

IN THE MATTER OF AN ARBITRATION

B E T W E E N:

HAMILTON POLICE SERVICES BOARD

(The Board)

- and -

HAMILTON POLICE ASSOCIATION

(The Association)

AND IN THE MATTER OF AN INTEREST ARBITRATION - FOR 2000 - 2002

ARBITRATOR: Kenneth P. Swan

APPEARANCES:

For the Board:

W.J. Hayter, Counsel
Bernie Morelli, Chair, HPSB
Mary Lou Dingle, Member, HPSB
Bruce Pearson, Member, HPSB
Ken Robertson, Chief, HPSB
Dave Logan, Acting Director, Human Resources,
City of Hamilton
James Grieve, Solicitor, HPSB
Lois Morin, Secretary, HPSB
John Pete, Superintendent

For the Association:

Barry Chercover, Counsel
S. Luft, Counsel
Gary Porter, Consultant
D. Allan, Administrator
B. Boyce, Executive Officer
B. Robinson, Chair
C. Wills, Director
R. Rozoski, Director
J. Engelhardt, Director

A W A R D

INTRODUCTION

A mediation hearing in this matter took place in Hamilton, Ontario on November 5, 2001. Unfortunately, the parties were unable to resolve the matters at issue between them, and those matters were subsequently referred to arbitration before me on January 15, 23 and February 22, 2002.

After the hearing, but before an award had been issued, the Association, by letter from counsel, alerted me to a settlement involving the City of Hamilton and the Hamilton Professional Fire Fighters' Association. Correspondence ensued between counsel in the course of which counsel for the City effectively objected to any consideration of that settlement in determining the issues between these parties. That correspondence was completed on May 9, 2002, and includes the positions of the parties both on whether I should consider the fire fighters' settlement in my deliberations, and on the substance of that settlement as well.

I have decided to accept the fire fighters' settlement as a part of the evidence before me. The long-standing relationship between police and fire fighters's salaries is a well-known aspect of interest arbitration in the public safety sector, and it would be wrong to ignore such an event, even when it arises after the close of the hearings. Obviously, it is only a part of the evidence available to me, and I shall discuss further its relevance to the issues to be decided below.

This is a complex dispute, involving a number of critical issues. Some of those issues involve significant cost; others are related to the governance of the police service. Substantial written submissions were presented, as well as three days of oral submissions. Based on those submissions, I turn to the matters to be resolved.

Both parties have advanced proposals for amendment to the collective agreements applicable to uniformed personnel and civilian personnel respectively which expired December 31, 1999. The parties are agreed that the agreements to be settled by this award should be for a duration of three years, from January 1, 2000 to December 31, 2002.

ASSOCIATION PROPOSALS

SALARIES

Both parties made extensive submissions on salaries, referring me to a number of authorities on the proper conduct of interest arbitration. Nothing would be served by analysing these authorities in any detail; they are well known, and they establish a range of considerations to be taken into account in dealing with disputes of this kind. Moreover, the *Police Services Act*, in subsection 122(5), sets out a number of criteria which I am required to consider, and to which the parties addressed a substantial part of their submissions. I have considered those factors, and this award is based on them, as well as other relevant considerations raised by the parties.

The Board bases its salary position largely on a budgetary allocation by the City of Hamilton which limits the funding to the Board to an increase of 2% of total salary in each of the calendar years 2000 and 2001. The Board's salary proposal, however, offers increases over the first two years of the agreement which would exceed the 2% increase provided by the City. This additional cost, which the Board refers to as "the shortfall", must be satisfied from elsewhere in the Board's operating budget for the three years under consideration. Therefore, the Board insists, its proposal is the most that should be awarded.

The proposal is as follows:

January 1, 2000	1.6%
July 1, 2000	1.0%
January 1, 2001	1.5%
July 1, 2001	1.5%
January 1, 2002	1.5%
July 1, 2002	1.5%

By contrast, the Association's primary position is as follows:

January 1, 2000	2.9%
January 1, 2001	3.01%
January 1, 2002	3.13%

At arbitration, however, the Association offered an alternative position which would have the effect of reducing the cash flow required to fund the increase, while producing similar end-rate salaries.

The proposal was as follows:

January 1, 2000	2.9%
January 1, 2001	1.5%
July 1, 2001	1.5%
January 1, 2002	2.1%
July 1, 2002	1.0%

It will be observed that the parties are not dramatically apart. The end rates created after July 1, 2002 by the proposal of either party would be less than \$200 apart. Nevertheless, both parties dealt with this as a critical issue between them, central to the resolution of the disputes which prevented them from concluding an agreement.

The parties have provided extensive comparisons with other police forces of comparable size and relevant geographical location. While all three positions fit generally within these measurements of comparability, the position which fits most closely is the alternative position proposed by the Association. Both in relation to end rates in each year of the contract, and in relation to the annualized cost of the increases, the Association's alternative tracks best what is known about settlements in the police sector among the large police services in the province.

Moreover, I am satisfied that, on the basis of the objective material presented to me on the City's financial position, it is a solution to the salary issue which is well within the criteria established by section 122(5) of the *Police Services Act*.

To whatever extent the Board bases its argument on the budgetary allocation made by the City for the first calendar years of the contract, it will be obvious that a municipal council cannot, simply by a budgetary process, control the interest arbitration process. Moreover, I do not understand the Board to argue that the budgetary allegation is controlling. Rather, it seems that the argument is that the budgetary allocation has some special status among the various sources of economic data available to me.

While budgetary allocations are certainly entitled to consideration, they cannot be given a status which would permit municipalities to trump all of the other considerations which go into establishing fair and reasonable salaries for employees subject to mandatory interest arbitration. To do so would render the interest arbitration provisions of the *Police Services Act* essentially meaningless. While I have the allocations in mind, therefore, I do not consider myself bound by them in fixing police salaries, anymore than the Board itself felt bound by them.

Moreover, it is instructive that the settlement reached between the City of Hamilton and the

Hamilton Professional Fire Fighters' Association is identical to the alternative proposal of the Hamilton Police Association. Not only is there a long-standing relationship between police and fire fighters' salaries in the former City of Hamilton, prior to amalgamation, that settlement constitutes a far more eloquent statement by the new City of Hamilton, after amalgamation, as to an appropriate salary increase for its public safety employees, than do the budget allocations.

Therefore, while I recognize that there were other factors involved in the fire fighters' settlement which must be taken into consideration in the total cost of the settlement to be resolved by me in the course of this arbitration, I am persuaded that I should accept the Association's alternative position on salaries.

I therefore award that all salaries as at December 31, 1999 be increased as follows:

January 1, 2000	2.9%
January 1, 2001	1.5%
July 1, 2001	1.5%
January 1, 2002	2.1%
July 1, 2002	1.0%

These increases are fully retroactive to the dates specified for all hours paid, and retroactivity shall be calculated and paid as soon as practical after the date of this award.

BENEFITS

Both the Association and the Board made proposals in relation to benefits. To a certain extent, those proposals are intertwined. Nevertheless, for the purposes of an orderly presentation of the resolution of the disputes between the parties, I shall deal separately with the proposals of each, while

observing that I have borne the total cost of the award in mind in dealing with all of the issues which have financial implications.

1. **Dental Benefits**

The current collective agreement language adjusts dental benefits to the ODA fee schedule one year in arrears of the posted schedule. The Association seeks to change the provision to provide coverage at the ODA fee schedule for the current year. The Association argues, and the Board concedes, that payment on the current ODA schedule is the norm in comparable police services. I therefore award the change requested by the Association. This change is to be effective for dental service provided after the date of this award.

The Association also seeks an increase in the lifetime limit for orthodontics from \$2000 to \$2500, and an expansion of the language to include the member and his/her spouse, as well as their children, who are already covered.

When comparability data are considered, the 80% co-insurance provision in the Hamilton collective agreement makes the total benefit entirely comparable to other police services. I am therefore not prepared to award any change in the maximum benefit at this time. I am, however, prepared to extend the coverage of the orthodontic plan to the member and the member's spouse, effective the date of this award, and so I award.

2. **Psychologists**

The Association proposes a change in Schedule D of the collective agreement to remove the per-visit caps on reimbursement for payments to registered clinical psychologists. These caps are \$50 for the first visit and \$35 per hour for subsequent treatments. It is not proposed to change the annual cap,

which is \$1,000 per year.

Having regard to the submissions of the parties, I am satisfied that this is an appropriate area for change. I award that the hourly rate for all visits be increased to \$70 per hour, with an annual cap of \$1000. This change is to be effective as of the date of this award.

3. **Hearing Aids**

The Association proposes that the current maximum benefit of \$300 be available every two years, instead of the current three years. This is a modest change, which I award. This change is effective as of the date of this award.

4. **Extended Health Care Benefits**

The Association proposes an increase from \$400 per person per calendar year to \$600 as the maximum benefit payable.

The evidence supporting this proposal is very sketchy. The proposal is denied.

COMPASSIONATE LEAVE

The Association proposes changes to the compassionate leave clauses of the collective agreements in a number of ways. First, the Association proposes adding step-brother and step-sister to the enumerations of brother and sister in clauses (e) and (f) of the provisions. I consider that this is a reasonable change and I award it.

Second, the Association proposes adding mother-in-law and father-in-law to the list of

relationships in respect of whose death a leave of absence of five days is available. I consider that this is also a reasonable amendment, and I award it.

The Association also seeks to change the number of days of leave of absence, whether three days or five days, to working days. In my view, this would significantly alter the dynamic of the compassionate leave provision, and would change the nature of compassionate leave from indemnity for what would otherwise be lost wages to a provision for paid leave. I do not think this is a reasonable change, and I do not award it.

Finally, there is an issue between the parties, which has been the subject of a grievance arbitration, relating to the discretionary nature of the compassionate leave, and the need to attend the funeral of the deceased in order to qualify. This is a complex dispute, and it is not clear to me that the collective agreement language proposed by the Association would achieve what it is seeking to do. I therefore propose to deal with the principles at issue, and remit the language to the parties for further consideration.

First, it seems unreasonable for management to have any discretion in respect of the length of the leave to which a member is entitled. The language should therefore reflect that the leave of absence is to be not more than three days or more than five days as specified, but at the option of the member, and not subject to management's discretion.

Second, the language now provides that the leave should be "in the event of the death of and for the purpose of attending the funeral of" the deceased. In my view, it is unreasonable to condition the leave on attending the funeral, or to limit the leave to end on the day of the funeral. It is not clear to me that, in fact, the latter is an intended aspect of the Board's policy in this regard, but it may be that the issue requires to be clarified. The language should therefore be changed to make it clear that the day of the

funeral, if any, is to be part of the specified leave of absence.

Finally, the Association proposes extending the paid benefits of this provision to temporary and part-time employees in the civilian unit. At present, the provision applies to these employees, but only on the basis that the leave is to be without pay. I think that this is a reasonable proposal, and I award it.

These changes to the collective agreement are effective on the date of this award. Where new language is required to implement the principles set out above, that new language shall be applied retroactively to the date of this award.

BURSARY/EDUCATION FUND

The collective agreements establish an education fund, fixed at a global amount of \$27,500 in 1991, and subject to an annual increase based on the Consumer Price Index for Canada. I am informed that the amount of this fund had reached \$31,600 in the year 2000. The Association seeks to increase it to \$55,000 for 2001, and thereafter to increase it by the Consumer Price Index.

This is an unusual form of education fund, apparently not found in any other comparable police service. There are apparently proposals outstanding to take a different approach to continuing education reimbursement. In the meantime, however, I think it is reasonable to provide an increase in the fund to \$40,000 for the calendar year 2002. The indexing provision should continue for subsequent years.

SICK LEAVE - DOCTOR'S NOTES

The Association proposes changes to Schedule B of both collective agreements and to the

regulations. The Association asserts that these changes are intended to require that the Board pay the expense of any medical certificates which it requires, and that the provision of a medical certificate be made discretionary, rather than mandatory. The proposed changes, however, appear to go much farther than that.

Once again, I propose to deal with this matter in principle, remitting to the parties the negotiation of the precise language to effect the changes awarded. In principle, I am not prepared to change Article 8 as proposed by the Association. This provision relates to the accumulation of sick leave credits, and eliminating it would appear to have a wider impact than is necessary to achieve the results sought by the Association.

I am prepared, however, to award that any cost associated with medical certificates required under Regulation 4, 6, or 7 be reimbursed by the Board. I am also prepared to award that Regulation 7 should be changed to provide that medical certificates under Regulation 7 be only required at the discretion of the Board, and on notice to the member.

ANNUAL LEAVE CREDITS FOR PREVIOUS SERVICE

The Association proposes that aggregated credited service should include service with any other Canadian police service. This would have the effect of increasing vacation entitlements for a substantial number of officers who have previous service. The justification for this proposal is not particularly convincing. The proposal is denied.

PARKING

Parking is only an issue for the Hamilton Police Service at the downtown Administration Building. At all other facilities, ample parking is readily available. The collective agreements include provision requiring the Board to assist in obtaining parking for members assigned to the Administration Building and to assume 50% of the monthly parking rate to a maximum of \$20. The Association proposes to increase the reimbursement rate to 100%, to a maximum of \$50, and to extend this benefit to temporary and part-time employees.

Given the potential cost of this change, I am not prepared to award it at this time.

FAMILY RESPONSIBILITIES LEAVE

The collective agreements now provide for up to five days each calendar year for family leave purposes, including child care, elder care and other family care requirements. The leave is without pay. The Association proposes to increase the leave to ten days per calendar year and to permit these days to be with pay, deducted from the employee's accumulated sick leave credits. While family leave is a progressive and desirable element in the collective agreement, and while it might be reasonable, with appropriate safeguards, to permit a loss of earnings to be offset from accumulated credits, the proposal advanced by the Association is far beyond any provision in any comparable police service. For the current round of arbitration, therefore, the proposal is denied.

COURT TIME

There is a complex dispute between the parties in relation to court time. First, the

Association proposes that the penalty provided in Article 4(6) applicable to a member who is required to return to police duties or court duties from an annual vacation apply to any scheduled statutory holiday time and accrued time scheduled in conjunction with vacation time.

The collective agreement provides a complicated process for signing for annual vacation, based on a right to sign for a two-week block in a first signing, all remaining annual leave entitlement in a second signing, and statutory holidays and at least 50% of projected accrued or approved credit time in a third signing. Where a member signs off Monday to Friday of one week in the third signing, the member may identify that week as blocked off for court purposes. If, however, the member is scheduled for court during that week, the penalty of two days off with pay for each day lost, which applies to vacation time, does not apply.

While the Association asserts that this makes those scheduling court time less sensitive to the interest of individual members in respect of weeks of holiday and accrued time, the Board denies that to be in fact the case, pointing out that those who schedule court dates are also members of the Association. I am not satisfied that the Association has made out a case for this change. The proposal is denied.

The Association also asks for a change in the basis for payment for off-duty court time. At present, a member who is required to attend at court during off-duty hours is to be paid a minimum of five hours at straight-time, or the actual hours worked at one and one-half times regular pay, whichever is the greater. The Association proposes to change this to a minimum of four hours at one and one-half times regular pay. I am not satisfied that the current provision is unreasonable, having regard to the provisions for court pay in comparable police services. The proposal is denied. Similarly, a proposal to make a similar amendment to the minimum pay for attending court immediately after working any regular shift that finishes

after midnight is also denied.

Finally, the Association proposes changes to the time off between attending court and beginning a night shift. I am not convinced that these changes are justified . The proposal is denied.

ANNUAL LEAVE SIGNING

The Association proposes changes in the annual leave signing provisions of the agreements to bring the language up to date with the current organizational structure. While the Association at one point sought an increase in the percentage of each signing group who could be absent on annual leave at any time, the Association abandoned that position at the arbitration, and reverted to the existing 20% calculation.

It is obvious that the language of this provision requires amendment. I do not think that there are any issues of principle involved now that the Association has changed its stance. I remit the language issues to the parties for resolution.

ASSOCIATION TIME FOR PAO/CPA

The Association proposes a new provision granting leave with pay to any member elected to the Board of Directors or any duly formed committee of either the Police Association of Ontario or the Canadian Police Association. There is apparently no one in this police service in a position to benefit from any such change at the present time. There being no immediate need to address this matter, it is denied for this round of arbitration.

INCLUSION OF ALL MEMORANDA OF AGREEMENT

The Association proposes to include the existing Memoranda of Agreement in the collective agreement. It was made clear at the hearing that this is not intended to give them any different binding effect, nor to give members any additional access to the grievance procedure in relation to those memoranda, than is currently the case. The Association merely asks to have all of the agreements affecting employment of its members in one place.

Since publication costs of the collective agreement are borne jointly by the parties, I award the Association's proposal, on the basis that no substantive change in grievability or arbitrability is involved.

TRAINING ALLOWANCE - CIVILIAN

Article 18.9 of the civilian agreement provides that Communications Operators assigned to train other persons for that classification be paid a 4% premium for all training hours. The Association proposes that Records Clerks, CPIC Operators, or Special Constables assigned to training should also be paid the same premium.

Provided that the language makes clear that the training must be specifically assigned by the Board, and that there be a minimum experience requirement analogous to that for communications operators, I award that the 4% premium be paid to these three classifications as well, effective the date of this award.

The Association also requests that clause 26.2, which provides for out-of-town training allowance for civilian members, be changed to provide allowances and expenses for civilian members like

those available to uniform members. I think that this is a reasonable change, and I so award, effective the date of this award.

SENIOR CONSTABLE QUALIFICATIONS

The Association proposed two changes to the qualifications for maintaining Senior Constable rate under the collective agreement. One of these was essentially agreed, a wording change in paragraph (d) to read:

The member must be free of a disciplinary conviction for which the confirmed penalty was the forfeiture of forty (40) or more hours pay or leave, or forty (40) or more hours suspension without pay, imposed in the previous twelve (12) months.

I so award.

The Association also proposes the removal of paragraph (c), which requires that the member must also have a satisfactory attendance record. It is obvious that this provision has created a significant amount of friction between the parties, and is one which is not replicated in Senior Constable provisions for any other comparable police services. I award that paragraph (c) be removed, and that paragraph (e) be amended accordingly.

SPECIALIST PAY

The Association requests a premium for constables assigned to duties as a Breathalyzer Technician or a Bomb Disposal Officer of 1% on all wages, and for constables assigned as an Accident Reconstructionist, a premium of 8%. It appears that the latter premium is already being paid as a matter of

practice, by analogy to the premium paid to criminal investigation detectives.

Provided that the language requires that the premium be paid only to those assigned to and performing the duties of the qualification, and that the qualification be maintained in accordance with the established requalification requirements, I award that these premiums be established and paid, effective January 1, 2002, and retroactive to that date.

BOARD PROPOSALS

SERGEANT'S RATE

The Board proposes to change the structure of salary for ranks above First Class Constable. The Hamilton Police Service is the only major police service with a two-tier structure for the Sergeant and Detective ranks. Sergeant (Detective) 2, the lower rate, is calculated as 108% of the First Class Constable rate. Sergeant (Detective) 1 is paid 108% of the Sergeant (Detective) 2 rate. Staff Sergeant (Detective Sergeant) is paid at 108% of the Sergeant (Detective) 1 rate. This differs from other forces where typically, each rate is based on a percentage of the First Class Constable rate. The Board proposes to change the three rates to 108%, 116% and 124% of the First Class Constable rate.

The Association argues that the two step Sergeant (Detective) rate saves the Board money in the first year of a promotion, when Sergeants and Detectives are paid at the lower level, and also saves money because Constables assigned to an acting rank of Sergeant or Detective are paid at the level 2 rate, thus reducing acting pay over comparable forces where there is a single rate, and acting pay is based on that rate.

On the basis of all of the submissions, I am not satisfied that the proposed change is justified. While the salary structure is unique, it is one negotiated between the parties, and one which has advantages for each.

COPP 2000

Perhaps the most contentious issue presented to me in this arbitration is the Board's proposal to amend the collective agreement for a pilot project implementing the COPP 2000 proposal. Briefly, COPP 2000 is a proposal for "patrol function re-engineering" developed by a project team composed of a number of both civilian and uniform bargaining unit members, and a representative of management. It proposes a number of organizational structures and technological innovations intended to enhance the efficiency of policing.

The implementation of the COPP 2000 proposal is behind schedule. It was suggested by the Association that the delay is at least partly due to the unavailability of the required technology. The current schedule involves an implementation of a pilot project in Division 2 beginning December 31, 2002 for one year. The Association expresses doubts that the technology will be available even to meet that schedule.

Each party blames the other for the unsatisfactory nature of this dispute. It is not my function to assign blame, but I think it is fair to say that neither party can escape some responsibility for the fact that negotiations for the necessary changes to the collective agreement to permit the pilot project to be undertaken have really never begun.

Indeed, it seems that it was only during the arbitration process that the precise required

changes or exceptions to the collective agreement sought by the Board were identified with any specificity.

As presented to me, the changes sought were as follows:

- (a) Sergeants will continue to work a 12 hour shift, but will vary from Schedule H of the collective agreement pertaining only to changing “night” shift to “day” shift;
- (b) Staff Sergeants will be required to work eight hour shifts, not 12 hour shifts under Schedule H;
- (c) Detectives will work a 10 hour shift but not as per Schedule F;
- (d) The prototype delivery system involves three Detectives, nine Detective Constables and no Detective Sergeant. Article 6(4) of the uniform collective agreement establishes fixed ratios as between the confirmed ranks and Detective Constables in the Investigative Services Division in Area 2 which is the area in which the pilot project will be run. The ratios under Article 6(4) are: 1 Detective Sergeant to seven Detectives (1:7), and seven Detective Constables for seven Detectives (1:1);
- (e) The pilot project requires no Detective Sergeant, and only one Detective to work with three or four Detective Constables, and so the ratio must be adjusted accordingly;
- (f) Annual leave signing would be changed to be by beat rather than by squad, possibly also with some discretion to adjust the outcome of a strict signing by seniority.

The Board’s position is essentially that these are minor changes, that they will be applicable only to those in Division 2 who are affected by the pilot project, and that they will have a direct impact only on a small number of those individuals. While the Board’s requests for changes to the collective agreement have previously been painted in very broad terms, the Board now asserts that these are intended to be temporary changes, in place only for the period of the pilot project, and reverting to the language specified in the collective agreements at the end of that project, unless the parties otherwise agree.

The Association's position is that each of these changes, even if it is applicable only to a limited number of people, would directly undermine collective agreement provisions which have been developed over a number of years, and which are intended to promote the well-being of its members, as well as the efficiency of the force.

Moreover, the Association has some broader concerns with the concept of COPP 2000. The Association views the proposal as changing the duties of various ranks and classifications, in some cases requiring members of one rank to perform duties currently assigned to a higher rank, without reclassification or compensation. The Association is also concerned that the supervision system envisioned under COPP 2000 will significantly reduce continuity of supervision, mentoring, career development and performance appraisals, areas where the parties have bargained a sophisticated structure which, the Association argues, is a model across the province.

It is obvious that the dispute between the parties is not yet susceptible of being resolved by interest arbitration. In fact, neither of the parties is asking me to make an award at this point, but to refer the matter back to them for discussion. The dispute is between the Board's proposal that I should do so and retain jurisdiction to resolve the matters should the parties be unable to resolve it themselves, and the Association's proposal that I should refer it back without retaining jurisdiction, and, if I see fit, order the parties to open negotiations early for new collective agreements so that this issue can be dealt with in the context of complete negotiations.

It will be obvious that I cannot make the order that the Association asks me to do; the parties can certainly agree to open negotiations early, but I have no jurisdiction to tell them to do so. I would, however, be derelict in declining jurisdiction over this matter in its entirety, and sending it on to a

subsequent round of arbitration which might not begin for a very substantial period of time, before an arbitrator who would have to spend the time again that I have spent to understand the issues. I have therefore decided to remit the matter to the parties for 45 days from the date of this award to permit them time to deal with the implications of the COPP 2000 pilot project, and the suspension of the application of parts of the collective agreements to that project. In my view, it should be possible to provide for the minimum collective agreement changes required to make the pilot project work, on a strictly time-limited and exceptional basis only, without any real harm to the interests of the Association or its members. Running the pilot project ought to give the parties a chance to assess its implications, both for the delivery of police services and for the issues identified by the Association as potentially endangered by the supervisory structure proposed. On the basis of the information gathered by both parties from the pilot project, informed decisions could then be made as to the extent to which the collective agreements ought to change to accommodate the COPP 2000 model, and the extent to which the COPP 2000 model ought to adapt to meet collective bargaining realities.

It is my intention to retain jurisdiction to resolve this matter if the parties are unable to do so themselves. As there is apparently some need to resolve these matters by September 2002 for an implementation on December 31, 2002, the parties may either make their submissions in writing immediately following the expiration of the 45 days, or earlier should they determine that they will be unable to resolve the matter. In the alternative, the parties may agree to deal with this by re-opening the hearing. If that is the case, they should be in contact with my office now to select a mutually acceptable date shortly after the expiration of the 45 day period.

On this basis, therefore, I remit these issues to the parties for further discussion, and retain

jurisdiction to bring this matter to a full and final conclusion, if they are unable to agree.

VACATION SIGN-UP- UNIFORM

The Board proposes a change to require Detective Sergeants and Detectives to sign together for vacation. The Association opposes this change.

I am not satisfied that the Board has established that this a necessary and desirable change to the collective agreement. It is therefore denied.

PROMOTION CLAUSE - CIVILIAN

This proposal of the Board is perhaps the second most contentious issue before me. The Board proposes to change the current promotion clause in the civilian collective agreement, clause 14.2, from one where seniority governs among applicants who have the qualifications to perform the work required, to one where seniority would govern only where the applicants are relatively equal in qualifications. In addition to favouring long service over superior qualifications, the Board argues that the effect of the clause has been to drive a number of part-time employees to other employment, because of the inherent barrier to desirable full-time positions which arises when seniority plays a more substantial part in the promotion process.

The Association disputes both the language proposed and the implications identified by the Board. It suggests that the examples of part-time staff “lost” to other employment is in fact misleading, and that in the last posting for full-time Communications Operator positions, four of the five vacancies were filled by part-time employees.

The Board is correct that the present clause is an anomaly among comparable police services. While it is difficult to know what actually occurs in practice, at least on paper all of the other comparable services has language which provides either for no specified role for seniority, or the same role for seniority as is now proposed by the Board.

On the other hand, the current clause provides significant protection for standards of qualification. It permits the Board to set qualifications to perform the work required “to the Board’s standards”, and makes promotion to certain “sensitive areas” subject to the approval of the Chief of Police.

The difficulty appears to arise from the fact that the nature of civilian employment is such that full-time employees looking for promotion to a higher classification compete for opportunities with part-time employees looking for an advancement to full-time. Where there are part-time and full-time positions in a desirable classification, the fact that part-time employees have been hired for and trained for that classification, and have significant experience in that classification, will often disadvantage full-time employees in a different classification when the test is one based on qualifications primarily. A test based on seniority will, in almost all cases, have the opposite effect.

These concerns ought, in my view, to be addressed more directly by the parties than has been the case so far. As there is no apparent urgency involved, and as there may be solutions which would protect both of the kinds of interests identified above, I am denying this proposal, with the suggestion to the parties that they review this matter again in their next round of negotiations.

BENEFIT COORDINATION

The Board proposes a number of changes to the benefit plans to reduce the cost of benefits. The Association opposes all of these on the basis that the current levels of protection were negotiated, and should not be altered.

The first proposal is benefit coordination between a member's benefit plan and a spouse's benefit plan, where the spouse is employed and covered by such a plan. The Association indicates that this would create an administrative burden on individual members, often requiring a spouse to make a fruitless claim for a benefit for which there is no coverage, or for which a coverage limit has been exhausted, simply to be able to make a claim under the member's plan.

I was not satisfied by the description given to me of the administrative arrangements required that this proposal is as simple and seamless as the Board proposes. If indeed it is one which can be done simply, then I have no doubt that the Association would readily agree to coordination that saves money while preserving benefit levels. I am not prepared to award this change, but I recommend that the Board and the Association pursue the possibility of implementing benefit coordination on a plan-by-plan basis, with the advice and assistance of the insurance carriers.

The Board seeks to obtain collective agreement language which would require mandatory generic drugs and prescriptions at the best available price at 10%. It appears, however, that the industry practice in the Hamilton area already includes best available price plus 10%, and Schedule D of the Uniform Collective Agreement already provides for generic drugs unless specifically prescribed otherwise by a physician. To whatever extent necessary, I award that the collective agreements be amended to reflect the current practice.

The Board also proposes a reduction in the cap on dispensing fees from \$9.00 to \$7.00 per prescription. On the basis of the submissions made to me, I do not think that this change is justified, and it is denied.

Finally, the Board proposes that the recall frequency for adults under the dental plan be changed to nine months. A nine month recall for adults is the norm in dental plans in comparable police services, and I think this is an area where the Board can justifiably claim relief. I therefore award that the dental plan recall be changed to nine months, at least in part to counterbalance the improvement in the ODA rate which I have awarded at the Association's request. This change will be effective as of the date of this award.

OPEN SPOTS

The Board proposes to amend the collective agreements to provide that where an open spot on the vacation sign-up list exists, a member cannot move into that spot within three weeks of the open spot without prior written consent of the command officer. The Association has made a counter proposal in its reply brief which at least appears to provide the basis for further discussions. Given that there is no urgency demonstrated, I deny the request, and remit it to the parties for consideration in the next round of collective bargaining.

DURATION OF AGREEMENT

The Board proposes an amendment to the language of the duration provision of the collective agreement to avoid "inadvertent retroactive application". I have dealt throughout this award with

the retroactive application of each element of my award. The parties can adapt Article 42(1), if necessary, to incorporate those determinations, and no amendment is necessary at this point.

CONCLUSION

In addition to the specific awards, I also award that the collective agreement shall contain any amendments agreed to between the parties in the course of negotiations. To whatever extent any matter proposed by other party has not been dealt with expressly, it is deemed to be denied. To whatever extent no effective date has been specified for any particular change awarded herein, it is deemed to be effective on the date of this award.

Finally, in addition to the specific reservations of jurisdiction set out above, I retain jurisdiction over the entirety of this dispute to whatever extent is necessary to ensure the conversion of this award into a full and enforceable collective agreement between the parties.

DATED AT TORONTO this day of July, 2002.

Kenneth P. Swan, Arbitrator

