

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

BETWEEN:

Cornwall Police Association

(Hereinafter called the "Association")

and

Cornwall Community Police Services Board

(Hereinafter called the "CCPS")

Board of Arbitration

Belinda A. Kirkwood, Sole Arbitrator

Appearances for the Cornwall Community Police Services Board

B. Richard Baldwin, Counsel
Herbert Law, Associate
Phil Poirier, Chair of the CCPS, Mayor of Cornwall
Linda Wilson, Chair Negotiating Team
Danny Aikman, Deputy Chief
Denis Thibault, Board Member
Jacques Lemire, Board Member

Appearances for the Association

Bill Cole, Consultant
Trevor Butler, President
Rick Carter, Chair Negotiating Team
Dan O'Reilly, Negotiating Team Member
Jeff Carroll, Negotiating Team Member
Anna Joseph, Negotiating Team Member

Date of Hearing

March 20, 2006 in Cornwall, Ontario

Written Submissions

March 31, 2006, April 14, 2006, April 24, 2006 April 28, 2006, and
May 15, 2006

AWARD

Introduction

The CCPS is responsible for the delivery of police services to the City of Cornwall (“the City”), which has a population of 45,640 as of the 2001 census. The CCPS is funded by the City.

The Association is the bargaining agent for 82 uniform members and 42 civilian members. Five senior police officers and senior civilian members belong to the Senior Officers’ Association, and accordingly are not part of this bargaining unit.

The most recent collective agreement between the parties expired on December 31, 2004. The parties were unable to reach a settlement through collective bargaining and referred the outstanding issues to arbitration.

By letter dated November 18, 2005, I was appointed by the Ontario Police Commission under the *Police Services Act* R.S.O. 1990 c.P15 (“the PSA”) to resolve the issues in dispute between the CCPS and the Association through a mediation/arbitration process. After two days of mediation on January 18, 2006 and January 23, 2006, the parties were still unable to reach an agreement and accordingly an arbitration of the outstanding issues was held on March 20, 2006. Further information and submissions were provided in writing on March 31, 2006, April 14, 2006, April 24, 2006, April 28, 2006 and May 15, 2006.

Pursuant to my authority under the PSA, I direct that the items that have been agreed to by the parties, together with this award on the issues in dispute, shall constitute the terms of the collective agreement to be entered into by the parties. As further agreed by the parties, the collective agreement settled by this award has a twenty-four month term running from January 1, 2005 to December 31, 2006.

The items placed in issue by the parties are:

Article 2.01 Seniority –Previous Service; Direct Entry

Article 9	Salaries
Article 9.01/Appendix A	Salaries (Uniform) Classification Differentials
New	Uniform Service Allowance/Service Recognition Pay
Article 9.02/Appendix A	Salaries (Civilian)
Article 9.02	Salaries (Civilian) Specialist Payments and Criminal Investigators Information Technology Manager
Article 9.03	Senior Constable Pay
Article 13.03	Option of Cashing in Holiday Pay in lieu of Time Off
Article 14	Medical, Insurance and Hospitalization
New	Retiree Benefits - Eligibility Out of Country Coverage
New	Hearing Aides Dispensing Fee Cap Physiotherapy Paramedical Services
Article 14.06	Dependent Coverage
Article 14.02	Semi-private ward accommodation
New	Training
Article 19	Service Pay
Article 29.01	Maternity/Paternity Leave
Schedule B, Casual Days,	
New	Permanent Part Time Civilian Employees
Schedule B	Job Openings
Retroactivity	

Principles

The role of an arbitrator in an interest dispute is to award a collective agreement which best replicates the agreement that would have been the result if the parties had been

free to negotiate a collective agreement without legislation prohibiting the parties' ability to strike and lock out. In order to make that determination there must be a consideration of the needs and priorities of the parties, and the strength and weaknesses of their respective positions, which are ascertained in part through a consideration of collective agreements which have been negotiated by other parties in similar situations and further, a consideration of their respective positions in light of the broader economic environment, as manifested by the factors which subsection 122 (5) of the PSA directs an arbitrator to consider. These factors are: the employer's ability to pay in light of its fiscal situation, 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; the economic environment in Ontario and in the municipality; a comparison as between the employees and other comparable employees in the public and private sectors; the terms and conditions of employment and the nature of the work performed; the employer's ability to attract and retain qualified employees, the interest and welfare of the community served by the police force; and any local factors affecting the community.

Other negotiated collective agreements particularly those which are entered into by other parties which closely resemble these parties and service similar communities indicate trends in collective bargaining, and are important factors which the parties would have considered and relied upon in negotiating a collective agreement.

For the most part, the Association compared themselves to Belleville, North Bay, South Simcoe, Peterborough, Oxford Community, and Sarnia which are consistent with medium size populations and medium size services. However, other relevant comparators are those which reflect similar populations and similar services, but are also within a relevant geographical area. Even though Brockville represents a smaller community and smaller service, and Kingston, a larger service and community, these services, which were referred to by the CCPS, are sufficiently similar to this community that they should also be considered.

Historically, the Association and the CCPS have not used the Cornwall Firefighters as comparators, but have compared themselves to other police services, and accordingly no collective agreements or awards affecting firefighters were provided in support. Both parties relied upon agreements and awards of other police services.

Freely negotiated collective agreements, by their nature, usually take into account local and economic realities, and to a large part the factors as set out in subsection 122(5) of the PSA. As Arbitrator Picher stated in *The Government of Newfoundland and Labrador and the Royal Newfoundland Constabulary Association* (unreported) (January 29, 1991) (Picher):

As a general matter, freely negotiated police force wage settlements are themselves influenced by general economic conditions such as unemployment rates, the consumer price index and inflation and, to some extent, the overall performance of the economy. They therefore represent a reasonably reliable reflection of all of those factors and influences as they impact on the terms and conditions of employment of police officers generally.

However, as each community and service is distinct and reflects the particular dynamics, interests and the particular economic situation of that community, and reflect the priorities of the particular parties, other collective agreements cannot be slavishly followed and applied. As Arbitrator McGinley pointed out in *Saint John Firefighters Association and the City of Saint John* (unreported) (August 24, 1999) (McGinley) at page 3, that:

The notion of comparability involves references which, when reasonably considered and weighed, do offer somewhat tangible guidelines, but it should also be held in mind that they should be seen only as guidelines and not commandments.

There is a further caveat, however, in weighing other collective agreements. It is important not to be driven solely by the comparison of particular items as parties place differing weights on various items in negotiating a collective agreement, when setting their particular priorities, and in coming to an agreement.

As reflected by the factors to be considered as directed in subsection 122(5) of the PSA, a proposed agreement must be considered in light of the economic environment of the community.

The Association submitted that as Cornwall has had the benefit of being able to sell its Hydro Utility in 1998 for \$68 million dollars, that it has the resources to fund its demands.

CCPS Counsel submitted that the City did sell its Hydro Utility in 1998 and has used three quarters of its revenue to reduce its debts and has placed the remaining quarter in a capital account to benefit its citizens. Council passed a by-law prohibiting the use of the funds for traditional annual operation budget items, annual operating costs of non-owned facilities, and for increases to the CCPS's operating budget. The result of that by-law is that the City does not have this asset at its disposal to finance the collective agreement between these parties, and therefore will have to finance its police service budget in the normal course through general taxation revenues.

The CCPS did not take the position that it had an inability to pay normative wages and increases. On the contrary, CCPS's Counsel submitted that the CCPS has not underfunded its police service in the past, and it wished to provide normative increases to those in the service in conjunction with the total compensation package and in line with the factors outlined in subsection 122(5) of the PSA and thereby be normative for the local community.

When considering the community, in the last few years Cornwall has made efforts to diversify its economy and has attracted new business to the community. However, at the same time, it has been affected negatively by lay-offs. During the term of this collective agreement, approximately 280 employees have been laid off in 2005 by Cornwall employers, and it will be affected further by the closure of the Domtar plant which will result in the loss of 910 jobs as of March 2006. With the closure of Domtar, the City can expect that its tax revenues will ultimately be reduced from \$1,000,000 to \$30,000. The City has not yet felt the full impact of this closure on its tax revenue. Nevertheless, the City's unemployment rate is being affected. In 2005, prior to the Domtar closure, the average unemployment rate in Cornwall of 9.2% was greater than the average unemployment rate for Ontario which was 5.5%.

Among the comparative municipalities only Brockville has higher per capita operational expenditures. A significant component of those expenditures was attributed to compensation. Although housing costs are lower than those found in its comparable communities, its housing taxes are higher. At the same time, the residents of Cornwall have lower earnings and income than those of neighbouring municipalities.

I have considered settlements in the police sector which play an important role in determining the outcome of negotiations, as well as the economic situation of the community, the settlements of the municipal employees and the private sector employees, which I am informed are less than the proposal made by the CCPS, and finally the taxpayer, as the payment of the collective agreement falls upon the City and ultimately the taxpayer. As a result, in replicating a collective agreement, I have awarded normative increases, when considering the total compensation package.

Salary and Responsibility Pay

Salary

Historically, the uniform and civilian members have received the same percentage increase, based on the negotiated changes to the First Class Constable rate. In the last round of negotiations which led to a negotiated collective agreement, the uniform members received an additional market adjustment.

The Association proposed that the base rate of the First Class Constable salary be increased in 2005 by 4.44% to bring the First Class Constable salary to \$68,171, in line with the average wage of the First Class Constable salary within their comparator group. For 2006, only three services among their comparables, Belleville, South Simcoe and Peterborough have reached agreements. The Association proposed a further increase in 2006 of 3.1% which would bring the First Class Constable salary to \$70,284 and maintain its position relative to that of Belleville, Peterborough and South Simcoe.

The CCPS proposed the following increases to the First Class Constable salary:

January 1, 2005	2.5%
July 1, 2005	1.0%

January 1, 2006	2.5%
July 1, 2006	1.0%

The effect of these increases is to raise the First Class Constable salaries as follows:

January 1, 2005	2.5% to \$66,905.05
July 1, 2005	1.0% to \$67,574.10
January 1, 2006	2.5% to \$69,263.45
July 1, 2006	1.0% to \$69,956.09

The CCPS submitted that in 2002, the Service was within 1% of the First Class Constable salary in its local comparators of Brockville, Belleville, and Kingston, and under its proposal, the difference in the end rate of a First Class Constable salary will have been eliminated in 2005. These increases are also in excess of those received by the City's municipal workers, who do not receive the retiree benefits which the uniform members receive, and for the most part, and are greater than the increases found in settlements reached in the private sector between local businesses and their unions.

When considering the collective agreements reached in Belleville, South Simcoe, Peterborough, Oxford County, Sarnia, Brockville and Kingston, the average salary of the First Class Constable increased by 3.67% between 2004 and 2005. Similarly, the collective agreements of services in a close geographical area, being Belleville, Peterborough, Brockville and Kingston showed an average increase in the First Class Constable salary of 3.66%. With respect to 2006, the only available freely negotiated collective agreements within the comparators in the same geographic area are Belleville and Peterborough. South Simcoe, which also is an acceptable comparator, has reached a freely negotiated agreement. The average increase in the salaries of the First Class Constable among these comparators is 3.21% and their average end rate is \$70,045. These collective agreements are indicative of a normative trend in police services in similar communities.

In keeping with the normative increases among the comparative group, and maintaining their relationship with Belleville, Brockville, Peterborough and Kingston, and considering Cornwall's economic environment, I hereby award the following increases to both the

uniform and civilian members placing the First Class Constable rate in Cornwall, slightly ahead of Belleville and Brockville and slightly behind the Peterborough and Kingston Services:

January 1, 2005	2.6%
July 1, 2005	1%
January 1, 2006	2.5%
July 1, 2006	1.0%

New - Responsibility Pay

The Association proposed the introduction of a service recognition pay, the Uniform Service Allowance. While the Association recognized that initially this form of increase was instituted in Toronto as a method of retaining and attracting officers, the Association was not submitting that there was any retention problem in Cornwall and the statistics did not indicate that there is any such problem. However, the Association submitted that the introduction of a Uniform Service Allowance is in conformity with the majority of collective agreements negotiated in the last twenty-four months.

The Uniform Service Allowance as proposed, increases the base wages of its uniform members in accordance with service levels reached. The increase is calculated on the basis of the First Class Constable rate, and is then applicable to all provisions in the collective agreement that use the base rate, such as in the determination of vacation pay, overtime, court time etc.

The Association proposed that the base rate of the salary of a First Class Constable be increased on the anniversary dates, as follows:

Anniversary Date	2005	2006
8 years	3%	3%
17 years	5%	6%
23 years	7%	9%

The Association Representative submitted that Senior Constables who are currently receiving 104% of the First Constable rate be grandfathered, until they receive the 5% or 6% increase after 17 years.

The CCPS asserted that this form of increase, although not called retention pay by the Association was introduced in 2003 as the City of Toronto Service/Retention pay increase, and as conceded by the Association, Cornwall does not have a retention problem. The CCPS therefore submitted that this is an expensive item with little value. The CCPS also submitted that the Uniform Service Allowance proposed was not the norm as there were other large services such as Guelph and Chatham Kent, which do not have responsibility pay, and within the comparative group, Arbitrator McLaren in his award between the *Brockville Police Association and the Brockville Police Services CCPS*, (unreported) (March 5, 2005) rejected responsibility pay for Brockville on the basis that Brockville did not have a retention problem.

The CCPS further submitted that the introduction of these wage increases will have a significant impact on its budget. The cost to introduce such an allowance for 2005 would be approximately \$193,000, and for 2006, would be approximately \$201,000. Given the cost of the Association's proposal for the Uniform Service Allowance, CCPS's counsel submitted that if such an allowance were awarded, and, should funding and taxation levels not be adequate, the CCPS may have to lay off members holding the Crime Analyst Position, and the Victim Assistance Coordinator, and two Dispatchers, who are important to the community.

The CCPS opposed the introduction of a Uniform Service Allowance, but recognized the importance of this item to the Association, and was prepared to consider it, if the total compensation package was considered, and significant trade-offs were made to offset the high cost of this increase to the salary grid. The CCPS submitted that the total compensation of its members is equivalent, if not superior, to those services in which the police officers receive some form of service/recognition pay as arguably its members have the best retiree benefits package in Ontario. The CCPS submitted that assuming a normative increase to the general wages, significant trade-offs were consistent with

overall compensation and replication principles of interest disputes. The CCPS would not agree to a uniform service allowance without financial compromises being made.

The Association, however, did not agree that significant trade-offs were appropriate, submitting that in other communities this benefit was obtained without such trade-offs. It did recognize however, that in other communities, Senior Officer Pay and Service Pay had been traded in order to obtain this form of service payment. Nevertheless, the Association also submitted that Cornwall has the resources to fund its demands.

In this arbitration, the most significant item which the Association was pursuing was the introduction of the Uniform Service Allowance. Due to the composition of the bargaining unit, which has a large proportion of officers with lengthy service, and due to the increasing numbers of other police services with a form of service payment, this is an item, which in itself, would likely have pushed the Association to the point of strike if they had that opportunity and were not able to obtain an acceptable service payment through negotiations.

Although a service/responsibility allowance began in Toronto in 2003 to create an incentive for the officers to stay on the Toronto force, it has since been adapted by many communities such that it can no longer be characterized solely as a retention pay, but rather a change in the salary structure providing additional compensation based upon service or responsibility. The adoption of such changes to the rate structure in 28 freely negotiated collective agreements in the period of 24 months, in large, medium and small services and communities, illustrate that increased compensation based on attaining levels of service supports the introduction of a change in the salary structure and rate.

Within the Cornwall's comparative group, Peterborough and Kingston, had adopted a form of payment for service before this trend had become evident, and they negotiated a 2% increase after 10 years of service and 5% increase after 20 years of service. Subsequently, however, most collective agreements where a service recognition pay has been introduced have changed the base rate with a higher increase at three levels of service 8, 17 and 23 years. Although Chatham Kent and Guelph, which have larger populations than Cornwall, do not have a service allowance in their collective agreement, their most current collective agreements were negotiated prior to the trend

becoming apparent and only cover the period up to the end of 2005. No new collective agreement has yet been negotiated for the relevant period in these municipalities.

There is a significant cost to implementing the pay scheme suggested by the Association as it will affect the majority of officers immediately. Thirty-nine officers have over ten years of seniority. Of the 39 officers with greater than ten years of service, 34 have greater than 16 years of service and 25 have greater than 20 years of service. Such significant changes to the collective agreement, which create a significant increase to the cost of the collective agreement, cannot be achieved without trade-offs. This is not without precedent. For instance, when the City of Toronto introduced service/retention pay, Service Pay, Court Elect and Senior Constable pay were eliminated, and there were modifications made to the benefit plans. I am advised by CCPS Counsel that in Belleville, the ability to cash out vacation pay was affected, and in Peterborough, changes were made to shift premiums in order to obtain a service/responsibility allowance. Arbitrator Snow reported in *The Oxford Community Police Services Board and The Oxford Community Police Association* (unreported) (September 24, 2005 (Snow)) that Peterborough obtained its allowance after trade-offs were made.

A Uniform Service Allowance increase must also be considered in terms of the benefits which the members already receive. The retiree benefits which these members receive are superior to almost every police service in the province and are better than Cornwall's municipal employees' benefits. The CCPS funds benefits for retirees until the member dies, and they are not curtailed at age 65 as found in most plans, and the retired member does not contribute to its costs. In terms of comparing one collective agreement to another and replicating the collective agreement that would have been negotiated, this significant benefit has to be taken into account.

The parties are already in the second year of the agreement covered by this award, and some costs cannot be recovered. When considering the cost of the total package, the introduction of a service recognition increase in the form of the Uniform Service Allowance is to take effect as of January 1, 2006, and the increase should be at a more moderate rate, and yet be consistent with many services which have begun this form of payment. A moderate form was applied in the award by Arbitrator Snow in *North Bay*

Police Services Board and The North Bay Police Association (Sworn Employees)
(unreported) (February 9, 2005) (Snow).

Accordingly, I award in lieu of Article 19 of the expired collective agreement, that as of January 1, 2006, the base salary for all uniform members of the bargaining unit be adjusted on the completion of 8 (eight) years of service, on his or her anniversary date, by an additional 3% of a First Class Constable's salary; on the completion of 17 (seventeen) years of service, on his or her anniversary date, by an additional 4% of a First Class Constable's salary; and on the completion of 23 (twenty-three) years of service, on his or her anniversary date, by an additional 5% of a First Class Constable's salary.

Amounts paid will be added to the members' base salary and will form part of the uniformed member's regular annual salary for the purpose of determining the annual rate. This adjusted rate will be used to determine all entitlements under the collective agreement, which are calculated on the basis of a member's hourly or regular annual salary.

For the purposes of "service" as relied upon in this provision only and in the application of this provision for the calculation of vacation pay, "service" shall include all police service for existing members. For any new members joining the Cornwall Community Police Service, "service" shall mean service with the Cornwall Police Service only.

Senior Constables presently receive an additional 4% after 12 years of service, which only a few services provide for Senior Constables in the province. As the Association was seeking to replicate the system of service payments as set out above, it is inconsistent that such payments continue, and accordingly the current Article 9.03(g) shall be deleted from this collective agreement.

As with the 27 of the 28 collective agreements where responsibility pay has been adopted, the corresponding service pay provisions are to be deleted. Therefore, the current Article 19.01 and 19.02 which provide lump payments for service at various levels shall be deleted from this collective agreement.

In terms of offsetting some of the costs and trade-offs, Cornwall senior members have enjoyed greater senior officer pay than found in most other services, as they have received 104% of the First Class Constable salary, rather than the more common 101%-102% of salary, and they have also received greater service pay. By eliminating the Senior Officer Pay and the Service pay, some of the costs, at a slightly higher rate, will be recovered.

Article 2.01 Seniority – Previous Service Carry Over

The Association proposed to amend the service and seniority provisions of the collective agreement in Article 2.01 to allow a member to count his or her service with any other police service in Canada for the purpose of calculating vacation and responsibility pay. For those hired after this award, the Association proposed that police service shall mean service only with the Cornwall Community Police Service.

“Service” in prior police services has been taken into account in the introduction of service/responsibility allowances, and accordingly I award a change to the definition of “service” to be consistent with the service required for the introduction and application of the Uniform Service Allowance as awarded, but for no other purpose.

Article 9 – Salaries (Classification Differentials)

Appendix A

The Association sought changes to the differentials between the various classifications, both above, and below the First Class Constable, in accordance with other similarly structured police services and asked that such changes be reflected in the Appendix in the form of percentages, rather than setting out salaries for each rank. The salaries in the current collective agreement as converted to percentages of the First Class Constable rate in the collective agreement, and the Association’s request is as follows:

Classification	Present	Proposed by the Association
4 th Class Constable	56	70
3 rd Class Constable	68	80
2 nd Class Constable	83	90
1st Class Constable	100	100
Senior Constable	104	104
Sgt.	113	113
Staff Sgt.	9.1% of 113	12% of 113

The CCPS maintained that there should be no change as there was no demonstrated need for the increase and that all constables invariably rise through the ranks.

The Association demonstrated that the salary differential of those constables below the rank of First Class Constable in Cornwall was behind the differentials found in their comparables. The average percent difference was 64.7% for a 4th Class Constable as compared to 55.5% for Cornwall, 76.9% for a 3rd Class Constable as compared to 68.46% and 87.2% for a 2nd Class Constable as compared to 83.32%. The CCPS recognized that that the position of Staff Sergeant appeared low, but submitted that after considering his length of service, his salary was not significantly out of line for the area. Appendix A states the salary of each classification, but the relationship of the salary of each classification to the rank of First Class Constable is not expressed in a percentage of the First Class Constable salary and is not readily apparent. As there is a relationship between the salary of each classification, and each party views the classification in relation to the First Class Constable rate, the use of percentages is a clearer way of expressing that relationship.

For the most part, differentials are expressed in terms of percentages of the First Class Constable rate, and accordingly in moving towards normative differentials, I award the following percentage changes:

Classification	Differential
4 th Class Constable	60
3 rd Class Constable	70
2 nd Class Constable	85
First Class Constable	100
Senior Constable	Deleted as awarded above
Sgt.	113
Staff Sgt.	10% of 113

Article 9.01 Civilian Positions

The Association proposed changes to salaries of three civilian positions, that of the Court Case Manager, the Media Relations Officer and the Information Technology Officer. The Association submitted that these positions are usually uniform bargaining unit positions, but in this bargaining unit are civilian positions. The members in these positions were formerly uniform members, and moved to these positions when each was being accommodated. The Association proposed that these positions which are currently paid \$50,494, be paid at the rate of 90% of the First Class Constable rate, which if had been applicable in 2004, would have resulted in a salary of \$58,745.

Although the duties may have been performed by persons who were formerly uniform members, an interest dispute is not the right forum to dispute the salary received after accommodation. Aside from rectifying an accommodation in the manner proposed by the Association, historically, these positions have been civilian positions in this bargaining unit, and the data did not support a change in the treatment of these positions. Therefore I deny the Association's request.

The Association proposed that the salary of the Information Technology Officer be increased from the current \$55,543 to \$65,000 in 2005 and \$75,000 in 2006.

As the Information Technology Officer has applied to the Ontario Civilian Commission on Policing (OCCOPS) to be considered as part of the newly formed Senior Officers Association, I will remain seized of the resolution of the salary for this position, should this position remain in this bargaining unit. However in the interim, the Information Technology Officer is to receive the same percentage increase as the other civilian members.

New – Specialist Payments and Criminal Investigators

The collective agreement does not provide for specialist pay or premium pay for members performing criminal investigation duties.

The Association proposes that the positions of Breath Technician, Scene of Crime Officer, Canine Officer, CERT, and Negotiator receive an additional 1% of their salary for each of the specialities that they obtain, to recognize their commitment and training, and that the positions of Criminal Investigator, Ident, and Training Officer receive an additional 6% of their salaries, to reflect the importance of their work.

The CCPS took the position that there was no demonstrated need for such payments. All the members holding these positions were First Class Constables, and if they were assigned such duties, it would appear that they were being promoted over other First Class Officers.

In North Bay, Peterborough and Belleville, the positions of Breath Technician, Scene of Crime Officer, Canine Officer, CERT, and Negotiator are paid a set premium for their specialities rather than a percentage of their salary, which range from \$200 to \$500 annually. Due to the other improvements to the collective agreement resulting from this award, I award \$200 annually for obtaining and recognizing their specialization. To reflect these qualifications in such a way does not create an appearance of promotion.

Although the positions of Criminal Investigator, Ident and Training Officers are important positions, more overtime is available to them. At this time, there is no similar demonstrated need for paying specialist pay for these positions.

Article 14 – Medical, Insurance and Hospitalization

Article 14.06 currently provides.

The CCPS shall provide the above benefits to retired members, spouse, widows, widowers, and their eligible dependents as defined in the plan where they are not otherwise provided under any government or other program.

The Association proposed that the dependent children of retirees be entitled to coverage as more and more members are having children in their forties, and it is possible that a member could retire where a child is considered an eligible dependent.

In the 1998 contract negotiations, the parties agreed to exclude children as “eligible dependents”, and in two collective agreements covering the period from 1998 to 2002, the parties included a provision removing that coverage. In the collective agreement covering 2003 to 2004, the parties removed the provision as it was understood that dependent coverage for retirees was not provided. There is no demonstrated need for the change proposed by the Association, and I decline to make this award.

The CCPS proposed three amendments to the retiree benefits. The CCPS proposed that for retirements after January 1, 2006, a member must have 25 years of continuous service with the Cornwall Community Police Service or the member retires on an unreduced OMERS pension. There is presently no such requirement.

The CCPS proposed that definition of spousal coverage be clarified to avoid ambiguity, such that the definition of spousal coverage for a retiree is limited to the spouse as of the date of retirement.

The CCPS proposed that in exchange for the Uniform Service Allowance, that semi-private coverage as provided in Article 14.02 be eliminated for both active retirees and active members, effective January 1, 2006, as this coverage is expensive, and yet its application is moot as most people who are hospitalized are automatically upgraded to semi-private wards depending on the degree of illness or injury sustained. This change would create a savings to the CCPS of approximately \$7,000 for active members and \$28,000 for retirees.

Among the comparator group, none of the services provide payment of premiums beyond the retiree reaching the age of 65. Therefore all the benefits received by the retirees are in excess of those in the comparator group. However, there has been no demonstrated need to introduce a new eligibility factor to obtain the benefits provided by the CCPS to its retirees as proposed.

Although spousal coverage for a retiree beyond the age of 65 as provided in Cornwall is greater than its comparators, as coverage is provided for a spouse, there is no reason to limit spousal coverage for the retiree to the spouse of the member as at the date of retirement.

I do not award a change to the semi-private coverage provided. There are no examples given where no member or retiree was not entitled to semi-private coverage.

New – Hearing Aides

The Association proposes a new provision to provide hearing aids with repair and replacement entitlements up to a lifetime of \$5,000 per year.

In light of the current retiree benefits and the introduction of the Uniform Service Allowance, I decline to make this award.

Article 29.01 Maternity Leave

The CCPS currently provides for 80% of the regular pay for the first two weeks of maternity leave and a top up of EI benefits to 93% of regular pay for the following 15

weeks that the member is off work for the maternity leave, and similarly for a member who adopts a child. There is no payment made for leave beyond these seventeen weeks.

The Association proposes that top up of 93% salary be extended to thirty-five weeks in order to cover the full period of maternity and paternity leave.

These parties had previously negotiated a higher percentage top up of Employment Insurance benefits, but for a shorter period of time than that found in the comparable group. Among the comparable group, there were few examples of top up payments, and among those, there were differences in the length of time covered, some provided longer coverage, but at less top up. The Association's brief did not provide a compelling argument for me to change to this provision at this time, and I do not award their request.

Schedule B – Job Openings

Currently, permanent vacancies and new positions must be posted for five days. The Association proposes that this posting requirement be applicable for temporary vacancies which the CCPS expects to last more than a week (five working days), and further that the CCPS offer its full time members the first opportunity to apply for these openings.

The CCPS agreed with the Association's proposal to provide full time members such opportunity. In accordance with this agreement, I make the following award as proposed by the Association.

Present full time employees shall be given first opportunity to apply for any openings for civilian personnel within the Cornwall Community Police Service. Present civilian employees shall be given first opportunity to apply for entry level openings for uniform members.

The CCPS agreed to post temporary positions that were expected to extend sixty days or more, but subject to the exigencies of the force. The CCPS submitted that there could be difficulties in carrying out its duties where there is only one person in a position and that person takes another position.

I decline to award the proposed amendment to post for short term temporary positions, as it would place unreasonable restrictions upon the CCPS to manage the work efficiently. However, as a vacancy of 60 days is a significant period of time which can allow members to obtain experience in different positions without unduly restricting management, I do award an amendment to Schedule B such that the posting provisions as set out also apply where a temporary vacancy is expected to extend to 60 days or more.

Out of Country Coverage

The CCPS is seeking, effective January 2006, the inclusion of pre-existing medical condition language as follows:

Any condition that existed prior to departure unless such pre-existing medical condition has been stable (i.e. no change in symptoms, no hospitalization, no change in condition, no new prescription drugs or prescribed change in treatment or medication) for 6 months immediately prior to departure.

The CCPS's insurer would not provide coverage without this limitation.

The CCPS sought to reduce the maximum length of coverage from 180 calendar days to 60 calendar days for out of country benefits on any one occasion as the CCPS had been advised by its insurer that due to the retiree benefits provided, it would not provide such coverage beyond 60 days.

The Association opposed the reduction of coverage as it was a benefit which the Association obtained twenty-two years ago, and which has withstood prior periods of economic hardship, the Social Contract and devolution of services. The Association submitted that it was not an issue of availability but of cost. The Association submitted that 180 day coverage can be obtained. The Association advised that North Bay and Peterborough have coverage for 180 days, South Simcoe has coverage for 90 days and Belleville has unlimited coverage.

The Association submitted that the CCPS has not used all methods at hands to reduce its costs while maintaining coverage, such as risk pooling, relying on reserves to offset spikes in premiums and lowering costs by reducing the profit attributed to the administrators of the plan or to avoid brokers or agents.

I award the changes to the Out of Country coverage as proposed by the CCPS, effective January 1, 2006. The inclusion of pre-existing medical condition language is a common pre-requisite for Out of Country coverage and the Association recognized that typically insurance companies provide coverage where a condition is stable. The purpose of Out of Country coverage is to provide benefits for new conditions, or an unpredictable change in a stable medical condition and not to seek treatment for illnesses and conditions that are known, unstable, or can be treated in Canada, which usually can be received at lower costs than outside the country. The wording as proposed by the CCPS contemplates coverage would be available where a pre-existing condition is stable.

Although coverage of benefits for 180 days while a member is out of the country had been obtained by the Association in 1984, a persuasive argument was made by the CCPS Counsel to reduce this benefit. The resolution of the Out of Country coverage was as important for the CCPS to resolve as was the Uniform Service Allowance. The CCPS demonstrated its need to limit the extent of coverage when retirees are out of the country for an extended period of time. The responsibility to obtain insurance coverage that meets the rights negotiated in the collective agreement falls upon the employer. It has met its obligations, and it has attempted to reduce its liability and premiums through risk pooling. The CCPS has done so through SunLife and have capped their liability at \$10,000, but only for the benefits provided by SunLife. As its insurer will not provide coverage as previously negotiated, the CCPS has had to go to a specialty carrier to obtain such coverage. The cost of obtaining individual travel insurance for the retirees and their spouses for individual 180 day trips has been quoted at \$161, 244.

I therefore award that Out of Country coverage be provided for 60 days on any one trip as proposed by the CCPS. A 60 day limitation provides coverage for a significant period of time outside the country for retirees, and does not negatively impact coverage for

active employees for times that they would spend out of country when not required to work.

Dispensing Fee Cap

The CCPS submitted that effective January 1, 2006, to cap dispensing fees payable under the drug plans at \$7.50 per eligible prescription. The CCPS submitted that it does not increase the employee's costs while providing cost savings of \$12,500 per year and there are a number of pharmacies who charge dispensing fees of \$7.50 or less.

Dispensing fee caps were not found in the comparable collective agreements of Peterborough, Belleville, South Simcoe, North Bay, or Oxford County. There was no demonstrated need for the introduction of a cap and I decline to award the request of the CCPS.

Physiotherapy

The collective agreement currently covers 100% of the costs of a licensed physiotherapist. The CCPS proposed a cap of \$500.00 per benefit year per employee as of January 1, 2006, for a cost savings to the CCPS of \$6,600. CCPS counsel submitted that such a change would still provide a benefit greater than the \$350 benefit for physiotherapy enjoyed by the Kingston Police Association members.

I decline to award the CCPS's request. Physiotherapy is no longer covered under OHIP, and due to the nature of the work it is in both parties' interest that the members may access physiotherapy if necessary. There is no demonstrated need to have co-payments or such a cap.

Paramedical Services

The current collective agreement provides 100% of the costs up to a maximum of \$500 per person in a benefit year for specified categories of paramedical specialists. To

capture part of the Association's proposed Uniform Service Allowance, the CCPS proposed to limit the coverage to \$50.00 per visit to a maximum of ten visits per benefit year (\$500.00 total cap) for each category of paramedical service under the plan effective January 1, 2006. This inclusion would create a cost savings of \$7,000 per year.

Apart from a pure financial savings there is no compelling reason to make such a change and I decline to award the CCPS's proposal.

Training and Option of Cashing in Holiday Pay in Lieu of Time Off

The current provision in the collective agreement provides an employee who is required to work on a paid holiday, the option of receiving a day off in lieu, at the rate of time and one half, or receiving pay at that rate, in addition to the regular day's pay for each eight hours worked. The CCPS proposes to eliminate the ability to receive cash in lieu, as of January 2006, and to introduce a provision for training to be compensated at straight time. The CCPS proposed the new provision training provision to be:

Effective in 2006 (Limited to employees working 12 hour shifts)

Each employee required by the Police Service to take training outside normal hours of work (to a maximum of forty (40) such hours) will be compensated for such training by time off at straight time rates. Time off must be taken within the same calendar year as training.

The CCPS submitted that this proposal has no effect in the context of the current training schedules, but is relevant in the context of its proposal for training. The CCPS submitted that currently 90% of Holiday Pay is cashed out. To eliminate this option combined with their proposal for training would create a savings of approximately \$75,000 per year, which would assist the CCPS if the Uniform Service Allowance was awarded. It would also create flexibility and allow them to do more training. The CCPS stated that due to the scheduling and competing times for time off training has to be done outside of the regular hours of work.

The Association opposed the elimination of the option to cash in holiday pay entitlements, as having the option was the norm within the comparative group. It also

submitted that whether statutory holiday pay is a pensionable earning is the matter of a lawsuit, and to remove this option could potentially have the effect that the member's potential pensionable earnings could be decreased. The Association was of the view that most training was done while the member was on duty, although readjustment to shifts occur from time to time. It opposed the training proposal as it was inconsistent with the comparators and it would allow the CCPS to require its officers to attend 40 hours of training outside normal work hours, with no premium compensation.

I award the removal of the option of the members to receive cash in lieu of working on a paid holiday, as it will provide some savings to the CCPS and offer them flexibility in scheduling without prejudicing the rights of the members. However, I deny the CCPS request to require a member to take up to 40 hours of training outside the normal hours of work at straight time, as there would be no incentive to try to schedule any training time within normal working hours and it would remove the member's right to premium pay for time spent in excess of the member's normal working hours.

Casual Days (Civilian Members) Schedule B

Currently the CCPS is entitled to hire temporary employees to fill in for illness, vacation, injury, lieu time, statutory holidays or approved leave of absence for specific jobs. The specific jobs are Full time Special Constables, Niche Inputters, Dispatchers, and Receptionists, who are absent due to illness, vacation, injury, lieu time, statutory holidays or approved leave of absence.

The CCPS proposed that the current language that describes the use of casual employees be amended so that casual civilian employees may be used on a temporary basis provided that there are bona fide operational reasons to do so. The CCPS submitted that hiring casual staff for any temporary need would significantly increase its flexibility, and allow it to achieve cost savings and service improvements. CCPS's Counsel submitted that currently other civilian positions, such as Records Clerk, (Information Classified, Administrative Secretaries and CPIC validators, cannot be

backfilled with the result that the work is not completed when those employees are absent. The current restriction limits the ability to complete short term projects and to handle temporary increases in workloads.

The only limitation on the use of the casual employee as proposed is that it is for a bona fide operational need. "A bona fide operational need" is open to a very wide interpretation, for example, the CCPS was seeking to use such employees for a public inquiry, which may extend over a period of two years. An interpretation of "a bona fide need" in a rights dispute could affect the bargaining unit. Although some work may not be able to be completed by those in civilian positions, other than those positions which the parties have determined as "specific jobs" while an employee is absent, there was no demonstrated need that would have suggested that the parties would have negotiated an expansion of the definition of specific jobs at this time.

New - Permanent Part Time Employees

The CCPS proposed the introduction of part time civilian employees to relieve and supplement full time employees in the Communication Department in order to cover the dispatch functions for the police and for the fire department. It proposed the following:

Part time civilian employees may be employed in the Communications Department for the purpose of relieving and supplementing full time employees in this Department. The specific hours of work will be established by the Chief. These persons will be compensated in the same manner as casual employees.

The CCPS submitted that it had incurred significant capital sums to increase the capability of the Communication Centre to dispatch for both fire and police. In addition, with the consent of the Association, without prejudicing their right to oppose the introduction of part time workers, the CCPS had trained workers to perform this function at significant cost. The job would begin once the Communications Centre has received new radios. Scheduling part time employees would improve the cost efficiency of the

communication centre. Without these employees, CCPS counsel submitted, the CCPS will not be able to backfill for training and lieu time.

The Association did not oppose the use of members for the fire dispatch function, but opposed the introduction of part time members for many reasons, amongst which is that it would affect the nature of the bargaining unit, the relationship with the CCPS, and would affect the rights and entitlements of full time members, to the degree that they may lose certain full time positions.

The need for this provision arose as a result of the transfer of the Fire Department's Dispatch Operation to the CCPS' Communication Department. The Fire Department had been concerned with the level of service provided by the private contractor, and the Fire Chief provided a report which recommended that the dispatch services be provided internally. As a result, the City directed that the current police communications be considered as an alternative, and the CCPS did take over this responsibility. There were significant capital expenditures to accommodate this change, as well as hiring full time staff. The CCPS provided training for four part time employees for this position on the agreement with the Association, but without their consenting to their use.

Since mediation, the CCPS has addressed this need by scheduling ten hour shifts. However, the CCPS's submitted that the ten hour shifts would not be needed if their proposal were adopted as it would allow them to use part time employees in the Communication Centre. The CCPS submits that the optimal staff requirements for the Communication Center would be two additional full time employees and six additional part time employees working an 11 p.m. to 4 a.m. shift. This would allow the CCPS to employ three dispatchers for 17 hours a day instead of three dispatchers for 20 hours a day.

When the comparator group is considered, Peterborough has some part time dispatchers, but only for backfill, and they do not have any casual employees. South Simcoe, as does Oxford Community, has had part time dispatchers as backfill for the full-time complement of dispatcher, but has no casual employees. Belleville has neither casual nor part time employees

The introduction of part time members is different from casual members, who are called in for temporary purposes, and as such, will have varying and irregular periods of employment. Part time members, as proposed by the CCPS, are to be employed on a regular basis. While the CCPS has proposed in this round of negotiations that the part time civilian members be compensated in the same manner as casual members, the introduction of part time members gives rise to many additional issues, such as hours of work thresholds, leave entitlements, accrual of seniority, which have not been discussed. The use of part time members can also easily impact the full time members, particularly as it relates to scheduling and overtime, and their use could possibly lead to the loss of full time positions. Accordingly, this proposal is not suited to be determined through interest arbitration, and ought to be resolved between the parties.

I therefore decline to award the CCPS's proposal.

Retroactivity

The retroactive wage adjustments, including retroactive adjustment for any overtime, statutory holiday or other form of compensation that would have been calculated on the basis of salary, which may have already been paid to a member, are to be made CCPS within 45 days following the release of this award.

This award shall be applicable to all current members of the Association, and to all persons who were members of the Association during any portion of the term covered by this collective agreement, but are not part of the bargaining unit at the time of the award.

I remain seized with the implementation of this award.

Dated at Toronto, this 26th of May 2006

"Belinda Kirkwood"

Belinda Kirkwood