

**IAFF, Local 2088  
And  
City of Tukwila  
Interest Arbitration  
Arbitrator: Jonathan S. Monat  
Date Issued: 03/16/1978**

**Arbitrator: Monat; Jonathan S.  
Case #: 01214-I-77-00044  
Employer: City of Tukwila  
Union: IAFF; Local 2088  
Date Issued: 03/16/1978**

**In the Matter of Arbitration )  
 )  
Between )  
 )  
City of Tukwila, )  
and )  
IAFF, Local 2088 )**

**ARBITRATOR'S OPINION  
AND AWARD**

**A hearing was held in Tukwila on February 3, 1978, from 2 pm to 5:30pm. Cabot Dow represented the City of Tukwila and Doug McNall represented the Union. Members of the arbitration panel included Jonathan S. Monat, Impartial Chairman; Dave Green, appointed by the Union; and John McFarland, appointed by the City. Mr. Green and Mr. McFarland filed written opinions to the Chairman prior to the writing of this award.**

**ISSUE**

**The parties stipulated that the sole issue before the arbitration panel was Article XVIII: Longevity, an interest matter to be decided as terms of a new collective bargaining agreement. This issue reaches the arbitration panel under RCW 41:56.**

**EXHIBITS**

**Joint Exhibit 1: 197601977 Collective Bargaining Agreement  
Joint Exhibit 2: Tukwila City Ordinance 997  
Employer Ex. 1: Employer Proposal of the Issue  
Employer Ex. 2a: Employer Prehearing Statement  
Employer Ex. 2b: August 29 letter, attachments  
Employer Ex. 2c: 1978-1979 Agreement**

**Employer Ex. 2d:** LaCugna Award  
**Employer Ex. 2e:** Certification of City Clerk, Agreement-Longevity of other City employees  
**Employer Ex. 2f:** Graph-Longevity Practices  
**Employer Ex. 2g:** Association of Washington Cities Survey  
Other documents received per request of the arbitration panel  
**Union Exhibit 1:** 1973 Collective Bargaining Agreement, page 3, longevity  
**Union Exhibit 2:** 1974 Collective Bargaining Agreement  
**Union Exhibit 3:** City of Tukwila Ordinance 604, 1969  
**Union Exhibit 4:** 1975 Collective Bargaining Agreement  
**Union Exhibit 5:** City of Tukwila Ordinance 657, 1970  
**Union Exhibit 6:** June 20, 1977 - City's Original Proposal  
**Union Exhibit 7:** Comparable Cities - Longevity  
**Union Exhibit 8:** Proposed Salary Plan, Resolution  
**Union Exhibit 9:** City Ordinance No. 1019  
**Union Exhibit 10:** Longevity Cost Projections

### **OPINION**

**The chairman has carefully reviewed the evidence and testimony presented at the hearing, and the positions of other members of the arbitration panel concerning the longevity clause at issue.**

**Both parties rely to some degree on the "comparable cities" argument, a position reasonably justified on the basis of the statutes. The position of both parties is plausible and reasonable when looking at comparable cities, notably Lynnwood, Kent, Auburn, and Puyallup. Comparative data within the City of Tukwila were also reasonable. Neither party's comparison is perfectly consistent and the choice the arbitration panel is asked to make is frankly arbitrary when relying on the comparable cities criterion.**

**Secondly, the concept that longevity is dealt with elsewhere in the agreement presents problems. The chairman excluded testimony at the hearing that there were other clauses negotiated and settled in relation to the longevity issue. Yet the position of the City points to other clauses and a new ordinance as bearing on the longevity issue.**

**The bargaining history with respect to longevity is reasonably clear. The City did not agree with the union on longevity. There was no tying of longevity to any other issue, settled or unsettled. In essence, the City said that the Council passed Ordinance 997 effective 1 January 1977 and the matter was beyond the scope of bargaining as a matter of fiat. Arbitrator LaCugna was cited as having so ruled in an earlier decision involving the parties.**

**From the chairman's dispassionate view of the record, the real differences on longevity turn on whether or not it has been foreclosed by the City Council and the Mayor by legislative action. The contract in force between the parties**

**contains two clauses of interest, Article VI - Management Rights and Article XXIII - Supplemental Agreements, a so-called zipper clause.**

**In the latter case, the parties have had a longevity clause in the agreement for many years. It has always been discussed, bargained, and, until this year, agreed upon. So until 1977, longevity was considered by both parties a bargainable issue. In the meantime, the City Council, outside the agreement, passes an ordinance which radically changes working conditions agreed upon in the written agreement.**

**The Union has contended with some support that it consistently objected to the Ordinance, initially within the timeframe of Article VI. Beyond that, it protested throughout bargaining that the specific language of the previous ordinance incorporated in the collective bargaining agreement was acceptable, agreed upon, and long-term benefits were derived and expected from that language in the agreement. Any change in language was an intent to change the meaning of the provision. In this case, the Union desired to retain present intent. The City position would change that agreed upon meaning and intent, and even reduce the monetary value of the benefit unilaterally.**

**Can the City propose a fiat, nonnegotiable right? The fiat right is well-established certainly but with some clearly emerging limitations. The limitation concern the legislative body's role in bargaining and in legislation. Under present Washington collective bargaining law (46.51.100) the fiat right appears to be preserved if, the legislative body delegates such ordinance authority to any civil service commission or personnel board...**

**There is no such board in this instance. The collective bargaining agreement is negotiated by an agent of the Council and the written agreement is signed by the President of the Council and the Mayor. It is the City Council which passes all ordinances. So, in effect, the City may bargain or not bargain as chooses to pass ordinances. It should not hide from the duty to bargain over an issue it has previously bargained by passing an ordinance. There is an inherent conflict in such a system.**

**The fiat right would have been preserved had the City had a legally established body as defined in 41.56 or had the particular issue been defined by a disinterested legislative body such as a state legislature or county council. This is not to say that the City's intent to create a uniform set of personnel policies is wrong. There would be many advantages to such a practice. But the establishment of uniform policies must not be at the expense of existing contractual rights.**

**Thus, the Chairman would conclude that the language of the longevity clause in the new agreement be as the Union proposes.**

**AWARD**

1. **The longevity clause of the 1977-1978 agreement shall read:**

**"After five years of continuous full-time employment with the City, the eligible employee shall receive an additional \$5.00 per month (\$60.00 per year). And for each additional year of continuous full-time employment thereafter, the eligible employee shall receive an additional sum of \$5.00 per month (\$60.00 per year).**

2. **Benefits accrued since the signing of this agreement shall be paid from the date the 1977-1979 agreement went into effect.**

**March 16, 1978  
Bellingham, WA 98225**

**Jonathan S. Monat  
Impartial Chairman**