

IN THE MATTER OF AN INTEREST AWARD

BETWEEN:

OTTAWA POLICE SERVICES BOARD

(The “Board”)

- and -

OTTAWA POLICE ASSOCIATION

(The “Association”)

ARBITRATOR: William A. Marcotte

APPEARANCES:

FOR THE BOARD:

D. Palayew, counsel
J. Dagher, counsel
E. El-Chantiry, chair
W. Fedec, exec. dir.
W. Salem, fin. dir.
N. Burrows, l.r.
S. Bell, inspector

FOR THE ASSOCIATION:

B. Cole, consultant
M. Skof, pres.
I. Pidcock, v.p.
D. Brennan, barg. comm.
C. Eastop, barg. comm.
A. Lamothe, barg. comm.
B. Samuel, barg. comm.

AWARD

This Arbitrator was appointed on June 4, 2015 under s.122(2) of the *Police Services Act* to determine matters unresolved in regard to the renewal of the collective agreement for sworn officers and the renewal of the collective agreement for civilian personnel, both of which expired on December 31, 2014.

Under the Act, the parties are prohibited from invoking sanctions (i.e., strikes by Associations and lock-outs by 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 outcome the parties, themselves, would have reached had they the ability to invoke sanctions in their efforts to fashion a renewed collective agreement, the “replication” principle. Since it cannot be known what the negotiated outcome would have been had the parties the ability to engage in unrestricted or “free” collective bargaining, replication requires objective consideration of the circumstances and context in which the parties attempted to renew their collective agreement. Further, under s.122(5) of the Act, an arbitrator is required to consider all relevant factors in making determinations on unresolved issues, including the following:

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 the municipality.
4. A comparison, as between the employees and other comparable employees in the private and public sectors, of the terms and conditions of employment and the nature of the worked 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 seven criteria, which are to be included among all factors considered relevant for purposes of this award, are general, provincial, and local in nature, with emphasis placed on local community circumstances. This emphasis is reflected in the legislated collective bargaining structure which provides for local-level (as opposed to, for example, provincial-level or regional-level) negotiations between police services boards and police associations.

The Local Community

There are some 1300 sworn members and 600 civilian members in the two bargaining units, serving a population of approximately 935,000. The Ottawa Police Services Board is one of the 12 largest in Ontario. (The other 11 services comprise the usual, longstanding comparator group: Durham, Halton, Hamilton, London, OPP, Niagara, Peel, Toronto, York, Waterloo, and, Windsor.)

As concerns the local community's economic circumstances, the Association submits that one international agency, Moody's, has given the City a triple A rating, while another, Standard and Poor's, is a AA+ rating, a stable rating of some 41 years which indicates Ottawa does not lack "the capacity to pay normative wages and benefits" (para.93). Moreover, percentage increase in policing expenditures, 1999 to 2009 inclusive, is roughly 4% for Ottawa compared to increases in 15 large municipalities in Canada (including Peel, Hamilton, York and London) of at least roughly 20% and higher (save for Quebec City and Victoria). Further, the mill rate devoted to police services in Ottawa has been reduced to 0.152678 in 2014 from a range between 0.159237 (2013) and 0.166392 (2011). The Association further contends that residential growth in Ottawa has, in effect, offset increases to the police services expenditures. When judged against economic indicators such as the

unemployment rate, labour force participation rate, gross and median household earnings (higher in Ottawa than in Ontario and Canada), the local community cannot be said to be unable to shoulder fair and comparable compensation costs for police services. Rather, as was said, the decision to limit police budget increases that reflect tax rate increases is a political decision and not one that can be sustained by an ability-to-pay argument.

The Board, equally, extensively canvassed the state of the provincial economy (and to a lesser extent federal fiscal circumstances), relying in particular on the 2012 report by the Commission on the Reform of Ontario's Public Service (the "Drummond" report) which emphasized the need to reduce public sector expenditures in order to reduce provincial debt and deficits in a climate where 4-year real Gross Domestic Product (GDP) is predicted to be some 2.1% to 2.7% (2016-2018 inclusive) following a slight uptick in GDP in 2015. In these circumstances, the 2015 provincial budget addressed the matter of controlling public sector wages as follows at:

Managing compensation costs is critical to balancing the budget, as over half of government spending goes to salaries and benefits in the Ontario Public Service (OPS) and broader public sector (BPS). Compensation costs must be addressed within Ontario's existing fiscal framework, which does not include additional funding for wage increases. *Any modest wage increases must be offset by other measures to create a net zero agreement, and all public-sector partners must continue to work together to control current and future compensation costs.* [Emphasis added by Board, para. 70.]

In line with its review of provincial fiscal policies, the City of Ottawa approved a 1.75% tax rate increase for police services in 2015, which it translates into a 2.0% total compensation increase for its sworn and civilian employees. The

Board submits this increase is fair and reasonable in the current economic circumstances in Ottawa (para. 87).

In applying legislative and other relevant criteria, emphasis is properly placed on the economic conditions of the local community. In that regard, the objective data which inform this matter indicate the City of Ottawa is fairly well-situated such that comparison with police services' collective agreements in similar municipalities, notably large ones (often referred to as the "Big 12"), is not unwarranted. Such comparison, however, is but one factor to be taken into account as is, for example, the Board-approved total compensation package, or, the Board's ability to attract and retain qualified employees, in determining fair and reasonable outcomes at arbitration.

In making these determinations in the instant case, I note the previous two collective agreements (January 1, 2011 to December 31, 2012, and, January 1, 2013 to December 31, 2014) were settled by arbitration. In an attempt to resolve their differences over the collective agreement at hand, the parties met for ½ day before applying for arbitration (a one-day mediation occurred on July 30, 2015 but no substantive negotiations occurred). It is difficult to imagine they engaged in the negotiation process. That is, there has been no attempt to test their respective proposals against each other in order to settle their differences by withdrawing, trading off, modifying or compromising on disputed issues. Rather, what I have before me is akin to each party's "wish list" which has not been subjected to the usual give-and-take of the negotiating table. While interest arbitration is an alternative to free collective bargaining, it is not an alternative to the negotiations *process quo process*. How then to deal with the task at hand. I am guided by the approach taken by arbitrator Hope in *Re City of Vernon v. Vernon Fire Fighters Assn., Local 1517*, Carswell 3766, [1995] B.C.C.A.A.A. No. 432, 42 C.L.A.S. 76, at para. 76, citing Prof. P. Weiler, *Reconcilable Differences* [n/d; n/p], pages 226-27:

76. “Still, arbitrators must make up their minds. How do they do this? They tend, first of all, to be terribly conservative about making any changes in the basic framework of the agreement. Arbitrators reason it is not up to them to play God with someone else’s working life or livelihood. *If the Parties want to make serious innovations in their relationship, they must do that themselves, by agreement.* The arbitrator will try to stick to the simple monetary issues about which he need make judgements only of “more or less.” [Emphasis added arbitrator Hope.]

And further,

77. In short, departures from the status quo with respect to other than monetary issues require compelling support. That fact is particularly applicable to bargaining units in the public sector during periods of increasing costs and declining revenues. It is also particularly applicable to employers who seek to reduce benefits and eliminate existing rights.

ITEMS IN DISPUTE

ASSOCIATION PROPOSALS

Issue No. 1 – Retirement Allowance (sworn agreement)

The current agreement provides for as follows:

10.08 At retirement with a non-actuarially reduced pension, employees with thirty (30) or more years of service will be entitled to a retirement allowance of two (2) days of pay for each completed year of service to a maximum of sixty (60) days.

The Association proposes: the deletion of the requirement that retirement be with a non-actuarially reduced pension; increase to 3 days from 2 the rate of yearly entitlement, elimination of the 60-day maximum, and, inclusion of this provision in the civilian collective agreement.

The Association notes that those who retire on a reduced pension do not qualify for the allowance, this distinction only intended to reduce the scope of application of this provision. The increase in the number of annual accrued days without a maximum is noted as less than what previously existed, i.e. a sick leave formula of 1½ sick days per month. The sought-for inclusion of the provision in the civilian collective agreement tends to harmonize it with the sworn agreement. Further, elimination of the requirement of 30 or more years of service to qualify for the allowance responds to the Board's reliance on hiring police officers who have previous experience in other police services, but which years are not recognized for retirement allowance purposes.

The Board opposes the Association proposals. Rather, it proposes the provision be modified such that the employee be entitled to "the proportionate amount of vacation leave earned for that year." It costs the Association proposal at \$60,700. For its part, the Board estimates its proposal will reduce the costs of this allowance to approximately \$211,000 per annum from roughly \$394,000 in each year, 2010 to 2014, inclusive.

In reply, the Association emphasizes its view that this payment is "part of a severance allowance for long-term members" that was negotiated by the parties.

This matter is best left to the parties to negotiate.

I award no change to the provision.

Issue No. 2 – Compensation (sworn & civilian)

The current annual salary of a First Class constable is \$90,244.81. (All references to rates of pay are in relation to this wage category for both sworn and civilian members, a common practice in police services interest arbitration.)

Firstly, the Association proposes an across-the-board increase of 3.033% which would result in maintaining its rank of 4th of the 12 largest police services in Ontario.

Secondly, the Association proposal is for upward adjustments to the salaries paid to constables below the rank of First Class, as follows:

Classification	Current Salary %	Proposed
4 th Class	52.2%	70%
3 rd Class	72.1%	80%
2 nd Class	80.1%	90%

In making this proposal, the Association notes the current salary of a 4th Class constable in Ottawa, \$46,316.33 is significantly below the average of the 11 other big services, i.e., \$62,892. Similarly, the 3rd Class constable pay rate of \$65,077.04 is below the comparable average of \$71,583, while the 2nd Class constable wage of \$72,301.97 is below the comparable average of \$80,311. Moreover, the Association points out the Ottawa wage rates are significantly below those of 4 small police services in Eastern Ontario (Deep River, Alymer, Cobourg, and, Saugeen Shores). The Association further submits that “Recruit” officers (i.e., below the rank of 4th Class constable attending the Ontario Police College) in Peel, Hamilton, Waterloo, Durham, and, London have annual salaries ranging from \$48,544 (Waterloo) to \$58,537 (Durham), all above the Ottawa 4th Class constable salary. As well, in Peel, York and Niagara, those in the “Cadet” classification have annual salaries ranging from

\$48,986 (Niagara) to \$49,748 (York), again, higher rates of pay than that of an Ottawa 4th Class constable.

Thirdly, the Association proposal is for the Staff Sargeant salary to increase to 127% differential of a First Class constable salary from 124%, which 3% increase brings the Staff Sargeant salary in line with the average 126.84% differential in the Big 12 police services (excluding the OPP service).

The Board proposes a 2% increase in total compensation. Its data indicate the Association proposals represent increase costs of \$7,261,000 (wages), \$880,000 (Constable differential), and, \$201,645 (S/Sgt differential). Given a 0.1% wage increase equivalent to \$239,000, the Association proposal on these three wage issues represents a 3.49% increase.

In regard to the comparator group consisting of the 11 other large police services in the province, the Board submits the Association's desire to remain the 4th ranked service among them "turns a blind eye to the specific economic and fiscal realities prevailing in the City of Ottawa". Rather, its proposal provides for the service to remain competitive with the large service boards and reflects economic realities, which realities include cost-saving measures in those awards. For example, the City of Toronto and its Association negotiated a 4-year agreement (2015-18) with an average wage increase of 2.09% but with an increase in the interval of progression through the Constable ranks to 14 months from 12 months, along with other benefit entitlement modifications including vacation entitlement in the year of retirement and elimination of this gratuity for new hires. The Hamilton settlement for a 5-year term ensures its rank of 3rd of the largest services; Peel's 5-year settlement has a wage increase average of 2.13%, Halton 2.2% (4-year average) and reduction in certain paid benefits. London's 4-year agreement provides for less than 1% wage increases in 2015-18, inclusive of as at December 1, 2018, "average of the Big 12 as at that date". The 5-year Sudbury collective agreement provides for an average

wage increase of 2.14% and a wage freeze in Cadet, 4th Class, 3rd Class, and, 2nd Class constable classifications.

As concerns internal (to the City) comparators, where collective agreements for 2015 are in place, either by way of mutual agreement or interest arbitration, a 2% wage increase applies for 2015. Further, the Board noted that similar percentage increases to the wages of sworn officers increases the gap between them and members of the bargaining units whose wage rates are significantly lower than those of police officers, a circumstance recognized in a British Columbia award wherein, the Board submits, the interest arbitrator for the *Re Surrey (City) and Surrey Firefighters*, [2011]. B.C.C.A.A.A. NO. 50 (McPhillips), “took the important steps of recognizing that the unique nature of the services provided by police personnel is already taken into account by compensating police services members at a higher level than other City employees” (Board Submission Brief, p.54).

In regard to provincial wage settlements, the Board submitted that for the first 6 months of 2015, private sector wage increases were 1.7%, public sector 1.8% and the industrial sector’s 7 categories range from 1.5% (primary) to 1.9% (transportation, and public administration).

The Board noted that, in the instant case, a 2% wage increase results in added compensation costs of \$4.82 million per annum, and each additional 0.1% increase costs approximately \$239,000 per annum. Thus, its proposal of an increase of 2% overall compensation is reasonable and consistent with the local community’s economic circumstances and those of the province.

I award as follows:

Wages:

January 1, 2015 – July 31, 2015	1.25%increase
August 1, 2015 – December 31, 2015	1.78% increase

<i>Constable Differential</i>	-	Status Quo
<i>S/Sgt Differential</i>	-	Status Quo

Issue No. 3 – Responsibility Compensation (sworn agreement)

Current Provision – Article 11

Provision [sic] applies to members of the uniformed bargaining unit as at date of this award [i.e., prior to the 2005 interest award]. Length of service shall be understood to mean the length of time a uniformed member spent with this employer as a uniformed member or as a civilian member (who has converted to uniform status). Years of service will include any time spent with any of the predecessor employees as a police cadet. No direct entry time applicable. To qualify, an officer must attain satisfactory performance in all areas.

The Association proposal is for the phrase, “as at date of this award”, to be deleted, and, the deletion of the sentence, “No direct entry time applicable”. Also, it proposes the deletion of the last sentence, as agreed to by the parties in a Letter of Agreement. The effect of the Association proposal is that all uniformed members of the polices service shall be entitled to Responsibility Pay, not only those employed prior to 2005, and, that experience gained as a police officer prior to joining the Ottawa polices service would qualify for this pay, i.e., 3% of a First Class Constable salary at 8 years of service; 6% at 17 years of

service, and, 9% at 23 years of service. The Association submits there are some 300 police officers who have from 1 to 22 years of service in other police services, which experience is not currently recognized for Responsibility Pay purposes.

The Board submits there are only 3 of the Big 12 services that fully recognize previous service. Should the Association proposal be awarded, it estimates an additional compensation cost of some \$560,000.

This matter is best left to the parties to negotiate.

I award no change to the provision.

Issue No. 4 – Sick Leave/IPP (Letter of Agreement, sworn and civilian)

Under art. 7.02(c) of the sworn agreement and (art. 15.01(a)(iii) of the civilian agreement), the employer “may require” the employee to produce a medical certificate in the case of various types of absences of 4 days. Where the absence extends to 20 or more days, “It will be necessary to renew such certificate” at the discretion of the Chief of Police.

The Association proposes that should the Board require such medical certificate or report, “the Board shall reimburse members for costs incurred to provide such medical certificates of reports.” The Association submits that only 2 of the 12 large services (Waterloo and Durham) provide for the employer not to pay for these sorts of documents and, in 2 cases, up to a certain maximum (London, \$50.00, Niagara \$70.00).

The Board rejects the Association proposal, noting “it is entirely reasonable for an employee wishing to take advantage of an entitlement such as sick leave to bear the burden of obtaining the necessary documentation in support.” As to the cost implications of the Association proposal, the Board

estimates \$48,950 per annum assuming each bargaining unit member obtains one doctor's note per year at a cost of \$25.00.

This matter is best left to the parties.

I award no change to the provisions.

Issue No. 5 – Indemnification (sworn and civilian agreement)

The Association proposes a number of substantive changes to the longstanding Article 26 (art. 28 civilian) Indemnification provisions. It submits its proposals are necessitated by Board-initiated changes to the manner and circumstances in which it reimburses the Association for legal costs incurred by its members when charged with criminal or statutory offences in the attempted performance in good faith of their duties as a police officers. Its proposals also provide former and retired employees to qualify for indemnification; a different method of resolving disputes between the parties over legal costs, and, a broadening of the forums in which police officers can properly claim legal costs. Thus, its proposals are as follows:

- Under art. 26.01, include “former employee or retiree”; eliminate the phrase “the necessary and reasonable” in describing legal costs, and, add “Legal costs will be consistent with the rules of the Law Society of Upper Canada.”
- Under art. 26.02, add to the effect reasonable consideration by the Board.
- Under art. 26.04, add the italicized words to the following: “When an employee is a defendant in a civil action, *or any other tribunal from which there can be damages or remedies...*”
- Under art. 26.05 delete the phrase “necessary and reasonable” in describing legal costs.

- Under art. 26.06, change “apply to” to “notify” so that the provision reads, “Where an employee intends to notify the Board of indemnification thereunder...” and necessary changes arising therefrom.
- Under art. 26.08, delete references to the Police Services Act in para. (a) as a forum where a sworn member “shall not be indemnified”, and, in para. (c), delete that same reference as it applies to disciplinary matters.
- Under art. 26.09, include “at the same jurisdiction level” in reference to being “finally acquitted” which phrase is defined as, “For clarity, an employee will be considered “finally acquitted” where a judicial or administrative procedure concludes without a conviction”.
- Under art. 26.10, disputes between the parties over solicitors’ fees and expenses, while submitted to the Board in a fashion so as to protect solicitor-client privilege, to be referred to the Law Society of Upper Canada rather than to an internal assessment officer.
- Under art. 26.11(a), delete “necessary and reasonable” in describing legal costs.
- Under art. 26.12, delete “application” and replace with “notice” in the circumstances where an employee seeks advance payment for “necessary and reasonable legal costs”, and add that the Board, in deciding the matter, will exercise its discretion reasonably. Should the employee ultimately not be entitled to those monies, they are to re-imburse the Board.
- Add new art. 26.13

Subject to other provisions of this article, a member who is not charged with a criminal offence but who has been the subject of a criminal investigation because of acts done in the attempted performance in good faith of his/her duties as a police officer shall be indemnified for legal costs incurred by the member during the investigation.

This part also applies to officers who, although not the subject of a criminal investigation, have incurred legal costs for interviews by the SIU.

It is understood that the legal costs of one counsel for each officer identified as a subject officer will be indemnified. For witness officers, the legal costs of one (1) counsel (as permitted by the Law Society of Upper Canada) shall be indemnified. If there are more than six (6) witness officers, the legal costs of a second counsel shall be indemnified. If there are interviews being conducted concurrently, then more than one counsel will be indemnified for witness officers.

The Board does not accept the Association proposal, noting that they “diminish the Board’s responsibility and public accountability” and, secondly, “there is an attempt to broaden the scope of situations in which legal indemnification applies.” Further, it submits that its responsibility in relation to legal indemnification is a matter falling within its jurisdiction under the *Police Services Act*.

The Association proposal calls for substantive and substantial changes to this provision.

This matter is best left to the parties to negotiate.

I award no change to the provision.

Issue No. 6 – Meal & Travel Allowance (sworn & civilian)

Under art. 18.14(c), the Association proposes that where the provision provides for set allowances for breakfast, lunch, and, dinner on an assignment beyond 100 kilometres from Ottawa headquarters, meals be paid at Federal Treasury Board/ National Joint Council published rates (which are higher than those in the agreement) without the need to be 100 kilometres away. Further, where art. 18.10(d) currently provides for an employee to be paid \$175.00 for

required attendance at the Ontario Police College in Aylmer and receive 42¢/kilometre of travel, the Association proposes the employee, if required to use his or her personal vehicle for “police service business”, be reimbursed the travel rates published by the above federal agencies.

The Board proposes clarifying that meal allowance cannot be claimed within 100 kilometres of the Elgin St. police station; that if public transit includes a meal (e.g. Via Rail) no claim can be made, or, if a meal(s) is included in the cost of a course, seminar or conference. The Board submits its proposal serves to reduce current costs of \$125,000 annually by only paying for meals if required.

In reply, the Association submits that the inclusion of the term “in-service training” in the Board proposal is improper because it did not form part of its initial proposals. Moreover, by amending the introductory language to read “member’s duties”, such duties as canine training that take place in other municipalities but still within 100 kilometres of Ottawa, improperly expands the scope of the provision.

This matter is best left to the parties.

I award no change to the provision.

Issue No. 7 – Clothing Allowance (sworn)

The Association proposes that the per annum allowance for the wearing of ordinary clothing in the performance of police duties be increased to \$1,350 from \$1,025, which latter amount is some \$175.00 less than the average (\$1202) for the other 11 large police services.

The Board submits the Association proposal cannot be justified in light of the prevailing environment of economic restraint. Only two of the Big 12

police services provide amounts similar to the Association proposal (York and Peel). The Board estimates increased costs of \$116,000 per year.

This matter is best left to the parties to negotiate.

I award no change to the provision.

Issue No. 8 – Court Time (sworn & civilian)

The Association proposes that a 1995 Letter of Understanding between the parties on the matter of pay for court time, confirmed in a Consent award, remain in effect and that the Board desist from applying the language in the collective agreement, since the Letter of Understanding supercedes the collective agreement language. Thus, it requests:

The Association proposes that the Arbitrator direct the parties to jointly determine language suitable to reflect both the Letter of Understanding negotiated following the Kalpan award and the adjustment to the premium rates awarded by Arbitrator Starkman.

The Board agrees with the Association proposal.

I award the Association proposal.

Issue No. 9 – Wages and Salaries (civilian)

The current collective agreement provides for an additional payment of \$325 per year after 10 years of employment; \$700 per year after 20 years, and \$1,000 per year after 30 years of employment. It also provides that these payments are “conditional upon satisfactory performance during the year...” (art. 6. (a) (iii)). The Association proposes the deletion of the conditional clause and the following payment scale:

After 5	years	=	\$	250
“	10	“	=	\$ 450
“	15	“	=	\$ 650
“	20	“	=	\$ 900
“	25	“	=	\$1,100
“	30	“	=	\$1,300
“	35	“	=	\$1,500

The Association further proposes that in the event of an employee’s death, the estate be paid the full amount.

The Association submits its proposed pay scale structures are as provided for in 9 of the 11 large police services and that the proposed dollar amounts are very similar, if not identical, in those other collective agreements, and closes the gap which exists over a 35-year career in comparison with those other services.

The Association also noted that only 2 of the large services (Niagara and Hamilton) make reference to some form of conditional requirement of the employee.

The Board rejects the Association proposal as significant and unnecessary which it cannot afford “under its present financial constraints.” It noted the April 5, 2013 *Goodfellow* interest award increased the 20-year payment to \$700 from \$500 and instituted payments at the 10-year and 30-year marks, which payments are said to roughly correspond to the average amounts for other police services. It costs the Association proposal as \$316,000 annually or an increase of \$134,000 over current expenditures. The current provision, however, is said to be in line with Big 12 comparisons, being only slightly below the average.

The Board also notes that arbitrator Goodfellow did not remove the condition of satisfactory performance for entitlement purposes, and, that it

would be unfair and unreasonable to eliminate its ability to pro-rate service pay.

This matter is best left to the parties to negotiate.

I award no change to the provision.

Issue No. 10 – Benefits for Retirees (sworn & civilian)

The current Letter of Understanding provides for the Board to pay 100% of the benefit premiums for retirees with at least 20 years of service on a non-actuarially reduced pension. The Association proposes a lower service threshold; of 10 years, and, elimination of the criterion of a non-actuarially reduced pension. It submits that if the provision is unchanged, sworn members who entered the service with experience elsewhere and those employees who started their career at a later age may not achieve the threshold 20 years of service. For similar reasons, employees currently view their career paths differently from when the provision was initially negotiated; a non-actuarially reduced pension may serve as an impediment to entering service.

The Board rejects the Association proposal noting that, aside from Waterloo, it provides retiree benefits for life as opposed to ages 65, 70, or 75 in other Big 12 services, i.e., a more costly and generous provision. And since it is for life, a 20-year service threshold is reasonable and appropriate. While the Association raises a concern about recruitment, since 2004 the Board has hired 165 direct entry recruits, or 27% of the sworn hires, itself a substantial number which belies concern over recruitment and retention.

This matter is best left to the parties to negotiate.

I award no change to the provision.

Issue No. 11 – Medical Plan (sworn & civilian)

The Association proposes that vision care, which is 100% Board funded, increase to \$400 every 24 months from \$300 every 24 months. Secondly, its proposal calls for the Board's contribution of \$500 for all paramedical and dental premiums to increase "to reflect the market rates found in comparable police collective agreements", effective January 2015.

By way of background to the proposal, for an extended period of time the Association has managed the members' benefit plans, which plans are ASO, whereby the Association contracts an administrator to adjudicate benefit claims. The Employer contributes \$500 towards the costs of the plans and the Association membership tops up that amount, e.g., if the plan provides for massage therapy at a value of \$1000, the Board contributes \$500 and the membership tops-up that amount by \$500. However, over the years the Board's level of contribution has fallen behind the levels of contribution in comparably sized police services, for example, the Boards of the other 11 large services contribute an average of \$695.50 for Chiropractic benefits, and, \$1400 for psychologist services.

A second circumstance affecting the Association proposal is a health-related program, the "Real You" program, introduced by the Board in 2011. As I understand it, part of the Board's \$500 goes towards the costs of this benefit plan, which then reduces its level of contribution to the other benefits, such that, in effect, the Association submits, the Board's liability for the costs of the Real You program are being subsidized by member-funded benefits. In that regard, the Board did not increase the contributions it makes to the existing, other benefit plans in introducing the Real You program.

The Board proposes the deletion of the Letter of Understanding whereby the Association administers its members' health and dental plans and that it

be responsible for the plans' administration. The Board submits that, currently, it cannot negotiate with insured-benefit providers over terms and conditions and suggests it will be able, as a larger employer, to negotiate more favourable costs for claims adjudication and administration of those plans, an efficiency that may not be utilized by the Association to the same extent.

The Board submits the Association has no incentive to reduce costs or improve efficiency because it bears no financial responsibility and is not accountable for its actions and decisions concerning these plans. In that regard, the Board notes that the current administrator has a fixed rate of 8% for claims adjudication and administration. On the other hand, the City of Ottawa's ASO plan has a fixed rate of 5.1% for those same services. In short, the Board submits that deleting the Letter of Understanding and making it the administrator through the City's arrangements is a more cost-effective measure since it is better suited to deal with the administration of the Health and Dental Plans.

In its reply, the Association categorically disagrees with any of the assertions made by the Board about its operation of the plan, the costs of its administration by an insurer, the lack of information claimed by the Board and any and all reasons why the Board suggests it is better placed to be responsible for the health and dental benefits.

The matter of the Letter of Understanding is best left to the parties to negotiate.

The Board's contributions are notably below the average (based on Association data) of the Big 12 agreements. I award as follows:

Vision Care	\$350
Massage Therapy	\$750

Chiropractic	\$700
Physiotherapy	\$750
Psychologist	\$750

The award on these benefits is retroactive to January 1, 2015.

Issue No. 12 – Mandatory Retirement (sworn & civilian)

The sworn collective agreement provides for, in art. 10.04, mandatory retirement “the first month immediately following the member’s sixtieth (60th) birthday.” (The civilian agreement makes reference to “normal” retirement.) The Association proposes deletion of all references to mandatory retirement. According to the Association, the parties, sometime in 2014, through informal discussions agreed to eliminate references to mandatory retirement, given a Board practice whereby the Chief of Police has allowed members to continue working past age 60. The Association finds it unexplainable why the Board has not yet implemented the parties’ agreement.

The Board agrees with the Association proposal.

I award the Association proposal.

Issue No. 13 – Contracting Out, Layoff/Recall (sworn & civilian)

Firstly, the Association proposes the following provisions be included in the collective agreement:

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

Secondly, in the sworn and civilian collective agreements, layoff and recall provisions provide for layoff in reverse order of seniority (with bumping rights in the civilian agreement) and recall in order of seniority. The civilian agreement also includes varying lengths of layoff notice based on years of service, and, no new hires for 12 months until “those laid off have been given opportunity of re-employment...”. The Association proposes that the following replaces existing language:

Proposed Language

- (1) The OPA and the Board agree that layoff is defined as a severance from active employment which may be temporary or permanent. It is understood that a layoff will not take place until the Board has demonstrated an inability to adjust the bargaining unit in accordance with provisions set out in this article.
- (2) The OPA and the Employer will create a joint committee, comprised of equal representatives, to oversee and administer the terms of the following.
- (3) Throughout this agreement references to "days' notice" will mean calendar days.

Notice Period to OPA

- (4) The Board will notify the OPA, in writing, at least one-hundred and twenty (120) days prior to the anticipated effective date of layoff. In this notice the Board will identify to the OPA the positions and incumbents in positions anticipated to be subject to layoff. The Board will also provide the OPA with detailed reasons outlining the reasons for each layoff.
- (5) Following delivery of notice by the Board to the OPA, the parties will:
 - a. Make best efforts, through a redeployment committee comprised of equal representatives of the OPA and the Board, to find alternative work within the bargaining unit for members affected by a layoff;
 - b. Provide reasonable training to allow a member affected by layoff to perform work elsewhere in the bargaining unit;
 - c. Give careful consideration to early retirement incentive programs in the bargaining unit for the purpose of avoiding layoffs of affected members;

- d. Give careful consideration to early retirement incentives for affected members;
- e. Give careful consideration to alternative work arrangements including, but not limited to;
 - i. job sharing;
 - ii. leaves of absence and furloughs;
 - iii. secondments;
 - iv. transfers to the Corporation of the City of Ottawa;
 - v. purchasing past pensionable earnings;
 - vi. unpaid education leave;
 - vii. retraining;
 - viii. combinations of the above;
 - ix. any other consideration necessary to limit the impact of layoffs on bargaining unit members.

(6) It is understood that the Board will be prevented from giving written notice of layoff to members where it has failed to give notice to the OPA as prescribed in this article. Failure to give the OPA advance notice as set out above will render any notice directly to members as void.

Notice Period to Affected Members

- (7) The Board will give the members affected at least ninety (90) days advance written notice prior to lay-off or pay in lieu of such notice. A person being provided pay in lieu of notice will be treated like any other member for the purposes of the application of this memorandum.
- (8) Following the Board giving notice to affected members, the Board will provide;
- a. Reasonable time off, with pay, allowing affected members to attend at job interviews including necessary time for related travel;
 - b. Affected members, not more than fourteen days following delivery of notice, professional assistance, at the Board's expense, in career coaching, resume drafting, interview skills, job search and so on.

Severance

- (9) A member of the OPA affected by layoff is entitled to a severance in accordance with the arbitral authorities in the Ontario Police Sector. It is understood that this severance is separate and apart from notice periods set out above;
- (10) It is understood that a member's entitlement to severance payment as set out above can be paid as a salary continuation, including necessary pension contributions, where the member gives written instructions to the Board not less than thirty (30) days before the effective date of the layoff.
- (11) A member exercising a recall right, as defined by this agreement, will have his/her severance terminated upon his/her return to work. In the event that the member accepts/assigned to a lower position than that occupied at the point of layoff, it is understood that the member will receive, in a lump sum payment not more than thirty days following return to work, the difference in pay between the job held at the point of layoff and the job taken in the recall for the equivalent of the period remaining in the severance period.

Benefits during Layoff

- (12) It is agreed that a member on layoff will be entitled to continue in the benefit plan, at the Board's expense until such time as (whichever occurs first);
 - a. The member accepts a recall from layoff;
 - b. Twenty-four months have elapsed.
 - c. The date which the member could have retired on an unreduced pension, in which case the member will, from that point forward, continue on retiree benefits as set out in the collective agreement.
- (13) It is understood that should the collective agreement's benefit plan be amended through negotiations during the layoff period, the members on layoff will be eligible for the improved benefits as if they remained an active member in the workplace.

Recall from Layoff

- (14) Each member affected by a layoff will have, for a period not less than sixty (60) months, a right to recall to the position occupied at the date of layoff.
- (15) The OPA and the Board are in agreement that recall from layoff will be done in reverse order of seniority. For clarity this means that the

first member recalled from seniority will be the most senior person affected by layoff as calculated at the date of the layoff.

- (16) The Board will not hire a new member into the OPA, including any temporary or term assignment, until it has offered recall to any member who remains on the recall from layoff list at any period during the sixty-month recall period..
- (17) In exercising a recall, it is understood that the Board will make best efforts to contact the member on the recall list. It is understood, however, that a member on the recall list must make efforts to ensure that the Board has the most up-to-date contact information.
- (18) A member who bumps into a lower classification in place of a layoff will be offered the first opportunity to resume a position in the same classification he/she held at the date of layoff. It is understood that the Board is obligated to offer this return to pre-layoff position prior to activating the recall list.
- (19) A member on layoff will have rights for rehiring into a lower classified position during the layoff period in accordance with his/her overall seniority in the bargaining unit.

Bumping Rights

- (20) Any member who is subject to a layoff may bump a less senior member from his or her own classification if he/she possesses the ability to perform the work within a reasonable period, including a reasonable and appropriate training period. Any disputes between the Association and the Employer will be referred to the parties' joint committee on layoff, recall and bumping.

Miscellaneous

- (21) The OPA and the Board agree that they will make their best efforts to limit or reduce the impact of any workforce adjustment that results in a potential layoff.
- (22) The OPA and the Board agree to work cooperatively to protect the interests of members who are being laid off and those impacted by the exercise of bumping rights.
- (23) The OPA and the Board agree that nothing prohibits them from retaining professional services to aid in the administration of this agreement, including professionals for the purpose of resolving potential conflicts that may arise.

- (24) The OPA and the Board agree that the terms of this agreement cannot be changed without the express written agreement of both the OPA and the Board.

The Association seeks for this language to be included in the collective agreement because the Board clearly indicated to it, in mid-2015, it was, as stated in the Association submissions, “intending on privatizing and/or otherwise contracting out a number of areas of function that are performed by sworn or civilian members. In that regard, the Board is currently investigating the contracting out of security services at the main court house, as part of its report, “Strategic Review: Civilianization and Outsourcing of Police Services” (June 29, 2015), a review process which began in various forms beginning in or around 2013. The Report provides a summary statement of the reasons for the Board’s initiatives, at p.3:

3. Business Opportunities

There are many current police duties that can be performed by private organizations at a lower cost, potentially saving local taxpayers significant dollars every year. The idea of privatization or outsourcing of non-core police functions is not new and in many instances being common practice by police services across the country.

The Association submits that, generally, contracting out and layoff/recall provisions have not commonly applied in police services/police association collective agreements. However, given the Board’s intentions, it seeks for there to be language in the collective agreements to ensure that the work of the bargaining unit remains exclusive to bargaining unit members, and, in the event employees are laid off, they can exercise the rights provided for in the proposed language in order to preserve their employment as much as possible.

The Board rejects the Association proposals. The proposals thwart its attempts to, potentially, shift non-core police functions to the private sector, which is in line with the current move in the province to reform policing which costs are increasing in an acute fashion. Further, it is to be remembered the *Police Services Act* and its attendant oversight provisions require that core policing duties cannot be performed by anyone other than a police officer nor can it reduce the size of its force without the approval of the Ontario Civilian Police Commission.

This matter is best left to the parties to negotiate.

I do not award the Association proposal.

Issue No. 14 – Duration of Agreement (sworn & civilian)

The parties are unable to reach agreement on the term of the collective agreements that expired on December 31, 2014. Accordingly, by operation of the *Police Services Act*, the term of the collective agreements for purposes of this interest award, is January 1, 2015 to December 31, 2015, inclusive.

BOARD PROPOSALS

Issue No. 1 – Vacation Leave (sworn & civilian)

The current provision provides for an employee to be entitled to “full vacation entitlement” for the year in which the employee retires. The Board proposes the amount of vacation entitlement in the year of retirement be the “the proportionate amount of vacation leave earned for that year”. The Board submits that, currently, if an employee retires in January, he or she experiences a windfall in the form of full vacation entitlement. Its proposal is fair and reasonable and would generate savings estimated to be approximately

\$200,000 per year where otherwise, based on data for 2010-14, inclusive, the amount paid out was approximately \$394,000 per year.

The Association rejects the Board's proposal. In that regard, it refers to a 1982 interest award *Re Brantford Police Association and The Brantford Police Services Board* by arbitrator Dempster who suggested that where a party seeks to amend, modify or delete a provision (which presumably deals with substantive matters) three conditions be considered: (1) abuse, (2) excessive cost, or (3) past problems. The Association submits the Board is unable to demonstrate these conditions exist.

This matter is best left with the parties to negotiate.

I award no change to the provision.

Issue No. 2 – Dry Cleaning Allowance

The Board proposes to remove the dry-cleaning provisions from the collective agreements. It notes that in 1996, all uniform pieces were changed to wash-and-wear from polyester, with the exception of the dress tunic. Moreover, there is no longer a Mounted Unit which was entitled to an extra \$200 per year. Its proposal is estimated to achieve a cost savings of approximately \$455,000 annually.

In reply, the Association notes that all other large police services provide for a dry-cleaning allowance.

This matter is best left to the parties to negotiate.

I do not award the Board proposal.

Issue No. 3 – Police College Allowance (sworn & civilian)

The current provision provides for a payment to an employee of \$175.00 “for each trip to and from” the Police College in Alymer. The Board proposes for the language to be amended to read “...for each trip to and from Alymer if they take their own vehicle”. The Board submits that under existing language, an employee receives the \$175.00 regardless of whether or not he or she uses their own vehicle. This proposal, it submits, which is in line with its rationale and intent to provide reimbursement for employees who actually use their own vehicle, is fair and reasonable. It notes that on average, 442 employees per year are paid this allowance, amounting to roughly \$174,000.

The Association opposes the Board’s proposal. Firstly, it submits that if 442 members attend Police College, if each receives \$175, that amounts to \$77,350 and not \$174,000. Further, if one compares the allowance to a per kilometre allowance of 42¢ (roughly the provincial government rate), the amount of re-imbusement would be \$528.36, given a 1,258 kilometre round-trip from Ottawa to Aylmer. Also, the Board provided no data concerning the number of its members who travel in a single vehicle, be it one, two, or three. Absent any such information to inform the debate, the proposal ought not to be accepted.

This matter is best left to the parties to negotiate.

I award no change to the provision.

Issue No. 4 – Association Estoppel Notice, Casual Employees (civilian)

The Board submits that while the Association served it with an estoppel notice in relation to the elimination of casual civilian employees, contending there is no mention of casual employee status in the civilian collective agreement, it disagrees with the Association’s interpretation of the agreement,

noting such reference in article 34. Nonetheless, in recognizing the agreement is silent with respect to the practices, terms and conditions of casual employment, it proposes the following Letter of Understanding:

A casual member is one who is employed as a relief or on replacement basis and is available for call-ins as circumstances demand. Casual members are not regularly scheduled to work.

Article 34, Temporary Employees, of the Civilian Collective Agreement shall apply to casual members. However, to qualify for a premium of ten (10) percent of basic salary in lieu of benefits, the casual employee must:

- a. complete six (6) months of employment with the employer; and
- b. have worked a minimum of 520 hours.

Statutory Holiday pay shall be in accordance with the Collective Agreement.

Service for the purpose of increments, salary, promotion, reclassification, or service pay shall be calculated as follows:

1,820 regular hours = 1 year of service
 3,640 regular hours = 2 years of service
 5,460 regular hours = 3 years of service

Casual members must declare their availability on a monthly basis.

Casual members holding more than one position must clearly indicate being in an overtime situation at the time of being offered available work.

Casual members may be scheduled on a temporary basis for either part-time or full-time work by the Chief or his/her designate to cover absences due to illness, vacation and leave of absence for periods not to exceed six (6) months.

Casual members shall make themselves available to work during peak periods. which are defined as Spring break (Ontario and Quebec school breaks), summer break (June 1, to September 30), and Christmas break (the week including Christmas Day and the week including New Years Day).

If a casual member has not been available or refuses to work for three (3) months, she/he will be given written notice of the Chief's intention to terminate his/her employment contract. Should the casual employee fail to respond to this letter within thirty (30) days from the date of mailing, she/he will be terminated. Employees who submitted a request for leave, in writing, and have been approved for an extended leave shall be exempt from this provision.

A casual member who accepts a shift shall have the same obligation to work as a regular full-time or temporary member.

The Board submits it has a long-standing practice of employing casual employees (some 70 per year over the past 5 years) in such service operations as: Courts, Call Centre/Switchboard, Intelligence, Records Management, Resourcing and Development, and, Victim Crisis Unit. The use of casuals is essential to operations and offers necessary flexibility in staffing the above-mentioned areas. Casual employees have the same benefits as temporary employees and receive 6% wages in lieu of benefits. The Board notes that while it has no part-time classification as does the majority of large service boards, none of those refer to "casual" employees.

The Association rejects the Board's proposal and takes the position that since "casual" is not an explicitly defined employee category, there should be no casual employees in the workplace. In the alternative, it is prepared to form a joint committee with the Board, however, with a "default" dispute resolution system as a function of the committee, i.e., the possibility of mediation/arbitration.

This matter is best left to the parties to negotiate.

I do not award the Board proposal.

Any item not addressed in this award remains unchanged.

The items addressed in this award are to form part of the parties' collective agreements for January 1, 2015 to December 31, 2015.

I remain seized of my jurisdiction in the event the parties experience any difficulty in implementing this award.

Dated at Toronto, this 21st day of June, 2016.



William A. Marcotte
Arbitrator