

IN THE MATTER OF THE *POLICE SERVICES ACT*

-and-

IN THE MATTER OF AN ARBITRATION

BETWEEN:

THE NORTH BAY POLICE SERVICES BOARD

- The Employer

- and -

THE NORTH BAY POLICE ASSOCIATION

- The Union

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

Arbitrator: Howard Snow

Appearances:

On behalf of the Employer

Glenn P. Christie	- Counsel
Terence Cant	- Chair, North Bay Police Services Board
Paul Cook	- Chief of Police
Shelly Hampel	- Human Resources Coordinator

On behalf of the Union

Ian Roland	- Counsel
John O'Grady	- Consultant
Mike Tarini	- President
Richard Dubeau	- Vice President, Chair
Sandra Mancini	- Bargainer
Tina Murphy	- Bargainer
Greg McClenaghan	- Bargainer
David Boland	- Civilian Director

Hearing held January 6 and 7, 2005, in North Bay, Ontario.

AWARD

I. INTRODUCTION

This is an award in an interest arbitration between the North Bay Police Services Board, the Employer, and the North Bay Police Association, the Union. The award settles the 2004 collective agreements for the sworn officers and the civilian employees.

II. THE ISSUES AND THEIR RESOLUTION

The sworn officers and the civilian employees are represented by the Union in different bargaining units. Since the parties were unable to resolve any items during bargaining, the Union referred both collective agreements to arbitration. 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 January 6, 2005, at which time the parties were unable to resolve any of the disputed items. They did discuss a three year agreement.

A day of arbitration was held January 7, 2005, when the parties presented their positions on one year agreements for 2004.

Because the parties made proposals for one year collective agreements to cover 2004, there was no dispute between them regarding duration and I thus note for clarity that this award is for a one year collective agreement for the year 2004 for both bargaining units.

This award reflects what I believe the parties would have agreed upon had they achieved their own settlement. However, in this instance I have relied more heavily upon what other

police services and police unions have agreed upon than would have been necessary if the parties' bargaining had been more productive.

In settling these collective agreements 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, comparison with other employees and the interests and welfare of the community.

During the arbitration phase there were five issues in dispute.

The issues for the sworn unit were:

1. Indemnification for legal costs in situations where the Ontario Civilian Commission on Policing Services overturns the Chief of Police's finding of no misconduct
2. Salary increase
3. Retention allowance

The issues for the civilian unit were:

4. Salary increase
5. Additional increase for court security employees

SWORN UNIT

1. Indemnification for legal costs in situations where the Ontario Civilian Commission on Policing Services overturns the Chief of Police's finding of no misconduct

Both parties made proposals to deal with the legal costs incurred by a sworn officer defending himself or herself in a hearing which occurs after the Ontario Civilian Commission on Policing has overturned a conclusion by the North Bay Chief of Police of no misconduct

by that officer. During the arbitration hearing the Union indicated that it was prepared to accept the Employer language as follows:

New Article 19:12

Notwithstanding Article 19:08 and subject to the other provisions of Article 19, the Board shall indemnify a member for the necessary and reasonable legal costs incurred where the member is the subject (not a witness) of a Board of Inquiry under Part V as a result of a decision by the Ontario Civilian Commission on Policing Services (OCCOPS) to overturn a finding of no misconduct by the Chief of Police.

I direct the parties to include the above provision in their 2004 collective agreement.

2. Salary increase

The Union proposed a 6% salary increase for the members of the sworn unit. The Employer proposed an increase of 2.55%.

Both parties used various economic data and salary information for police officers in Ontario to support their proposals. The Employer also relied upon a recent salary increase agreed upon by the City of North Bay and the Canadian Union of Public Employees.

While the various comparisons were of value, I found one comparison made by the Employer to be of particular assistance. The Employer referred to a 13 year (1992-2004) review of the salaries of police officers in the following 16 police forces - Barrie, Belleville, Brantford, Chatham-Kent, Cornwall, Guelph, OPP, Oxford Community, Peterborough, Sarnia, Sault Ste. Marie, South Simcoe, St. Thomas, Sudbury Regional, Thunder Bay, and Timmins. This group consists of northern Ontario police forces, other Ontario police forces of similar size and the OPP, which polices the area around North Bay. I found the comparison between the

salaries for the above group and the salaries for the North Bay officers very helpful.

During the period 1992 through 2003 the North Bay first class police constables were paid 97.62% of the average of the officers working for the other 16 police forces. The Employer drew particular attention to this 12 year average and proposed that the increase for 2004 (the 13th year) should reflect the 12 year average.

That data, however, also shows the salary of the North Bay police officers rising since 1998. Since 1998 the North Bay police salaries as a percentage of the average salaries of the other 16 forces were as follows:

1998 - 96.45%
1999 - 96.77%
2000 - 97.09%
2001 - 97.69%
2002 - 99.31%
2003 - 100.3%

In comparison with the North Bay civilian employees, during 1999-2003 the North Bay sworn officers received larger salary increases. In particular, on July 1, 2002, the sworn officers received an extra 2% and on July 1, 2003, an extra 1.5% when the civilian employees received no increase. A review of the data and of the size of the salary increases for the North Bay sworn officers as compared to the North Bay civilian employees leads me to conclude that the parties were attempting to “catch-up” the salaries of the sworn officers. While it was not clear what precisely the salaries were to “catch up” to, by 2003 the salaries of the sworn officers achieved parity with and, in fact, rose marginally above the average salaries in this particular comparison group (\$62,606 versus \$62,440.75 for the first class constables).

For 2004 the average salary of 14 of the 16 forces for whom the Employer included data for 2004 was \$65,303.71. I note that the average for 2004 would have been marginally lower had figures been included for all 16 forces. Nevertheless, to maintain its relative position at 100.3% of the average of those 14 police forces, the North Bay police would require an increase of 4.62%.

Reviewing all the information, I cannot accept that the appropriate comparison should be the historical 12 year comparison and the resulting 97.62% average salary which was urged upon me by the Employer. Since the parties have in the past few years changed the relative salary position of these officers in comparison with salaries in this group of 16 police forces, I conclude that the increase which I award should be sufficient to maintain the more recent relative position.

I conclude that for 2004 the North Bay police officers should continue to be paid near the average of the above forces. In 2003 they were at 100.3% of that average. An increase of 4.5% will maintain the officers at a salary near that average. In addition, a 4.5% increase is within the range of salary increases which other police forces and other police unions have agreed upon elsewhere in Ontario. I award an increase of 4.5% effective January 1, 2004.

3. Retention allowance

The basic salary structure for sworn police officers has been in place throughout Ontario for many years. That structure changed in 2003 when the Toronto Police Service and Toronto Police Association agreed upon an additional retention allowance for experienced officers. As many experienced officers were leaving the Toronto force, the retention allowance was intended as a means of retaining the force's experienced officers. The amount of the retention

allowance was 3% after 8 years, 6% after 17 years and 9% after 23 years. The parties implemented the change in two steps with the first step being 3%, 4% and 5% for one year, with 3%, 6% and 9% a year later. At the same time, the parties to the Toronto agreement made several compensating changes elsewhere in their collective agreement to help pay for this new allowance.

This change in salary structure has been adopted by most of the police forces in Ontario and is now the norm. The collective agreements covering the vast majority of the police officers in Ontario now either have this new salary structure fully in place, or are in the process of implementing it. The retention allowance has been adopted by police forces which have no problem retaining senior police officers.

This Union wanted its officers to enjoy this new benefit. As part of its proposal the Union indicated that the existing Service Pay and Senior Constable Pay provisions would be removed, and I note that their removal would help to pay for this allowance.

The Employer opposed the introduction of these changes.

Several months ago in an award in Oxford (Oxford Community Police Services Board and Oxford Community Police Association, September 24, 2004, unreported) I declined a similar union request. At that time the change in the salary system did not seem to me to have merit, in part because that force did not have a problem retaining senior police officers.

I remain unconvinced that there is a benefit to either employers or unions from this change in the salary structure. Similarly this police force does not have a retention problem.

However, my concerns about the wisdom of the new system have not been widely shared in

the Ontario police community which has embraced this change. There are now so many police forces with this new salary system that I accept that it is the new salary norm, quite apart from any impact it may have upon any alleged retention problem. That is, while it was intended in Toronto to combat a retention problem, it has now simply become the new salary structure for police officers in Ontario. I conclude that my concerns should not prevent the employees in this force from having the benefit of this new allowance and therefore I award an allowance of the type first introduced in Toronto.

The next issue is how much change to make in a one year agreement which is entirely retroactive. A common first step in introducing this new wage provision has been a 3,4,5% introduction, a process which mirrors the Toronto approach. I award a 3% after 8 years, 4% after 17 years and 5% after 23 years provision effective July 1, 2004.

As part of its request the Union proposed that the existing Service Pay and Senior Constable Pay would be removed. I direct the elimination of both Service Pay and Senior Constable Pay effective June 30, 2004.

New language will be required to implement this benefit. I leave it to the parties to prepare language to implement this change in their 2004 agreement.

CIVILIAN UNIT

4. Salary increase

The Union proposed a salary increase of 6% for the civilian unit. The Employer proposed an increase of 2.25%.

The Union submitted that the increase should be the same for the two units. The Employer relied upon the recent history of civilian employees receiving lower increases than sworn officers (see above) as justifying a continuation of that practice.

The more common, although clearly not universal, practice in Ontario policing is that both civilian employees and sworn officers receive the same salary increase. The exceptions are few and they generally reflect some element of catch-up for the unit receiving the larger increase, or another exceptional reason. I have already expressed the view that the different increases in North Bay over the past several years appear to have been designed to bring - and clearly brought - the salaries of the sworn officers to parity with the salaries of officers employed by other police forces.

My award for the sworn officers has no element of catch-up. As my review of the data suggests that the civilian employees are, if anything, behind similar employees elsewhere, I can see no justification for a smaller increase for the civilian employees in comparison with the sworn employees. I conclude that the civilian increase should be the same as for the sworn unit - that is 4.5% as of January 1, 2004.

5. Additional increase for court security employees

The Union submitted that the court security employees in the civilian unit - that is special constables and court coordinator - had fallen behind similar employees elsewhere in the province and provided extensive data in support of that assertion. The Union sought a 12% increase.

The Employer did not dispute the general point that these employees were behind other similar employees in other police forces but submitted that:

1. As the salaries had been bargained by the parties, I should respect the parties' previous agreement regarding the relative pay of this group of employees; and,
2. As any special increase for this male dominated group of court security employees would have an impact on the salaries of other female dominated groups of employees through pay equity, I should not award a special increase.

While I can understand that the Employer's concerns might make the Employer unwilling to agree to a special increase for the court security employees, in considering what is a fair and appropriate salary I do not think either argument is valid. The fact that the parties agreed on what, in retrospect, is a low salary through to the end of 2003 does not mean that the low salary needs to continue indefinitely, or even for an additional year. Nor is the effect which an adjustment will have on other salaries through the application of pay equity persuasive. If the Employer has one or more female dominated groups which will be entitled to an additional increase because of the increase for the male dominated court security employees, then that is exactly the intent of the provincial pay equity scheme and I do not think I should award less than I would otherwise because of the Employer's concern. Clearly the data shows the court security employees have fallen behind and deserve a larger increase than other employees.

The primary issue is how large an increase is merited and how fast the correction should be made. The data suggests that these employees have fallen 12% behind, but I note that the pay rates for special constables are in a state of flux throughout the province as other parties are going through a similar exercise of adjusting salaries for these employees. In any event, corrections of the magnitude which are apparent here are rarely made in one year, especially if, as in this instance, that year is entirely retroactive. I note that in 2002 and 2003 when the parties were adjusting the salaries of the sworn unit they agreed to mid-year salary increases for that unit when the civilian employees received no increase.

An adjustment for the second half of 2004 in an amount of roughly half what these employees have fallen behind seems reasonable in this case. I award an additional increase for these employees of 6% effective July 1, 2004.

Summary:

I direct the parties to prepare a collective agreement for the sworn unit and one of the civilian unit for the 2004 calendar year incorporating the above provisions, together with any other changes they may have agreed upon - I understand there may be a change flowing from the settlement of a grievance.

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 agreements.

Dated in London, Ontario, this 9th day of February, 2005.

Howard Snow, Arbitrator