

**IN THE MATTER OF AN ARBITRATION PURSUANT TO THE PROVISIONS
OF SECTIONS 40 AND 124 OF THE POLICE SERVICES ACT, R.SO. 1990,
CHAPTER P15 AS AMENDED**

BETWEEN:

KINGSVILLE POLICE SERVICES BOARD

(the "Board")

- and -

CHIEF NICK KUIPERS

("Kuipers")

PAULA KNOPF – SOLE ARBITRATOR

SUPPLEMENTARY AWARD

On November 15, 1999 I issued an Award in this matter concerning the rights of Chief Nick Kuipers consequent to the disbandment of the Kingsville Police Services Board. I remained seized with issues concerning implementation. The parties have since contacted me seeking direction on issues of Salary Differential and Pension Loss. By the parties' agreement, written submissions were exchanged and filed, dated March 8, 15, and 20, 2000. These have been reviewed and considered.

Salary Differential

Chief Kuipers was awarded compensation for wage loss on the basis of a 24-month notice period. His counsel submits that this should be calculated on the assumption of a 2.6% salary increase in 1999 and 2000. Counsel for the Police Services Board (the Board) submits that it is inappropriate and outside of my jurisdiction to order that a "notional" salary increase should be computed into the concept of wage loss. Further, the Board raises the question of how the parties should deal with the issue of Chief Kuipers' actual salary with the O.P.P for the year 2000 before that rate is fixed.

As stated in the original Award, the concept of a notice period in a case like this is based on a "legal fiction." It is designed to replicate the period of notice that fairly compensates a person for loss of employment. The calculations are based on the

point that the employment is terminated. While there may be situations where it could be appropriate to assume salary increases during the period of notice, I do not conclude that this is such a case. In this economic climate, public sector salary increases are no longer automatic. Further, there is no reliable method of calculating what the increase would be because the suggested average over the last three years is not the basis upon which increases are normally determined. **Therefore, the calculation of the wage loss should be based on Chief Kuipers' salary at the time of disbandment.**

However, I am concerned about the delays the parties are experiencing in finalizing this matter because of the uncertainty over the Year 2000 O.P.P. rate. It is important for both parties that this matter be resolved as quickly as possible. It would seem that there are three logical ways to accomplish this.

Alternative One – As per the Board's proposal, the Board's liability for calendar year 2000 be calculated on the assumption that the claimant will receive a 5% increase effective January 1, 2000. If the new wage grid negotiated by the O.P.P. Association provides a lesser increase, the Board would recalculate its payment and provide for any shortfall. Conversely, if the wage increase exceeds 5%, Chief Kuipers would reimburse the Board for any overpayment.

Alternative Two – The salary differential for 1999 should be paid over immediately and the differential for 2000 should then be paid as soon as that rate is fixed.

Alternative Three – The parties exercise their right to design a different, but mutually agreeable solution.

Chief Kuipers should have the right of choosing which alternative is preferable. He should communicate his choice to the Board within one week of receipt of this Supplementary Award.

Pension Loss

The original Award granted Chief Kuipers “compensation for the loss of the contribution holiday he would have enjoyed under OMERS during the twenty-four month period of notice.” His counsel submits that this should be calculated by totaling the amount that Chief Kuipers will actually pay into this O.P.P. pension during the two-year period. It is argued that this represents the “direct out-of-pocket consequence” of the loss of the OMERS’ contribution holiday.

The Board responds by arguing that the original Award set liability at the amount that would have been forwarded to OMERS but for the contribution holiday. It

was said that this would be consistent with the Award I issued with respect to the Kingsville Police Association.

I am mindful of the submissions regarding Chief Kuipers' actual economic losses. But I see no difference between the entitlement of Chief Kuipers and the Police Association in this area. **Accordingly, the Board is liable for the amount its pension contribution would have been but for the OMERS' contribution holiday.**

No other outstanding issues have been brought to my attention. I urge the parties to bring finality to this matter as soon as possible. I remain seized with issues of implementation should any further assistance be required.

Dated at Toronto, this 18th day of April, 2000.

Paula Knopf
Sole Arbitrator