

IN THE MATTER OF AN ARBITRATION

B E T W E E N:

THE CHATHAM-KENT POLICE ASSOCIATION
(Hereinafter referred to as “the Association”)

-and-

THE CHATHAM-KENT POLICE SERVICES BOARD
(Hereinafter referred to as “the Board”)

GREIVANCE OF TERRY MARCHAND
(hereafter referred to as the “the Grievor”)

SOLE ARBITRATOR:

Richard H. McLaren, C. Arb.

COUNSEL FOR THE ASSOCIATION:

Andrew F. Camman, Counsel
Polishuk Camman & Steele

Shawn Mungar, Grievance Director
Chatham-Kent Police Association

A/Sgt. Terry Marchand, Grievor

COUNSEL FOR THE BOARD:

Glenn Christie, Counsel
Hicks Morley

Don Fuoco, Chair
Chatham-Kent Police Services Board

Carl Herder, Chief of Police
Chatham-Kent Police Service

A Hearing in relation to this matter was held at Chatham, Ontario on 10 July 2006.

A W A R D

A grievance was filed by the Association on 22 June 2005 on behalf of its member A/Sgt. Terry Marchand. It alleges a breach of the Collective Agreement (the Agreement) in that the Board failed to pay him for his attendance on 30 and 31 March 2005 as a subpoena witness in a court proceeding in the Municipality of Peel Region. The matter was not settled through the grievance procedure and came before me as the Arbitrator agreed upon by the parties to resolve the dispute. At the time of the hearing held at Chatham, Ontario on 10 July 2006 it was agreed by counsel that there were no issues as to my jurisdiction to hear and determine the matter; nor, as to the arbitrability of the grievance.

At the hearing the parties agreed to proceed by way of an agreed statement of fact. No witnesses were called. The agreed facts are:

1. *On March 3, 2004 A/Sgt Marchand was in the Region of Peel (Mississauga) to attend a hockey tournament with other officers of the Chatham-Kent Police Service. Upon leaving Crocodile Rocks (a restaurant on Hurontario Street), A/Sgt. Marchand witnessed a black Toyota hit Officer Steve Webber, a fellow member of the Chatham Police Service. The driver of the Toyota had circled three times and appeared to deliberately hit Officer Webber, who is now permanently disabled. Officer Webber was on long term disability at the time of the trial, therefore put in no claim for overtime.*
2. *While some of the officers tended to Officer Webber, A/Sgt Marchand ran two blocks to a stop light where he caught up with and attempted to detain the suspect in his vehicle. He was unable to extricate the suspect from his seat belt and the suspect accelerated through the intersection, leaving the scene. A/Sgt. Marchand did not have time to identify himself as a police officer.*
3. *Eventually the suspect turned himself in to Peel Regional Police.*

4. *A/Sgt Marchand was subpoenaed to give evidence at the jury criminal trial of the accused in Brampton, Ontario. He attended court for two days (March 30th and 31st, 2005), and was required to stay in Brampton overnight. A/Sgt Marchand's testimony helped the Crown obtain a conviction for dangerous driving.*
5. *Any officer hired from another service is not paid by Chatham Kent Police Service for court time incurred at their previous employer.*
6. *If called, the Chief of Police evidence would be that when a police officer is hired away from another police service, the Chatham Kent Police Service does not pay for court services under say for example the Peel employment arrangements.*
7. The documents brief of the Association contained at Tab 3 a copy of the grievance filed and the background to the grievance. Tab 4 is a copy of the subpoena. Tab 5 is a copy of the application for overtime, and denial of same in accordance with Article 14.1 and 14.2 of the Collective Agreement filed at Tab 1.
8. Counsel agreed that if the Arbitrator decided the matter in favour of the Association that he was to remain seized of the remedy giving time for the parties to work out the remedy before completing the award.

In support of its position the Association submits that the wording of the Collective Agreement is the key to understanding the obligation of the employer. It was submitted that the *Police Services Act*, R.S.O. 1990, C. P.15 and the Collective Agreement in Article 14.1 combine to establish that when a sworn officer is working within the duty of the Act and the wording of the Collective Agreement that they are entitled to be paid in accordance with Article 11 for the time spent in a court giving evidence. This was described by counsel as the Duty argument. The alternative argument was that under Article 14.2 if an officer is required to give evidence as a witness because of being required to do so by subpoena and the exceptions of Article

14.1 do not apply then the officer is to be paid for his time as a witness and traveling to the court appearance. This was referred to as the Subpoena argument.

The Board submits that it is incorrect to analyze these facts on the basis of an officer's duty under the *Police Services Act*. An officer has duties under that legislation that are independent of the Collective Agreement, which merely defines the economic terms of the employment relationship and does not, nor can it under the legislation, define the duties of an officer or instruct an officer on what it is they are to do in the way of performance of work under the Collective Agreement. The issue is purely one of determining the meaning of the Collective Agreement and whether it provides for the payment obligation alleged by the grievance. It was submitted that under s. 14.1 and 14.2 the grievor was not acting as a witness for the Chatham-Kent Police Service when he testified as to the events set out earlier. Therefore, there is no entitlement to pay under the Collective Agreement. In support of its argument reference was made to the case of *Stratford Police Association v. Board of Commissioners of Police*, an unreported decision of Arbitrator Aggarwal dated 9 July 1982.

The relevant provisions of the Collective Agreement read as follows:

Article 1 – Interpretation

1.1 *Except where a contrary intention appears, in this Agreement;*

...

(c) *“Civilian Members” are non-sworn members who function in support roles to the Service;*

...

(g) *“Member” means any person in the Bargaining Unit as prescribed in Article 2;*

(h) *“Service” means the Chatham Kent Police Service;*

Article 14: Court Time

14.1 *In this Article, Court or Courts shall mean all courts of law and shall include a coroner's inquest, civil trial, examination of discovery, a Police Act trial and any other tribunal, inquiry or hearing a member is required to attend as a result of his service to the Police Service. Court time shall mean the required attendance of a member as a witness in court as herein defined during a member's off shift hours, rest days or annual or statutory leave. This benefit shall not apply to a defendant in a Police Services Act trial nor to a defense witnesses in a Police Services Act trial. However, if members are required to attend as defense witnesses in a Police Services Act trial and such defense is successful, then this paragraph will deem to apply. This paragraph shall not apply to any litigation where a member is involved in a personal capacity. Any monies received by a member as conduct money or witness fees shall be paid to the Police Service.*

14.2 *When a member by virtue of his duties or in response to a subpoena to attend court is required to travel to another municipality, such member's hours of court duty shall commence at a time to be determined by the member's senior officer and shall continue until the member has completed his court appearance and returned to Police headquarters. The time spent in travel and court attendance only, shall be applicable under Article 11 of the current agreement to determine the hours of court duty and upon return to the Police headquarters the member shall be marked off duty by his senior officer. Verification of the time of completion of the court appearance shall be made by an official of the court where appearance is made. All sections of Article 11 shall apply to determine hourly rate of pay.*

Reference was made to the following provision of the *Police Services Act, supra*.

POLICE OFFICERS

Duties of police officer

42. (1) *The duties of a police officer include,*

- (a) *preserving the peace;*
- (d) *apprehending criminals and other offenders and others who may lawfully be taken into custody;*

Power to act throughout Ontario

(2) *A police officer has authority to act as such throughout Ontario.*

DECISION

The employment relationship of police officers is different than other types of employment relationships found within the province in that the rights of management and the obligations of the Collective Agreement are specifically made ... *subject to the provisions of the Police Services Act and the Regulations made hereunder* ... {hereafter the Act} as provided for in Article 3.1(a). Therefore, the Association argument that the Collective Agreement ought to be interpreted in accordance with the obligations found in section 42(1)(a) & (d) of the Act is not well founded. A great deal of the performance of work is not a right of management but is set out as a mandatory obligation of the Act. The Collective Agreement establishes the economic terms of the employment relationship but does not establish the work terms of that relationship which is left to be established by the Act.

The issue is how to interpret the Collective Agreement in respect of payments for court time found in Articles 14.1 and 14.2 when a police officer is called upon by way of *subpoena* to be a witness in a criminal court proceeding in another municipal jurisdiction in respect of charges laid by a police force other than that of the Board.

It is not disputed that a subpoena was issued requiring A/Sgt Marchand to testify in a criminal court proceeding. The reason he was subpoenaed was because in the course of being at the hockey tournament in Peel region he had taken up his duties as a police officer under the Act and chased an alleged suspect. His actions that day were rooted in his duties as a police officer under the Act. When he comes to testify in respect of what happened, it is not those actions of the day that justify his payment of the time it takes him in court to be a witness, but whether the Collective Agreement with his employer, the Board, requires that they pay him for his time.

Article 14.1 provides for compensation calculated in accordance with Article 11 as indicated by Article 14.2 when: *...a member is required to attend as a result of his service to the Police Service ...* The Association says that the reference to *Police Service* is not specific to the Chatham-Kent Service, and indeed it is by definition the word service, standing alone, that brings in the concept by way of definition in Article 1.1(h) of being employed by the Board. The Board responds that the reference *Police Service* ought to be read as meaning employed by the Board.

The other necessary parameters of Article 14.1 that come into play are that the member: (i) attend a court of law; (ii) that the litigation does not involve the member's personal capacity; (iii) the matter is not a *Police Services Act* matter where attendance is as a defendant; or (iv) attendance is at a *Police Services Act* trial as a defense witness and the defense is successful. This matter does not involve the *Police Services Act*. Therefore, those parameters have no application here. The other parameters of Article 14.1 are satisfied to bring into play the article if the one condition *a member is required to attend as a result of his service to the Police Service* is satisfied.

The interpretation of the Collective Agreement involves both a defined and undefined reference to "service". The definition of the term *Service* as it appears in Article 1 of the Agreement refers to the Chatham-Kent Police Service while the term *Police Service* is not defined in the Agreement. Though the specific term *Police Service* is left undefined, given that the term *Service* is defined as the Chatham-Kent Police

Service and that the term is contained in the Agreement, which is exclusively between the Chatham-Kent Police Service and Chatham-Kent Police Services Board, I find that the ordinary English language meaning of the term *Police Service* refers only to the Chatham-Kent Police Service and not to general service rendered as a police officer.

An alternative analysis of the provision leads to the same conclusion. If the phrase *service to the Police Service* is read together rather than seriatim then the definition of service qualifies Police Service. Therefore, the defined term within the phrase and makes it plain that Police Service is referring to the Chatham-Kent Police Service. I must add that the drafting intent would certainly be more evident if the defined term service was capitalized and the undefined term Police Service was lower case. Nevertheless, I conclude that Police Service refers only to the Chatham-Kent Police Service and not to general service rendered by a police officer.

The fact that the officer was executing his duties under the *Police Services Act* on the 3rd March, 2004 does not inherently mean that the officer's subsequent Court appearance in Peel Region came about "*as a result of his service to the Police Service*" as stated in Article 14.1 of the Agreement. Given that I have decided that term Police Service refers specifically to the Chatham-Kent Police Service, I find that the grievor's actions were consistent with his Duties as a police officer under Section 42 of the *Police Services Act*, but that the grievor cannot invoke the provisions of Section 14.1 or 14.2 of the Agreement because the need to appear in Court did not come about as "*a result of his service to the Police Service.*" The parties did not extend the benefit to cover court appearances in matters involving another police service other than that of the Board.

The alternative argument advanced by the grievor was that the issuance of a subpoena to the grievor invoked Article 14.2 of the Agreement. The grievor's interpretation of this Article is that because a subpoena was issued that required him to travel to a different municipality for a Court appearance in conjunction with his duties as a police officer, he is due overtime pay and travel costs calculated in accordance with the stipulations of Article 11 of the Agreement. While this may seem a reasonable

interpretation of the facts, Article 14.2 of the Agreement cannot be read and interpreted independently. Rather, it must be read as a natural extension of Article 14.1 in which the term Court is defined, as is the stipulation that all Court appearances for which officers would be entitled to overtime and other benefits be “*as a result of his service to the Police Service(.)*” which, as has already been established, is not the case here.

For all of the foregoing reasons, I conclude that the Board acted correctly in this case. It is ordered that the Grievance be dismissed.

DATED at LONDON, ONTARIO THIS 24th DAY of July 2006

Professor Richard H. McLaren, C.Arb.
Arbitrator