

IN THE MATTER OF THE *POLICE SERVICES ACT*

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE SAULT STE. MARIE POLICE SERVICES BOARD

- The Employer

- and -

SAULT STE. MARIE POLICE ASSOCIATION

- The Union

AND IN THE MATTER OF an arbitration under Section 122 regarding a new collective agreement

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer

B. R. Baldwin	- Counsel
Herbert Law	- Counsel
Judge James Greco	- Chair, Police Services Board
Pat Mick	- Vice Chair, Police Services Board
Ian Mackenzie	- Member, Police Services Board
Robert Davies	- Chief of Police

On behalf of the Union

Caroline V. (Nini) Jones	- Counsel
Don Simburski	- President
Gerry Rooney	- Vice President
Rodney Burrows	- Vice President
Kerry Scott	- Civilian Representative

Hearing held April 4 and July 24, 2007, in Sault Ste. Marie, Ontario.

AWARD

I. INTRODUCTION

This is an award in an interest arbitration between the Sault Ste. Marie Police Services Board, the Employer, and the Sault Ste. Marie Police Association, the Union. The sworn officers – excluding the Chief, Deputy Chief, and members of the Senior Officers' Association – are represented by the Union.

The Employer referred this matter to arbitration when the parties failed to reach a collective agreement during bargaining. The Chair of the Ontario Police Arbitration Commission appointed me to resolve this dispute and specified that the method of arbitration be mediation-arbitration.

One day of mediation took place April 4, 2007, when the parties resolved many items.

A day of arbitration was held July 24, 2007, when the parties presented their positions. The presentations concluded with a conference call July 27, 2007.

The parties had reached agreement upon many items for their new collective agreement, including a general salary increase. Nevertheless, several issues remained to be resolved in this arbitration and are dealt with below. I note that the parties agreed upon a two year agreement and this award therefore covers the 2006-2007 collective agreement.

The award reflects what I believe the parties would have agreed upon had they achieved their own settlement. In settling this collective agreement I have considered the criteria specified in Section 122(5) of the *Police Services Act*, criteria such as the economic situation in the province and locally, the Employer's ability to attract and retain employees, the interests and

welfare of the community, etc. In addition, I have compared the terms and conditions of employment for these police officers with the terms and conditions for officers in other similar communities.

II. UNION PROPOSALS

Experience allowance, senior constable pay, service pay, “Ident” and “CID” allowances

The primary question at arbitration was whether the Union request for an “experience allowance” should be awarded to these police officers. The experience allowance is designed to compensate experienced officers. In simplified terms, this allowance provides for an additional pay increase of 3% after 8 years of service, 6% after 17 years and 9% after 23 years. This allowance was first introduced in Toronto in 2003 as a “retention” allowance. It is referred to by various names in other collective agreements but, for simplicity, I have used the Union’s label of “experience” allowance when referring to such allowances.

In a police interest arbitration in North Bay in early 2005 I expressed the view that the experience allowance was “the new salary norm” and that “it has now simply become the new salary structure for police officers in Ontario.” (*The North Bay Police Services Board and The North Bay Police Association*, February 9, 2005, at page 7). Since that time, the allowance has been adopted by additional parties in police bargaining. Some 97% of police officers in Ontario now have an experience allowance included in their collective agreements.

With respect to salaries, these parties have for many years compared themselves with the police services in four other northern Ontario cities - Thunder Bay, Sudbury, North Bay and Timmins. Sudbury, North Bay, and Timmins each now have an experience allowance.

In Thunder Bay the parties have a collective agreement for 2005 but do not yet have an agreement for 2006 or 2007. In 2005 Thunder Bay introduced a 2%, 3%, 6% allowance. Although it has been common for an experience allowance to be introduced in two phases, it is not clear whether those parties will implement a full experience allowance.

The Employer opposed the award of experience pay. In the alternative, the Employer said that the full 3%, 6% and 9% should not be awarded in 2006. In the further alternative, the Employer said that if the allowance is awarded then trade-offs should be required.

Two other types of compensation currently in the collective agreement - Senior Constable pay in Article 8.13 and Service Pay in Article 10 - are also designed to compensate experienced officers. As those allowances effectively serve the same purpose as the proposed experience allowance, the Union suggested they be deleted. Many other parties have deleted their senior constable pay and service pay when introducing an experience allowance.

In addition, the Union acknowledged that if its proposal for an experience allowance is awarded, two other allowances might be reduced as they serve a similar function.

First, the Union proposed that the allowance paid to officers in the Forensic Identification Branch be reduced, whereas the Employer said that it should be eliminated. It appears that officers working in this area are often senior and, with the introduction of an experience allowance, some reduction in the allowance is justified. However, this allowance also reflects specialised skills, and not simply years of service.

Likewise the Union said that the allowance paid to officers in the Detective Branch should be reduced, while the Employer felt it should be eliminated. Again, it appeared that senior

officers are more likely to work in this area and, with an experience allowance, some reduction in this allowance is justified.

Decision:

Given the common nature of experience allowances in police agreements throughout Ontario, and especially the fact that the four main comparator police services each have an experience allowance, and notwithstanding the fact that the Thunder Bay allowance was only a partial allowance effective in 2005, I award an experience allowance beginning in 2006. As has been the practice in most police services, I propose to phase in the new allowance. The most common phase in has been a 3%, 4% and 5% allowance in the first year, but the Union proposed a 2%, 4% and 6% allowance. In part, this suggestion was made because it was less costly for the Employer. I award a 2%, 4%, and 6% allowance effective January 1, 2006, and the 3%, 6% and 9% allowance effective January 1, 2007. The parties will need to draft language to implement this allowance - my award is an allowance of the type common throughout the Ontario police system.

As the new experience allowance effectively serves the same purpose as Senior Constable Pay and Service Pay, I direct that both those allowances be deleted effective January 1, 2006.

I conclude that removing the Forensic Identification allowance entirely is not warranted because the allowance compensates officers for specific skills. I direct that the "Ident" allowance be reduced from 6% to 3%, effective January 1, 2007.

As with the "Ident" allowance, I conclude that removing the Detective Branch allowance entirely is not warranted. I direct that this "CID" allowance be reduced from 4% to 2% effective January 1, 2007.

Holidays

The Union asked that the holiday provisions be amended in three ways. First, the Union sought to add language which would formalize the existing Employer practice of scheduling holidays by order of seniority. Secondly, the Union wanted to add language that would require the Employer to use its “best efforts” to schedule training so as not to interfere with holidays. On this second issue I note that the Employer already schedules training in this manner. Thirdly, the Union proposed that if an officer cancelled a vacation then that cancelled vacation time be made available for other officers to bid upon in order of seniority. The successful bidder would, of course, have to release vacation time he or she had previously booked and that time would then be made available for bidding. The Union acknowledged that it would be appropriate to have a limit on the number of holiday changes as a result of this bidding system. Currently, the Employer practice is to make cancelled time available on a first come, first served, basis, limiting officers to one day at a time.

The Employer opposed these changes.

Decision:

There have been no particular problems with the Employer's present practices both in scheduling holidays by seniority and in scheduling training so as not to interfere with holidays. I am not persuaded that the situation would be improved through the incorporation of those Employer practices in the collective agreement. As for the Union's proposed change regarding cancelled vacations, I am not persuaded that the proposal is an improvement. These three requests are denied.

Job postings, transfers and promotions

The Union requested three changes in Article 24 which deals with job postings, transfers and promotions. First, the Union asked 1) to change the qualifications for “relieving” positions (such as a constable replacing a sergeant while the sergeant is on holidays), and 2) to specify that the senior officer who met the qualifications would be entitled to the relieving position. Secondly, the Union sought to have all positions vacant for more than 30 days posted and filled through the job posting process. Thirdly, the Union proposed specific arrangements for officers writing promotional exams - for example, paid time off for officers while writing the exams, or extra pay if the officers were scheduled to be off duty at the time of the exams.

The Employer opposed all three changes. The Employer said the proposal to change the qualifications needed for an officer to obtain a relief position would lower the existing standards, whereas ensuring the senior officer was appointed would prevent the Employer from appointing another officer who may have special expertise in that area. As for posting vacancies, the Employer noted that the proposal was to post for 15 days and, in the case of a short term vacancy such as 31 days, much of the period of the vacancy would be finished before the vacancy could be filled. Filling vacancies in this way could also create a ripple effect as the Employer might then have to post the position of the officer appointed. As for the promotional exams, the Employer suggested that it was in the individual’s interests to write the exams and seek promotion and that the Employer should not be required to pay for this.

Decision:

First, it was unclear what the practical implications of the first two changes (qualifications for relieving and the posting of vacancies) would be and I am hesitant to order any changes in articles of this type when the practical impact is vague. Secondly, since this agreement will be largely retroactive, any changes made to this provision could not be made retroactive in effect and would have little impact during this agreement. Finally, regarding promotional

exams, I am not persuaded that the changes would be beneficial. These changes are denied.

Health and welfare

The Union also proposed two improvements in the vision care benefit 1) to increase the amount of the benefit to \$275 every two years and 2) to add the cost of an eye examination every two years. As part of its benefits proposal, the Union also requested extensive improvements in the existing retiree benefits.

The Employer opposed all the changes and noted, in particular, that the retiree benefits would be very expensive.

Decision:

I direct an increase in vision care from \$225 to \$275 together with a change to clarify that the cost of an eye exam may be included in that \$275. These changes are to be effective September 1, 2007.

Turning to retiree benefits, my award above regarding experience pay will be very costly for the Employer. I am not persuaded that a second costly new change in this round of bargaining is warranted and the Union request regarding retiree benefits is therefore denied.

III. EMPLOYER PROPOSALS

Many of the Employer proposals were designed to minimize the financial impact upon the Employer should the Union's experience allowance request be granted.

Before considering the Employer proposals, I will make a brief comment on the suggestion

that the Union must “buy” the experience allowance, or that there must be a value for value trade. I do not accept that suggestion as being a general principle of bargaining. Changes to a collective agreement may be warranted based on the criteria specified in the *Police Services Act*. If a review of those criteria indicate that these employees deserve an experience allowance without any offsetting changes in the agreement, there would be no need for trades.

On the other hand, in my experience when major changes are made which are of particular concern to one party, the parties are more likely to also make changes of special interest to the other party. I have kept this in mind.

And in particular, in many other rounds of bargaining where the experience allowance has been implemented in the police sector, the Employer has made gains in some other area. In attempting to replicate what these parties might have agreed upon had they reached their own agreement, I have been cognisant of the recent settlements in other police services.

Shift schedule

The Employer’s major proposal in this round of bargaining was a change in the shift schedule.

There are 8,760 hours in a year (excluding leap years) and the Employer provides policing for all those hours. In general, the same number of Uniform Branch police officers are scheduled for duty at all hours of the day and night, all year.

The officers in the Uniform Branch presently work in one of four platoons. The four platoons cover all 8,760 hours each year, so that each platoon provides policing for 2,190

hours per year. Each platoon is scheduled using a compressed (fewer, longer shifts) work week with 12 hour shifts, so that each platoon's hours of work vary from week to week.

As for individual officers, the current collective agreement is premised on a 40 hour work week or, assuming 52 weeks per year, a 2,080 hour work year. Because each platoon is scheduled for 2,190 hours, the collective agreement addresses the difference between the usual 2,080 hour work year and the 2,190 hours required of each platoon by allowing each officer an additional 110 hours of time off per year.

Providing policing during this 110 hours of time off allowed each officer is, in effect, a hidden expense of the existing schedule. Nevertheless, that schedule has been used for some 20 years and it appears that little was said about problems with it until the Union raised and pursued an experience allowance.

In the fall of 2006 Timmins introduced an experience allowance and at the same time changed the shift schedule from 12 hour shifts to a 12 hour and 11 hour schedule. That 12 - 11 schedule provides for 12 hour day shifts and 11 hour night shifts and, with variations in officers' starting and stopping times, provides police coverage for all 24 hours per day, although there is reduced staffing during the "quiet" hours of the early morning. Assuming that a platoon was scheduled for 91 night shifts per year, the 12-11 schedule produces a work year of 2,099 hours, much closer to 2,080 hours per year, and avoids most of the current cost of replacing officers during their 110 hours of time off per year.

Although the issue of the modified schedule was raised in bargaining by the Employer in November 2006, it was not until shortly before the mediation held April 4, 2007, that the Employer first proposed language for a 12 - 11 shift schedule. Its proposal was based on the schedule adopted in Timmins. At the arbitration hearing July 24, the Employer again

proposed a 12-11 schedule based on the Timmins model, but a schedule slightly modified from its April version.

I note that the Union submitted I should not consider this Employer request as it arose so late in the process.

Turning to the merits of the proposal, at the hearing I was provided with very little from the Employer about the proposed shift, other than the information that it would save the Employer money and that it met the statutory requirements. The Employer said that the schedule was working well in Timmins.

The Union said that the experience in Timmins with the new schedule has been, at best, mixed. The Union noted it had not engaged in any meaningful discussion of the shift schedule with the Employer and suggested that I might direct the parties to strike a joint committee to study shift schedules in preparation for the next round of negotiations. The Union said it would be willing to discuss this matter in the near future.

Finally, near the end of the hearing the Employer made an alternative proposal that I order the adoption of a new 12 - 11 schedule in principle, direct the parties to discuss the details of the schedule further, and remain seized to establish the details of the 12 - 11 schedule if the parties did not reach agreement by October 31, 2007.

Decision:

Regarding the Union submission that I not consider this shift change proposal, in effect the Union said that by raising this new issue so late in the bargaining the Employer was not engaged in good faith bargaining.

The overriding legal requirement on the parties in their negotiations is to “bargain in good faith and make every reasonable effort to come to an agreement” (see Police Services Act, Sec. 119(3)). There was no plausible suggestion that the Employer was doing anything other than attempting to reach a collective agreement, although, of course, on terms it could accept. I conclude that the Employer was meeting its obligations and I will consider the Employer’s shift change proposal.

While I am sympathetic to the Employer’s concerns about the additional costs associated with the existing schedule and its desire to remedy that, a shift schedule for police officers is not one based simply on costs. The Employer data outlined the average number of calls for service received during each one hour time period throughout the week. There are clearly “busy” times and “slow” times in policing. A shift schedule should reflect that reality. In addition, there are manning levels in the collective agreement and statutory provisions on staffing that must be considered.

Any changes in the shift schedule cannot be made retroactively. Most of this two year agreement has expired already. Given my own questions regarding the new shift schedule, the Union’s concerns about the Timmins experience, and the fact that the parties have not discussed this matter in any depth, I am not prepared to simply order the adoption of the Employer’s proposed new schedule at this time.

However, I have noted both the Employer’s concerns with the current schedule and the Union’s willingness to discuss the matter further. I conclude that the issue of shift schedule merits further examination. I direct the parties to resume bargaining regarding the issue of shift schedule. If the parties are unable to reach agreement on the issue of a schedule by October 31, 2007, on request of either party I will reconvene the hearing and determine a shift schedule.

Overtime pay

The Employer proposed reducing overtime pay from time and a half to time and a quarter and to eliminate the pyramiding of overtime with holiday pay, premium pay, etc.

Decision:

Although the Guelph Police Association agreed to such changes in exchange for the experience allowance, the overtime provisions in this agreement are consistent with the four main northern comparator police services. I see no basis on which to make the proposed changes.

Health and welfare

The Employer also proposed a number of adjustments to the health and welfare plan, including capping the dispensing fee for drugs and capping the orthotics/orthopedic shoes allowance at one pair and a maximum of \$400 per year. These changes were proposed primarily to save money. The Union acknowledged that there was some merit in the proposals regarding orthotics/orthopedic shoes and drug dispensing fees.

Decision:

I direct that the orthotic/orthopedic shoes be capped at one pair per year with a maximum of \$400 per year and that the dispensing fee for prescription drugs be set at a maximum of \$8.00 per prescription. As with vision care above, these changes are to be effective September 1, 2007.

Court notification

Police officers often have to attend at court as part of their duties. Given that officers work shifts, the court appearances may fall at a time officers would otherwise be off duty or scheduled to be on holiday. The agreement contains provisions for paying officers for this extra work. The Employer asked for the addition of a provision requiring officers to notify the Employer when they were required to attend court while on leave or in training and to incorporate a provision detailing the consequences of a failure to notify. Once it had notice from the officers, the Employer said that it would then attempt to reschedule the court appearances.

Decision:

The Employer policy already requires officers to notify the Employer of court appearances and, as with the Union request to add to the collective agreement the Employer policy on scheduling vacations, I am not persuaded that the Employer proposal needs to be added to the collective agreement.

Long term/short term protection plans

The Employer made a proposal to alter the Long Term/Short Term Protection Plan provisions to deal with employees returning to work. Currently, the agreement provides that an officer who has been on short or long term disability must return to “active duty” for one month in order for a subsequent claim to be treated as a new claim, rather than a resumption of the old claim. The Employer proposed to add the following wording:

Definition of Active Duty:

Active duty refers to regular duties or pre-injury illness duties.

“Interpretation of Active Duty”

“When a member is off on short-term disability, long-term disability, or on a temporary modified duty program, he/she must return to their pre-injury/illness job functions for 30 consecutive days full

time. Only regularly scheduled days off will be included in the 30 days. If a member is assigned to a permanent modified or accommodated position full time, the 30 days will start at the commencement of the member being assigned to that position.”

The Union opposed the above change.

Decision:

Given human rights requirements, accommodating disabled employees and reintegrating them in the work place is a complex area. The impact of this proposal was unclear. I reject this Employer request.

Pensions

I note that the Employer made a proposal on pensions in Article 28. Late in the process the Employer withdrew this proposal.

Other cost savings

Finally, the Employer made several other proposals designed primarily to save money. For example, the Employer suggested that officers pay for the long term disability plan, rather than the Employer, and that shift premiums be eliminated.

Decision:

I have considered all of these cost saving proposals, but I reject each of them.

IV. SUMMARY

I direct the parties to resume bargaining on the issue of shift schedule as set out above. Assuming they resolve that matter, I direct the parties to then prepare a collective agreement

for the 2006 and 2007 calendar years based on the 2004-2005 collective agreement and incorporating the above provisions, together with all those changes they had previously agreed upon and their agreement on a shift schedule.

I leave to the parties the preparation of collective agreement language for the items awarded above. I remain seised to deal with any issues which may arise in the implementation of this award or in the preparation of the new collective agreement. In particular, I remain seised to deal with the issue of shift schedule.

Dated in London, Ontario, this 16th day of August, 2007.

Howard Snow, Arbitrator