

74-019

IN THE MATTER OF THE POLICE ACT
R.S.O. 1970, Chapter 351, as amended;

AND IN THE MATTER OF an arbitration
pursuant to Section 33 of the Police
Act R.S.O. 1970, Chapter 351 as re-
enacted by the provisions of Section 2
of the Police Amendment Act, 1972,
S.O. 1972, Chapter 103.

BETWEEN:

THE NIAGARA REGION POLICE
ASSOCIATION

(hereinafter called the
"Association")

AND:

THE NIAGARA REGIONAL BOARD OF
COMMISSIONERS OF POLICE

(hereinafter called the "Board")

ARBITRATOR:

C. H. CURTIS.

APPEARANCES:

For the Niagara Regional
Board of Commissioners
of Police

Mr. S. E. Dinsdale, Q.C., Counsel

Mr. B. R. Baldwin, Solicitor

Mr. Carl Kuchard, Executive Sec-
retary, Board of Com-
missioners of Police.

For the Niagara Region
Police Association

Cst. E. R. Johnson, President
and Spokesman.

Cst. Peter Buch, Secretary.

Cst. Frank Stanley, Bargaining
Chairman

Insp. Don Stannard, Pension
Advisor.

At the commencement of a hearing held in St. Catharines on October 30, 1974 the parties agreed that the arbitrator had been properly designated and that he had jurisdiction to deal with all the matters in dispute.

The circumstances underlying the dispute here are, briefly, as follows:

There are two collective agreements between the parties, one covering the civilian members of the police force, the other covering the police members of the force. Both of these agreements expired on December 31, 1973.

The parties were unable to resolve the differences that arose between them during their negotiation of agreements for the year 1974. They resorted to arbitration and on June 6, 1974 the arbitrator, Mr. George S. P. Ferguson, Q.C., issued an award dealing with the matters that were in dispute.

Subsequently, the parties were unable to agree on the meaning of the portions of the Award dealing with life insurance and with pensions. On September 17, 1974 the Association requested the Solicitor General to appoint a single arbitrator to deal with the dispute between the parties under Section 33 of The Police Act, R.S.O. 1970, c. 351, as re-enacted by the provisions of section 2 of the Police Amendment Act, 1972, S.O. 1972, c. 103. The Association indicated to the Solicitor General that the parties were unable to agree on an arbitrator.

LIFE INSURANCE

The Award on this matter provides:

Currently the Board pays 100% of the premium cost for coverage in the amount of \$20,000.00 for the police members of the force, and, for the coverage in the amount of \$10,000.00 for the civilian members of the force.

The evidence before me does not support the validity of the Association's request for increases of coverage to \$40,000.00 and \$20,000.00. However, the request to include accidental death and dismemberment coverage appears to be fully warranted and therefore I award that the current policies shall include this coverage for all of the persons covered by the two agreements effective within sixty (60) days after the date of this Award.

The parties submit that they have been unable to agree on the amount of the accidental death and dismemberment coverage awarded.

In support of its position the Association files a document entitled "Police Association of Ontario--Group Insurance Plan", which, it submits, is carried by Canada Life Assurance Company. The Commission submits that the document was not before the arbitrator and concludes that he could not have had its contents in mind when he formulated his Award.

However, in his Award Mr. Ferguson sets out the Association's request regarding life insurance and notes that the request for a larger amount of term life insurance and the request for the introduction of accidental death and dismemberment coverage were for insurance with Canada Life Assurance Company. Therefore it is proper to conclude that the Award was formulated in the light of the provisions of the plan for life insurance carried by Canada Life Assurance

Company. Accordingly I find that the Award relating to life insurance must be interpreted to provide accidental death and dismemberment coverage the full amount of which is equal to the amount of the Life Insurance presently carried, that is, \$20,000 for the police members of the force and \$10,000 for the civilian members of the force.

PENSIONS:

The Award is as follows:

- (a) For the police force members of the force the Board shall provide, commencing from January 1st, 1974, a type (1) OMERS supplementary plan covering past and future service based on a $1\frac{3}{4}\%$ benefit rate formula and based on their being a normal retirement age of 60 years. Past service shall be paid for by the Board and future service costs for this supplementary pension benefit shall be paid for on a 50-50 basis by the employee and the Board.

The Award proceeds to give the civilian members of the force the same type of supplementary plan except that it is to be based on a normal retirement age of 65 years rather than 60 years.

The parties have a difference of opinion concerning the meaning to be attached to the terms "past service" and "future service" in the sentence:

"Past service shall be paid for by the Board and future service costs for this supplementary pension benefit shall be paid for on a 50-50 basis by the employee and the Board."

More particularly, the question is, what point in time divides service into past service and future service?

The Association's position is that the effective date of the Supplementary Pension Benefit, O.P.E.P.S. Type

1, is the date that divides service into past service and future service. The proposed 1974 Police Working Agreements that the Association submitted to the Board under cover of a letter dated July 22, 1974, show January 1, 1974 as that date. So the Association regards all service prior to January 1, 1974 as past service and all service after that date as future service.

The Association submits further that it argued before the arbitrator that there should be no reduction of .7% in the pension calculations to integrate the pension with the amount under the Canada Pension Plan. The Association points out that there is no mention of such a reduction in the Award and the Association concludes that the arbitrator, by that omission, awarded an O.M.E.R.S. Type 1 pension without the reduction on account of the Canada Pension Plan.

The Board takes the position that the date of enrolment in O.M.E.R.S. divides service into past and future service. In the Board's view it follows that, if a member of the force enrolled in O.M.E.R.S. on January 1, 1965, his past service is service before that date and his future service is service after that date.

The Board supports its position in the first place, by reference to the Ontario Municipal Employees Retirement System Act, R.S.O. 1970, c. 324, as amended, the act that established O.M.E.R.S. There the Board notes the term "prior service" in Section 13(k) and notes the provision that "prior service" may be recognized in establishing a pension

plan. The Board points out, too, that "prior service" is defined in Section 1 of the Act as,

.... the service of an employee before the date on which this Act and the regulation become applicable to the employer.

The Board submits that the Act and its regulations become applicable on an employer when his employees enroll in O.M.E.R.S. The Board concludes that "past service" as used in the Award is "prior service" in the Act, so that the past service of a member of the force is his service prior to his enrolment in O.M.E.R.S.

In the second place, the Board draws attention to the MEMORANDUM TO EXPLAIN SUPPLEMENTARY PENSION BENEFITS where O.M.E.R.S., Type 1, agreement is set out showing that a pension under that agreement is based partly on the number of years of "credited service". The Board points out that, according to the Memorandum, "credited service" may be service after enrolment under O.M.R.S. or it may be service before and after enrolment in O.M.E.R.S. The Board contends that it is significant that the Memorandum refers to enrolment under O.M.E.R.S., not to enrolment under a supplementary plan as the dividing point between "past service" and "future service".

The Board submits that the arbitrator had this Memorandum before him and the Board contends that in that context he used the terms "past service" and "future service".

Finally, the Board points out that the terms "past service" and "future service" are defined in the cost estimates of O.M.E.R.S. Supplementary Benefits contained in the Association's brief at pages 53-64 inclusive. The

Board submits that these estimates were before the arbitrator, and the Board concludes that he used the terms "past service" and "future service" as defined there as follows:

Past Service means continuous service with the employer before participation of the employer in O.M.E.R.S.
Future Service means contributory service with the employer after enrollment in O.M.E.R.S.

In reply to the Association's contention that the Award, by its silence on the point, provides for pension calculations that do not include the reduction of .7% on account of the Canada Pension Plan, the Board submits that the Award specifies the use of the 1 $\frac{3}{4}$ % benefit rate formula which formula includes the .7% reduction. The Board submits further that everything submitted to the arbitrator contained reference to the .7% reduction on account of the Canada Pension Plan.

I find in the first place that the Board has shown that "past service" and "future service", properly defined mean, respectively, the service prior to a member's enrolment in O.M.E.R.S. and after a member's enrolment in O.M.E.R.S. I direct that the Award be so interpreted.

I find, further, that the Award does provide for the .7% reduction to integrate the pension with the amount under the Canada Pension Plan. I direct that the Award be so interpreted.

Dated at Kingston, Ontario, this 15th day of November, 1974.

.....
C. H. Curtis.