

This arbitration arises out of a decision by the City of Orillia to disband the Orillia Police Service and transfer its responsibilities to the Ontario Provincial Police. As required by Section 40 of the *Police Services Act*, this decision was reviewed and approved by the Ontario Civilian Commission on Police Services, which directed that any unresolved matters relating to severance for members of the disbanded force should be dealt with by arbitration. There were a number of unresolved matters arising out of the disbandment process which were referred to me. A hearing was scheduled for May 29, 1996, in Orillia.

All Uniform members of the Orillia Police Service who wished to were able to take up employment with the O.P.P. at their current rank. The transition date, June 1, 1996, being a Saturday, they were retained by the Orillia Police Services Board until June 2nd and sworn in as O.P.P. officers on June 3rd. The civilian members of the Orillia Police Service were not given the opportunity to join the O.P.P.

Initially, the parties had discussed only the question of payout for accumulated sick leave. In a letter dated May 27, 1996, however, the Association held that several additional areas remained to be decided: health-care benefits for retirees; benefits for three uniform officers on long-term disability; bridging coverage for members who do not yet qualify for the equivalent O.P.P. benefits; legal indemnification for 10 years for situations arising out of an officer's time with the Orillia Police Service; and unused vacation and other banked or accrued unpaid time. There was also the issue of possible entitlement to a share of an OMERS Type 3 surplus.

A hearing was held to decide severance issues as per Section 40 of the *Police Services Act*. At that hearing on May 29, 1966, Mr. Bass, acting for the Board, raised an objection on the grounds of the timeliness of the raising of these additional issues. It was agreed that Mr. Bass and Mr. Roland, acting for the Association, would submit written briefs on the issue of timeliness. Should I rule that the additional issues would be considered, then they would supply one another with written briefs on these issues and written rebuttals, all of which they would also submit to me. The parties made their submissions on the question of sick leave payment at the hearing.

In my ruling, I concluded that the strictures governing interest arbitration did not apply to this situation—an arbitration of severance under Section 40. My ruling on this issue is attached as Appendix I to this award. The parties proceeded with written submissions, in the process resolving most of the outstanding issues. I received the last of these submissions and rebuttals in March 1997. The only issues that remain to be considered are sick leave payout and extended health benefits for two officers who took early retirement rather than join the O.P.P. Thus, this award deals only with these two issues.

Sick leave Benefits

The Association is claiming a cash payment for the value of accumulated sick leave benefits or some substantial part of accumulated sick leave benefits. It suggests 50% but, in any case, no less than 25%. The Board argues that there is no such entitlement.

This issue has to be looked at in the partial context of the Orillia municipal employee sick leave plan as well as the O.P.P. short-term sick leave plan, so it is necessary to set these out briefly before setting out the parties' arguments in this matter. For sick leave purposes, members of the Orillia Police Service were included under a municipal by-law, By-Law 1983-2, covering all municipal employees. When introduced in 1983, this plan froze the sick-bank cash-out of the previous plan and introduced a long-term disability plan. Under this plan, officers would receive 12 hours' sick leave for every month of regular attendance¹ and these hours could be accumulated. After 800 hours had

¹ They would receive proportionately less for months in which they were absent due to illness.

been accumulated, sick hour credits earned but not used were to be paid out at the rate of 25% pay for each such hour each year, to a maximum of 32 hours of pay. Alternatively, the officer could choose to *not* take payment but continue to accumulate sick leave to a maximum of 1,200 hours. Under the Orillia plan, an officer who was ill could use his accumulated sick leave to maintain his salary at 100% until the long-term disability plan triggered at 17 weeks. The LTD plan is paid for by the employer. Accumulated sick time could also be used to supplement either LTD or Workers' Compensation payments.

The Ontario Provincial Police short-term sickness plan simply pays 100% of salary for the first six days of illness, after which it pays 75% for an additional 124 days each year. The O.P.P. LTD plan, which is co-paid 90/10 by the Board and the officers, cuts in after 25 weeks. There is a qualification period of 20 working days.

The Association's claim that their members should be entitled to some substantial payout of their unused sick leave is based on four arguments. First, they argue that there is a substantial loss in terms of sick leave coverage in moving from Orillia to the O.P.P. Whereas the use of accumulated sick leave under the Orillia plan covers 100% of officers' salaries from the first day until the LTD plan kicks in after 17 weeks, the O.P.P. pays only 75% after six days (at 100%) until the LTD plan kicks in at 25 weeks. There is also a waiting period of 20 working days.

Second, a number of recent freely negotiated severance agreements in similar situations have included partial payouts of unused sick leave credits, even though this was not required under the collective agreement. For example, the Fort Frances severance agreement provided for the Board to pay 100% of vested sick leave credits plus 40% of unvested credits, to a maximum total of one half-year's salary; Kirkland Lake's agreement provided for payment of the monetary value of all vested and unvested sick leave credits; the Town of Kincardine made provision for officers who were not hired for other employment with the Town to be paid at the rate of 75% of accumulated sick leave.

Third, the City of Orillia itself recognized the basic fairness of doing this when it agreed to pay the civilian members of the Orillia Police Service 25% of the value of their unused sick leave when the force disbanded.

Fourth, the Police Service Board included a 25% reimbursement for unused sick leave in early retirement packages offered to members in 1995.

More generally, the Association argued that, quite apart from the value of total compensation, which it argues is virtually the same as in Orillia (aside from salaries), moving to the O.P.P. poses the real possibility of “significant disruption in workplace and residential circumstances” for all of these officers by virtue of the fact that they may face transfer to areas far from Orillia.

For its part, the Police Services Board argued that these officers are not entitled to any payout—or, indeed, any severance at all. The Board’s brief sets out the basis of this argument, which hinges on the fundamental purpose of severance compensation in such situations:

The term “severance” has always been accepted as a synonym for compensation or the payment of damages to make up for a loss actually suffered by the departing employee. It is not a form of lottery ticket. Severance is not required to be paid or awarded to an employee who has not sustained any loss or damage in the course of leaving his or her employment.

To put this another way, to be entitled to the damages involved in severance, an employee must have suffered an actual loss. The onus is clearly on the employee to prove the damages which he or she is alleged to have suffered.

The Board argued, in short, that because all of these officers immediately went to work for the O.P.P. at a total compensation significantly greater than what they were receiving in Orillia, there was no loss and, therefore, there is no entitlement, in law, to *any* form of severance. These officers’ employment was uninterrupted and their total compensation, if anything, increased as a result of their move to the O.P.P. The Board also pointed out that the actual chances of being involuntarily transferred were quite remote; under the transfer protocol, officers are protected from transfer during the first three years and, under O.P.P. policy, emphasis is put on voluntary transfers.²

² The Board pointed out, for example, that in 1996, all 792 O.P.P. transfers were voluntary and, in 1995, there was only one involuntary transfer in the Service.

Award^{3/4}Sick Leave Credits

The question of what payment, if any, should be made to these officers for unused Orillia sick leave credits must be looked at in the context of the larger issue of whether they are better or worse off as a result of transferring to the O.P.P. In its submission, the Board argued that, taking into account salary, benefits, holidays, sick leave, LTD, insurance, and allowances, the O.P.P. total compensation was \$2,968 greater than that of the Orillia Police Service for these officers, not counting the advantage of the O.P.P.'s having the classification of Senior constable.³ In its reply, the Association disputed the Board's costing of various elements, paying particular attention to sick leave and LTD, and concluded that "when the benefits (apart from salary) are properly calculated the monetary difference between the O.P.P. and Orillia benefits is negligible." In its rebuttal, the Board recalculated its costings and presented a revised difference in total compensation of \$3,042, noting that, even if Orillia's sick leave plan did provide superior coverage, the added value could not make Orillia's total compensation higher than the O.P.P.'s.

Having carefully reviewed the submissions of both parties on this point, I am confident in concluding that the total compensation provided by the O.P.P. is substantially greater than that of the Orillia Police Service. Indeed, the difference in salary alone puts the O.P.P. \$2,314 ahead in total compensation, and even the Association concedes that the non-salary components of the two packages are roughly equal. While there are undoubtedly elements of the O.P.P. agreement offers at least an acceptable substitute for the Orillia officers' former benefits plans. Thus, given that the salary differential alone is \$2,314, it is clear that, in the matter of total compensation, these officers are substantially better off financially as a result of transferring to the O.P.P.

³ The Orillia Police Service did not have the Senior Constable classification.

On the matter of transfers, the evidence shows that there is no chance of being involuntarily transferred during the first three years of service with the O.P.P.⁴ and relatively little chance after that.

Taking into account both compensation and working-situation considerations, then, it is impossible to conclude on the evidence that these officers are any worse off as a result of having transferred to the Ontario Provincial Police. Indeed, if anything, they are better off; certainly, in financial terms, they are.

Turning to the law applicable to this situation, it is now accepted that the arbitration of severance disputes under Section 40 disbandments should be decided on the basis of the civil-law principles of unjust dismissal. The following excerpt from *Re Town of Wiarton and Chief Constable Alfred Schultz* (1988), a decision rendered by this arbitrator, discusses these principles and their application in the disbandment of police forces.

The principle of law upon which wrongful dismissal cases are decided in civil court is well known and has its roots in contract law. The court deems an implicit employment contract to exist between the employer and employee and, should the employer break that contract by terminating the employee without cause, then that employer is held liable for the obvious and foreseeable economic consequences to the employee flowing out of his termination.⁵

Put another way, the implied contract is deemed to include an understanding that the employee will not be terminated except for cause. Accordingly, when an employee *is* terminated without cause, there is an obligation on the employer to take into account the economic consequences to that employee and to shield him from them....

Shielding the employee from the foreseeable economic consequences of the dismissal has been taken by the courts to mean giving that employee reasonable notice of the termination (or pay in lieu of notice); “reasonable notice”, in turn, has been interpreted to mean whatever time it could be expected for the employee to attain similar employment. The question is, in other words, how long it will take the employee to put himself back into the approximate economic position he would have been in had the discharged not occurred...

⁴ Except to take up a promotion.

⁵ This does not apply in situations where the employee is either covered by a collective agreement with a “just cause” provision or a personal employment contract specifically dealing with termination. Neither applies in the instant case.

It seems to me that the civil-law principle of reasonable notice — adapted to the special realities of policing and the peculiarities of this situation—is adequate and appropriate as a guide for a settlement in this case. There are four reasons for this, the first of which is captured in the rhetorical question, “if not the principle of reasonable notice, then what?” Any decision regarding the quantum of compensation...must be based on some principle; it cannot be just random or picked out of the air. I have been unable to come up with any better principled basis for a decision, nor have I heard a better suggestion.

Second, the principle of reasonable notice is not a mechanistic formula. As suggested by Chief Justice McRuer, it is a concept which takes into account many disparate factors and can be applied with common sense....

Fourth, the basis of this principle—the shielding of the dismissed employee from the inevitable economic consequences of his being terminated—seems appropriate and consistent with the goal of determining a fair, reasonable and equitable settlement....

For all of the above reasons, then, this award will be based on the common-law principle of reasonable notice, adapted to the unusual circumstances of policing, Chief Schultz, and the Wiarion situation.

As noted, there has since been a general acceptance of the applicability of the principles of wrongful dismissal to Section 40 proceedings.

I have concluded that, in terms of the economics of the situation, these officers are at least as well off—and, indeed, considerably better off, financially speaking—as a result of transferring from the Orillia Police Service to the Ontario Provincial Police. In addition, the evidence did not establish that, in terms of the non-economic dimensions of the situation, they were likely to be any worse off. In view of these conclusions, as well as the fact that there was no interruption of either their employment or their compensation, they have a weak case, in law, for claiming such compensation. By and large, there has been no loss and, as set out above, compensation in these matters is, by definition, intended to offset some loss. The uniformed officers’ situation can be contrasted in this respect to that of the civilian members of the Orillia Police Service, who were *not* given the opportunity to transfer to the O.P.P. They did suffer a loss and, given the principles of unjust dismissal set out *supra*, were entitled to be compensated for that loss. In this light, the fact that the civilians received payment for 25% of their accumulated sick leave in their severance agreement does not support similar treatment for their uniformed colleagues.

In view of the foregoing, therefore, I must reject the Association's argument that all uniformed officers who moved to the O.P.P. should receive a payment for some substantial portion of all of their unused sick leave. There is simply no basis in law or principle for such a payment.

The Association argued that I should consider the fact that the Board included a 25% payout for all unused sick leave in early-retirement packages in 1995. Unfortunately, this does not help the Association in this case, either. These payments were characterized by the Association as an "inducement"—that is, as a device to make early retirement more financially feasible and therefore more attractive to officers. A payout of sick leave makes eminently good sense in such a situation but, given that that situation is utterly unlike *this* situation, where officers are immediately taking up positions with higher compensation, it provides no support for the Association's claim.

Likewise, the freely negotiated severance agreements in the Fort Frances, Kirkland Lake, and Kincardine disbandments are of little assistance to the Association in this situation. Any arbitration award has to be grounded in some relevant body of principle. It is now well established that the relevant principle in Section 40 cases is that set out *supra*—that is, the obligation of an employer to shield an employee from the economic cost of dismissal when there is no cause for dismissal. In interest arbitration, on the other hand, one of the relevant principles is comparability. In other words, if this were a conventional interest arbitration, then the Fort Frances, Kirkland Lake and Kincardine settlements might have some force. Given that this is an arbitration under Section 40, however, little weight can be accorded these other settlements. All I can conclude from them is that, under the circumstances which then prevailed in those three police services (of which we are ignorant) the parties decided, for their own reasons (of which we are also ignorant) that their officers should be compensated for unused sick leave.

I have rejected the Association's proposal that all officers transferring to the O.P.P. should be compensated for all of their unused sick leave. The situation is different, however, for accumulations of sick leave over 800 hours. Under By-law 1983-2, after officers had accumulated a minimum of 800 hours of sick leave, they could then opt to be paid each year at the rate of 25% for all unused hours over 800 hours, such payments

being limited to 32 hours. Some presumably exercised this option; many did not. The evidence shows that, as of April 30, 1996, 18 of 38 officers had accumulations greater than 800 hours. Officer who chose not to take the 25% cash payment for sick leave in excess of 800 hours, it can be presumed, did so in order that they would have more sick time banked in the event that they were ill for long periods of time or that they needed to supplement WCB or long-term disability. They made this decision based on the quite reasonable expectations that their employment with the Orillia Police Service would continue and that the Orillia Police Service itself would continue.

In effect, the decision to disband the Orillia Police Service imposed a cost on any officer with more than 800 hours of sick leave accumulated—namely, the cash value of 25% of the equivalent hourly salary for all hours above 800. Clearly, had any such officer been able to anticipate the closure of the Orillia Police Service, then he or she would have cashed out any such sick leave credits as they accumulated. However, they did not do that, for entirely logical reasons, and now find themselves in a position where the extra credits mean nothing. Having foregone the money to which they were entitled under the collective agreement in order to accumulate extra credits, they are about to see those extra sick leave credits dissolve with the disbandment of the Orillia Police Service.

In my view, it is not very much of a stretch to characterize this particular loss as an “economic consequence” of the decision to disband the Orillia Police Service. Put another way, it seems to me that compensating such officers for the appropriate hours they accumulated above 800 fits within the spirit, if not the legalistic letter, of the principle of “shielding the employee from the economic consequences of dismissal.” It is at least a logical and defensible extension of that principle, particularly because, as the *Wiarnton* award noted, the principle of reasonable notice must be “*adapted to the special circumstances of policing.*” In policing, one is always aware of the special risks associated with the job and the correspondingly special importance of sick leave. In short, these officers should be compensated for appropriate hours above 800 they had accumulated.

While I am not suggesting that the disbanding of the Force was foreseeable in the long term, or that the Board should necessarily have acted differently in its severance

negotiations with the Association, I am suggesting that I can and should recognize the foregoing reasoning in my award. Accordingly, therefore, it is my award that all officers who, at the time of disbandment, had more than 800 hours of accumulated sick leave in the bank, be compensated for those excess hours in accordance with By-Law 1983-2. That is to say, they are to be compensated at the rate of 25% of the rates then in effect to a maximum of 32 hours for each year in which they accumulated, but did not cash in, sick-bank hours in excess of 800.

Extended Health Care Coverage for Sgt. Adams and Constable Crockford

The Association is arguing that these two officers, both of whom chose to retire rather than to accept employment with the O.P.P., are entitled to have the Board pay for extended health care (EHC) benefits until age 65. The facts are not in dispute, and are set out below.

Both officers retired effective May 31, 1996, on the date of disbandment of the Orillia Police Service.

Constable Crockford was 51 years of age, and Sgt. Adams was 58, at the time of disbandment.

The O.P.P. offer to Sgt. Adams was that he would serve at the rank of Constable; there was no assurance of the rank of Sergeant.

Constable Crockford started his career in 1966 with the O.P.P. and joined the Orillia Police Service on March 16, 1969. Sgt. Adams started his career with the Metropolitan Toronto in 1958, joining the Orillia Police Service on May 1, 1970. Both served at Orillia until retirement.

One area of the factual situation is partially in dispute—namely, what was understood by Constable Crockford and Sgt. Adams with respect to the length of time it would take them to qualify for full extended O.P.P. Extended Health Care retirement benefits were they to join the O.P.P. Up to last year, it seems to have been understood by the parties that the minimum time was ten years. However, in discussions in 1992 between the Management Board of Cabinet and the O.P.P. Association, it had been agreed that O.P.P. employees who terminated would be eligible to receive extended health care retirement benefits as long as they qualified for pension benefits under the Public Service Pension

Fund. The minimum service for qualification for the Public Service Pension Plan is two years. The practical effect of this agreement was to reduce the waiting period for entitlement to extended health care retirement benefits from 10 to 2 years for O.P.P. officers.

The application of this change to those officers transferring to the O.P.P. from the Orillia Police Service was confirmed in the spring of 1996, but the exact date is not clear from the evidence. I note that the Police Services Board was notified of the applicability of this change by a letter from the O.P.P. dated May 29, 1996, in response to a letter from the Board, dated March 20, 1996. There is a dispute as to whether Constable Crockford and Sgt. Adams knew about this change—or, at least, *should* have known about it—when they made their decisions to retire rather than to accept employment with the O.P.P. The Association claims that these officers did *not* know that the waiting period was anything less than 10 years when they made their decision to retire, while the Board claims that it “understood that all parties were aware of this change and expected that it would apply to the transferring Orillia officers.” In any event, the Board argues that the information had been available since 1992 and, as part of their duty to mitigate their losses, Constable Crockford, Sgt. Adams, and the Association should have sought out the facts.

Article 14.01 (a) (ii) of the Orillia collective agreement provided as follows:

The board agrees to pay 100% of the Blue Cross Extended Health Care for officers who retire at age sixty (60) year or who have completed thirty (30) years of continuous service at the time of their retirement.

This payment shall be maintained until the retired officer reaches the age of sixty-five (65) years.

Both Sgt. Adams and Constable Crockford applied for this benefit before they retired, but it was denied by the Police Services Board on the basis that neither had had 30 years of continuous service with the Orillia Police Service. They grieved, and the matter was referred to rights arbitration, before Mr. Barry Fisher. In an award dated March 26, 1997, Mr. Fisher dismissed the grievance, having found, on the basis of the wording of the agreement as well as the practice of the parties over the years, that “thirty years of

continuous service” could only mean thirty years of continuous service with the *Orillia Police Service*.

At roughly the same time as the grievance, the Association sought this benefit on behalf of Constable Crockford and Sgt. Adams as part of the severance agreement under the Section 40 of the *Police Services Act*. Again, the Board refused to agree, so that the matter came before me.

The Board argued that, having opted to test this claim at rights arbitration, the Association was now estopped from asserting the same right in these Section 40 proceedings. With great respect, this is not a case for estoppel and, so far as I can see, there is nothing to prevent the Association from pursuing its claim before both a rights arbitrator and an arbitrator appointed under Section 40; each looks at the situation from a different perspective and must decide the issue in terms of different principles. Thus, I do not accept the Board’s argument that the Association is estopped from putting this issue before me in this Section 40 proceeding.

The Board’s principal argument in respect of Constable Crockford and Sgt. Adams is, as it was for the officers joining the O.P.P., that any claim for severance must be grounded in some form of loss. And, while there is no question that the loss of employment can be considered such a loss, in the case of Constable Crockford and Sgt. Adams, it was a self-inflicted loss. That is to say, in the law of unjust dismissal, from which the principles which determine severance in Section 40 cases are derived, there is a concomitant duty on the part of the dismissed employee to mitigate his or her loss by trying to obtain another job. In this case, another job, carrying superior compensation, was offered to both officers, but they declined. Accordingly, so argues the Board, they have disintitiled themselves to any severance.

The Association argues the Constable Crockford and Sgt. Adams retired when they did only because of the disbandment of the Orillia Police Service and that they had a perfect right to retire. They are claiming only retiree health benefits to which, they understood, they would not be entitled were they to join the O.P.P., since they believed that the entitlement waiting period was ten years (with the O.P.P.) which, being 51 and 58 years old, respectively, they could never attain. The Association is arguing, in other

words, that these two officers will have missed EHC retiree benefits because the Orillia Police Service ceased to exist, and that they should therefore be compensated for that loss in this severance award.

Award^{3/4} Extended Health Benefits

As noted in the earlier part of this award, the principles which govern severance entitlement—in civil law and, it is now accepted, in Section 40 cases—derive from the civil law of unjust dismissal. The heart of this body of principles is the notion that the employee must be shielded from the economic consequences of dismissal. In this situation, all of the uniformed officers were afforded such a shield to some extent, by virtue of offers of employment with the Ontario Provincial Police. Indeed, it can be said that most of them were *more* than shielded because of the fact that the total compensation under the O.P.P. was significantly higher than it was in Orillia.

In the law of unjust dismissal—as in civil law more generally—there is the duty to mitigate damages; the dismissed employee is expected to do everything reasonable to reduce or limit his or her economic loss by trying to find another job as quickly as possible. The courts allow, however, that the dismissed employee does not have to accept just *any* job; he or she can hold out for something roughly similar, in terms of type, stature, and compensation level, to the position from which he or she was dismissed.

In applying these principles of wrongful dismissal to the facts of this situation, it becomes necessary to distinguish between Constable Crockford and Sgt. Adams. First, there is a significant age differential; Constable Crockford was 51 and Sgt. Adams 58 at the time of retirement. More importantly, though, the O.P.P. would only guarantee Sergeant Adams the rank of Constable.

The absence of a guarantee of the rank of Sergeant is important in two respects, the first of which is economic. As a Sergeant with the Orillia Police Service, Sgt. Adams earned a salary of \$53,900, which \$1,895 greater than the O.P.P. First Class Constable salary of \$52,035. This differential means, even if one accepts the Board's view of the relative total values of the two compensation packages, that Sgt. Adams would have sustained an overall economic loss of \$1,167 annually had he transferred to the O.P.P. as a

Constable. Applying the Association's characterization of the relative costs, he would have sustained a loss of \$1,800 to \$1,900.

But the matter of the rank of Sergeant is an important issue, in and of itself. As has been well documented in the research literature in both Canada and the United States, rank has a special significance in the profession of policing, to a degree unmatched by virtually any other profession in the private sector and most of the public sector. Indeed, the only really comparison is the armed forces. In both policing and the armed forces, rank is the outward manifestation of one's career success. It is literally worn on the sleeve; it is obvious to everyone, whether a member of the profession or not. Indeed, the lack of promotion to higher rank—the so-called “career constable” syndrome—brought about by the squeeze on municipal budgets over the last ten to fifteen years, has posed a major problem for North American police forces in terms of morale. In the special context of policing, in other words, it is a significant cost, in a non-economic sense, to be reduced in rank from Sergeant to Constable.

The final element to be considered in respect of Sergeant Adams's choice of retirement over the O.P.P. is the matter of his age as of May 31, 1996: he was 58 years old. Thirty-eight of these years had been spent in policing—the first 12 with Metropolitan Toronto and the last 26 with Orillia. He was less than two years away from retirement.

Overall, it is my conclusion that, in refusing the offer of employment with the O.P.P., taking into account all of the foregoing factors, in the context of the unique culture and nature of policing, Sgt. Adams cannot be said to have refused to mitigate the damages arising out of his dismissal from the Orillia Police Service. If one assumes that he would have transferred to the O.P.P. as a Constable,⁶ then it is clear that, in economic terms, he would have lost from \$1,200 to \$1,900 per year. He would also have been required to accept a demotion in rank—an important consideration in policing, much more so than in civilian professions. On top of all of that, given that he was 58 years old, had nearly 38 years of policing experience, and was less than two years away from retirement, his decision to retire rather than to start a job with a new organization, having spent 26 years with the old, is understandable. In my view, Sgt. Adam's decision to retire rather

⁶ And, confronting the choices facing him, this is the only prudent assumption he could have made.

than accept employment as a Constable with the O.P.P. falls within the acceptable boundaries of a position which a police officer dismissed because of the disbandment of his force should be able to reasonably turn it down without prejudice to his chances for severance compensation.

Constable Crockford is in a different situation. At the time of disbandment, he was only 51 years old and a Constable. The O.P.P. position would have brought him a significantly richer total-compensation package, and he would have gone to the O.P.P. at his present rank. As well, at the relatively young age of 51, he had significantly longer time to adapt to, and carve out a comfortable niche in, a new organization.

Constable Crockford's and Sgt. Adams's situations differ in one other respect, as well. Given the two-year qualification period for EHC retiree benefits with the O.P.P., Constable Crockford, being only 51 years of age, could have qualified easily, while Sgt. Adams, being over 58, would never have qualified. I accept that neither officer understood that the qualification period was two years rather than ten at the time they made their decision. On the other hand, the Board's argument that they or the Association should have ascertained the facts is at least worth considering. Since I heard little evidence with respect to how possible it was to determine these facts, however, I merely make this as an observation; my award does not turn on it.

Taking all of the foregoing into account, it is my conclusion that the principle of "shielding the employee from the economic consequences of dismissal" stretches far enough to support the Association's claim on behalf of Sgt. Adams, despite his declining the O.P.P. offer, but not far enough for Constable Crockford. In choosing to retire, not knowing the outcome of either the rights or the Section 40 arbitrations, Constable Crockford in effect opted for the benefits of retirement over a demonstrably improved economic package, with at least adequate non-economic dimensions, provided by the O.P.P. In short, there is simply no basis to find that the Police Services Board or the City of Orillia should have to pay for Constable Crockford's extended health care to age 65. Accordingly, then, his claim must be dismissed.

Sgt. Adams, on the other hand, falls within the principle of the requirement that a dismissed employee be shielded from the economic impact of being dismissed—despite,

for the reasons set forth *supra*, his turning down an offer of employment with the O.P.P. I accept that he retired only because the Orillia Police Service disbanded and that, but for that disbandment, he would have continued in the Service's employ to retirement at age 60. At that point, he would have been entitled to extended health retirement benefits to age 65, pursuant to Article 14.01 (a) (ii) of the Orillia collective agreement. There is no question, in other words, that the decision to disband the Force resulted in the direct cost impact on Sgt. Adams of losing extended health care retirement benefits. And he could not have qualified for them, had he taken the O.P.P. position.

For all of the foregoing reasons, then, Sgt. Adams's claim succeeds. The Police Service Board is directed to provide retiree extended health benefits to Sgt. Adams until he reaches 65 years of age. This may be accomplished either by actually paying the premiums for extended health care over time or by providing a lump sum in favour of Sgt. Adams equivalent to the present value of the cost of extended health care benefits from June 1, 1996, through to the day on which he turns 65 years of age.

I believe that I have dealt with all of the issues outstanding but, in the event that I have inadvertently missed something, or that the parties have any difficulty implementing any aspect of this award, I remain seised.

It remains only for me to thank Mr. Bass and Mr. Roland for their very thorough and helpful presentations.

Dated at Kingston, this 12th day of June, 1997.

R. L. Jackson

Appendix 1

Ruling Re Timeliness

Having read and considered both submissions, I have concluded that I must hear and determine all of the issues raised at the May 27 hearing. If this were a normal interest arbitration in the context of a conventional round of collective bargaining, then I would agree with Mr. Bass's position for the reasons set out in the Kevin Burkett *Princess Margaret Hospital* award. However, it is not such a situation.

May appointment pursuant to the decision of the Ontario Civilian Commission of Police Services to hear and determine "any unresolved severance issues" arising out of the disbandment of the Orillia Police Force creates a situation that is different from that of an interest arbitrator in a conventional bargaining setting in these respects:

1. This will be the one and only opportunity for these officers to have these issues resolved whereas, in a conventional bargaining setting, the next round of bargaining would give them the opportunity to have the issues addressed.
2. The heart of the reasoning in *Princess Margaret Hospital* and like awards is that, to entertain new proposals part way through the collective bargaining process, would be to prejudice and undermine that process and, as a matter of policy, that cannot be tolerated. However, that consideration does not exist in this situation since any attempt that might have been made between the parties themselves to negotiate severance was, by definition, a one-time-only negotiation. In short, there is no process to prejudice.
3. The collective-bargaining process regime set out in the *Police Services Act* mandates an integrated sequence of phases in order to create an efficient and orderly process for the resolution of interest disputes, which must be respected and protected; notice to bargain, bargaining in good faith by both parties, conciliation and then, if necessary, arbitration. In other words, arbitration picks up and carries on with a process that has already proceeded through other statutorily imposed phases. In this Section 40 arbitration, no such sequence of phases was mandated; there was only arbitration. In other words, in terms of its statutory context, this arbitration is not part of an integrated process, but a distinct and independent event.
4. Any prejudice to the Board will have been cured by adapting the process in the way we did; that is, by agreeing to either reconvene or have written submissions if I ruled that I had jurisdiction to hear and determine these other issues.

For all of the foregoing reasons, then, it is my ruling that I must hear and determine all of the issues raised at our hearing on May 27.