

**International Association of Fire Fighters Union Local No. 726
And
City of Puyallup
Interest Arbitration
Arbitrator: Robert A. Sutermeister
Date Issued: 09/18/1980**

**Arbitrator: Sutermeister; Robert A.
Case #: 02726-I-80-00073
Employer: City of Puyallup
Union: IAFF; Local 726
Date Issued: 09/18/1980**

Interest Arbitration

City of Puyallup

and

**International Association of Firefighters
Union Local No. 726**

**Dates of Hearing: July 15-16, 1980
Place of Hearing: Puyallup, Washington
Date Post-Hearing Briefs Received: September 6, 1980**

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Chairman
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Summary

The arbitration panel has adopted the City's proposals on:

- I. Wages
- II. Longevity
- III. Rank differential
- V. Duration of contract
- X. Overtime

The arbitration panel has adopted the Union's proposals on:

- VI. Management rights (in part)
- VII. Prevailing rights
- XI. Non pyramiding
- XII. Entire agreement
- XIII. Medical/Dental
- XIV. Emergency Call-in

The parties were in agreement on:

- X. Probation

On the following issues the panel has adopted some portions of the proposals; rejected some portions; and mandated no change on other portions until such time as the parties can negotiate the provisions themselves:

- IV. Grievance Procedure
- VIII. Sick leave

Background

The previous contract between the parties was in effect for the calendar years of 1978 and 1979. The parties negotiated on a new contract but were unable to agree in several areas. After mediation, the parties referred the following issues to the panel for resolution:

- 1. Wages
- 2. Longevity
- 3. Rank differential
- 7. Prevailing Rights
- 8. Sick Leave
- 9. Probation

- | | |
|------------------------------|------------------------------|
| 4. Grievance Procedure | 10. Overtime |
| 5. Duration of the agreement | 11. Non pyramiding |
| 6. Management Rights | 12. Entire agreement |
| | 13. Medical/dental insurance |
| | 14. Emergency call-in |

Guidelines for Arbitration Panel

RCW 41.56.460 lists guidelines for an arbitration panel to use in making its decisions (Union Exhibit 14). The panel believes the two most important criteria are:

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 uniformed 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.

The panel is well aware of the advantage to the City of having parallel clauses in the contracts between the City and various Unions representing employees and is sympathetic to this objective. In fact, one of the guidelines calling for "comparisons among uniformed personnel" does allow the Panel to consider wages, hours and conditions of employment for the police. However, the panel does not feel this is an overriding consideration, but that data on wages, hours and conditions of employment for firefighters in comparable cities, or compelling evidence or arguments, should be given greater weight than clauses in contracts with other employee groups in Puyallup.

The panel furthermore feels that its role is not to usurp the negotiating process of the parties. Where the issues appear to us to be critical, we have made decisions. Where the issues appear to us to be non-critical, we have been hesitant to impose our judgments on the parties but have left several of these issues to be resolved through negotiations.

Cities for Comparison

The parties have not agreed on a list of cities of similar size with which comparisons can be made. The Union argues that the past practice of comparing Puyallup with Tacoma should be continued by the arbitration panel, but the guidelines set down by RCW 41.56.540 require the panel to consider comparable cities whether the parties have done so in the past or not.

During negotiations this year, the City did introduce a list of the 24 largest cities in Washington to show that Puyallup firefighters were

among the highest paid. This list, minus the cities east of the Cascades, was referred to by the Union in the arbitration. However, the City had prepared a different list of cities for use in the arbitration, consisting of all cities in Washington (east and west of the Cascades), Oregon and California which had paid fire departments and had populations between 10,000 and 30,000. Puyallup has a population of approximately 17,000.

Following are the lists of Washington cities used by the two parties in arbitration:

<u>City of Puyallup</u>	<u>IAFF 726</u>
Aberdeen - - - - -	Aberdeen
Auburn- - - - -	Auburn
Centralia	
Edmonds- - - - -	Edmonds
Ellensburg	
Hoquium	
Kelso	
Kennewick	
Kent- - - - -	Kent
Kirkland	
Lynnwood- - - - -	Lynnwood
Mercer Island- - - - -	Mercer Island
Moses Lake	
Mountlake Terrace- - - - -	Mountlake Terrace
Mount Vernon	
Olympia- - - - -	Olympia
Pasco	
Port Angeles	
Pullman	
Redmond- - - - -	Redmond
Walla Walla	
Wenatchee	
	Bellevue
	Bellingham
	Everett
	Longview
	Renton
	Seattle
	Tacoma
	Vancouver

The panel recognizes the limitations of any list of comparable cities, but believes the fairest comparison can be made with cities

of similar size in Western Washington. The panel has therefore selected the following cities, between 10,000 and 30,000 in population, as comparable cities.

Aberdeen	Lynnwood
Auburn	Mercer Island
Centralia	Mountlake Terrace
Edmonds	Mount Vernon
Hoquiam	Olympia
Kelso	Port Angeles
Kent	Redmond*
Kirkland	

* Only limited data were available from Redmond, and statistics on one or two other comparable cities were missing from some exhibits; thus there are not always the total of 15 cities for comparison.

I. Wages

The City proposed a three-year agreement with no wage increase for 1980, and increases in 1981 and 1982 equal to those granted in the contract with policemen. The Union proposed a two-year agreement, with no increase for the first six months of 1980; an 8% increase for the last six months of 1980; an increase on January 1, 1981 equal to the increase in the Consumers' Price Index for Seattle-Everett between May and November 1980; and an increase on July 1, 1981 equal to the increase in the same CPI between November 1980 and May 1981, less 2%.

Previous contracts between the parties resulted in two pay increases in 1976, two pay increases in 1977, four pay increases in 1978, and six pay increases in 1979. At the end of 1979, Puyallup first class firefighters had a monthly salary of \$1852 compared to an average 1980 salary of \$1679 for comparable cities used by the panel. If "assessed valuation" is used as a measure of "size," Puyallup's assessed valuation per capita was \$12,354(1) compared to an average of the cities used by the panel of \$15,840.

(1) This was the City's figure in City Exhibit 18. The Union introduced a figure of \$13,452. Both figures are considerably below the average for comparable cities.

Regardless of cities used for comparison in past years, regardless of the City's ability to pay, regardless of salary increases compared with cost of living increases, the overwhelming evidence presented to the panel is that Puyallup firefighters have fared very well in the past so that their salaries now rank at the very top of comparable cities. Thus it is the panel's judgment that the City's wage offer is a

reasonable basis for settlement and should be adopted. The following schedule will result:

<u>Position</u>	Average (2) <u>for 1979</u>	<u>1980 (3)</u>	<u>1/1/81</u>	<u>7/1/81</u>	<u>1/1/82</u>	<u>7/1/82</u>
Captain	1922	2037	2147	2230	2312	2367
Firefighter (1st class)	1748	1852	1952	2027	2102	2152
Firefighter (2nd class)		1754	1849	1920	1991	2038
Firefighter (3rd class)		1660	1750	1817	1884	1929
Firefighter (4th class)		1583	1668	1732	1796	1829
Firefighter (probation)		1498	1579	1640	1701	1742

(2) From City Exhibit 1.

(3) These figures represent an increase of approximately 6% above the average salaries for 1979. The reduction in hours per work week from 52 to 50 effective January 1, 1980 represents a further increase in wages.

II. Longevity

The proposals of the parties on longevity provisions follow:

	<u>Current agreement and City Proposal</u>	<u>Union Proposal</u>
		<u>January 1, 1980</u>
5 - 9 years	1%	1%
10 - 4 years	1.5%	2%
15 -19 years	2%	3%
20 years +	2.5%	4%
		<u>July 1, 1980</u>
5 - 9 years	1%	2%
10 - 14 years	1.5%	4%
15 - 19 years	2%	6%
20 years +	2.5%	8%

Of the 15 cities used by the panel for comparison purposes, longevity after 15 years service is computed as follows:

No longevity provisions	6 cities
1%	1 city (Hoquiam which pays \$20)
2%	4 cities (Mt. Vernon pays \$45 & Centralia \$30)
4%	2 cities (Lynnwood pays \$60)

6%
1.93%

2 cities
Average

Thus, Puyallup, with 2% longevity after 15 years' service, is slightly above the average.

Comparisons of salary plus longevity (City Exhibit 33-36) for the 15 cities used by the panel show:

Salary Plus Longevity

	<u>Puyallup</u>	<u>Average of Comparable Cities</u>
After 5 years	\$1871	\$1690
After 10 years	\$1881	\$1705
After 15 years	\$1889	\$1714
After 20 years	\$1898	\$1722

The panel believes the present longevity provisions place Puyallup in a very favorable relationship with comparable cities and should be retained in the new agreement.

III. Rank Differential

The current differential between the salary of Firefighter 1st class and Captain is 10%. The City proposes to retain the present differential, while the Union proposes that the differential be 12% effective July 1, 1980 and 15% effective July 1, 1981.*

* These figures come from Union Exhibit 28 and from the post-hearing brief. The effective dates differ from those stated in the Transcript (page 252).

Since many comparable cities have Lieutenants as a rank between Firefighter 1st class and Captain, the panel places greater weight on City Exhibit 39 than on Union Exhibit 19. Using the 15 cities on City Exhibit 39 which the panel has selected as comparable cities, the average percent difference between salaries of Firefighters and Lieutenants/Captains is 10.16%. This figure is very close to the current differential in Puyallup between Firefighters and Captains and, in the panel's opinion, the 10% differential should be retained in the new agreement.

IV. Grievance Procedure

The City proposed a (1) more precise definition of "grievance," (2) a statement that there is only one outstanding grievance on January 1,

1980, and (3) a time limit for filing a grievance of 60 days from the situation giving rise to the grievance.

In its post-hearing brief, the City modified its position on the third item above by adding "or within 60 days after the employee through the use of reasonable diligence should have become aware of the situation giving rise to the grievance."

Since comparable cities used by the panel (with only one possible exception) define grievances in terms of the agreement, the panel supports the City's proposal as follows:

A grievance shall be defined as a dispute or disagreement raised by an employee, or group of employees against the City involving the interpretation or application of the specific provision(s) of this agreement.

Since testimony at the hearing revealed that there was at least one grievance outstanding on January 1, 1980, the panel rejects the City's proposal as follows:

The Union and employees agree that there are no outstanding grievances on the date the new agreement goes into effect.

Although the panel is sympathetic with the idea of time limits on grievances and believes such limits are beneficial to both parties, the majority of cities on the panel's list of comparable cities do not have time limits (8), and a minority do have time limits (6). The parties are in agreement that a grievance must be filed within 60 days after a situation arises or after the employee knows or should have known about the situation which gives rise to the grievance. A statement that that effect shall be included in the 1980-1982 agreement. Any additional time limits should be provided through negotiation.

Although no evidence was presented to the panel on the practices of comparable cities in regard to obtaining lists of arbitrators, striking names, a new paragraph (#7) in the grievance procedure,(1) the proposal for prohibiting an arbitrator from adding to, subtracting from, or modifying the agreement,(2) and compensation of witnesses, the panel believes the article on grievance procedure should specify that:

1. the parties make a joint request to FMCS for a list of arbitrators, since there is no cost for this service and it gives the parties the opportunity to select an arbitrator,
2. each party take its turn in striking one name from the list,

3. a flip of a coin determine which party strikes the first name,
4. an arbitrator be prohibited from adding to, subtracting from, or modifying the agreement,
5. each party compensate its own witnesses at an arbitration hearing.

On the other hand, the panel believes that the Union's proposal for a new paragraph (#7) should be negotiated and not imposed upon the parties by the panel.

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- (1) The City did present some testimony regarding comparable cities but no exhibit (Tr. 338).
 - (2) Article XVI in the 1978-79 agreement already contains a sentence limiting the authority of the arbitrator to the interpretation and application of the agreement, so that portion of the City's proposal is not addressed by the panel.

V. Duration of Agreement

The City proposes a three-year agreement and the Union a two-year agreement.

Among the cities used by the panel for comparison purposes, 6 have 3-year contracts, 4 have two-year contracts, and 3 have 1 year contracts. The panel believes a 3-year contract is appropriate for the following reasons:

1. this places Puyallup in line with the majority of comparable cities
2. this will greatly reduce time and expense of yearly negotiations
3. this will be in line with contracts negotiated by the city with other employee groups
4. the panel agrees with the Union that it is impossible to predict cost of living figures 3 years in advance, but feels the Union is in an excellent Position now compared to other cities and, with the wage offer adopted, will remain in a good position relative to other cities over the 3-year period.

The contract period will be January 1, 1980 to December 31, 1982.

VI. Management Rights

The City proposes a new management rights clause in the contract, as follows:

It is recognized that the City shall retain whatever rights and authority are necessary for it to operate and direct the affairs of the Fire Department, including, but not limited to, the right to direct the working forces; to plan, direct and control the operations and services of the Fire Department; to determine the methods, means, organization by which such operations and services are to be conducted; to assign overtime; to lawfully recruit, assign, reassign or promote employees within the Fire Department; and (for cause) to fairly demote, suspend, discipline, discharge employees; or relieve employees due to lack of work or other legitimate reasons; to make and enforce reasonable rules and regulations; and to make reasonable changes or eliminate existing methods, equipment or facilities.

The Union opposes a management rights clause on the groups that it is not needed, and the City already has the right to assign overtime and to enforce reasonable rules and regulations. However, if a clause is mandated by the arbitration panel, the Union proposes it read as follows:

It is recognized that the City shall retain whatever rights and authority are necessary for it to operate and direct the affairs of the fire department, including, but not limited to, the right to direct the work force, to plan, direct, and control the operations and services of the fire department, to determine the methods and means by which such operations and services are to be conducted, lawfully recruit, assign, reassign, or promote employees within the fire department and, for just cause, to demote, suspend, discipline or discharge employees, and to make reasonable changes or eliminate existing methods, equipment or facilities.

Eleven of the 15 cities used by the panel as comparable cities have management rights clauses. The panel believes such a clause should be included in the contract and supports the Union's proposal until such time as the parties may negotiate changes.

VII. Prevailing Rights

Article XXI - PREVAILING RIGHTS - in the 1978-1979 agreement between the parties states:

All rights and privileges held by the employees at the present time which are not included in this agree-

ment shall remain in force, unchanged and unaffected in any manner.

The City proposes that Article XXI be amended to state:

Except as otherwise stated in this Agreement, the Employer agrees that in placing the terms of this Agreement into effect it will not cancel rights or privileges generally prevailing for employees even though such rights or privileges are not itemized in this agreement.

The Union states the present wording of Article XXI has been in the contract since 1971 and there is no reason for a change.

Of the 15 cities deemed comparable to Puyallup by the panel, City Exhibit 52 provides data on 14. Six of these have no prevailing rights clause, 6 have clauses we deem similar to the clause in Puyallup's 1978-1979 contract, and 1 or possibly 2 have clauses we deem similar to the City's proposal. The parties have had the present provision in the agreement since 1971. The panel agrees with the Union that there were no compelling reasons presented to the panel for a change in the article, and that the phrase "generally prevailing" is ambiguous and would present problems of interpretation. The panel thus feels that there should be no change in Article XXI until it is negotiated by the parties themselves.

VIII. Sick Leave

Both parties proposed to change the sick leave provisions of the 1978-1979 agreement. The City proposed to reduce sick leave for non-duty connected injury or illness from 12 to 10 hours per month for 24-hour shift personnel, whereas the Union proposes to retain the 12 hours per month and, for LEOFF II employees, create a "bank" of 144 hours sick leave when a new person is hired and have that person "pay back" by cutting his accrual rate from 12 hours to 6 hours per month during his third and fourth year of employment.

The parties are in agreement in their proposal that 8 hour shift *personnel should accrue sick leave at the rate of 8 hours per month to a maximum of 1040 hours.

Article X of the 1978-1979 agreement provides:

Upon termination of employment, whether voluntary, involuntary, or by retirement, the firefighter shall receive one-half accumulated sick leave up to 65 days

at regular rate of pay as severance pay; except an employee terminating employment by retiring with 25 or more years of service with the City shall receive 100% accumulated sick leave up to 130 days at regular rate of pay as severance pay.

Both parties made proposals regarding pay out of accrued sick leave, and both parties agreed such proposals would apply only to employees hired after January 1, 1980. The City proposed pay out of accrued sick leave only upon normal service retirement, after 25 years, and not if an employee resigned or was discharged. The Union proposed pay out of accrued sick leave be denied if an employee terminated voluntarily prior to 25 years of service. The panel feels that if an employee terminating voluntarily prior to 25 years of service is denied sick leave, there is even greater reason for denying accrued sick leave to an employee discharged. Moreover, City Exhibit 55 indicates that, of 14 comparable cities, 11 pay out no accrued sick leave when an employee terminates. The City's proposal should be included in the 1980-1982 agreement, as follows:

Upon termination, any employee hired after January 1, 1980, shall receive no cash value of any sick leave accrued but not used, except upon normal service retirement.

The Union further proposed that, for LEOFF II employees, sick leave shall be used for on-the-job injury to supplement workmen's compensation so that the employee would receive 100% of his base pay. The City's proposal was that LEOFF II personnel injured on the job shall be covered in accordance with Washington State Law through Workmen's Compensation.

The panel was given some evidence that further negotiations between the parties may well have resulted in agreement on most of the items proposed on the sick leave issue. We believe that route is better than solutions imposed by the panel, and that present provisions on sick leave should be continued in the new agreement, with the two exceptions marked above by asterisks, until such time as the parties themselves may negotiate changes.

IX. Probation

As long as a probationary employee is eligible for a pay increase after 6 months, as he is under the City's proposal, the Union is in agreement. Therefore the City's proposal, as follows, should be included in the agreement as Article V:

All new employees shall serve a probationary period of one year, as per Washington State Civil Service Laws

and as implemented by City of Puyallup Civil Service By-Laws, and shall have no seniority rights during this period but shall be subject to all other clauses of this agreement. All employees who have been employed for one year shall be known as permanent employees and the probationary period shall be considered part of their seniority time.

It is understood that probationary firefighters will continue to be eligible for a salary adjustment after 6 months. The panel presumes Appendix B will be changed to indicate that a Firefighter 4th class is also Probationary.

X. Overtime

In the 1978-1979 contract, overtime was based on 2080 hours per year (or 40 hours per week). However, the current work week is 50 hours which translates into 2600 hours per year.

The City proposes 2600 hours per year as the basis for overtime, while the Union position is to leave it at 2080 hours per year.

Of the 14 comparable cities used by the panel, 12 base overtime on hours worked and 2 base overtime on a 40 hour work week.

The average overtime rate for the 14 comparable cities used by the panel is \$12.69. This compares to \$12.82 per hour for Puyallup if 2600 hours is used as a base.

The panel believes the City's proposal will place Puyallup in a reasonable relationship with comparable cities and should be included in the contract, to be effective at the beginning of the first pay period following receipt by the parties of the arbitration panel's award.

XI. Non-Pyramiding

The 1978-1979 contract has no provision for non-pyramiding. The Union opposes adoption of a clause, feeling it is not needed. The City proposes the following:

Compensation shall not be paid more than once for the same hours under any provision of this agreement. In no event shall any overtime, acting pay or premium pay be pyramided or be considered part of base pay under any provision of this agreement.

The panel is in sympathy with the City's intent in desiring this clause, but there was no evidence this is a critical problem, no evidence

of the existence of a non-pyramiding clauses in contracts of comparable cities, and a strong statement from the Union representative that pyramiding "has never happened in our City, we don't intend for it to happen, and we don't feel it's needed in the agreement."

The panel believes that any such clause should be negotiated and not mandated by the panel.

XII. Entire Agreement

The 1978-1979 contract has no clause on this subject. The Union opposes the addition of such a clause on the grounds it is not needed. The City proposes the following clause:

The parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreement arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of any or both of the parties at the time they negotiated or signed this Agreement. The parties further agree, however, that this Agreement may be amended by the mutual consent of the parties in writing at any time during its term.

On City's exhibit 60 there are contractual provisions on "complete agreement" quoted from the agreements of 11 cities. Of these 11 cities, 8 are among the list of comparable cities as judged by the arbitration panel. This means 8 out of a total of 15 comparable cities have some type of "complete agreement" clause. Many of these clauses merely provide that "no previously written or oral statements shall add to or supersede any of its provisions."

Since most comparable cities do not have the all-inclusive type of **entire agreement clause** proposed here, and since a compelling need for **such a clause has not been demonstrated, it should not be included in the 1980-1982 agreement.**

XIII. Medical/Dental Insurance

The 1978-1979 contract provided for the City to pay full premium cost of employees and dependents for medical, dental, vision and drug expenses. The City proposes that "no added costs be incurred by the City during 1980," prospective after the arbitration award. The City agrees to pick up the added costs, if any, in 1981 and 1982--but simply to have a cap on costs for the balance of 1980. The Union proposes to continue the present clause in the new agreement.

Since there was no evidence that a further increase in insurance premiums is likely in 1980, and since there will be only about 31/2 months left in 1980 when the arbitration decision reaches the parties, the panel feels that provisions in the 1977-1979 agreement should be continued in the 1980-1982 agreement.

XIV. Emergency Call-In

Article XIII in the 1978-1979 agreement includes this paragraph:

Whenever possible additional manpower requirements of the Fire Department shall be met by affording the opportunity to work to full-paid members of the Fire Department.

The Union wishes to retain this clause in the agreement since it has been in the agreement since 1973 and does not prevent the use of volunteers but only requires the City to call the career firefighters first.

The City proposes to omit the paragraph quoted above, so it will have the option of using volunteers if feasible for financial or other considerations. (There are currently no volunteers in the department.)

Examining cities in City Exhibit 63, of 15 cities deemed comparable by the panel, 7 use volunteers, 5 have all paid firefighters, and 3 did not report. The panel is not persuaded that this issue is sufficiently critical at this time to justify the panel imposing its opinion on the parties.

Thus Article XIII in the 1978-1979 agreement should be continued in the 1980-1982 agreement.

Seattle, Washington
September 18, 1980

RA Sutermeister, Chairman
Cabot Dow *
Doug McNall *

*Signatures do not indicated concurrence with every item.