

IN THE MATTER OF AN INTEREST ARBITRATION

BETWEEN

VANCOUVER POLICE BOARD

(the “Employer”)

AND

VANCOUVER POLICE UNION

(the “Union”)

RE: 2019 WAGE RATES

APPEARANCES: Gavin Marshall and Tamara Navaratnam, for the Employer

Gabriel M. Somjen, Q.C., and Sara Forte, for the Union

ARBITRATOR: Mark J. Brown

DATE OF HEARING: June 7, 2020

DATE OF AWARD: June 23, 2020

I. ISSUE

I was appointed by the parties to conduct an interest arbitration to determine wage rates and term for a renewal Collective Agreement. The previous Collective Agreement expired December 31, 2018.

In December of 2019, I was involved with the parties as a mediator. All outstanding matters, except wages and term, were resolved. Those agreements were put in the form of a Memorandum of Agreement appended to this Award. In addition, the parties had achieved resolution on other provisions in October of 2019, which are reflected in another Memorandum of Agreement, also appended to this Award.

Initially after my appointment as Arbitrator, the parties were seeking a multi - year renewal Collective Agreement. In early March of 2020, the Union requested the production of financial records to prepare for the hearing initially scheduled for the end of March. I declined to order the production as requested by the Union because the Employer was not arguing an inability to pay.

The hearing in late March was adjourned to June 7th. In the interim a perfect storm developed. On top of the drug and mental illness crisis that Vancouver was already facing, the COVID - 19 pandemic struck causing health and economic issues, and society in general commenced a more active debate on the future of policing. It made the parties' task of developing a position for a multi - year agreement extremely difficult.

In the end, shortly before the commencement of the hearing on June 7th, the parties agreed that I should address wages for 2019 only. The parties agreed to a one year Collective Agreement, which has retroactive application only as far as wage rates are concerned. The Union is seeking an increase of 4.5%; the Employer is proposing a 2% increase.

This will allow the parties to assess the impact of all the above on Collective Agreement provisions for 2020 and the future under hopefully more stable conditions.

I commend the parties for their thorough and thoughtful submissions. I also want to emphasize that both parties noted that their respective positions were presented against the backdrop of mutual respect and collaboration.

II. LEGISLATIVE FRAMEWORK AND GUIDING PRINCIPLES

I consider it beneficial to set out the legislative framework and guiding principles before the parties' positions, rather than waiting for my analysis, in order to better understand their positions as I summarize them below.

I was appointed under the *Fire and Police Services Collective Bargaining Act*, RSBC 1996, c 142 (the "Act"). Section 4 (6) sets out the factors that an arbitrator is to consider in rendering a decision:

- (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; and
- (g) any other factor that the arbitrator or arbitration board considers relevant.

The parties referred to a number of arbitrations in their submissions. The ones that I find most instructive are cases that actually involve these parties: *Vancouver Police Board v. Vancouver Police Union*, [1997] B.C.C.A.A.A. No. 621 (Lanyon, Q.C.) ("*VPB-VPU 1997*"); *Vancouver Police Board and VPU (Collective Agreement Renewal)*, Re [2014] CarswellBC 2723 (Lanyon, Q.C.) ("*VPB-VPU 2014*"); and, *Vancouver Police Board and VPU (Collective Agreement Renewal)*, Re [2016] CarswellBC 2899 (Lanyon, Q.C.) ("*VPB-VPU 2016*").

In *VPB-VPU 1997*, the arbitrator discussed the criteria that are set out in the Act at paragraphs 48 to 55:

48. I now turn to each of the enumerated factors set out in Section 4(6). I will comment in general terms on each of these factors. These remarks are not intended to be exhaustive.

- (a) "term and conditions of employment for employees doing similar work"

49. This factor is common throughout interest arbitral jurisprudence. It is a matter of common sense and involves simply the rational matching of the terms

and conditions of employment for similar occupations. This, like subsection (d), may include local, regional, or national comparators.

(b) "the need to maintain internal consistency and equity amongst employees"

50. This factor ensures that the relationship among employees in a bargaining unit for the same employer, or between bargaining units of the same employer, are both consistent and equitable. This factor also takes account of any equity provisions, legislative or otherwise, which may impact upon the parties.

(c) "terms and conditions of employment for other groups of employees who are employed by the employer"

51. Employers, especially large public sector employers, may have more than one bargaining unit of employees. These bargaining units can be represented by the same union or different unions. An arbitrator must take into consideration the settlements achieved by that employer with its other bargaining units. The consistency of settlements between bargaining units is significant, not only in terms of equity, but also, in terms of industrial stability. Exceptions to this consistency must be clearly set out; for example, uniqueness of work, equity, catch up, etc.

(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"

52. Whereas Section 4(6)(a) points to broad comparisons, this factor requires a more detailed examination of the particular job or classification at issue. The language of this subsection is straightforward and directs the arbitrator to the specific terms and conditions of employment; in relation to qualifications, the nature of the work, and the responsibilities assumed, all of which must be weighed in terms of what is fair and reasonable.

(e) "the interest and welfare of the community served by the employer and the employees as well as any factors affecting the community"

53. This factor includes the circumstances of the regional or local economy and the local labour market conditions. It would also include any unique factors concerning the nature of the work or the service performed; for example, the recruitment and retention of police officers, crime rates, etc.

(f) "any terms of reference specified by the minister under section 3"

54. This provides the Minister with the ability to set specific terms of reference which may conceivably involve a direction to give certain of the above factors more weight than others, or to specify new factors under subsection (g). The Minister has not exercised this power in this case. The parties have consented to this arbitration.

(g) "any other factor that the arbitrator or arbitration board considers relevant"

55. This provision is meant to be, and is, open ended. It may, for example, include the financial state of an employer. As stated by Weiler, an arbitrator is not the appropriate person to make decisions concerning a public sector employer's ability to pay, based simply upon such a position taken in arbitration by that employer. However, there are corroborative factors which do assist in measuring this issue on an objective basis. These include, what that employer continues to pay for other goods and services, its current taxation policies, user fees, recent cut-backs, layoffs, and downsizing. The disclosure of finances is a key element in the weight attributed to this factor. It is clear that interest arbitration awards cannot be divorced from an employer's financial situation and the local and regional economy.

In *VPB-VPU 2016*, the arbitrator reviewed the legislative criteria and previous awards, and summarized the conclusions that he reached in *VPB-VPU 2014* as follows at paragraphs 38 to 42:

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.

The second principle is that the 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 public officers in other major municipalities in Canada. This principle is directly incorporated into Sections 4 (6)9a)-(d).

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

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 Fire Fighters Ass. (IAFF, Local 1399)*, [2016] B.C.J. No. 880 (B.C.S.C.), 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 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.

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:

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.

It is apparent from Arbitrator McPhillips’s award that in many prior interest arbitrations involving the 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 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 unit 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.

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.

Other cases cited by the parties will be noted when I outline their respective submissions.

III. UNION SUBMISSION

The Union is seeking a 4.5% wage increase for 2019. The Union notes that the Employer acknowledges that it is able to pay the increase. The publicly available financial information of the City of Vancouver (the "City") and the Employer's budget documents demonstrate that the Employer's budget for 2019 was approved in November of 2018 and that the City set aside funds to pay for that budget, which included wage increases for the Union.

The Union's mandate is to achieve wages for its members that are the highest for municipal police officers in Canada. The Union argues that the 2% proposed by the Employer is not reasonable as it is a lower increase than that achieved by Oak Bay and Delta for 2019 as both received an increase of 2.5%. Also, the result would be that the Union would be paid less than police in Edmonton, Calgary, Winnipeg and Saskatoon.

The Union sets out several reasons to argue that its members should be the highest paid police force.

The Union argues that the Vancouver police have historically been recognized by arbitrators as the highest paid police in Canada. In *Board of Police Commission for City of Vancouver v. Vancouver Policemen's Union*, dated July 24, 1975 (Blair), the arbitrator stated at page 7:

While looking at these various aspects of to-day's (sic) situation, one has also, in the Arbitrator's view, to keep before him the principle of maintaining the Vancouver Police Force where it rightfully belongs, namely, on the top level among Canada's police forces in terms of wages, fringe benefits and working conditions.

And in *Vancouver Police Board v. Vancouver Police Union*, 1993 B.C.C.A.A. No. 363 the arbitrator stated at paragraph 66:

In my view, the principles that properly govern the issues raised in this dispute are those defined in the three arbitral authorities relied on by the Union. Those principles include an acceptance of the fact that the profession of police officer is unique in terms of its industrial relations implications. Guidance with respect to appropriate terms and conditions of employment must be sought in a comparison with other police forces across the country. TO (sic) quote Mr. Blair, as adopted by Mr. Ladner, arbitrators engaged in resolving disputes between these parties must keep before them "the principle of maintaining the Vancouver Police force where it rightfully belongs, namely, on the top level among Canada's police forces in terms of wages, fringe benefits and working conditions.

The Union also cites *Vancouver Police Board v. Vancouver Police Union*, 1995 B.C.C.A.A. No. 238 at paragraph 73:

In summary on this point I believe and so find that the Union's proposal of a 1.5% increase to the first class officer's rate in 1995 and a further 1/5% in 1996, while not being perfect, more appropriately meets the criteria which I have adopted. Under that proposal Vancouver officers will, hopefully, remain "on the top level among Canada's police forces in terms of wages...."

The Union notes further that in *VPB-VPU 2016*, the arbitrator stated at paragraphs 46 and 52:

46 Second, the Union states, and it is not disputed, that as of December 31, 2015, Vancouver Police Officers ranked 16th 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.

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.

To support its argument to be the highest paid police force in Canada, the Union argues that its officers are the best in Canada, which has been supported in public statements made by the Chair of the VPB, and Mayor of the City. Furthermore, the Union argues that it is obvious that Vancouver is the hardest municipality in Canada to police.

The Union argues further that the creation of the Surrey Police Department will create a retention problem for the Employer as many of its officers live outside the City, and many in Surrey. With Surrey's objective of recruiting experienced police officers, the Employer will need to retain its existing force.

From an economic point of view, the Union argues that Vancouver is the most expensive place in Canada to live. The 2019 Canada Livability Report by RE/MAX attempted to identify affordable places that are also desirable for high livability. Edmonton, Calgary and Saskatoon housing prices are more in line with their average household incomes. The house-price-to-average-income ratio, as an indicator of housing affordability, is 10.5 in Vancouver versus 2.6 in Edmonton, 2.9 in Calgary and 2.8 in Saskatoon.

The Union argues further that the City's CPI for 2019 was 2.4%. The Employer's proposed increase of 2% leaves the employees worse off than 2018. The cost of living in the City results in many officers living outside the City. Studies cited by the Union identify the impact of officers living outside the community in which they work. Also, because 83% of the officers live outside the City, in the event of an emergency, like an earthquake, the police response time would be inadequate.

The Union then makes arguments related to different wage comparators.

First, in comparison to other Western Canadian cities, the Union argues that a salary increase for 2019 of 4.5%, effective January 1, 2019, will take the Union members to a level that finally leads municipal police forces in Canada, including Winnipeg, Calgary, Edmonton and Saskatoon which have, for the last number of years been considerably higher paid than the Union.

The Union argues that historically the Union was paid more than these cities but fell behind due to wage controls in the Province in the 1980's. In the 2000's the difference was maintained due to Alberta's better economic situation, which has now reversed. Even so, Calgary police officers received a wage increase of 1% on January 1, 2019 and 0.5% on December 1.

Assuming a 4.5% increase for the Union, the 2019 wage rates for various police officers would be as follows:

Vancouver	\$104,729
Edmonton	\$104,691
Calgary	\$102,890
Winnipeg	\$101,754
Delta	\$101,736
Toronto	\$100,924
Saskatoon	\$103763

With respect to the Employer and City budgets, the Union argues that even though there was no specific amount budgeted for wage increases in the Employer's 2019 budget, the City's audited financial statements for the year 2019 show a reserve fund of \$55 million for wage increases for its employees including VPU members. The auditors' note that the assumption for this reserve was that wage increases would be in the range of 2.58% to 4.63%. The audited financial statements also include an accounting of the City's large year-over-year surpluses, including a surplus of approximately \$300 million in 2019.

The Union argues further that historically the City's policing budget has been approximately 21% of the total budget. Increasing the wages as proposed by the Union leaves this proportion at 20%.

The Union also makes comparisons to smaller police forces in the Province. Delta freely negotiated a 2.5% increase for 2019, and Oak Bay received the same increase in an interest arbitration. In *VPB - VPU 2016*, the arbitrator awarded the Union 1% more than Delta (3.5% versus 2.5%). Using that same rationale, the minimum that the Union should receive for 2019 is 3.5%.

IV. EMPLOYER SUBMISSION

The Employer seeks an increase of 2% because it strikes a balance between the fair expectations of the parties for 2019, the factors to be weighed under the Act, comparable wages, and the current unique financial circumstances faced by the City of Vancouver.

The Employer cites *VPB - VPU 2016*, where the arbitrator placed a VPU First Class Constable's salary in Vancouver ahead of comparators in Toronto and other notable Ontario police departments, and reduced the salary gap between Vancouver and Edmonton and Calgary police officers. The Employer argues that in the current climate, the Employer's position of 2% would do the same, and would allow the parties the flexibility to determine future wages by free bargaining when things become more certain for 2020 and beyond.

In comparing to other jurisdictions, the Employer argues that 2% aligns with the principle of comparability and is fair and reasonable given the wages of police officers in other major Canadian cities.

The Employer argues that Toronto and other Ontario municipal forces remain the most significant comparators. Toronto recently voluntarily reached a collective agreement with its police union providing for increases of 2.5% in 2019, 2.5% in 2020, 1.97% in 2021, 1.85% in 2022 and 1.75% in 2023.

The Employer notes that a 2% increase in 2019 will maintain the Vancouver police salaries above Toronto and the OPP:

	2018	2019	2020	2021	2022
Vancouver	\$100,224	\$102,228	-	-	-
Toronto	\$98,453	\$100,924	\$103,457	\$105,506	\$107,457
OPP	\$98,355	\$100,470	\$102,630	\$104,661	\$106,597

The Employer argues that the Western Provinces have been historically higher. The Employer cites Statscan Industrial Aggregate figures to highlight its point. In the period 2001 through 2018, BC's overall average provincial weekly earnings, annualized increased by 39.2% over the period, whereas Vancouver police wages increased by 52.8% (both un-compounded). By 2018, BC's average annual earnings was \$50,539 and a Vancouver First Class Constable's salary was \$100,224.

By comparison, for the same period in Alberta, average annualized earnings increased by 54.4% whereas police wages in Edmonton increased by 58.0%. Thus, even though they increased in percentage terms more than in Vancouver, Edmonton police wages were only slightly more than the general wage increases in Alberta during this timeframe. At the end of 2018, Alberta average annual wages were \$59,912, over

\$9,300 more than in BC. Average wages in Alberta were generally at least 18% higher than in BC. Saskatchewan and Manitoba figures are lower than in Alberta, with Saskatchewan at \$52,917 (higher than BC) and Manitoba at \$48,883 (lower than BC).

However, despite the generally higher wages in Alberta, there has been a downward pressure on public sector salaries in recent years due to the recession. Edmonton police recently negotiated nominal wage increases of 2% for 2018, 0.5% for 2019, 1.5% for 2020 and 1.5% for 2021. The Calgary police reached a settlement in April of 2020 at 0.0% for 2018, 1.5% for 2019 and 1.5% for 2020. Saskatoon's recent agreement was 2% for 2018 and 1.75% for 2019.

The Employer argues further that Montreal and the RCMP both have wage rates below Vancouver.

As far as other factors that should be considered, the Employer argues that there are no recent comparators in the form of settlements or awards from other Lower Mainland police or fire services. The cost of living is high in Vancouver, but that has been the case for some time and employers do not pay higher wages to entice people to live in one of the most desirable cities in the world. In any event, the Employer has been able to recruit and retain police officers.

With respect to internal comparators, the Employer has a collective agreement with the Teamsters Local 31 that expired December 31, 2019 and had an increase of 2% in 2019.

The Employer acknowledges that there are special challenges for Vancouver policing but in reviewing several statistics argues that there is no special development in the nature of policing that justifies a wage increase above 2%.

In addition to proposing 2% for 2019, the Employer asks that I direct the parties back to the bargaining table in the fall of 2020 with an interest arbitration hearing to be scheduled by no later than the end of April of 2021.

V. AWARD

I emphasize at the outset that this Award addresses 2019 only, by agreement of the parties. It is unusual to have an interest arbitration award that has a retrospective view only; as most awards would also look prospectively. However, given the current pandemic and economic uncertainty that exists, it was wise for the parties to take this approach. It allows the parties to deal with 2020 and beyond when the environment is more stable.

I also note that the Employer requested that I direct the parties back to the bargaining table for 2020 and beyond with an interest arbitration to be scheduled for the spring of 2021. I decline to do so as I do not have the jurisdiction to make such a direction. My jurisdiction is for the 2019 year only. The parties are free to return to the bargaining table whenever they want; and, if they want my assistance in anyway whatsoever I would be pleased to assist.

I do not intend to repeat any of the caselaw, set out in the previous sections of this Award, that guides my analysis. However, for ease of reference I will repeat Section 4(6) of the Act:

- (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; and
- (g) any other factor that the arbitrator or arbitration board considers relevant.

I intend to review each factor. However, the above factors are not necessarily a checklist. There is no weighting assigned to the factors and each one must be applied according to the circumstances in the case at hand. I must also consider the replication principle.

With respect to factor (a) “terms and conditions of employment for employees doing similar work”, I concur with the arbitrator in *VPB - VPU 2016* that Toronto and other Ontario police forces are the most significant comparator. Toronto’s freely negotiated wage increase for 2019 was 2.5% and the OPP was 2.15% for 2019. The Alberta police forces have been historically higher, in part because of a more robust economy.

However, their settlements are now lower due to the economic downturn in that Province. Therefore, it does not take the Union's proposed 4.5% increase to close the gap between the Vancouver wage rates and the Alberta wage rates. The downward trend in their settlements will close the gap over time if Vancouver's settlements do not fall in the same manner.

The Delta settlement in 2019 of 2.5% was an anomaly as they lead the Vancouver settlement. In *VPB - VPU 2016* the arbitrator awarded 3.5% increase to Vancouver in 2016 when Delta received 2.5%. He created a gap because it was "not fair and reasonable that these officers earn the same salary as the Delta police officers". However the reason for the size of the gap (i.e. 1% and compounding in subsequent years which increases the gap slightly) was not explained. I agree with the Union that in applying the replication theory, the Union would not have accepted lower than the Delta settlement for 2019.

Regarding factor (b) "the need to maintain internal consistency and equity amongst employees", the Employer's other bargaining unit, the Teamsters Local 31, received 2% for 2019. The internal consistency and equity between that group and the police does not necessarily mean that the police settlement should be the same. In fact, it could be argued that the same settlement may disturb the historical internal consistency by reducing the gap in wage rates.

With respect to factor (c) "terms and conditions of employment for other groups of employees who are employed by the employer", the comparison may be to the City even though it is not the same employer. The City increases for other bargaining units, and the general public service at large, were in the 2% range for 2019, in part based on the Province's guidelines and their impact on settlements with employers who were not technically covered by them.

Factor (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", points to the specific job as opposed to the broader comparisons in factor (a). While there may not be substantial changes in the job that warrant an increase out of step with other police forces, the Vancouver situation which involves the opioid crisis, COVID 19 response, the impact on the downtown area when entertainment etc. brings crowds from other municipalities in the Lower Mainland into the City and protest response, demonstrates why the Vancouver police have been paid higher in the Province and why they are compared to Toronto and other large cities.

With respect to factor (e) "the interest and welfare of the community served by the employer and the employees as well as any factors affecting the community", the issue of recruitment and retention arises here. While the Employer at the hearing asserted that recruitment and retention were not a problem, a letter from the Employer dated April 27, 2020 to the City's Mayor and Council stated otherwise. The Employer stated in that letter that the creation of the Surrey Police Department created "an impending threat to retaining talented staff, as invariably a portion of its sworn officers and civilian

professionals will transfer to the new Surrey Police Department”.

Regarding factor (f) there were no “terms of reference specified by the minister under section 3.

And finally under factor (g) “any other factor that the arbitrator or arbitration board considers relevant”, I note that the Employer is not arguing an inability to pay. The financial statements for 2019 for the City show a reserve fund of \$55 million for wage increases for it’s employees including the Union. The auditor’s notes show that wage increases would be in the range of 2.58% to 4.63%.

The City is now faced with significant economic issues. This will no doubt have an impact on how the parties deal with 2020 and beyond. The Employer argues that its proposed 2% is fair and reasonable and prudent for 2019 considering the financial circumstances. However, the Employer did budget for a higher increase for 2019 as noted above.

Given all the circumstances of the case at hand, I am not persuaded by the Employer’s position. The proposed 2% increase does not maintain the comparison to other police forces, especially considering the Delta settlement. While the Delta settlement is not determinative, it does have an effect. The impact of the nature of the job, recruitment and retention, cost of living and the fact that inability to pay is not an issue leads me to conclude that 2% is not a fair and reasonable settlement.

However, neither am I persuaded by the Union’s position. The proposed 4.5% is too rich given all of the circumstances as set out above in the review of the factors under the Act. As I noted above, the Alberta settlements are lower due to the economic situation in that province. The gap between Alberta and Vancouver will decrease over time. The Toronto settlement of 2.5% for 2019 was freely negotiated and is more in line with what I consider to be a fair and reasonable settlement given all the circumstances at hand.

I am not persuaded by the Union’s alternative position of the Delta settlement of 2.5% plus 1% either. The reason for the 1% was not explained in the previous award, and the gap increased over the term of the collective agreement due to compounding. The arbitrator at the time awarded 3.5% to Vancouver (the Delta 2.5% increase plus 1%) in the first year of the collective agreement to create a gap and then applied the same percentage increase in the second and third year of the collective agreement. He did not apply a larger percentage in subsequent years. The Union’s alternative position of the Delta 2019 settlement of 2.5 % plus 1%, as was awarded previously, assumes that the arbitrator’s rationale was that the Vancouver settlement would always be 1% higher than Delta’s. However, that was not the case. The arbitrator created the 1% gap in the first year of a three year collective agreement and then applied the same increases.

I award a 2.5% increase effective January 1, 2019. I conclude that a 2.5% increase is fair and reasonable as it maintains the Vancouver police as one of highest paid in Canada. Toronto has been the most significant comparator, and a 2.5% increase is the same as what was freely negotiated in Toronto for the same time frame. It also maintains a differential with other police forces in the Lower Mainland. It is the same increase as Delta and Oak Bay and maintains the gap created by the arbitrator previously. It is in line with the cost of living, fits within the Employer's previous budget and maintains equity in the internal structure.

"Mark J. Brown"

Dated the 23rd of June, 2020.

MEMORANDUM OF AGREEMENT

Between:

Vancouver Police Board
(hereafter called "the Employer")

And:

Vancouver Police Union
(hereafter called "the Union")

WHEREAS the Parties entered into discussions during the term of the collective agreement with respect to a limited set of topics;

AND WHEREAS the Parties have agreed to enter into this Memorandum of Agreement in order to document their agreement with respect to those topics;

THEREFORE the Parties agree as follows:

1. Eliminate the requirement to work night-shift, if subsequently attending Court

Article 7.6 Court Time Schedule, Denotification, Section D "Relief from Duty" shall be amended as follows:

7. OVERTIME

7.6 Court Time Schedule, Denotification

D. Relief From Duty

- (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, then the member shall be deemed to have worked their previous shift in full. 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, at which time the member shall be allowed the same night off. In this Article 7.6(D)(a), "practicable" is to mean that the squad affected cannot fall below minimum staffing levels to facilitate the relief from duty.

2. Add "per diem" language into the Collective Agreement

Article 6 Special Allowances shall be amended, and Article 6.6 added as follows:

6. SPECIAL ALLOWANCES

<as per collective agreement>

6.6 Per diem

In the event a member is directed to travel for an authorized work purpose, members who are required to use their personal vehicle will be entitled to mileage allowance as per City of Vancouver auto allowance policy, and per diem meal allowance as per City of Vancouver meal per diem policy.

3. Improve Educational Fund at Article 6.3

Article 6.3 Educational Fund, (a) shall be amended as follows:

6.3 Educational Fund

(a) A Police Educational Fund in the amount of \$100,000 per year, has been established to financially assist members of the Department who are interested in furthering their education by enrolling in approved courses.

4. Establish Education Fund and Increment Program for permanent full time Special Constables and Jail Guards

Schedule "E", No. 6 Special Constables shall be amended, so as to add "6.3 Educational Fund", in its entirety, to "6. SPECIAL ALLOWANCES", with the exception that 6.3(a) will permit for an annual Education Fund maximum of \$10,000, as follows:

6. SPECIAL ALLOWANCES

...

6.3 Educational Fund

(a) An Educational Fund in the amount of \$10,000 per year has been established to financially assist full-time permanent Special Constables of the Department who are interested in furthering their education by enrolling in approved courses.

(b) – (h) as per the body of the collective agreement>

11. WORKING CONDITIONS

11.5 Increments

(a) Eligibility for advancement from one step (increment) to the next is subject to service, satisfactory to the Employer, for a total of twelve (12) calendar months per step.

Schedule "E", No. 7 Jail Guards shall be amended, so as to include an allowance of Clothing Points for a complete Dress Uniform for Jail Guards, and to add "6.3 Educational Fund", in its entirety, to "6. SPECIAL ALLOWANCES", with the exception that 6.3(a) will permit for an annual Education Fund maximum of \$10,000, as follows:

SPECIAL ALLOWANCES

6.1 Clothing Allowance

(a)(iii) During the 3rd and all subsequent calendar years of service, Guards shall be allocated an annual point entitlement of 250 points.

...

(x)

Uniform Item	Points Required Per Item
Uniform Boots	200
T-Shirt	5
Socks	8
Uniform Shirt	24
Trousers	78

(xi) Over and above the annual allocation set out in 6.1(a)(iii), in their 3rd calendar year of service, Guards shall be allocated a one-time point entitlement in the amount required for a complete dress uniform. Notwithstanding the limitations on points carry over in 6.1(a)(viii) below, this one-time allocation can be used by a Guard at any time during or after their 3rd calendar year of service, but only for a complete dress uniform.

6.3 Educational Fund

(a) An Educational Fund in the amount of \$10,000 per year has been established to financially assist Jail Guards of the Department who are interested in furthering their education by enrolling in approved courses.

<(b) – (h) as per the body of the collective agreement>

11. WORKING CONDITIONS

11.5 Increments

(a) Eligibility for advancement from one step (increment) to the next is subject to service, satisfactory to the Employer, for a total of twelve (12) calendar months per step.

(b) Effective January 1, 2019, permanent full time Jail Guards having completed ten, fifteen, and twenty years of continuous service with the Vancouver Police Department, shall be eligible to receive, respectively, 105%, 110%, and 115% of the highest rate of pay in their existing position or job classification. In order to qualify for receipt of such increments, those attaining such eligibility as of January 1, 2019 must first complete on their own time, five courses of study per increment approved by the Department and have successfully passed an examination set and administered by the Department.

Schedule “E”, No. 7 “Jail Guards, PART B – CASUAL GUARDS” shall be amended, to add “Section 6.3 Educational Fund”, to the PART B list of exceptions that do not apply to the employment of casual jail guards.

PART B – CASUAL GUARDS

- A. The terms and conditions of Part A of this Letter of Understanding between the Vancouver Police Board and the Vancouver Police Union shall apply to Casual Guards save and except for the following provisions thereof:

...

6.3 Educational Fund

5. Amend “indemnification” provisions

Article 9.9(d)(i) and (ii) shall be amended as follows:

9.9 Indemnification of Members

...

(d)(i) A member who is a respondent at a “public hearing” held pursuant to Part 11 of the Police Act, R.S.B.C., 1996, c. 367, arising from acts done in the performance, or attempted performance, in good faith, of the member’s duties as a police officer shall be indemnified for the necessary and reasonable legal costs incurred in representing the member at the public hearing.

(ii) A member who appeals under Section 154 of the Police Act, R.S.B.C., 1996, c. 367, the decision of an adjudicator at a public hearing arising from acts done in the performance, or attempted performance, in good faith, of the member’s duties as a police officer shall be indemnified for the necessary and reasonable legal costs incurred in representing the member in the appeal ONLY WHERE the appeal is successful.

...

6. Eliminate the “6 month” requirement for Sick Leave at Article 9.3

Schedule “B” Sick Leave and Gratuity Plan, Sick Leave, (a) Sick Leave Plan, (1) shall be amended as follows:

SICK LEAVE

(a) Sick Leave Plan

A Sick Leave Plan based on the following shall apply to all members

(1) Sick Leave with pay shall be granted upon commencement of employment except where a performance or discipline issue has been identified and there is agreement between the Union and Department to extend the probationary period.

...

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

Article 11.2 Promotional Policy shall be amended, by adding 11.2(d) as follows:

11.2 Promotional Policy

...

(d) A member's sick benefit utilization shall not be considered in determining suitability for promotion or transfer.

<remainder as per collective agreement>

8. Add a provision to the collective agreement referencing all secondment agreements

Article 11 Working Conditions shall be amended as follows:

11. WORKING CONDITIONS

<11.1 – 11.10 as per collective agreement>

11.11 Secondment

The Employer makes available, and members may apply for secondments to other policing organizations from time to time. A member remains an employee of the Department while seconded to duties with another police force.

The terms of the collective agreement, rules of personal conduct and deportment under the Department and the expectations set out in the Police Act shall continue to apply to the member while on secondment, unless exceptions are specifically agreed to by the Union.

9. Eliminate clothing allowance "clawback" at 6.1 (h)

Article 6.1(h) shall be amended as follows:

6. SPECIAL ALLOWANCES

6.1 Clothing Allowance

...

(h) It is understood that members absent on either sick leave or Workers' Compensation benefits for a period in excess of four consecutive weeks shall then cease to be entitled to the benefits provided pursuant to Subsections (d) and (e) of this Section 6.1 for the remainder of such absence. This benefit will not be prorated and rebated for the time that the member is absent, and is returning to their duties where they will still be required to wear civilian clothing.

10. Amend Standby provision in the collective agreement to clarify entitlement while on Overtime Leave or Annual Leave

Article 7.4 Callouts, (f) Standby shall be amended as follows:

7. OVERTIME

7.4 Callouts

(f) Standby

Where a member is required to stand by between regularly scheduled shifts, such member shall be compensated at the rate of one (1) hour at straight-time. Where a member is required to stand by during weekly leave, over-time leave, gratuity leave, supplemental leave or annual leave, such member shall be compensated at the rate of three (3) hours at straight-time for the time the member is required to stand by in any twenty-four (24) hour period or portion thereof (with the twenty-four (24) hour period commencing at the same time that the standby requirement is effective). For the purposes of this Section 7.4(f), weekly leave is deemed to have commenced at the conclusion of the member's last scheduled shift of their tour of duty.

If a member is called out while on standby such member shall be compensated for such callout as provided in Section 7.4(a) or 7.4(e) (whichever Section is applicable) in addition to the member's standby compensation.

11. Amend 6.1 Clothing Allowance to remove boots/shoe allowance from the Point Allocation or amend total

Article 6.1 Clothing Allowance shall be amended as follows:

6. SPECIAL ALLOWANCES

6.1 Clothing Allowance

(a) (i) During the 1st calendar year of service, all new members shall be issued, on an as-required basis, at the discretion of the Chief Constable, a basic complement of uniform items including: complete dress uniform, dress uniform boots, operational uniform shirts, operational uniform trousers, caps, waterproof jacket, briefcase, footwear allowance of up to four hundred dollars (\$400.00), gloves, t-shirts, and socks. New members shall not be eligible to participate in the Point System Program during their 1st calendar year of service.

....

(xii) UNIFORM ITEMS AND POINT ALLOCATION

UNIFORM ITEM	P O I N T S REQUIRED PER ITEM
Forage Cap	33
Gore Tex Shell	238
Fleece Jacket	110
Shirt	48
Socks (1 pair)	2
Trousers (1 pair)	78
T-shirt	5

UNIFORM ITEM	P O I N T S REQUIRED PER ITEM
Complete Dress Uniform (incl. pants, Belt and buckle, and "collar dogs"	435

AGREED to this 9th day of October, 2019.

BARGAINING REPRESENTATIVES FOR
THE EMPLOYER:

BARGAINING REPRESENTATIVES FOR
THE UNION:

Steve Rai

Ralph Kaisers

Gavin Marshall

Janet Stringer

Dan Petrie

Memorandum of Agreement

Between

Vancouver Police Board
(hereafter called the “Employer”)

And

Vancouver Police Union
(hereafter called the “Union”)

WHEREAS the Parties have conducted a mediation in respect of the current round of collective bargaining;

AND WHEREAS the Parties have reached agreement with respect to a number of proposals;

THEREFORE, the Parties agree as follows:

1. The Union withdraws its proposals in respect to the following matters [references are to proposal numbers in the Union’s proposals tabled October 7, 2019 (the “Union Proposals”)]:
 - a. Union representation (D3);
 - b. Employer discretion to suspend without pay pending a Police Act investigation (D4);
 - c. Reimbursement of wages for unpaid suspensions pending a Police Act investigation (D5);
 - d. Expungement of discipline records (D6);
 - e. Travel day pay for courses/conferences (D7);
 - f. Meal and coffee breaks (D10).
2. The Union withdraws its proposal in respect of the Traffic Authority Personnel (Union Proposals, D12).
3. There will be a cap on massage benefits reimbursement, with all savings resulting from the cap on massage reallocated to psychological services plan (quantification to be agreed by the parties).
4. Section 9.14(f)(4) will be amended to replace (a) and (b) with the following: “ninety three percent (93%) of their gross weekly earnings for the first seventeen (17) weeks if a member continues to receive Employment Insurance benefits, which period includes the one (1) week Employment Insurance Waiting Period.

5. Terms and conditions of employment for Community Safety Personnel (“CSP”) will be included as a schedule to the Collective Agreement referencing applicable collective agreement provisions, and the parties recognize CSP as part of the bargaining unit. The cap for CSP FTE will be increased from 30 to 40. The intent of the parties is to maintain the current terms and conditions of the CSP. CSP wages are unchanged by this Settlement Agreement, however, the parties agree that CSP will receive any percentage increases in their wages, at the same percentage increase as a first class constable, as mutually agreed by the parties or as decided by the interest arbitration in this matter.
6. The Union withdraws its proposal in respect of a patrol premium (Union Proposal, B2).
7. Section 6.4 of the Collective Agreement will be amended to replace “one dollar and twenty-five cents (\$1.25) per hour” to “one dollar and thirty-five cents (\$1.35) per hour” effective January 1, 2020, and to “one dollar and forty cents (\$1.40) per hour” effective January 1, 2021, and thereafter.
8. Increase clothing allowance under section 6.1(d) to increase the yearly plainclothes allowance from \$1070 to \$1250, the daily rate from \$4.05 to \$4.73. This increase is effective January 1, 2020.
9. Schedule “E” No. 8 Letter of Understanding regarding parking is eliminated.
10. The only remaining issues to be put forward at the Labour Board mediation and any interest arbitration are wages and term. Any and all bargaining proposals by either party not addressed in this agreement are withdrawn.

Agreed to this 6th day of December 2019

BARGAINING REPRESENTATIVES FOR
THE EMPLOYER:

BARGAINING REPRESENTATIVES FOR
THE UNION:

IN THE MATTER OF AN ARBITRATION
PURSUANT TO THE FIRE AND POLICE SERVICES COLLECTIVE BARGAINING
ACT RSBC 1996 c. 142

Between

VANCOUVER POLICE BOARD

(the “Employer” or the “VPB”)

-and-

VANCOUVER POLICE UNION

(the “Union” or the “VPU”)

(2021 Interest Arbitration)

ARBITRATOR: John B. Hall

APPEARANCES: Gavin Marshall and Tamara Navaratnam,
for the Employer
Sara Forte, Gabriel M. Somjen, QC, and
Sarah Ewart (articled student),
for the Union

DATES OF HEARING: October 26 & 27 and
November 4, 2021

DATE OF AWARD: December 6, 2021

AWARD

I. INTRODUCTION

The most recent Collective Agreement between the Union and the Employer had a one-year term which expired on December 31, 2019. Negotiations for a renewal agreement, followed by mediation at the Labour Relations Board, left all items on both parties' agendas outstanding. The Union next applied to the Minister of Labour to have the bargaining dispute resolved by interest arbitration under the *Fire and Police Services Collective Bargaining Act* (the "Act"). That direction was made by letter dated July 22 of this year and I was appointed by agreement as the single arbitrator.

Counsel subsequently accepted my encouragement to narrow the number of proposals advanced to arbitration. The Union has now put forward what it describes as a "focused and narrow list" after dropping the majority of its proposals unilaterally. It says the remaining items are "its top bargaining priorities". Aside from term and wages, they are: a new patrol premium; improved pregnancy and parental leave; increased per diem rates for police officers on travel status; and, improvements to health benefits. The Employer also dropped all but one of its proposals beyond the core issues of term and wages. It proposes amendments to reduce the costs associated with the gratuity plan benefit. This item was left on the table by the Employer because the wage increases and other improvements sought by the Union exceed the budgetary constraints imposed on the Police Board by the City of Vancouver.

II. BACKGROUND

The one-year Collective Agreement covering the 2019 calendar year was finalized by an award from Arbitrator Mark Brown: *VPB -and- VPU (2019 Wage Rate Grievance)*, [2020] BCCA AAA No. 50 (the "*Brown Award*"), issued on June 23, 2020. The award

appended one Memorandum of Agreement containing matters resolved by the parties during negotiations and a second Memorandum of Agreement containing additional items resolved through mediation with Arbitrator Brown. At the end of the day, the award dealt only with salary for a one-year term which the parties had agreed was appropriate given the onset of the pandemic. Arbitrator Brown concluded that a 2.5% increase was fair and reasonable as “it maintains the Vancouver police as one of the highest paid in Canada” (p. 15).

Beginning in January of this year, the parties had a number of dates scheduled for negotiations over the provisions of their next Collective Agreement. The Employer does not contest the Union’s description of what occurred during those sessions:

- January 25 - The Employer attended with a committee that included a representative of its “funder”, the City of Vancouver. A protocol agreement was executed.
- February 25 - The Union was prepared to exchange proposals but the Employer did not have a position on wages. There were no representatives of the City of Vancouver in attendance. In accordance with the Protocol Agreement, all proposals were to be exchanged at the outset. No proposals were exchanged.
- March 30 - The Employer still had no position on wages. There were no representatives of the City of Vancouver in attendance. Despite the Protocol Agreement, to try to get some movement, the Union agreed to proceed to exchange proposals without specific wage proposals. The Union and Employer each presented their proposals.
- April 8 - There was a brief discussion about the Union’s proposals. The session ended early.
- April 26 - The Employer cancelled the bargaining session on short notice.
- April 28 - The Employer cancelled the bargaining session on short notice.
- April 29 - Counsel for the Employer attended alone at the bargaining session, which adjourned after 10 minutes because no bargaining could occur.

Following these dates, all proposals by both parties remained on the table. The Union says, however, that one important agreement was reached during the session on March 30 when it presented its position that Vancouver police officers should become “the highest paid in Canada”. According to the Union’s notes, the Employer returned after a caucus and Deputy Chief Constable Steve Rai stated the Department agreed the Union’s members should receive the highest pay. The Employer does not dispute that something to this effect was said; however, it notes that Deputy Chief Constable Rai is not on the Vancouver Police Board and did not have authority to speak on its behalf.

The Union applied to the Labour Relations Board on April 30 for the appointment of a mediator. Trevor Sones met with the parties on May 31, June 25 and July 7. His ensuing report to the Associate Chair, Mediation on July 19 noted that “agreement was not achieved on any of the matters outstanding”. The Employer had, however, tabled a wage proposal of a 2.5% increase for each of 2020 and 2021. The same position is advanced by the Employer in this proceeding due to the “unique constraints” imposed by the City of Vancouver. That subject was explored at some length by counsel in their submissions, including the respective rights and obligations of the City and the Employer under the *Police Act*. Much of the discussion falls well beyond my jurisdiction although the resulting impact on this collective bargaining dispute is unmistakable. As counsel for the Employer somewhat understatedly commented, this round of negotiations (including the mediation phase) was “anemic”. Counsel explained the Employer’s financial situation in an email dated September 29 (all underlining in original):

Current Situation and Position of the VPB

In the current bargaining round, the context is different [than in the proceeding before Arbitrator Brown], as follows:

- VPB submitted its operational budget in November 2020, for the 2021 fiscal year, per *Police Act*. The budget request included a modest increase (approximately 2%, from about \$316m to about \$322m).
- VPB budget request was refused by the Vancouver City Council.
- City Council instead resolved to, and has, effectively frozen VPB budgets for 2021 at previous 2020 levels.

- VPB has appealed the City budget freeze decision, to the provincial director of police services under s. 27 of the *Police Act*, which permits such an appeal.
- No response has been received from the province.
- The City authorized VPB to make a wage proposal of 2.5% per year for two years.
- VPB has not received confirmation from the City that the 2% wage proposal, if accepted, will be built into City allocated budget increases for policing for 2020 and 2021, etc.. However, VPB believes it is reasonable to assume that the specific proposal endorsed by the City (2.5% x 2 years) will be built into City budgeting.
- The same cannot be said for other monetary outcomes from an arbitrated Award. In other words, VPB has not received any confirmation from the City that:
 - A wage award that exceeded 2.5% in any year past 2 years, or
 - An Award respecting any other VPU proposal with an additional expense to the cost of policing (eg., shift differential)would be built into future City allocated budget increases for policing in 2020, 2021 etc.
- On the contrary, VPB maintains that, contrary to past practice, VPB must assume that additional expenses associated with the cost of policing flowing from a collective agreement award at arbitration, would be borne by existing or future annual VPB budgets, and have to be found within those budgets.
- VPB has repeatedly sought clarification as to future funding stability from the City of Vancouver, but has been unable to obtain certainty with respect to the above questions from senior City of Vancouver staff. The answers appear to reside at the political level, within the City Council.

The City of Vancouver is the funder for policing and is entitled, within its legal responsibilities under the *Police Act*, to make decisions as to how its budgets are allocated.

The bargaining relationship, and the Employer who is party to the collective agreement and appearing at this arbitration, is not the funder and is bound by the budget it is provided, having no other source of funding.

As a result, based on the state of uncertainty about its own budget, and the impact any shortfall may have on the duties to maintain adequate policing in the City of Vancouver, VPB is not confident that it is able to pay for the cost of an Award that exceeds the 2% [sic] funding envelope received for wages from its own funder.

VPB takes no position as to whether the City of Vancouver has an ability to pay, or not. The City of Vancouver has specified legal obligations under the *Police Act* with respect to funding, in particular section 15 of the Act.

As noted in this email, the Employer has appealed the City's decision respecting the police budget for 2021 to the Director of Police Services. The supporting document (the "DPS Appeal") is over 125 pages in length and contains numerous passages which the Union relies on to support its proposals in this arbitration.

III. GOVERNING PRINCIPLES

Section 4(6) of the Act enumerates various factors which must be considered when a fire or police collective agreement is directed for resolution by arbitration:

- (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; and
- (g) any other factor that the arbitrator or arbitration board considers relevant.

No terms of reference were specified by the Minister when this dispute was directed to arbitration and, therefore, Section 4(6)(f) does not apply.

A substantial body of case law has developed over the years to provide additional guidance. Several of those awards involved the immediate parties, including the relatively recent *Brown Award*. Rather than reproduce already familiar ground yet again by repeating the same passages from prior decisions quoted by Arbitrator Brown, I adopt by reference what can be found at pages 3 through 6 of his decision. One passage which does warrant inclusion here is the summary of the “general principles” found at paragraph 8 in *Penticton (City) v. Penticton Fire Fighters Assn. (IAFF, Local 1399)*, [2016] BCJ No. 880 (BCSC):

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 of 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.

Madame Justice Bruce later observed that past awards can be persuasive or “helpful guides” but cannot be considered in isolation from the factors at play in a specific case. Thus, “[a]n interest arbitrator who slavishly follows past awards without regard to the particular facts ... fetters [their] discretion and acts contrary to the statutory mandate in s. 4(6) of the *Act*” (para. 45).

IV. TERM OF THE NEW COLLECTIVE AGREEMENT

This is perhaps the most straightforward matter in dispute and represents a logical starting point. The Union seeks a three-year term while the Employer submits a two-year term should be awarded.

The renewal agreement finalized by Arbitrator Brown had an “unusual” retrospective one-year term which ended on December 31, 2019. Thus, the Collective Agreement had already expired about six months before his award was issued. As the Union points out, awarding a two-year term at this stage would see the next Collective Agreement on the cusp of expiry and put the parties immediately back into another round of collective bargaining with the inevitable prospect of Vancouver police officers again being financially disadvantaged by retroactive pay at a future date.

The Employer seeks to support its position by arguing a two-year term would better allow the parties to address current and future uncertainties, including the potential impact of inflation.

There might be more force to the Employer’s position if there was a realistic prospect of meaningful collective bargaining occurring in the near future. However, there is no reason to believe that the “unique constraints” (its counsel’s terminology) which the City placed on the Employer during the current round of collective bargaining will not persist – meaning the parties would almost certainly find themselves having to resort to interest arbitration yet again with the associated time and expense. There are accordingly sound labour relations reasons to prefer the Union’s longer term.

The case for a three-year term is bolstered by looking at the pattern of bargaining between these parties between 2007 and 2019. The four Collective Agreements during that period all had a duration of at least three calendar years, being 2007-2010, 2010-2012, 2013-2015, and 2016-2018. I find returning to a three-year term as proposal by the Union is entirely appropriate in the circumstances.

V. WAGES

Counsel understandably devoted a substantial portion of their submissions and the supporting data to this subject¹. The Union’s proposed increases are predicated on the “principled basis” that it should be the highest paid police force in the country. The Union submits “... it is finally time to put Vancouver police officers first in Canada with an award of 4%, 3%, 3%” (submission at para. 58). It says that the Vancouver police force historically occupied the highest paid position and maintains arbitrators recognized this was appropriate. In that regard, it cites *Vancouver Police Board -and- Vancouver Policemen’s Union* (unreported), July 24, 1975; *VPB -and- VPU*, [1993] BCCAAA No. 363 (Hope); and, *VPB -and- VPU*, [1995] BCCAAA No. 238 (Albertini). The Union additionally proposes a cost of living adjustment (COLA) clause in the third year.

In my view, the Union’s position overstates the approach taken in the above-cited awards. The learned arbitrators consistently found that Vancouver police officers rightfully belong “*on the top level* among Canada’s police forces in terms of wages, fringe benefits and working conditions” (at page 7 and paras. 66 and 73 respectively; italics added). This is consistent with Arbitrator Lanyon’s decision in *VPB -and- VPU*, [2016] BCCAAA No. 118, to reinstate the Union’s members to be “*amongst* the higher paid officers in Canada” (para. 53; italics added). That sentiment is acknowledged and accepted by the Employer in this proceeding, although it maintains such an outcome can be achieved through its proposed 2.5% increases. Given the ongoing Covid-19 pandemic, the Employer submits “it is not appropriate to entertain anything more than wage increases that stay the course and continue to position Vancouver police wages in line with their key metropolitan comparators (submission at para. 14).

The Union’s position regarding wages is captured more broadly by the following summary of its arguments:

¹ Although both parties directed their submissions to “wages”, the actual figures under consideration are the First Class Police Constable salaries.

The factual circumstances of this round of bargaining and interest arbitration are extraordinary in a few ways:

- a. The employer has agreed VPU members should be the highest paid in Canada;
- b. Several smaller BC police forces have settled out ahead of Vancouver;
- c. Surrey Police Services is actively recruiting and hiring away VPU members;
- d. RCMP wages have increased dramatically;
- e. Inflation is rising and may continue to rise; and
- f. The City is attempting to dictate VPU wage increases, contrary to the *Police Act* budgeting process, which undermines collective bargaining and this interest arbitration.

Applying the legal framework, including replication, a fair and reasonable award, and the requirement to consider the extraordinary facts of this case rather than a “slavish” deferral to past arbitrations mean that Toronto is not the most significant wage comparator, but we should instead be looking to meet and exceed other western comparators and smaller BC forces. (submission at paras. 163-164)

The Employer, in contrast, emphasizes substantially different considerations to support its proposed increases (additions based on the Employer’s oral submissions):

To recap, there are a number of compelling reasons that support this result for 2020-21 [at 2.5% each year].

- a. It is in line with other police settlements, among VPD’s peer group forces [particularly Toronto];
- b. It will place VPD in line with local police forces in compensation;
- c. It is consistent with a provincial mandate for 2.0%;
- d. It provides appropriate flexibility in light of an economic outlook that remains uncertain;

- e. It exceeds, but is not far out of step with wage settlements in BC [including the Employer's bargaining unit with the Teamsters];
- f. It gives appropriate weight to the budgetary challenges of COVID-19 faced by the municipality, and the community that the Vancouver Police serve;
- g. It strikes an appropriate balance between the statutory powers that you wield under the FPSCBA, and the political authority of the City of Vancouver to set priorities for the community, by exercise of its budgetary prerogative.

Such an award is consistent with the replication principle, and also falls within a "reasonable range of comparators" and it would be a "fair and equitable" result.

This result would be consistent with the mandated conservative exercise of arbitral discretion, which you are called upon to exercise in an interest arbitration, in that it would not be, a novel departure from previous awards or settlements.

Further, the award should not jump to match wage rates in the prairie provinces, which have not been traditionally considered relevant in BC for police wage negotiations or interest arbitration. (submission at paras. 236-39; underlining in original)

I do not intend to recite all of the evidence relied on by the parties in support of their respective positions regarding rates of pay. Only those elements which have been most persuasive in the course of my deliberations will be highlighted in relation to the applicable criteria.

Statutory factor (a) requires an examination of "terms and conditions of employment for employees doing similar work". The Union emphasizes voluntarily negotiated settlements of 3.5% for 2020 in both Oak Bay and Delta. It says this is a "dramatic departure" from past years when it was rare for other municipal police forces in British Columbia to settle ahead of Vancouver, and maintains it would be detrimental to police labour relations and cause "a crisis of morale within the VPD" if Vancouver is paid less than these much smaller police forces.

The Employer relies on statements in past decisions (including the *Brown Award*) to the effect that Toronto and other Ontario police forces “are the most significant comparator”. Toronto is obviously instructive because it is a large city and presents many of the same policing challenges as Vancouver. Those parties concluded a multi-year collective agreement in February of 2019 with increases of 2.5%, 2.5%, 1.97%, 1.85% and 1.75% for the years 2019 through 2023. The negotiated settlement followed an increase to the Toronto police budget. The Employer accurately notes that its 2.5% proposal for both 2020 and 2021 would place Vancouver police officers above Toronto.

Counsel directed their submissions as well to Prairie Province comparators. Calgary and Edmonton in particular have been at the top end of the scale due to once thriving economic conditions in Alberta. Those conditions have now deteriorated. The Employer maintains there is still no basis to bring Vancouver to the levels found in Alberta and the other Prairie Provinces, while the Union submits the comparative economic situations are now reversed completely and Vancouver should be at the top.

Factor (b) addresses “the need to maintain internal consistency and equity amongst employees”. This suggests an examination amongst employees in the bargaining unit to which the collective agreement being resolved will apply, as opposed to other bargaining units with the same employer, because factor (c) concerns “terms and conditions of employment *for other groups of employees* who are employed by the employer” (italics added). I note, however, that arbitrators have in the past considered the Employer’s other bargaining unit with the Teamsters Local 31 in relation to the second factor. Rather than dwell on this potential debate, I will address factors (b) and (c) together.

No issue is raised over internal consistency and equity amongst employees represented by the Union. Shortly before the present arbitration began, the Employer ratified a new collective agreement with the Teamsters Local 31 which provides for increases of 2.0% effective January 1 in each of 2020, 2021 and 2022. Figures provided by the Employer indicate that the City of Vancouver has negotiated collective agreements

with its CUPE locals which provide similar, in not identical, wage increases for the same years. Although not ratified by the time of final argument, the Vancouver Fire Fighters Association negotiated a two-year collective agreement with the City which provides for a 2.5% increase in each of 2020 and 2021. The Union advised that this new collective agreement includes 24 hour shifting which it portrayed as a “huge win” for the Fire Fighters.

Thus, and in summary with respect to factors (b) and (c), the Employer’s proposal of 2.5% for 2020 and 2021 either equals or exceeds recent settlements applicable to other bargaining units in Vancouver. Given its position that there should only be a two-year term, the Employer did not propose any increase for 2022.

The fourth factor is directed to “(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”. The Employer “freely acknowledges” that the job duties, workload and the nature of police work are demanding and unique but asserts there have been no relevant changes in these metrics since 2016. Its position in this proceeding stands in rather marked contrast to the portrayal of the “Current Policing Climate” described in considerable detail in the Employer’s DPS Appeal. Among other concerns, and by comparison to some areas of the City which experienced workload decreases or even complete shutdowns during the pandemic, Vancouver police officers continued to work on the front lines and “[t]he VPD’s workload remained *or even increased* in many areas” (para. 8.27; italics added). The Chief of the Vancouver Police Department raised these concerns in a May 13, 2020 email to the City Manager:

This motion [that the VPD budget be reduced by 1% to address City budget pressures] comes in the midst of an extremely challenging year that includes large-scale pipeline protests, the COVID-19 pandemic, Oppenheimer Park decampment as well as increased calls of anti-Asian racism, arsons, commercial premises being burglarized and violent robberies in our city, to name a few. Our VPD members have been on the frontlines throughout the entire pandemic, 24/7, putting themselves at risk

to keep Vancouver safe (including VPD members becoming infected with COVID-19 in the performance of their duties). The VPD responds to far more emergency calls for service than all other first responders combined.

A partial sampling of the headings in the DPS Appeal provides additional insight into the current challenges: Ongoing Regional Gang Conflict, Opioid Crisis, Increasing Crime and Fear of Crime, Street Disorder and Encampments, Increasing Police Workload and Caseload, Core City Phenomenon, and New Demands and Expectations on Police. These and other subjects are covered at pages 31-64, while other External Pressures on Policing such as Increasing Investigative Complexity are examined at pages 65-77 of the document. I have reviewed those sections of the DPS Appeal in their entirety and the escalating challenges police officers since 2016 are palpable. It is perhaps sufficient to quote from the Executive Summary in the appeal to the Director of Police Services. The Employer wrote that the City's decision to reduce its budget:

... comes at a time when Vancouver is contending with an unprecedented global pandemic, public violence caused by an escalating regional gang conflict, an increasing number of protests, the opioid crisis, soaring hate crime incidents, and other significant public safety concerns. (para. 1.6)

The next statutory factor is “(e) the interest and welfare of the community served by the employer and the employees as well as any factors affecting the community”. The Employer introduced a variety of economic indicators, including: British Columbia consumer price index figures relative to the rest of Canada; wage increases within this Province (particularly, other settlements in the emergency services sector²); and labour market statistics. The City of Vancouver's budget and financial situation was raised under the final statutory factor and will accordingly be addressed below.

² The Employer's examples include negotiated settlements covering paramedics and nurses in the Province which predominantly resulted in 2.0% annual increases. The Union points to a March 9, 2020 interest arbitration award covering E-Comm employees. Among other increases, Arbitrator Vince Ready awarded 2.5%, 2.5% and 3.0% for the years 2020, 2021 and 2022, as well as a 1.5% “market adjustment” for certain classifications in each of the final two years.

I accept that the points raised by the Employer under this heading should have a moderating influence on any monetary award. Nonetheless, there is a cogent and countervailing consideration.

I refer, in this regard, to the potential ramifications resulting from the City of Surrey's decision to end its longstanding arrangement with the RCMP for policing services and instead establish its own municipal force. This had been acknowledged by the Employer at the time of the *Brown Award* as "an impending threat to retaining talented staff, as invariably a portion of its sworn officers and civilian professionals will transfer to the new Surrey Police Department" (pp. 13-14). The Employer attempted to downplay that prospect in this proceeding; however, it did not resile from the "impending threat" in the DPS Appeal submission:

In addition to regular attrition due to retirements, the VPD faces an impending threat to retaining talented staff. It is anticipated that a portion of VPD sworn officers will seek transfer to the new Surrey Police Service. More than 40% of VPD staff live in Surrey and its neighbouring communities. The opportunity to work in the area where they live might be appealing for some officers.

In November 2020, the VPU conducted a survey asking its members how likely they were to apply to the Surrey Police Service. Out of 1,031 respondents, a total of 311 (30%) indicated that it was highly likely or likely they would apply. Even if only half of these VPD officers actually transferred to the Surrey Police Service, the VPD would experience the largest staffing turnover in its history. (paras. 7.48 and 7.49)

The DPS Appeal later noted an ongoing decline in job applications. Relative to 2016, the VPD is now receiving fewer than half as many job applications for the same number of jobs and "[t]he problem will be exacerbated when the Surrey Police force starts actively recruiting" (para. 7.64).

The parties agree on the 2021 salary rate for Surrey which has been posted on a website. There is of yet no collective agreement in effect but the individual employment

contracts contain a 2.5% increase for 2022 subject to performance and discretion of the Chief Constable.

The remaining factor is “(g) any other factor that the arbitrator or arbitration board considers relevant”. While the Employer does not argue ability to pay, it submits the City of Vancouver’s budget and financial situation is a relevant consideration due to the unique governance and funding arrangements established under the *Police Act* and because the City’s citizens ultimately bear the cost of policing and law enforcement. The Employer notes that about 21% of the City’s operating expenses is allocated to Police, and compares this to Edmonton at only 15.7%. On the other hand, the Employer’s DPS Appeal stated at paragraph 8.44 that the Vancouver police budget “compares advantageously” to several other Canadian cities, including Victoria (23%), Toronto (23%) and Winnipeg (26.5%). The parties agree that the Vancouver policing budget has historically been slightly above or below the 20% figure.

As recounted already, the Employer is concerned about “the cost of any award which exceeds the 2.5% funding envelope received for wages at this table” (submission at para. 156) and says this uncertainty raises several considerations “in the current political environment”. As also recounted above, the Union alleges the City “is attempting to dictate VPU wage increases, contrary to the *Police Act* budgeting process, which undermines collective bargaining and this interest arbitration” (submission at para. 163). The City’s ability to pay for police services is another subject covered in the DPS Appeal where one finds the following:

Publicly, the Mayor and Council have positioned the decision to hold the 2021 budget of the VPD to the 2020 level as a fiscal decision driven by the City of Vancouver’s inability to pay. However, these claims are contradicted by the City’s own financial data, other decisions by Council, and public comments by certain councillors.

The City’s ability to pay for policing is unquestionable. While the COVID-19 pandemic had a significant impact on City operations during 2020, the City was ultimately able to make a net contribution of \$11.8M into its General Revenue Stabilization Reserve in 2020.

For 2021, Council voted to invest a total of \$10.5M in new City initiatives, including \$2.5M for discretionary initiatives not covered in the preliminary budget prepared by City staff. These initiatives were explicitly funded with the \$5.7M removed from the Police Board-approved VPD budget.

The context of Council's decision related to the 2021 VPD budget strongly suggests that it was reached for reasons that are separate from, and inconsistent with, evidence-based public safety considerations. (paras. 1.28 to 1.31; italics added)

At the end of the day, the Union is probably closest to the mark when it suggests the evidence in this proceeding “is insufficient to draw any conclusions about the City’s economics” (reply at para. 55). There are numerous inconsistencies throughout the record which have not been detailed in this award. But that aside, there is ultimately no argument based on inability to pay.

There is one more “other factor” to consider based on the parties’ submissions; namely, the extent to which inflation should be addressed under wages. Recent and rising increases in the cost of living form the basis for the Union’s COLA clause proposal. The Employer sought to deflect the issue, in part, by proposing a two-year term and leaving the subject to a future round of negotiations -- a position which has now been rejected.

Canada has begun to experience inflationary pressures which have not been encountered for years, if not decades. The negotiation of COLA clauses was a standard feature of collective bargaining in the 1970s. They have not been regarded as necessary while the Bank of Canada has generally held price increases at or below its 2% annual target. The Bank’s pronouncements during the recent stages of the pandemic have described inflation as “transitory” although the period during which it is anticipated to remain a concern has lately been extended; moreover, projected rates have increased steadily. In short, a higher rate of inflation is proving to be more persistent than initially projected.

The Union relies on British Columbia Consumer Price Index statistics which show inflation in Vancouver trending upward to 3.3% and 3.6% for August and September 2021 respectively as compared to those months in 2020. As the Employer observes, the 12 month averages are lower. Nonetheless, the latest 12 month average for Vancouver has jumped to 2.0% as compared to 0.6% for 2020 and the monthly figures continue to trend upward.

What is the cumulative consequence of the foregoing in respect of actual wage increases during the three years of the new Collective Agreement?

I acknowledge the primacy which has typically been afforded Toronto as a police comparator. The reason for historically comparing Vancouver to Toronto is that both share “core city” challenges not faced by police services in smaller communities. I refer once more to a passage from the DPS Appeal submission:

Because of its unique situation, Vancouver faces unique policing challenges and shoulders extraordinary policing responsibilities. Often referred to as a "core city", Vancouver is a major urban core with the largest port in Canada, a vibrant central business district an entertainment district with a high concentration of license liquor seats (bars and nightclubs), many major tourist attractions, and at least four professional sports teams. As acknowledged by the City itself, Vancouver is a main hub for commuters, business, tourism, recreation, cultural events, demonstrations, protests, and other regional or magnet events. (para. 1.5)

Arbitrator Brown stated that this situation “... demonstrates why Vancouver police have been paid higher in the Province and why they are compared to Toronto and other large cities” (p. 13). Arbitrator Lanyon opined in 2016 that other police settlements in the Lower Mainland should have a “moderating influence” on his award for the Vancouver police but stated immediately that “it is not fair or reasonable that these officers earn the same as the Delta police officers” (para. 51). He therefore increased the VPD salary by 3.5% in the first year as compared to the 2.5% negotiated in Delta in order to keep Vancouver above this smaller non-core locale.

Thus, Toronto has typically been used as a comparator to explain why Vancouver salaries should not be lower than smaller municipalities in this Province. The Toronto settlement relied on by the Employer was reached in February of 2019 -- that is, well before the global upheaval caused by the pandemic and under entirely different economic conditions, especially in respect of inflationary trends. More critically, there have since been two voluntary settlements at 3.5% in smaller British Columbia municipalities for 2020. A reminder of the admonishment in *Penticton* to not “slavishly” follow past arbitration awards is highly relevant to the present debate.

The Employer’s proposed increase of 2.5% in 2020 would effectively place Vancouver at or below some smaller British Columbia municipalities. Applying the replication theory, there is considerable force to the Union’s rejoinder that it would never have agreed to an increase which would leave its members behind or even just catching up to any smaller British Columbia police force. But nor is it necessary to award 4.0% in order to place Vancouver above -- albeit only slightly -- other Provincial comparators. That outcome can be achieved by a 3.0% lift which takes into account the moderating conditions identified above. The same ranking can be continued through an increase of 2.5% for 2021.

This leaves for determination a “fair and reasonable” salary for 2022. I have concluded that a COLA clause should not be incorporated into the Collective Agreement at this juncture. It would represent a departure from the *status quo* and the necessity is to some degree a matter of speculation. Nonetheless, when combined with the other factors such as the escalating challenges faced by Vancouver police and the “impending threat” presented by the new Surrey Police Department, the current rate of inflation lends strong support to the Union’s proposal for 3.0% in the final year of the Collective Agreement. I find the proposed increase is entirely appropriate in the circumstances.

Based on the figures presented at arbitration, the cumulative impact of these increases will accomplish the Union’s stated objective of returning its members to the position of being the highest salaried police officers in Canada. This outcome has not

been reached as a matter of principle and should not be construed as a departure from the prevailing approach which holds that Vancouver should be “amongst the higher paid officers”. The result is just another watermark in the ebb and flow of settlements and awards over the years which have reflected the economic conditions and other attendant circumstances particular to the context. Finally, and while far from determinative, I am satisfied that the increases will keep the total cost of police services within the range of their historical percentage as a proportion of the City’s overall budget.

VI. OTHER PROPOSALS AT ISSUE

In addition to the general interest arbitration principles set out earlier in this award, the parties have at Schedule “E” to their Collective Agreement set out certain principles to guide the negotiation of benefit provisions. They are as follows:

1. Those provisions which are enjoyed by members of the Union in common with other bargaining units representing employees of the City of Vancouver, should, subject to the opportunity to effect mutually agreed-upon trade-offs, be patterned after the provisions negotiated by the bargaining agents of those other employees.

Examples of fringe benefits falling into this category include Annual Leaves, Public Holidays, Supplementary Annual Leave, Extended Tour of Duty, Industrial First Aid Allowance, Medical Services Plan (Extended Health Care Coverage included), Group Life Insurance, Sick Leave and Gratuity Plan, Workers' Compensation benefits, Dental Services Plan, Bereavement Leave, and Parental Leave.

2. Those provisions which are considered to be peculiar to the policing service, should be based upon comparisons with other major municipal police departments in Canada.

Examples of fringe benefits falling into this category include Clothing Allowance, Service Pay, and Court Time Allowances.

3. Certain provisions should be treated on their own merits by comparison both with other major municipal police departments in

Canada, and also with provisions negotiated by the bargaining agents of other employees of the City of Vancouver.

Examples of fringe benefits falling into this category include parking for members, premiums for working on public holidays, and shift differentials.

4. Certain provisions should be treated on their own merits without the necessity of being compared to any specific internal or external comparator.

Examples of fringe benefits falling into this category include total and permanent disability, dependents' compensation and psychological services.

5. It is recognized by the Employer and the Union that the foregoing represent guidelines which must be viewed as incorporating sufficient flexibility to permit mutually agreed-upon variations and trade-offs to accommodate the distinct needs of policing.

Another principle to recognize for purposes of the ensuing discussion is the reluctance of interest arbitrators to address matters beyond term and basic compensation. Some of the reasons were explained by Arbitrator McPhillips in *Richmond (City) -and- Richmond Fire Fighters' Assn., IAFF Local 1286*, [2009] BCCAAA No. 106, at paragraphs 74-78:

With respect to the other issues in this dispute there are four general observations to be made. The first is whether this Award should address those matters at all. Generally, interest arbitration awards will deal with such issues only if there is a clear and compelling reason to do so: *Greater Victoria Labour Relations Association* [1993] B.C.C.A.A.A. No. 321, October 28, 1993 (Ready); *City of Vancouver*, December 21, 1983 (McColl); *City of Campbell River, supra*; *City of Burnaby, supra*.

The second consideration is that in the evidence at the hearing the parties primarily focused on wages and term of the Agreement and very little attention was placed on these other matters with the result that there is little in the way of background or analysis that has been provided for consideration.

The third consideration is these are cost and language items which generally require trade-offs with other terms in the Agreement to be made by the parties themselves and it is difficult to do that in this setting.

The final point is that this Collective Agreement will expire in approximately three months and the parties will soon have another opportunity to address directly the matters of concern to them and the bargaining history is that is what they have done.

As a result of these considerations, it will be appropriate to include these items in the new Agreement only if there is a very obvious reason to do so.

The “final point” identified by Arbitrator McPhillips does not apply here for two reasons. First, because of the three-year term being awarded, the new Collective Agreement will not expire until the end of next year so the opportunity to address the remaining issues being advanced to arbitration is not imminent. Second, and more significantly, the recent bargaining history between these parties does not inspire confidence that issues of concern will be meaningfully addressed in the next round of negotiations. The Union aptly complains that it did not have a proper opportunity to bargain over the remaining proposals. Moreover, if negotiations are similarly constrained in the future by the City, and the Employer can arrive at an interest arbitration knowing only wages and term will be entertained, “there would be no incentive for the Employer to engage in bargaining” (Union reply at para. 61). It is also the case that interest arbitrators have awarded items in addition to wages and term in prior proceedings between these parties.

The Union’s complaints are legitimate. I accordingly find that the traditional deference or reluctance to address other items should not apply with the same rigor and it is vital to consider what changes might have been made at the bargaining table consistent with the replication theory.

(a) Patrol Premium

The Union describes patrol officers as the “frontline of policing” with the role being regarded as “physically demanding and dangerous work, on a 24/7 schedule” (submission at para. 118). As a consequence, the teams in the Employer’s four patrol

districts are skewed towards junior officers. The Union sees a value in having experienced officers remain in, or return to, the Operations Division in order to provide mentoring and leadership. To achieve this objective, it proposes a patrol premium of 5% for members with over 10 years of seniority who are assigned to operations and work as part of a uniformed patrol team. It characterizes the patrol premium as “a top priority for this round of bargaining” (*ibid* at para. 125).

The Employer is opposed to the premium and does not perceive the operational difficulty which the Union seeks to address. The Employer also opposes the premium based on cost which it admits “is difficult to predict but would at least cost several hundred thousand dollars per year at a time, to repeat, when the Police budget has been frozen” (submission at para. 168).

Both parties introduced figures regarding the potential cost of the proposed patrol premium in final reply. While the estimated number of officers who would become entitled to the premium varied considerably, even the Union’s figure would result in a substantial overall cost of roughly \$700,000 annually. There is then the fact that a patrol premium is a relatively unique provision in police collective agreements across Canada -- the Union raised only Edmonton and Toronto where, in both examples, a lower 3% premium applies after five years of policing service.

When the foregoing points are considered, in combination with the lack of any perceived need on the part of the Employer, I find it highly improbable that the Union would have achieved this proposal at the bargaining table. Indeed, the concept has been successfully rebuffed by the Employer when discussed several times in prior negotiations. In the absence of a more compelling reason being advanced by the Union, the proposal must be rejected here.

(b) Pregnancy & Parental Leave Benefit Improvements

The Union recognizes paragraph 1 in Schedule “E” but says paragraph 5 must be given significant weight under this heading. It maintains balancing the gender breakdown of police in Vancouver continues to be a challenge and a high priority. Among other statistics, it relies on a Vancouver Sun article from 2020 which reported the Department “was 26% female officers” (submission at para. 131). The Union additionally notes that the percentage of applications from women remains low and is in decline, dropping from 27% in 2017 to 18% in 2020.

An improvement to maternity leave benefits was negotiated in the last round of bargaining. The top up had previously been to 95% for the first six weeks and to 85% for the next 11 weeks. The negotiated improvement was to 93% for the first 17 weeks. In this proceeding, the Union’s proposal would increase the top up to:

- (i) 100% for the first 6 weeks (inclusive of the one week EI waiting period); and
- (ii) 93% each additional week the member receives maternity and/or parental benefit under Employment Insurance for up to 52 weeks in total. This benefit could also be divided over an 18 month period if the member has opted to take the 18 month maternity/parental leave option.

The Union also proposes eliminating the prorating of annual leave in Article 9.14(c) where a member returns to work from maternity and/or parental leave.

The Employer objects strongly to the imposition of the costs associated with these changes, which it estimates to be “at least hundreds of thousands per year”. It submits the proposal would deviate significantly from benefits negotiated by unionized workers employed by the City of Vancouver and is a classic example of where an interest arbitrator should exercise restraint.

Once again, the parties' estimates of the potential cost impact associated with this proposal vary by a wide margin, and the Union criticizes some of the underlying assumptions made by the Employer in its calculations. The parties have also advanced divergent comparators, including top up benefits found in other police collective agreements. Nonetheless, it is possible to distill some general themes.

The most obvious point is that the vast majority of top up provisions in police agreements are for a period of 17 weeks. The Union cites only two instances of a longer period: the RCMP at 54 weeks and Regina at 26 weeks. All British Columbia police forces, as well as Toronto, are for 17 weeks at various percentages. Thus, and giving due regard to the Union's commendable aspirations, anything beyond the 17 week period would introduce the type of fundamental change admonished in the *Penticton* judgment.

On the other hand, there appears to be an upward trend within the 17 week period. Some municipalities in British Columbia are at 95% for the entire time. Victoria and Oak Bay now top up to 100% for 17 weeks.

The Employer and the Union introduced an improvement to the maternity top up in their last negotiations. Given the importance placed on the subject by the Union, it is entirely reasonable to have expected additional movement at the table in this round. I therefore award a 100% top up for 17 weeks but decline to introduce any other change to the *status quo*. This includes the existing language on the proration of vacation.

(c) Per Diems

Per diem language was added to the Collective Agreement through a negotiated Memorandum attached to the *Brown Award*. However, the language merely incorporated the existing practice of paying \$60 per day in accordance with City of Vancouver policy. This figure has four components: breakfast (\$10), lunch (\$15), dinner (\$25) and incidentals (\$10). The Union relies on paragraphs 2 and 5 in Schedule "E" and argues

policing requires travel that is not comparable to that done by other unionized City employees:

... Investigation work, in particular, can require extensive travel for lengthy periods. Crime does not respect borders and VPU members travel all over Canada to conduct investigative work. Police work is unpredictable in schedule and demands, so flexibility for per diems is much more important than for other City employees attending meetings, conferences or training where meals can be organized and are often included. (submission at para. 139)

The Union maintains \$60 per day is insufficient to purchase healthy meals while travelling and is not consistent with other British Columbia police forces. It proposes fixing the per diem meal allowance and incidental rates to those set by the Canada Revenue Agency (presently \$113.25 a day in total which increase automatically). It seeks the same rates for travel in the United States “but paid in US funds”.

The Employer notes “the inconsistent treatment of per diems” in other bargaining relationships and submits members of the Union are not behind their comparators in other police departments or at the City of Vancouver. As such, it argues there is no compelling reason to grant the request.

The parties helpfully presented a table of the various police per diem comparators found in their written submissions. There are one dozen in total. It is not clear if other police forces do not have per diems or whether the rates could not be obtained. Nonetheless, the sampling is sufficient for immediate purposes. Only two police forces (the RCMP and Central Saanich) are currently at the CRA levels. On the other end of the spectrum, only West Vancouver aligns at the bottom with the Union’s members. Toronto is slightly higher at \$65 per day. Two municipalities, as well as BC Transit, fall within the \$70 to \$75 range; two municipalities are at \$80; Victoria is slightly below \$90; and, New Westminster is at \$100 per day.

The Employer does not contest the Union's reasons for seeking an improvement to the per diem rates or the travel burden placed on Vancouver police officers as compared to City of Vancouver employees. In my view, this is another area where there would likely have been movement at the table in the context of meaningful negotiations and a healthy increase can be justified. I am not prepared, however, to link per diems to the CRA figures which increase automatically. I instead award a new total of \$95 comprised of breakfast at \$20, lunch at \$25, dinner at \$35, and incidentals at \$15 per day.

(d) Extended Health Benefits

The Union has three proposals designed to improve health benefits for its members:

- (i) Increase the one million dollar life time limit for extended health to an unlimited amount.
- (ii) Increase coverage for the Psychological Services Plan from \$3000.00 to \$5000.00 claimable per family per 12 month period.
- (iii) Insert a provision that includes registered clinical counsellors and registered social workers for the Psychological Services Plan.

These laudable proposals can be addressed globally in the sense that my main reasons for not awarding them apply in each case; namely, there is not sufficient information in the record before me to adequately assess the impact of the proposal and/or there is no demonstrated need at present for the change.

To begin, there has apparently never been a situation where one of the Union's members has been denied benefit coverage based on the existing lifetime limit. Thus, there is no "obvious reason" for the first amendment. This is additionally a subject which falls within the first paragraph of Schedule "E" and City employees have the same one million dollar limit.

Next, there was an agreement in the last round of negotiations to place a cap on massage benefits reimbursement, with the savings being re-allocated to the Psychological Services Plan subject to “quantification [being] agreed by the parties”. The Employer says this freely negotiated trade-off should not be “thwarted” by awarding an increase in the present proceeding. The Union responds that the issue is back on the table because no progress has been made and information it has requested has not been received; in short, it says the attempt to work together has failed.

The Union is obviously frustrated by the lack of progress on this front. However, I am not persuaded that the circumstances yet warrant a third party intruding on the parties’ relatively recent bargain or that mechanisms are unavailable for the Union to obtain the costing information it seeks. I was also advised during the hearing that benefits generally are being discussed by the parties “in another forum”. But once again, I do not have adequate information to assess the cost implications of the Union’s proposed increase to the limit under the Psychological Services Plan (which is, admittedly, unique to police services under Schedule “E”).

Lately, and regardless of the qualifications of registered clinical counsellors and registered social workers (an issue raised by the Employer), I do not have adequate information to assess the impact of including their services under the Plan. This is another proposal which the Employer has rejected previously and there is no reason to believe inclusion of these professionals would have been achieved at the table in this round, even if there had been more robust negotiations between the parties.

(e) Employer Proposal Respecting the Gratuity Plan

The Employer brings this proposal “out of an abundance of prudence” and based on “the responsibility ... to seek savings, however minimal, to its human resources costs” because the Union’s proposals exceed the limit it has been given by the City (submission at paras. 218 and 220).

The Gratuity Plan is a benefit found in Schedule “B” to the Collective Agreement. Credits accrue for service based on a formula expressed in hours, as well as based on completed years of service where a member has not been on paid sick leave. The gratuity credits accumulate over a member’s career and are paid out in specified circumstances. The “problem” from the Employer’s perspective is that gratuity is accrued at one rate but generally paid out at a “much more costly rate” (*ibid* at para. 228). It therefore seeks a direction through this award that gratuity values be fixed not only in hours but also at the monetary rate at which the gratuity was actually earned.

While again recognizing the financial constraints imposed on the Employer, I am not prepared to amend the Gratuity Plan to, in effect, partially offset the gains made by the Union in this proceeding. Those gains have been modest and reflect the “conservative nature of the process”. But more critically, the Employer previously attempted to make reductions to sick leave and gratuity without success – including in the round of bargaining preceding the *Brown Award*. The Union remains adamantly opposed and it is highly unlikely that it would have agreed at the negotiating table to make any concessions in this area.

VI. DISPOSITION

I will not attempt to summarize the reasons set out above for rejecting many of the Union’s proposed amendments to the current Collective Agreement as well as the Employer’s proposal to amend the gratuity plan. My conclusions regarding the changes which have been awarded can be summarized as follows:

- (a) the new Collective Agreement will have a three (3) year term from January 1, 2020 to December 31, 2022;
- (b) salary increases effective as of January 1 in each year will be 3.0%, 2.5% and 3.0% with interest owing on any retroactive payments;

- (c) the maternity top up will be increased to 100% for the existing 17 week period effective January 1, 2020 with interest owing on any retroactive payments; and
- (d) the new per diem rates totaling \$95.00 a day will become effective January 1, 2022.

I retain jurisdiction in the event of any difficulty implementing this award or in otherwise finalizing the terms of the new Collective Agreement.

DATED and effective at Vancouver, British Columbia on December 6, 2021.

A handwritten signature in black ink, appearing to read "John B. Hall", written over a large, loopy circular flourish.

JOHN B. HALL
Arbitrator