

**City of Bothel  
And  
IAAF Local No. 2099  
Fact Findings  
Arbitrator: Charles S. LaCugna  
Date Issued: 12/09/1978**

**Arbitrator: LaCugna; Charles S.  
Case #: 01729-F-78-00089  
Employer: City of Bothell  
Union: IAFF; Local 2099  
Date Issued: 12/09/1978**

**In  
Fact Finding Proceedings  
between  
IAAF LOCAL #2099  
and  
THE CITY OF BOTHELL  
REPORT WITH  
RECOMMENDATIONS  
December 9, 1978**

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between  
IAFF LOCAL #2099  
and  
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**REPORT WITH  
RECOMMENDATIONS**

**I HISTORY OF COLLECTIVE BARGAINING**

**On June 20, 1978, the parties began negotiations because their existing three year Collective Bargaining Agreement would**

expire on December 31, 1978. Discussions on a wage and benefit package during the seven negotiation sessions were very limited. The City blamed the Firefighters: the Firefighters were intransigent and they proposed a "wish list" which contained numerous new financial and nonfinancial provisions. The Firefighters blamed the City for the delay and impasse: the Firefighters pointed to the fact that twenty-one (21) of the items opened by the City had been settled while only eight (8) of the Union's initial requests had been resolved. Since mediation on September 11, 1978, was not successful, the parties mutually declared an impasse. Since the parties are subject to the Public Employees Collective Bargaining Act (RCW Chapter 41.56) , each party in compliance with RCW 41.56.440 nominated a member to a Fact Finding Panel. The City nominated James R. McMahan as its Panel member; the Firefighters nominated Clarence L. Ashe as its Panel member; and PERC appointed Charles S. LaCugna Chairman of the Panel. On October 30, 1978, and on October 31, 1978, fact finding hearings were held in the Bothell City Hall. The parties agreed to mail and exchange post-hearing Briefs, postmarked no later than November 10, 1978. The Chairman of the Fact Finding Panel reminded Panel members that since the spirit and intent of fact finding is to aid in the resolution of disputes, the Panel members should feel free to seek other avenues for negotiation and compromise.

## **II THE ISSUES**

The parties agreed to submit the following issues to fact finding with recommendations:

- 1. Increase in base salary,**
- 2. City Contribution to Medical and Dental Insurance Premiums,**
- 3. Addition to Pay Increment for Education,**
- 4. Longevity Pay,**
- 5. Command Duty Pay,**
- 6. Prevailing Rights Clause,**
- 7. Composition of Bargaining Unit,**
- 8. Minimum Manning,**
- 9. Authority of Volunteer Officers over Full-Time Rank and File Firemen.**

At the first scheduled meeting of the Panel on November 16, 1978, at Seattle University, the Firefighters offered to withdraw their request for a Prevailing Rights Clause, a Mini-

**mum Manning clause, and a Longevity clause. The Firefighters were also willing to leave the Bargaining Unit question to PERC, to let the Volunteer question remain a matter of continuing discussion, and to retain the Medical Provisions as they were.**

**The Firefighters also modified their monetary requests. They would accept:**

- a) A wage increase of 8.59% to be distributed across the board;**
- b) \$100 for Command Duty when so assigned;**
- c) Either a longevity or an educational incentive provision, effective January 1980, and**
- d) A reopener clause only on wages or the May to May CPI for 1980.**

**The Firefighters' proposal met the Chairman's request that the Firefighters seriously consider the City's objection that "the Union has been totally unwilling to limit its new proposals." Hence, the financial provisions also remain unresolved" (City Brief, p. 3) . The Firefighters' new proposal led the Chairman to ask the City's Panel member to apprise the City Manager of the Firefighters' last offer. After consultation with the City Manager, the Chairman, to clarify the issues, reduced the positions of the parties to writing as follows:**

- 1. The City offered 8.4% on wages;  
The Firefighters wanted 8.59% on wages.**  
  
**The City wanted to distribute the percentage increase on wages;  
The Firefighters wanted an across the board increase.**
- 2. Command Duty: The City offered \$75, when so assigned;  
The Firefighters wanted \$100, when so assigned.**
- 3. Education Incentive (the request for a Longevity clause was withdrawn)  
The City offered \$50 per month for an AA degree;  
The Firefighters wanted \$25 per month for 45 credits**

and/or \$50 per month for an AA degree (90 credits).

4. For 1980, the second year of the Contract, the City offered the CPI with a maximum of 8%; the Firefighters would accept a reopener or CPI May to May.

On November 20, Mr. Ashe offered the City Manager another modified proposal: (1) an 8.58% salary increase without an across the board application"; the Union offered its own distribution formula; (2) the Union lowered its request from \$100 to \$75 of Command Duty when so assigned but asked that in the second year of the contract, the \$75 be raised in accordance with percentage salary increase; (3) the Union also modified its previous education incentive request: from "\$25 per month for 45 credits" to "\$25 per month for a Certificate" but retained its "\$50 per month for an AA degree."

The City Manager acknowledged that the Firefighters' new proposal showed "effort and consideration"; perhaps it was a little too high but that otherwise it seemed to be a good proposal" (Firefighters' Memorandum of November 21, 1978) The City Council considered the proposal, and on November 21, 1978, the City Manager and the City Panel member advised the Chairman that "the City's current proposal is a financial package distribution of approximately 7% and this is consistent with the maximum Federal Guidelines." The City Council urged the Panel to give "strong consideration" to this Presidential Guideline.

### III FACT FINDER'S AUTHORITY

The fact finder's authority to make recommendations stems from the Public Employees Collective Bargaining Act, Section 41.45.440, which reads:

In making its findings, the fact finding panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and as additional standards of guidelines to aid it in developing its recommendations, it shall take into consideration those factors set forth in RCW 41.56.460.

### IV INTERPRETATION AND APPLICATION OF STATE LAW

The purpose of the law is to settle disputes, and wanting that, to arrive at those recommendations which flow logically

from the facts as presented. The declaration of legislative intent is found in RCW 41.56.430, which reads:

The intent and purpose of this 1973 amendatory act is to recognize that there exists a public policy in the State of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the State of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

#### 1 - Interpretation of ROW 41.56.430

The intent of the State Legislature as expressed in the Act is to authorize the fact finder to ascertain those facts which serve as a basis for hastening the collective bargaining process so that the parties might reach a mutually acceptable agreement. RCW 41.56.430 clearly intends to prevent the disruption of the vital protective services so necessary to urban living. However, if the parties cannot agree on a contract, the parties must proceed to fact finding with recommendations. My quasi-mediatory and adjudicatory effort attempted first to secure a settlement on the theory that mutual agreement was prima facie evidence of equity and "reasonableness." Since the parties could not agree on all issues, the remaining issues are now subject to the fact finder whose recommendations must derive from the fact finder's interpretation and application of the criteria set forth in the law.

#### 2 - Interpretation of RCW 41.56.460

RCW 41.56.460 directs the Panel to be "mindful of the legislative purpose enumerated in RCW 41.56.430 and as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors" , to wit:

- a) The constitutional and statutory authority of the employer.
- b) Stipulations of the parties.
- c) Comparison of the wages, hours and conditions of employment of the uniformed personnel of cities and counties involved in the proceedings with the

wages, hours and conditions of employment of unformed personnel of cities and counties respectively of similar size on the west coast of the United States.

- d) The average consumer prices for goods and services, commonly known as the cost of living.
- e) Changes in any of the foregoing circumstances during the pendency of the proceedings.
- f) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

a) **Constitutional and Statutory Authority of the City**

The constitutional and statutory authority of the City to tax is necessarily limited because the City of Bothell, as a creature of the State, has only those taxing powers which are expressly delegated to it by the State Legislature, viz., the sales tax and property tax. In addition, the State Legislature has limited the amount of revenue from property taxes to a maximum increase of six percent per year. Moreover, the taxing power of the Fire Districts is limited; fire districts can raise revenues only from property taxes.

The City noted that the City's limited tax base imposed severe" restraints on the City Council in the allocation of General Funds revenues. Hence, the Firefighters' request for 9.4% salary increase plus additional monetary benefits calculated to be 5.16% for a total of 14.56% must be examined within these limits because the City Council, by very office, must make not only fiscal but also politically practical judgments in the disbursement of available revenue. The tax dollars to be allocated to the wage and benefits package of the Firefighter must also consider its impact upon the City's budget, already 14.7% of the City's total budget (City Exh. #3). Or as the City put it: "the large percentage spent on fire protection in Bothell leaves less tax dollars in Bothell for other uses such as police, streets and parks" (City Brief, p. 15)

b) **Stipulations of the Parties**

The parties submitted as Joint Exhibit #1 their Agreement on all issues except those issues now in fact finding.

c) **Comparison of the wages, hours and conditions of em-**

**ployment of the uniformed personnel of cities and counties involved in the proceedings with the wages, hours and conditions of employment of uniformed personnel of cities and counties respectively of similar size on the West Coast of the United States**

The City recognized the intellectual and statistical dilemma inherent in the "comparability" guideline. State law mandates that Bothell be compared to cities of "similar size but the City found it is most difficult, if not impossible, to find a "comparable" city because Bothell provides unique services and operates under special funding arrangements. Bothell's population of 6700 serves not only its own people but also a population of approximately 30,000; the City's assessed valuation is \$103,000,000, but its fire service serves an assessed valuation of approximately \$278,000,000; the City provides two-thirds of the funding for fire department services; and one-third of the funding is provided by the 24,000 people based outside the City limits.

In a determined effort to ascertain what jurisdictions were "truly comparable," the City conducted an extensive, detailed, and impressive survey which led the City to three conclusions: Bothell is comparable "in certain respects" to other Western Washington cities of 5,000-12,000 population; in "certain other respects" to other Western Washington Fire Districts which serve populations of 20,000-40,000; and Bothell cannot be compared to other Western Washington cities with a population of 15,000-30,000.

**A. CRITERIA FOR "COMPARABLE CITIES"**

To arrive at the "most comparable cities," the City developed the following seven broad criteria for "reasonable comparisons to other cities of Bothell's uniqueness":

- a. Population 4,000-12,000
- b. Population Density/Per Square Mile 500-2,000 people
- c. Number of firefighters per 1000 population = 0.5-1.5 per thousand
- d. Ratio of firefighters per millions = 1 per 10-25 millions of dollars in assessed valuation
- e. Assessed value per capita = \$8000-\$20,000

- f. **Number of firefighters in department = 5-20 firefighters to provide adequate responsiveness**
- g. **Fiscal (ability to pay) Factors**
  - 1. **Population size = 4,000-1,200**
  - 2. **Total tax revenue - \$150-\$200 per capita**
  - 3. **Fire Budget Expenditure - \$35 approximately annually per capita ratio**
  - 4. **Western Washington Area**

**The City measured thirty cities in Western Washington against the above criteria and concluded that Shelton, Tumwater, Centralia, Kelso, and Mt. Vernon were the "most comparable" because only these five cities met the seven criteria (City Brief, p. 12) . All the other cities were eliminated as "comparable" because they failed to meet either one or more of the criteria (City Exh. #1, p. 2).**

**B. CRITERIA FOR "COMPARABLE" FIRE DISTRICTS**

- a. **Population 20-40 thousand (Bothell and encompassing districts covered are about 30 thousand population)**
- b. **1978 Assessed Real Property = 225-325 millions of dollars values (Bothell and three districts) = 278 million dollars**
- c. **Tax Revenues of approximately \$200,000-\$300,000 (Bothell and three encompassing districts approximately \$300,000)**
- d. **Number full paid firefighters - 5 to 20 (same as for cities above)**
- e. **Western Washington**

**The City measured thirty-eight fire districts against the above criteria and concluded that the following fire districts were "comparable," to wit:**

- King County District #2**
- King County District #10**
- King County District #16**
- King County District #25**
- King County District #40**



**Kitsap County District #7  
Pierce County District #9 (City Exh. #2, p.1)**

In marked contrast to the City's exhaustive statistical analysis, the Firefighters offered no statistical evidence at the hearings or in their Brief to support their contention that in some degree the fire departments in the immediate Bothell geographic area were comparable. The Firefighters said that the City recently and the negotiators since 1972 tacitly had recognized this comparability. Bothell's unique character made these departments somewhat "comparable" because these departments had the same fire protection problems and the same socioeconomic conditions (Firefighters' Brief) . At the November 16, 1978, meeting of the Fact Finding Panel, the Firefighters changed their position. Their research showed that they could accept all of the City's fire districts except Kitsap District #7 and Pierce District #9 because these latter two districts were geographically remote. The other five fire districts (Special "Comparability" Exhibit) were comparable because the Firefighters agreed with the City that "fire districts are less complicated" i.e. , they have only one source of revenue, the real property tax (Memorandum of November 17, 1978) . The Firefighters believed that the facts deduced from these "comparable" fire districts would, or could, easily justify at least a 9.4% salary increase.

The fact finder must, and does reject all the statistical evidence based on the City's selective criteria of "comparable" cities and fire districts because both the compared cities and fire districts are markedly different in their political, economic, and environmental make up. The fact finder must also reject the Firefighters ' " comparable" fire districts for the same reason, and additionally, because the Firefighters' analysis of "comparability" did not include "cities of similar sizes." The conclusion is that Bothell's admittedly unique services and funding arrangements make it impossible to apply the elusive "comparability" guideline. Therefore, all arguments derived from statistical evidence that purports to show that Bothell is "truly" comparable, or "mostly" comparable, or "comparable" or "historically" comparable can have no force and effect, much less be conclusive of the issue. It is enough to say that Bothell is unique: not comparable to any other city.

**d) Cost of Living**

**The Bothell Firefighters asked for a salary increase of**

9.4%, the May 1977 to May 1978 Seattle-Everett Consumer Price Index. The Firefighters advanced several reasons: the request was not exorbitant because the increase was necessary just to keep up with inflation, the increase would neither dislocate the City's proposed balanced budget nor cause any cut backs, the proposed budget already provided for at least an 8.4% increase for all other employees, more than the City's 7% offer to the Firefighters, the police with whom the Firefighters shared a "historical" and "de facto" parity had already settled for a 10% increase, and it was just not true that Firefighters' wages had exceeded the rise in the Consumer Price Index (City Exh. #4) . Just the opposite is true; "Bothell Firefighters are barely keeping pace with the rise in the CPI" (Firefighters' Brief, p. 4).

The City thought the Seattle-Everett CPI inapplicable to Bothell because the Firefighters' wages had not only increased rapidly but had exceeded the CPI over the past few years. These wages "have to be leveled off." And, the City thought that the Seattle-Everett CPI could not be fairly used because the CPI has a "considerably large" element for housing costs, and a "large increment" for medical care. The City's calculation was: if housing and medical care (paid by the City) were to be eliminated from the CPI computation, the actual and applicable cost of living increase for Bothell would be less than 7%. Were the fact finder to recommend the May 1977 to May 1978 Seattle-Everett CPI, the Panel would recommend a "double benefit" to every Firefighter whose medical payments are paid by the City and to every Firefighter who owns his home.

e) Changes in any of the foregoing circumstances during the pendency of the proceedings

None.

f) Such other factors not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

This "catchall" guideline allows the fact finder to consider those conditions equally or more important than the other guidelines which give color, context, and reality to the statistical evidence. Bothell, a small city with the usual banks, businesses, and shops, situated in a largely rural area,

enjoys small town amenities with easy access to the Seattle- Everett Metropolitan area. Bothell, the cross roads of two major arterials, suffers from an increasing traffic congestion and encroaching urbanization. The Firefighters enjoy open and easy access to the City Manager; their inability to agree on a Collective Bargaining Agreement arises out of different perspectives and interests. Other factors are considered in the

## Section V - RECOMMENDATIONS.

### V RECOMMENDATIONS

These recommendations flow from a consideration of the limited application of the CPI, from the bargaining history, and from an assessment of political and economic realities. They also consider and "give considerable weight to the many unique aspects of Bothell and its fire department" (City Brief). In effect, I have combined and correlated the mass of evidence and arguments to arrive at the most "reasonable" and most acceptable" bargain, one which the parties would have struck, if they could have, by themselves.

It is true, as practitioners are well aware, and as the City noted that the deficiencies inherent in the CPI make it merely a guide rather than a definitive statement," applicable primarily to "urban" centers. Yet it is still one of the most authoritative and reliable measures to determine an acceptable and fair wage and benefit package. The CPI does offer a practical rule to estimate the rise in the cost of living, hence to determine the relative percentage salary increase necessary to maintain an employee's real income. Although the CPI is a most useful guide, I have given greater weight to the respective bargaining positions of the parties on November 16, 1978. On that date the parties were close to an agreement and the City Manager thought that the proposal of the Firefighters was a "good proposal." These positions delimit the range of acceptability," and they circumscribe the fact finder's jurisdiction over the subject matter.

#### 1 - Salary Increase

What would be a fair and acceptable salary increase'?

Is the Firefighters' offer to settle for 8.58% salary increase "a bit too high," as the City Manager said? An 8.58% salary increase is reasonable," and "within range": the City

had already budgeted an 8.4% increase for all other employees including the Firefighters (Memorandum of November 27, 1978); the City Manager had used 8.4% in his Wage Survey Comparison; and the police had already settled for a 10% increase.

I have given 'strong consideration' to the Presidential Guideline of 7%. This defense is inadequate. First, the City never advanced the federal guide line in fact finding until November 20, 1978, shortly after the parties were close on the percentage increase (8.4% vs. 8.59%). Second, the fact finder is not a creature of the Federal government but an agent of the State. He has no choice but to apply state law unless state law has been preempted by federal statute. Third, the City offered no evidence or argument to show why or how the federal guideline was applicable to Bothell.

**RECOMMENDATION:** 1 (a) That the City increase the Firefighters' base salary by 8.6%

This increase, lower than the 9.4% May to May CPI gives the Firefighters some protection against inflation, reflects the Firefighters' bargaining position, and considers minimal education and entry skills required, turnover rate, productivity, ambience, non-work hours, geographic location, political climate, and the salary adjustment effective July 1, 1978. The 8.6% also considers the effect of inflation on the City's budget and the need for the Firefighters, as well as all other citizens, to accommodate to the extent possible to federal guidelines.

(b) That the 8.6% be applied across the board.

The politically sensitive "distribution" argument cannot be resolved in fact finding. All ranks suffer the onslaught of inflation. If, as the City says, the Captain's salary is „ misaligned," the recourse in equity is in the elimination of captains and other supervisors from the bargaining unit not in invidious discrimination against the more energetic or the more competent.

**RECOMMENDATION:** 2 - Command Duty; That the City pay \$75 when so assigned

Firefighters have performed this service, the City needs it, and the parties have agreed on \$75.

**RECOMMENDATION: 3 - Educational Incentive; That the City deny the Firefighters' request.**

**These provisions are not only rare but the Firefighters advanced no convincing evidence or arguments to support their request. The City's offer of \$50 a month "to attempt a settlement" is politically desirable but unsupported by the facts. Incentive is eminently personal: it requires personal sacrifice and carries the promise of personal reward in promotion and in salary increase.**

**RECOMMENDATION: 4 - For the 1980 Contract Year: That the City grant the Firefighters the May to May CPI**

**To achieve "acceptability" and "reasonableness," I gave serious consideration to the City's admonition that "any settlement where salary and fringe benefits increases exceed CPI is unreasonably high" and to the Firefighters' need to stave off the ravages of inflation.**

**James R. McMahon  
For the City of Bothell**

**Clarence L. Ashe  
For the Firefighters**

**December 9, 1978  
Seattle, Washington**

**Charles E. LaCugna /  
Chairman**