

1. I have been appointed under the provisions of the *Police Services Act*, R.S.O. 1990, ch. P.15 (the "PSA") to adjudicate upon the issue remaining in dispute between the parties in respect of the negotiation of a renewal collective agreement to the one that expired on December 31, 2010. There is no dispute with respect to my authority in this regard. The agreement at issue covers the civilian employees employed by the West Nipissing Police Service ("the Service"). Pursuant to the parties' agreement, the collective agreement will run from January 1, 2011 through December 31, 2013.

2. The Service was formed in 1999, when the Municipality of West Nipissing was created. Located between Sudbury and North Bay, the Municipality spans almost 2,000 square kilometers and encompasses, from east to west: Sturgeon Falls, Crystal Falls, Field, Cache Bay, Verner, Lavigne, River Valley as well as 17 townships. According to the 2011 report, "*Police Resources in Canada*," a Statistics Canada publication, West Nipissing's population in 2010 was 13,775.

3. The Association represents 31 members, 19 of whom are covered by the uniform collective agreement, and 12 of whom are covered by the civilian collective agreement. This latter agreement has members in the following positions: dispatchers, special constables and one full-time administrative assistant.

4. Until this round of negotiations, the parties were able to resolve the terms in dispute between them without recourse to arbitration. The Association provided notice of intent to bargain in respect of the uniform and civilian employees on December 13, 2010. Negotiations ensued and the uniform collective agreement was reached. It provides, among other things, for wage increases of 3% on January 1, 2011, 1.5% on January 1, 2012 followed by 1.75% on July 1, 2012, and 1.5% on January 1, 2013 with an additional 1.75% on July 1, 2013. The uninterrupted pattern for these parties has been that the negotiated general wage increases for the uniform members have been mirrored

in the civilian collective agreements negotiated by the parties. In this round, the parties have agreed that the administrative assistant's wage increases will continue to do so.

5. The only issue before me is therefore wages for dispatchers and special constables.

6. The parties agree that the wages at issue are "out of market." They disagree, however, on the appropriate comparators and the rate at which catch-up to parity with such comparators should be achieved. In the last collective agreement, which covered January 2008 through December 2010, in addition to the general salary increase of 3% per year over the three-year agreement, the parties negotiated a 2% market adjustment increase in each year, for a total increase of 5% in each year, thereby moving the civilian members closer to market rates (on either party's proposed comparators).

7. Were I to apply the same general wage increase to which the parties voluntarily agreed for uniform members and the administrative assistant position to the dispatchers and special constables, the dollar figure would translate to wages of \$45,203.22 and \$45,784.89 respectively, effective January 1, 2011, (up from \$43,886.62 and \$44,451.35 in 2010). By July 2013, the dispatcher and special constable wages will have increased to \$48,213.68 and \$48,834.09 respectively.

8. The Board proposes an overall wage adjustment of 4% for each of the three years of the renewal collective agreement, 2% of which the Board characterizes as the wage adjustment or catch-up, which moves the dispatchers and special constables towards parity with those so employed in its proposed comparator police groups. By 2013, this translates to \$49,366.48 and \$50,001.72, respectively. At that time the Board estimates the average dispatcher's wage among its proposed comparators at \$60,241.87 and the

average special constable's at \$59,474.32.

9. Beyond the general wage increase negotiated by the parties for the uniform members referenced in paragraph 4 above, the Association is seeking for the civilian group a wage adjustment to what it calculates is the average rate of pay in the comparable police groups it proposes – those it states the parties have agreed inform the wage rates negotiated for its uniform members. The Association is seeking immediate parity with these allegedly agreed upon uniform counterparts. In support of its quest for parity, the Association points out that West Nipissing is an economically healthy and growing community, and more particularly a community that evidences no indicators of financial distress. The Association argues that it is untenable for the Board to maintain that the Municipality continue to pay its dispatchers and special constables what it refers to as sub-standard wages, and to sanction the move towards parity at what the Association references as a “glacial” pace.

10. The Association submits that the dispatchers and special constables require an overall market adjustment in 2011 of 36.40% and 29.41%, respectively. Based on the Association's estimate that the renewal agreement for Orangeville (one of the Association's stated comparators which has a population of 28,770) will result in a general wage increase of 3% per year for its police bargaining unit, the Association further submits that in 2012 and 2013, additional adjustments of 3.13% and 3.65% for dispatchers and 3.96% and 1.42% for special constables are warranted.

11. The Board refers me to the statutory criteria enumerated and which I am mandated to consider as set out in section 122(5) of the PSA. In particular, the Board emphasizes the broader economic context and its impact on the Municipality's ability to pay increased wages. The Board argues this context should moderate the wage increase to be awarded. The Board also emphasizes the arbitral principles of demonstrated need, total compensation, replication, and

the importance of considering the bargaining history of these parties' freely negotiated collective agreements.

12. As for the proposed comparators themselves, the parties rely on information referenced in *Police Resources in Canada*, the 2011 publication referenced above. Therein, data on police personnel, among other data collected and related to police services, is tracked in ranges by population size of communities in the Province. The first range tracks data where the population is over 100,000. The second tracks data for communities with a population between 50,000 and 99,999, followed by a third range where the population is between 15,000 and 49,000. The final range sets out data for those communities with populations of less than 5,000.

13. The Board's wage proposal calculations are drawn from the average wages for dispatchers and special constables in those communities with populations between 5,000 and 14,999 (9 communities for dispatchers and 8 for special constables). The Association's are based, as stated above, on what it says the parties have agreed are the comparators used by them to inform the negotiated wage rates for the uniform members of the bargaining unit. The Board says there is no such agreement on appropriate comparators informing the negotiated wage rate for uniform members. Irrespective, while there is some overlap between the Association and Board proposed comparators, the notable difference is that the Association's include communities where the population is larger than 15,000 (5 such communities) as well as certain of those with populations between 5,000 and 14,999 (7 communities within this range, 4 of which have populations between 5,000 and 10,000).

14. The Board's approach regarding comparators is not entirely consistent with the comments of Arbitrator Marcotte, with which the parties agree, set out in the *Pembroke Police Services Board and the Pembroke Police Association (civilian interest arbitration)* (unreported, November 15, 2010) case:

In my view, comparison with jurisdictions of similar populations is more appropriate than comparisons based on geographic proximity, on the reasonable assumption that similar-sized populations entail similar policing services, all other things being equal...

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The comparison articulated by Arbitrator Marcotte does not lend itself to the immediate disqualification of a community once its population reaches 15,000. To suggest that it does would translate to an immediate adoption of a new set of comparators once a community's population reaches 15,000. A more fluid process is in order. In my view, West Nipissing's growing population base, at 13,775 as of 2010, justifies comparisons between the wage rates of its dispatchers and special constables with communities where the population is above 15,000 as well as below 10,000, all other things being equal.

15. I am mindful of the economic circumstances and indicators which the Board urges me to consider and which it argues should temper both the general wage increase to be awarded as well as the rate at which catch-up should be achieved with the appropriate comparators. My primary task is, however, to replicate the agreement that would have been reached if bargaining had taken place in a strike/lockout environment, with comparability as the primary tool to effect this task. In this regard, the general wage increases proposed by the Board cannot be rationalized when these parties have:

- voluntarily negotiated the general wage increases to the uniform members as set out in paragraph 4 above;
- have agreed to apply it to the administrative position on the civilian side;
- the civilian collective agreements have mirrored the general wage increases in the uniform collective agreements in an uninterrupted pattern throughout the parties' bargaining history.

In these circumstances, the application of the principle of replication translates to a determination that the Association would have negotiated the same general wage increases for the dispatchers and special constables as it did for its uniform members and the administrative assistant position on the civilian side had bargaining taken place in a strike/lockout environment.

16. As for the market adjustment or catch-up to be awarded in the circumstances, I am cognizant of, and appreciate, the long accepted principle of demonstrated need referenced by the Board in its submissions. However, in my view, the principle applies primarily to non-monetary issues. I do not accept, as was suggested by the Board, that somehow the Association must demonstrate a need for its dispatcher and special constable members to earn comparable wages to those earned by appropriate comparators in other municipalities. The Board's proposal of a 2% wage adjustment before me and the settlement in the last round of bargaining where the Board agreed to phase in wage adjustments to move its dispatchers and special constables towards parity, acknowledge as much.

17. The case for catch-up, in looking at the numbers referenced in both parties' submissions, has already been made. The salaries being paid to the dispatchers and special constables on the civilian side in West Nipissing are inequitable even if I were to accept as appropriate comparators only those proposed by the Board, which I do not for the reason stated above.

18. Contrary to the position espoused by the Association, however, parity with appropriate comparators is not achieved in one round of bargaining. Arbitrator Burkett's comments in the recent case of *Fort Frances (Town) v. Fort Frances Professional Fire Fighters Assn.* (Collective Agreement Grievance), [2011] O.L.A.A. No.123, are apt, particularly in light of the bargaining history of wage disparity of the dispatchers and special constables in West Nipissing compared to appropriate comparators:

Where the parties had voluntarily agreed to be amongst the lowest paid of comparable fire services (both as to size and geography) over a long series of voluntary agreements, catch-up must also be effected over time and with a moderated economic impact upon the Employer. Having said this, we are of the mind, firstly, that, as at Kirkland Lake, the correction here should be spread over a number of years with backend loaded split increases; secondly, that during the term of this agreement (through 2012) the Fort Frances salaries should at least be brought into line with those paid to the Kapuskasing fire fighters as the next lowest paid; and thirdly, given the quantum of catch-up (including recognition pay), the remainder of the economic package must be moderated.

...

19. There is no doubt catch-up must be a gradual process. The history of collective bargaining which has the dispatchers and special constables in West Nipissing as the lowest paid in both the Board's and Association's lists of what each argues are the appropriate comparator police groups, together with the negotiated outcome of the last round of bargaining is a relevant, albeit not determinative consideration in determining the rate of catch-up to be awarded here (see *Laughlen Centre v. CUPE Local 3107*, [2000] O.L.A.A. No 358). This is so because it informs the analysis of what the likely outcome of collective bargaining might be if the parties had the right to strike and lock-out.

20. Finally, in fashioning my award and in looking closely at the information set out in the briefs presented, I noted differences in wages attributed by the Board and the Association to those comparator municipalities they have in common as appropriate comparators. For example, while both the Association and Board have dispatchers in Espanola making \$55,818.54 in 2013, the lowest paid dispatchers, according to the Board's figures, will be in Aylmer, where the wage is at \$54,398.55. The Association lists the dispatcher's wage in Aylmer at \$64,077 in 2013. It appears that the Board's number accurately reflects the dispatcher wage in Aylmer in 2013, as the wage indicated in the Association's submission is the same as the wage it submits is the special constable wage – consistent with the Board's wage for that year. As for special constables, the

2010 reported wage in the Association's chart is inconsistent with the base salary reported in its submissions, whereas the Board's accurately reflects the special constables' 2010 wage. After a careful review of the wage charts provided by the Board and the Association, I place greater reliability upon the figures in the Board's chart as a more accurate reflection of the incremental improvements in those comparator police services the parties have in common.

21. Having regard to all the forgoing, I award as follows:

AWARD

22. The parties are hereby directed to enter into a renewal collective agreement for the term January 1, 2011 to December 31, 2013, that contains all the terms of the predecessor collective agreement, save and except for the following additions and/or amendments.

1. All matters agreed to by the parties prior to the date of this award. If there is any dispute as to the agreement of those items, I remain seized in respect of any and all such disputed items.
2. Amend Appendix A, to provide for overall wage adjustments to the dispatcher (full-time after 12 months) and special constable (full-time) positions as follows:

3% effective January 1, 2011

3% effective July 1, 2011

3% effective January 1, 2012

3% effective July 1, 2012

3% effective January 1, 2013 and

3% effective July 1, 2013

with the necessary modifications made to each of the classifications.

Retroactivity

23. Wage retroactivity based on all hours paid is to be paid to all civilian member employees employed since the expiry of the predecessor collective agreement. Payment is to be made within sixty (60) days of the date of this award. Any civilian member employee who has left the employ of the Service is to be so notified in writing at his/her address on file within thirty (30) days of the this award. The retroactive entitlement for these civilian member former employees is to be made within (30) days of acknowledgement of receipt of notice of entitlement.

Seized

24. I remain seized of the implementation of this award until the parties enter into a formal collective agreement.

Dated at TORONTO on July 26, 2012.



Christine Schmidt, Arbitrator