IN THE MATTER OF AN INTEREST ARBITRATION under

s. 122 of the *Police Services Act*

BETWEEN:

REGIONAL MUNICIPALITY OF NIAGARA POLICE SERVICES BOARD
(The "Board")

- and -

NIAGARA REGION POLICE ASSOCIATION
(Uniform and Civilian Members)
(The "Association")

ARBITRATOR: William A. Marcotte

APPEARANCES:

FOR THE BOARD:	W. McKaig, counsel E. Murray, art. law stu. H. D'Angela, Board chair G. Scandlan, consultant J. Cook, consultant and others
FOR THE ASSOCIATION:	B. Cole, consultant P. DiSimoni, pres. L. McClay, CAO/Gen'l. Counsel and others

Mediation held in Niagara-on-the-Lake September 17, 2012; hearings in Niagara-on-the-Lake on January 28, February 22, March 4, 5 and 6, 2013. Conference call on May 8, 2013.

INTEREST AWARD

On July 12, 2012, I was appointed interest arbitrator under section 122 of the *Police Services Act* (the "PSA") to hear and determine all matters in dispute between the Regional Municipality of Niagara Police Services Board (the "Board") and the Niagara Region Police Association (the "Association") with respect to the renewal of the uniform and civilian collective agreements that expired on December 31, 2011. The method of dispute resolution chosen was mediation-arbitration. Hence, mediation was held on September 14, 2012, followed by arbitration proceedings on January 28, February 22, March 4, 5 and 6, 2013, and by way of conference call on May 8, 2013, regarding matters unresolved through mediation.

When interest arbitration occurs under the PSA, section 122.(5) is applicable:

> (5) In making a decision or award, the arbitration board shall take into consideration all factors it considers relevant, including the following criteria:
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> 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. The economic situation in Ontario and in the municipality.
> 4. A comparison, as between the employees and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.
> 5. The employer's ability to attract and retain qualified employees.
> 6. The interest and welfare of the community served by the police force.
> 7. Any local factors affecting that community.

The above criteria do not represent a departure from usual or often-used criteria generally employed by interest arbitrators. As stated by arbitrator Swan in "The Search for Meaningful Criteria in Interest Arbitration", *Dispute*

Resolution: Public Policy and the Practitioner, Proceedings of the Fifth Annual Meeting (SPIDR) (Washington, D.C., 1978), p. 344:

> It is, I think, fair to say that virtually all interest arbitrations in Canada are resolved by an appeal to a relatively limited number of criteria: the ability of the employer to attract and retain competent employees, internal relativities, external relativities, changes in the cost of living, changes in productivity, the ability of the employer to pay, and a general doctrine of fairness and equity. There is probably nothing exceptional in any of these criteria taken individually, and they should all bear, more or less, on the outcome of any public sector arbitration.

Under the *Act*, the parties are prohibited from invoking sanctions (i.e., strikes by associations and lock-outs by services boards) in their efforts to negotiate renewals of their collective agreements. Interest arbitration, therefore, is an alternative dispute resolution mechanism which attempts to replicate the bargaining outcomes the parties, themselves, would have agreed upon had they the ability to invoke sanctions in their efforts to fashion a renewed collective agreement *Re University of Toronto v. University of Toronto Faculty Assn.,* [2006] O.L.A.A. No. 782, 148 L.A.C. (4th) 193 (Winkler) para. 6: "The first [general principle] is the 'replication principle' which mandates that an award…would, as closely as possible, reflect the agreement that the parties would have reached had they been able to reach an agreement in free collective bargaining." (See also, e.g., *Re Pembroke (City) v. Pembroke Professional Firefighters' Assn. (Vacation),* [2000] O.L.A.A. No. 612 (Knopf) para. 4: "…the task is to try to replicate collective bargaining as closely as possible.").

Since it cannot be known what would have been the negotiated outcomes had the parties the ability to engage in "free" collective bargaining, replication requires objective consideration of the circumstances and context in which the parties attempted to renew their collective agreement. This objective consideration is made in light of the need to balance the interests of the parties

as represented by the positions they have taken on disputed items. As stated in *Re Sault Ste. Marie Police Services Board and Sault Ste. Marie Police Association* (1998) unreported version (Marcotte) at p. 3:

> All these considerations [i.e., s. 122.(5) of the Act] are to be taken into account with the emphasis placed on the local community circumstances. That local criteria and not simply provincial criteria must be attended to in making this award, is supported by the legislative collective bargaining structure which provides for local-level (as opposed to provincial-level or regional-level [e.g., northwestern Ontario]) negotiations between employer boards and police associations. Ultimately, therefore, it is to the local community that I look in order to determine what is a fair and reasonable settlement for both the Employer and the Association. That is, an interest arbitrator must balance the employees' interests in being treated fairly, and, the interests of the public-sector employer in providing wages, benefits, and working conditions comparable to those of similarly-employed groups that are reasonable and comparable to what the community itself is able to derive from employment, both sets of interests to be considered within the societal context.

In particular regard to the economic circumstances of the local community, arbitrator Teplitsky in *Re St. Catharines Professional Fire Fighters Association and the Corporation of the City of St. Catharines* (1985) unreported version (cited in the Association Arbitration Submissions, at p. 33), addressed the requirement to take into account both the interests of the community and the interest of its members who provide public service as follows:

> Economic conditions within the community are relevant to the extent that wage settlements reflect the community's willingness to moderate its expectations. Public sector employees should fare neither better nor worse than the community which it [sic] serves.

The Municipality of Niagara is geographically large, some 1,850 square kilometres with a population (2011) of roughly 430,000 bounded by Lake Erie to the south, Lake Ontario to the north, the Niagara River to the east, and, the

Municipalities of Hamilton and Haldimand to the west. The largest urban areas are St. Catharines, Welland, and, Niagara Falls. The smaller urban areas are Thorold, Port Colborne, Fort Erie, and, Grimsby, along with 5 other municipalities. Board data indicate some 700 sworn members and a total of 352 civilian members of the service, with 683 of the sworn members and the civilian members comprising the Association bargaining unit. Association data (2010) indicate a ratio of 230 police services employees per 100,000 population. Association data indicate that calls for police services have steadily decreased from 133,545 in 2005 to 118,553 in 2011. The total crime rate (excluding driving offences and criminal negligence causing death) was 5,596 in 2008, 5,271 in 2009, and, 5,442 in 2010, with a corresponding "total crime severity index", of 80, 76, and 70, respectively, in those same 3 years. Comparative data with the other 11 large police services boards in Ontario (commonly referred to as the "Big 12"), indicate the Niagara Region statistics fall close to the median rate. Association data also indicate the procedural steps police officers are required to follow have increased from 1974 to 2004, in the cases of: Homicide (90 to 113); Break & Enter (37 to 45); Domestic Assault (36 to 58); Impaired Driving (29 to 42), and, Trafficking (drugs) (9 to 65). Along with the complexity of policing, there has been increased "capital and equipment investment" in regard to: computer-aided dispatch; records management systems; radio communications, and, mobile workstations. The Region has allocated some 83 million dollars (debentured capital expenditure) for construction of new headquarters and new facilities in St. Catharines, Fort Erie, and Grimsby, as well as for upgrades in other existing and ageing facilities.

In regard to the economic situation in Niagara and the province, the Board's data are drawn from: FP Markets Canadian Demographics, 2012; Statistics Canada (2006 and 2011 census data); a report from Watson & Associates Economists Ltd.; municipal "Financial Information Returns"; BMA Municipal

Study 2010 and 2011, and, various municipal websites. For purposes of comparison, the Board compares itself to the municipalities/regions of Halton, Peel, Hamilton, Waterloo, Durham, and, on occasion, comparison to provincial statistical data. These 5 comparators were relied upon by arbitrator Jackson in his May 7, 1997 interest award between the parties and which comparators the Board submitted continue to be appropriate. The salients of the data presented by the Board are addressed below.

The Niagara Region's population (2011) is smallest (431,346) of the six service boards; the comparators' populations range between 501,669 and 608,124, save for Halton with a population of 1,296,814. Niagara has the lowest percentage population growth (2006 to 2011) at 0.92%, compared with a comparator range of 3.05% (Hamilton) to 14.22% (Halton). MLS Average Housing Prices (Resale) 2012 estimates indicate $230,000 for Niagara, compared with $317,500 for Waterloo, and, $350,000 for Hamilton. The Average New Single Detached housing prices estimates for 2012 are $398,000 (Niagara), $425,000 (Waterloo), and, $510,000 (Hamilton). The percentage growth in that price from 2010 – 2012 is 5% for Niagara, and, 12% for both Waterloo and Hamilton. Housing costs, as a percentage of Household Income (2012) are 28.6% for Niagara, 29.9% for Waterloo, and, 37.1% for Hamilton.

As concerns labour force data, the Niagara 2012 unemployment rate is 7.8% compared with Waterloo at 6.6%, Hamilton at 6.5%, and, Durham (Oshawa) at 8.7% (provincial average is 7.9%). In 2007, those unemployment rates are 6.8% Niagara, 5.5% Waterloo, Hamilton at 6.0% and Durham (Oshawa) at 6.2% (provincial average 6.4%). Labour force participation rates for 2012 indicate Niagara at 64.7%, Waterloo 71.8%, Hamilton 65.3% and Durham (Oshawa) at 68.5% (provincial average of 65.5%). Those rates in 2007 were Niagara at 63%, Waterloo at 70%, Hamilton 66.9%, and, Durham (Oshawa) at 68.4%. The data indicate that from 2001 to 2010, the per capita labour income in Niagara was

consistently below the provincial average from 2001 to roughly 2004 (Niagara at roughly $33,000 and provincially roughly at $36,000), with a larger discrepancy from 2005 to 2010 (Niagara at approximately $35,000 and provincially at some $39,000 to $41,000).

In regard to 2012 property taxes on a single family home with an assessed value of $350,000, Niagara taxes are $5,213 compared with Halton ($3,284), Peel ($4,076), Waterloo ($4,379), City of Hamilton ($4,522), and, Durham ($5,688). These amounts of 2012 property taxes, as a percentage of household disposable income are 10.2% for Niagara, 3.5% for Halton, 5.2% for Peel, 6.2% for Waterloo, 7.3% City of Hamilton at 7.3%, and, Durham at 7.4%. When based on estimated resale values of single family homes, the amount of property tax in Niagara is the lowest ($3,426) compared with Halton ($5,442), Peel ($4,661), Waterloo ($4,004), Hamilton ($4,780) and Durham ($5,363) and represent the lowest percentage of household disposable income i.e., 7.2% when compared with Halton (7.9%), Peel (7.5%), Waterloo (7.3%), Hamilton (9.9%), and Durham (8.5%).

In further regard to household income, in 2012 the average household income for Niagara is $76,476 compared with $129,861 for Halton, $105,020 for Peel, $92,813 for Waterloo, $81,280 for City of Hamilton, and, $101,833 for Durham (provincial average of $92,225). The average disposable income in that same year is: $50,942 for Niagara, $95,046 for Halton, $78,979 for Peel, $70,296 for Waterloo, $62,316 for City of Hamilton, and, $77,133 for Durham (provincial average of $69,868). The percentage change in disposable income for the period of time 2010-12, is 1.65% Niagara, 2.66% Halton, 2.29% Peel, 0.34% for Waterloo, -2.64% City of Hamilton, and, 1.97% Durham.

The 2012 average discretionary income data indicate $18,208 (Niagara), $37,185 (Halton), $28,456 (Peel), $25,878 (Waterloo), $22,280 (City of

Hamilton), and, for Durham, $28,801 (provincial average $25,811). Percentage change in that amount for the period of time 2008-12, are: 7.62% (Niagara), 5.03% (Halton), 3.83% (Peel), 6.87% (Waterloo), 8.51% (City of Hamilton), and, 5.33% in Durham. As a percentage of total income for 2012, average discretionary income is: 23.8% for Niagara, 28.6% for Halton, 27.1% for Peel, 27.9% for Waterloo, 27.4% for City of Hamilton, and, 28.0% for Durham. Average discretionary income as a percentage of total income for the period of time 2008-12 is: 3.3% (Niagara), 1.6% (Halton), 2.3% (Peel), 2.9% (Waterloo), 3.9% (City of Hamilton), and, 2.3% (Durham).

Comparison of average liquid assets per household in 2010 reveals $111,247 for Niagara, $199,382 in Halton, $189,237 in Peel, $144,362 in Waterloo, $97,842 in City of Hamilton, and, $164,078 in Durham (provincial average of $128,425). Percentage change in those figures from 2008-10 are: 4.0% (Niagara), 5.34% (Halton), 5.32% (Peel), 5.57% (Waterloo), 5.23% (City of Hamilton), and, 4.97% (Durham)

Regional-level comparison of Reserves and Reserve Funds per household (2011), indicates $1,563 for Niagara, $4,258 for Halton, $3,210 for Peel, $1,494 for Waterloo, City of Hamilton at $3,684, and Durham at $5,013. Percentage changes of those funds for the period of time 2008 to 2011 are an increase in Halton of 25.3%, -0.7% for Peel, -9.3% for Waterloo, 29.3% for City of Hamilton, and, for Durham, 34.3%, compared to 6.1% for Niagara. Tax operating ratios (2010) indicate -4.1% for Niagara, Halton at 14.4%, Peel 0.3%, Waterloo -3.9%, City of Hamilton -3.1%, and, Durham at 5.3%. Those figures, when viewed as percentage changes from 2009, indicate Niagara at -1.4%, Halton at -0.7%, Peel at 2.2%, Waterloo at 10.3%, City of Hamilton at 7.1%, and, Durham at 1.8%. In 2010, Niagara had a Tax Operating deficit of -4.1% compared to Halton at 14.4% surplus, Durham 5.3% surplus, Peel .3% surplus, City of Hamilton -3.1% deficit, and, Waterloo -3.9% deficit.

Weighted assessment values for tax purposes for 2011 indicate Niagara at 49.3 billion, Halton at 94.3 billion, Peel at 182.6 billion, Waterloo at 63.2 billion, City of Hamilton at 62.1 billion, and, Durham at 72.0 billion. The percentage change in those amounts from 2008 to 2011 are: Halton 35.5%, Peel 23.0%, Waterloo 27.4%, City of Hamilton 28.0%, Durham 22.4%, and, Niagara experiencing a change of 24.5%. Assessment growth expressed as a percentage is 0.92% Niagara, 1.49% Halton, 1.5% Peel, 1.85% Waterloo, City of Hamilton 1.10% and Durham 1.39%. Assessment growth as a percentage of change in the period 2009-12 indicates Niagara at 1.12%, Halton at 2.43%, Peel 1.82%, Waterloo 1.78%, City of Hamilton 1.18%, and, Durham at 1.42%. The data indicate that Niagara Region has the lowest weighted assessment and assessment growth in 2011, and, the lowest percentage of increase growth in the 2008-11 period (2009-11 for assessment growth data).

In regard to police services operating costs per capita for 2011, the data indicate $333.94 for Niagara, $230.89 for Halton, $252.43 for Peel, $233.42 for Waterloo, $269.27 for Hamilton, and, $248.62 for Durham. As concerns First Class Constable salaries for 2011, the Niagara salary was $83,246, for Halton $83,274, Peel $83,483, Waterloo $83,156, City of Hamilton $83,327, and, Durham $82,888. The change in average annual salary for the period of time 2007-11, indicates 3.16% for Niagara, 3.09% for Halton, 3.15% for Peel, 3.08% for Waterloo, 3.10% for City of Hamilton, and, 2.98% for Durham. As concerns civilian members, the Board provided 2011 market data which compare 22 classifications in Niagara with those (where they exist) in the 5 comparator boards. In classifications of: switchboard operator, district assistant/admin. asst., supervisor-special constables, records CPIC supervisor, FOI (freedom of information) clerk, FOI analyst, intelligence analyst, fleet mechanic, and, fleet supervisor, the salaries are below the median salary of the comparators, and, in Niagara above the median in the classifications of: mail clerk, courier, records

receptionist, station duty operator, special constable/escort officer, communicator, supervisor communicators, CPIC records, and, Quartermaster/stores.

The Board submitted that its "poor economic" or financial situation is such that it does not have the ability to pay the compensation increases sought by the Association in this round of collective bargaining above what it proposes i.e., a 1.02% increase in total compensation. There is no money at the Regional level to pay compensation increases above what it proposes and there is no ability on the part of the Region's taxpayers to pay more property taxes to support increased compensation above 1.02%. In that regard, the Board submitted it is important to recognize and consider the entire compensation package reflected in the current uniform and civilian collective agreements, and the effect on those matters of the Association proposals *Re Meadow Park Nursing Home and S.E.I.U., Local 210* (October 24, 2990) unreported version (Samuels) at pp. 5 and 6:

> Another basic consideration is total compensation. This has two aspects.
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> Firstly, in the end one cannot consider each proposed change to the collective agreement in isolation; rather one has to take into account the overall increase in wages and benefits in order to determine the real demands being made of this employer. If it is decided that an overall increase of x% is fair and reasonable, this increase can be made up of improvements to various parts of the compensation package. There are trade-offs to be made. Significant increases in one area necessitate little or no increase in other areas.
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> Secondly, when comparing the wages and benefits of employees to another group, it is essential to do this on a total compensation basis, rather then on a simple comparison of the treatment in one area. It is the overall comparison, which is significant, not the piece by piece comparison. For example, Group A may have foregone some wages in order to have a rich health and welfare package. It would not be fair for Group B to demand the same health and welfare as Group A if it insisted on retaining its more generous wage structure.

Secondly, the Board submitted that, in consideration of individual items in dispute, an award ought to be made if there is a demonstrated need for amending or adding to the collective agreements. That is, the proposing party must establish there is a need for the proposal and that its proposal, in fact, addresses the stated need. Thirdly, the Board contended that this award ought to be consistent with fiscal realities and other relevant criteria and ought not reflect compromise to, in effect, "give something to each party", referring to a 1976 interest award of Justice Dubin, at p. 7:

> One of the difficulties in the arbitration process in the past has been the tendency of an arbitration to arrive at an award which is a compromise of the respective positions of the parties. The effect of that has been to encourage the parties to keep all of the contentious items on the table and to discourage them from making a sincere effort to resolve items by themselves.

The Association submitted that in regard to the economic situation in Niagara and the province, it has no fundamental disagreement with the Board's "data points." This information, it said, indicates the Niagara Region is "in the middle or near the bottom" of the comparators. However, it argued that the Board comparators reflect substantively different socio-economic factors so as to be of questionable value for comparison purposes.

Concerning the specifics of the Board's data, the Association submitted that median, rather than average, amounts are preferred data since average figures give too much weight to "outliers", i.e., the top and bottom figures. More particularly, the Association is uncertain as to how household disposable income adds anything to the economic situation debate. The notion of "discretionary household income" is not a "direct number" but, rather, is presented as a "calculated after-tax figure minus sources not clearly specified."

Moreover, discretionary income as a percentage of total income is a ratio that has little meaning. The Association submitted that FP Markets data arise from "questionable sources", for example, liquid assets per household. The Niagara Region has a large number of retirees and that group is known, generally and not just in Niagara, to not have high levels of liquid assets. Moreover, senior citizens, for the most part, have paid off their mortgages and data which assume purchase of a new house or borrowing large amounts of money for that purpose do not reflect the older population's economic circumstances.

As to the size and growth rates in comparator populations, the Association argued that the smaller population and slower rate of growth in Niagara – and, hence, lower rates of new housing construction resulting in a lower rate of tax-assessment growth – indicate lower needs for Regional services, including policing. As to housing prices data, there are lower land costs in the Niagara Region and the Board's data do not measure housing costs as a share of income, rather, they illustrate a "calculated cost", which assumes borrowing money at assumed interest rates for down payment purposes. In contrast, 2006 Statistics Canada census data indicate housing costs as a percentage of income to be: 19% in Niagara, 20% in Halton, 25% in Peel, 21% in Waterloo, 21% in Hamilton, 22% in Durham, and, 21% in York Region (a provincial average of 21%). Similar percentages in regard to rental costs are said to be: 16% in Niagara as opposed to the Board data indicating 29%, 15% in Hamilton as opposed to 37%, and, 14% in Waterloo as opposed to 30% as is the Board's figures. The Association argues that Statistics Canada data are to be preferred since what is measured is "what people actually pay" for housing costs versus hypothetical down payments and interest rates.

In regard to the Board's data concerning property taxes, the Association contends the figure of $350,000 is "extraordinarily high" for Niagara Region housing and the Canadian Real Estate Association figure of $230,000 as the

average resale value is more appropriate. When the latter figure is used, the percentage of after-tax income directed to property taxes drops from 10% to 7.2%, i.e., an actual lower property burden on taxpayers as compared to the Board's comparators.

Regarding reserves funds, the Association submitted that, by law, municipalities are not permitted to run a deficit, so different ratios are applied to these funds. At any rate, it was contended, operating ratios are different because they have less to do with "capacity to pay for" certain matters and more to do with political decisions rather than a fiscal decision (I note the Association in this part of its presentation strayed from explication of data into simple opinion). More generally, the Association noted that the most recent Standards & Poor rating for the Niagara Region re-affirmed its AA rating.

As concerns unemployment rate data, the Association contended that longer periods of time than used by the Board are more illustrative for economic circumstances purposes. In that regard, the unemployment rate in Ontario and in the Niagara Region from 1996 (the base year for a new labour force survey by Stats Canada) to 2012, indicates that, for Ontario, the rate of unemployment following the recession, in roughly 1998 to 2001, has recovered to roughly 8% in 2011 and 2012. The Niagara Region data indicate that its unemployment rate roughly reflects the provincial experience, but in line with a historically higher rate of unemployment – at times significantly higher – in the Niagara Region as compared to historical provincial data. The same holds true, it was said, concerning labour force participation rates. As to those two measures, the Association argued there has been no significant change to them so as to justify departure from the norm concerning wage settlements in the police services sector. Moreover, the gap between Niagara Region rates and comparator data reflects, at least in part, the larger portion of the population over 65 years of age in Niagara.

As to the police services operating costs per capita data, the Association pointed out that police services calculate this figure in different ways. For example, the Niagara Region includes the cost of buildings, facilities, and vehicles while Waterloo Region does not. As concerns comparative data regarding First Class Constable salaries, the Association submitted it is "completely irrelevant" to compare that salary with average household income. There is no dispute that police officers in the Niagara Region are relatively well-paid, as in most other parts of Ontario, and, police salaries across the province demonstrate a notable degree of uniformity.

The Association argued that the Board's "ability to pay" position is, in reality, an "unwillingness to pay" argument, or, and "unwillingness to allocate budgetary funds" argument. The Association submitted the numerous interest arbitration awards it presents indicate, by way of summary, frequent arbitral criticism of the "inability to pay" argument as applied in the public sector:

1. Ability to pay is a factor entirely within the government's control
2. Government cannot escape its obligation to pay normative wage increases to public sector employees by imposing limitations on funds that are available to public institutions.
3. Entrenchment of ability to pay as a criterion fetters the discretion of arbitrators, and challenges the legitimacy of the arbitration process as a viable dispute resolution process.
4. Public sector employees should not be required to subsidize public services through substandard wages and benefits.
5. Public sector employees should not be penalized because they have been denied the right to strike.
6. Government ought not to be allowed to escape its responsibility for making political decisions by hiding behind a purported inability to pay.
7. Arbitrators are not in a position to measure a public sector employer's ability to pay.

In the instant case, the Board's total compensation proposal simply reflects the amount budgeted by the Regional Council and which reflects but a willingness to pay, not an ability to pay, decision.

Rather, the Association submitted that the replication principle entails consideration of comparability with similarly-employed police services' employees *Re Saint John Firefighters Association and the City of Saint John* (August 24, 1999) unreported version (McGinley) at p. 3:

> …the Board sees the replication principle as requiring interest arbitrators to attempt to simulate what might have been agreed to by the parties in a free collective bargaining environment, keeping in mind market and economic realities…. The notion of comparability involves references which, when reasonably considered and weighed, do offer some tangible guidelines, but it should also be held in mind that they should be seen only as guidelines and not commandments.

In turn, it was submitted, comparability involves certain considerations applicable to public sector parties required to settle their disputes by interest arbitration *Re B.C. Railway Co. and Brotherhood of Maintenance of Way Employees, Caribou Lodge, Loc 221* (June 1, 1976) unreported version (Shime). The considerations identified by arbitrator Shime include that public sector employees should not be expected to accept sub-standard wages as a means of subsidizing the service they provide. Further, that: cost-of-living is a factor which intends to maintain the wage position of employees relative to the balance of the economy; public sector employees should not be denied the benefits of economic productivity advances; public sector employees doing work of comparable skill and ability ought to receive equivalent compensation so as not to distort the patterns or structures of compensation within those groups, and, where groups of employees performing similar work are employed by different employers they ought to receive similar wages.

More particularly, the Association submits that because there are no "similarly employed" police officers who are not members of other police services boards, the appropriate comparator is First Class Constables' salaries in comparable police services boards. In that regard, the Association draws upon a wider range of comparators (its selection based on the size of the police service), than does the Board, albeit including the Board's 5 comparators.

In regard to the Board having approved the Regional Council's decision to set the total compensation increase for the Board's 2012 budget at 1.02%, the Association submitted the Regional Council's decision is reflective more of a "political decision" than a decision based on "economic influences." For example, a decision by Council to restrict or freeze property tax increases is a political decision reflecting unwillingness to pay rather than ability to pay, as is the decision concerning levels of reserve funds. Rather, the Association submitted, three key points are to be considered in evaluating economic or fiscal data to support the Board's ability-to-pay criterion: firstly, governments do not have an ability to pay that is independent of that of their citizens. Secondly, ability to pay taxes and other fees to support local government must be measured in the context of the benefits received from local public services and, thirdly, there is no such thing as a representative composite citizen. By way of illustration regarding the last matter, even in the extreme event of a 4% increase in the rate of unemployment, 96% of those employed are not affected by that rise and it is not reasonable for police officers to compensate the community in general in the form of lower salaries for the loss of living standards for that 4% of the community.

As concerns the Association's criticisms of its data, the Board argued that FP Market data are recognized as reliable and credible for the purposes at hand and it uses CMHC data Statistics Canada data, where appropriate, noting that the latter is dated, i.e., 2006 census data. Nonetheless, use of a variety of data

sources tends to ensure relevant and current analysis. Whether a mean or median calculation is used, there is no fundamental affect on the data. No matter how you calculate it, the Niagara Region is economically below the comparators. A notable change is that the rate of population growth in Niagara decreased to .92% in 2006-11 from 4.1% in 2001-06. Its data do not oversimplify housing costs as a percentage of income. Association data concerning rental percentages of income do not accord with CMA St. Catharines data. The Board data indicate, in regard to household income, a shift away from goods-producing services to lower-paying service economy jobs.

As to the matter of ability to pay, the Board noted that it does not have independent authority to levy taxes, that the Regional Council has that power and, in the instant case, the members of the Police Services Board unanimously approved the Region's budgetary allocation of 1.02% total compensation increase for Association members.

ITEMS AGREED UPON

Any and all items agreed upon by the parties prior to September 17, 2012 as well as my award in regard to matters remaining in dispute are to form the January 1, 2012 – December 31, 2012 uniform and civilian collective agreements, i.e., a one-year renewal, as agreed to by the parties. Further, the parties have requested this award include the following:

> "A proposal was made to remove the word 'further' from the last sentence of Articles 11.12 and 11.22 of the Uniform Collective Agreement and Articles 8.11 and 8.20 of the Civilian Collective Agreement. The proposal is awarded."

Any proposed matter not addressed in this award is rejected.

ITEMS IN DISPUTE

The items remaining in dispute are presented, in order of the uniform collective agreement provisions, in 3 categories:

(A) Items common to the uniform and civilian collective agreements

(B) Items applicable only to the uniform collective agreement

(C) Items applicable only to the civilian collective agreement

(A) Items Common to the Uniform and Civilian Collective Agreements

Recognition and Scope (uniform – art. 1.5.1 (new); civilian 1.4.1)

There is no clause regarding this subject-matter in the uniform collective agreement proposed by the Association. As concerns the civilian collective agreement, art. 1.4.1 states:

> The Association and the members recognize and acknowledge that it is the exclusive function of the Board to:
>
> i. maintain order, discipline and efficiency;
> ii. hire, discharge, direct, classify, transfer, promote, demote, and suspend or otherwise discipline any employee, provided that a claim of discriminatory promotion, demotion or transfer or a claim that any such employee has been discharged or disciplined without just cause, may be the subject of a grievance;
> iii. generally to manage the operations and undertakings of the Service and, without restricting the generality of the foregoing, to select, install and require the operation of any equipment, plant and machinery which the Board in its uncontrolled discretion deems necessary for the efficient and economical carrying out of the operations and undertakings of the Service.
>
> Also, relevant for purposes at hand:
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> 1.4.2 The Employer agrees that it will not exercise the foregoing functions in a manner inconsistent with the provisions of this Agreement.
>
> 1.5 The parties agree that there will be no harassment or discrimination, as defined the O*ntario Human Rights Code.* Alleged incidents of harassment or discrimination will be addressed through the grievance procedure.

The Association proposes the above wording of art. 1.4.1 be changed and that the changed wording be included in the uniform and civilian collective agreements, as follows:

> The Association recognizes and acknowledges that it is the exclusive function of the Board to:
>
> i. Maintain order, discipline and efficiency;
> ii. Hire, discharge, direct, classify, transfer, promote, demote, and suspend or otherwise discipline any employee;
> iii. Generally manage the operations and undertakings of the Service.
>
> If a member claims that the Board has exercised any of the functions outlined above in a discriminatory or unfair manner or without reasonable cause then such claim may be the subject of a grievance.
>
> The Board agrees that the exercise of the functions in section 1.4.1 shall be consistent with the provisions of this Agreement and shall be consistent with the provisions of the Ontario Human Rights Code, the Police Services Act and the Regulations thereunder.

The Association also proposes that the following be inserted before the above-last paragraph:

> The parties agree that there will be no harassment or discrimination, as defined by the Ontario *Human Rights Code.* Alleged incidents of harassment and discrimination will be addressed through the grievance procedure.

The Association submitted that the current wording of the civilian clause is "clumsy" in particular regard to the use of "equipment, plant and machinery", and its proposal "modernizes" the provision. On the other hand, the Board's proposal (*infra*) perpetuates that language and does not adequately capture the obligation on it to act fairly and reasonably in the exercise of its management

rights. The inclusion of "reasonable" is required since the Police Services Act does not make clear the expectation that the labour-management relationship "would have as its heart such expectation." The Association noted the requirement for "reasonable" exercise of management rights exists in the Ottawa, Toronto, York, Halton, and Peel agreements, while the Waterloo and Windsor agreement contain a "just cause" requirement. Further, the Association argued that demonstrated need exists for the language of its proposal, in that police services rely heavily on general orders or other policy instruments to direct the workplace and workforce, but there is no dialogue between the Association and Board as to these directives. Its proposal is, therefore, warranted.

The Board proposes no change to art. 1.4.1 of the civilian collective agreement. As to the uniform collective agreement, the Board suggests the following language:

> 1.4.1 The Association and the members recognize and acknowledge that it is the exclusive function of the Board to:
> i. maintain order, discipline and efficiency;
> ii. hire, direct, classify, transfer and promote any member, provided that a claim of discriminatory promotion or transfer may be the subject of a grievance;
> iii. discharge, demote, suspend or otherwise discipline any employee in accordance with the provisions of the *Police Services Act;*
> iv. generally to manage the operations and undertakings of the Service and, without restricting the generality of the foregoing, to select, install and require the operation of any equipment, plant and machinery which the Board in its uncontrolled discretion deems necessary for the efficient and economical carrying out of the operations and undertakings of the Service.
>
> 1.4.2 The Employer agrees it will not exercise the foregoing functions in a manner inconsistent with the provisions of this Agreement.

The Board submitted that the language in the civilian collective agreement is longstanding, having been introduced by arbitrator Joyce in his 1992 award, and where he did not include the Association language requiring Board rules and regulations to be applied "in an equitable, fair,...reasonable" manner, for reason that this language "would leave the Employer open to subjective attack over virtually all of its decision" (p. 18). The Board noted the Association proposal fails to acknowledge that uniform members are subject to the provisions of Part V of the PSA concerning all discipline matters. Also, the Association has provided no indication to the Board of specific problems which its proposal can be said to address, and the comparators do not demonstrate a trend, rather, their provisions are varied and provide no guidance as to appropriate language for the parties at hand. In response, the Association noted previous complaints of poor communication system (2000 and 2012) had to involve Occupational Health and Safety officials of the Ministry of Labour rather than having these complaints more properly dealt under the collective agreement.

In *Re The Kingston Police Services Board and The Kingston City Police Association* (March 18, 2004) unreported version (Marcotte), the matter of a management rights clause in a collective agreement is addressed at p. 7, as follows, relevant to our purposes:

> ...it can be said that the management clause in a collective agreement operates to delineate the extent to which an employer's exercise of its management rights are unrestricted by the terms and conditions of a collective agreement and the correlative extent to which a union can properly challenge an exercise of management rights through the grievance and arbitration procedures. Hence, any change in the current language of the management rights clause will significantly affect the current delineation of the parties' rights under the provision of the collective agreement.

As to the "modernization" of the language of the provision, the *Concise Oxford English Dictionary*, relevant to our purposes, defines the noun "plant" as: "b. a factory", and the noun, "factory", as: "1 a building or buildings containing plant or equipment for manufacturing machinery or goods." Clearly, the word "plant" has no application to police services boards. "Machinery" and "equipment" are words that apply. I award that the word "plant" be deleted from the provision in the civilian collective agreement and that it not appear in the uniform agreement provision.

In regard to the uniform collective agreement, I award the language at art. 1.5 of the civilian collective agreement to be included in the management rights provision. I also award the Board's proposed management rights provision, subject to the following amendment.

The Association proposes, as follows, for both collective agreement:

> If a member claims The Board has exercised any of the functions outlined above in discriminatory or unfair manner or without reasonable cause, then such claim may be the subject of a grievance.

The awarded inclusion of art. 1.5 of the civilian collective agreement in the uniform agreement makes the Association proposed use of the word "discriminatory" somewhat, albeit not completely, un-necessary. I do not award its inclusion. In regard to the phrase, "unfair manner or without reasonable cause", the use of the word "unfairly", or, the phrase, "unfair manner", is generally excluded from management rights clauses in collective agreements and appears in only a few police-sector collective agreements, as indicated in Association data. I do not award its inclusion. The inclusion of the requirement for an employer to exercise its management rights in a reasonable manner has been addressed by the Ontario Court of Appeal *Re Metropolitan*

Toronto (Municipality) v. C.U.P.E. (1987), 62 O.R. (2d) 636 (Div. Ct.), revd 69 D.L.R. (4th) 268 (C.A.) leave to appeal to S.C.C. refused 120 N.R. 192n. As stated in Brown and Beatty, *Canadian Labour Arbitration* 4th ed., (Aurora, Ont.: Canada Law Book, Inc.) para. 4:2326:

> And given that in both Ontario [supra] and Manitoba, the Courts of Appeal have affirmed the principle that, where appropriate, management rights are to be exercised in a reasonable manner…

That is not to say that all management rights are required to be exercised in a reasonable manner, rather, it is only in regard to employer obligations and employee rights that exist in the collective agreement. As stated in *Re Board of School Trustees of School District No. 37 (Delta) and C.U.P.E., Loc. 1091 (Buchko),* at p. 49:

> A reading of [the] authorities indicates that the concept of "reasonableness" cannot be used to create substantive rights. In my opinion, the cases cited above, even those which most strongly advocate an obligation of reasonableness, do not stand for the proposition that a collective agreement should be read in a particular way because it would be "reasonable" to do so. What those cases establish is that if an obligation or right already exists under a collective agreement, then that right or obligation must be exercised in a reasonable manner. In other words, the notion of "reasonableness" refers to the manner in which an existing right must be exercised and should not be used to create a right.

Since the current state of the law is that an employer is required to exercise its management rights in a reasonable manner in regard to existing obligations and rights under a collective agreement, and it cannot be understood the parties agree an employer can exercise its management rights in an unreasonable manner, there is no basis not to include this requirement in the uniform and civilian management rights provision.

For purposes of clarity, art. 1.4.1 of the civilian collective agreement remains unchanged save for the deletion of the word "plant" in subsection 1.4.1 iii, and the inclusion of the phrase "an unreasonable manner or in" in art. 1.4.2.

1.4.1 The Association and its members recognize and acknowledge that it is the exclusive function of the Board to:
i. maintain order, discipline and efficiency;
ii. hire, discharge, direct, classify, transfer, promote, demote, and suspend or otherwise discipline any employee, provided that a claim of discriminatory promotion, demotion or transfer or a claim that any such employee has been discharged or disciplined without just cause, may be the subject of a grievance;
iii. generally to manage the operations and undertakings of the Service and, without restricting the generality of the foregoing, to select, install and require the operation of any equipment and machinery which the Board in its uncontrolled discretion deems necessary for the efficient and economical carrying out of the operations and undertakings of the Service

1.4.2 The Employer agrees it will not exercise the foregoing functions in an unreasonable manner or in a manner inconsistent with the provisions of this Agreement.

In regard to the uniform collective agreement, I award as follows:

1.8 MANAGEMENT RIGHTS

1.8.1 The Association and the members recognize and acknowledge that it is the exclusive function of the Board to:
i. maintain order, discipline and efficiency;
ii. hire, direct, classify, transfer, and, promote and member provided that a claim of discriminatory promotion or transfer may be the subject of a grievance;
iii. discharge, demote, suspend, or otherwise discipline any member in accordance with the provisions of the *Police Services Act.*
iv. generally to manage the operations and undertakings of the Service and, without restricting the generality of the foregoing, to select, install and require the operation of any equipment and machinery which the Board in its uncontrolled discretion deems necessary for the efficient and economical carrying out of the operations and undertakings of the Service

1.8.2 The Employer agrees it will not exercise the foregoing functions in an unreasonable manner or in a manner inconsistent with the provisions of this Agreement.

1.9 The parties agree there will be no harassment or discrimination, as defined by the *Ontario Human Rights Code.* Alleged incidents of harassment or discrimination will be addressed through the grievance procedure.

Recognition, Scope & Definitions (art. 1 – uniform and civilian – new)

The Association proposes the following language be added to the uniform and civilian collective agreements:

> Except to the extent and degree agreed upon by the parties, no work customarily performed by an Employee covered by this agreement shall be performed by another employee [sic] or a person who is not an employee of the Employer.

The Association identified this proposal as a major issue. There have been two incidents where non-bargaining unit members have performed bargaining unit work. More significantly, with the construction of the new headquarter facilities, it is reasonable to anticipate there will be some centralization of the work currently performed in district facilities, particularly in regard to civilian members. It is also concerned that "heightened political attention to models of policing" caused by rising police service costs threatens the integrity and viability of the bargaining unit. There is, it was said, no economic reason why the Board would resort to contracting out its protection services, therefore, arguments supporting the need for drastic cost measures are not relevant. Moreover, the workload of this police service has not experienced dramatic fluctuations which might necessitate contracting out of services. The Association acknowledges that this issue has not been faced in the past, nonetheless, heightened political pressure to restructure police services ought to be dealt with in the collective agreement, rather than simply attempting to

react to restructuring changes in the future. In further support of its position, the Association notes that clauses quite similar to its proposal exist in closely-related firefighter collective agreements and have been included in them for a member years, and where arbitrators have reasoned, *a propos* the circumstances in this Board:

> The test for demonstrated need is not easily applied to a demand in the area of unit security. If a bargaining agent had to wait until after the bargaining unit has been depleted the awarding of such a clause would provide cold comfort to the bargaining agent (*Re Ottawa Professional Fire Fighters Assn.* (June 15, 1988) unreported version (Burkett) p. 15).

The Board objects to the inclusion of this language in the collective agreements. Firstly, the Association proposal could be construed as improperly eliminating the statutory right given to police services boards to use non-police services employees to perform policing functions pursuant to sections 4, 5, 7, and 40 of the PSA, and, *Regulation 3/99* thereunder. Further, regardless of the jurisdictional argument, this award cannot override specific legislative rights given to the Board concerning the delivery of policing services. As to the two incidents referred to by the Association, a Region employee was employed in 2011 for some 10 days over a 4-week period to clear a backlog in clearance certificate applications. The second instance involved using the services for a Region's Occupational Health Nurse for some 6 months and during which time it was uncertain as to whether that position was a Senior Officer or an Association position. (It was eventually determined to be a Senior Officer position.) The Board noted that none of its comparators has a similar provision and there has been little or no discussion between the parties in regard to the matter of demonstrated need, as against the Board's need for flexibility and "creativity" concerning cost effective ways of providing required policing services, noting that over 94% of the police services budget is for wages and benefits costs. As concerns civilian members in particular, current article 28 of

the civilian collective agreement deals with lay-off and recall matters agreed to by the parties.

The Association proposals call for the addition of a significant, substantive right for its members, essentially an integrity-of-the-bargaining-unit provision. Arbitrators are chary of including a substantive right in a collective agreement, but consider doing so where there is established a demonstrated need for such a provision. In the instant case, with the completion of the new facilities and centralization of some of the Board's operations, the matter of staffing surpluses may become a matter of concern to the Association. (In that regard, the two staffing instances referred to by the parties appear to have arisen due to exigencies at those times and do not reflect on-going circumstances.) However, the completion of the new headquarters is not anticipated by the Board to occur prior to 2015, i.e., 3 years after the expiry of the collective agreement at hand. Further, the Board indicated its senior officers have begun the early stages of the planning process concerning staff, and, that staff attrition will play a role in future staffing. Given the significant substantive right associated with the proposed provision, the lack of demonstrated need, and, the timing of the move to the new headquarters vis-à-vis the expiry date of the agreement at hand, the Association proposal is premature. I do not award the Association proposal.

Salaries (uniform – art. 2.1; civilian art. 2.1)

Article 2.1 in each agreement refers to Appendix "A" – Salary Schedule. The parties' submissions on this matter referred to the salary of a 1st Class Constable, i.e., the benchmark for comparator purposes. The parties are agreed that the awarded percentage increase to that benchmark applies to all salaries of the uniform and civilian members (in some cases, as a percentage increase in hourly wage rates). The Association proposes a 3.05% increase which raises the benchmark salary to $85,787.00 (rounded from $85,785.62) from the 2011 salary of $83,246.60. The Association compares its proposal to

the benchmark salary in London, Ottawa, Toronto and York in addition to the Board's comparators of Halton, Peel, Waterloo, Hamilton, and Durham, as follows:

Niagara Region Police Association – Comparator Wage Analysis – 2006 to Present

	2006	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	**2013**	**2014**
Durham Regional	71502	73697	76003	78299	80762	82888	85,376		
Halton Regional	71471	73730	76060	78418	80770	83274	85,606	87,932	90,054
Hamilton	71484	73743	76073	78469	80825	83328	85,619		
London	71435	73595	76050	78438	80807	83216	85,562	87,932	90,218
Ottawa	71438	73617	75996	78445	81012				
Peel Regional	71441	73734	76086	78460	81046	83483	85,988	88,151	90,355
Toronto	71511	73657	76094	78742	81250	83851	86,368	88,846	90,623
Waterloo	71372	73655	76012	78445	80798	83156			
York	71511	73656	75866	78741	81249	83483	85,988	88,148	90,352
Average	**71463**	**73676**	**76026**	**78495**	**80946**	**83335**	**85,787**	**88,202**	**90,320**
Niagara Region	71343	73492	75706	78147	80607	83247			
Difference	-120	-184	-320	-348	-339	-88			
							3.05%	2.82%	2.4%

The Association noted that for Waterloo and Ottawa, the matter of 2012 salaries is currently before interest arbitrators. The Association does not include the Ontario Provincial Police ("OPP") salary because its current 4-year collective agreement included a "greater than the normative wage increase at the commencement", the following 2 years at 0% increase, and, the fourth year increase to be such as to "guarantee [the OPP] of being the highest paid officers

in Ontario." The 2011 Windsor collective agreement also awaits an arbitrator's award.

The Association proposal removes the $88.00 difference between its First Class Constable's salary and the settled average of its comparators for 2012. Its "customary" request is that salary increases and all forms of compensation based on salary (save for benefits) be made retroactive, in this case, to January 1, 2012, including for members who are no longer employed by the Board subsequent to January 1, 2012 for the period of time of their 2012 employment. It requests the award specify that all retroactive payments are to be made within 45 days of the date of issuance of this award and should that not occur, interest paid in accord with the *Courts of Justice Act* for post-judgement orders.

The Association submitted that comparisons with other police services is the only legitimate way for determining police officers' wages and benefits in similarly-sized municipalities. In that respect, the Association argued that it appropriately uses the other large services as its comparators. Thus, its proposal on salaries, which results in the 1st Class Constable salary in Niagara reflecting the 2012 average of its comparators is a reasonable, justifiable request.

The Board proposes a 0.82% salary increase which it states will increase total compensation (e.g. overtime rates) under the provisions of the collective agreement by 1.02%. Alternatively, it proposes a 1.02% total compensation increase excluding salary. The Board submitted that while the Association proposal reflects the 2012 average salary of its comparators, its salary proposal meets the requirement that its employees' wages be "comparable" to that of its comparators. In that regard, the Board submitted the following comparison:

Police Service	Dec 2011 Rate	% of Top Rate	Dec 2012 Rate	% of Top Rate
Peel	$83,483	100%	$85,988	100%
Halton	$83,275	99.8%	$85,606	99.55%
Hamilton	$83,327	99.7%	$85,619	99.56%
Niagara	$83,246	99.7%	$83,929*	97.6%
Waterloo	$83,156	99.6%	n/a	
Durham	$82,888	99.3%	$85,376	99.3%

*Niagara's 2012 increase assumes a .82% wage increase.

The Board submitted its comparators are more appropriate in that they have consistently been used since the 1997 *Jackson* award, while the Association is not consistent in its use of comparators. The Board argued its proposal justifies variation from the comparators based on the financial and economic data for the Niagara Region. Its proposal results in Niagara bargaining unit members earning substantially more than the average household in the Region, as well as retention of "attractive" benefits and pensions and an "unparalleled level of job security". The Board submitted there is precedence for a wage difference of 2.4% or more between comparators as found in a sampling of civilian job positions; the data indicate there are significant, i.e., greater than 2.4%, wage differences, some well over 10% e.g., wages for the Communicator position.

The Board submitted that, with a 2012 budget total of $120,224,768.00 for personnel costs, a 1% increase in total compensation has a cost of $1,200,000. Consequently, any total compensation increase above 1.02%, for example 2%, would result in an immediate deficit of $1,200,000 for 2012. If the Board decides to reduce service costs to meet the above 1.02% increase, such reductions cannot be made retroactively.

In further regard to retroactivity, the Board submitted that article 35.1 in the uniform agreement and article 19.1 in the civilian agreement limit retroactive payments in the following manner:

> 35.1 A former member of the Service who has been dismissed or resigned from the Service for reasons other than ill health or retirement, prior to the execution of this Agreement, shall not be entitled to any increase in wages or other benefits as herein provided.

As concerns temporary employees, the Board argued there are short-term employees who no longer work for it and administrative difficulties would be experienced in locating them. It suggests these individuals not be eligible for retroactive payments. The Board submitted that 45 days to pay retroactivity is "unachievable" and that 60 days are required for this purpose.

The data concerning the financial situation in Niagara in comparison with the Board's 5 comparators (the same data are not available for the other comparators used by the Association) leads to certain conclusions relevant for purposes at hand. The Niagara Region has the smallest population and the lowest percentage of population growth from 2006 to 2011. While it has the lowest 2012 average household income, it has experienced a percentage increase in that income, from 2008 to 2012 of 15.7%, in a comparative range from 6.45% (Peel) to 18.95% (Hamilton). While resale house prices, $230,000, tend to be lower in the Niagara Region than certain of the comparators (Hamilton $350,000; Waterloo $317,500) and represent a lower percentage of 2012 average household income (28.6% compared to 37.1% for Hamilton, and, 29.9% for Waterloo), the property taxes paid in Niagara on the benchmark $350,000 assessed value of a single-family home (i.e., a different figure vis-à-vis average house prices) are higher in Niagara ($5,213) than in Halton ($3,284), Peel ($4,076), Waterloo ($4,379) and Hamilton ($4,502) and only lower than in

Durham ($5,688). When the resale value of single-family homes are considered, the Niagara value of $230,000 reduces the amount of property tax as a percentage of disposable household income to the lowest of the comparator group i.e., 7.2% with the 5 comparators in a range from 7.3% (Waterloo) to 9.9% (Hamilton). Further, in regard to taxpayer income, from 2008 to 2012, the Niagara average household income rose from $66,101 to $76,476 (15.7% increase) and average discretionary income as a percentage of total income rose by 3.3%, a greater increase than the comparators save for Hamilton at 3.9%. During that same period of time the Ontario Consumer Price Index increased from 113.3 in 2008 to 121.8 in 2012, for a percentage increase of 7.5%. That is, the Niagara average household income increase exceeded CPI by 8.2%. In comparison, from 2008 to 2011, the First Class Constable salary in Niagara rose from $75,706 to $83,247 for a percentage increase of 9.96%, i.e., less than the percentage increase in average household income (to 2012) but more than the percentage rise in CPI from 2008 to 2011 (i.e., 113.3 to 120.1 for an increase of 6.0%).

As concerns the Board's salary proposal, it reflects the decision of the Region's Council to budget a 1.02% compensation increase for the police service. In *Re Hamilton Police Services Board and Hamilton Police Association* (July 9, 2002) unreported version (Swan), the arbitrator addresses the notion of budgetary allocations for interest arbitration purposes at p. 4, as follows:

> While budgetary allocations are entitled to consideration, they cannot be given a status which would permit municipalities to trump all other considerations which go into establishing fair and reasonable salaries for employees subject to mandatory interest arbitration. To do so would render the interest arbitration provisions of the *Police Services Act* essentially meaningless. While I have the allocations in mind, therefore, I do not consider myself bound by them in fixing police salaries, any more than the Board itself felt bound by them.

In the instant case and in regard to the last part of the last sentence, the Board justifies its proposal on the basis of the Region's decision which it has unanimously approved concerning the 2012 budget for the police service. That decision by the Region's governing body is but one factor which must be taken into account. For its part, the Association justifies its proposal for a salary increase which reflects the average salary of its comparators on the basis that comparability with similarly-employed members of police associations is a major consideration for mandatory interest arbitration purposes and that, overall, there have been no changes in the local economic circumstances so as to not justify the salary increase which it seeks. However, comparability with other police services is also but one factor which must be taken into account. Moreover, both factors are to be considered in the context of balancing the parties' interests as defined by their positions on salaries and wages.

Based on review of all the information which informs criteria identified in s. 122.(5) of the *PSA* and bearing in mind that "Public Sector employees should fare neither better nor worse than the community which it serves" *RE St. Catharines Professional Fire Fighters, supra*, I award the Association proposal for a salary increase of 3.05% effective January 1, 2012. This percentage increase does not exceed what the community itself has been able to achieve through its employment and, as well, leads to a 2012 salary that reflects neither the bottom nor top of the Association comparators, rather, it reflects the average of its comparators.

Overtime (art. 6.6 – uniform, art. 6.7 – civilian)

The Association proposal is for an increase to 160 hours from the current 120 hours of overtime hours which can be placed in a member's "Special Overtime Bank." These hours can be used to take additional time off when needed or required. The Board opposes this proposal, noting that there already exist generous leave provisions in the collective agreements.

The data indicate that 7 of the "Big 12" collective agreements provide for less banked overtime hours (20 to 100 hours) than do the Niagara collective agreements. One has the same current amount of 120 hours and 2 have no limit, one of which (Toronto) requires that bank to be reduced to 20 hours "before year end." The current amount of 120 hours compares quite favourably with the Association comparators. I do not award the Association proposal.

Shift Premiums – (uniform – arts. 9.2, 9.3, 9.5; civilian – art. 5.1)

The Association proposes that for uniform members on the 12-hour compressed work week (art. 9.2) the 32.5¢/hr. shift premium increase to 60¢/hr.; the members on the 10-hour compressed work week (art. 9.3) receive 40¢/hr. rather than 0¢/hr.; afternoon shifts (art. 9.5) currently paid a premium of 18¢/hr. to attract 40¢/hr., and, that the nightshift premium (art. 9.5) increase to 60¢/hr. from 32.5¢/hr. In regard to civilian members that the afternoon and nightshift premium (art. 5.1) increase to 40¢/hr and 60¢/hr., respectively, from 30¢/hr. for afternoon and nightshifts. The Association notes the current shift premiums have been in place "for more than two decades" resulting in a "deteriorating effect" caused by inflation. The Board opposes this proposal and estimates a cost of some $143,500 associated with it. While these premiums are "somewhat lower" than those of the comparators, the Board argued there is no justification for the "massive increases" suggested by the Association.

When the current premium for the 12-hour shift is annualized (i.e., 32.5¢ x 2080 hrs.) it amounts to $676, which is more than Halton ($250), Peel ($400), Waterloo ($400), Hamilton ($624), Durham ($367.50) and York ($350) and less than London ($750), OPP ($2,058), Windsor ($832 or $1,248), Toronto ($728 or $1,248) and Ottawa ($936.20 or $1,144). The current premium compares favourably with those of the comparators. I do not award the Association proposal. (The amounts for Hamilton, OPP, Windsor, Toronto, and, Ottawa may

not reflect the actual amounts given their structure of payment which is based on various start times, e.g., the Windsor rates are 40¢/hr after 1,430 hrs. and 60¢/hr. after 1,800 hrs. Thus, the annualized premium paid at 60¢/hr. for Windsor is said to be $624.)

As concerns 10-hour shift premiums, again on an annualized basis, the Niagara amount of $374.40 is more than Halton ($250), Peel ($250), Waterloo ($250), Durham ($260) and York ($200), and less than London ($300), OPP ($2,058), Windsor ($832 or $1,248), Toronto ($728 or $1,248), Hamilton ($624), and, Ottawa ($936.20 or $1,144). (The same caveat as for the 12-hour shift applies to OPP, Windsor, Toronto, Hamilton, and Ottawa.). I find the current premiums compare favourably with those of the comparators. I do not award the Association proposal.

In regard to the afternoon (majority of shifts between 1600 and 2400 hours) and night shift (majority of shifts fall between 2400 hrs and 0800 hrs) premiums, the Niagara premium of 18¢/hr. and 32.5¢/hr., respectively, are substantially below the 5 comparators for which data is presented: 98¢/hr. between 1600 and 0500 hrs (OPP), 40¢/hr. after 1430 hrs and 60¢/hr. after 1800 hrs (Windsor), 35¢/hr. from 1000 to 1800 hrs, and, 60¢/hr. from 1800 to 0430 hrs (Toronto), 30¢/hr. for a shift starting between 1200 and 2400 hrs (Hamilton), and, 45¢/hr. after 1500 hrs if the majority of the shift is after 1500 hrs and 55¢/hr. after 2110 hrs if the majority of the shift is after 2100 hrs (Ottawa). In light of the comparator data, I award 30¢/hr. for all hours of the majority if the shift falls 1600 and 2400 hrs, and, 40¢/hr. for all hours if the majority falls between 2400 and 0300 hrs.

Sick Leave (uniform – arts. 11.12, 11.22.1; civilian – arts. 8.11, 8.20.1)

The Board proposes that a 14-day limit be included in the above articles for the time in which a member is to submit an attending physician/psychologist

report for purposes of entitlement to sick leave benefits or accumulated sick leave payout. There is currently no time limit for the submission of these reports. It noted the timely provision of medical reports has been "an ongoing problem for the Human Resources Unit." The information from that Unit indicates it deals with 2 to 4 medical reports per week, but with an average compliance time of roughly 2 to 3 weeks. Since the requests are not made until a member has been off for at least 10 days, no medical information is received "even in the best case scenario for a month or more." The Board submitted that the inclusion of a time limit benefits the member in knowing early on in the process if the medical information is satisfactory for benefit entitlement purposes and, if not, clarification or additional information can be requested in a timely manner. From the Board's perspective, timely receipt of medical information aids in planning/deployment issues, and, accommodation matters. The 14-day time limit is fair (unless there is a reasonable excuse as is now provided for), given ready-access to medical services in the Region. Moreover, it noted that a medical report is requested on a discretionary basis and not for every instance of absence where a member's absence exceeds the relevant thresholds on the agreements.

As to its comparators, Durham provides for "the provision of medical reports within the Board's control." In Halton, for any absence more than 3 days a member must provide a medical report within 7 days of the first day of absence or return to work, whichever is earlier. In Hamilton, for absences exceeding 6 days a medical report is due on the 6th day and updated at the 14th day of absence. A medical report in Peel can be requested at any time and the Waterloo agreement is silent, however, a third-party adjudicator is to collect all medical information after an absence of 5 shifts.

In its presentation, the Board referred to sick leave usage by the Association members. However, sick leave usage is not relevant to the matter of a time limit

for providing required medical reports. I agree with the Association submission, *viz.*, it fails to see the nexus between usage and time limits for a required medical report.

There is nothing fundamentally unreasonable about requiring a member to produce a medical report when absent for a period of time. While the Association was critical of the Board data, it did not directly criticize the 14-day time limit requirement without a reasonable excuse. I award the Board's proposal.

Sick Leave (uniform – art. 11.14, 11.24; civilian – 8.13, 8.22)

The Association suggests that under Sick Leave (art. 11.14, art 8.13), and, short-term disability (art. 11.24, art. 8.22) provisions, the Board pay for the entire cost of a physician or psychologist service not covered by the insured benefits plans, rather than the current maximum of $70.00. The Board rejects this proposal in noting the Human Resources Unit has received "few, if any, complaints of doctors charging more than the specified maximum." Moreover, if the current cap is removed the "risk…is that doctors will have free rein to charge significantly more than what may be reasonable." It submitted the cost associated with this proposal is difficult to ascertain, but may become significant if doctors start charging $200 to $300 per report.

The Association comparators data indicates that 7 collective agreements provide for full reimbursement of the sort of above medical reports, one has no provision (Durham), one reimburses $10.00 (Toronto), one provides for "all reasonable costs" (Peel), and, London provides for "up to $50 but will cover higher if approved by an Inspector."

There is no indication in the submissions as to when the $70 maximum was included in the parties' collective agreements or when the similar provisions

were included in the comparator agreements. In any event, the Board's submission that few, if any, complaints have been received in regard to this issue leads me to conclude not to award the Association proposal.

Long-Term Disability (uniform – art. 11; civilian – art. 8)

The Association proposes that for members on Long-Term Disability ("LTD"), their payment be increased by wage/salary percentage increases subsequent to the year in which they went on LTD. The Board opposes the Association offer in noting that for every 1% increase in those payments there is a 10% increase in premium rates it pays for this coverage.

The Association proposal would dramatically increase the premium rates for LTD coverage. There is insufficient data presented by the Association to support their offer. I do not award the Association proposal.

A further issue raised by the Association concerns art. 8.25.3 which states:

> 8.25.3 Long Term Disability Insurance Plan, when in effect, will provide seventy-five percent (75%) of income, based on own occupation for a minimum period of two (2) years.

The Association proposal is for the "removal of the $4,200/month ceiling that the Employer unilaterally included when arranging the plan." It would seem that as at the date of issuance of this award, the "ceiling" matter has been resolved. However, there is on-going discussion between the parties as to the retroactive date of the new ceiling. Should this matter remain unresolved and should it fall within my jurisdiction, I have remained seized *infra* of any implementation difficulties.

Annual Vacation and Statutory Holidays (uniform – arts. 12.8, 12.9.3; civilian – arts. 9.8, 9.12)

The Association offers that entitlement to 280 hours of vacation (arts. 12.8 and 9.8, respectively) accrue after 25 years of service rather than 30 years of service as currently provided for in the agreements. Secondly, under arts. 12.9.3 and 9,12, respectively, "Floater Days" entitlement is calculated on the basis of "years of service." The Association seeks to have "years of service" include military police service and years of service with other or previous police services boards. As to the reduction in years to be entitled to 280 hours vacation, the Association submitted that only 4 of its comparators require 30 years service and 8 require less (3 require 25 years, 3 require 27 years, and, 2 require 28 years). As to its "floater days" proposal, it suggests that years of military police service and service with other police services be included for entitlement purposes since the Board benefits from that previous experience of those members.

The Board rejects the Association proposals. However, if either or both of the Association proposals is/are awarded, it submitted that these are increased costs that ought to be included as part of the Board's total compensation increase offer of 1.02%. As to the specific proposals, the Board notes that its comparators reveal the Association members have comparable provisions in the current collective agreement.

As concerns vacation entitlement, the data indicate the majority of the Association comparators achieve entitlement to 280 hours of vacation in less years of service than in Niagara. However, only 3 of the comparators provide for that entitlement at 25 years of service. That is, while the trend is for less than 30 years, it does not reflect 25 years as the required number of years. I award 280 hours of vacation at 28 years of service.

As concerns entitlement to "floater" days, the Association does not provide data in support of its proposal. I do not award the Association proposal.

Court Allowance (uniform – arts. 13.1, 13.5; civilian – arts. 11.1, 11.5)

The Association proposes that the minimum amount of paid time at the premium rate for Court attendance as a witness while off duty, paid to the member in his or her capacity as an employee, increase to 5 hours from the current 3 hours in both collective agreements under arts. 13.1 and 11.1, respectively. Secondly, the Association suggests amending or adding to the language of those articles to the effect that the member receive a "minimum of 6 hours time off" prior to a morning sitting of the court and "with pay for such portion of the 6 hours which falls with the member's regular tour of duty." As concerns arts. 13.5 and 11.5 respectively, the Association proposes that the "free from duty" period of time prior to a Court appearance increase to 4 days from 2 days for members on a 12-hour compressed workweek schedule. Alternatively, it proposes that should the member be unable to have that amount of "free time", whatever amount of such time not available be granted after the Court appearance. Thirdly, the Association proposes that where the collective agreement now provides that, "…it is understood that annual vacation includes the 2 days immediately preceding the member's vacation…", it be amended to "4 days".

The Board opposes the Association suggestions. The Board has no control over trial dates and, thus, a member could be required to attend on a day off or on vacation. However, under the current provision, these individuals are "generously" compensated for their attendance. Should the Association proposal be awarded, the costs associated with it ought to be included in the 1.02% total compensation available. Secondly, the increase to 6 hours from 3 hours proposed by the Association for time off prior to a morning sitting of the Court has "significant cost and administrative issues" for the Board,

particularly in regard to administration in that an officer scheduled to work until 6:00 am (Court sitting commencing at 9:00 am, for example) would be required to be relieved of duty at 4:00 am, which would require another officer to come in early for his or her shift, and, at overtime rates. The Association proposal, to increase the definition of vacation time prior to the commencement of it to 4 days from 2 days for members on 12-hour shifts, results in 12 days of "protected vacation time" rather than the current 10 days. By way of example, the Board noted that an employee working a Monday-to-Friday schedule would be off work for 9 days when taking vacation time for the 5 days from Monday to Friday, given the Saturday and Sunday days off prior to and following the week of vacation. The current provision gives an employee on a 12-hour-shift schedule (2 day shifts followed by 2 night shifts followed by 4 days off) one more "protected" day of time off than an individual on the 5-day, Monday to Friday shift.

In regard to the increase to 5 hours from 3 hours when attending Court as a witness, save for Waterloo (which has the same amount of time and wage rate) the Association's other comparators provide for either 4 hours (6 collective agreements) at time-and-a-half, 5 hours at 1.5 the rate (1 collective agreement), or, straight time (5 hours in Durham), and time in Court plus 3 hours straight time (Windsor). The London agreement provides for 1.5 the rate with a "minimum appearance of 5 hours straight time." I award an increase to 4 hours from the current 3 hours.

As concerns the Association proposal for 6 hours free from duty prior to morning Court sitting, only 3 of its comparator agreements provide for such time, and, do so only in regard to "hours after", not before. I do not award the Association proposal. As to the Association third proposal, there is no clear trend in the comparator collective agreements based on Association data, that

supports extending "protected days" to 4 from 2 days. I do not award the Association proposal.

Medical, Hospital and Drug Insurance (uniform – arts. 15.4.1, 15.4.2, 15.4.3, 15.4.9, 15.5.3, 15.5.4, 15.6, 15.12.5, New – support hose/socks; civilian – arts. 12.4.1, 12.4.2, 12.4.3, 12.4.0, 12.5.3, 12.5.4, 12.6, 12.11.3, 12.11.5, new – support hose/socks)

The following chart demonstrates the Association proposals regarding the above articles (uniform articles mirrored in the civilian collective agreement):

Collective Agreement Article (uniform)	**Benefit Type**	**Present Coverage**	**Proposal**
15.4.1	Chiropractor, Osteopath, Podiatrist, Chiropodist, Acupuncture, Naturopath	$450	$600
15.4.2	Psychologist (to include psychotherapist)	$1,000	$2,000
15.4.3	Audio-Hearing Aids	$300/24	$500/24
15.4.9	Massage	$400	$700
15.5.3	Orthodontia	$2,500 (life)	$3,500 (life)
15.5.4	Caps/Crowns	$2,500/life	$1,500/annual
15.6	Vision	$350/24	$450/24
15.12.3	Retiree Dental/Vision (pre-65)	$1,000/annual	$1,400/annual
15.12.5	Health Spending Account	$2,500	$3,250
NEW 15	Support hose/socks (prescribed)		$200

The Board opposes the Association offer, in noting it amounts to an additional $293,838.00 per year or, if awarded, whatever is awarded be included in the Board's offer of an overall compensation increase of 1.02%.

The Board has the following proposals in regard to the Medical, Hospital and Drug Insurance provisions at Article 15 and Article 12, respectively, in the uniform and civilian collective agreements:

Drug Benefit

1) Implement a 20% co-insurance factor paid by employees, for drugs only (arts. 15.3, 12.3)

Cost Savings: $367,848

2) Decrease the dispensing fee cap to $7.00 (arts. 15.3, 1.3)

Cost Savings: $19,800

3) Generic substitution – although drugs that a physician specifies "no substitution" are reimbursed only up to the lowest priced generic equivalent (arts. 15.3, 12.3)

Cost Savings: $28,308

4) Change coverage to a two-tiered managed Drug Formulary; 100% reimbursement for drugs eligible under the Manulife Dynamic Therapeutic Formulary (DTF) and 80% reimbursement for all other drugs currently covered under the plan, as explained in the material from Manulife attached at Tab 59 of the Board's document Brief (arts. 15.3, 12.3)

Cost Savings: $141,420

Hospital Benefit

5) Remove semi-private and private room coverage

Cost Savings (from removing Private Room): **$14,088**
Cost Savings (from removing Private Room and Semi-Private): **$65,124**

Chiropractor

6) Decrease the maximum from $450.00 per calendar year, including X-Rays, to $400.00 per calendar year including X-Rays

Cost Savings: $11,304

Massage Therapist

7) Decrease the maximum for $400.00 per calendar year with a cap of $50.00 per visit, to a calendar year maximum of $350.00, with the same $50.00 per visit cap

Cost Savings: $17,004

Orthopedic

8) Decrease the maximum payment form $375.00 per pair to $300.00 per pair

Cost Savings: $17,000

Basic Dental

9) Introduce a 20% co-insurance factor paid by employees

Cost Savings: $225,720

10) Introduce an annual maximum of $1,500 per person for basic preventative services

Cost Savings: $42,324

11) Change the recall visit for dependent children to once every 9 months

Cost Savings: $14,100

Major Restorative

12) Decrease the lifetime maximum from $2,500.00 to $2,000.00, reimbursed at 50%

Cost Savings: $28,224

Orthodontics

13) Decrease the lifetime maximum form $2,500.00 to $2,000.00, reimbursed at 50%

Cost Savings: $28,224

> The total cost savings that would be achieve [sic] if all of the above proposals were awarded amounts to $1,006,400.00.

The benefits which the Board seeks to decrease would make them less comparable than as currently provided for in the collective agreement, including its proposal for co-insurance for certain drug and dental benefits where the Board now pays 100% of the premium costs and no co-insurance factor exists. I do not award the Board's proposals.

In regard to the Association proposals, its data indicate that save for Durham, the level of benefits in Niagara for chiropractor, osteopath, podiatrist and chiropodist are below 10 comparators (including OPP which is not included in the salary data and so excluded it from my consideration), save for Halton and York (but which has slightly higher coverage only for chiropractor.) Windsor's chiropractor limit is $400 but $1,000 for physiotherapy). I award an increase to $500 per benefit year from $450. Concerning psychologists and psychoanalysts, 6 of 8 comparators (Durham is said to be "undetermined") provide for higher benefit levels (a range from $1,250 to $2,000) with Peel and Halton lower than Niagara. I award an increase to $1,250.

Niagara's benefit of $300 per 24 months for hearing aids is below 9 comparators with London at the identical benefit level. Of the 9 with higher dollar amounts, however, 6 have longer time period covering the maximum amount: Durham 500/60 mos.; Halton $1,000/36 mos.; Hamilton $500/36 mos.; Peel $450/36 mos., Waterloo $750/36 mos., and, York $1,200/60 mos. Windsor "covers cost of hearing aid." I award $330 per 24 months. For massage therapy, the Niagara benefit of $400/yr., is below that of 10 comparators (excluding OPP), where that benefit ranges from $450/yr (Durham) to $1,500/yr. (Ottawa and London). Four comparators (London, Ottawa, Waterloo and York) are at $1,500/yr., $1,500/yr., $1,000/yr., and, $1,300/yr.,

respectively, with Halton, Windsor and Hamilton at $500/yr., Peel at $650/yr., and Toronto at $600/yr. I award $500/yr.

In regard to orthodontia, 7 comparators have a higher lifetime benefit (Halton $3,000, Hamilton $3,000, Windsor $3,000), with Durham and York at the same level as Niagara, i.e., $2,500. I award an increase to $3,000 from $2,500.

As for dental major restorative and vision care, the Niagara benefit levels are comparable to those of the comparators. I award no increase to major restorative and vision care.

As concerns retiree dental and vision care for 8 of 10 comparators the employer pays 100% of the premiums for the same coverage as for active employees. Since I award no increase for active members, I award no increase for retirees.

In regard to the health spending account, the Niagara limit of $2,500 annually for ages 65 to 70, is below all comparators save for Halton, which has the same level as Niagara. (The benefit in Ottawa and Windsor is "Life Benefit.") Four comparators provide for $2,000 annually (Durham, Hamilton, London and Toronto) and 2 provide $3,250 annually (Peel and York). I award an increase to $3,000 from $2,500.

I do not award the Association proposal for the inclusion of support hose/socks.

Compassionate Leave (uniform – art. 29.1; civilian – art. 16.1)
The Association proposes that "aunt" and "uncle" family members be included and to provide 1-day of paid compassionate leave with pay for those family members.

The Board does not agree to the Association proposals. It submitted that, currently, the collective agreements contain generous and comparable compassionate leave provisions and, as well, the "floater" holiday is available for this purpose. Moreover, under the *Employment Standards Act,* employees are able to take emergency family leave for compassionate purposes. Further, it comparators' collective agreements do not provide for aunts and uncles and that additional costs are associated with this expansion.

I do not award the Association proposal to include "aunt" or "uncle" in art. 29.1. Only London, Durham, and, Windsor (and the OPP) agreements contain leave for those relatives.

(B) Uniform Collective Agreement Items

Performance Pay (uniform – art. 2.3)

The Association proposes that years of service recognized for this pay be expanded to include time spent in military police services and in other police services rather than only service with the Board, given that such service translates into skill and experience which an individual brings to his or her job. Secondly, the Association offers to delete art. 2.3(d) which disentitles a police officer from this pay if he or she has a disciplinary conviction of 40 or more hours in the previous 12 months. Forfeiture of such pay, it was said, is effectively a second penalty for a conviction under the separate disciplinary processes of the PSA. By way of illustration, a 40-hour penalty under the PSA results in a 1st Class Constable losing approximately $1,600, and under art. 2.3, either roughly $2,500, or $5,000, or $7,500, depending on the pay calculation of either 3%, 6% or 9%, i.e., the base performance allowance calculator.

The Board's proposals are as follows: (1) grandfather the pay so as to disentitle newly-hired officers; (2) limit the use of this pay to pension purposes only and not for other pay or allowances as currently provided; (3) the calculation to be based on a daily, pro rate basis, excluding sick leave entitlements if other than sick leave arising from an HRC-recognized disability, and, (4) lengthen disentitlement period to 24 months from 12 months, include "satisfactory" or "better" performance appraisals in the preceding 2 years and no more than 48 hours of sick time per year in the preceding 2 years, save for absence due to disability under the HRC.

This provision provides for additional wages on the basis of years of experience. Experience which an officer brings to the Board is no different from his or her experience with the Board. I award the Association proposal that experience gained in the military police service and other policing services be included in art. 2.3(c). As to its proposal that art. 2.3(d) be deleted, the Association comparators indicate that 7 do not disqualify an officer from performance allowance in the case of a disciplinary conviction and none totally disqualify the officer as does the current agreement. While I am not prepared to delete the provision, it is reasonable that the forfeiture be tied to the level of experience pay, i.e., 3%, 6%, or 9%. I award that an officer who has disciplinary conviction drops 1 level and the period of time of disentitlement to remain for the current 12 months. In this regard, I note Association data regarding the comparators indicates an Association member suffers an actual earning loss over more than double that of the comparators, i.e., $9,092.80 compared with 7 where the loss is $1,600.80, and, 3 where the loss is $4,097.80.

In regard to the Board's proposal, I do not award that the performance allowance be grandfathered. Were that to occur, a 2-tier system of wages would result for uniform members which is not, at this conjuncture, said to exist in the Board or Association comparators. As to the proposal to limit the

application of performance allowance to apply to only calculation of pension entitlement, I do not award the Board proposal. I do not award the Board proposal that the calculation of performance allowance be based on a daily *pro rata* basis.

Hours of Duty (uniform – art. 5.1.12)

The Association suggests that under art. 5.1.12, the "Minimum Staffing Numbers" from 6:00 am to 6:00 pm in District 5 (Fort Erie) be increased to "4+1" from "3+1". The Association submitted that this is not a "breakthrough" proposal, in that the parties have long acknowledged the health and safety implications regarding staffing and are agreed that the collective agreement provisions establish a necessary framework for the issue. Its proposal is said to but codify the existing practice of increased staff levels in District 5, which is 4+1. Moreover, its proposal is that of the joint Shift Monitoring Committee where the A/Deputy Chief acknowledged there are additional staffing requirements in District 5 and where one additional staff has been in place for two years. Codifying this practice would have the benefit of eliminating the additional staffing on a premium rate basis as is currently done.

The Board rejects the Association proposal. It submitted that policing needs in its districts can fluctuate over time. For example, an additional officer over and above the collective agreement requirement in District 8 was deployed. A "side letter", i.e., outside the collective agreement, commits the Board to this additional deployment for the term of the collective agreement. In this way, should policing needs in District 8 decrease over time, the Chief of Police has the flexibility to move back to the contractual minimums. The Board does not agree with the Association proposal for District 5, for to do so, would not allow the Chief of Police to deploy or not staff on the basis of policing needs.

Article 5.1.12 indicates the parties are agreed on "Minimum Staffing Numbers" for the Services' districts at "Peak Period", "3:00 am to 6:00 am", and "6:00 am to 6:00 pm", times, and, on differently-scheduled calendar days for "Peak Period", i.e., 6:00 pm to 3:00 am. By way of agreeing to "minimum" numbers as opposed to set numbers or maximum numbers, the parties have not limited the ability of the Chief of Police to add to those minima should he deem it necessary. That is, the parties must be taken to have contemplated the sort of situations in District 5 and District 8 where additional staff were deployed at the discretion of the Chief of Police. Thus, that additional deployment did occur is within the realm of the parties' understanding as to how these agreement provisions would operate. In short, nothing has changed concerning the manner in which the Employer has deployed staff under Article 5 generally and art. 5.1.12 in particular. I do not award the Association proposal.

Acting Ranks (uniform – art. 7.3)

Current art. 7.3 states: "Acting rank shall be distributed to qualified Members on an equitable basis, subject to the exigencies of the Service." The Association proposals that a March 31, 2005 "Memorandum" under the signature of Supt. D.W. Kane, form part of art. 7.3. That Memorandum provides for the following policy:

> Effective immediately and subject to the contingencies of the service, the following policy will apply:
>
> - a confirmed supervisor will be on patrol in the **DISTRICT** at all times;
> - a qualified acting supervisor (by exam) will be on duty in all other areas of the District;
> - when sufficient deployment numbers exist within a **DISTRICT** that enable redeployment of confirmed or qualified supervisors to cover duties in other Divisions **within that DISTRICT**, those resources will be redeployed.

In situations where staffing shortages exist:

- hire a confirmed rank within the Division, if unavailable;
- hire a qualified actor within the Division, if unavailable;
- hire a CIB confirmed rank within the Division (name on the Overtime list), if unavailable;
- hire CIB qualified within the Division (name on the Overtime list), if unavailable;
- hire confirmed/qualified within the District, if unavailable;
- hire outside the Division – confirmed, if unavailable;
- hire outside the Division – qualified.

If none of the above are available:

- hire knowledge, skills and ability until a confirmed member can be hired, as per general orders.

The Association submitted this policy has been in place and "functioned without incident since it was introduced.... It makes clear that vacancies in supervisory positions are to be filled with confirmed supervisors." It notes a "confirmed" person holds the rank and excludes those who are "acting" in a rank. However, beginning in 2011, the Board began making the assignments in question to those in an "acting" position contrary, it argues, to the March 31, 2005 policy. Moreover, it contends the Board's deviation from its policy is not in compliance with its legislative health and safety obligations and its general obligation to provide a safe workplace. The Association submits that the inclusion of this policy in art. 7.3 will provide for its adherence on the part of the Board.

The Board opposes the Association proposal. It submits the current policy has certain benefits which include: (1) supervisors are more willing to work additional shifts, (2) the policy provides for limited assurance in supervisory coverage, and, (3) hiring remains in control of the Staff Sargeant. There are, however, risks associated with the policy: (1) no certainty in Staff Sargeant

coverage, (2) inconsistent district-to-district staffing, (3) inequitable distribution of overtime and acting time opportunities, and, (4) the policy may lead to bumping which means that scheduled acting time is often cancelled.

Rather, the Board proposes that the current policy be changed, as follows, and indicates the benefits and risks of that change as follows:

- Confirmed requirement for both Sergeants and Staff Sergeants (requiring a minimum of 1 confirmed Uniform Staff Sergeant in either 1, 2, or 3 District in addition to the existing Patrol Sergeant requirements)
- Once confirmed requirements are met, actors are used and hiring is done at the lowest rank of absence
- Staff Sergeant hires only Sergeants and constables
- Duty Office (explained below) will hire Staff Sergeants using the following priorities:
  (a) Hire staff to reduce other overtime created in the District; and
  (b) Equitable distribution to all confirmed Staff Sergeants (District, Uniform, the other assignments).

The benefits to this new process include:

- Provides Staff Sergeant coverage
- Ensures consistent confirmed rank levels
- Reduces out of rank overtime
- Equitable opportunities for both acting time and overtime
- More manageable distribution of staffing demands at the Staff Sergeant level
- Staffing requirements managed by Duty Office
- Increased predictability of supervisory staffing

The risks of the new process include:

- Requires consistent distribution of actors
- Staff Sergeants may be required to work in another District

The Board submitted that the new policy, whereby the "Duty Office…will hire Staff Sargeants using the following priorities…" aligns with changes made to the

2009-11 Senior Officers Association collective agreement which currently states, relevant to our purposes:

> 6.6.3 …The Service may offer Acting Duty Office responsibilities to fully qualified, on-duty Staff Sargeants, or to any on-duty Staff Sargeant who, in the opinion of the Deputy Chief, possesses the necessary knowledge, skills and ability to act as Duty Office Inspector. In the absence of either category of Staff Sargeant, or in the event the Duty office position is back-filled using a Staff Sargeant on overtime, Duty Officer responsibilities will be offered to members of the Senior Officers' Association on a first-refusal basis."

Further, in regard to art. 7.3 in the collective agreement before me concerning the equitable distribution of acting rank opportunities, the Board's submission indicates:

> In Districts where this [new] process is in place, approximately 70% of the scheduled acting time for qualified Constables and/or Sargeants was cancelled [April through June 2011, 2011 used as the sample year]. The same approximate levels of cancellations continue today.

The March 31, 2005 policy is viewed differently by the parties concerning its efficacy. The Association contends it has functioned without incident yet the Board notes certain "risks" associated with it, one of which is said to be "Inequitable distribution of overtime and acting time opportunities", which, seemingly, is adverse to the requirement under art. 7.3 for there to be equitable distribution of acting rank opportunities, presumably including on overtime. The new policy, however, is said to have the benefit of, "Equitable opportunities for both acting time and overtime", i.e., not as adverse to the art. 7.3 requirements. On the other hand, the new policy in the period of time in 2011 used as a "snapshot" by the Board as to its application, resulted in 70% of scheduled acting time having been cancelled. In any event, to award the Association proposal would result in a unilaterally-determined Board policy

forming part of the collective agreement, but which policy has been superceded by a recent policy said to be more in line with the requirements of art. 7.3 of the collective agreement, albeit with the effect of reducing acting rank and overtime opportunities.

The contractual matter of concern is the equitable distribution of the opportunities specified in art. 7.3. The policy matter of concern is how those opportunities arise but which policy lies outside the collective agreement. Whatever may be the policy, the Association, under art. 7.3, has the right to challenge the resultant distribution of acting rank opportunities as being inequitable. In my view, including the March 31, 2005 policy in the collective agreement does not advance the Association cause. I do not award the Association proposal.

Personnel (uniform – arts. 32.1, 32.2 and Appendix "D")

The Board proposes to delete articles 32.1, 32.2 and Appendix "D" from the collective agreement. Art. 32.1 provides for the use of "a minimum of six (6) two-officer car patrols between 7:00 pm and 3:00 am, deployed as specified in Appendix "D". (Art. 32.2 provides for the hours of deployment to be varied on mutual agreement of the parties) Appendix "D" indicates a minimum of three, 2-officer patrol cars in District 1, and, a minimum of two, 2-officer patrol cars in District 2. The Board proposal would meet its objective of leaving deployment issues in the hands of the Chief of Police.

The Board submitted that since these provisions were introduced into the 1985 collective agreement, neither it nor the Chief and Senior Management team believes there are any officer or public safety benefits of 2-officer patrol cars compared with 1-officer patrol cars. In this regard it relies on a 1977 study of the issue of the San Diego, California police service. That study is said to have concluded that one officer in a patrol car can perform more safely, effectively

and as efficiently as two officers at almost half the cost, with fewer citizen complaints. It submitted that similarly, in a 2001 paper prepared by The Frontier Centre for Public Policy in Winnipeg, the authors frame the controversy over 2-officer v. 1-officer patrol cars in terms of each side's "pro & con" arguments. The study concludes that, for the City of Winnipeg:

> On balance research supports the conclusion a more flexible policy towards using one-officer cars in Winnipeg would increase coverage, reduce response times, use resources more effectively, and create a more attentive police force, with no loss of safety for the officers.

The Board submitted that it does not expect this award to determine the safety issue that is controversial subject-matter of the debate. Rather, the point of the Board's proposal to delete the provisions is not that it will henceforth rely solely on 1-officer patrol cars, rather, it seeks to allow the Chief of Police to determine this deployment issue through the use of his discretion in accordance with the *PSA* and "common law duties." The factors, which favour 1-officer patrol cars in the Niagara Region, are, as follows: (1) the current deployment model makes an earlier "bridges" issue moot; (2) with some exceptions, members do not like being assigned to 2-officer patrol cars; (3) the same benefits concluded in the Winnipeg paper apply. The Board notes that only one of its 5 comparators (Durham) has a 2-officer patrol car requirement in its collective agreement.

The Association opposes the Board's proposal. It notes, firstly, the Board suggests that the arbitrator ignore the safety dimension to the issue, yet, safety is central to all staffing issues, including the number of officers in a patrol car. The Association notes it is long-settled that working conditions for police officers include safety issues. The jurisprudence also establishes that an arbitrator's jurisdiction on this issue does not extend to matters of efficiency of patrolling or in improving police services to the community, rather, the issue is to be considered as a working condition with aspects of "safety, security, well-

being and the like" Swan and Simmons, *Labour Relations Law in the Public Sector* (Kingston, Ont.: Queen's University Industrial Relations Centre, 1982) p. 317. Significantly, the Association submitted the Board has provided no evidence that deleting the provisions from the agreement "will maintain the health and safety assurances now provided." In that regard, the jurisprudence indicates that a party which seeks to introduce changes to the staffing provisions of a collective agreement is required to provide *viva voce* evidence e.g., *Re City of Peterborough and PPFFA* (November 28, 1995) unreported version (Teplitsky), *Re City of Belleville and BPFFA* (March 2, 1998) unreported version (MG. Picher), but there is no such evidence in the instant case. The Association notes that 4 of its comparators (London, Durham, Windsor, Toronto) provide for 2-officer patrol cars. The Association submitted that it has not received a proposal from its members to delete the 2-officer patrol car provision.

As noted by the Association, the San Diego study is somewhat dated, completed some 33 years ago. The Winnipeg report is specific to the City of Winnipeg, as is the San Diego study. Neither serves as generalizeable data or findings. The issue is a safety matter which, despite the Board's submissions, cannot be ignored when considering the matter. In that regard, arbitrators have required a party seeking to change staffing provisions to produce evidence regarding safety issues sufficient to support what it seeks *Re City of Peterborough, supra, Re City of Belleville, supra, Re City of London and LPFFA* (September 10, 1979) unreported version (Walker), *Re City of North York and NYPFFA* (April 30, 1986) unreported version (Clement), *Re City of Welland and WPFFA* (September 21, 1992) unreported version (McKechnie), *Re Town of Niagara Falls and NRPPA* (August 14, 1977) unreported version (arbitrator not identified), all as cited in the Association Reply Submissions. The arbitral approach is stated in *Re City of London* (p. 78 of the Association submissions);

> It would be inappropriate, if not imprudent for the Boar to render a decision on such a complex issue, without the issue being the subject of a special hearing in which the Board heard evidence *viva voce*.

Undoubtedly staffing issues, as is the matter at hand, are complex issues, in particular where safety is involved. In the instant case, the evidence before me falls well short of meeting the arbitral approach. I do not award the Board's proposal.

Detective Services Unit (D.S.U.) Special Allowance (uniform – art. 42)

The Association's two proposals are: (1) remove the requirement to have worked continuously in the Unit for 6 months to be entitled to the allowance and, (2) delete the limiting provision that if on a modified work program while in the Unit, the officer does not receive the allowance. The Association submits that a member who joins the Unit assumes the entire work of that Unit from the start and, therefore, ought to be paid the allowance from the first day in it. Secondly, a member who performs the work of the Unit on a modified work-duties basis is still performing substantially the work of the Unit. Moreover, the Association asserted it considers this practice to be discriminatory under the *Human Rights Code*.

The Board proposes no change to article 42. It notes there is a "learning curve" associated with work in the Detective Services Unit, to which officers apply for a position, which justifies a waiting period. The Board rejects the Association proposal to delete the clause that the allowance apply where the members are assigned Unit duties on modified work programs. Since a member on modified duty, it submitted, "will not be able to perform substantially all of the duties of the position", it is inappropriate to pay the allowance for someone who also did not acquire the position through the posting process, but who is being accommodated in the workplace pursuant to the *Human Rights Code*. The Board contends that this provision, introduced in the 1989-90 collective

agreement, remain unchanged, that it "works well" and allows the Employer to accommodate members in accordance with their workplace restrictions.

The Board data indicate that 4 of the comparators (the exception being Hamilton which has no waiting period) provide for a waiting period prior to receiving the full allowance, with waiting periods of 12 months in Durham and Halton, a 6-month waiting period in Peel, but at 20% of the First Class Constable rate (compared with 75% in art. 42.1), changing to 4% at 12 months and capping at 8% at 24 months. Waterloo provides for 6% for 2 years, then capped at 9% of that rate.

I agree with the Board's position that based on the comparators, the Association proposal regarding removal of the 6-month period for entitlement lacks justification. I do not award the Association proposal. As to no entitlement to the allowance if performing Unit work on modified duties due to restrictions, the Association does not contradict the Board's assertion that accommodating injured members in the Unit has worked well for a lengthy period of time. I do not award the Association proposal. Further, if the Association considers the practice of not paying the allowance when a member is being accommodated to be discriminatory, there are avenues open to it to pursue its contention.

Allowances (uniform - Coach Officer Allowance (art. 43.1), Hazard or Danger Pay for Divers, Explosive Technicians & E.T.U. [Emergency Task Unit] (art. 44.1), Marine Trainer Allowance (art. 45.1), and, Canine Officer Allowance (arts. 46.1, 46.2)

The Association offers to include scene-of-crime officers, ["SOCO"], recruitment/training officers, and, intoxilyzer technician as eligible for the above-type allowances in amounts of 3%, 5%, and, 3% respectively, of base salary. (I note that officers under arts. 43.1 and 44.1 receive a 5% allowance,

under art. 45.1, 50¢/hour and or monthly allowance of $75.00 under art. 46.1 and 55¢/hour under art. 46.2). The Association submitted that since the Board recognizes that other officers who have received specialized training and assume additional responsibilities, the above officers ought to also receive that some recognition.

The Board rejects this proposal as being "unaffordable and not justified based on comparator agreements." Rather, it proposes:

> (i) delete "Commencing January 1, 2007" in art. 44.1
>
> (ii) Add:
> 44.2 This allowance shall be calculated on a pro-rated basis for those members who provided fulltime service in their respective duties for less than the full year.
> 44.3 Commencing January 1, 2012, members who provide part-time services to the Service in their capacity as Police Divers, Explosive Technicians, Canine Unit or members of the Emergency Task Unit, including members of the tactical Support Group, shall receive a special allowance of five percent (5%) of the base hourly salary of the member per hour in addition to his/her regular salary during the time assigned to such duty. This allowance does not apply to training periods.

The Board submitted that its proposals are designed, essentially, to pay officers with specialized training and/or responsibilities when performing that work but not when not performing the work. It acknowledges that the cost savings of its proposal are modest, some $10,000 per year, but there is no justification that officers be paid the money when not performing the work. It notes that of its comparators, the requirement is for the officer to be actually assigned to and working in the position in order to be eligible for the allowance.

In regard to the Association proposal to include SOCO, recruitment/training officers, and, intoxilyzer technician in the group eligible for the pay, its comparator data indicates only 2 comparators (Halton and York) provide

specialist pay for SOCOs, 3 (Halton, Toronto, York) pay recruitment/training officers, and 4 (excluding Sudbury) *viz.*, Halton, Windsor Toronto, and, Hamilton have this pay for intoxilyzer technician. I do not award the Association proposal based on comparator data.

In regard to the Board's proposals, I note they are in line with its comparators i.e., specialist pay or allowance is paid when the officer is actually performing the specialized work. In that the Board's proposals are supported by the comparator data, I award the Board's proposals.

Sargeant and Staff Sargeant Salary Differentials (uniform - Schedule "A")
The Association proposes that the salary differential between the 1st Class Constable salary and the Sargeant salary increase to 116% from 113.5%, and, the Staff Sargeant rate to increase to 128% from 126% of the First Class Constable salary. The Board opposes the Association offer, noting it increases Sargeant's salaries by some 1.2% and Staff Sargeant's by some 1.5% over and above any general wage increase, and, amounts to $293,838 annually based on 2011 salary rates.

Association comparator data indicate a range from 113% (Durham, London, OPP) to 120.5% (Windsor) for an average of 114.37%. In addition to the 3 above comparators, Halton (113.2%) and Waterloo (113.4%) are below the Niagara rate, while Ottawa has the same 113.5% as Niagara. York and Peel are at 114%, Toronto, which is well outside the norm, at 120.5%, the average Sargeant differential is 113.7%. I do not award the Association proposal.

In regard to the Staff Sargeant salary differential Association comparators show a range from 124% (Ottawa) to 135.5% (Windsor), with an average of 127.26%. Durham (125%), Waterloo (125.9%) and Ottawa (124%) are below the Niagara differential of 126%, which is the same rate for York, while Peel and Toronto, at

126.5% are slightly higher than Niagara. Excluding Windsor, at 135.5% which is well above the norm, the average is 126.4% i.e., within .4% of the Niagara rate. I do not award the Association proposal.

Letter of Understanding (uniform – Minimum Staffing in the Casino Unit)
The Board suggests that the Letter of Understanding be deleted from the uniform collective agreement. The Letter of Understanding provides for "a minimum staffing level of one supervisor and two constables on days shifts and one supervisor and three constables on night shifts…[T]hose minimums shall automatically come into force and form part of Article 5.1 of the Collective Agreement." Apparently, the Board and the Casino negotiate the terms for the provision of the above staffing, also apparently funded by the Casino. The Board submits, however, that at present time "it is clear that any request to convince the Casino to agree to any level of minimum staffing in the Casino Patrol Agreement would be absolutely pointless."

The Association opposes the Board's proposal in that it views the matter as a health and safety issue in providing for minimum staffing levels.

The matter of Casino staffing arises from an agreement between the Board and the Casino and not between the Board and the Association. That is, the level of staffing at the Casino remains to be resolved between the Board and a non-party to the collective agreement. Should the Board and the Casino fail to reach agreement, the Letter of Understanding becomes redundant. However, should they reach an agreement that provides for lower minimum level of staffing, the Letter of Understanding would commit the Board to the current level of staffing at its own costs. Given the nature of the Letter of Understanding, i.e., dependent upon negotiations between the Board and Casino, it would be unfair for the Board to incur costs as a result of those negotiations which do not involve the Association. However, if a different level

of minimum staffing is successfully negotiated, a Letter of Understanding reflecting that difference is to be included in the collective agreement. Given the present uncertainty over this matter, it is prudent to leave the Letter of Understanding as part of the collective agreement. I do not award the Board proposal subject to the above.

Letter of Understanding (uniform – Badges)

The Letter of Understanding states: "There shall be no name badges required to be worn by members unless required by law." The Board proposes that this Letter be deleted from the collective agreement. It notes that members of the Senior Officers Association wear cloth name-tags sewn to their uniform and so, members of the uniform bargaining unit also be required to do so. The Board submitted the Letter of Understanding was introduced into the 2006-08 collective agreement on its understanding that the Province was "about to clarify the issue of name badges through legislation in 2006. That legislation did not materialize." It remains unresolved and "apparently" there will be no legislation to address the issue. The Board submitted that the Ontario Labour Relations Board has determined the wearing of name badges is not a safety issue in a decision between the Toronto Police Services parties. The Board submitted the wearing of name badges will service to "promote transparency and accountability within the Police Service."

Of its 5 comparators, only Peel does not require officers to have name badges on their uniforms and a Board survey of 16 larger and smaller police forces reveals that only 3 do not so require, while a fourth requires a name badge only on formal dress uniforms. Of those that do not have this requirement, none imposes the restriction under the provisions of a collective agreement rather, the matter is left to the discretion of the Chief of Police.

The Association opposes the Board's proposal on the basis it is a health and safety issue and submits that the wearing of a badge number, as is now done, properly balances the Board's interest in transparency against officer safety. Further, the Association noted that the Board does not point to a problem with the current provision, nor abuse resulting from it and, presently, if asked for his or her name by a member of the public the officer is required to give his or her name.

The difficulty with the Association position is that the OLRB has ruled the wearing of name tags not to be a health and safety matter. Further, the Board data indicate that 4 of its comparators require wearing of name tags as do a clear majority of some 16 police services it surveyed. I award the Board's proposal.

(C) Civilian Collective Agreement Items

Job Classifications (civilian – art. 22.1)

The Association proposes that the job classification system be amended to provide members whose wages are currently red-circled with all, 100%, of the wage increase for 2012, and, all increases in years thereafter. In an April 28, 2011 award, arbitrator Burkett directed that red-circled members in the job classification system would not receive salary changes until 2014 and then only be in receipt of 50% of wage increases, either through negotiations or an arbitration award. The Association notes that approximately 55 members were affected by red-circling and since 2011, some are no longer in red-circled positions and, currently, some of the differences between the red-circled wage and salary increases are as little as 14¢ annually. Those of the 55 who would benefit from the Association proposal are, generally, very senior members.

The Board opposes the Association proposal. It notes the Association made the same argument before arbitrator Burkett, who rejected it in making his award. It estimates the cost of the Association proposal to be $47,250 per year, diminishing until all members are paid at the appropriate job classification rate.

The Burkett award has been in place for a very short period of time and can be viewed as representing a fair and reasonable direction regarding red-circled members. I do not award the Association proposal.

Acting Classifications (civilian - art. 25.1)

The Association proposes that a member who is performing the duties of a higher classification receive at least 25¢/hr. above his or her current rate, or, 25¢/hr. above the salary rate of a member under their direct supervision while the member is performing the duties of the higher-rated position. While acknowledging there are minimal cost consequences associated with the Association proposal, the Board suggests it be denied.

The Association proposal essentially arises from the April 28, 2011 Burkett award which resulted in overlaps between lower classifications and mid-rate levels in the job classification system. For example, the highest rate in a Band 7 position is $31.48/hr. while the lowest rate in Band 8 is $30.03/hr. If a Band 7 member is assigned to an acting position at Band 8, his or her salary rate is the next Band 8 level, in this case $31.50/hr, for an increase of only 2¢ /hr. There have been, moreover, recent instances where acting supervisors are making less than those they supervise. In this respect, the Burkett award defined the gap between classifications, limited to application only in the job evaluation process, however, to be no less than 25¢/hr. This minimum did not carry over into other sections of the agreement. The Association's proposal extends the 25¢/hr. minimum to those other sections, e.g., Acting Classifications, and would ensure members in acting positions are fairly

compensated for performing additional duties and responsibilities and reflects internal equity in pay.

The Board notes the minimal financial consequences resulting from the Association proposal but suggests that the monetary incentive ought to be secondary to the career development benefits gained while serving in an acting capacity.

The amount of money involved in the Association proposal appears to be quite modest, as the Board acknowledges. Further, the Board acknowledges that the Association proposal is consistent with "internal equity". I award the Association proposal.

Lay-Off and Recall (civilian - arts. 28.3.2, 28.4, 28.6.3)

Under art. 28.3.2, the Association proposes that a member be given no less than 120 days notice of a lay-off rather than "as much notice as possible" as currently provided for in that article. Under art. 28.4, the Association offers that full-time members be given a maximum of 6 months to qualify for a position held by a temporary member rather than requiring full-time members to be "reasonably qualified" for the temporary position at the time of lay-off. The Association proposes that a member who takes a lower-rated wage position maintain his or her higher-rated wages rather than the wages/salary of the lower position as is currently agreed upon between the parties. Fourthly, the Association seeks the addition of new language to the effect that no new employees be hired prior to laid-off members who have recall rights be given the opportunity to fill the job/position if they are qualified or if they can become qualified within 6 months of being recalled.

The Board opposes the Association's suggestions. The Board submits that the current collective agreement provisions have "far greater protections than would

otherwise be considered the norm, whether in the police or non-police sectors." It notes: job competitions at the same or lower level are suspended pending "bumping" process outcomes; "as much notice as possible" is given to members of a pending lay-off; the Board must meet with the Association before lay-off notices are given; temporary employees are laid off prior to permanent members reasonably qualified for another position; laid-off members moving into a temporary position retain full-time rights for 18 months; laid-off members can apply for vacant or new positions while laid off; laid-off members receive benefit coverage for 3 months, with the option to pay for benefits for an additional 9 months, and, when recalled, a member receives retroactive credit for seniority while laid off. The Board data indicate, it was said, the current provisions are "more detailed and protective of members" than the collective agreement provision of its 5 comparators.

The Board submitted there is no need for further amendment of these provisions since lay-offs are extremely rare, even on the civilian side. Moreover, civilian members have additional protections under section 40 of the PSA as these also apply to contracting out of police services. As to the Association concerns over the new headquarter facility, currently it is planned for 2015. The Senior Executive is in the process of determining which positions, if any, will be affected by the move and has commenced meetings with the Association on this matter. It is important to bear in mind this agreement will be in place for one year, expiring December 31, 2012. On the one occasion in the past when the issue of lay-off arose, the parties were able to resolve the matter. In any event, the Board intends to deal with reductions, if any, in staffing first through attrition. In these circumstances, the Association proposals are premature and any concerns the Association has ought to be dealt with through discussions and not arbitration.

The Association does not challenge the Board's observation that the current provisions concerning lay-off and recall are more extensive than in the Board's 5 comparators. Further, the move to the new facilities is not scheduled for at least 2 more years. The collective agreement subject to this arbitration expired on December 31, 2012. The Board is in the planning stages as to future staffing requirements and has met with the Association to discuss these matters and indicates those discussions will continue. I do not award the Association proposals.

Civilian Training Allowance (civilian – art. 36.1)

The Association proposes that the word "Civilian" be deleted from art. 36.1 in order for the provision to encompass the training of uniform members which training is currently excluded. The Association views its amendment as "housekeeping", neither costly nor a circumstance that arises with great frequency. However, it is unfair that a civilian member is unpaid if training a uniform member.

The Board rejects the Association proposal noting only limited situations where a civilian would train a uniform member. It also has concerns over what constitutes training. For example, if a civilian member assists uniform members in learning the data entry system, such as KRONOS, it is of the view that such assistance is not "training". The Board's 5 comparators do not support the proposal, in that only Durham has an allowance for training other members. In Halton and Peel the allowance applies only to training new members or trainees and in Hamilton, training is restricted to 4 civilian positions. Waterloo does not have a provision.

If a civilian is assigned to train a uniform member, there is no reason why he or she should not receive the same allowance as when training another civilian member; training is training. As to the Board's concern as to what would

constitute training, it is commonly recognized in the labour relations context that a difference exists between "training" on the one hand, and, "familiarizing" and "assisting" on the other. I award the Association proposal.

Service Pay (civilian – art. 40.2)

The Association suggests that the performance allowance provided to civilian members at 5 year intervals, effective January 1, 2011, increased as follows:

	2011	2012
5 years of service	$180	$250
10 years of service	$360	$450
15 years of service	$540	$650
20 years of service	$720	$900
25 years of service	$900	$1,100
30 years of service	$1,080	$1,300
35 years of service	$1,160	$1,500

The Association also proposes to delete the provision in art. 40.2(c) which disentitles a member from the allowance unless "free of discipline for which the confirmed penalty was a two-day suspension without pay or more within the previous twelve months."

In regard to Association comparator data, it submitted that over the course of a 35-year career, a member would earn $20,060 which is $882 below the average of its comparators, which comparators indicate a range from $15,425.04 (Toronto) to $26,100 (Waterloo). Its proposal would lead to earnings of $24,750 over the 35-year span. As concerns the deletion of the service pay disqualifier, data from 9 of its comparators reveal that save for Hamilton, (which requires the member to maintain "achieved requirements" on evaluations), none has a provision like art. 40.2(c).

The Board proposes to eliminate the service pay for new hires, and that the pay be "grandfathered", i.e., apply only to current members. The Board notes that the 2012 cost of the existing benefit is $135,900 per year and the Association proposal represents an increase of 27.8%, or, $37,871 per year. Further, the Board submitted that art. 40.2(c) is consistent with the provision in the uniform collective agreement.

The Association comparator data indicate that up to 25 years of experience the range of service pay allowance is from $100 (5 years Halton) to $1,200 (Waterloo) as compared with the respective Niagara rates of $180 and $900. Save for London ($950), Durham ($1,100), Halton ($1,100) and Waterloo ($1,300), the Niagara 25-year amount is the same as York ($900) and above Hamilton ($800), Toronto ($689.06), Peel $830) and Ottawa ($500). (Windsor provides for time off with pay at increments of 5 hours up to 30 hours for 30 or more years of service). Moreover, a review of this pay at the 10, 15 and 20 year intervals indicates that the Niagara pay is at least comparable and in some cases higher than the comparators. At the 25-year, 30-year, and, 35-year intervals the Niagara pay remains roughly comparable except for Durham, Halton and Waterloo which have higher rates at the 30- and 35-year intervals. Overall, the Niagara rates are comparable. I do not award the Association proposal.

In regard to the disqualifying provision in art. 40.2(c), none of the Association comparators have a similar provision, while Hamilton seems to the eligibility for it to job performance but not to disciplinary matters. I award the Association proposal.

As concerns the Board's proposal to grandfather the allowance, this suggestion creates a 2-tier structure over an item of pay simply on the basis of cost. I do not award the Board proposal which effectively creates two classes of members.

Retroactivity

Retroactivity shall apply only to wages and wage-related items, which items do not include benefits and non-wage related items. Articles 35.1 (uniform) and 19.1 (civilian) shall govern in regard to entitlement to wages and wage-related items which items do not include benefits and non-wage related items. For temporary employees who worked for the police service during the term of this collective agreement, i.e., January 1, 2012 – December 31, 2012, the Board shall notify them by way of regular mail to their last-known address of any wage and wage-related entitlements they may have and notice to contact the Board for payment purposes. Retroactive payments shall be made no later than sixty (60) days from the date of issuance of this award.

I remain seized of my jurisdiction in the event any difficulties between the parties arise in implementing this award.

Dated at Toronto, this 29th day of May, 2013.

"William A. Marcotte"
William A. Marcotte
Arbitrator