

IN THE MATTER OF A RIGHTS ARBITRATION OF SERGEANT MICHAEL STYLES

B E T W E E N:

THE MEAFORD THORNBURY POLICE ASSOCIATION
(Hereinafter referred to as "The Association")

-and-

THE MEAFORD THORNBURY POLICE SERVICES BOARD
(Hereinafter referred to as "The Board")

-and-

MICHAEL STYLES
(Hereinafter referred to as "The Grievor")

SOLE ARBITRATOR: Richard H. McLaren

APPEARANCE FOR THE ASSOCIATION: No appearance

APPEARANCE FOR THE GRIEVOR: David S. Thompson

APPEARANCE FOR THE BOARD: Bob Bass

A HEARING IN RELATION TO THIS MATTER WAS HELD AT MEAFORD, ONTARIO,
ON OCTOBER 29, 2002.

AWARD

Michael Styles joined the predecessor Municipal Police Services to the Meaford Thornbury Board upon moving from the Toronto Police Service in May of 1976. He became a first class constable in 1979. In 1988, he successfully completed his examinations for promotion to Sergeant. From 1988 to 1997, Mr. Styles periodically acted as a Sergeant. There was also an extensive period in which he acted as Sergeant from February of 1997 to November of that year. Upon amalgamation in November 1997, Mr. Styles returned to the rank of first class constable. Mr. Styles was appointed acting Sergeant in September of 2000 by acting Chief Birchall and, thereafter, continued to serve as an acting Sergeant until the disbandment of the force on September 3, 2002. Upon disbandment, Mr. Styles accepted a position with the O.P.P. as a senior constable. As such, he is paid \$63,622. As an acting Sergeant with the Meaford Thornbury Police Service, Mr. Styles was being paid \$62,225 in 2002. An O.P.P. Sergeant is paid \$70,176 in 2002. It is submitted on behalf of the acting Sergeant Styles that, in light of the fact that he had held the position of acting Sergeant for a period of 2 years, he should be treated as Sergeant in consideration of all issues arising from the disbandment of the Meaford Thornbury Police. Arguments were made on behalf of Mr. Styles that he ought to receive compensation for the loss of the Ontario Municipal Employees Retirement Service (OMERS) “contribution holiday”, the loss of rank, the loss of vacation entitlement as well as other benefits and legal costs. In support of his position, the following cases were relied upon:

Town of Wiarton & Chief Constable Alfred Schultz
(Professor R. L. Jackson, 1988); *The Orillia Police*
Services Board & The Orillia Police Association
(Richard L. Jackson, 1996); *Kingsville Police Services*
Board & Chief Nick Kuipers (Paula Knopf, 1999); *The*

Corporation of the Town of Parry Sound & Kenneth Cooke, Tom King, Ted Mace and Dan Predie (Kenneth Swan, 1989); The Renfrew Police Services Board & The Renfrew Police Association (C. Gordon Simmons, 2001); Point Edward Police Services Board & Leo Mayer (Belinda A. Kirkwood, 2000); Goderich Police Services Board & Lonsbary and Brownlee (Kevin M. Burkett, 1999).

In support of its position, the Board argues that whether you compare Mr. Styles' earnings as an acting Sergeant or a senior constable with the Town, in either event, his position as a constable with the O.P.P. results in an actual higher annual salary, therefore, there is no loss in pay. The only possibility for loss in pay is the theoretical argument of comparing Mr. Styles' salary at Meaford Thornbury with that of the Sergeant position with the O.P.P. It was also submitted that the Board need only ensure that there is no loss as it relates to the permanent position held by Mr. Styles which was that of a senior constable.

In support of the position of the Board, Mr. Styles was never confirmed in the position of Sergeant. An acting Sergeant is just that, acting, and is not permanently in the position. Despite various efforts made by Mr. Styles to persuade the Board to act, they did not do so. Therefore, Mr. Styles can only be considered as a senior constable when comparing his new position with the O.P.P.

DECISION

Acting Sergeant Styles was just that, an acting Sergeant with the Meaford Thornbury Police Service. If he had been confirmed in that position as a

permanent rank on or before 3 September 2001, he would have been accepted into the O.P.P. as a Sergeant. If he had been confirmed in the rank within the year prior to the disbandment between 3 September 2001 and 3 September 2002, he would have been eligible for participating in the rank determination process which may have resulted in him achieving the rank of Sergeant with the O.P.P. Therefore, it is only if he had been confirmed as a permanent Sergeant for more than a year prior to the disbandment that he would have for certain been accepted into the O.P.P. as a Sergeant. He was not transferred as a Sergeant and the O.P.P. does not employ him as such. I am being asked to deem him to be such for purposes of the calculations in this Award.

Mr. Styles' testimony indicates that he did, in fact, try to become a permanent Sergeant with the Meaford Thornbury Police Service. He had verbal discussions with acting Chief Birchall as the process of discussion and the chain of events leading to the disbandment began to build several years ago. Mr. Styles currently holds a promotional competency credit which the O.P.P. has recognized which would be effective for 3 years following his transfer. The O.P.P. is not to recognize the competency credit unless Mr. Styles is considered qualified for any job that requires a Sergeant rank which is posted in the period up until his credit runs out. The Board did consider a request in June 2002 to backdate a permanent position for Mr. Styles. For a variety of reasons, some of which were articulated by Mr. Edmunds at the hearing, the Board did not choose to elevate Mr. Styles to the permanent rank of Sergeant at that time or on an earlier basis. Therefore, I cannot consider Mr. Styles to be at the equivalent of a Sergeant position when he was transferred to the O.P.P. Similarly, I cannot make comparisons on a theoretical

basis that he would be a Sergeant with the O.P.P. and undertake a salary comparison on that basis. Therefore, whether you consider Mr. Styles to be a first class constable, which is his permanent classification with Meaford Thornbury Police, or you take his acting salary, in either event the salary which he is now being paid, that of a first class constable with the OPP, is in excess of what Mr. Styles was being paid in either of his previous positions. There is no basis on which to make a financial compensation assessment which treats Mr. Styles as being paid at the deemed equivalency of a Sergeant with the O.P.P. Therefore, there is no compensation equivalency to be paid in this case,

Mr. Styles accepted work in mitigation as a replacement of the work he had been doing for Meaford Thornbury upon his transfer and commencement of work with the O.P.P. on 3 September 2002. Mr. Styles had been an acting Sergeant for more than 2 years with the Board and upon disbandment he not only suffered some loss of rank, but he also suffered loss of status by working with the OPP as a patrolling constable in a police position. I do find that the Board dragged its feet in confirming the permanent position for Mr. Styles and that, through no particular fault of the Board, the whole police service had gone through considerable disruption with the disbandment decision and the succession of illnesses and replacement of police chiefs. The last permanent Chief of Police, John Ormesher, went on sick leave, then long term disability in September of 2000. He subsequently retired never having returned to active duty. During the absence of Chief Ormesher, the acting Chief of Police was Stephen Birchall. Acting Chief Birchall went on sick leave in December of 2001. He also did not return to active employment. His replacement was acting/acting Chief of Police, Charlie Watts,

who was appointed in February 2002. Charlie Watts' main function seems to have been focused on the winding up of the Municipal Police Services. There was a considerable amount of confusion and, as a result, the administrative functions were not fully understood or carried out by the various peoples who had assumed the Chief responsibilities. Therefore, in recognition of the fact that there may be a loss of opportunity to become a permanent Sergeant or at least to have become so in time to have been interviewed for the possibility of being transferred to the OPP as such, it is appropriate to award some compensation. Considering the long service of the employee, in excess of 26 years, it is appropriate to make some adjustment. I find that what is appropriate must be tempered by the fact that he has been taken on as an officer of the O.P.P. and in doing so has received a higher salary than he would have had even at the acting Sergeant salary rate. Therefore, I award a loss of salary for a period of one year in recognition of the lost rank and status that went with the transfer to the OPP as a constable. I understand that this would amount to \$6,500 according to the submissions presented on behalf of Mr. Styles.

PENSION

As a member of the Meaford Thornbury Police Force, Mr. Styles' pension coverage was provided through the Ontario Municipal Employees' Retirement Plan (OMERS). Upon being transferred to the O.P.P., Mr. Styles' pension coverage was then provided by the Public Service Pension Plan (PSPP). At the time of disbandment of the Meaford Thornbury Police Force, members of OMERS were entitled to a "contribution holiday" due to a superior past performance of the OMERS plan which resulted in a surplus. As a result, the members, including Mr.

Styles, were not required to make any contributions whatsoever to fund their pension. However, as a member of the PSPP, Mr. Styles is not entitled to the same such benefit and must, therefore, make contributions to the PSPP which are deducted from his salary with every pay cheque. As a result, the Association contends that Mr. Styles is suffering a reduction in his net income in the amount of \$712.03 in 2002 and \$4093.71 in 2003, based on current salary rates. The OMERS “contribution holiday” is scheduled to end 31 December 2002, with full funding of members’ contributions to be phased in over the following two years.

In Kingsville Police Services Board and Kingsville Police Association,
Arbitrator Knopf wrote the following at p.11:

Pension – The Decision

As the *Orillia* decision makes clear, the principles governing an attribution under section 40 of the Act must recognize that an employer is liable for the obvious and foreseeable economic consequences to the employees flowing out of their termination. In the case at hand, while it is true that there are pension plans available under both the Kingsville and the O.P.P. collective agreements, there is an obvious and identifiable economic consequence to the employees who are transferred to the O.P.P. Had these officers remained as members of the local force, they would have enjoyed a contribution holiday under OMERS for the period, January 1, 1999 until July 31, 1999. However, as members of the O.P.P. they are having to contribute \$382.00 per month for the Public Service Pension Plan. The foreseeable and calculated economic loss is the contribution holiday which they could have enjoyed for that 7-month period.

Having regard to the same circumstances in the present case as was in the *Kingsville* case, I also find that the loss of the “contribution holiday” resulted in a true foreseeable and calculated economic loss which could have been enjoyed

between 3 September 2002, the time of disbandment, and 31 December 2002 and also throughout the entire 2003 year, although at a reduced rate. Accordingly, I find the economic loss to be in the amount of \$712.03 in 2002 and \$4093.71 in 2003, based on Mr. Style's current salary rates.

However, it must also be taken into consideration that the goal of these determinations is, for some reasonable period of time, to put the employee in the same position as if they had not been transferred. As a result of Mr. Styles' increase in salary with the O.P.P., that amount being an increase of \$1397.00, I find the increase in the PSPP pension contributions to be partially off set by Mr. Styles' increase in wage. Therefore, the Board is ordered to compensate Mr. Styles for the sum of \$3408.74, the difference between Mr. Styles' increase in wage and increased pension contributions. Furthermore, after the 2003 period, Mr. Styles merely ought to have the benefits of the new employment relationship including its pension plan. The duty to mitigate the loss will arise after one year and there ought to be no further adjustments.

OTHER MATTERS

The other matters are relatively limited as to their consequences and I note Mr. Styles now works for a much larger police force where his position is likely to be as secure as or more secure than it was previously. I do not find the other economic differences to be of such significance that they ought to be the subject of any compensation order. Indeed, the benefit plan of the Town of Meaford may well be more favorable than the benefit plan of the O.P.P. as the Association contends; however, the actual financial impact can not be ascertained without knowing which

benefits Mr. Styles will actually have to call upon. As such, the specific benefits of the Town's plan which may become attributable to Mr. Styles in the future are not within the reasonably foreseeable period subject to compensation. Therefore, no compensation for any difference between the two benefit plans ought to be ordered.

COSTS

A decision in the judicial review decision of the Point Edward Police Services Board and Leo Mayer in the Divisional Court of Ontario by Judgment dated 30 April 2001 indicated that Arbitrators do have the authority to issue costs determinations in these matters. Accordingly, I fix the costs of representation of Sergeant Styles at \$2,500.00.

DATED AT LONDON, ONTARIO, THIS 27th DAY OF NOVEMBER, 2002

Richard H. McLaren, C.Arb.