

IN THE MATTER OF ARBITRATION PURSUANT TO THE PROVISIONS OF SECTION 40
OF THE *POLICE SERVICES ACT*, R.S.O. 1990, CHAPTER P.15 AS AMENDED

B E T W E E N:

THE MEAFORD THORNBURY POLICE ASSOCIATION
(Hereinafter referred to as “The Association”)

-and-

THE MEAFORD THORNBURY POLICE SERVICES BOARD
(Hereinafter referred to as “The Board”)

-and-

FORMER ACTING CHIEF STEPHEN BIRCHALL
(Hereinafter referred to as “The Grievor”)

SOLE ARBITRATOR: Richard H. McLaren, C.Arb.

APPEARANCE FOR THE ASSOCIATION: No Appearance

APPEARANCE FOR THE GRIEVOR: David S. Thompson

APPEARANCE FOR THE BOARD: Malcolm Winter

A HEARING IN RELATION TO THIS MATTER WAS HELD AT MEAFORD, ONTARIO,
ON NOVEMBER 29, 2002.

INTERIM AWARD

This arbitration arises as a result of a disbandment carried out pursuant to Section 40 of the *Police Services Act*. On 3 September 2002, the Municipal Police Services of the Joint Meaford Thornbury Police Services Board was outsourced to the Ontario Provincial Police (O.P.P.). The parties were unable to resolve their differences in the issues linked between Acting Chief Birchall and the Board.

At the request of counsel representing Acting Chief Birchall, an application was made for the appointment of an Arbitrator as a result of a disbandment pursuant to Section 40 of the *Police Services Act*.

I was appointed the Arbitrator pursuant to subsection 124(3) of the *Police Services Act*, R.S.O. 1990, c.P.15, by the Honourable Robert W. Runciman, MPP, Leeds-Grenville, Minister of Public Safety and Security. At the time of the hearing on 29 November 2002, counsel representing the parties agreed that I had been properly appointed and that I had jurisdiction to act as the Arbitrator in the matter and make a final and binding determination of the matters in dispute between the parties.

Acting Chief Stephen Birchall was present at the hearing on 29 November 2002 and made himself available for examination and cross-examination. There was no conflict in his testimony during the cross examination of the Acting Chief. I have summarized the facts presented in that testimony.

Stephen Birchall was born on 30 July 1951. He first commenced work as a

Police Constable with the Metropolitan Toronto Police Force in February of 1971 and served with that force until February of 1976. He left the Metro force as a First Class Constable and joined the Meaford Police Service in that same capacity.

Mr. Birchall worked his way through the ranks and, subsequently, became a Sergeant with the Meaford Police Service in May of 1988. He remained a Sergeant until January of 1997. At that time, the then Chief of the Meaford Police retired and Stephen Birchall became the Acting Chief in the formation of the Meaford Thornbury Police Service. The Meaford Thornbury Police Service amalgamation was finalized in November of 1997, at which time Mr. Birchall returned to his classified rank of Sergeant with the newly amalgamated police service. The Chief of Police of the former Thornbury Police Service became the Chief of the new amalgamated Board.

In the period from January to November of 1997, while Mr. Birchall was Acting Chief of the Meaford Police force, he spent a considerable period of time working on various aspects related to the amalgamation process. In addition, there was also a possibility of Collingwood joining in the amalgamation, so a considerable amount of time was also spent working on that potential aspect of the amalgamation.

In the period from November 1997 onward, subsequent to the two forces being amalgamated, Mr. Birchall was Acting Chief in all cases when the actual Chief was away on vacation or away otherwise.

Prior to amalgamation, Acting Chief Birchall had taken a number of courses

and had additional training to perform his job. He had completed a management course at the Ontario Police College and had obtained a business management certification from Georgian College, in addition to having taken several forensic courses. During the amalgamation, whenever the Chief of the amalgamated service was absent, on vacation or for any other reason, Stephen Birchall became the Acting Chief of the amalgamated force.

In September of 2000, the Chief left on long term sick leave, until his subsequent retirement in June 2001, and appointed Stephen Birchall as Acting Chief. Mr. Birchall was, therefore, continuously the Acting Chief from September 2000 until 27 February 2002 when he himself became ill and left on a long term disability (LTD). In this position, Mr. Birchall was responsible for the full range of the Chief's duties, including keeping the Police Service in accordance with the required Provincial standards, boosting the morale of the service, and managing the budget. It was during this period, when the decision to outsource the Meaford Thornbury Police Service to the O.P.P. was made. This decision resulted in a considerable additional workload being placed upon Acting Chief Birchall in respect of that process.

The Acting Chief's salary with the agreed upon adjustment for 2002 was \$76,387.80. As a result of 2 months hospitalization and major heart surgery with numerous complications, Mr. Birchall has been on long term disability continuously since 27 February 2002. Therefore, at the time of this hearing, Acting Chief Birchall was still an employee of the Meaford Thornbury Police Services Board although he was on a long term disability. In that regard, he was

paid 75% of his monthly salary, which is \$6,361.33 (Exhibit 2). In addition, he is also paid for 12 statutory holidays and 31 years of service for vacation pay calculated under the Collective Bargaining Agreement in force between the Meaford Thornbury Police Association and the Board. At the time of the hearing, Acting Chief Birchall was still on long term disability and there was a possibility that Mr. Birchall may remain on long term disability until 30 June 2004. After 30 June 2004, the policy requires that the payment only be made in respect of someone who was unable to work in any capacity as opposed to a person unable to work as a police officer. At the time of the hearing, it was unknown at what point, under the provisions of Section 40 Subsection 2, Acting Chief Birchall and the Board ordered me to submit the matter to arbitration. The difficulty at the present time is that there are too many uncertainties to make any decision with respect to severance pay. At the present time, Acting Chief Birchall is still an employee of the Police Services Board and as long as he remains on long term disability he is deemed to be an employee. It will not be certain, until some time in the future, whether Mr. Birchall will be employed by the O.P.P. or whether he will, in fact, be employed in some other type of job. This latter fact is the other uncertainty which must be clarified before any determinations can be made under the provisions of the legislation.

A letter of Statement of Good Intentions was filed as Exhibit 1 from Jay C. Hope, the Bureau Commander, Human Resources Bureau, at the O.P.P. dated 1 March 2002. The letter apparently had been sent to an incorrect address at which Mr. Birchall had not lived for a large number of years. The letter merely came to Mr. Birchall's attention at the hearing. A review of the letter indicates that while

there is a Statement of Good Intentions that Mr. Birchall may receive an offer of employment from the O.P.P., it is not an offer for full-time employment with the O.P.P. Indeed, such an offer could not be made until first, Acting Chief Birchall is no longer on long term disability, and second, until he has provided satisfactory evidence from a medical practitioner of his suitability to return to duty as a police officer. Only when these two contingencies have been eliminated, can the parties have a meaningful discussion as to an appropriate severance package. Therefore, it is not possible for this matter to proceed any further to date until the outcome of these contingencies are fully known.

An argument was submitted on behalf of Acting Chief Birchall by his counsel suggesting that one could make, on a theoretical construction, determinations at this time. It was argued on behalf of the Police Services Board that the specific facts must to be known before any suitable severance package can be determined and that the arbitration was premature in proceeding any further than it has currently proceeded.

DECISION

I was advised by both counsels that this case is unique in circumstances and that there are no cases which could be found which presented this type of problem for determination. Upon reflection and further discussion with counsel, I have decided that it was necessary to adjourn these proceedings *sine die*. Although the matter has been properly commenced before me and evidence has already been received by me, no determination of compensation for the loss of employment or

for the difference between the employment relationship with the O.P.P. and the Meaford Thornbury Police Services Board can be made at this time. Therefore, the matter is adjourned until such time as those determinations can be made.

The matter has properly proceeded to arbitration and the arbitration has been commenced pursuant to Section 124(3) and Section 40(3) of the *Police Services Act*. As the Arbitrator was unable to determine certain facts which are necessary in order to consider the separation agreement under Section 40(2), it is hereby ordered that the matter be adjourned *sine die*. I have heard the testimony of Acting Chief Birchall and I am properly seized of the case. On the event that the facts do become sufficiently clear to enable the parties to proceed with the arbitration, the matter may be brought on for further hearing and determination by the Arbitrator upon written notice by either party to the Arbitrator and the Ontario Police Arbitration Commission.

The costs of this matter are to be fixed at a later date in connection with the final determinations.

DATED AT LONDON, ONTARIO, THIS DAY OF DECEMBER, 2002

Richard H. McLaren, C.Arb.