

IN THE MATTER OF AN INTEREST ARBITRATION UNDER
THE FIRE AND POLICE SERVICES COLLECTIVE BARGAINING ACT, R.S.B.C,
1996 c. 142

BETWEEN:

VANCOUVER POLICE BOARD

(the "Police Board")

AND:

VANCOUVER POLICE UNION

(the "Union")

(Re: Collective Agreement Renewal)

ARBITRATOR:

Stan Lanyon, Q.C.

COUNSEL:

Kim Thorne and
Ryan Copeland
for the Employer

Gabriel Somjen
for the Union

DATE OF HEARING:

August 2 and September 14, 2016

PLACE OF HEARING:

Vancouver, B.C.

DATE OF DECISION:

September 29, 2016

A W A R D

I. Introduction

[1] The term of the parties' prior collective agreement was January 1, 2013 to December 21, 2015. The wage increases under that agreement were as follows: 2013 – 2.5%; 2014 – 2.0%; and 2015 – 2.5%, for a total of 7% over three years (*Vancouver Police Board and Vancouver Police Union*, July 29, 2014, Lanyon, Q.C.)

[2] The parties have proceeded expeditiously in this matter. Collective bargaining took place on March 14, 2016, followed by mediation before the British Columbia Labour Relations Board on April 19, 2016. The matter was then referred to the Minister of Labour who directed this collective bargaining dispute to interest arbitration.

[3] The parties agreed to mediation/arbitration. Mediation was scheduled for August 2, 2016. As will become evident, the parties differ substantially on the issue of wages. It was agreed that this arbitration would be conducted by way of oral submissions. No witnesses were called to give evidence. Each party introduced a range of documents consisting of economic and government reports. The parties also submitted written arguments. Both parties submissions have been very thorough.

II. Issues – Agreed to Items

[4] In the period between the mediation and arbitration of this matter the parties successfully reduced the number of issues in dispute, reached agreement with respect to some issues, and agreed to a process for resolving other issues.

III. Term of Collective Agreement

[5] The parties have agreed that the term of their renewed collective agreement shall be from January 1, 2016 to December 31, 2018.

IV. Joint Committee

[6] The parties have agreed to establish a Joint Committee with representatives from each side to deal with a number of outstanding issues. Appendix A to this Award, Memorandum of Agreement, establishes the terms of this Joint Committee. Appendix B, entitled “Vancouver Police Union 2016 Proposals for Committee”, dated March 14, 2016, sets out the various issues that have been referred to this Joint Committee.

V. Parties Expired Collective Agreement: January 1, 2013 – December 21, 2015

[7] All of the terms and conditions of the parties’ expired collective agreement, that have either not been amended by this Award, or have not been amended by the Joint Committee in Appendix A, shall form part of the parties’ renewed collective agreement (January 1, 2016 – December 31, 2018).

V. Issues in Dispute

[8] There are two issues in dispute: Wages and the Benefit Plan.

VI. Wages

[9] The parties have narrowed this issue. The only dispute with respect to wages is the first year of the agreed upon three year agreement.

[10] The national standard comparator for all collective agreements with respect to Police Officers wages throughout Canada is the salary of the First Class Constable. The current salary of a First Class Constable in the Vancouver Police Force is \$92,165. I will begin by setting out each sides wage proposal.

VII. Union Proposal

[11] The Union proposes the following wage increases:

January 1, 2016 – 5.28% (\$97,032)

January 1, 2017 – 2.5% (\$99,457)

January 1, 2018 – 2.5% (\$101,943)

Total: 10.28%

VIII. Employer Proposal

[12] The Employer proposes the following wage increases:

January 1, 2016 – 2.5% (\$94,469)

January 1, 2017 – 2.5% (\$96,830)

January 1, 2018 – 2.5% (\$99,251)

Total: 7.5%

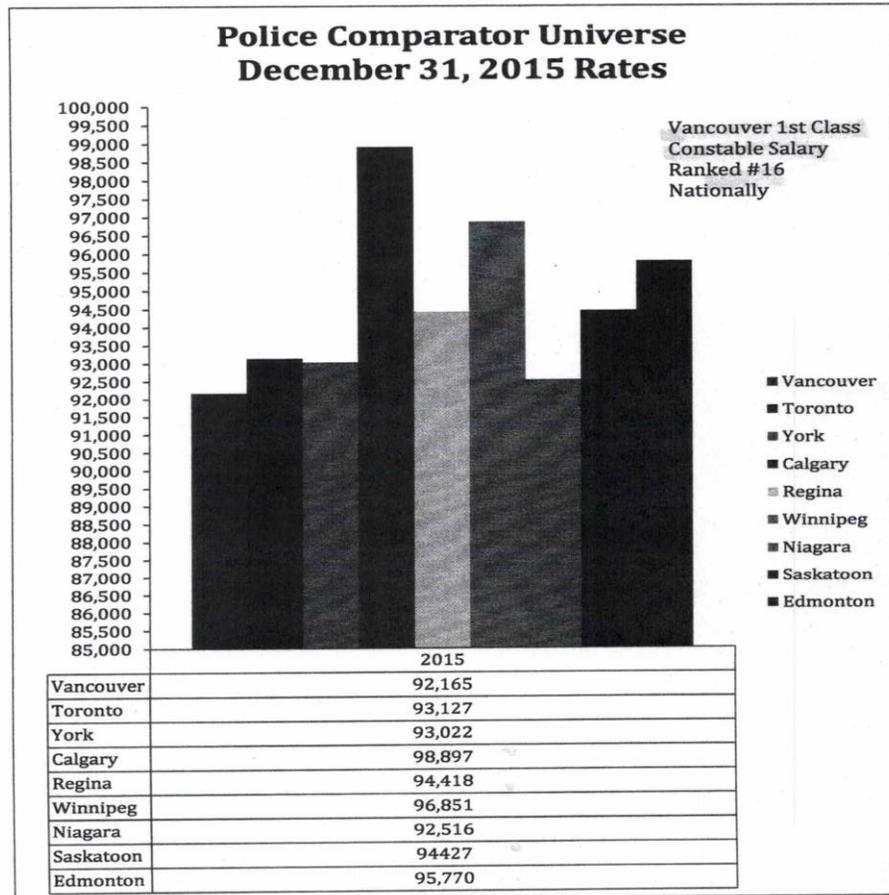
IX. Union Argument

[13] The underlying theme of the Union’s argument is that the Vancouver Police Officers should lead the police forces in Canada: “...Vancouver should be the leader in Canada”. (para. 24, written submission)

[14] The Union contends that since the last interest arbitration in 2014 (*VPD v. VPU, supra*), Vancouver and British Columbia now lead the country in economic growth; therefore, the salaries of the Vancouver Police Officers ought to exceed those in both the Western Provinces, in Toronto, and in Ontario generally.

[15] The Union produced the following graph which sets out the salaries of police officers in both the Western Provinces, and in the Toronto/York Regions as of December 31, 2015. Vancouver Police Officers rank the lowest on this graph. The Unions says that Vancouver is 1% behind Toronto and other Ontario municipalities; 7% behind Calgary; 4% behind

Edmonton, and 5% behind Winnipeg. It says that as of December 31, 2015, according to the RCMP Pay Council data, Vancouver Police Officers ranked 16th in Canada (para. 41):



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[16] The Union contends that Vancouver has in five of the last six years experienced growth at more than 3% a year, whereas the Canadian economy grew by an average 1.8% per year over the same period (para. 79). In addition, economic growth for British Columbia is predicted to be 3% or greater for both 2016 and 2017 (para. 82). Thus, both Vancouver and British Columbia lead Canada in economic growth.

[17] The Union states that inflation in Vancouver is the second highest (CPI 2%) in Canada. Toronto is the highest with CPI at 2.1%. The prediction for Vancouver for CPI increases, in the period 2015 – 2018, is to average 2.1% (para. 62).

[18] The Union cites the 2016 Mercer Cost of Living survey which ranks Vancouver as the costliest city in Canada (para. 52). There is no dispute between the parties that housing in Vancouver is unaffordable. The average price is now \$1.5 million. Further, the rental vacancy rate is 0.6%. The normal rate is between 3 – 4%. The Union says that the desirable municipal policy of having essential service workers, such as police officers, live in the city in which they work is no longer attainable.

[19] Turning to the issue of workload, and to the changes in the duties of a Vancouver Police Officer, the Union argues there has been a rise in terrorism, plus a more recent trend of targeted attacks on police officers. In 2015, Vancouver’s violent crime severity index was twice that of Toronto. Property crime has increased. The Downtown Eastside is the most difficult place in Canada to police. The problems in this neighbourhood include homelessness, addictions and mental illness. Non-criminal events are a growing part of a Vancouver Police Officers’ workload (domestic disputes, mental health incidents, street disorder, etc.); however, all of these incidents must still be investigated because of the potential for them to escalate into criminal incidents.

[20] There is no dispute that the duties of a police officer are unique. They are both challenging and dangerous, including the potential for any police officer having to put their “life on the line”. Recent wellness studies, specifically those done with respect to Vancouver Police Officers, have demonstrated that many police officers show high levels of stress, anxiety and depression.

[21] Furthermore, the Union points to strong public support, which has repeatedly been demonstrated in public surveys; these surveys reveal that “policing is high priority budget item” (para. 116).

[22] Finally, the Union contends that the recent Delta Police Officers' settlement should not be determinative of this matter. It argues that the Delta Police Force is a suburban force, and that it does not face the same challenges that police officers in Vancouver face. Therefore, it is not a proper comparator under the established arbitral jurisprudence.

[23] Thus, in summary, the Union claims that the "exceptionally positive financial circumstances", in Vancouver and in British Columbia, combined with its high cost of living, together with the increasing difficulty of policing in Vancouver, that "it is now necessary and reasonable for the Vancouver Police Officers to assume their status as the highest paid officers in Canada" (para. 118).

X. Employer's Argument

[24] The Employer argues that Toronto police force, and other Ontario police forces, have been one of the most important of the traditional comparators with respect to the determination of the Vancouver Police salaries. The single largest police force in Canada is in Toronto (the 4th largest City in North America, behind Mexico City, New York and Los Angeles). The Employer emphasizes that Toronto has recently reached a collective agreement voluntarily. It is a four year collective agreement that provides for the following increases: 2015 – 2.75% (93,127); 2016 – 1.95% (94,949); 2017 – 1.9% (96,759); and 2018 – 1.75% (98,452). In addition, it states that this new agreement also included concessions that will save the Toronto Police Board an estimated \$203.5 million (paras. 39 and 40).

[25] The Employer further contends that the Toronto Police settlement is also reflected in the wages awarded to other Ontario Police Forces outside of Toronto. It sets out the following settlements at six municipalities in Ontario:

- a. York: 2016 – 1.5% Jan 1 and 0.563% July 1; 2017 – 1.5% Jan 1 and 0.4% July 1; Jan 1, 2018 – 1.75%; Jan 1 2019 – 2.0%
- b. Peel: 2015 – 3.07%; 2016 – 1.96%; 2017 – 1.91%; 2018 – 1.75%; 2019 – 2.0%
- c. Sudbury: 2015 – 2.1%; 2016 – 2.1%; 2017 – 2.0%; 2018 – 2.3%; 2019 – 2.0%

- d. Waterloo: 2015 – 2.75%; 2016 – 2.2%; 2017 – 1.9%; 2018 – 1.9%; 2019 – 1.94%
- e. Windsor: 2015 – 2.75%; 2016 – 1.9%; 2017 – 1.9%; 2018 – 1.8%; 2019 – 2.1%
- f. Barrie: 2015 – 2.75%; 2016 – 2.1%; 2017 – 2.1%; 2018 – 2.1%

[26] The Employer states that these settlements are on average 2% or less. And because the leading comparator, Toronto’s collective agreement, was reached voluntarily, this reflects most accurately the principle of replication that should be applied to the Vancouver Police.

[27] The Employer rejects the Western Provinces as comparators, especially Edmonton and Calgary, Alberta. In an arbitration award, dated September 28, 2015, (*Corporation of City of Calgary and the Calgary Police Association*, (September 28, 2015), Tettensor, Q.C.) the Calgary Police were awarded the following wage increases: 2014 – 2.25% (\$93,447); 2015 – 2.75% (\$96,017); 2016 – 3.0% (\$98,897). The Edmonton Police Force, in an Award dated August 29, 2016 (Smith), were awarded the following increases: 2014 – 2.4% (\$93,435); 2015 – 2.5% (\$95,771); 2016 – 2.75% (\$98,404).

[28] The Employer cites and relies upon my conclusion in the 2014, *VPB & VPU, supra* Award, where I concluded that the settlements in Alberta were “too rich” for the City of Vancouver (para. 54). The Employer argues that this continues to be the case and believes that the Alberta settlements will be moderated in the next round of collective bargaining due to that province’s current recession.

[29] The Employer further contends that salaries are generally higher in Alberta, and that this trend continues despite the province’s current recession. It relies on the Alberta Industrial Aggregate which records that during the period of 2001 – 2015 annual wages in Alberta increased by 54.1%. The salary of Edmonton Police Officers over that same period increased by 50.5%. The average salaries in Alberta in 2015 were \$59,794, which the Employer states is 25% higher than salaries in B.C. Conversely from 2001 – 2015 the B.C.

Industrial Aggregate increased by 32.9% and Vancouver Police wages increased by 44.3%. The average salary in B.C., under the Industrial Aggregate, was \$47,504 (paras. 59 and 60).

[30] In addition, the Employer argues that the City of Vancouver recently negotiated a collective agreement with CUPE, Local 104. The salary increases were as follows: 2016 – 1.5%; 2017 – 1.5%; 2018 – 2.0%; 2019 – 2.0% (para. 74). In addition, it sets out the wage increases in the public sector in the Lower Mainland which are as follows: 2016 – 0.8%; 2017 – 1.4%; 2018 – 1.6%; and 2019 – 1.7%. Wage increases in the private sector in the Lower Mainland are as follows: 2016 – 1.9%; 2017 – 1.7%; 2018 – 1.0%; and 2019 – 0.2% (paras. 91 and 92). Similar to Ontario settlements the Employer argues that all of these settlements are under 2% a year. It describes these wage settlements as “modest” (para. 93), and that they should have a moderating effect on the Vancouver Police Union settlement. Finally, in terms of other B.C. emergency services employees, for example, the nurses and the B.C. Paramedics, both of these groups agreed to a 5.5% increase over five years (para. 96).

[31] Similar to the Union, the Employer asserts that the increases for police officers at Delta, British Columbia (2.5% over four years, 2016 – 2019), should not be determinative with respect to this interest arbitration. The Employer describes the Delta settlement as “an anomaly”. It says that it is not a proper comparator because the police force there does not face the same challenges and difficulties as do the Vancouver Police Officers. However, the Employer recognizes that the Delta settlement causes some labour relations difficulties, and it is therefore a major factor in its offer of 2.5% per year over three years (total of 7.5%).

[32] The Employer describes the economic data for both British Columbia and Vancouver as one of modest growth, and says that the economy will remain stable in the near future.

[33] The Employer agrees that the Vancouver police force is a “first class, world class” municipal police force. It believes its officers should be well paid, it understands the uniqueness of policing, and the difficulties and challenges faced by its police officers in the

performance of their day to day duties. However, it believes that the current public and private settlements in the Province of British Columbia should act as a moderating force with respect to wage increases, and sees its offer of 2.5% per year for three years as an appropriate settlement.

XI. Legislation: Fire and Police Services Collective Bargaining Act, R.S.B.C. 1992 c.142 (“Act”)

[34] This *Act* addresses the settlement of collective bargaining disputes through the use of interest arbitration with respect to Police and Firefighter collective agreements.

[35] Section 4.6(s) sets out the following seven factors an interest arbitrator must consider when “rendering a decision”:

(6) In rendering a decision under this Act, the arbitrator or arbitration board must have regard to the following:

- (a) terms and conditions of employment for employees doing similar work
- (b) the need to maintain internal consistency and equity amongst employees;
- (c) terms and conditions of employment for other groups of employees who are employed by the employer;
- (d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered;
- (e) the interest and welfare of the community served by the employer and the employees as well as any factors affecting the community;
- (f) any terms of reference specified by the minister under section 3;
- (g) any other factor that the arbitrator or arbitration board considers relevant.

[36] As both parties state, these legislative criteria were argued and addressed in some detail in my last award in 2014 (*VPD v. VPU, supra*). I will summarize the conclusions set out in that Award.

[37] First, there have been numerous awards published with respect to the interpretation of these statutory factors: *Vancouver Police Board and Vancouver Police Union*, [1997] B.C.C.A.A.A. No. 621 (Lanyon); *City of Burnaby and Burnaby Firefighters Union, Local 23*, [2008] B.C.C.A.A.A. No. 220 (Gordon); *City of Richmond and Richmond Firefighters Association*, [2009] B.C.C.A.A.A. No. 106 (McPhillips); *City of Nelson and Nelson Professional Firefighters Association*, [2010] B.C.C.A.A.A. No. 174 (McPhillips); *City of Campbell River and Campbell River Firefighters Association*, October 19, 2005 (Gordon).

[38] The general arbitral approach adopted in these awards has been to interpret these statutory criteria in light of fundamental interest arbitration principles. The first such principle is the replication theory – an award should attempt to replicate a settlement that the parties themselves would have concluded. This is essentially a conservative exercise. An arbitrator should not unduly intervene into a collective agreement, or undertake comprehensive changes in the absence of the parties agreement.

[39] The second principle is that an award must be fair and reasonable. This factor is expressly set out in Section 4(6)(d). What is fair and reasonable resides in part within the principle of comparability. Comparability is defined as the rational matching of similar occupations; for example, comparing Vancouver Police Officers with police officers in other major municipalities in Canada. This principle is directly incorporated into Sections 4(6)(a) – (d).

[40] The *Act* does not assign weight to any particular factor. However, these statutory factors do incorporate local, regional and national comparators.

[41] With respect to the Vancouver Police Officers, I concluded in my 2014 Award that these officers should be in the same comparative range as other larger municipal police forces in Canada. Further, that local wage settlements in British Columbia, and in the Lower Mainland, ought to have a “moderating influence” (para. 47) on the wage settlement of the Vancouver Police Officers. It should be noted that since 2014 the British Columbia Supreme Court has rendered an Award in *Penticton (City) v. Penticton Firefighters Assn., International Association of Firefighters, Local 1399* [2016] B.C.J. No. 880, specifically with respect to the criteria set out in Section 4(6) of the *Act*. Madame Justice Bruce first affirms the general arbitral principles set out in prior arbitral awards at paragraph 8 of her decision:

1. There is no weighting assigned to the factors in s. 4(6) of the Act and thus each must be applied according to the circumstances in the case.
2. The arbitrator must apply the replication principle; that is, what the parties would have agreed to and likely achieved had a collective agreement been negotiated through collective bargaining. In applying this principle, arbitrators look to the historical pattern of settlements by the parties as evidence of what would likely “replicate” a bargained collective agreement.
3. The process of interest arbitration is conservative and the arbitrator should respect the bargaining relationship that exists and not introduce fundamental changes to the collective agreement. In other words, the interest arbitrator should not be an innovator and should strive to maintain the status quo.
4. The award should be fair and reasonable and fall within a reasonable range of comparators. This principle appears to be a marriage of the replication principle with the premise that the arbitrator not make fundamental changes to the collective agreement.

[42] Madame Justice Bruce then comments that an interest arbitrator should not presume that “external wage parity” will prevail only when there are “extraordinary circumstances justifying a different result”. She writes that this would violate the statutory criteria set out in Section 4(6), which requires an arbitrator “to consider and weigh local conditions when

determining wages and working conditions”. Thus, past interest arbitration awards are persuasive, but not determinative. The most important factors are the actual circumstances before the arbitrator in each case. Her remarks on this issue are as follows:

45 An interest arbitrator who slavishly follows past arbitration awards without regard to the particular facts before him fetters his discretion and acts contrary to the statutory mandate in s. 4(6) of the Act. While past arbitration awards can be helpful guides, they are not binding on an interest arbitrator and cannot be considered in isolation from the facts of the case.

46 It is apparent from Arbitrator McPhillips’ award that in many prior interest arbitrations involving firefighters, the wage increases negotiated by other unionized employees within the same employer’s operation have not been accorded significant weight. An arbitrator cannot rely on these past awards to justify his decision unless their underlying rationale applies to the facts of the case before him. These past arbitration awards have relied on the specialized nature of the work performed by firefighters to justify less weight being attributed to the wage increases negotiated by other employee groups. This is a commonality that would likely apply with equal force to other firefighter bargaining units in British Columbia. However, in any particular case there may be different factors at play that dictate more weight be given to settlements within the employer’s operation and less weight to external parity. Arbitrators cannot ignore these factors in favour of blind adherence to past arbitration awards.

47 Similarly, the fact that other arbitrators have imposed external wage parity for firefighters cannot automatically dictate the same result in every case. The interest arbitrator cannot start with a presumption that external wage parity will prevail unless there are extraordinary circumstances justifying a different result. This approach would clearly violate the mandate in s. 4(6) to consider and weigh local conditions when determining wages and working conditions. Past precedents may be persuasive; however, it is the facts of each case that must justify the award regardless of what other arbitrators have concluded.

XII. Decision Re: Wages

[43] It is instructive to once again set out the parties' proposals with respect to the issue of wages. The Union's proposal is as follows:

January 1, 2016 – 5.28% (\$97,032)
January 1, 2017 – 2.5% (\$99,457)
January 1, 2018 – 2.5% (\$101,943)
Total: 10.28%

[44] The Employer proposes the following wage increases:

January 1, 2016 – 2.5% (\$94,469)
January 1, 2017 – 2.5% (\$96,830)
January 1, 2018 – 2.5% (\$99,251)
Total: 7.5%

[45] First, I concur with both parties' assertion that the Delta settlement is not determinative of this matter. Clearly there are police duties that overlap between Vancouver and Delta Police Forces; however, Vancouver has some of the most difficult areas to police in all of Canada; for example, the Downtown Eastside, whose populations include the homeless, the addicted and those who are mentally ill. In addition, the three major cities of Canada, Toronto, Montreal and Vancouver, are major port cities that have a wide range of policing matters on a scale not experienced by suburban police forces such as Delta. Further, Delta has traditionally followed the Vancouver settlements, not preceded it. For whatever reason, Delta chose to do otherwise. This fact alone should not convert the Delta Police settlement into a true comparator for the purpose of determining the Vancouver Police Officers' wages. It has, however, placed the Vancouver Police Board in a difficult labour relations situation.

[46] Second, the Union states, and it is not disputed, that as of December 31, 2015, Vancouver Police Officers ranked 16th in Canada. This is not justified based on the historical

arbitral jurisprudence, set out in my Award of 2014, that places Vancouver Police Officers among the highest group of paid officers in Canada.

[47] Third, Vancouver and British Columbia lead Canada with respect to economic growth. The average growth with respect to both is 3%, in comparison to the average of 1.8% for the country as a whole.

[48] Fourth, I agree with the Employer that Toronto, and the Ontario municipal police forces, remain the most significant comparator. However, I agree with the Union that its members have trailed Toronto for the past 15 years, and that therefore the current economic circumstances justify Vancouver Police Officers leading Ontario police officers with respect to their wages in this current round of collective bargaining.

[49] However, I do not see the Union's request for a 5.28% increase in one year (other essential service workers in B.C. were given a 5.5% increase over five years) as justifiable given local settlements in both the public and private sector – all of which are below 2% during the same period as the term of this collective agreement.

[50] The Union's proposal of 5.28% is based upon the salaries of Calgary and Edmonton police officers. I once again decline to follow the Calgary and Edmonton settlements. In the Calgary interest arbitration award (*City of Calgary, supra*), dated September 28, 2015, that arbitration board concluded that "the material before us does not show that the downturn has a direct effect on public sector wages in Alberta to date" (para. 117). The Employer in this case asserts that should the recession in Alberta continue in 2017 this may well exert a downward pressure on public sector salaries. I think that is a reasonable conclusion to draw.

[51] It is my conclusion that the settlements of other employees in the Lower Mainland ought to exercise a moderating influence on the Vancouver Police Force salary award. On the other hand, it is not fair and reasonable that these officers earn the same salary as the

Delta police officers. I therefore conclude that the salary increases for Vancouver Police Officers shall be as follows:

2016 – 3.5% (\$95,391)

2017 – 2.5% (\$97,776)

2018 – 2.5% (\$100,220)

[52] The effect of this award is to reinstate the Vancouver Police Officer amongst the higher paid officers in Canada. It puts them, for the first time in a number of years, ahead of Toronto and other Ontario municipalities police salaries. And it reduces the salary gap between Vancouver and the Edmonton and Calgary police officers.

XIII. Health & Welfare Benefit Plan

[53] The Union proposes to take over the administration of the Health and Welfare Plan for its members. It says that it can manage these plans more efficiently and effectively on behalf of its members. It guarantees that the Employer's costs will remain the same for the next three years.

[54] The Employer opposes the transfer of the Health and Welfare Plan to the Union. It says that this transfer involves complex procedural and substantive issues, and will also impact other plan members. They state this is a "classic example" of when an interest arbitrator should exercise restraint (para. 130).

[55] This same proposal arose in the last round of collective bargaining. I recommended in my 2014 Award that the parties establish a committee to address this issue. No such committee was formed.

[56] I conclude that the Union's proposal to transfer of the Health & Welfare Benefit Plan should be referred to the Joint Committee established under Appendix A, and added to the issues set out in Appendix B that are to be negotiated by that Joint Committee.

[57] I reiterate that the terms and conditions set out in this Award, along with the expired 2013 – 2015 Collective Agreement, and any amendments agreed to by the parties with respect to Appendix B, shall form the parties renewed Collective Agreement, and be in force from January 1, 2016 – December 31, 2018.

[58] It is so Awarded.

[59] Dated at the City of New Westminster in the Province of British Columbia this 29th day of September, 2016.

A handwritten signature in black ink that reads "Stan Lanyon". The signature is written in a cursive style with a large initial "S" and a stylized "L".

Stan Lanyon, Q.C.

Appendix A

MEMORANDUM OF AGREEMENT

Between

The Vancouver Police Board

The "Employer"

And

The Vancouver Police Union

The "Union"

The parties agree as follows:

1. The Employer and Union will participate in a joint committee for the purposes of having discussions regarding changes to their collective agreement.
2. The committee will be composed of three senior representatives from the Employer and three senior representatives from the Union. The committee will meet as needed, but at least quarterly.
3. The committee may invite other persons to assist, to provide advice, or as a resource where it is mutually agreeable to do so.
4. The committee may request the assistance of Stan Lanyon to assist these discussions where it is mutually agreeable to do so, or where either party feels the discussions are at impasse. Once such a request is made, the parties will, with the assistance of Mr. Lanyon, attempt to mediate the remaining issues.
5. The parties will share the costs of mediation, including mediator fees.
6. The mediation contemplated by this agreement will be non-binding.
7. The parties may mutually agree to modify this agreement.
8. This agreement will expire and is terminated at the earliest of December 31, 2018, or at the expiration of the new collective agreement as awarded by Stan Lanyon subsequent to the arbitration hearing on September 14 and 19, 2016 or unless expressly agreed to in writing by the parties.

This Agreement signed on August _____, 2016

For the Union

For the Employer

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**VANCOUVER
POLICE UNION**

**2016
PROPOSALS for Committee**

March 14, 2016

The Vancouver Police Union proposes a joint labour management committee to consider the following amendments to its 2012 – December 31, 2015 Collective Agreement with the Vancouver Police Board to address the following issues:

- (1) Eliminate the requirement to attend Court after night shift.

One of the most dangerous and difficult assignments a member can have is court attendance after night shift. Dangerous because sleep deprivation causes people to make mistakes. Difficult in terms of physical stresses and long term health implications caused by the disruption to a person's biorhythms.

The ultimate objective is to prohibit court appearances after nightshift. The committee should consider the use of increased premiums and other strategies to achieve this objective.

- (2) Modify "Shift Differential" Premiums.

One of the most critical assignments in policing from a community policing perspective is the Patrol assignment. Typically this is the 'entry level' position in policing. However, now more than ever, we need experienced officers to return to Patrol assignments in order to ensure that new recruits have access to appropriate and necessary mentoring and coaching so that they can establish a solid foundation upon which they can rely throughout their policing career. This is not only better for the citizens in our community that we service but it will also mitigate risk for the VPD. We would propose changing current "dollar" amount to a percentage. This method of compensation would better recognize the deleterious effects of shift work and also make these assignments more appealing.

- (3) Add language to address the impact of technology on work expectations both during and outside of regularly scheduled hours.

Technological advancements mean more members are being deployed with or issued personal or other communication devices, and more members are accessing work files and emails remotely; all of which creates an expectation that members must 'work' outside of their regularly scheduled hours.

- (4) Amend "Maternity and Parental Leave" provisions to supplement employment insurance benefits for members utilising parental leave entitlements and add specific provisions for attendance at Court while on Maternity or Parental leave.

The number of female officers at the VPD has increased significantly. The VPD has publicly stated that increasing the number of female police officers is a key strategic priority. Moreover, because of changing attitudes towards parenting, work/life balance, and the challenges of juggling family demands with full time or dual careers, more of our members find it necessary to use this benefit. Many employers have been very aggressive in this area and have adopted improved "Maternity and Parental Leave" benefits. As a result we are faced with some significant retention issues within this segment of our membership.

- (5) Add 'per diem' language into the Collective Agreement.

Some time ago the Union agreed to remove the per diem language from the Collective Agreement on the promise that this could be better managed as a policy issue. Our experience has not reflected this to be the case. The process for submitting per diem claims has been frustrating at best. Claims are regularly denied for what appears to be no valid reason or members are forced to undertake unreasonable adjudicative processes to have their claims accepted. As a result, members required to attend to the VPD's business outside of their regularly assigned duties incur additional expenses that we submit are reasonable, but for which they are not compensated.

- (6) Improve Educational Fund at Article 6.3.

The authorized strength of the VPD has increased in recent years with no proportionate increase to this Fund.

The Department encourages members to continue their professional development in a variety of ways including through advanced education. Given that the VPD advertises itself as a 'learning' organization that emphasizes education and encourages ongoing learning and education for existing employees, it is appropriate that this Fund is improved.

- (7) Establish Education Fund and Increment Program for permanent full time Special Constables and Jail Guards.

The Department encourages members to continue their professional development in a variety of ways including through advanced education.

Schedule "F" refers to 'training' and 'career opportunities'; however, there is no similar provision for these members to self-develop as there is for all other VPD employees, despite the fact that they are encouraged to do so.

- (8) Amend "Maternity and Parental Leave" return to work provisions to eliminate the prorating of annual leave.

This can be a disincentive for members to return to work from maternity or parental leave and creates a retention issue for both the Union and the Employer.

- (9) Amend "Indemnification" provisions.

The BC Police Act has been significantly amended. Part 9 has been replaced by Part 11. The indemnification provisions need to be amended to reflect the new processes that have been established in Part 11.

- (10) Eliminate the "6 month" requirement for Sick Leave at Article 9.3

The VPD prides itself on recruiting only the very best candidates and often recruits members from other police organizations. Preventing new employees from accessing this benefit in a time of need is not only inconsistent with the VPD's own organizational values but is also inconsistent with VPD policies and directives.

- (11) Amend the Collective Agreement "Indemnification of Members" language to remove subparagraph 9.9 (b) (iv).

This provision refers to a member consulting with legal counsel to determine whether he/she should provide a 'duty report' or statement. It further provides that, if it is later determined that a member has acted in 'bad faith', then the Employer can turn to the Union to

indemnify the Employer for any legal fees paid for the purpose of the member providing a statement.

This provision is no longer suitable given numerous changes that have taken place in the area of members' providing statements. Subsequent to this provision being included in the Collective Agreement, the Employer has developed a policy requiring members to provide a 'duty report' or statement. Clearly, the Employer has concluded that it is beneficial to the VPD for police officers to provide 'duty reports' or statements when they are investigating complaints or other matters involving police officers. Also, in many cases, the Employer advises members to seek legal advice without either the member or the Employer first consulting with the Union, even though it is the Union who may ultimately be responsible for the legal fees involved (according to this provision).

Moreover, recent amendments to the BC Police Act have resulted in a provision being added to the Act that compels members to provide statements during conduct investigations.

The Union proposes to remove this Collective Agreement provision on the basis that the Employer cannot hold the Union liable for a policy that the Employer has created. In addition, the BC Police Act's new "duty to cooperate" provision compelling police officer 'statements' raises a similar argument.

The Union does not intend to modify the requirements or limitations on 'indemnity' that are included elsewhere in section 9.9 of the Collective Agreement including sections (9.9(a), (b)(i)1&2, and (b)(iii)).

(12) Review Schedule "E" No. 8 – Special Constables

Schedule "E" is a new schedule that was added during the last round of collective bargaining. There is a need to review the positions that were established within the Schedule and how they were classified to ensure that the duties and functions of each position has not significantly changed since that time.

(13) Add language to prohibit consideration of a member's sick benefit utilization in determining suitability for promotion or transfer.

Employees are often sick for legitimate reasons, which can include taking time off at the direction of the Employer (Flu Season). However in some cases, these legitimate absences are being considered against an employee during competitions for promotion or transfer. This practice may also be contrary to existing Human Rights legislation, depending on the circumstances, and must be stopped.

(14) Eliminate Schedule "E" No. 2 – Parking

Policing is a 24/7, 365 day activity. Significant policing events can unexpectedly occur in a community that require an immediate response. For instance in 2011 citizens engaged in a riot in the downtown business district that had a devastating effect on the City of Vancouver. In these circumstances, additional personnel are called out with little or no notice. The same would be true if a natural disaster or act of terror were to occur in Vancouver. One of the unintended consequences of requiring members to pay for parking is that they will modify their behaviour; some will eliminate the use of a car all together, others will make alternative arrangements that may make it difficult to respond to work to assist with a catastrophic event. A further complication is that the vast majority of VPD members commute from distant municipalities where access to public transit is limited. This is also an issue of equity; many City employees do not pay for parking. Furthermore, where pay parking is in effect, those employees generally have numerous alternative options. Finally, a third party location is no longer being utilized for parking at the VPD Graveley location so the cost for parking has been eliminated. In the circumstances it is not reasonable to therefore expect employees to continue to pay for parking.

(15) Add a provision to the collective agreement referencing all secondment agreements

The VPD participates in a number of Integrated Policing Units and many members are seconded to those units. Typically secondment agreements are established to set out terms and conditions for affected members. Issue regarding collective agreement provisions and interpretation are a constant source of frustration for VPU members

(16) Eliminate the practice of "stacking" callouts

More and more frequently members are being asked to work more than one overtime callout within a 24 hour period. This practice

discretion under Section 110(5) of the BC Police Act, to withhold a member's pay and allowances where the member has been suspended from duty during the course of an investigation into that member's conduct.

According to section 110 of the Police Act, if the Discipline Authority decides to suspend a member during the course of an investigation into the member's conduct, the member will continue to be paid during that interim suspension, unless the Police Board decides that it is in the "public interest" to discontinue the member's pay and allowances (Subsection 110(5) of the Police Act).

The Police Act goes on to provide some procedural rules that must be followed by the Police Board before they can make such a decision, but does not provide any definition for what constitutes "public interest". The VPU submits that withholding a member's pay during the course of an investigation and before any findings of misconduct have been made in the case should be done only in the clearest of cases because of the detrimental financial impact such a decision can have on the member. The Police Board must balance the interests of the taxpayers and the public against fairness to their employee. This principle has been long recognized in labour law where the law is settled that an interim suspension of an employee should only be without pay in the clearest of cases where the allegations are serious and the Employer intends to fire the employee should the evidence bear out the misconduct.

The VPU proposes that, in the interests of fairness and consistency, a provision should be added to the Collective Agreement to define what constitutes "public interest" in order to guide the parties.

- (20) Add a provision to the Collective Agreement to define the circumstances under which a member who has been subject to a period of unpaid suspension during the course of an investigation into his or her conduct will be entitled to be reimbursed for pay his or her full pay and allowances at the conclusion of the matter.

Where a member has been subject to a period of unpaid suspension during the course of an investigation into his or her conduct, subsection 110(9) of the Police Act provides the rules for when the Police Board MUST reimburse the member his or her pay and allowances at the conclusion of the matter. Section 110(9) provides the minimum standard for reimbursement and does not preclude the parties from agreeing to additional circumstances in which it would be

fair and appropriate for the Employer to reimburse a member his/her pay and allowances at the conclusion of a matter.

The VPU submits that any time the member continues to be employed by the Employer at the conclusion of the proceedings, and where the discipline imposed is minor in nature (a reprimand, a training requirement, a short demotion or suspension) or where the penalty imposed as discipline is financially less than the financial impact of the interim unpaid suspension, it would be fair and appropriate for the Police Board to reimburse the member for their pay and allowances.

- (21) Amend Standby provision in the collective agreement to clarify entitlement while on Overtime Leave or Annual Leave

Members are regularly required to remain on "standby" will on overtime or annual leave. This is a benefit to the employer and to the community. The current Standby language should be modified to ensure it is clear that members are entitled to Standby compensation in these circumstances

- (22) Amend 6.1 Clothing Allowance to remove boot/shoe allowance from Point Allocation or amend total

The cost of obtaining appropriate footwear has increased since the original Point Allocation was established. The Union would propose removing the boot/shoe allowance from the Point Allocation and instead establish a stand-alone schedule for footwear replacement. In the alternative, the Point Allocation should be amended to reflect the increased cost of obtaining suitable uniform items.

- (23) Amend Schedule "E" – No. 9 Special Allowances, 6.1 Clothing Allowances to add a point entitlement for a Dress Uniform for permanent full time Jail Guards.

Since the Jail Guard positions were established as new positions in the VPD some years ago, a number of Jail Personnel have established themselves as permanent full time, long serving and contributing members of the VPD. These Jail Guards routinely attend public and community events representing the VPD and they should be able to participate in these events with a dress uniform similar to that which all other VPD members are issued.