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March 19, 2004

Ms. Eleanor Patterson  
Executive Officer  
Ontario Police Arbitration Commission  
1<sup>st</sup> Floor  
25 Grosvenor Street  
Toronto, Ontario M7A 1Y6

Dear Ms. Patterson:

**Re: Kingston Police Interest Dispute - Civilian and Uniform**

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In regard to the March 18, 2004 interest award between The Kingston Police Services Board and The Kingston City Police Association (Sworn), there are two clarifications, as follows:

- (1) p.6 - The last sentence of the paragraph above "Article 5. ACTING PAY AND PROMOTIONS" properly reads as follows:

"Given this circumstance in the context of long standing, freely-negotiated language in art. 4.2, I do not award the Board proposal."

- (2) p. 37 - Art.17.2, the second paragraph properly reads as follows:

"to All members of the Kingston Police who are regularly assigned to plain-clothes duty shall receive a clothing allowance of nine hundred and fifty (\$950) per annum."

In regard to the March 18, 2004 interest award between The Kingston Police Services Board and the Kingston City Police Association (Civilian), there is one clarification, as follows:

- (1) p.6 - The last sentence in the paragraph above, "Article 5. ACTING PAY AND PROMOTIONS" properly reads as follows: "Given this circumstance in the context of long standing language in art. 4.2, I do not award the Board proposal."

I apologize for any inconvenience caused by the above lack of clarity.

Yours truly,



Wm. A. Marcotte

cc: D. A. Whyte, B. Cole,  
D. Harrington, D. Mastin

**IN THE MATTER OF AN INTEREST ARBITRATION PURSUANT TO *POLICE SERVICES ACT, R.S.O., 1990 c. P.15***

**BETWEEN:**

The Kingston Police Services Board  
(The "Board")

**AND**

The Kingston City Police Association  
(Civilian Members)  
(The "Association")

**ARBITRATOR:** William A. Marcotte

**APPEARANCES:**

**FOR THE BOARD:**

D. A. Whyte, counsel  
C. Allison-Burra, Board chair  
Wm. Campbell, Board member  
Wm. Hackett, Board member  
D. Murphy, D/chief  
Wm. Bishop, Dir., H.R. (Kingston)  
D. Campbell, L.R. officer  
K. Matthews, H.R. co-or.  
and others

**FOR THE ASSOCIATION:**

Wm. Cole, consultant  
S. Bambrick, Assn. pres.  
D. Mastin, Assn. sec'y.  
J. Smith, Assn. member  
K. Duncan, Assn. member  
and others

Hearings held in Kingston on January 7, 8, 9 and February 17, 2004.

## **AWARD**

By way of notice from the Ontario Police Arbitration Commission dated September 23, 2003, I was appointed arbitrator in the matter of an interest arbitration pursuant to section 122. of the *Police Services Act, R.S.O., 1990, c.-P.15 as amended*, between The Kingston Police Services Board (the “Board”) and The Kingston City Police Association (the “Association”). Pursuant to ss. 122.(2) 4. of the Act, the method selected was mediation-arbitration. Mediation sessions were held on November 10, 11, 17 and 18, 2003, and arbitration hearings occurred on January 7, 8, 9 and February 17, 2004. The parties agreed to extend the time for the issuance of this award pursuant to ss.122.(3.6) of the Act.

### **MATTERS AGREED UPON**

In the arbitration hearing on February 17, 2004, the parties concurred that all matters contained in Tab 3 of the Board’s “Book Of Documents” submitted in arbitration on January 8, 2004, were agreed to by them prior to the arbitration hearing. Also, the parties are agreed that Article 29. - TERM OF AGREEMENT reads as follows:

29.1 This agreement shall come into effect as of the 1<sup>st</sup> day of January 2003 and shall remain in effect until the 31<sup>st</sup> day of December 2003 and thereafter until replaced by a new agreement, decision, or award, within the meaning of section 129 of the *Police Services Act* aforesaid. (2003)

### **MATTERS IN DISPUTE**

In determining the matters remaining in dispute, I am mindful of the provisions of section 122.(5) of the Police Services Act, which states as follows:

122.(5) In making a decision or award, the arbitration board shall take into consideration all factors it considers relevant, including the following criteria:

1. The employer’s ability to pay in light of its fiscal situation.

1. The extent to which services may have to be reduced, in light of the decision or award if current funding and taxation levels are not increased.
2. The economic situation in Ontario and in the municipality.
3. A comparison, as between the employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.
4. The employer's ability to attract and retain qualified employees.
5. The interest and welfare of the community served by the police force.
6. Any local factors affecting the community.

The parties' submissions inform the above criteria. Thus, the population of the City of Kingston (enlarged in 1998 through merger with two contiguous municipalities) stood at roughly 116,000 as of 2000, with some 47,000 households. The City employs approximately 1450 people, with just over 1,000 of them members of the Canadian Union of Public Employees. Different, if not unique police servicing needs are associated with correctional and associated facilities and activities, a military base and training facilities, large post-secondary student populations, tourism and cross-boarder activities, and, close proximity to the Highway 401 corridor (i.e., Toronto-Ottawa-Montreal). The Standards & Poors "Canadian Ratings" (Oct. 23/03 publication), gave the City an A+ rating (the highest is AAA) for reasons as follows:

The ratings on Kingston reflect the city's very low current debt burden, its high level of liquidity, an established record of good budgetary performance, and an exceptionally stable economy. The city's significant near -, medium - and long-term capital expenditures plans, its relatively low financial flexibility, and its slightly below-average economic performance constrain the ratings.

Further, based on median household income and level of residential property tax burden in 2003, the City's manager of finance, in January, 2004, reports that of sixty municipalities, "Only 10 municipalities rank higher than . . . Kingston's total average tax burden [of] \$3,280 on a median household income of \$58,183 (5.6%)."

In regard to comparisons with other police services, the Board identifies the collective agreements in the municipalities or regions of Barrie, Brantford, Chatham/Kent, Guelph, Peterborough/Lakefield,

Sarnia, Sault Ste. Marie, and, Thunder Bay as appropriate comparators. The Association comparators are Brantford, Guelph, London, Sarnia, Sudbury, and Windsor. (Sarnia has roughly one-third less population than does Kingston, while London and Windsor have populations more than one-third larger than Kingston.) A review of available per-household and per-capita costs for police services (the data address roughly the years 2000 to 2002) appears to suggest the Kingston police services costs are lower than any of the above 11 comparators. For example, the Kingston 2002 per-capita cost of \$130 is below that of 7 comparators (excluding Chatham/Kent, London, Peterborough/Lakefield, and, Windsor), which costs are in a range from \$145 (Brantford) to \$188 (Thunder Bay). The Kingston 2002 per-household cost of \$316.34 is lower than Brantford (\$331.12), Guelph (\$441.32), Sarnia (\$437.16) and Sudbury (\$410.21), but slightly higher than London (\$312.34). There is no suggestion in the submissions that, due to the economic situations in Kingston and in the province, there exists a concern that police services may have to be reduced in the circumstance of this arbitration, although the Board did caution that its financial resources are somewhat constrained, as indicated in the financial data before me. Further, while some seventeen or eighteen police officers have left the force (164 sworn members in 2003) during the past three years, the information as to the reasons for their departure coupled with the Board's submission that it has no trouble attracting applicants, that total number does not indicate a significant retention problem.

Finally, it is recognized there is no comparable private-sector service to public-sector police services. The parties did draw comparisons to other Kingston public-service employees' collective agreements, mainly the Kingston Fire Fighters and Kingston C.U.P.E. agreements, as appropriate comparators in addition to comparison with other Ontario police services' collective agreements, in particular, the 11 comparators extensively relied on by them in the instant case. This sort of approach to interest arbitration in public-sector police services, i.e., consideration of the criteria identified in s.122.(5) of the Act and significant reliance on similarly-employed groups, essentially entail a balancing of interests, on the part of the arbitrator, between the employer and the employees *Re Carleton Board of Education* (March 18, 1994) unreported (Marcotte), cited at p.39 of the Board's brief, as follows:

Thus, we must balance the employee's [sic] interests, that of having been treated fairly, and, the Employer's interests as a public sector employer, that wages, benefits, and working conditions are comparable to those of similarly-employed groups, and

comparable to what the community, itself, is able to derive from its employment, both of which interests are considered within the current societal context.

Article 4.     **RESERVATIONS OF MANAGEMENT**

Art. 4.2     Existing Language

4.2     The Board agrees that no member will be dealt with adversely without “just cause” and that it will exercise the functions outlined in article 4.1 in a manner consistent with this agreement. [I have excluded the date existing language was included in the collective agreement in regard to all provisions referred to in this award.]

Board Proposal

4.2     The Board agrees that no member will be disciplined, discharged, demoted, or suspended without “just cause” and that it will exercise the functions outlined in Article 4.1 in a manner consistent with this agreement and the *Police Services Act*.

The Board submitted that the phrase, “dealt with adversely”, is vague and ambiguous language. Under the current wording, there have been labour relations difficulties, for example, a recent grievance (under identical language in the sworn collective agreement) that challenges an administrative transfer due to its effect on a member’s personal circumstances and which matter, further, begs the question of how one applies the just cause standard to an administrative transfer. Thus, the Board proposes the phrase be deleted and matters to which just cause is typically applicable, i.e., discipline, discharge, demotion and suspension, be specifically identified. One result, it argued, is that of “cleaning up” the current provision.

Association Position

The Association opposes the Board’s proposal. It submitted that the current language, included in the collective agreement some fourteen years ago by way of an Interest Award, is suited to the parties’ circumstances, for example, a recent arbitration dealing with a matter regarding a position within the force which may not necessarily have been captured as a proper grievance under the

Board's proposed language. It also submitted that the Board's proposal unduly limits that which may properly be subject-matter of a grievance.

Where a management rights clause is included in a collective agreement, it is understood, generally and broadly, as preserving an employer's right to operate and manage the enterprise or service as it sees fit subject, however, to the express provisions in a collective agreement which are commonly viewed as limiting or restricting the employer's management rights. Thus, from one perspective, it can be said that the management rights clause in a collective agreement operates to delineate the extent to which an employer's exercise of its management rights are unrestricted by the terms and conditions of a collective agreement and the correlative extent to which a union can properly challenge an exercise of management rights through the grievance and arbitration procedures. Hence, any change in the current language of the management rights clause will significantly affect the current delineation of the parties' rights under the provisions of the collective agreement. Given this circumstance in the context of long standing language in art. 4.2, I do not award the Board proposal.

iii) Article 5. **ACTING PAY AND PROMOTIONS**

Association Proposal (New Language)

(a) Posting of Positions

All positions within the Kingston Police will be posted and members interested in such position will be entitled to apply.

(b) Posting Committee

A Posting Committee is a joint committee comprised [sic] of two (2) representatives of the Association and two (2) representatives of the Board. The Committee will review the process and definition of the posting article and make recommendations to the Chief.

(c) Transfer Committee

A transfer committee is a joint committee comprised [sic] of two (2) representatives of the Association and two (2) representatives from the Board. The committee shall review all involuntary transfers. A member who is the subject of an involuntary transfer may make application, within five (5)

days of being notified of such transfer, for the committee to review the transfer. The Committee may make recommendations but the Chief retains the right to final decision.

The Association submissions indicate the impetus for this proposal arises from recent membership complaints concerning assignments not all of which opportunities were made known to the members. As well, a grievance has been filed recently in regard to the transfer of an Association member. The intention behind its proposal is for transparency, openness and consistency regarding postings and transfers processes.

### Board Position

The Board opposes the Association proposal. Under the current structures, the Board has the ability to respond to changes in servicing the community which may involve assignments it views as necessary and that need not be posted. In any event, the Association proposal simply adds another layer to an already complicated process. Additionally, it notes that contrary to the Association submissions, it does post most, not few, promotions and transfers. In the case of an involuntary transfer, a member has available a chain-of-command procedure for voicing his or her concerns .

The current provisions in Article 5 already contain language at art. 5.3 (a) which requires that “Notice of all job vacancies shall be posted . . .” Thus, para. (a) of the proposal is redundant. Further, Article 5 provides for promotion and transfer procedures that do not make necessary, in the labour relations context, the committees proposed by the Association. What does not appear to be provided for is an explanation to the member for an involuntary transfer under art. 5.5. I award as follows, to be included in the provisions of Article 5:

A member who is involuntarily transferred shall be informed in writing of the reasons for the transfer prior to the effect date of the transfer.

Article 5      **PROMOTIONS**

Art. 5.7      Existing Language [in part]

- 5.7 In the event that the successful applicants prove unsatisfactory in positions during the aforementioned trial period or find themselves unable to perform the duties of a new job classification, they shall be returned to their former position at the salary level they would have held had they not been transferred or promoted within that job classification, without loss of seniority. . . .

#### Board Proposal

- 5.7 A successful applicant who proves unsatisfactory in the new position during the aforementioned trial period shall be returned to their former position at the salary level they would have held had they not been transferred or promoted within that job classification, without loss of seniority. . . .

The Board submits that its proposed change i.e., the deletion of the phrase “. . . or finds themselves unable to perform the duties of a new classification . . .”, leaves intact the Board’s ability to return a successful candidate to the former position but results in that candidate not being able to return if he or she so declares an inability to perform the new duties. It submitted that on three occasions during the term of the 1998-02 collective agreement, the successful candidates to job postings said they did not want to continue in the position during the trial period. The adverse effect on other employees’ morale affected by the return to the former position, and the resultant adverse effect on the Board’s operations and work flow would not recur under the Board’s proposal or, at least, would not be as great if the successful candidate completed the trial period.

#### Association Position

The Association opposes the Board’s proposal because it places an unreasonable limitation on employees. It also noted that not all civilian jobs are reflected in the collective agreement. The proposal would have a “chilling effect” on employees provided with a job opportunity through a posting if they know they would be unable to return to their former position should they deem themselves unable to perform the duties of the new position. The Association disputes the Board’s assertion as to adverse effects on morale, in that, “Everyone knows the domino effect” arising from promotions.

I am not prepared to take away an existing employees' right to declare themselves unable to perform the duties of a position for which he or she is the successful candidate in the circumstances described by the Board; three changes-of-mind in a 5-year period does not appear significant, given the Association assertion that these instances are insignificant in comparison with the total numbers of promotions or transfers that have taken place in the last five years. On the other hand, the Board points to a problem under the current provision, namely, that of self-declaration of inability to perform the duties prior to the end of the trial period. Be that as it may, under the current and proposed provision, the Board can return a candidate to the former position at any time during the trial period, which circumstance would create the sorts of problems it suggests could occur if the successful applicant made that decision. That is, the Board proposal does not appear to resolve the problems it associates with a successful candidate's decision, during the trial period, to return to the former position. I do not award the Board proposal.

Article 8      **SERVICE PAY**

Art. 8.1      Existing Language

8.1 Members shall be paid service pay as follows, in December of each year.

5-9 years of completed service: \$60  
 10-14 years of completed service: \$120  
 15-19 years of completed service: \$180  
 20-24 years of completed service: \$240  
 25-29 years of completed service: \$300

Association Proposal

8.1 Members shall be paid service pay as follows, in December of each year.

5-9 years of completed service: \$100  
 10-14 years of completed service: \$225  
 15-19 years of completed service: \$275  
 20-24 years of completed service: \$375  
 25-29 years of completed service: \$475  
 30 years or more of completed service: \$525

The Association submitted that the data from its 6 comparators clearly reveal the current amounts of service pay to be, "off the mark in all categories", and should be increased. It also proposes the

addition of a 30-year or more category. It submitted that any award in this matter ought to maintain the internal relationship between service pay for Civilian and Sworn members of the Association.

### Board Position

The Board opposes any addition to or increase in service pay in that it is an anachronistic provision which the parties have not dealt with for an extended period of time and ought to be deleted. Moreover, the increase in costs that result from the Association proposal ought to be considered in terms of the “total compensation” costs to the Board arising from the collective agreement and, from that perspective, I ought not to “breathe new life into this concept.”

A review of the parties’ 11 comparators reveals that all contain a service pay provision. The data indicate that for each of the five categories in art. 8.1, the Kingston service pay is lower than the comparator available pay ranges and, thus, lower than the average in each category (\$83; \$162; \$243; \$324 and \$405, respectively). In light of the above and being mindful of the internal relationship between civilian and sworn members’ collective agreements, I award as follows:

8.1 Members shall be paid service pay as follows, in December of each year.

5-9 years of completed service: \$65  
 10-14 years of completed service: \$130  
 15-19 years of completed service: \$195  
 20-24 years of completed service: \$260  
 25-29 years of completed service: \$325

I do not award the addition of the category, “30 years or more of completed service”. It is more appropriate for the parties, in the circumstances at hand, to negotiate this sort of addition than for it to be awarded through arbitration.

## Article 10 **HOURS OF WORK**

### Association Proposal (New Language)

Communications Operators be given the privilege of leaving the station on their lunch periods and lunch relief to be provided to maintain staffing levels of three (3) communications operators at all times.

The Association submitted that some twenty years ago, communications operators' weekly hours of work were increased from 35 to 40 to accommodate the inclusion of a Board-paid lunch period. The Association assertion is that while there was also a salary increase at that time, a result of the change in hours was a reduction in the hourly rate by 95¢. Thus, its proposal is intended to restore a work-free lunch and, by remaining paid, the proposal restores the level of compensation prior to the paid-lunch arrangement. The Association further submitted that its proposal regarding minimum staffing levels intends to ensure adequate staffing while an operator is on an interrupted lunch break away from work.

### Board Position

The Board opposes the Association proposal. Firstly, the issue is not arbitrable because it is essentially a staffing issue, which issue in the police services sector can only arise in the context of a health and safety matter for which, however, there is no evidence in the instant case. Secondly, the Association proposal ignores the "reality of policing which follows a cyclical pattern of calls", and fails to account for staffing levels that are governed, to a large degree, by that cycle. Thirdly, because the lunch period is paid for, the Board is entitled to require communication operators to remain at work subject to its discretion and control. The practice, moreover, is that should these employees be unable to take their lunch period due to work demands, they are paid an extra hour at the regular straight time rate. The Association proposal, in all these circumstances, is "unwarranted and out of line with the realities of the situation." The Board, further, disputes the Association assertion that rates of pay were effectively reduced with the advent of the paid lunch-period, in that compensation was increased at the time this provision was introduced. Finally, the Board submitted that there is no comparable provision in the comparator collective agreements and, in any event, the some \$120,000 increase in total compensation associated with this Association proposal is not at all warranted.

The Association does not dispute that the matter of staffing in the police services sector is considered in the context of health and safety concerns; there is no evidence or information before me in this regard. Also, because the lunch period is paid for by the Employer, it does have the right

to direct and control employees during that period time and which right, in the instant case, the Employer is not prepared to relinquish. In these circumstances, I do not award the Association proposal.

Article 10      **HOURS OF WORK**

Association Proposal (New Language)

10.5 (a) A member who performs his/her duties on one period of twelve (12) hours shall be allowed two (2) periods for lunch, which will be of forty-five minutes each or one (1) one period of lunch which will be 90 minutes, as mutually agreed upon by the member and his/her supervisor.

10.5 (b) Any hours worked in excess of forty (40) hours in a calendar week period due to the twelve (12) hour shifts shall be accumulated in a separate bank and an effort will be made by the members to take this banked time off in lieu of payment. The members will have up to September 1<sup>st</sup> of the year to utilize banked time off, at a mutually agreeable time. After that date, Management will have the remainder of the year to assign banked time off at a mutually agreeable time, but if no agreement can be reached, then the Chief of Police shall allot such time off. In the event that a member is unable to take time off for all of his/her banked time, the remainder of the banked time shall be paid to the member or carried over to the next year, whichever is agreeable to both parties.

10.5 (c) Any day referred to in this agreement will be of twelve (12) consecutive hours, with the exception of days off, which will be twenty-four (24) hours. Days off will be consecutive from the last day worked and will be of four (4) consecutive days.

10.5 (d) All leave days referred to in the current working agreement shall be calculated as an eight (8) hour day with the exception of Compassionate Leave, Family Leave, Leave of Absence for PAO Convention; Quarterly Meetings and Local Executive Meetings which will be twenty-four hours.

10.5 (e) When one (1) week of Annual Leave is taken, the four preceding and the four days following the leave days will also be deemed to be Annual Leave when a court appearance or a call back to duty is required by the member.

10.5 (f) All members shall accumulate one hundred and four hours in a calendar year, of time worked in excess of forty (40) hours in a calendar week, if that member has worked a full calendar year. This shall be referred

to as “accrued time.” A member may accumulate or lose accrued time credits depending upon the number of hours worked in a calendar week.

The Association submitted that the inclusion of its proposal is necessary. The proposal reflects the present work arrangements, first introduced in 1998 by way of a system of 12-hours shifts, but there is no current collective agreement provision to enforce compliance with the new system. Thus, the Board is free to change the shift system, including reversion to the previous “undesirable” 8-hour shift system. Its proposal, also, importantly aligns civilian and sworn Association members’ (platoon) shifts. It is also an important addition because it will assist the Association, its members, and the Board in applying other sections of the agreement “that rely on a clear definition of day. At present there is nothing that anyone can point to that clearly defines entitlements based on some written definition of day.”

### Board Position

The Board opposes the Association proposal which it views as an indirect attempt to set staffing levels and, thus, directly related to the Association proposal for a 3-person minimum staffing level for communication operators. The Board iterated its position on this matter, i.e., that staffing is a management rights issue and there is no evidence concerning health and safety issues..

As discussed in the context of the Association proposal concerning minimum staffing in order to accommodate a free lunch period for communications operators, the Board does have the exclusive right to deal with staffing matters and which right it is not prepared to relinquish. There is also no suggestion of a health and safety issue. I do not award the Association proposal.

## Article 11      **ANNUAL VACATIONS**

### Existing Language

11.5 During the calendar year in which a member completes fifteen (15) years of continuous service and in each subsequent year in which a member is employed on a full-time regular basis, the member shall be entitled to twenty-five (25) days’ vacation with pay at the current prevailing salary. (Arbitration Award 1990)

11.6 During the calendar year in which a member completes twenty-five (25) years of continuous service and in each subsequent year in which a member is employed on a full-time regular basis, the member shall be entitled to thirty (30) days' vacation with pay at the current prevailing salary.

Association Proposal

- (1) Change entitlement to 25 days from 15 to 13 years.
- (2) Change entitlement to 30 days from 25 years to 18 years.
- (3) Add entitlement to 35 days at 25 years.
- (4) Add entitlement to 40 days at 40 years.

Board Proposal

The Board opposes any increase to or acceleration of the amount of vacation hours entitlement. It submitted that such entitlements have already been used for 2003 and that the some \$107,000 in costs associated with this proposal (i.e., including police officers) is significant when viewed from a total compensation perspective, and where the current vacation entitlement provisions are generally in line with those among the 11 comparators used by the parties in the instant case.

The current amounts of vacation hours entitlement and when they accrue in terms of years of service compare favourably with that which is available in the 11 comparators, except for entitlement to 30 days vacation. Of the 11 comparators, only Barrie matches the 25 years of service currently provided for in the Kingston collective agreement. The range in the other 10 comparators is from 19 years (Sudbury) to 24 years (Chatham/Kent reduced to 23 years in 2005), with 23 years being the most frequently occurring number (London, Brantford, Sarnia, Guelph), followed by 20 years (Peterborough/Lakefield, Thunder Bay, Sault Ste. Marie). I award as follows:

11.6 change “twenty-five (25) years to “twenty-three (23) years”.

I do not award the remainder of the Association proposal.

Article 12. **BENEFITS**

Art. 12.2.(b) Existing Language

art.12.2.(b) The Board shall provide the Blue Cross Dental Plan 9 or its equivalent, with a nine-month recall for those insured who are eighteen (18) years of age and over, subject to the approval of the Association. The Board shall pay two-thirds (2/3) and the Association member shall pay one-third (1/3) of the premium cost for both single and dependent coverage based on the current Ontario Dental Association Schedule of Fees. . . .

The following proposal from the Board is accepted by the Association. Accordingly, I award as follows:

art. 12.2.(b) The Board shall provide the Blue Cross Dental Plan 9 or its equivalent, with a nine-month recall for those insured who are eighteen (18) years of age and over, subject to the approval of the Association. The Board shall pay 100% of the premium cost for both single and dependent coverage based on the current Dental Association Schedule of Fees. . . .

Article 12. **BENEFITS**

N.B.- The parties discussed the following issue in the context of Schedule B - Extended Health Benefits. I place it here under Article 12 in ease of reference to art. 12.2.(b) only, and for reason that it is identified as a waiver (rider?). Where the parties ultimately place this issue in their agreement is their decision to make.

Association Proposal (New Language)

The Board will pay for orthodontics to a maximum of \$2500 per member, spouse and dependent.

The Association submitted that the absence of a provision regarding orthodontic care in the collective agreement is out of step with what is provided for in its 6 comparators. Those agreements provide for lifetime coverage of between \$1500 and \$5000, and where the employer pays 100% of the premium cost on a 50/50 “shared risk” (Sudbury collective agreement) basis.

Board Position

The Board does not oppose including orthodontic coverage as a benefit under the collective agreement and proposes, as follows as a new addition to the collective agreement:

Orthodontic:

The Board will pay the premiums necessary to provide coverage on a 50/50 co-payment basis, \$1,000.00 lifetime maximum, for insureds under eighteen (18) years of age.

I award the Board proposal.

#### Article 13.1 **ANNUAL SALARY SCHEDULES** (Schedule A)

##### Association Proposal

The Association proposes that all salaries set out in Schedule A be increased by 10% for the period of time, January 1, 2003 to December 31, 2003. The Association submitted its proposal is fair and reasonable, given historic relationships with police services in similar-size municipalities and the historic internal relationship between police and fire fighters in Kingston, as well as the relationship between civilian salaries and police officer salaries in this Association. (I follow the parties' submissions in discussing this issue in terms of the "benchmark" 1<sup>st</sup> Class Constable salary addressed in the collective agreement for the sworn members of the Association.)

The Association data indicate that in 1993, the Kingston 1<sup>st</sup> Class Constable salary of \$52,642 was \$1,421.00 above the average of its 6 comparators. By 1996, it had reduced to \$273 above average, and in 1998 was \$1106 below the average. During the term of the 1998-02 collective agreement, the Kingston benchmark salary remained roughly \$1000 below average, and by 2002 it was below the average figure by \$1916. By way of direct comparisons, the Association data indicate that while the Kingston benchmark salary in 1993 was \$2,164 higher than the one for Guelph, by 2002 the Kingston 1<sup>st</sup> Class Constable salary was \$2,480 less than that in the Guelph collective agreement. The Association drew a similar comparison with the benchmark figure for Brantford, whereby the Kingston figure was \$3,183 higher than for Brantford in 1993, but in 2002 was \$313 lower.

The Association noted there is a well-recognized comparison of the wage relations between police officers and fire fighters within the same community for purposes of determining both groups' wage rates. Comparison with the Kingston fire fighters indicates that the 1<sup>st</sup> Class Constable salary was \$1820 higher than the comparable fire fighter salary in 1993 and 1996. In 1998, that difference had decreased to \$949 and, by 2002, both groups were at the same salary level, approximately \$59,460. An increase in 2003 of 7.57% results in a salary of \$63,409 and restores the historical average difference of \$921 higher for police officers when compared with the fire fighters 2003 benchmark salary. It was also pointed out that at the end of the fire fighters' collective agreement in 2005, their benchmark salary will be \$68,018.

### Board Proposal

The Board proposes that all salaries remaining in Schedule A increase by 3% effective January 1, 2003, and by a further increase by 2% effective July 1, 2003, for an end rate 1<sup>st</sup> Class Constable salary of \$62,470. The Board submitted its proposal recognizes its police officers' salaries have fallen behind those of its 8 comparators. The end rate amount of \$62,470 is some \$595, or approximately 1%, above the average salary of that grouping in 2003, and provides a greater percentage increase in 2003 than any of the comparators, save for Chatham-Kent (a 4% increase in January 2003 and 1% in July, 2003). The Board also indicated its proposal places the Kingston salary figure ahead of those in the two close-by communities of Belleville (\$62,273) and Brockville (\$62,417).

In comparison with the Kingston fire fighters, the Board pointed out their collective agreement is for a 3-year period (2003-2005), with "front-end loading" of the approximately 14.4% salary increase in the first year (2.5% January 1, 2003, 2.5% July 1, 2003, 1.5% October 1, 2003), for a 2003 end-rate salary of \$63,409, with the remaining increases to occur in 2004 and 2005. The Board notes, however, that under the 2003-05 collective agreement, fire fighters will work 2,184 hours per year (on 24-hour shifts) as compared with 2,080 hours for police officers in 2003. The Board pointed out that its proposal is higher than that which it provided to its largest union, C.U.P.E., 2.8% for 2003.

The Board submitted that its proposal is a proper balance between the need for its civilian members to “catch up” and the current financial circumstances of the City of Kingston. It also takes into account the financial costs of its other proposals that have a direct monetary consequence on its budget. In that regard, the Board’s data indicate that, in comparison with an additional salary cost increase of roughly \$1,173,000 represented by the Association proposal (as calculated on the basis of all maxima wage figures), the total compensation figure associated with all of its monetary proposals is slightly more than \$1,000,000 in comparison with the similarly-calculated Association figure of some \$2,595,000.

In addition to the above data which draw comparisons between the salaries of Kingston police officers and those of the Association and Board comparators, as previously addressed in this award the information submitted by the parties indicates that during the period of time 2000 to 2003, the cost per capita and the cost per household for police services in Kingston ranked among the lowest of the eleven communities comprising the Association and Board comparators.

In consideration of all the foregoing, including examination of all the information before me regarding the current state of municipal finances in this community and the parties’ submissions thereof, I am of the view that it is appropriate to consider the matter of salaries in light of the historic relationships that the Kingston police officers have with the 11 comparator communities and with the Kingston fire fighters. I do not consider that the Kingston community pays relatively more for its police services than do these other communities, especially since the Kingston community does present characteristics that are unique for police service purposes, and because its current financial circumstances are such that salary increases do not unduly strain its resources. I am also mindful of the financial circumstances regarding needed municipal infrastructure capital expenditures and the costs to the Board of other collective agreement provisions of a direct monetary nature. I award a salary increase for 2003 as follows: January 1, 2003 - 3%, July 1, 2003 - 2%, October 1, 2003 - 1½%.

Article 13. **SALARIES**

Art. 13.7 Existing Language

### 13.7 Shift Differential

- (a) A tour of duty in the amount of (15) cents an hour shall be paid to all members for all hours worked during a tour of duty that commences at or after 2:00 p.m. and before 7:00 p.m.
- (b) A tour of duty differential in the amount of twenty-five (25) cents an hour shall be paid to all members for all hours worked during a tour of duty that commences at or after 7:00 p.m. and before 6:00 a.m.
- (c) All monies standing to a member's credit, by virtue of this article, shall be calculated to the 31<sup>st</sup> of October in each year and paid out no later than the 30<sup>th</sup> of November of each year.

#### Association Proposal

The Association proposes that the 15¢/hr. referred to in art. 13.7 (a) be increased to 50¢/hr. and the 25¢/hr. in art. 13.7 (b) be increased to 75¢/hr. The Association submitted there is "little doubt" that the shift premiums established in 1984 are in need of improvement. The average afternoon shift premium of its comparators is in the 25-to-28¢/hr. range (Brantford and Guelph provide for annual payments) and the night shift premium average is 44¢/hr. It also submitted that a review of various police services collective agreements reveals patterns similar to those in its 6 comparators , including a yearly average amount of \$345 for 3-shift structures.

#### Board Proposal

##### 13.7 Shift Differential (Civilian)

- (a) All members regularly working on the Front Desk shall be paid no later than November 30<sup>th</sup> of each year the sum of \$100.00 on account of shift differential. Members working less than a full year on this area shall receive a pro-rated amount based on the number of full months.
- (b) All members regularly working in Communication shall be paid no later than November 30<sup>th</sup> of each year the sum of \$250.00 on account of shift differential. Members working less than a full year in these areas shall receive a pro-rated amount based on the number of full months.

The Board submitted that its “lump sum” approach to shift differential payments in relation to “off shifts” worked by employees during a yearly shift-cycle, is more attuned to the circumstance where its civilian employees’ off shifts are consistent throughout the year rather than inconsistent “in and out” off shifts during a yearly cycle. Thus, its proposal is more reasonable in terms of, both, the approach to and quantum of compensation.

In my view, since the parties agree that some improvement in the shift differential amounts are warranted but differ in regard to changes in structure for such payments, it is appropriate to award only changes to the amounts of differential. Upon review of the data before me concerning the parties’ comparators, I award as follows:

#### 13.7 Shift Differential

(a) change “fifteen (15) cents an hour” to “twenty-five (25) cents an hour”

(b) change “twenty-five (25) cents an hour” to “forty (40) cents an hours”

#### Article 14. **SICK LEAVE**

##### Art. 14.19. Benefits While on Sick Leave.

(a) A member who has exhausted sick leave credits and has not been approved for long-term disability (LTD) is entitled to the following benefits for a period of one year from the date of exhaustion of sick leave credits.

- (1) extended health care;
- (2) dental care; and
- (3) group life insurance.

(b) A member who is off work due to illness and has not exhausted sick leave credits after a six-month period may waive the right to continue on sick leave and commence benefits under the Association’s LTD plan, provided that the member provides proof to the Chief of Police or Chief’s designate that LTD benefits have been approved. While on LTD, the member shall continue to be eligible for the following benefits:

- (1) extended health care;
- (2) dental care; and

- (3) group life insurance.

### Association Proposal

14.19 (a)(i) A member who has exhausted sick leave credits and has not been approved for long-term disability (LTD) shall be allowed to receive sick leave credit from another member of the same classification or higher at the same rate, if a member of a lower classification wishes to donate time it shall be prorated at it's [sic] value. Members from both Uniform and Civilian collective agreements can donate time to one another under these circumstances.

(a)(ii) A member who has exhausted sick leave credits and has not been approved for long-term disability (LTD) is entitled to the following benefits for a period of one year from the date of exhaustion of sick leave credits:

- (1) extended health care;
- (2) dental care; and
- (3) group life insurance.

(b) A member who is off work due to illness and has not exhausted sick leave credits after a three month period (balance of wording remains the same)

The Association submitted that its proposal it is not inconsistent with the “fraternal” nature of policing, i.e., to allow members to donate sick leave credits to one another in a time of need, which practice, while not always set out in the collective agreement, is “common in both the police and fire sectors.” Secondly, its proposal to reduce the time from 6 months to 3 months in order to waive the right to continue on sick leave and commence benefits under the Association’s LTD plan, reflects a change that has been made to that policy. Because the LTD plan is fully funded by Association members, there is no prejudice to the Board resulting from this reduction in waiting time. Further, any concern about possible abuse of sick time overlooks the reality that the member on LTD has a serious medical limitation which prevents him or her from working.

### Board Position

The Board opposes the Association proposal, in particular the reduction in the waiting time for reason that it may reduce members' incentive to accumulate sick leave credits and, thus, may lead to an abuse of sick time. Also, the Board does not have access to any medical information related to LTD benefits, or, to information as to the member on LTD concerning health status and ability to return to work on modified duties. In these circumstances, the Board is reluctant to alter the collective agreement in order to facilitate movement of sick leave credits or movement of employees to LTD benefits.

As concerns the proposal to allow a member to transfer sick leave credits to another member in the circumstances addressed in art. 14.19 (a)(i), the only information I have as to the appropriateness of this proposal is that of an unspecified practice not always set out in collective agreements in the police and fire sectors. Thus, since the practice apparently does exist outside the provisions of a collective agreement and I lack information regarding the specificities of such practice or practices, I am reluctant to award the Association proposal in this matter, at least since the result it seeks may not necessarily require collective agreement language. I do not award this Association proposal.

As concerns the matter of the reduction of the waiting period in art. 14.19(b), I note the Association assertion that the proposal aligns collective agreement language with the provisions of the LTD policy. In my view, the fact that the Board has no knowledge regarding members' actual usage of this benefit stems from its non-participation in the plan and not as a result of the mechanisms or provisions of the plan. As to the Board's concern about abuse of sick leave resulting from the proposed reduction in the waiting period, that concern is speculative at best. I award as follows:

14.19(b) A member who is off work due to illness and has not exhausted sick leave credits after a three-month period [balance of wording remains the same].”

Article 14. **SICK LEAVE**

Art.14.19(b) Existing Language

A member who is off work due to illness and has not exhausted sick leave credits after a six-month period may waive the right to continue on sick leave and commence benefits under the Association's LTD plan, provided that the member provides proof to the Chief of Police or Chief's designate that LTD benefits have been approved. While on LTD, the member shall continue to be eligible for the following benefits:

- (1) extended health care;
- (2) dental care; and
- (3) group life insurance.

### Board Proposal

The Board proposes that the last sentence of the above clause be changed to read: “While on LTD, the member shall continue to be eligible for the following benefits providing the member pays for one-half the cost of the benefits:” The Board submitted that it has no involvement in the Association LTD plan, “Quite bluntly, the member who becomes entitled to LTD benefits . . . simply disappears for an indeterminate period of time.” It has no contact with the insurer regarding entitlements, no knowledge of the expected duration of an absence while on LTD, no information as to ability to perform modified work, and, no medical information. It views its ability to continue payment of extended health care, dental and group life insurance benefits as “a completely open-ended liability . . . with no opportunity to manage that liability whatsoever.” In these circumstances, a proposal that the member on LTD pay one-half the costs of the above insured benefits is reasonable and represents a small measure of “risk management” on its part.

### Association Position

The Association opposes the Board’s proposal because it would lead to different treatment of police officers on the basis of attendance or absence from work, and because it seeks to “saddle” an employee with added health care costs during a period of time when he or she is in more need of insured benefits and in receipt of less money than if on active duty. The Association submitted that the proposal is discriminatory, given that it rests on the basis of an employee’s disability. The proposal is also inconsistent with the norms and general approaches in insurance policies, said to be to the effect of premium waivers in the case of disability and in receipt of LTD payments. Further, the Association submits that the Board would probably have knowledge of the reason for absence, and, the commonly-known limitations on the length of time when police officers are off on LTD allow it to determine the outer limits of its liabilities. Finally, the Association was unable to find any Ontario police services collective agreement provision of the sort proposed by the Board.

It would appear that the Board's proposal in regard to art. 14.19 (b) is unprecedented *vis-a-vis* Ontario police services collective agreements. In my view, any ability it would gain in regard to risk management is more than offset by the circumstance that a member in receipt of LTD benefits receives less money than if actively at work and, thus, less able to financially tolerate a requirement to co-fund his or her insured benefits. Moreover, the requirement for a member absent on LTD to fund his or insured benefits would not necessarily improve the Employer's state of knowledge regarding that absence. I also note the Association submission that it views the Board proposal as possibly discriminatory on the basis of a member's disability. I do not award the Board proposal.

Article 14. **SICK LEAVE**

Art.14.19(c) Existing Language

Sick leave credits shall not accumulate while the member is on LTD. Members who do not return to work shall have their sick leave pay-out under Articles 19.5 and 19.6 based on their salary in effect upon the start of LTD.

Board Proposal

Sick leave credits shall not accumulate while the member is on LTD. Members who do not return from LTD to active duty for a subsequent period of six months shall have their sick leave pay-out under Article 19.5 and 19.6 [sic] based on their salary in effect upon the start of LTD.

The Board submitted that under the current language, the possibility exists that a member who has been off work on long-term disability for an extended period of time could return to active duty for one day then go back on LTD and, thereby, be entitled to sick leave pay-out at his or her rate of salary in effect on the one day of active duty rather than in effect at the start of the long-term disability absence. The requirement for active duty for six months following an LTD absence is viewed by it as a reasonable requirement. It also noted that in the event of a recurrence of a LTD or STD claim, a prerequisite to benefits entitlement is a return to work for a minimum of 21 days.

Association Position

The Association objects to this Board proposal and submitted that there is no recollection on its part of the circumstance having occurred which the Board seeks to prevent. Moreover, it stated, there is no provision in any Ontario police services collective agreement that provides for a minimum period of time for a return to work in order to garner eligibility for higher-rated sick leave buy-outs.

The Board agreed its proposal is based on a theoretical situation. Given that there is said to be no comparable provision in Ontario police services agreements, and in light of no experience akin to the Board's example, I do not award the Board proposal.

Article 16. **PREGNANCY, ADOPTION, AND PARENTAL LEAVE**

Art. 16.3 Existing Language

16.3 During pregnancy leave, the Board shall provide a supplementary maternity benefit to a maximum of fifteen (15) weeks, while the member is in receipt of Employer Insurance maternity benefits, equal to the difference between the Employment Insurance benefit paid to the member and 75 percent of her regular rate of pay. In order to be eligible for this supplementary maternity benefit, the member shall, upon request, provide confirmation of her Employment Insurance benefits.

Association Proposal

The Association proposes that the maximum number of weeks for supplementary maternity benefits increase from 15 weeks to 50 weeks, and that the level of benefits increase from 75% to 90% of the regular rate of pay. The Association submitted that while none of its 6 comparators provide for a duration of 50 weeks of employment insurance "top-up" to 90%, four collective agreements (York, Hamilton, Durham and Belleville) provide for 30 weeks of top-up. The Association also stated that the OPP collective agreement provides for 50 weeks at 92% of the regular rate of pay.

Board Position

The Board opposes the Association proposal. It noted that 4 of its 8 comparators contain a clause identical in duration and level of top-up to what currently exists in the instant agreement (save in the

case of Barrie, which includes the first 2-week employment insurance waiting period). Its remaining 4 comparators, it was said, do not vary greatly from these duration and level of top-up norms.

There is no support in the comparator data for the Association proposal. I do not award the Association proposal.

Article 16. **PREGNANCY, ADOPTION, AND PARENTAL LEAVE**

Art. 16.5 Existing Language

Pregnancy leave and parental leave for the natural mother shall not exceed thirty-five (35) weeks in total. Parental leave for either parent or adoptive parent shall not exceed (18) weeks, in accordance with the provisions of the *Employment Standards Act*.

Association Proposal

The Association proposes that the above pregnancy and parental leaves increase from 35 weeks to 52 weeks in total. It submitted that its proposal seeks but to update this provision in order to maintain compliance with sections 46, 47 and 48 of the *Employment Standards Act* (“ESA”), which allow for pregnancy and parental leave up to 52 weeks.

Board Position

The Board agrees to updating this provision. I award the Association proposal.

Article 20. **COMPASSIONATE LEAVE**

Art. 20.3 Existing Language

Compassionate leave to a maximum of five (5) days per year, non-cumulative, shall be granted a member and is to be utilized for special unplanned emergency situations that are acceptable to the Chief of Police and involve the health of the member’s spouse, child, mother, father, mother-in-law, or father-in-law.

Board Proposal

Compassionate leave to a maximum of five (5) days per year, non-cumulative, shall be granted a member and is to be utilized for special unplanned emergency situations that are acceptable to the Chief of Police and involve a serious threat to the health of the member's spouse, child, mother, father, mother-in-law or father-in-law and the member is required to be present as the primary care giver. A child shall be deemed to be a child under the age of eighteen years.

The Board submitted that the changes it proposes bring this clause "into line with its original intent." It submitted that the manner in which this clause has been used since introduced in 1999 has gone beyond the original intent, for example, an Association member wishing to attend a daughter's natural childbirth where there was no serious threat to the health of the 42-year old daughter. The Board indicated that only 4 of its comparators contain a similar leave provision and of those 4, only 1 (Barrie) is similar to the extent that an absence is not charged against sick-leave credits but, as in the instant case, it is a free-standing, paid entitlement.

#### Association Position

The Association opposes all the changes suggested by the Board. It submitted that the freely-negotiated language in art. 20.3 does reflect the parties' intentions in 1999. Instead, the Board's proposal "eviscerates" the original intention, i.e., "to allow the member to be free from work, without resort to alternative forms of leave, to care for a sick relative." Further, the Association submitted that the proposed changes create unworkable restrictions and create great uncertainty, e.g., What constitutes a "serious threat"? In any event, the approval for this leave lies within the discretion of the Chief of Police, but which exercise under the current language appears to have led to inconsistent treatment of members.

The fundamental dispute between the parties is a disagreement as to their intention in agreeing to the current language in art. 20.3. That dispute lies better to be resolved through rights arbitration rather than interest arbitration. I do not award the Board proposal.

Association Proposal (New Language)

A member, which includes another member who is a primary caregiver, may be granted up to forty (40) hours leave of absence without loss of pay for illness of spouse, child, or childbirth by spouse, or another member, or a person who has been designated as the receiver of primary care, and at the discretion of the Chief of Police or his designate. In this section, spouse includes common-law and same sex spouse and primary caregiver.

Note: The primary care giver shall be designated by the Chief or designate on prior written notification by the member identifying the care recipient.

The Association submitted that the current language in art. 20.3, is “too ambiguous and allows for capricious application by the Chief [of Police] or designate.” This new language “clarifies” the Association intent behind art. 20.3 by way of rectifying a history of inconsistent treatment of members under the current language. The Association also contended that this sort of family-support clause is becoming more common in police services collective agreements, and notes that 4 of its 6 comparator agreements provide for emergency leave for reason of family illness or sickness.

Board Position

The Board opposes the Association proposal and pointed to the existence of art. 20.3 as a provision that deals with the issues addressed in this proposal. It also submitted that should a circumstance arise that does not fit within the purview of art. 20.3, a member can access other leave provisions, albeit through expenditure of sick-leave credits.

In my view, art. 20.3 responds adequately to the subject-matter addressed in the Association proposal, which article does reflect whatever trend there may be in the comparators to include provisions similar to art. 20.3. I do not award the Association proposal.

Article 24      **GRIEVANCE PROCEDURE**

Association Proposal (New Language)

The Association Executive may grieve any matters it deems necessary on behalf of the membership.

The Association submitted that members are reluctant to file a grievance, perhaps due to concerns about their careers with the Board or because they believe a formal complaint “simply isn’t worth ‘the hassle’.” Consequently, the Association leadership is in a difficult position, given its fiduciary duty to represent all of its members in the context of their employment relationship with the Board, which duty has consequence in terms of both negotiation and administration of the collective agreement. In particular regard to the latter, the Association could find itself faced with an issue estoppel objection from the Board when an individual member files a grievance about a matter where other members in the past have not done so in identical or similar circumstances.

#### Board Proposal

A grievance arising directly between the Board and the Association the subject-matter of which is of general application across the bargaining unit, and which concerns the interpretation, application, administration or alleged violation of the Collective Agreement, must be submitted in writing by the Association as a policy grievance to the Chief of Police or designate at Step No. 3 pursuant to Article 26.6(b) of the grievance procedure within five (5) days following the circumstances giving rise to the grievance. No policy grievance which has not been processed through all applicable steps of the grievance procedure shall be referred to arbitration. It is expressly understood that the provisions of this article may not be used with respect to a grievance directly affecting a member(s) when such member(s) could have instituted the grievance. It is also expressly understood that the Association may not recover damages or other remedies on behalf of individual members pursuant to a policy grievance.

The Board submitted that the Association proposal is too broad, “both in relation to the usual collective agreement language which describes the scope of issues which are ‘grievable’, and also in relation to this particular collective agreement”. On the other hand, the Board recognizes that the current provisions of Article 24 do not contemplate what is generally or typically known as a “policy grievance”, i.e., a grievance filed by a union or association where no individual member is directly affected by an action on the part of an employer alleged to be in violation of a term or condition of the agreement. The language of the Board proposal, it was said, provides the Association with the ability it seeks but without the overly-broad approach taken by the Association

It is common for collective agreements to make distinction between an individual grievance and a union, or in the instant case an Association, policy grievance. The distinction, moreover, is more or less as described in the language of the Board's proposal, i.e., an individual grievance is one that directly affects an individual member and an Association policy grievance is one that has broad application across the membership and need not necessarily speak to a matter directly affecting an individual member. Thus, since the Board proposal responds to the essential complaint of the Association, I award the Board proposal.

Article 25. **DISCIPLINE, SUSPENSION, AND DISCHARGE**

Art. 25.5 Existing Language

25.5 Employees shall be notified in writing of any serious dissatisfaction concerning their work within ten (10) working days of the discovery of the event. Such notice shall include particulars of the work performance that led to the complaint. Employees shall reply in writing and all reports and documents shall become part of their record.

Board Proposal

25.5 Employees shall be notified in writing of any serious dissatisfaction concerning their work within ten (10) working days after any investigation into the matter is completed. Such notice shall include particulars of the work performance that led to the complaint. Employees shall reply in writing and all reports and documents shall become part of their record.

The Board submitted that under the current provision, the 10-day limit is not sufficient time, especially in a complex theft or fraud allegation, in order to complete its investigation, meet with the employee to obtain his or her version of events, decide on the level of discipline and, then, to draft the discipline documentation. It submitted that such expectations are unrealistic for a 10-day period of time and the agreement ought to be altered in order for there to be a more professional, thorough, and responsible investigation and handling of this sort of matter.

Association Position

The Association opposes the Board proposal in that, it submitted, there lies potential for mischief in it. There would be nothing to prevent the Board from investigating a matter long past, and should the Board not deal with such matter in a timely fashion as required of it under the current provision, an opportunity to use discipline as a constructive, behaviour-correction device could potentially be lost. Instead, the Board proposal could allow matters requiring investigation to drag out, which seems contrary to the intention behind its proposal. Also, it submitted that the proposal may lead to inconsistent applications of this provision by the Board.

Under the current language of art. 25.5, it would seem that the requirement on the Board is to notify the employee of serious dissatisfaction concerning their work within ten days of becoming aware of the “triggering” event, including notification of the, “particulars of the work performance that led to the complaint.” This provision does not seem to require the Board to do more than particularize the work performance related to an event which it views as resulting in serious dissatisfaction with the employee’s job performance, and, to inform the employee of such dissatisfaction within ten working days following the discovery of the event. In other words, the current language does not appear to require the Board, necessarily, to conclude all the steps indicated by it within the ten working-day limit. Absent further explanation of the Board’s concerns, I do not award the Board proposal.

## Article 27. **LAYOFF AND RECALL**

### Association Proposal (New Language)

27.8 Should the Kingston Police be disbanded or reduced in size as a consequence of an agreement with the Minister of Safety and Security to have the Ontario Provincial Police assume policing responsibilities for the municipality, each member of the force not offered employment with the Ontario Provincial Police, or whose employment is terminated as a consequence of an agreement with the Ministry of Safety and Security to have the Ontario Provincial Police assume policing responsibilities shall be entitled to the following.

- (a) three months salary for every year of service or part thereof, but any event no less than three months salary;
- (b) the full hospital and medical benefit package under this agreement at the date of termination, to continue for two years from the date of termination, or

until the member is re-employed and in receipt of such benefits from the member's new employment;

(c) an amount of up to \$5,000 for education, upgrading or retraining. These funds are for tuition, books and equipment, traveling and living expenses, directly related to education upgrading or retraining. A member seeking education funding must initiate education upgrading or retraining within a period of thirty-six months after date of termination. Once a member has commenced upgrading or retraining the funds will continue to be available for a thirty-six month period.

27.9 Cash payout of the total number of sick days standing to the credit of each member, based upon the salary rate at the time of termination of employment, up to twelve (12) months salary.

27.10 The Board agrees that when a member is offered and accepts employment with the OPP, the Board will pay all costs to ensure that the member shall continue to have the same pensionable service under the Public Service Pension Plan as the member enjoyed under the OMERS pension plan.

27.11 The Board agrees that on the date of disbandment of the Force each member absent from duty by virtue of illness or injury, or an authorized absence, shall continue [sic] to be provided with all of the benefits of this Agreement, unless such benefits are otherwise provided by the Ontario Provincial Police from the date of disbandment. A member covered by this provision who has not been offered employment with the OPP shall be entitled to all of the applicable severance benefits outlined within this Agreement in addition to any other benefits of this Agreement.

27.12 In the event that the Board receives permission to disband the Service and contracts policing to another police service, other than the Ontario Provincial Police, or amalgamates with another police service, the disbandment or amalgamation shall not occur unless all members of the Service are offered the same or similar employment with the new police service. The new employment shall be at the same or higher rank or classification level without loss of seniority, and an equivalent or improved salary and benefits package as provided in this Agreement.

The Association submitted it is necessary for there to be language in the collective agreement because it has, "little confidence in . . . management . . . should there be disbandment", since this matter has apparently been discussed in public and during the last round of negotiations. The Association suggests its proposal is similar to provisions contained in the Belleville, Brockville, Gananoque and Thunder Bay collective agreements.

### Board Position

The Board opposes the Association proposal. There is no demonstrable need for this provision in the 2003 collective agreement. The Board is only aware that City Council did debate this issue in 1998, but went no further. The Board submitted that severance protections in the case of disbandment do exist pursuant to section 40 of the *Police Services Act*, whereby consent to disbandment may only occur if there is a severance agreement in place covering all affected employees, and absent such agreement, the matter is then referable to an arbitrator. Moreover, the Association proposal contains “wildly excessive severance provisions”, that are far beyond the severance protections under the *Act*.

While the provisions of the *Police Services Act* concerning severance for all employees in the case of disbandment may not be as extensive as those proposed by the Association, nonetheless, section 40 of the *Act* does provide for mechanisms that address severance issues as well as a dispute resolution mechanism should agreement on severance packages not be reached. I do not award the Association proposal.

Issue

### **PAY EQUITY**

#### Association Proposal (New Language)

#### Pay Equity Maintenance:

Both parties are in general agreement with the need to review and maintain the pay equity plan in place to ensure that appropriate work values are recognized in response to such things as Technological change, amalgamation, reorganization or any other events that affect work value;

- (a) A joint committee composed of representatives from both parties will meet within 90 days of the signing of the agreement to commence the review process;
- (b) The committee mandate will include the review of the job evaluation plan, the job data collection process and the evaluation results;
- (c) The committee will ensure that the review process is consistent with the Pay Equity Act, Pay Equity Commission directives, and relevant Tribunal decisions;

Any dispute arising from the work of this committee will be referred to an appropriate third party for resolution.

The Association submitted that following implementation of Pay Equity legislation in or about 1990 there has not been an adequate review of the original pay equity plan. While the City of Kingston supplemented its plan in 1992, 1999, 2002, with “internal equity achieved” in 2003, the Board has only made sporadic and minute pay equity efforts over the past 13 years despite the need for an update as a result of changes to the nature of positions, creation of new ones, merger of others and deletion of some positions on the civilian-side of the police services. The Association acknowledges that there are alternative routes for dealing with the above pay equity issues (it has a current file with the Pay Equity Commission). However, inclusion of its proposal in the collective agreement, which is not a precedent-setting provision *vis-a-vis* its 6 comparators, provides for an ability to file a grievance concerning pay equity issues and, as well, provides for a positive commitment by the Board that it will adhere to the spirit of the legislation.

#### Board Position

The Board opposes the Association proposal on the grounds that there is no valid labour relations reason for it. The *Pay Equity Act*, to which the Board is subject, contains a comprehensive process in regard to the creation and maintenance of pay equity in the workplace, and, in regard to which the Board perceives it is in compliance. The administrative agency of the *Act* has its own specialized tribunals to deal with enforcement issues and there is no demonstrable need for this proposal to be included in the collective agreement. The Board noted that some of the Association 6 comparators contain job evaluation provisions which are not comparable to pay equity provisions and only very few of all 11 comparators make provision for pay equity issues.

The *Pay Equity Act* has its own tribunals and mechanisms to deal with pay equity matters, including disputes arising from the legislative requirements. The Association is aware of this in that it has utilized these mechanisms. Further, the majority of comparators do not include pay equity provisions of the sort represented by the Association proposal. In these circumstances, I see no compelling reason to broaden the scope of the terms and conditions of the collective agreement. I do not award the Association proposal.

## **PRIVILEGES AND CONCESSIONS**

### Association Proposal (New Article)

The municipality shall provide on site parking for personal vehicles of all members of the Kingston Police. This parking shall be at no cost to the member and the parking lot shall be at the location where the member reports on and off duty.

### Board Position

The Board proposes that this matter not be dealt with by the parties since it cannot be dealt with in a retroactive manner. I agree with the Board position on this matter. I do not award the Association proposal.

## **SCHEDULE B      EXTENDED HEALTH BENEFITS**

### Para. 7    Paramedical Services (Existing Language)

(7) Paramedical Services - Coverage includes the services of the following practitioners (not a relative) up to a maximum of \$250 for a person insured in any benefit period, including one x-ray examination up to a maximum of \$50: physiotherapy, speech therapy, and clinical psychologists, chiropractors; osteopaths, podiatrists, and naturopaths; and therapeutic masseurs (on recommendation of a physician).

### Association Proposal

The Association proposes that the above maximum increase from \$250 to \$1000 and the amount in regard to x-ray examination increase from \$50 to \$250.

### Board Proposal

The Board proposes that the maximum coverage increase from \$250 to \$300 with no other changes to the provision.

### Para. 12    VISION CARE (Existing Language)

Vision care will include the following coverage:

- (a) \$65 for regular glasses, including frames, lenses, and dispensing.
- (b) \$90 for bifocals or trifocals; and
- (c) \$200 for contact lenses.

Each member of a family would be entitled to one pair of glasses for every two year period. The plan does not provide for repairs.

Association Proposal

The Association proposes that the above amounts all increase to \$300 and that Association members only, be entitled to \$100 for sunglasses.

Board Proposal

The Board proposes that this clause read: “Each member of a family will be entitled to \$225.00 coverage for prescriptions eyewear, every two (2) year period. The plan does not provide for repairs.”

As can be seen from the above, both parties agree that some improvement to the extent of coverage for Paramedical Services and Vision Care services ought to occur.

In regard to Paramedical Services, of the 6 Association comparators, 4 provide for chiropractic treatment for \$200 (Brantford), \$1000 (Guelph, i.e., \$50x20 visits), \$400 (London, i.e., \$20x20 visits), and \$350 (Windsor, 25 visits or \$350); physiotherapy \$400 (London), \$1000 (Windsor), and \$50x20 visits (Guelph); masseur/masseuse treatment, \$400 (London), \$200 (Brantford) \$50x20 visits (Guelph). Naturopathetic services are provided for in Guelph (\$50 to a maximum of \$1000). The Association also points out that the Kingston fire fighters collective agreement specifies \$500 for chiropractic and physiotherapy treatments. It further states that “ many police services in the province are in receipt of \$1000 limits in the various forms of paramedical coverage.”

The Board submitted that the quadruple and fivefold increase in the annual maxima sought by the Association for paramedical services and x-ray examinations, respectively, amounts to increases in costs of approximately \$35,000. This proposal, when viewed in light of the fact that the current provision includes paramedical services that not provided for in other collective agreements (e.g., speech therapy, osteopaths, podiatrists), is “very excessive and not supportable”, while its proposal is the more reasonable approach and carries increased costs of approximately \$2000.

Given that the current provision covers paramedical services not addressed in the comparator collective agreements and, thus, of greater benefit to the Association members, I award that the current maximum of “\$250” be changed to “\$350”. I award no change to the amount for x-ray examinations.

As concerns vision care, the Association 6 comparators all provide for a 2-year period in a range from \$200 (Sarnia and Guelph) to \$300 (Windsor), with London and Sudbury at \$250 and Brantford at \$225. The Board’s 8 comparators indicate, as well, that Chatham/Kent provides for \$200 for adults, \$120 (every 12 months) for children, and \$300 for contact lenses in a 2-year period. Sault Ste. Marie provides for \$225 every 2 years, while Thunder Bay is at \$225 every two years. The Board states its proposal is a comparatively fair figure that carries a \$30,500 increase in costs as contrasted against the Association proposal increased costs of \$63,000. I award the Board proposal.

## **SCHEDULE D      PART-TIME EMPLOYEES**

### 7. Vacations Existing Language

All part-time employees, other than contract employees, shall receive four percent (4%) vacation pay in lieu of vacation.

### Association Proposal

The Association seeks an increase in the percentage of in-lieu vacation pay from 4% to 6%. It noted that the Guelph and Durham collective agreements provide for a minimum of 6%, which amount can increase on the basis of cumulative part-time hours worked to 12% and 8%, respectively.

### Board Position

The Board opposes the Association proposal and submitted that no other comparator collective agreement, besides Guelph, provides for more than 4% in-lieu vacation pay. It argued there is no demonstrated need for this increase in that it does not have any problem in recruiting and retaining part-time employees. It further noted this Association proposal increases these costs by some \$5,250 per year.

Save for Guelph, no other of the 11 comparator collective agreements provides for the percentage requested by the Association. As well, the Board assertion that it has no difficulties recruiting and retaining part-time employees was not challenged by the Association. I do not award the Association proposal.

### **SCHEDULE D      PART-TIME EMPLOYEES**

9.(c) Posting for Positions Existing Language

9.(c) In order to provide continuity of service, the Board may use part-time employees to fill a position until a competition is completed.

#### Association Proposal

9.(c) In order to provide continuity of service, the Board may use part-time employees to fill a position until a competition is completed. This period of time taken to fill a position shall not exceed three (3) months, excluding vacancies due to LTD.

The Association submitted that while the current provision does not allow the Board to use part-time employees to fill a full-time position indefinitely, it asserted that this is what the Board has done “on many occasions”. In the result, the Association has “lost a number” of full-time positions. Its proposal will ensure the Board adheres to the intent of the current wording in para. 9. (c) by way of more specific language, in that three months is more than reasonable as a time-limit for purposes of para. 9. (c).

### Board Position

The Board is not opposed to a time frame that limits the length of time a part-time employee can be used to fill a full-time position. Its experience, however, leads it to conclude that a 3-month limit is too short. It proposes a limit of twelve months with exclusions, namely “vacancies due to pregnancy or parental leave, sick leave, long term disability, WSIB or other leave of absence due to illness or injury.” The Board submitted that without these exclusions, it would be forced to dismiss the part-time employee when the full-time employee absent for one of the above reasons returns to work.

The Association did not challenge the Board’s assertion that a 3-month limit is too short nor disagree with the exclusions identified by the Board. I award the Board proposal.

### **Concluding Statements**

All matters contained at Tab 3 of the Board’s “Book Of Documents” submitted in arbitration on January 8, 2004, all other matters agreed to by the parties, and, all matters awarded in this award are to form part of the January 1, 2003 - December 31, 2003 collective agreement. The parties are directed to execute their collective agreement no later than forty-five (45) days following the issuance of this award, or, at a time mutually agreed upon by them.

I remain seized of my jurisdiction in the event the parties experience any difficulty in implementing this award.

Dated at Toronto, this 18th day of March, 2004.

“William A. Marcotte”  
William A. Marcotte  
Arbitrator



