

**IN THE MATTER OF AN INTEREST ARBITRATION**

BETWEEN:

**COBOURG POLICE SERVICES BOARD**

(the "Employer/Police Services Board")

- and -

**COBOURG POLICE ASSOCIATION**

(the "Association")

**PAULA KNOPF – SOLE ARBITRATOR**

**APPEARANCES**

**For the Employer**

**Daniel Leone, Counsel**

**For the Union**

**Bill Cole, Consultant  
Stan Sokay, President  
Karen Stokes, Civilian Representative  
Karen Finnemore, Civilian Representative  
John Davidson, Past President  
Andrew Allan, Treasurer**

**Hearing in this matter was held in Cobourg, Ontario on July 21, 2002  
And written submission followed**

## A W A R D

This is an interest arbitration convened pursuant to the *Police Services Act*. The Cobourg Police Association (hereinafter referred to as the Association) is the exclusive bargaining agent representing police constables, officers (excluding Inspector, Deputy Chief of Police positions) and civilian staff. There are 31 uniformed and 26 civilian members. The civilian members are a mix of full-time and part-time employees. The members of the Association provide police and support services to the residents of the town of Cobourg and the neighbouring community of Hamilton Township. The Cobourg Police Services Board (hereinafter referred to as the Police Services Board or the Employer) has responsibility for these areas and their approximately 27,000 residents.

Historically, the parties have reached a collective agreement covering both the uniformed and civilian employees. However, in this round of bargaining, the Association indicated its desire to create a separate collective agreement applicable to the civilian members only. The parties were able to successfully negotiate a contract covering the uniformed members. However, the parties were unable to reach agreement regarding the civilian contract.

Pursuant to the Act, a conciliation officer was appointed to assist the parties. When the impasse continued, I was appointed by the Solicitor General to conduct a mediation/arbitration proceeding to resolve the contract.

The parties chose to engage in a process of active mediation. When those efforts did not result in agreement, the parties agreed to submit written evidence and argument to the mediator/arbitrator and to have a decision issued on the basis of the briefs presented.

This Award results from a careful consideration of the written submissions filed by both parties.

Before embarking on a determination of the individual issues that arise in this case, it is important to state the underlying philosophies that have been applied to this particular situation. First and foremost, as an interest arbitrator, the goal is “to establish the terms and conditions which the parties themselves would have fashioned if they had had the right to strike or lock out.” See *Welland County General Hospital* (1965), 16 L.A.C. 1 (Harry Arthurs) at page 6. In addition, an arbitrator must also pay heed to the criteria in the *Police Services Act section 122(5)*:

1. The employer’s ability to pay in light of its fiscal situation.
2. 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.
3. The economic situation in Ontario and in the municipality.
4. A comparison, as between the employees and other comparable employees in the public and private sectors, of the terms and conditions of employment and the nature of the work performed.
5. The employer’s ability to attract and retain qualified employees.
6. The interest and welfare of the community served by the police force.
7. Any local factors affecting that community.

Finally, it is very significant for the situation at hand that the parties have negotiated a contract governing the uniformed officers. Historically, the civilian and uniformed officers have been treated equally in this jurisdiction. The freely negotiated settlement with the uniformed officers was ratified on August 28, 2001. Therefore, that document presents significant and compelling evidence regarding a predictor of

the terms and conditions which the parties could have expected to have fashioned if they had the right to strike or lock out.

With these principles and criteria in mind, I can now turn to the specific issues that remain in dispute.

## **1. SALARY INCREASES**

With the exception of two categories, the Association seeks the same increases as were negotiated for the uniformed members across the board, i.e. 4% in each of the three years that the collective agreement would be in force. The Association argues that its request is compatible with the history of bargaining in this jurisdiction and maintains a status quo with regard to other Police Services Board historical comparators. The evidence shows that collective bargaining has resulted in the same percentage increases achieved by the uniformed and civilian members with this Police Service since 1992. The Board is offering 4% for all categories in the three years of this collective agreement and wants to make no exceptions for any categories. On the whole, the parties are in accord with the notion that the members of the bargaining unit should receive the same percentage as negotiated by the uniformed members,

The Association seeks an exception to the general increases with respect to the positions of communicator and court security. The Association argues these positions are “critically underpaid and as a result are subject to retention and morale problems.” Therefore the Association seeks a 21.45% increase over the life of the contract for the communicator and 27.55% increase for the court security officer position. To justify these amounts, the Association filed information regarding the salaries being paid for these positions in what it refers to as the “historically comparable” jurisdictions with similar positions. The Association points to the fact

that a court security officer has recently left this force to take a position in Port Hope as a communicator. Port Hope is one of the comparables that has been used by the parties in the past. The Association asserts that other civilian staff are “considering leaving, subject to the adjustment in their present salaries.”

The Association has proposed salary increases for the communicators as follows

2001	12%
2002	3.85%
2003	4.07%:

The Association proposed increases for the court security officer of 27.55% over the three years to achieve the average hourly rate of court security positions in the five comparators of Owen Sound, Oxford, South Simcoe, Orangeville and Lindsay.

The Police Services Board responds by asserting that it is “not currently experiencing a problem with attracting or retaining employees.” It also asserts that any purported concerns about retention are “simply false.” The Employer explained that only one security officer has left this police force recently and that this was because the individual accepted a different and higher rated position with another service. Therefore, it was said that there is no real issue of retention in this jurisdiction. The Police Services Board also cites the recent hiring of a husband and wife “team” from the Ottawa Police Service as indicative of the fact that this Force can retain qualified people at the salary levels being offered.

The Police Services Board also stressed that the notion of “total compensation” should be considered when looking at these positions and the overall salary offer. The Employer points out that the Association has already received

improvements in this round of bargaining in the areas of benefit plans, increased shift bonuses and years of continuing service with other police service boards or agencies. The Board has also agreed to increase mileage rates, court allowance rates, meal allowances and standby pay for court security.

Addressing the issue of catch-up directly, the Employer argues that it is not necessary or warranted in this round of bargaining. The Police Services Board stresses that its offer of 4% to all classifications keeps the parties “within range” of the Association’s own comparables. The Board also emphasizes that the “current level of service cannot be provided without an increase in the Board’s budget” and that any further increases would necessitate a tax increase.

In reply, the Association also turned to the concept of total compensation and the total package in the collective agreement. It stressed that the Association’s concession to relieve the Board from paying for all related costs, including tuition, for recruit training at the Ontario Police College has relieved the Board from paying an estimated seven to ten thousand dollars per recruit for tuition. The Association argues this should be taken into consideration in determining “total compensation.”

After considering all these submissions and the materials filed, the following conclusions emerge. The negotiated settlement with the uniformed members and the parties’ positions at this hearing make it clear that a 4% increase to the civilian salaries in each of the three years of this contract is appropriate to a certain degree. **Therefore, with the exception of the communicators and court security officers, I order that the members of this bargaining unit have their salaries increased by 4% in each of the three years of the contract.**

Turning to the classification of communicator and court security officer, the evidence reveals that these positions have not maintained the same level of comparability to other positions amongst the appropriate comparables. It is not clear how or why these positions have fallen behind other positions in this bargaining unit which seem to maintain a kind of harmony with the comparators. An arbitrator is often reluctant to interfere with a pattern that has developed through free collective bargaining. On the other hand, if nothing is done in this case, these two positions will continue to divert away from comparability with their colleagues in comparable jurisdictions. This will also cause divergence or anomalies within this bargaining unit. Accordingly, some degree of “catch-up” is in order. However, I do not agree with the Association that it is the role of this arbitrator to completely remedy the situation in this contract.

**Having taken into consideration the able submissions of the parties, I have concluded that the appropriate “catch-up” in this situation should be for both the communicator and the court security classification to be increased by the following percentages:**

	<b>Communicator</b>	<b>Court Security</b>
<b>2001</b>	<b>12 %</b>	<b>10 %</b>
<b>2002</b>	<b>3 %</b>	<b>3 %</b>
<b>2003</b>	<b>3 %</b>	<b>2 %</b>

## **2. STATUTORY HOLIDAYS**

Currently, the collective agreement provides for twelve statutory holidays. If a member is required to work on such a holiday s/he is entitled to a day

off with pay to be paid at one and a half times the regular rate for all hours worked on the holiday. The calculation for regular full-time communicators is 12 hours. For other full-time members of this bargaining unit, the calculation is 8 hours. The Police Services Board negotiated a concession with the uniformed bargaining unit in this area reducing the number of statutory holidays to eleven days. Further, uniformed members are paid at the rate of ten hours per day although they have a twelve-hour shift. The Police Service Board is proposing that the civilian contract limit the number of statutory holidays to eleven and that members be paid on the basis of an eight-hour shift. The proposal also will allow for Heritage Day to be added to article 17.01 “when” it is proclaimed by the federal government. The Board argues that these amendments would be consistent with the freely negotiated settlement with the uniformed members and are also in line with the historical comparator services.

The Association vigorously objects to the proposed changes. It stresses that the uniformed officers agreed to delete one statutory holiday in response to achieving significant and desirable alternations to their shift scheduling. The uniformed officers had long sought the twelve-hour shift that has now been introduced. Therefore, the concession of a statutory day brought significant gains to the uniformed members. The Association also points out that prior to the restructuring of the shift system for the uniformed members, they had received ten hours’ pay for each statutory holiday. In agreeing to change to the twelve-hour shift, the parties did not amend the statutory holiday entitlement hours upwards. The Association points out that there are no proposals to change the hours of work for civilians and therefore no demonstrated need to change the hours that would be allocated to each day of a statutory holiday. It was argued that to do otherwise would undercut the purpose of the day off in lieu of the statutory holiday.

Keeping in mind the historically close relationship between the civilian and uniformed terms and conditions of employment in this police service, it would



seem appropriate that the collective agreement be amended to match the uniformed agreement to provide eleven rather than twelve statutory holidays annually.

However, I have not been persuaded that there is any justification for amending the number of hours from the current language of article 17.01. **Accordingly,**

**Article 17.01 shall simply be amended by providing for a total of eleven statutory or paid holidays as per the language of the Employer's proposal.**

**However, there shall be no amendment to the calculation for the members' hours of work. Further, Article 17.02 shall be amended to provide that Heritage Day will be added to the statutory holidays in 17.01 when it is proclaimed by the Federal Government as a statutory holiday.**

### **3. HEALTH BENEFITS**

The collective agreement currently provides health and insurance benefits for regular part-time employees who received such benefits prior to November 29, 1997. Newer part-time members are not eligible for these benefits. The Association wants the limitations removed so that all part-time employees have the same extended health care benefits. The Association argues that this will assist with retention and recruitment.

The Board responds by pointing out that the current wording was instituted in the last round of collective bargaining where the parties agreed to exclude newer part-time employees from the benefits. It was submitted that it is simply "not realistic" to assume that the parties would alter this item at this time. Further, it was stressed that reinstating the benefit would be extremely costly.

In the last round of bargaining, the parties freely agreed to restrict the health benefits to one group of regular part-time members. I am confident that there were valid and well considered reasons for doing this. It is neither timely nor

appropriate to change the parties' decision in the next round of bargaining. **Accordingly, the current language shall remain the same.**

#### **4. BARGAINING UNIT COMPOSITION**

A position of accounts clerk has been created and filled. The Police Services Board is remitting dues check-off for the incumbent. This matter comes before this arbitrator because an issue has arisen with regard to the proper classification of the position. The Association argues that this is a question that should be directly determined by the parties regardless of whether other classifications should be retained or amended in the collective agreement.

The Police Services Board has been seeking to delete certain classifications contained in the collective agreement that are currently unoccupied. The Police Services Board has indicated to the Association that it wishes to tie the resolution of the accounts clerk classification to decisions regarding the deletions of the classifications for the other positions.

The Association suggested that the matter be remitted to the parties for 45 days and if no agreement can be reached, the arbitrator would receive further submissions and make a binding determination in the matter.

The Police Services Board maintains that it is prepared to include the position in the bargaining unit and continue to negotiate an appropriate rate.

It is somewhat surprising that this issue remains unresolved and has been brought before this arbitrator. Both parties agree that the position is one that belongs in the bargaining unit. Further, there appears to be no dispute about the

appropriate rate. This issue should not be a stumbling block to achieving a collective agreement.

**The parties are ordered to include the position of accounts clerk in the collective agreement and to agree upon an appropriate rate for that classification. The parties are given 45 days from the date of this award to achieve agreement on that matter. Failing that, the matter can be brought before this arbitrator at the request of either party.**

## **5. CONCLUSION**

As a result of the foregoing, the parties are ordered to enter into a collective agreement incorporating the items they have already agreed upon and the items that have been resolved by way of this award. I remain seized with matters regarding implementation should the parties require any further assistance.

DATED at Toronto, Ontario this 13<sup>th</sup> day of November, 2002.

---

Paula Knopf – Sole Arbitrator