

2010

MEMORANDUM OF AGREEMENT

between the

VANCOUVER POLICE BOARD

and the

VANCOUVER POLICE UNION

THE UNDERSIGNED NEGOTIATORS OF THE GVRD LABOUR RELATIONS DEPARTMENT ACTING ON BEHALF OF THE VANCOUVER POLICE BOARD (the "Employer") AGREE TO RECOMMEND TO THE EMPLOYER, AND IF THE EMPLOYER SHOULD AGREE, TO VANCOUVER CITY COUNCIL;

AND

THE UNDERSIGNED NEGOTIATORS OF THE VANCOUVER POLICE UNION (the "Union") AGREE TO RECOMMEND TO THE MEMBERSHIP OF THE UNION;

THAT THE COLLECTIVE AGREEMENT COMMENCING 2010 APRIL 01 AND EXPIRING 2012 December 31 (the "new Collective Agreement") SHALL CONSIST OF THE FOLLOWING:

1. **Previous Conditions**

All of the terms and conditions of the Collective Agreement commencing 2007 January 01 and expiring 2010 March 31 shall apply except as specifically varied below.

2. **Term of Agreement**

The Employer and the Union agree that the term of the new Collective Agreement shall be for thirty three (33) months, commencing 2010 April 01 and expiring 2012 December 31. It is further agreed that Subsections 50(2) and 50(3) of the Labour Relations Code shall be specifically excluded from and shall not be applicable to the new Collective Agreement.

3. **Wages**

(a) **Schedule "A"**

The Employer and the Union agree that Schedule "A" in the new Collective Agreement shall reflect wage adjustments as follows:

- (i) Effective 2010 April 01, the First Class Constable rate in effect on 2010 March 31 (that is, \$6,590.00) shall be increased by one point five percent (1.5%) and be rounded to the nearest whole dollar (that is, to \$6,689.00). All other existing rank indices shall be maintained.

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VANCOUVER POLICE BOARD – VANCOUVER POLICE UNION (cont'd)

- (ii) Effective 2010 October 01, the First Class Constable rate in effect on 2010 September 30 (that is, 6,689.00) shall be increased by one point four five percent (1.45%) and be rounded to the nearest whole dollar (that is, to \$6,786). All other existing rank indices shall be maintained.
- (iii) Effective 2011 April 01, the First Class Constable rate in effect on 2011 March 31 (that is, \$6,786.00) shall be increased by one point five percent (1.5%) and be rounded to the nearest whole dollar (that is, to \$6,888.00). All other existing rank indices shall be maintained.
- (iv) Effective 2011 October 01, the First Class Constable rate in effect on 2011 September 30 (that is, 6,888.00) shall be increased by one point four five percent (1.45%) and be rounded to the nearest whole dollar (that is, to \$6,988). All other existing rank indices shall be maintained.
- (v) Effective 2012 April 01, the First Class Constable rate in effect on 2012 March 31 (that is, \$6,988.00) shall be increased by one point two five percent (1.25%) and be rounded to the nearest whole dollar (that is, to \$7,075.00). All other existing rank indices shall be maintained.
- (vi) Effective 2012 December 31, the First Class Constable rate in effect on 2012 December 30 (that is, \$7,075.00) shall be increased by one point three percent (1.3%) and be rounded to the nearest whole dollar (that is, to \$7,167.00). All other existing rank indices shall be maintained.

(b) Schedule "F"

The Employer and the Union agree that the hourly rates of pay for "Guards" and "Special Constables" shall reflect wage adjustments as follows:

- (i) Effective 2010 April 01, all hourly rates of pay which were in effect on 2010 March 31 shall be increased by one point percent (1.5%). The new hourly rates shall be rounded to the nearest whole cent.
- (ii) Effective 2010 October 01, all hourly rates of pay which were in effect on 2010 September 30 shall be increased by one point four five percent (1.45%). The new hourly rates shall be rounded to the nearest whole cent.
- (iii) Effective 2011 April 01, all hourly rates of pay which were in effect on 2011 March 31 shall be increased by one point five percent (1.5%). The new hourly rates shall be rounded to the nearest whole cent.
- (iv) Effective 2011 October 01, all hourly rates of pay which were in effect on 2011 September 30 shall be increased by one point four five percent (1.45%). The new hourly rates shall be rounded to the nearest whole cent.

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VANCOUVER POLICE BOARD – VANCOUVER POLICE UNION (cont'd)

- (v) Effective 2012 April 01, all hourly rates of pay which were in effect on 2012 March 31 shall be increased by one point two five percent (1.25%). The new hourly rates shall be rounded to the nearest whole cent.
- (vi) Effective 2012 December 31, all hourly rates of pay which were in effect on 2012 December 30 shall be increased by one point three percent (1.3%). The new hourly rates shall be rounded to the nearest whole cent.

4. **Section 7.5 – Investigative Phone Calls**

Effective the date of ratification of the Memorandum of Agreement, the Employer and the Union agree to replace the first paragraph of Section 7.5 with the following:

“In the event that a member while off duty receives a telephone call from the Department of one (1) hour or less which results in a work requirement but does not require attendance at a work site which is related to an investigation and, at the direction of a supervisor is required to create a General Occurrence Report, supplement a General Occurrence Report, or create some other substantial documentation in relation to the investigation, then such member shall be entitled to one and one-half (1½) hours’ compensation. In the event a call under this provision results in a work requirement which goes beyond one (1) hour they shall be paid two times (2X) their regular hourly rate for the time spent beyond the first hour performing work. It is understood that phone calls of an administrative nature shall not trigger this provision unless the call is of a prolonged nature in response to a significant operational necessity. In such cases, claims are subject to the approval of the Inspector in charge of the Section to which the member is assigned. Claims for compensation under this provision are subject to approval by the member’s supervisor.”

5. **Section 7.6 – Court Time Schedule, Denotification**

Effective the date of ratification of the Memorandum of Agreement, the Employer and the Union agree to replace Section 7.6D(a) with the following:

“(a) When a member detailed for the midnight shift is required to attend Court, the member shall, when practicable, be granted the night off prior to attending Court. If attendance of such a member, having already been granted the midnight shift off, is only required at one session, the difference in hours between the six (6) hours Court Time paid and the actual time off work will be deducted from the member's accumulated overtime. When it has not been practicable to grant a member time off prior to attending Court and the member is required to attend morning and afternoon sessions, such member shall notify their Inspector prior to 1700 hours when such member will be allowed the same night off.”

6. **Employee Benefits – Section 9.1(b) and 9.6 – Extended Health and Dental Plans and Schedule “B” – Sick Leave and Gratuity Plan**

(a) Effective the date of ratification of the Memorandum of Agreement, the Employer and the Union agree to establish a committee of up to three (3) representatives of the Employer and up to three (3) representatives of the Union to discuss the current Extended Health and Dental Plans and investigate the possibility of establishing a flexible benefits plan. The intent of the committee is to develop a flexible benefits plan following the framework of an existing plan at the City of Vancouver which can allow more individual choice to employees within the current funding framework for the existing plans. This committee will meet as required and complete its work by 2011 September 30 with an aim to implementing the new Flexible Plan effective 2012 January 01. In the event the parties are not able to mutually agree to a new Flexible Plan by 2011 September 30 the current Extended Health and Dental Plans will remain in effect with the following amendments:

- Increase vision care from the current \$300 payable per person per 24 months to \$400 payable per person per 24 months including coverage for laser eye surgery;
- Increase the coverage for eye examinations from \$75 every 2 years to \$100 per 24 months; and,
- Increase coverage for the Psychological Service Plan from \$2,400 to \$3,000 claimable per family per 12 month period.

(b) Effective the date of ratification of the Memorandum of Agreement, the Employer and the Union agree to amend Schedule “B” – Sick Leave - paragraph (a)(5) to read as follows:

“(5) Earned sick leave may be accumulated to a maximum of two thousand eighty-eight (2,088) hours.”

Transition - the Employer and the Union agree that any member who, as of the date of ratification of this Memorandum of Agreement, had more than two thousand eighty-eight (2,088) hours in their sick leave bank shall be allowed to retain their full sick bank. These employees shall not accumulate any additional sick leave while they are above the cap of two thousand eighty-eight (2,088) hours. In the event an employee uses sick leave sufficient to bring them below two thousand eighty-eight (2,088) hours they shall once again be able to accumulate sick leave in accordance with the Collective Agreement provided they shall be subject to the same maximum accumulation as all other members.

7. **Section 9.9 – Indemnification**

Effective the date of ratification of the Memorandum of Agreement, the Employer and the Union agree to amend Section 9.9(i)(ii) by replacing the words “within 5 days” with the words “within 10 calendar days”.

8. **Section 9.13 – Compassionate Leave**

Effective the date of ratification of the Memorandum of Agreement, the Employer and the Union agree to amend Section 9.13 to read as follows:

“9.13 **Bereavement Leave**

- (a) Bereavement leave in the case of the death of a member's spouse (including common-law spouse), child, grandchild, ward, brother, sister, parent, guardian, parent-in-law, grandparent, or other relative if living in the member's household, may be granted without loss of pay for a period not to exceed four (4) working shifts;
- (b) Requests for leave under paragraph (a) shall be submitted to the member's Divisional Commander who will determine and approve the number of days required in each case;
- (c) A member who qualifies for bereavement leave without loss of pay under Section 9.13(a) herein may be granted such leave when on annual leave if approved by the member's Divisional Commander. A member who is absent on sick leave with or without pay or who is absent on Workers' Compensation, shall not be entitled to such bereavement leave without loss of pay.
- (e) Upon application to, and receiving approval by the Department, a member may be granted leave of up to one-half (½) working shift without loss of pay in order to attend a funeral as a pallbearer or a mourner in any case other than one covered by Subsection 9.13(a).”

9. **Section 14.2 – Grievances**

Effective the date of ratification of the Memorandum of Agreement, the Employer and the Union agree to replace Section 14.2(c) with the following:

- “(c) Should no settlement be reached under Section 14.2(b) within 10 days, or within such further period as may be mutually agreed upon, the grievance shall be submitted to a Board of Arbitration composed of a single arbitrator to be chosen by the parties. In the event either party wants a three (3) member Board of Arbitration each party shall choose one member of the Board and the third, who shall be Chair, will be chosen by the other two. The findings of such Board of Arbitration shall be final and binding upon both parties.”

10. **Schedule “C” – Dependants Compensation**

During the drafting of the new Collective Agreement, the Employer and the Union agree to review the language in Schedule “C” – Dependants Compensation of the Collective Agreement and amend the language as required to ensure that widows are not treated in a different manner than widowers.

11. **Schedule “E” – Supplementary Annual Leave: Explanation Table**

Effective the date of ratification of the Memorandum of Agreement, the Employer and the Union agree to delete Schedule “E” from the Collective Agreement.

12. **Schedule “F”, No. 4 – Operations Deployment Model – 11 Hour Shift**

Effective the date of ratification of the Memorandum of Agreement, the Employer and the Union agree to Amend Schedule “F”, No. 4 section 4(c) by adding the following new paragraph (vi):

- “(vi) At the end of each calendar year members’ outstanding balances will be reconciled to ensure that they are not in excess of plus or minus sixty (60) hours. As part of this annual reconciliation process the Employer will notify all Members when the reconciliation is occurring. In the event a member does not agree with the balance on their pay advice, they shall inform the Employer and the Member and the Employer will review any available documentation to determine the balance. Once the reconciliation is complete, members will submit an overtime slip to credit positive balances over sixty (60) hours to their overtime banks. Negative balances in excess of sixty (60) hours may be reconciled by members submitting overtime slips utilizing OTL, CTO, Supplementary Annual Leave, Deferred Annual Leave or Annual Leave credits.

Transition – in transitioning to this new reconciliation process the Employer will notify all members that the Paid Time Owed balances are being reviewed and will provide each member with their current balance. Once a member has been notified of their current balance if they believe there is an error they shall have thirty (30) calendar days to request from the Employer a detailed accounting of their balance. Upon receiving the detailed accounting a member shall have a further thirty (30) days to provide documentation to the Employer if they believe the information in the payroll system is incorrect. In undertaking this review the Employer will review any errors identified by employees which occurred in the three (3) year period prior to 2011 January 01. Once this review has been completed the balances as of 2011 January 01 will be deemed correct for all employees. In the ongoing administration of this provision both the Employer and employees will be responsible to identify any errors in their Paid Time Owed balance as part of the annual reconciliation of hours.

13. **Schedule “F” – No. 7 – Special Constables**

Effective 2009 December 31, the Employer and the Union agree to add a new position titled “VPD Analytic Standards Advisor” to Schedule “F” No. 7 and move the current incumbent in the “Senior Strategic/Tactical Analyst” position to the new position of VPD Analytic Standards Advisor at the same step he is at in his current position. The rates of pay for this new position will be as follows:

Step 1 \$39.33  
Step 2 \$41.51  
Step 3 \$43.69

14. **Schedule “F” – No. 8 – Jail Guards**

Effective the date of ratification of the Memorandum of Agreement, the Employer and the Union agree to add the following new section following the section titled “TRAINING COURSES”:

**“DNA TRAINER**

A qualified holder in good standing of the DNA Trainer Designation who is required by the Employer to provide training in the information and skills necessary to qualify according to Sections 487.05(2)(b)(i) or 487.056(3) of the Criminal Code as amended by the DNA Identification Act to collect samples for the purposes of DNA analysis shall be entitled to a premium of eighty-five dollars (\$85.00) per month.”

15. **Group 5 Pension**

Effective the date of ratification of the Memorandum of Agreement, the Employer agrees to apply to the Pension Corporation to become a Group 5 employer under the rules of the Municipal Pension Plan.

In the event the Pension Corporation approves the application, all existing eligible employees and all future eligible employees will be covered by and be subject to the current and any future rules established by the Municipal Pension Board and the Pension Corporation governing Group 5 participation.

In conjunction with the establishment of Group 5, all contributions by both the Employer and the employees to the Special Agreement Pension (SA) shall cease for eligible employees. Employee balances in the SA shall be handled in accordance with the rules established by the Municipal Pension Plan.

In the event there are employees who are in Group 2 as of the date the Pension Corporation approves the application for the Group 5 Pension who do not qualify for Group 5, those employees will continue, subject to the approval of the Pension Corporation, to be covered by the Group 2 provisions of the Municipal Pension Plan and to contribute to the Special Agreement (if they are already contributing). New hires into

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VANCOUVER POLICE BOARD – VANCOUVER POLICE UNION (cont'd)

positions that are not eligible to participate in the Group 5 Pension will be treated as Group 1 or Group 4 as appropriate under the rules of the Municipal Pension Plan.

16. **Parking**

- (a) Effective 2011 July 01, the Employer and the Union agree to delete Section 11.10 from the Collective Agreement.
- (b) The Employer and the Union agree to attach the Letter of Understanding regarding Parking attached as Appendix 1 to this Memorandum of Agreement to the new Collective Agreement.

17. **Housekeeping**

Effective the date of ratification of the Memorandum of Agreement, the Employer and the Union agree to:

- (a) delete Sections 13(a) and 13(b)(ii) and amend the balance of Section 13 to read as follows:

“13. **PENSIONS**

- (a) Any member who has completed 25 years of pensionable service and has attained the age of 50 years, may apply to retire with a pension which is not reduced for early retirement. In any such case the Employer agrees to pay the amount determined by the Pension Corporation to be sufficient to supplement the member's pension in an amount equal to the amount by which the member's pension would have been reduced by early retirement of the member and the member shall repay to the Employer ½ (one-half) of the amount paid to the Pension Corporation using after-tax dollars.
- (b) Members who, prior to April 2007, purchased pensionable service in accordance with the rules of the Municipal Pension Plan which reflected the period of time when they were on probation and did not contribute to the Municipal Pension Plan shall, upon producing the receipt, be eligible to have the Employer reimburse the member fifty percent (50%) of the purchase cost as stipulated by the Pension Corporation. This payment will be made in the year in which the member reaches minimum retirement age.



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VANCOUVER POLICE BOARD – VANCOUVER POLICE UNION (cont'd)

(c) Pension Contributions

Contributions to the Public Sector Pension Plan shall commence on a member's date of hire.”;

- (b) amend Schedule “A” and Article 11.5 as required to re-title the “Probationer Constable” rank to “Recruit Constable”;
- (c) amend the Collective Agreement as required to reflect the ten (10) hour day, forty (40) hour week as the standard hours rather than the current eight (8) hour day, forty (40) hour week. It is expressly agreed between the parties that there shall be no gain or loss in cost or benefits to either the Employer or the Members as a result of this change; and,
- (d) any other housekeeping changes mutually agreed between the parties during the drafting of the new Collective Agreement.

18. Drafting of New Collective Agreement

The Employer and the Union agree that in all instances where an amendment to the Collective Agreement is effective on the date of ratification of this Memorandum of Agreement, then for the purposes of drafting the new Collective Agreement, the amended or new provision shall only appear in the new Collective Agreement together with a sentence referencing its effective date.

19. Ratification

The parties expressly agree that, upon the completed signing of this Memorandum of Agreement, the parties shall recommend the approval of this Memorandum to their respective principals and schedule the necessary meetings to ensure that their principals vote on the recommendations forty-five (45) days, or as soon as practicable, from the date on which the Memorandum of Agreement is signed.

2010 MEMORANDUM OF AGREEMENT  
VANCOUVER POLICE BOARD – VANCOUVER POLICE UNION (cont'd)

DATED this 14<sup>th</sup> day of February, 2011 in the City of Vancouver.

REPRESENTATIVES FOR THE  
EMPLOYER:

REPRESENTATIVES FOR THE UNION:

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“Adam Palmer”

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“Tom Stamatakis”

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“Jeff Sim”

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“Matt Kelly”

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“Andrew Naklicki”

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“Darrell Daniels”

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“Paul Strangway”

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“Louis Odendaal”

“Rhonda Bender”

2010 MEMORANDUM OF AGREEMENT  
VANCOUVER POLICE BOARD – VANCOUVER POLICE UNION (cont'd)

This is the Appendix 1 referred to in item #16 of this Memorandum of Agreement.

Appendix 1

LETTER OF UNDERSTANDING

between the

**VANCOUVER POLICE BOARD**  
(hereafter called "the Employer")

and the

**VANCOUVER POLICE UNION**  
(hereafter called "the Union")

**Re: Parking**

The Employer intends to implement paid parking for Members on the following basis:

1. Members who drive to work and park at an Employer provided parking lot will be required to pay for parking commencing 2011 July 01.
2. The rate for parking will be two dollars (\$2) per day for employees who occasionally drive to work or thirty dollars (\$30) per month for employees who choose to purchase parking on a monthly basis. The monthly parking pass will provide parking for employees during any employment related activity including regular shifts, overtime, callout, and court attendance at all lots provided by the Employer.
3. Employees who purchase a transferable monthly parking pass, which shall be transferable between multiple vehicles of the employee or multiple vehicles in a carpool arrangement, will pay for their parking through payroll deduction.
4. The specific details of how the pay parking program will operate, including processes for commencing and cancelling monthly parking privileges, will be established by a subcommittee of the VPU/VPD Labour Management Committee.

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VANCOUVER POLICE BOARD – VANCOUVER POLICE UNION (cont'd)

Appendix 1 (cont'd)

Signed this 14<sup>th</sup> day of February, 2011.

REPRESENTATIVES FOR THE  
EMPLOYER:

REPRESENTATIVES FOR THE UNION:

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“Adam Palmer”

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“Tom Stamatakis”

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“Jeff Sim”

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“Matt Kelly”

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“Andrew Naklicki”

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“Darrell Daniels”

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“Paul Strangway”

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“Louis Odendaal”

“Rhonda Bender”

IN THE MATTER OF AN INTEREST ARBITRATION UNDER  
THE FIRE AND POLICE SERVICES COLLECTIVE BARGAINING ACT, R.S.B.C,  
1996 c. 142

BETWEEN:

VANCOUVER POLICE BOARD

(the "Police Board")

AND:

VANCOUVER POLICE UNION

(the "Union")

(Re: Collective Agreement Renewal)

ARBITRATOR:

Stan Lanyon, Q.C.

COUNSEL:

Tom Roper, Q.C. and  
Ryan Copeland  
for the Employer

Gabriel Somjen and  
Lisa Carlson  
for the Union

DATE OF HEARING:

June 9, July 2, 3, 4 and 7, 2014

PLACE OF HEARING:

Vancouver, B.C.

DATE OF DECISION:

July 29, 2014

## A W A R D

### I. Nature of Proceeding and Background

[1] The parties' previous collective agreement was in effect from April 1, 2010 to December 31, 2012. The parties commenced collective bargaining in respect to the renewal of this collective agreement on May 13, 2013. They met approximately twenty times - inclusive of both their own negotiations and mediation at the B.C. Labour Relations Board.

[2] On February 5, 2014 the Union applied to the Minister of Labour asking that the parties' collective bargaining dispute be resolved by arbitration under the *Fire and Police Services Collective Bargaining Act*, R.S.B.C. 1996 c 142 (the "*Act*"). On February 20, 2014 the Employer agreed that this dispute should be resolved by interest arbitration, but asked that the Minister direct this arbitration board to give greater weight to Sections 4 (6)(b), (c) and (e) of the *Act*, in order that the Board "address and correct" the growing discrepancy between police salaries and the salaries of other civic employees. On May 27, 2014, the Acting Minister of Labour directed the dispute to interest arbitration; however, she refused to make the specific direction sought by the Employer. Acting Minister Oakes stated that an arbitrator under the *Act* is bound to consider all the factors set out in Section 4(6), and therefore, the Employer could make the same submission to the arbitrator that it had made to the Minister.

[3] The parties agreed to mediation/arbitration. It soon became evident after the first day of mediation that the parties were too far apart to reach agreement. The matter then proceeded to arbitration for the remaining three days. No witnesses were called. A large number of documents were introduced, consisting of many different economic reports and studies from across the country – federal, provincial and municipal. The entire hearing was conducted by way of oral submission. The parties also made written submissions amounting to almost 200 pages.

[4] Two of the more common collective bargaining methodologies employed by parties are, first, to bargain article by article, and, if agreement is reached in respect to a particular article, record that article as having been settled in the form of a Memorandum of Agreement or an Agreed to Items record. This document is then put before an interest arbitrator as the Agreed to Items along with a list of the remaining outstanding issues. A second method also approaches bargaining on an article by article basis. However, this method is governed by the convention that nothing is agreed to until everything is agreed to. In this round of bargaining these parties chose this second method. Thus, with a few exceptions to be noted later, there remains a significant number of outstanding issues. This is the case notwithstanding that the parties, to their credit, have reduced the number of issues that are outstanding, both prior to and during this interest arbitration.

## II. Outstanding Issues in Dispute

[5] The Union lists the following issues in dispute:

- (a) Wages,
- (b) Shift differential,
- (c) Per diems,
- (d) Maternity and Parental leave,
- (e) Vision care,
- (f) Orthopedic benefits,
- (g) Healthcare spending,
- (h) Psychological services,
- (i) Dental services,
- (j) Indemnification provisions,
- (k) Sick leave,
- (l) Parking,
- (m) Clothing allowance,
- (n) Administration of Benefit Plan.

[6] The Employer also identified the following issues in dispute:

- (a) Term,
- (b) Wages,
- (c) Wage offsets (a number of items under this heading),
- (d) Parking, and
- (e) Annual leave.

[7] Amongst the most important issues in any interest arbitration are Wages and the Term of the agreement. The Term of this agreement can be dealt with summarily.

### III. Term

[8] Although the Employer had reserved its right to seek a longer term collective agreement (either four or five years) it acknowledged that the parties have made their wage proposals on the premise of a three year collective agreement with a term of January 1, 2013 – December 31, 2015. I, therefore, conclude that the renewed collective agreement between these parties shall run from January 1, 2013 to December 31, 2015.

### IV. Wages

[9] Not surprisingly, this has proved the most difficult issue; indeed, it may be fairly stated that this issue has proved to be more contentious than at any other time in the recent past. The Employer described the difference in the parties proposals as “stark”, and the Union states that the Employer’s approach to wages in this round of bargaining has had an adverse effect on the bargaining relationship.

[10] The Union seeks the following wage increases:

- January 1, 2013 – 6%
- January 1, 2014 – 3.5%
- January 1, 2015 – 3.5%
- Total: 13%



[11] The Employer has three different wage proposals. It acknowledges that its first proposal is lower than the settlements reached with other civic employees in the City of Vancouver. It says that this settlement is necessary because it acts as a corrective to the discrepancy between Police Officer salaries and other civic employees. This first proposal is structured as follows:

January 1, 2013 - .50%  
January 1, 2014 – 1.50%  
January 1, 2015 – 1.75%  
Total: 3.75%

[12] The Employer’s second proposal “mirrors” the other civic settlement wage increases. It is as follows:

January 1, 2013 – 1.75%  
January 1, 2014 – 1.75%  
January 1, 2015 – 2.0%  
Total: 5.5%

[13] However, this settlement, the City states, would require reductions to the gratuity day banks of employees.

[14] The Employer’s third proposal is that any settlement higher than that reached by these other civic employees would require significant offsets to achieve a “net zero additional cost”. It gives examples of the following offsets that would be required: a reduction in the health and welfare benefits, or the increment structure, or the gratuity day bank, or shift premiums, or overtime rates, or any “other changes that generate a net savings”. In other words, these would be cuts to the current collective agreement wages and benefits in order to limit any increase to 5.5% (second scenario).

[15] Underlying the Employer's approach is its fundamental disagreement with the way the *Act* has been interpreted and applied by interest arbitrators. The Employer argues that interest arbitrators under the *Act* have misapplied the enumerated factors set out in Section 4(6). It states that interest arbitrators have placed undue reliance on national comparators, specifically Sections 4(6)(a) and (d), to the exclusion of other local and regional factors, Sections 4(6)(b)(c) and (e), to the point that it has rendered these local and regional factors almost "meaningless".

V. *Fire and Police Services Collective Bargaining Act, R.S.B.C. 1996 c 142*

[16] Section 4(6) of the *Act* sets out the following seven (7) factors that an arbitrator must consider when rendering a decision:

(6) In rendering a decision under this Act, the arbitrator or arbitration board must have regard to the following:

- (a) terms and conditions of employment for employees doing similar work;
- (b) the need to maintain internal consistency and equity amongst employees;
- (c) terms and conditions of employment for other groups of employees who are employed by the employer;
- (d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered;
- (e) the interest and welfare of the community served by the employer and the employees as well as any factors affecting the community;
- (f) any terms of reference specified by the minister under section 3;
- (g) any other factor that the arbitrator or arbitration board considers relevant.

[17] Since the enactment of this statute there have been numerous awards published in respect to how these particular factors ought to be interpreted. (See for example: *Vancouver Police Board and Vancouver Police Union*, [1997] B.C.C.A.A.A. No. 621 (Lanyon); *City of Burnaby and Burnaby Firefighters Union, Local 23*, [2008] B.C.C.A.A.A. No. 220 (Gordon); *City of Richmond and Richmond Firefighters Association*, [2009] B.C.C.A.A.A. No. 106 (McPhillips); *City of Nelson and Nelson Professional Firefighters Association*, [2010] B.C.C.A.A.A. No. 174 (McPhillips); *City of Campbell River and Campbell River Firefighters Association*, October 19, 2005 (Gordon).

[18] The interpretive approach of these awards has been to adopt certain fundamental interest arbitration principles. The first is the theory of replication. In summary, an award should replicate as closely as possible an agreement that the parties themselves would have concluded had they been able to do so. In a process of mediation and/or arbitration the interest arbitrator attempts to narrow the difference between the parties so that any final award reasonably “splits the difference” between the parties; a result that the parties tacitly (if unhappily) understand. Thus, interest arbitration is essentially a conservative exercise.

[19] A second general principle is to award what is fair and reasonable. This principle was incorporated specifically into the *Act* (Section 4(6)(d) “the need to establish terms and conditions that are fair and reasonable”). This fair and reasonable rule is within the context of the principle of comparability, the third factor. Comparability is defined as the rational matching of similar occupations. This principle was also directly incorporated into the enumerated factors under Sections 4(6)(a) – (d).

[20] The *Act* assigns no weight to any of the individual factors set out in Sections 4(6)(a) – (g) of the *Act*. As the provision states, an “arbitrator or arbitration board must have regard to” all of the seven (7) factors listed in Section 4(6) (a) – (g).

[21] As stated, Section 4(6) (a) - (d) establishes the principle of comparability. An arbitrator therefore, must compare the terms and conditions of other employees “doing

similar work” (4(6)(a)); he/she must “maintain internal consistency and equity amongst the employees” (4(6) (b)); the arbitrator must “examine the terms and conditions of other employees employed by the employer (4(6)(c)); and the arbitrator must ensure that the terms and conditions are fair and reasonable in respect to the qualifications of the employee, the work they perform, the responsibilities they assume and the nature of the services they render (4(6)(d)).

[22] Section 4(6)(e) deals with the “interest and welfare of the community served ...” Section 4(6)(g) addresses “any other factors” that the arbitrator considers relevant. Finally, Section 4(6)(f) is a direction to incorporate any terms of reference specified by the Minister. As I stated earlier, this is not relevant in this case.

[23] I agree with the Employer that factors 4(6) (a) - (d) address local, regional and national comparators. Conversely, factors (b), (c) and (e), emphasize local and regional concerns, whether they be collective agreement settlements or economic factors.

## VI. Employer’s Argument

[24] As stated, the Employer argues that these enumerated factors under Section 4(6) (a) – (g) of the *Act* have not been applied to Police and Firefighter salaries “as it was intended”. It states that national comparators have been given undue weight to the exclusion of the other statutory factors. Moreover, it argues that this “arbitral trend” has, since 1995 (a year before the *Act* came in force), led to a unjustifiable “divergence” between Police and Firefighter salaries and other civic employees. This trend must now be “corrected” by giving far greater weight to the factors listed in 4(6) (b), (c) and (e); in effect, Police and Firefighter wage increases should be almost identical to those negotiated by other civic employees.

[25] The Employer argues that its primary offer of 3.75% is designed to begin to correct the discrepancy between VPU and CUPE/Teamsters wage increases. It says that its alternative position of 5.5%, which matches the existing settlement with CUPE, will “perpetuate the existing wage gap”; and if both of these proposals are rejected, and a higher

amount is awarded, the existing wage gap will only be “exacerbated”; thus, such an award will require significant offsets.

[26] Moreover, the Employer rejects the exclusive reliance on the standard comparator - the First Class Constable classification. It says that in addition to examining First Class Constable salaries, this arbitration board ought to consider Total Cash Compensation – specifically, salary increments. It relies on the RCMP Total Compensation Report, dated December, 2012. In terms of Total Cash Compensation the Report finds that Vancouver is second out of nine jurisdictions.

[27] In respect to the City of Vancouver settlements, the Employer argues that between 1994 and 2012, VPU salaries have increased a compounded 68.4%, while CUPE/Teamsters settlements over the same period have increased 50.2%. In terms of the local and regional economy, it cites the Economic Forecast Council of British Columbia (Budget and Fiscal Plan 2014/15 – 2016/17, February 19, 2014, Ministry of Finance, British Columbia) which sees real GDP increases in BC as being on average 1.4% in 2013, 2.3% in 2014 and 2.7% in 2015 (page 90). It also cites the Wage Settlement Data from the Business Council of B.C., for the year ending May 2014, which notes that settlements in the public sector averaged 1.25%, and in the private sector, 1.99%. The Employer relies upon the B.C. Public Sector Employer’s Council record of settlements that demonstrates that increases for essential service workers, including employees such as paramedics, nurses, prison guards, etc. over the period 2014 – 2019, amounted to 5.5%.

[28] In respect to the City of Vancouver, the Employer argues that, notwithstanding it is *not* making an ability to pay argument, it does rely on the May 2014 Report (City of Vancouver, Financial Status and Outlook) of Ms. Patrice Impey, Chief Financial Officer for the City of Vancouver, which states that the City is facing a structural operating gap requiring cost reductions of \$7 million per year; an infrastructure gap which must be financed through debt which is at its upper limit; and tax increases that exceed inflation. She notes that in the last six years the cost of VPU settlements “have exceeded the inflation cost by \$50 million”. Further, in 2012 the impact of VPU salaries was \$15 million or 3% of

all property tax paid by residence and businesses. She concludes her report by stating that “holding VPU wages to inflation are particularly critical to maintaining the City’s financial stability” (page 9).

[29] In reply to the Union’s claim for 13% over three years, which is based upon the current salaries paid by other Western Provinces such as Alberta, Saskatchewan and Manitoba, the Employer argues that the industrial aggregate wage rate in BC was \$45,559 in 2013, whereas in Alberta it was \$57,814. Further, it cites a Royal Bank of Canada Newsletter, dated June 2014, which states that the average growth rate in Alberta over the last 4 years has been 4.3%. In 2014 and 2015 growth is predicted to be 3.7 and 3.5, respectively. B.C.’s projected growth over the period 2013 – 2015 is 1.7, 2.1 and 2.8, respectively. The Consumer Price Index for British Columbia and Alberta in May 2014 was 119.7 and 132.8 respectively.

[30] Finally, the Employer says that many of the factors that the Union relies upon for its wage increase proposal, such as job content and workload, have already been factored into their current wages; furthermore, there have been no significant changes in these factors to justify any increase to their wages.

## VII. Union’s Argument

[31] The Union argues that the comparability of wages between police forces in major Canadian cities has been longstanding, and as well, predates the current *Act*. Moreover, the standard of comparability has always been examined through the salary of a First Class Constable. The Employer’s attempt to include increments as another factor in comparing salaries would potentially lead to a comparison based on total compensation. This would make interest arbitrations under the *Act* more complex, lengthy and costly.

[32] The Union stresses many of the factors that have been historically included in the analysis of police salaries. These include such factors as the uniqueness of policing, workload, the increase in serious and more violent crimes, policing in the Downtown

Eastside, gang violence, civil disobedience and newer factors, such as the increasing number of the mentally ill who live on the street. It says the complexity of policing has increased with new technology, equipment, complex legal decisions and legislation, more sophisticated investigations, increased judicial and public scrutiny, and multiple civilian oversight.

[33] Beginning with the Cost of Living, the Union cites the Economist, 2013 Worldwide Cost of Living Survey, which ranks Vancouver out of 140 cities worldwide the 21<sup>st</sup> most expensive city to live in. Ten years ago Vancouver was ranked 69<sup>th</sup>. In 2013, Montreal was ranked 30<sup>th</sup> and Toronto 47<sup>th</sup>. The Union states that there is no dispute that Vancouver is one of the most unaffordable cities in respect to the price of housing. It says that the Bank of Canada has stated that the average selling price of a home in Vancouver is now nearly eleven times the average of a Vancouver family's household income. The Royal Bank of Canada's housing affordability report has called Vancouver the "worst" place in Canada to afford a house. This has a negative impact on all essential service workers who can no longer afford to live in the City.

[34] The Union further relies on the Conference Board of Canada's annual analysis of economic conditions in Canada's thirteen larger cities: *Conference Board Metropolitan Outlook*, Spring 2014. The Report states that Vancouver is expected to top the roster of 13 cities in growth with GDP increases of 3.2% annual until 2018. The report predicts that over the next two years Vancouver's economy will see "significant improvements". Furthermore, the Union cites the March 7, 2014, Standard and Poor's Rating Service which affirmed the City's Double AA credit rating, citing the City's "very positive liquidity position, strong economy and healthy budgetary performance".

[35] Most important, the Union argues, is that the Vancouver Police Department proportion of the City's annual operating budget has remained constant for many years. From 1996, when the *Act* was passed, to 2014, the portion of the Vancouver Police Department's budget to the City of Vancouver's operating budget, has fluctuated between a

low of 18.9% to a high of 20.5%. In 2013 it was 19.1%. The fact that this has remained constant, the Union argues, means that police salaries have not become “inordinately high”.

[36] In respect to Ms. Impey’s report to this Board the Union relies upon two of the City of Vancouver’s own reports. First, the City of Vancouver 2014 Capital and Operating Budget, (page 14) under the heading Guiding Principles for Financial Sustainability, states that the City’s debt is financially sustainable over the next five years:

The City determines its long-term borrowing capacity for regular, non-utility related capital programs by limiting the ratio of annual tax-supported debt-servicing charges to operating expenditures at 10%. The ratio was 7.7% in 2012, and is forecast to increase slightly to 7.8% in 2013 and 7.9% in 2014. The ratio is expected to peak in 2019 and gradually stabilize and decrease thereafter due to better alignment of new debt issuance and maturities and ongoing debt reduction on the City’s regular capital program.

[37] Second, the City of Vancouver Property Tax Review Commission Report, dated January 2014, set out some of its findings in this summary form:

#### Review of the Data

The Commission examined a variety of data on Vancouver, a set of municipalities within Metro Vancouver, and cities across Canada. The Commission’s findings are presented as follows:

- Tax Share – Vancouver’s overall tax shift from non-residential to residential properties has exceeded that of every other municipality examined.
- Class 6 Tax Rates – The rate has declined significantly over the period in Vancouver than it has in all other cities examined.
- Class 6 Assessment – Class 6 property values, on average, have remained among the strongest of the comparison groups since 2010.
- Class 6 Taxes per capita – The data show a decrease in taxes paid since 2006 in Vancouver, but an increase in almost all other comparison cities.



- Commercial Development – Vancouver’s relative ability to attract investment, as measured by Class 6 building permit values, has been strong.
- Vacancy Rates – Available data, though limited, do not suggest problems in the office and retail (mall-based) sectors in Vancouver.
- Taxes across Canada – Municipal business taxes in Vancouver are competitive with those in other large Canadian cities.

[38] The Union relies upon the following freely negotiated collective agreement settlements in other parts of Canada: in Winnipeg, a four year agreement, 2013 – 2016, was reached with a 13% increase; in 2011, the Toronto Police Association ratified a new agreement with wage increases of 11.2% over four years; the Peel Regional Police Association ratified a four year agreement with their officers with a 10.98% increase; the York Police Association ratified a new agreement in 2013 with a 7.94 % increase over three years; the Niagara Police agreed to an increase of 7.6% over three years beginning 2013.

[39] Finally, the Union points to the fact that the increases it received in the last Collective Agreement (2010 – 2012), freely negotiated, amounted to 2.95 (2010), 2.95 (2011) and 2.55 (2012) (a total of 8.45%). These increases were based on Toronto as the comparator. However, during that same period, CUPE, at the City of Vancouver received increases of 4.0 (2010), 4.0 (2.11) and 1.25 (total of 9.25%).

#### VIII. Analysis and Decision Regarding Wages

[40] The Employer argues vigorously that local and regional economic conditions, and local collective agreement settlements, should prevail over all other criteria in the setting of Police and Firefighter salaries. Alternatively, if national comparators are used, the greatest weight should be given to the RCMP and to Montreal. It says that these two police forces have been employed on many past occasions as national comparators, and should continue to be relied upon. As of 2012, Montreal police earned \$74,058 rising to \$77,050 in 2014; the RCMP as of 2012 are paid \$79,308 rising to \$82,108 in 2014. The existing salary of Vancouver Police is \$86,004 as of 2012.

[41] The Employer's argument that local settlements and local economic conditions ought to be given the greatest weight in determining Police and Firefighter salaries is a longstanding one. Arbitrator Albertini, in *Vancouver Police Board v. Vancouver Police Union*, 1995 B.C.C.A.A.A. No. 238, summarized the Employer's argument in that round of bargaining as follows:

It is the Employer's position that local economic conditions should be the "principle criteria" because those conditions have produced other settlements within the Province, settlements negotiated in free collective bargaining. They reflect the general state of British Columbia including efforts to contain current tax levels. In particular, the level of settlements for other public sector employees with special emphasis on the municipal settlement recently negotiated between the Greater Vancouver Regional District (the GVRD) on behalf of its members and C.U.P.E. which includes Local 1004, the bargaining agent for the Vancouver's outside workers. In addition, relative earnings as reflected by the Industrial Aggregate measurement within and between provinces should be seriously considered.

(para 9)

[42] He concluded that the comparability of police officer wage rates in Vancouver should be those paid to other officers employed by other major Canadian cities:

The external criteria proposed by the Union and the local conditions criteria proposed by the Employer are not convenient temporal positions taken for this case. They are deep rooted long standing positions which are legitimate negotiating positions. Unfortunately, one must prevail. While not absolute, I am satisfied that the principle criteria in the development of police officer wage rates in the city of Vancouver should be by comparison to those paid to the officers employed in other major Canadian cities.

(para 25)

[43] Prior to the enactment of the *Fire and Police Services Collective Bargaining Act*, Arbitrator Hope, in *Vancouver Police Board v. Vancouver Police Union*, 1993 B.C.C.A.A.A. No.

363, came to the following two conclusions in respect to the comparability of Vancouver Police salaries to the salaries of other police officers nationally:

It is not a question of whether there has been a “tracking” of wages in other centres. It is a question of whether the relationship between wages in Vancouver and wages in other police forces across the country has been acknowledged by the parties to be a dominant and traditional factor in the fixing of wage rates. The facts are overwhelming. In support of the conclusion that both parties and arbitrators appointed by them have recognized that factor as having a dominant influence, albeit with reluctance on the part of the Employer in negotiating within that reality.

...

In the resolution of conflicting positions, an arbitrator is required to follow well-defined principles, and, in the circumstances before me, those principles compelled the conclusion that an historical relationship does exist which favours fixing wages in Vancouver on the basis of a comparison with wage rates to police officers in other major centres, subject always to any relevant local conditions that impact on the issue. I turn now to the specific issues raised in dispute.

(para 70 and 74)

[44] Indeed, as far back as 1971, in the *Board of Police Commissioners for the City Vancouver v. Vancouver Policemans Union*, May 14, 1971, Arbitrator Blair came to the conclusion that salaries of Vancouver Police Officers ought to be comparable to those of Toronto and Montreal. He stated the following:

As we have seen, Vancouver Police, in terms of wage rate, have since 1966 been allowed to fall behind the Police of not only Toronto and Montreal but of many other Canadian cities as well. After considering most carefully all of the facts and circumstances under which it occurred, one cannot in all conscience support this drop in their position. On the contrary, in the light of all these things which we have been discussing in the foregoing, one is forced to the conclusion that Vancouver Police are at least entitled to wage parity with the Police of Toronto and Montreal – and with the Police of those other

major Canadian cities which we know to be on the latter's level.

(p. 12)  
(emphasis added)

[45] I have emphasized the last part of this quote because it is a recognition that comparators may vary over time. There is nothing surprising in this - the economies in different provinces will vary over time. This principle of comparability is not rooted in one or two specific cities but rather to the larger metropolitan areas of Canada whose police officers perform the same demanding, complex and dangerous work that the Vancouver Police Officers do. I conclude, therefore, that Vancouver Police should be in the “same comparative range” as the larger metropolitan police forces in other parts of Canada – whichever they may be. *Vancouver Police Board v. Vancouver Police Union*, 1997 B.C.C.A.A.A. No. 621 (Lanyon); *Vancouver Police Board v. Vancouver Police Union*, 2000 B.C.C.A.A.A. No. 308 (Munroe).

[46] I also draw the same conclusion as Arbitrator Munroe in *Vancouver Police Board v. Vancouver Police Union*, 2000 B.C.C.A.A.A. No. 308 that “in the present circumstances, my conclusion is that the external comparison should be accorded the greatest weight, but with the local wage environment having some moderating influence”. This is the result of the uncontested fact that the most compelling comparators, are, of course, other police forces. The work of Police Officers is unlike the work of any other civic employee. I stated the following in *Vancouver Police Board v. Vancouver Police Union*, 1997 B.C.C.A.A.A. No. 621:

First, I accept the uniqueness of policing. It is not an occupation or profession comparable to other public sector employees. Both the nature of the work and the nature of the public responsibilities are different. This has to do with their duties and powers and, as captured in past arbitral awards and academic literature, the necessity at some point to lay their “life on the line”. I also accept the unavailability of similar local comparisons. The police forces of Canada’s three largest cities experience criminal activity on a scale not experienced by smaller municipal forces.

[47] The City of Vancouver, in this arbitration, seeks not simply a rebalancing of the statutory factors in Section 4(6) (a) – (g) to address its specific circumstances; rather, in fact, it seeks to overturn the current arbitral policy under the *Act* as a whole; in effect, to stand the current policy on its head. As a general rule, it says that local comparators are to be given the greatest weight, and national comparators assigned less weight. To do so would be to repeal 40 years of arbitral jurisprudence. I am not prepared to do that.

[48] In conjunction with this calculation that greater weight should be assigned to national comparatory standards, I also affirm that this standard should be based upon a First Class Constable salary. The Employer wants to add to this national standard the cost of increments. It says that if increments are added in, the Vancouver Police Force are rated second of nine municipalities. However, the use of the First Class Constable salary is not simply a matter of a comparative standard for the Vancouver City Police; rather, it is the normative *national standard*. This current standard permits a rational matching of all salaries, of all police, across the country. In the RCMP Pay Council Report, dated March 2014, the report lists a total of 85 Police Departments, with 50 or more employees, across the country, and it compares their salaries based upon the First Class Constable salary: “*Canadian 1<sup>st</sup> Class Constable Salaries*”.

[49] The difficulty in setting out additional factors, such as increments, and adding that factor to this comparative calculation, is that it leads potentially to an analysis of total compensation. By permitting the parties to “cherry pick” one or two factors (which favour their analysis) would indeed very quickly lead to an analysis based upon total compensation. I agree that this would make hearings more complex, lengthier and more costly. This, of course, does not in any way preclude the parties from examining total compensation during their own collective bargaining negotiations. I therefore maintain the First Class Constable salary as the standard comparator.

[50] Notwithstanding my conclusion that external comparisons should be accorded greater weight, there are decisions under the *Act* that have given greater weight to local settlements and local and regional economic conditions. For example, in the *Greater Victoria*

*Labour Relations Association and Victoria Police Union*, unreported, 2002 – 2004 (Lanyon) I refused to grant the Victoria Police a 1.2% increase that would have given them parity with the Vancouver Police. I did so on the basis of the existing local economic conditions in Victoria which, on average, had lower wages and a lower cost of living. Further, in *City of Nelson v. Nelson Police Association*, 2005 B.C.C.A.A.A. No. 130 (Lanyon), I declined to award to the Nelson City Police increases that would have given them parity with Victoria. Again, I declined to do so based on local economic conditions, and awarded Nelson City Police the same increase as City of Nelson’s CUPE bargaining unit. A third example was when the City of Prince Rupert was facing economic difficulties. The City was \$10 million in debt, the unemployment rate was twice that of Vancouver, and concessions had been made by the other municipal unions. As a result, in *City of Prince Rupert and Prince Rupert Firefighters Association*, 2004 B.C.C.A.A.A. No. 236, I awarded the Firefighters the same increases as the City of Prince Rupert CUPE bargaining unit: 1% in 2000 and 0% in 2001 – 2004. Thus, in summary, an arbitrator under the *Act* is compelled to weigh all factors. Those enumerated factors that stress local and economic conditions can be, and have been, applied in the circumstances where it is fair and reasonable to do so.

[51] Turning to the parties’ own collective bargaining relationship, it should be noted that in Schedule F, No. 1 of the Collective Agreement (entitled, *Principles to Guide the Negotiation of Benefit Provisions Between the Employer and the Union*) these parties have specifically set out what aspects of the collective agreement are to be governed by local comparators. Schedule F states that certain fringe benefits will be “patterned after the provisions negotiated by the bargaining agents of those other employees”. For example, benefits such as annual leaves, public holidays, medical services plans, sick leave and gratuity plans, workers compensation benefits, dental services, compassionate and parental leaves will all be patterned after local CUPE/Teamster agreements with the City of Vancouver. Other benefits such as clothing allowance, and court time allowances will be based upon municipal police forces and other departments in Canada. Other benefits fall into a hybrid category - comparisons are made both to other police departments and to employees of the City. An example of this are shift differentials. Finally, some benefits are treated on their own merits without the need to compare to either internal or external comparators. An example of this are psychological

services. What has expressly been omitted is salaries. By direct inference, therefore, the exclusion of salaries from the parties' own comparison scheme in Schedule F lends further credence to the use of national and/or external comparators in respect to salaries.

[52] Second, in the last round of collective bargaining, 2010 – 2012, the parties freely negotiated and reached a collective agreement without reliance on an interest arbitrator. The increases agreed to place a Vancouver First Class Constables salary in 2012 in the same comparative range as that of Toronto and York: Vancouver, 2012, \$86,004; Toronto, 2012, \$86,366, York, 2012, \$85,988.

[53] Traditionally, the external comparators have been Toronto, Montreal and the RCMP. As stated earlier, Montreal and the RCMP now lag substantially behind. The leading comparators are now the Western Provinces of Alberta, Saskatchewan and Manitoba. For example, Calgary and Edmonton, at the end of 2013, have established First Class Constable rates of \$91,391 and \$91,245 respectively. This is more than a \$5,000 increase over the \$86,004 paid to a First Class Constable at the end of 2012 in Vancouver. Regina, at the end of 2014, is paying its First Class Constables \$91,407, and Winnipeg, which settled with its police officers for a 13% increase over the period December 24, 2012 to December 23, 2016, will pay a First Class Constable \$96,850 at the end of 2016. The Toronto settlement is less than these Western Provinces. At the end of 2013 a First Class Constable in Toronto will earn \$88,844; and at the end of 2014 that same Constable will earn \$90,621. York, settled for 7.94% over three years (2013 – 2015), resulting in a First Class Constable receiving \$93,022 at the end of 2015.

[54] I have concluded that the settlement in Alberta is “too rich” for the City of Vancouver. The province of Alberta has had an average growth of more than 4% over the last 4 years. Its average industrial aggregate wage is \$57,814 as compared to \$45,559 in British Columbia. By inference I also reject the settlement in Winnipeg. Thus, I decline to impose the Union's proposed increase of 13% over 3 years which is based on the Edmonton, Calgary and Winnipeg Collective Agreements. In rejecting these settlements I therefore give greater weight to the local economic conditions in this province and to the City of

Vancouver's current economic circumstances, notwithstanding that the arbitral jurisprudence places the Vancouver Police amongst the leading comparators. Thus, I incorporate Arbitrator Munroe's conclusion in *Vancouver Police Board v. Vancouver Police Union, supra*, that local wage settlements should exercise a "moderating influence" over extra provincial elements. And the more that these national comparators skew the local wage differences, the greater the weight that should be given to regional and wage settlements.

[55] However, the City did not make an ability to pay argument and its economic forecast, on balance, is quite positive over the next three years. Therefore, I conclude that a 7.0% increase in the First Class Constable's salary is warranted in the circumstances before me. This increase shall be broken down in the following yearly increments:

2013 – 2.5%  
2014 – 2.0%  
2015 – 2.5%  
Total 7.0%

[56] In absolute dollars (rounded off) this amounts to the following increase in the First Class Constable's salary:

2013 - \$88,154  
2014 - \$89,917  
2015 - \$92,165

[57] This puts a Vancouver Police Officer (First Class Constable) in the same comparative range as Toronto and other Ontario settlements; in 2013 a Police Officer in Vancouver will earn \$88,154; in Toronto, 2013, \$88,844; in 2014, Vancouver, \$89,917; in Toronto, 2014, \$90,621; and in 2015, a First Class Constable in York will earn \$93,022, and in Vancouver that same officer will earn \$92,165.



[58] I also conclude that there are no offsets. To do so would be to directly reduce these percentage increases; in effect, giving with one hand and taking away with the other. Such offsets are not warranted given that these increases, although in the same comparative range as Toronto, still fall somewhat below them.

[59] I wish to make one final remark in respect to the economic reports. The parties, as expected, select aspect of these many different reports that are in furtherance of their arguments. My approach to these reports is to prefer statistical information that is an actual summary of past or current economic circumstances, rather than speculative predictions; that does not mean, of course, that such predictions have no value.

#### IX. Other Issues in Dispute

[60] With the exception of the four items to follow, I have decided not to address the remaining outstanding issues in dispute. As stated, interest arbitration is a conservative process. It works best when the differences referred to a third party are few in number. Mature collective bargaining relationships, such as the one before me, have crafted a collective agreement over a good number of years. During numerous rounds of collective bargaining the parties have arrived at many different and difficult trade offs. For an interest arbitrator to delve too deeply into that collective agreement, without any knowledge of those tradeoffs, may potentially upset this delicate balance achieved over many years. The increases in these remaining issues sought by the Union are substantial. The proposed cuts sought by the Employer are equally substantial. Having read the parties' extensive submissions, and listen to their comprehensive arguments, I have decided to limit this Award to the Wages and Term of the agreement. I therefore decline to address all other proposed changes to the collective agreement.

[61] There are four exceptions to this. They involve non-monetary items. Two involve the structuring of committees. The first is an agreement by the parties to establish a Reformatting Committee. The purpose of this Committee is to examine the collective agreement and reformat it into a more easily understood document. It is described as a

“housekeeping” committee. Each side shall have three members on the committee. This committee shall have only the power of recommendation. Its recommendations can be re-examined by any other internal processes of these parties; however, only the City and the Union have the power to make any binding amendments to the collective agreement.

[62] A second committee is a Benefits Administration Committee. It also has only the power of recommendation. There will be three members from each party on the committee. The purpose of this committee is to examine in good faith the feasibility of transferring the administration of the Health and Welfare Benefit Plans to the Union. The Union states that it can save the Employer at least several hundred thousand dollars a year in respect to the operation of these plans. Any final decision in respect to this potential transfer of the plan can only be made by the Employer and the Union jointly. If the committee is not able to agree to the terms of the transfer then, of course, the administration of the benefit plan remains with the Employer.

[63] Third, the parties have agreed to amend Schedule E, No. 4, Operations Deployment Model 11 Hour Shift, specifically Article 4(c), to read as follows:

Upon transfer from 11 hour shift position, members outstanding balances must be reconciled. Where a positive balance remains, the Employer will pay that balance down to zero at the Employee’s current rate of pay. Where a negative balance remains, the employee will identify which leave bank the hours are to be drawn from within two weeks of transfer. Where a source is not identified there will be discussion between the member and the Employer to determine the source of the deduction.

[64] Fourth, the *Police Act* R.S.B.C. 1996 c. 367 includes expungement provisions in respect to a Police Officer’s discipline record. The parties have agreed that these specific provisions are subject to the grievance/arbitration process under their collective agreement.

[65] The terms and conditions set out in this Award, along with the expired 2010 – 2012 Collective Agreement, shall form the parties renewed Collective Agreement and be in force from January 1, 2013 to December 21, 2015.

[66] It is so Awarded.

[67] Dated at the City of New Westminster in the Province of British Columbia this 29<sup>th</sup> day of July, 2014.

A handwritten signature in black ink that reads "Stan Lanyon". The signature is written in a cursive style with a small flourish at the end.

Stan Lanyon, Q.C.

IN THE MATTER OF AN INTEREST ARBITRATION UNDER  
THE FIRE AND POLICE SERVICES COLLECTIVE BARGAINING ACT, R.S.B.C,  
1996 c. 142

BETWEEN:

VANCOUVER POLICE BOARD

(the "Police Board")

AND:

VANCOUVER POLICE UNION

(the "Union")

(Re: Collective Agreement Renewal)

ARBITRATOR:

Stan Lanyon, Q.C.

COUNSEL:

Kim Thorne and  
Ryan Copeland  
for the Employer

Gabriel Somjen  
for the Union

DATE OF HEARING:

August 2 and September 14, 2016

PLACE OF HEARING:

Vancouver, B.C.

DATE OF DECISION:

September 29, 2016

## A W A R D

### I. Introduction

[1] The term of the parties' prior collective agreement was January 1, 2013 to December 21, 2015. The wage increases under that agreement were as follows: 2013 – 2.5%; 2014 – 2.0%; and 2015 – 2.5%, for a total of 7% over three years (*Vancouver Police Board and Vancouver Police Union*, July 29, 2014, Lanyon, Q.C.)

[2] The parties have proceeded expeditiously in this matter. Collective bargaining took place on March 14, 2016, followed by mediation before the British Columbia Labour Relations Board on April 19, 2016. The matter was then referred to the Minister of Labour who directed this collective bargaining dispute to interest arbitration.

[3] The parties agreed to mediation/arbitration. Mediation was scheduled for August 2, 2016. As will become evident, the parties differ substantially on the issue of wages. It was agreed that this arbitration would be conducted by way of oral submissions. No witnesses were called to give evidence. Each party introduced a range of documents consisting of economic and government reports. The parties also submitted written arguments. Both parties submissions have been very thorough.

### II. Issues – Agreed to Items

[4] In the period between the mediation and arbitration of this matter the parties successfully reduced the number of issues in dispute, reached agreement with respect to some issues, and agreed to a process for resolving other issues.

### III. Term of Collective Agreement

[5] The parties have agreed that the term of their renewed collective agreement shall be from January 1, 2016 to December 31, 2018.

IV. Joint Committee

[6] The parties have agreed to establish a Joint Committee with representatives from each side to deal with a number of outstanding issues. Appendix A to this Award, Memorandum of Agreement, establishes the terms of this Joint Committee. Appendix B, entitled “Vancouver Police Union 2016 Proposals for Committee”, dated March 14, 2016, sets out the various issues that have been referred to this Joint Committee.

V. Parties Expired Collective Agreement: January 1, 2013 – December 21, 2015

[7] All of the terms and conditions of the parties’ expired collective agreement, that have either not been amended by this Award, or have not been amended by the Joint Committee in Appendix A, shall form part of the parties’ renewed collective agreement (January 1, 2016 – December 31, 2018).

V. Issues in Dispute

[8] There are two issues in dispute: Wages and the Benefit Plan.

VI. Wages

[9] The parties have narrowed this issue. The only dispute with respect to wages is the first year of the agreed upon three year agreement.

[10] The national standard comparator for all collective agreements with respect to Police Officers wages throughout Canada is the salary of the First Class Constable. The current salary of a First Class Constable in the Vancouver Police Force is \$92,165. I will begin by setting out each sides wage proposal.

VII. Union Proposal

[11] The Union proposes the following wage increases:

January 1, 2016 – 5.28% (\$97,032)

January 1, 2017 – 2.5% (\$99,457)

January 1, 2018 – 2.5% (\$101,943)

Total: 10.28%

VIII. Employer Proposal

[12] The Employer proposes the following wage increases:

January 1, 2016 – 2.5% (\$94,469)

January 1, 2017 – 2.5% (\$96,830)

January 1, 2018 – 2.5% (\$99,251)

Total: 7.5%

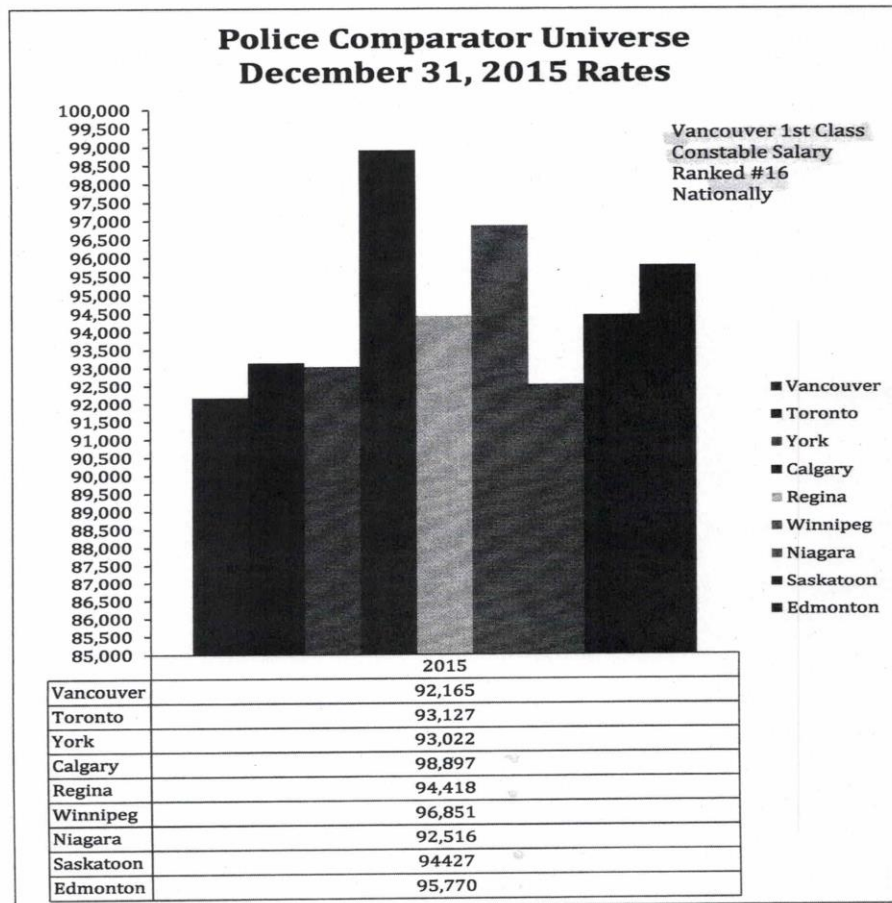
IX. Union Argument

[13] The underlying theme of the Union’s argument is that the Vancouver Police Officers should lead the police forces in Canada: “...Vancouver should be the leader in Canada”. (para. 24, written submission)

[14] The Union contends that since the last interest arbitration in 2014 (*VPD v. VPU, supra*), Vancouver and British Columbia now lead the country in economic growth; therefore, the salaries of the Vancouver Police Officers ought to exceed those in both the Western Provinces, in Toronto, and in Ontario generally.

[15] The Union produced the following graph which sets out the salaries of police officers in both the Western Provinces, and in the Toronto/York Regions as of December 31, 2015. Vancouver Police Officers rank the lowest on this graph. The Unions says that Vancouver is 1% behind Toronto and other Ontario municipalities; 7% behind Calgary; 4% behind

Edmonton, and 5% behind Winnipeg. It says that as of December 31, 2015, according to the RCMP Pay Council data, Vancouver Police Officers ranked 16<sup>th</sup> in Canada (para. 41):



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[16] The Union contends that Vancouver has in five of the last six years experienced growth at more than 3% a year, whereas the Canadian economy grew by an average 1.8% per year over the same period (para. 79). In addition, economic growth for British Columbia is predicted to be 3% or greater for both 2016 and 2017 (para. 82). Thus, both Vancouver and British Columbia lead Canada in economic growth.



[17] The Union states that inflation in Vancouver is the second highest (CPI 2%) in Canada. Toronto is the highest with CPI at 2.1%. The prediction for Vancouver for CPI increases, in the period 2015 – 2018, is to average 2.1% (para. 62).

[18] The Union cites the 2016 Mercer Cost of Living survey which ranks Vancouver as the costliest city in Canada (para. 52). There is no dispute between the parties that housing in Vancouver is unaffordable. The average price is now \$1.5 million. Further, the rental vacancy rate is 0.6%. The normal rate is between 3 – 4%. The Union says that the desirable municipal policy of having essential service workers, such as police officers, live in the city in which they work is no longer attainable.

[19] Turning to the issue of workload, and to the changes in the duties of a Vancouver Police Officer, the Union argues there has been a rise in terrorism, plus a more recent trend of targeted attacks on police officers. In 2015, Vancouver’s violent crime severity index was twice that of Toronto. Property crime has increased. The Downtown Eastside is the most difficult place in Canada to police. The problems in this neighbourhood include homelessness, addictions and mental illness. Non-criminal events are a growing part of a Vancouver Police Officers’ workload (domestic disputes, mental health incidents, street disorder, etc.); however, all of these incidents must still be investigated because of the potential for them to escalate into criminal incidents.

[20] There is no dispute that the duties of a police officer are unique. They are both challenging and dangerous, including the potential for any police officer having to put their “life on the line”. Recent wellness studies, specifically those done with respect to Vancouver Police Officers, have demonstrated that many police officers show high levels of stress, anxiety and depression.

[21] Furthermore, the Union points to strong public support, which has repeatedly been demonstrated in public surveys; these surveys reveal that “policing is high priority budget item” (para. 116).

[22] Finally, the Union contends that the recent Delta Police Officers' settlement should not be determinative of this matter. It argues that the Delta Police Force is a suburban force, and that it does not face the same challenges that police officers in Vancouver face. Therefore, it is not a proper comparator under the established arbitral jurisprudence.

[23] Thus, in summary, the Union claims that the "exceptionally positive financial circumstances", in Vancouver and in British Columbia, combined with its high cost of living, together with the increasing difficulty of policing in Vancouver, that "it is now necessary and reasonable for the Vancouver Police Officers to assume their status as the highest paid officers in Canada" (para. 118).

#### X. Employer's Argument

[24] The Employer argues that Toronto police force, and other Ontario police forces, have been one of the most important of the traditional comparators with respect to the determination of the Vancouver Police salaries. The single largest police force in Canada is in Toronto (the 4<sup>th</sup> largest City in North America, behind Mexico City, New York and Los Angeles). The Employer emphasizes that Toronto has recently reached a collective agreement voluntarily. It is a four year collective agreement that provides for the following increases: 2015 – 2.75% (93,127); 2016 – 1.95% (94,949); 2017 – 1.9% (96,759); and 2018 – 1.75% (98,452). In addition, it states that this new agreement also included concessions that will save the Toronto Police Board an estimated \$203.5 million (paras. 39 and 40).

[25] The Employer further contends that the Toronto Police settlement is also reflected in the wages awarded to other Ontario Police Forces outside of Toronto. It sets out the following settlements at six municipalities in Ontario:

- a. York: 2016 – 1.5% Jan 1 and 0.563% July 1; 2017 – 1.5% Jan 1 and 0.4% July 1; Jan 1, 2018 – 1.75%; Jan 1 2019 – 2.0%
- b. Peel: 2015 – 3.07%; 2016 – 1.96%; 2017 – 1.91%; 2018 – 1.75%; 2019 – 2.0%
- c. Sudbury: 2015 – 2.1%; 2016 – 2.1%; 2017 – 2.0%; 2018 – 2.3%; 2019 – 2.0%

- d. Waterloo: 2015 – 2.75%; 2016 – 2.2%; 2017 – 1.9%; 2018 – 1.9%; 2019 – 1.94%
- e. Windsor: 2015 – 2.75%; 2016 – 1.9%; 2017 – 1.9%; 2018 – 1.8%; 2019 – 2.1%
- f. Barrie: 2015 – 2.75%; 2016 – 2.1%; 2017 – 2.1%; 2018 – 2.1%

[26] The Employer states that these settlements are on average 2% or less. And because the leading comparator, Toronto’s collective agreement, was reached voluntarily, this reflects most accurately the principle of replication that should be applied to the Vancouver Police.

[27] The Employer rejects the Western Provinces as comparators, especially Edmonton and Calgary, Alberta. In an arbitration award, dated September 28, 2015, (*Corporation of City of Calgary and the Calgary Police Association*, (September 28, 2015), Tettensor, Q.C.) the Calgary Police were awarded the following wage increases: 2014 – 2.25% (\$93,447); 2015 – 2.75% (\$96,017); 2016 – 3.0% (\$98,897). The Edmonton Police Force, in an Award dated August 29, 2016 (Smith), were awarded the following increases: 2014 – 2.4% (\$93,435); 2015 – 2.5% (\$95,771); 2016 – 2.75% (\$98,404).

[28] The Employer cites and relies upon my conclusion in the 2014, *VPB & VPU, supra* Award, where I concluded that the settlements in Alberta were “too rich” for the City of Vancouver (para. 54). The Employer argues that this continues to be the case and believes that the Alberta settlements will be moderated in the next round of collective bargaining due to that province’s current recession.

[29] The Employer further contends that salaries are generally higher in Alberta, and that this trend continues despite the province’s current recession. It relies on the Alberta Industrial Aggregate which records that during the period of 2001 – 2015 annual wages in Alberta increased by 54.1%. The salary of Edmonton Police Officers over that same period increased by 50.5%. The average salaries in Alberta in 2015 were \$59,794, which the Employer states is 25% higher than salaries in B.C. Conversely from 2001 – 2015 the B.C.

Industrial Aggregate increased by 32.9% and Vancouver Police wages increased by 44.3%. The average salary in B.C., under the Industrial Aggregate, was \$47,504 (paras. 59 and 60).

[30] In addition, the Employer argues that the City of Vancouver recently negotiated a collective agreement with CUPE, Local 104. The salary increases were as follows: 2016 – 1.5%; 2017 – 1.5%; 2018 – 2.0%; 2019 – 2.0% (para. 74). In addition, it sets out the wage increases in the public sector in the Lower Mainland which are as follows: 2016 – 0.8%; 2017 – 1.4%; 2018 – 1.6%; and 2019 – 1.7%. Wage increases in the private sector in the Lower Mainland are as follows: 2016 – 1.9%; 2017 – 1.7%; 2018 – 1.0%; and 2019 – 0.2% (paras. 91 and 92). Similar to Ontario settlements the Employer argues that all of these settlements are under 2% a year. It describes these wage settlements as “modest” (para. 93), and that they should have a moderating effect on the Vancouver Police Union settlement. Finally, in terms of other B.C. emergency services employees, for example, the nurses and the B.C. Paramedics, both of these groups agreed to a 5.5% increase over five years (para. 96).

[31] Similar to the Union, the Employer asserts that the increases for police officers at Delta, British Columbia (2.5% over four years, 2016 – 2019), should not be determinative with respect to this interest arbitration. The Employer describes the Delta settlement as “an anomaly”. It says that it is not a proper comparator because the police force there does not face the same challenges and difficulties as do the Vancouver Police Officers. However, the Employer recognizes that the Delta settlement causes some labour relations difficulties, and it is therefore a major factor in its offer of 2.5% per year over three years (total of 7.5%).

[32] The Employer describes the economic data for both British Columbia and Vancouver as one of modest growth, and says that the economy will remain stable in the near future.

[33] The Employer agrees that the Vancouver police force is a “first class, world class” municipal police force. It believes its officers should be well paid, it understands the uniqueness of policing, and the difficulties and challenges faced by its police officers in the

performance of their day to day duties. However, it believes that the current public and private settlements in the Province of British Columbia should act as a moderating force with respect to wage increases, and sees its offer of 2.5% per year for three years as an appropriate settlement.

XI. Legislation: Fire and Police Services Collective Bargaining Act, R.S.B.C. 1992 c.142 (“Act”)

[34] This *Act* addresses the settlement of collective bargaining disputes through the use of interest arbitration with respect to Police and Firefighter collective agreements.

[35] Section 4.6(s) sets out the following seven factors an interest arbitrator must consider when “rendering a decision”:

(6) In rendering a decision under this Act, the arbitrator or arbitration board must have regard to the following:

- (a) terms and conditions of employment for employees doing similar work
- (b) the need to maintain internal consistency and equity amongst employees;
- (c) terms and conditions of employment for other groups of employees who are employed by the employer;
- (d) the need to establish terms and conditions of employment that are fair and reasonable in relation to the qualifications required, the work performed, the responsibility assumed and the nature of the services rendered;
- (e) the interest and welfare of the community served by the employer and the employees as well as any factors affecting the community;
- (f) any terms of reference specified by the minister under section 3;
- (g) any other factor that the arbitrator or arbitration board considers relevant.

[36] As both parties state, these legislative criteria were argued and addressed in some detail in my last award in 2014 (*VPD v. VPU, supra*). I will summarize the conclusions set out in that Award.

[37] First, there have been numerous awards published with respect to the interpretation of these statutory factors: *Vancouver Police Board and Vancouver Police Union*, [1997] B.C.C.A.A.A. No. 621 (Lanyon); *City of Burnaby and Burnaby Firefighters Union, Local 23*, [2008] B.C.C.A.A.A. No. 220 (Gordon); *City of Richmond and Richmond Firefighters Association*, [2009] B.C.C.A.A.A. No. 106 (McPhillips); *City of Nelson and Nelson Professional Firefighters Association*, [2010] B.C.C.A.A.A. No. 174 (McPhillips); *City of Campbell River and Campbell River Firefighters Association*, October 19, 2005 (Gordon).

[38] The general arbitral approach adopted in these awards has been to interpret these statutory criteria in light of fundamental interest arbitration principles. The first such principle is the replication theory – an award should attempt to replicate a settlement that the parties themselves would have concluded. This is essentially a conservative exercise. An arbitrator should not unduly intervene into a collective agreement, or undertake comprehensive changes in the absence of the parties agreement.

[39] The second principle is that an award must be fair and reasonable. This factor is expressly set out in Section 4(6)(d). What is fair and reasonable resides in part within the principle of comparability. Comparability is defined as the rational matching of similar occupations; for example, comparing Vancouver Police Officers with police officers in other major municipalities in Canada. This principle is directly incorporated into Sections 4(6)(a) – (d).

[40] The *Act* does not assign weight to any particular factor. However, these statutory factors do incorporate local, regional and national comparators.

[41] With respect to the Vancouver Police Officers, I concluded in my 2014 Award that these officers should be in the same comparative range as other larger municipal police forces in Canada. Further, that local wage settlements in British Columbia, and in the Lower Mainland, ought to have a “moderating influence” (para. 47) on the wage settlement of the Vancouver Police Officers. It should be noted that since 2014 the British Columbia Supreme Court has rendered an Award in *Penticton (City) v. Penticton Firefighters Assn., International Association of Firefighters, Local 1399* [2016] B.C.J. No. 880, specifically with respect to the criteria set out in Section 4(6) of the *Act*. Madame Justice Bruce first affirms the general arbitral principles set out in prior arbitral awards at paragraph 8 of her decision:

1. There is no weighting assigned to the factors in s. 4(6) of the Act and thus each must be applied according to the circumstances in the case.
2. The arbitrator must apply the replication principle; that is, what the parties would have agreed to and likely achieved had a collective agreement been negotiated through collective bargaining. In applying this principle, arbitrators look to the historical pattern of settlements by the parties as evidence of what would likely “replicate” a bargained collective agreement.
3. The process of interest arbitration is conservative and the arbitrator should respect the bargaining relationship that exists and not introduce fundamental changes to the collective agreement. In other words, the interest arbitrator should not be an innovator and should strive to maintain the status quo.
4. The award should be fair and reasonable and fall within a reasonable range of comparators. This principle appears to be a marriage of the replication principle with the premise that the arbitrator not make fundamental changes to the collective agreement.

[42] Madame Justice Bruce then comments that an interest arbitrator should not presume that “external wage parity” will prevail only when there are “extraordinary circumstances justifying a different result”. She writes that this would violate the statutory criteria set out in Section 4(6), which requires an arbitrator “to consider and weigh local conditions when

determining wages and working conditions”. Thus, past interest arbitration awards are persuasive, but not determinative. The most important factors are the actual circumstances before the arbitrator in each case. Her remarks on this issue are as follows:

45 An interest arbitrator who slavishly follows past arbitration awards without regard to the particular facts before him fetters his discretion and acts contrary to the statutory mandate in s. 4(6) of the Act. While past arbitration awards can be helpful guides, they are not binding on an interest arbitrator and cannot be considered in isolation from the facts of the case.

46 It is apparent from Arbitrator McPhillips’ award that in many prior interest arbitrations involving firefighters, the wage increases negotiated by other unionized employees within the same employer’s operation have not been accorded significant weight. An arbitrator cannot rely on these past awards to justify his decision unless their underlying rationale applies to the facts of the case before him. These past arbitration awards have relied on the specialized nature of the work performed by firefighters to justify less weight being attributed to the wage increases negotiated by other employee groups. This is a commonality that would likely apply with equal force to other firefighter bargaining units in British Columbia. However, in any particular case there may be different factors at play that dictate more weight be given to settlements within the employer’s operation and less weight to external parity. Arbitrators cannot ignore these factors in favour of blind adherence to past arbitration awards.

47 Similarly, the fact that other arbitrators have imposed external wage parity for firefighters cannot automatically dictate the same result in every case. The interest arbitrator cannot start with a presumption that external wage parity will prevail unless there are extraordinary circumstances justifying a different result. This approach would clearly violate the mandate in s. 4(6) to consider and weigh local conditions when determining wages and working conditions. Past precedents may be persuasive; however, it is the facts of each case that must justify the award regardless of what other arbitrators have concluded.



## XII. Decision Re: Wages

[43] It is instructive to once again set out the parties' proposals with respect to the issue of wages. The Union's proposal is as follows:

January 1, 2016 – 5.28% (\$97,032)  
January 1, 2017 – 2.5% (\$99,457)  
January 1, 2018 – 2.5% (\$101,943)  
Total: 10.28%

[44] The Employer proposes the following wage increases:

January 1, 2016 – 2.5% (\$94,469)  
January 1, 2017 – 2.5% (\$96,830)  
January 1, 2018 – 2.5% (\$99,251)  
Total: 7.5%

[45] First, I concur with both parties' assertion that the Delta settlement is not determinative of this matter. Clearly there are police duties that overlap between Vancouver and Delta Police Forces; however, Vancouver has some of the most difficult areas to police in all of Canada; for example, the Downtown Eastside, whose populations include the homeless, the addicted and those who are mentally ill. In addition, the three major cities of Canada, Toronto, Montreal and Vancouver, are major port cities that have a wide range of policing matters on a scale not experienced by suburban police forces such as Delta. Further, Delta has traditionally followed the Vancouver settlements, not preceded it. For whatever reason, Delta chose to do otherwise. This fact alone should not convert the Delta Police settlement into a true comparator for the purpose of determining the Vancouver Police Officers' wages. It has, however, placed the Vancouver Police Board in a difficult labour relations situation.

[46] Second, the Union states, and it is not disputed, that as of December 31, 2015, Vancouver Police Officers ranked 16<sup>th</sup> in Canada. This is not justified based on the historical

arbitral jurisprudence, set out in my Award of 2014, that places Vancouver Police Officers among the highest group of paid officers in Canada.

[47] Third, Vancouver and British Columbia lead Canada with respect to economic growth. The average growth with respect to both is 3%, in comparison to the average of 1.8% for the country as a whole.

[48] Fourth, I agree with the Employer that Toronto, and the Ontario municipal police forces, remain the most significant comparator. However, I agree with the Union that its members have trailed Toronto for the past 15 years, and that therefore the current economic circumstances justify Vancouver Police Officers leading Ontario police officers with respect to their wages in this current round of collective bargaining.

[49] However, I do not see the Union's request for a 5.28% increase in one year (other essential service workers in B.C. were given a 5.5% increase over five years) as justifiable given local settlements in both the public and private sector – all of which are below 2% during the same period as the term of this collective agreement.

[50] The Union's proposal of 5.28% is based upon the salaries of Calgary and Edmonton police officers. I once again decline to follow the Calgary and Edmonton settlements. In the Calgary interest arbitration award (*City of Calgary, supra*), dated September 28, 2015, that arbitration board concluded that “the material before us does not show that the downturn has a direct effect on public sector wages in Alberta to date” (para. 117). The Employer in this case asserts that should the recession in Alberta continue in 2017 this may well exert a downward pressure on public sector salaries. I think that is a reasonable conclusion to draw.

[51] It is my conclusion that the settlements of other employees in the Lower Mainland ought to exercise a moderating influence on the Vancouver Police Force salary award. On the other hand, it is not fair and reasonable that these officers earn the same salary as the

Delta police officers. I therefore conclude that the salary increases for Vancouver Police Officers shall be as follows:

2016 – 3.5% (\$95,391)

2017 – 2.5% (\$97,776)

2018 – 2.5% (\$100,220)

[52] The effect of this award is to reinstate the Vancouver Police Officer amongst the higher paid officers in Canada. It puts them, for the first time in a number of years, ahead of Toronto and other Ontario municipalities police salaries. And it reduces the salary gap between Vancouver and the Edmonton and Calgary police officers.

### XIII. Health & Welfare Benefit Plan

[53] The Union proposes to take over the administration of the Health and Welfare Plan for its members. It says that it can manage these plans more efficiently and effectively on behalf of its members. It guarantees that the Employer's costs will remain the same for the next three years.

[54] The Employer opposes the transfer of the Health and Welfare Plan to the Union. It says that this transfer involves complex procedural and substantive issues, and will also impact other plan members. They state this is a "classic example" of when an interest arbitrator should exercise restraint (para. 130).

[55] This same proposal arose in the last round of collective bargaining. I recommended in my 2014 Award that the parties establish a committee to address this issue. No such committee was formed.

[56] I conclude that the Union's proposal to transfer of the Health & Welfare Benefit Plan should be referred to the Joint Committee established under Appendix A, and added to the issues set out in Appendix B that are to be negotiated by that Joint Committee.

[57] I reiterate that the terms and conditions set out in this Award, along with the expired 2013 – 2015 Collective Agreement, and any amendments agreed to by the parties with respect to Appendix B, shall form the parties renewed Collective Agreement, and be in force from January 1, 2016 – December 31, 2018.

[58] It is so Awarded.

[59] Dated at the City of New Westminster in the Province of British Columbia this 29<sup>th</sup> day of September, 2016.

A handwritten signature in black ink that reads "Stan Lanyon". The signature is written in a cursive style with a large initial "S" and a stylized "L".

Stan Lanyon, Q.C.

Appendix A

**MEMORANDUM OF AGREEMENT**

**Between**

**The Vancouver Police Board**

**The "Employer"**

**And**

**The Vancouver Police Union**

**The "Union"**

The parties agree as follows:

1. The Employer and Union will participate in a joint committee for the purposes of having discussions regarding changes to their collective agreement.
2. The committee will be composed of three senior representatives from the Employer and three senior representatives from the Union. The committee will meet as needed, but at least quarterly.
3. The committee may invite other persons to assist, to provide advice, or as a resource where it is mutually agreeable to do so.
4. The committee may request the assistance of Stan Lanyon to assist these discussions where it is mutually agreeable to do so, or where either party feels the discussions are at impasse. Once such a request is made, the parties will, with the assistance of Mr. Lanyon, attempt to mediate the remaining issues.
5. The parties will share the costs of mediation, including mediator fees.
6. The mediation contemplated by this agreement will be non-binding.
7. The parties may mutually agree to modify this agreement.
8. This agreement will expire and is terminated at the earliest of December 31, 2018, or at the expiration of the new collective agreement as awarded by Stan Lanyon subsequent to the arbitration hearing on September 14 and 19, 2016 or unless expressly agreed to in writing by the parties.

This Agreement signed on August \_\_\_\_\_, 2016

For the Union

For the Employer

\_\_\_\_\_  
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**VANCOUVER  
POLICE UNION**

**2016  
PROPOSALS for Committee**

*March 14, 2016*

The Vancouver Police Union proposes a joint labour management committee to consider the following amendments to its 2012 – December 31, 2015 Collective Agreement with the Vancouver Police Board to address the following issues:

- (1) Eliminate the requirement to attend Court after night shift.

*One of the most dangerous and difficult assignments a member can have is court attendance after night shift. Dangerous because sleep deprivation causes people to make mistakes. Difficult in terms of physical stresses and long term health implications caused by the disruption to a person's biorhythms.*

*The ultimate objective is to prohibit court appearances after nightshift. The committee should consider the use of increased premiums and other strategies to achieve this objective.*

- (2) Modify "Shift Differential" Premiums.

*One of the most critical assignments in policing from a community policing perspective is the Patrol assignment. Typically this is the 'entry level' position in policing. However, now more than ever, we need experienced officers to return to Patrol assignments in order to ensure that new recruits have access to appropriate and necessary mentoring and coaching so that they can establish a solid foundation upon which they can rely throughout their policing career. This is not only better for the citizens in our community that we service but it will also mitigate risk for the VPD. We would propose changing current "dollar" amount to a percentage. This method of compensation would better recognize the deleterious effects of shift work and also make these assignments more appealing.*

- (3) Add language to address the impact of technology on work expectations both during and outside of regularly scheduled hours.

*Technological advancements mean more members are being deployed with or issued personal or other communication devices, and more members are accessing work files and emails remotely; all of which creates an expectation that members must 'work' outside of their regularly scheduled hours.*

- (4) Amend "Maternity and Parental Leave" provisions to supplement employment insurance benefits for members utilising parental leave entitlements and add specific provisions for attendance at Court while on Maternity or Parental leave.

*The number of female officers at the VPD has increased significantly. The VPD has publicly stated that increasing the number of female police officers is a key strategic priority. Moreover, because of changing attitudes towards parenting, work/life balance, and the challenges of juggling family demands with full time or dual careers, more of our members find it necessary to use this benefit. Many employers have been very aggressive in this area and have adopted improved "Maternity and Parental Leave" benefits. As a result we are faced with some significant retention issues within this segment of our membership.*

- (5) Add 'per diem' language into the Collective Agreement.

*Some time ago the Union agreed to remove the per diem language from the Collective Agreement on the promise that this could be better managed as a policy issue. Our experience has not reflected this to be the case. The process for submitting per diem claims has been frustrating at best. Claims are regularly denied for what appears to be no valid reason or members are forced to undertake unreasonable adjudicative processes to have their claims accepted. As a result, members required to attend to the VPD's business outside of their regularly assigned duties incur additional expenses that we submit are reasonable, but for which they are not compensated.*

- (6) Improve Educational Fund at Article 6.3.

*The authorized strength of the VPD has increased in recent years with no proportionate increase to this Fund.*

*The Department encourages members to continue their professional development in a variety of ways including through advanced education. Given that the VPD advertises itself as a 'learning' organization that emphasizes education and encourages ongoing learning and education for existing employees, it is appropriate that this Fund is improved.*



- (7) Establish Education Fund and Increment Program for permanent full time Special Constables and Jail Guards.

*The Department encourages members to continue their professional development in a variety of ways including through advanced education.*

*Schedule "F" refers to 'training' and 'career opportunities'; however, there is no similar provision for these members to self-develop as there is for all other VPD employees, despite the fact that they are encouraged to do so.*

- (8) Amend "Maternity and Parental Leave" return to work provisions to eliminate the prorating of annual leave.

*This can be a disincentive for members to return to work from maternity or parental leave and creates a retention issue for both the Union and the Employer.*

- (9) Amend "Indemnification" provisions.

*The BC Police Act has been significantly amended. Part 9 has been replaced by Part 11. The indemnification provisions need to be amended to reflect the new processes that have been established in Part 11.*

- (10) Eliminate the "6 month" requirement for Sick Leave at Article 9.3

*The VPD prides itself on recruiting only the very best candidates and often recruits members from other police organizations. Preventing new employees from accessing this benefit in a time of need is not only inconsistent with the VPD's own organizational values but is also inconsistent with VPD policies and directives.*

- (11) Amend the Collective Agreement "Indemnification of Members" language to remove subparagraph 9.9 (b) (iv).

*This provision refers to a member consulting with legal counsel to determine whether he/she should provide a 'duty report' or statement. It further provides that, if it is later determined that a member has acted in 'bad faith', then the Employer can turn to the Union to*

indemnify the Employer for any legal fees paid for the purpose of the member providing a statement.

This provision is no longer suitable given numerous changes that have taken place in the area of members' providing statements. Subsequent to this provision being included in the Collective Agreement, the Employer has developed a policy requiring members to provide a 'duty report' or statement. Clearly, the Employer has concluded that it is beneficial to the VPD for police officers to provide 'duty reports' or statements when they are investigating complaints or other matters involving police officers. Also, in many cases, the Employer advises members to seek legal advice without either the member or the Employer first consulting with the Union, even though it is the Union who may ultimately be responsible for the legal fees involved (according to this provision).

Moreover, recent amendments to the BC Police Act have resulted in a provision being added to the Act that compels members to provide statements during conduct investigations.

The Union proposes to remove this Collective Agreement provision on the basis that the Employer cannot hold the Union liable for a policy that the Employer has created. In addition, the BC Police Act's new "duty to cooperate" provision compelling police officer 'statements' raises a similar argument.

The Union does not intend to modify the requirements or limitations on 'indemnity' that are included elsewhere in section 9.9 of the Collective Agreement including sections (9.9(a), (b)(i)1&2, and (b)(iii)).

(12) Review Schedule "E" No. 8 – Special Constables

Schedule "E" is a new schedule that was added during the last round of collective bargaining. There is a need to review the positions that were established within the Schedule and how they were classified to ensure that the duties and functions of each position has not significantly changed since that time.

(13) Add language to prohibit consideration of a member's sick benefit utilization in determining suitability for promotion or transfer.

*Employees are often sick for legitimate reasons, which can include taking time off at the direction of the Employer (Flu Season). However in some cases, these legitimate absences are being considered against an employee during competitions for promotion or transfer. This practice may also be contrary to existing Human Rights legislation, depending on the circumstances, and must be stopped.*

(14) Eliminate Schedule "E" No. 2 – Parking

*Policing is a 24/7, 365 day activity. Significant policing events can unexpectedly occur in a community that require an immediate response. For instance in 2011 citizens engaged in a riot in the downtown business district that had a devastating effect on the City of Vancouver. In these circumstances, additional personnel are called out with little or no notice. The same would be true if a natural disaster or act of terror were to occur in Vancouver. One of the unintended consequences of requiring members to pay for parking is that they will modify their behaviour; some will eliminate the use of a car all together, others will make alternative arrangements that may make it difficult to respond to work to assist with a catastrophic event. A further complication is that the vast majority of VPD members commute from distant municipalities where access to public transit is limited. This is also an issue of equity; many City employees do not pay for parking. Furthermore, where pay parking is in effect, those employees generally have numerous alternative options. Finally, a third party location is no longer being utilized for parking at the VPD Graveley location so the cost for parking has been eliminated. In the circumstances it is not reasonable to therefore expect employees to continue to pay for parking.*

(15) Add a provision to the collective agreement referencing all secondment agreements

*The VPD participates in a number of Integrated Policing Units and many members are seconded to those units. Typically secondment agreements are established to set out terms and conditions for affected members. Issue regarding collective agreement provisions and interpretation are a constant source of frustration for VPU members*

(16) Eliminate the practice of "stacking" callouts

*More and more frequently members are being asked to work more than one overtime callout within a 24 hour period. This practice*

discretion under Section 110(5) of the BC Police Act, to withhold a member's pay and allowances where the member has been suspended from duty during the course of an investigation into that member's conduct.

*According to section 110 of the Police Act, if the Discipline Authority decides to suspend a member during the course of an investigation into the member's conduct, the member will continue to be paid during that interim suspension, unless the Police Board decides that it is in the "public interest" to discontinue the member's pay and allowances (Subsection 110(5) of the Police Act).*

*The Police Act goes on to provide some procedural rules that must be followed by the Police Board before they can make such a decision, but does not provide any definition for what constitutes "public interest". The VPU submits that withholding a member's pay during the course of an investigation and before any findings of misconduct have been made in the case should be done only in the clearest of cases because of the detrimental financial impact such a decision can have on the member. The Police Board must balance the interests of the taxpayers and the public against fairness to their employee. This principle has been long recognized in labour law where the law is settled that an interim suspension of an employee should only be without pay in the clearest of cases where the allegations are serious and the Employer intends to fire the employee should the evidence bear out the misconduct.*

*The VPU proposes that, in the interests of fairness and consistency, a provision should be added to the Collective Agreement to define what constitutes "public interest" in order to guide the parties.*

- (20) Add a provision to the Collective Agreement to define the circumstances under which a member who has been subject to a period of unpaid suspension during the course of an investigation into his or her conduct will be entitled to be reimbursed for pay his or her full pay and allowances at the conclusion of the matter.

*Where a member has been subject to a period of unpaid suspension during the course of an investigation into his or her conduct, subsection 110(9) of the Police Act provides the rules for when the Police Board MUST reimburse the member his or her pay and allowances at the conclusion of the matter. Section 110(9) provides the minimum standard for reimbursement and does not preclude the parties from agreeing to additional circumstances in which it would be*

*fair and appropriate for the Employer to reimburse a member his/her pay and allowances at the conclusion of a matter.*

*The VPU submits that any time the member continues to be employed by the Employer at the conclusion of the proceedings, and where the discipline imposed is minor in nature (a reprimand, a training requirement, a short demotion or suspension) or where the penalty imposed as discipline is financially less than the financial impact of the interim unpaid suspension, it would be fair and appropriate for the Police Board to reimburse the member for their pay and allowances.*

- (21) Amend Standby provision in the collective agreement to clarify entitlement while on Overtime Leave or Annual Leave

*Members are regularly required to remain on "standby" will on overtime or annual leave. This is a benefit to the employer and to the community. The current Standby language should be modified to ensure it is clear that members are entitled to Standby compensation in these circumstances*

- (22) Amend 6.1 Clothing Allowance to remove boot/shoe allowance from Point Allocation or amend total

*The cost of obtaining appropriate footwear has increased since the original Point Allocation was established. The Union would propose removing the boot/shoe allowance from the Point Allocation and instead establish a stand-alone schedule for footwear replacement. In the alternative, the Point Allocation should be amended to reflect the increased cost of obtaining suitable uniform items.*

- (23) Amend Schedule "E" – No. 9 Special Allowances, 6.1 Clothing Allowances to add a point entitlement for a Dress Uniform for permanent full time Jail Guards.

*Since the Jail Guard positions were established as new positions in the VPD some years ago, a number of Jail Personnel have established themselves as permanent full time, long serving and contributing members of the VPD. These Jail Guards routinely attend public and community events representing the VPD and they should be able to participate in these events with a dress uniform similar to that which all other VPD members are issued.*