

IN THE MATTER OF A SECTION 40 - SEVERANCE ISSUES ARBITRATION

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")

SOLE ARBITRATOR: Richard H. McLaren, C. Arb.

APPEARANCE FOR THE ASSOCIATION: Michael Styles

APPEARANCE FOR THE BOARD: Bob Bass

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

AWARD

This is an arbitration pursuant to Section 40 and Section 124 of the *Police Services Act*. It arises out of a decision by the Town of Meaford Thornbury to outsource Meaford Thornbury Police Services to the Ontario Provincial Police (OPP). The decision was approved by the Ontario Civilian Commission on Police Services which directed any unresolved matter related to severance for members of the disbanded force should be dealt with by arbitration. The outstanding issue that is to be dealt with in this Award relates to the vacation credits for Acting Sergeant Styles and Senior Constable Parish.

Section 40 of the Police Services Act reads as follows:

...

1. A board may terminate the employment of a member of the police force for the purpose of abolishing the police force or reducing its size if the Commission consents and if the abolition or reduction does not contravene this Act.
2. The Commission shall consent to the termination of the employment of a member of the police force under subsection (1) only if,
 - a. the member and the board have made an agreement dealing with severance pay or agreed to submit the matter to arbitration; or
 - b. the Commission has made an order under subsection (3).
3. If the member and the board do not make an agreement dealing with severance pay and do not agree to submit the matter to arbitration, the Commission, if it is of the opinion that it would be appropriate to permit the abolition of the police force or the reduction of its size, may order the member and the board to submit the matter to arbitration and may give any necessary directions in that connection.
4. Section 124 applies to an arbitration referred to in this section with necessary modifications. R.S.O. 1990, c.P15, s.40.

...

The summary of the vacation provisions in each of the collective agreements is as

follows:

Meaford Thornbury	O.P.P.
2 weeks after 1 year of service	---
3 weeks after 5 years of service	3 weeks after 1 year of service
4 weeks after 9 years of service	4 weeks after 8 years of service
5 weeks after 18 years of service	5 weeks after 16 years of service
plus 1 day/year of service after 20 years	6 weeks after 23 years of service

The O.P.P. provision is superior to the Meaford Thornbury vacation provision for all employees who have below 25 years of service. For those employees who have 26 or above years of service, the Meaford Thornbury vacation provision is superior. Two uniform members of the Meaford Thornbury Police Service, Acting Sergeant Styles and Senior Constable Parish, have service levels of 30 and 31 years, respectively, at the time of their transfer to the O.P.P. For the year 2003, these two employees would have accumulated 31 and 32 years of service. Accordingly, under the Meaford Agreement they would be entitled to 12 days and 13 days of additional vacation time over the 5 week allowance. Therefore, Mr. Styles and Mr. Parish would be entitled to 37 and 38 vacation days, respectively, under the Meaford Agreement. However, under the O.P.P. agreement, each employee would be entitled to only 30 days vacation, the maximum 6 weeks. The Association submits that as a result of the maximum allowed vacation time under the O.P.P. plan, Mr. Styles and Mr. Parish will not only lose the benefit of the extra 7 and 8 vacation days which they would have accumulated by the end of 2003, but will also lose the benefit of accumulating further additional vacation days in the future in which they can fall back on in the event of an unexpected illness or to take an extended holiday before retiring. The Board argues that regardless of the loss, given the total compensation increase of at least \$3000 before the vacation issue is considered, there can be no compensation loss claimed for the vacation loss since the total dollar value of the loss will remain under the increase in salary.

In deciding this matter, it is first necessary to make reference to the *Wairton* case, where

Arbitrator Jackson adopted a view that economic consequences must flow within a reasonable notice period. To go beyond the reasonable notice period becomes too remote for damages and should therefore not be factored into any determination of a compensation for loss. I find that the reasonable notice period includes only to the end of 2003. Any time, thereafter, Mr. Styles and Mr. Parish would have a duty to mitigate, thus, there ought to be no further adjustments. Indeed, the loss of the benefit of accumulating further additional vacation days beyond 2003 is clearly outside of the reasonably foreseeable notice period, as I have determined, and should not be compensated for. It is simply too remote to be compensated for. Either Mr. Styles or Mr. Parish may, in fact, decide to leave the employment of the O.P.P. at any time beyond the reasonably foreseeable notice period or may have an untimely death. Therefore, to compensate for years beyond the reasonably foreseeable notice period would be unjust.

Nonetheless, in considering only the 2003 notice period, I find there to be a true economic loss encroached upon both Acting Sergeant Styles and Senior Constable Parish as a result of their transfer to the O.P.P. I find their true economic loss to be the additional 7 and 8 vacation days which Mr. Styles and Mr. Parish would have accumulated, respectively, to the end of 2003. The daily rate for a Senior Constable under the Meaford Agreement amounts to a loss of \$219.75 per day - \$1,538 for seven days and \$1,758 for an eight day loss. Regardless, the Board has requested, in essence, that the loss of vacation days be offset by the increase of Mr. Styles' and Mr. Parish's total compensation. I would tend to agree. 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. Offsetting one's loss of vacation days with one's increase in salary appears, to me, to be a reasonable request which would balance out the effects of the transfer. However, given the fact that I have already fully offset Mr. Styles' increase in income in a separate Award, the Board is ordered to compensate Mr. Styles in the amount of \$1,538 for the seven vacations

days lost. With regards to Mr. Parish, I find that his increased income, under the employment of the O.P.P., fully compensates for any lost vacation days in which he endured, therefore, no compensation is ordered.

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

Richard H. McLaren, C.Arb.