

IN THE MATTER OF AN ARBITRATION

B E T W E E N:

THE REGIONAL MUNICIPALITY OF YORK POLICE SERVICES BOARD

(The "Board")

- and -

YORK REGIONAL POLICE ASSOCIATION

(The "Association")

AND IN THE MATTER OF A GRIEVANCE CONCERNING SERVICE CREDITS FOR THE
CALCULATION OF THE REGIONAL POLICING ALLOWANCE

David K.L. Starkman

Arbitrator

APPEARANCES FOR THE BOARD

Lucy Siraco
Gilda Sutton

Counsel
Manager, Human Resources

APPEARANCES FOR THE ASSOCIATION

Barrier Chercover
Keith Aubrey

Counsel
Association Vice-President

A Hearing in this matter was held on September 27, 2004 at Aurora, Ontario

AWARD

The Association grieves that the Board has violated the provisions of the collective agreement by not including cadet service, and civilian service with the Regional Municipality of York Police Services Board (The "Board"), in the calculation of the Regional Policing Allowance.

In July, 2003 the parties signed a Memorandum of Settlement which, for the first time, provided a Regional Policing Allowance in the following terms:

Regional Policing Allowance

Effective July 1, 2003:

After 8 years service–3% of 1st Class
After 17 years of service–4% of 1st Class
After 23 years of service–5% of 1st Class

Effective July 1, 2004:

After 8 years of service–3% of 1st Class
After 17 years of service–6% of 1st Class
After 23 years of service–9% of 1st Class

The Regional Policing Allowance shall apply to all Uniform classifications, including Sergeant/Detective and Staff Sergeant/Detective Sergeant, and to members in receipt of the Detective Constable and other similar premiums pursuant to Article 17. The effective rates shall be as set out in Appendix "A" hereto. "Service" for the purposes of this provision shall be service with York

Regional Police as defined in the Uniform Working Agreement.

The RPA shall form part of base salary and shall be paid bi-weekly. It shall be included as salary in calculating overtime, vacation and statutory holiday pay, pension contributions, sick leave pay, etc. but shall not be included in calculating salary for purposes of payment of sick leave credits pursuant to paragraph 6 of Schedule "B".

Service is defined in article 1.2 of the collective agreement as:

- 1.2 "Service" shall commence and be computed from the date of being sworn into office and shall mean continuous service as a member of the York Regional Police or as a member of one of the police forces of the former municipalities of the County of York which were amalgamated into the York Regional Police by the Regional Municipality of York Act, R.S.O. 1980, Chapter 443. For the purpose of Articles 6, 12 and 16, service means continuous service.

It was the position of the Association that the language was clear in providing that service shall include time spent as a cadet or as a civilian member of the force. It was the position of the Board that article 1.2 was clear that service did not include time employed as a cadet or civilian member of the force except for the purposes of articles 6, 12, and 16 which concern sick leave gratuities, vacation entitlement, and service pay premiums respectively.

The parties agreed on certain background facts as follows:

4. The Regional Policing Allowance (RPA) is a new provision in the Uniform Collective Agreement in effect between January 1, 2003 – December 31, 2005.
5. It was the product of bargaining that took place over several months and which resulted in the Memorandum of Settlement dated July 14, 2003.
6. On November 5, 2003, the Association filed this grievance in learning that the employer was not taking into account Cadet Service in calculation of member entitlement to the RPA.
7. The Association, through counsel, has taken the same position for police officers who transferred from civilian positions within the York Regional Police and have become York Police Officers. The employer does not object to the arbitrator determining the issue with respect to both former cadets and former civilians.
8. The Association's position is that all service with the York Regional Police Service counts in determining the RPA entitlement of all York Police Officers.
9. The employer's position is that entitlement to the RPA is to be based on service as a sworn police officer with York Regional Police and that service as cadets or as civilian members of York Regional Police is not to be included in determining an officer's entitlement to the RPA.
10. The arbitrator should determine this issue and reserve on issues of compensation or implementation, if relevant, for the parties to attempt to resolve.
11. Other entitlements are or were based on service with the York Regional Police under the Uniform Agreement.
12. Vacation entitlement (as opposed to selection) is and has been based on an aggregate of all service with the York Regional Police (including cadet, civilian and police officer).
13. Pension entitlement under Omers also is based on an aggregate of all service.
14. Retirement leave is based on an aggregate of all service with the York Regional Police.
15. Service pay was based on an aggregate of all service with the York

Regional Police.

16. Senior Constable pay was based on time as a police officer with York Region.
17. All members of the York Regional Police Service are sworn in using an oath or affirmation.
18. Before Article 17.13 of the Uniform Agreement was deleted, uniform members were eligible for “senior constable pay” after 10 years of service as a police officer with the YRP (and if they met other stated qualifications). The 10-year period was calculated by the Board from the date a uniform member was sworn in as a YRP police officer. This swearing in date is referred to in YRP pay administration documentation as the uniform member’s policing (“POL”) date.
19. The date upon which a uniform member begins his/her employment with YRP is referred to in YRP pay administration documentation as the uniform member’s taken-on -strength (“TOS”) date. The Board uses a uniform member’s TOS date for purposes of Article 6 - Sick Leave Gratuities, 12 - Annual Vacation and 16 - Service Pay. (Service Pay was deleted effective July 1, 2003).

SUBMISSIONS OF THE PARTIES

The parties both agreed that the wording of the Memorandum of Settlement and article 1.2 of the collective agreement were clear, but have quite different interpretations of what it means. In the Associations’s submission article 1.2 defines service broadly as being computed from the date of being sworn into office, and means continuous service as a member of the York Regional Police which, in its view, includes service as a cadet or as a civilian employee, as these employees are required to swear an oath of confidentiality at the commencement of their employment. In its view, when the parties intended to define service more narrowly they had done so explicitly in

the collective agreement and reference was made to various provisions in this regard.

Article 12 provides for vacation entitlement based on years of service and article 12.6 states that “for the purposes of this Article seniority in the rank of Constable shall be defined as length of service from the date of being sworn in as a Police Officer with the York Regional Police”.

Article 16 provides for service pay after a certain number of years of service and this service pay was calculated and paid by the Board based on total years of service including cadet and civilian service.

Article 17.12 provides for a Detective Constable premium based on months of service and provides that “for the purposes of defining service, any single assignment to the Investigative Services Division or to a District Criminal Investigative Branch of at least 6 months duration, within 4 years prior to being so appointed shall be considered as service”.

Article 17.13 provides for a senior constable premium and as part of the eligibility criteria, it provides that a constable shall “be a First Class Constable who has completed ten years service, as a Police Officer, with the York Regional Police”.

Article 17.15(A) provides for an annual premium for Breathalyzer or Intoxalyzer Technicians and provides that such premium “shall be prorated for the total number of full months in a calendar year that the member served in a uniform capacity...”

Article 17.16 makes provisions for a premium for Technical Collision Investigator based on months of service “in the unit”, and similarly article 17.17 provides for a premium to members assigned to the Emergency Response Unit based on months of service “in the ERU”.

The Association also referred to the Salaries as set out in Schedule “C” and in particular to the notation that the Senior Constable premium was replaced by the Regional Policing Allowance effective July 1, 2003, in support of its position that the parties intended for the Regional Policing Allowance to be calculated based on the totality of an officer’s service just as had been done when calculating the senior constable premium.

Reference was also made to the definition of member in the *Police Services Act* R.S.O. 1990 as “member of a police force” means a police officer, and in the case of a municipal police force includes an employee who is not a police officer”, and to section 51(2) of the Act which provides that “a police cadet is a member of the municipal police force”.

In the course of its submissions the Association made reference to the following decisions: *Re Weyerhaeuser Chapleau and I.W.A. - Canada, Local 2995* (2001) 98 L.A.C. (4th) 150 (S. Tacon), *Re City of Richmond and Canadian Union of Public Employees, Local 718* (1995) 52 L.A.C. (4th) 380 (M. Thompson), *Medis Health and Pharmaceutical Services Ltd. and Teamsters, Chemical and Allied Workers, Loc. 424* (2000) 93 L.A.C. (4th) 118 (T.E. Armstrong), *Re: Sutton Place Hotel and U.S.W.A.*, (2001) 107 L.A.C. (4th) 370 (T.E. Armstrong), *Ivaco Rolling Mills, v. United Steelworkers of America, Local 7940* (Retirement Benefits Grievance),

[2001] O.L.A.A. No. 867 (M. Bendel), *Re Lear Seating Canada Ltd. and Canadian Automobile Workers, Local 1524*, (1992) 30 L.A.C. (4th) 143 (R.L. Kennedy),

The Board submitted that article 1.2 was clear and provided the general rule that service was to be calculated from the date that persons were sworn in as police officers, and did not include service as a cadet or civilian member of the police service, and emphasized that the second sentence of article 1.2 provided that “For the purpose of Articles 6, 12 and 16 service means continuous service.

Article 6 concerns sick leave gratuities, article 12 concerns annual vacation entitlement, and article 16 concerns service pay premiums. By making it clear that, for the purpose of these entitlements, service means continuous service, including service as a cadet or civilian member of the police service, the Board submitted, that when calculating service for other entitlements under the collective agreement, the parties intended that service be restricted to time spent as a police officer. In its submission, there would be no need for the second sentence of article 1.2 if the first sentence meant that, as a general rule, all service was to be counted.

The Board also referred to article 26.4 of the agreement which provides that:

- 26.4 Members retiring from the York Regional Police after thirty (30) years service or at age sixty (60) with at least twenty (20) years service will be allowed up to three (3) months retirement leave. Such leave shall be taken in the three (3) months immediately preceding their date of retirement. Where the member has remaining to him vacation entitlement in respect of the calendar year in which he retires, such vacation entitlement shall be

scheduled for and taken in the three (3) month retirement leave period.

Where a member has already used all or part of his vacation leave entitlement in respect of the calendar year in which he retire, the three (3) month retirement leave period shall be reduced by the number of days of entitlement already taken in the calendar year in question.

It was acknowledged that the Board recognized all service for the purpose of this article but did so because the retirement leave is tied to outstanding vacation entitlement.

The Board also referred to article 1.1 which provides that “In this Agreement “member” means a member presently and hereinafter appointed to the York Regional Police holding office under oath according to statute”. In its view, the words “holding office under oath” refers to the oath sworn to become a police officer and not to oaths of secrecy.

With respect to the Association’s submissions concerning the calculation of service for the purpose of the premiums in article 17, it was submitted that such words were necessary, because there were civilian positions in the unit, and that the parties wanted to make it clear that service in the unit as a civilian would not be counted as service for the purpose of calculating the premium.

In the course of its submissions, the Employer made reference to the following arbitral decision:

Re Ipsco Inc. and International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Shopmens Local Union No. 805, (2004) 124 L.A.C. (4th) 403 (W.J. Warren), *Re Brandon General Hospital and Manitoba Nurses Union, Loc 4*, (1996) 56 L.A.C. (4th) 174 (J.M.

Chapman), *Re Vancouver Hospital and Health Sciences Centre and Hospital Employees' Union, Local 180*, (1996) 54 L.A.C. (4th) 35 (N. Morrison), *Re Delta Toronto East Hotel and Hotel Employees Restaurant Employees Union, Local 75* (2001) 98 L.A.C. (4th) 31 (K.P. Swan), *Re Fanshawe College and Ontario Public Service Employees' Union*, (1982) 4 L.A.C. (3d) 10 (K.E. Swinton), *Re Government of Province of Alberta and Alberta Union of Provincial Employees (Gaudette)* (1994) 40 L.A.C. (4th) 30 (J. Moreau),

DECISION

The facts are not in dispute. The parties signed a memorandum of understanding in July, 2003 which, for the first time, provided for a Regional Policing Allowance and provided that the calculation of service shall be in accordance with the York Regional Police Uniform Working Agreement. Article 1.2 of that agreement provides that service shall commence and be computed from the date of being sworn into office and shall mean continuous service as a member of the York Regional Police. The second sentence of article 1.2 provides that for the purpose of Articles 6, 12, and 16, service means continuous service.

In their submissions the parties articulated differing views as to how service was to be calculated. According to the Association, service is defined broadly in article 1.2 and would include service as a cadet and/or a civilian employee and should be interpreted and applied broadly, except where the parties have specifically provided for a more restricted definition of service. According to the Board, service is defined in article 1.2 as not including service as a cadet and/or civilian, and should be interpreted and applied restrictively, except where the parties

have specifically provided for a broader definition such as in the second sentence of article 1.2 which concerns articles 6, 12, and 16, of the collective agreement.

In determining this matter I am endeavouring to discern the intention of the parties from the language they have used in the collective agreement, and, to the greatest extent possible, to give meaning to all the words and provisions of the collective agreement. Article 1.1 defines member, for the purposes of this agreement, as a person holding office under oath, and article 1.2 defines service as commencing and being computed from the date of being sworn into office.

It was agreed at the hearing that cadets, special constables, police officers and civilian employees all swear or affirm an oath of confidentiality before a commissioner of oaths in the following form:

I affirm that I will not disclose any information obtained by me in the course of my duties as a “police officer, police cadet in Training , civilian employee, as the case may be, except as may be authorized or required by law”.

Police Officers, in addition to swearing an oath of confidentiality, also swear/affirm an oath as a police officer in the following form before a Judge or Justice of the Peace:

I solemnly swear that I will be loyal to Her Majesty the Queen and to Canada, that I will uphold the Constitution of Canada and that I will, to the best of my ability, preserve the peace, prevent offences and discharge my other duties as a Police Officer faithfully, impartially and according to law. So help me God.

In my view, there is a difference between taking an oath to perform the duties of a police officer, which is sworn only by police officers, and an oath of confidentiality which is sworn by all employees of the police service. Article 1.1 refers to persons “holding office under oath”, and article 1.2 refers to persons being “sworn into office”, and when I review the nature of the oaths, it appears that police officers are taking an oath of office, which concerns how they will perform the entirety of their duties and responsibilities as police officers. The oath of secrecy, on the other hand, does not concern itself with the entirety of the duties performed by police cadets or civilian employees, and instead refers to and confirms a prohibition against the disclosure of certain information which is only a narrow and limited part of their respective jobs.

Put more succinctly, I have concluded that, when the parties referred in article 1.2 to service being calculated from the date of being sworn into office, they were referring to the oath/affirmation taken by police officers and not to the oath/affirmation of confidentiality which is taken by police officers, cadets, and civilian employees.

Accordingly, I have concluded that article 1.2 means that service shall commence from the date of being sworn into office as a police officer, and that this service must be continuous service as a police officer. I am reinforced in this conclusion by the second sentence of article 1.2 which provides that for the purpose of Articles 6, 12, and 16, service means continuous service. While there may be some vagueness and perhaps uncertainty about this sentence when read in isolation, if article 1.2 is given the meaning preferred by the Association, that service as defined in the first sentence means all service, including cadet and civilian service with the York Regional Police

service, there would be no need to have the second sentence of article 1.2 which would be entirely repetitive.

If however, the first sentence means that service is calculated as of the date that a person is sworn into office as a police officer, and does not include cadet or civilian service, as submitted by the Board, then the second sentence of article 1.2 is required to make it clear that, in matters of sick leave gratuities, vacation entitlement, and service pay premiums, the parties intended that the entire uninterrupted service, including cadet and civilian service, is to be counted for the purpose of these calculations.

The fact that in article 17 there is specific reference to the calculation of service, does not, in my view, detract from my conclusion that the language used in article 1.2 indicates an intention by the parties to calculate service based on the date that a person is sworn into office as a police officer. Articles 17.12, 17.15(A), and 17.16 all make reference to the calculation of service based on the length of time that an officer was working as a Detective Constable, Breathalyzer or Intoxalyzer Technician or in the Emergency Response Unit respectively, so as to exclude from receiving the premium officers who did not work in such capacities, and the language in article 17.13 restricts the senior constable premium to First Class constables who have completed ten years of service with the York Regional Police. The fact that schedule "C" indicates that the senior constable premium was being replaced by the Regional Policing Allowance effective July 1, 2003, is not determinative because the parties both knew and had agreed that the Regional Policing Allowance would replace service pay premiums and senior constable premiums as of

July 1, 2003 and the collective agreement indicates that both these premiums were deleted as of July 1, 2003.

Having reviewed the matter, I am satisfied that, according to article 1.2, service for the purposes of calculating the Regional Policing Allowance is to be calculated from the date a person is sworn into office as a police officer and shall mean continuous service, and shall not include service as a cadet or civilian member of the York Regional Police Service.

The grievance is therefore denied.

Dated at Maberly, Ontario this 8th day of October, 2004

David K.L. Starkman