International Association of Fire Fighters, Local 2221
And
Pierce County Fire District No. 9
Interest Arbitration
Arbitrator: Phillip Kienast
Date Issued: 12/18/1979

Arbitrator: **Kienast; Philip**
Case #: **02194-I-79-00060**
Employer: **Pierce County Fire District 9**
Union: **IAFF; Local 2221**
Date Issued: **12/18/1979**

IN THE MATTER OF ARBITRATION

PIERCE COUNTY FIRE DISTRICT #9 (Summit)	)	**OPINION AND AWARD of Philip Kienast December 18, 1979**
and	)	
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 2221	)	**RE: Interest Arbitration on 1980 Contract**

APPEARANCES

For the Union:

Mr. Ronald E. Menge, Secretary-Treasurer

For the District:

Mr. Frank Wally, Commissioner

OPINION

This proceeding is pursuant to RCW 41.56 and applicable administrative codes as adopted by the Washington State Public Employment Relations Commission. A hearing in this matter was held on November 5,

1979 at which time both parties were afforded unlimited opportunity to present evidence and argument regarding the issues in dispute. Post hearing memorandum were simultaneously submitted by mail on November 15, 1979 and the record in this matter closed upon their receipt by the Arbitrator on November 17, 1979.

At the time of the hearing the parties stipulated the following items for a successor contract to the current Agreement (J2)* between the parties were unsettled and properly before the Arbitrator for disposition (Jl).

1. **Wages**
2. **Hours**
3. **Educational Reimbursement**
4. **Sick Leave**
5. **State Industrial Insurance**
6. **Term of Agreement**
7. **Holidays**
8. **Shift Changes**

RCW 41.56.460 specifies the criteria or factors the Arbitrator must consider in his decision:

> **41.56.460 Uniformed personnel - Arbitration Panel Basis for determination. In making its determination, the panel shall be mindful of the legislative purpose enumerated in section 1 of this 1973 amendatory act and as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:**

***J, U and E respectively denote Joint, Union and Employer exhibits.**

(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 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.

(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.

(g) Findings of fact made by the fact-finder pursuant to section 3 of this 1973 amendatory act. [1973 c 131 sec. 51

41.56.430 Uniformed personnel - legislative declaration.
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. [1973 c 131 sec. 2.]

The Arbitrator has carefully considered all these factors in deciding the aforementioned issues as set out below.

The parties' presentations, especially the Union's, indicate some uncertainty as to the decision rules that shall be applied by the Arbitrator in determining the issues in dispute. In particular the Union notes in its post hearing memorandum:

> **I would like to start this letter off by saying that I am very unhappy with the way that the Arbitration Case went. This is all new to me and deep in my heart I felt that justice would be served. We are a small Department and have traditionally been much more dedicated than most other Departments. We have always worked harder and given our "free time" generously. Somehow I felt that in this proceeding we would be rewarded for a job well done. Such was not the case.**
>
> **You have talked about gains and total packages. After much thought and talking it over with a disappointed membership, I would like to clarify a few things. The Union entered into Negotiations by bargaining in "good faith" and we have**

> **continued to do so. This is something we feel the Commissioners have not done. When we entered into this we did not do so with inflated requests or "give away" items. We feel justified in everything we have asked for. However, you gave me the impression that no matter which side was right, each side had to give a little. We do not have any "give away" items, so I will list the items in order of importance to us.**

First and foremost, the Arbitrator would emphasize that he does not automatically "give a little" to each side. Rather he looks at each issue and awards on the basis of the legislated criteria set out above. In this regard the Arbitrator would call the Union's attention to his Award in the matter of interest arbitration between City of Yakima and IAFF Local 469 (January 30, 1975) in which he affirmed the Union position in whole based on his analysis of the parties' positions relative to the aforementioned criteria. If neither parties' position is affirmed in total in the instant case it indicates not a predisposition of the Arbitrator to give each side "a little," but rather his firm conviction that his determination meets the mandate set out in RCW 41.56.

Second, in making his decision the Arbitrator is constrained to do so on the record made by the parties. Thus, the Union assertion that its members are more dedicated. worked harder and give of their time more generously" remains just that--an assertion. The Union introduced no significant evidence in the record of this proceeding to document this assertion. While the Union may have cause to "feel" the Commissioners have not bargained in "good faith" they have not proved such bad faith by the evidence in the record of this proceeding. The process of interest arbitration would lose credibility entirely if an arbitrator were to give any probative weight to such assertions. If the Union believes its members work harder or smarter than they did previously or in comparison to fire fighters in other departments it is incumbent on it to prove it by the weight of the evidence. The Union most certainly would not want the issue decided substantially against them on the basis of Employer assertions unsubstantiated by the evidence. As to the importance of the record see this Arbitrator's award in City of Billings, Mt. and IAFF Local 521 (June 19, 1979).

The first principal of this Arbitrator's decisional framework is that interest arbitration constitutes an extension of collective bargaining. This point of view is one normally and traditionally taken by arbitrators of interest disputes. For an eloquent elaboration of the implications of this viewpoint the Arbitrator refers the

parties to the opinion of his colleague, Adolph Koven, in Associated Hospitals of the East Bay and ILWU, Local 6 (71-2 ARD 8479) where he states in part:

> **Not only is the 'interests' arbitration an extension of the collective bargaining process but it is also an extension of the particular quality, in strength and in weakness, of the specific collective bargaining situation and relationship. In this sense the parties can neither disengage themselves from their history nor can they disengage themselves from their relative positions vis-a-vis the other party. They each come with the very same luggage they previously carried to their negotiations and cannot expect it to become heavier or lighter simply because they now come before an interests' arbitrator.**
>
> **Without question, the most extensively used standard in 'interests' arbitration is 'prevailing practice' (Cleveland Transit and Amalgamated Transit, 45 LA 905).**
>
> *******
>
> **In the final analysis, the weight to be accorded a standard in any given case is, or should be, the result of the evidence submitted by the parties in respect of its application.**
>
> **[For a concurring view see also Arbitrators Frank Eklouri and Edna Elkouri, How Arbitration Works, 3rd ed., 1973, Chapter 18.1**

A large portion of "the luggage" the parties brought with them into this proceeding is found in their current Agreement (J2) . One of the best guides an arbitrator has in determining what would be reasonable to award in a new contract is what the parties themselves have found reasonable to agree to in the past. Stated another way, the party proposing new provisions or a break from past wage/benefit patterns bears a heavy burden of proof that such a change is now appropriate. As noted above,one of the best measures of appropriateness is the "prevailing practice" or comparability standard. In this latter regard joint exhibits on five purportedly comparable fire departments were submitted: Parkland, City of Puyallup, University Park, Spanaway and Lakewood (J2-7 and U 2-6) . After a careful analysis of this evidence the Arbitrator has concluded that three; Parkland, University Park and Lakewood represent fire department operations most comparable to that found in District #9 (Summit) and looked principally to these three for guidance as to prevailing practices.

In terms of statutory authority and ability to pay the Arbitrator finds no significant difference between District 9 and these three. A basic comparison of the wage/benefit packages in the three jurisdictions discloses

	1979	Monthly Salary	Education Incentive pay[c]	Medical Dental	Sick Leave [e]	Holidays
Parkland	($l,376)	$1,560	6%	$95	None	9
University Park	($1,441)	$1,624[b]	6%	$105	10/20	9
Lakewood	($1,462)	$1,624[b]	5%	$135	3/30	11
Summit[a]	($1,465)		6%	$90	None	9

[a] Current terms except for $90 medical/dental figure already agreed to for 1980.

[b] Represent average monthly salary to be paid in 1980 per contract formulas.

[c] Percentage increment for AA degree in fire science.

[d] Maximum amount payable for dependent medical and dental coverage.

[e] Number of shifts paid sick leave LEOFF 1/LEOFF 2.

On the basis of a comparison of the wage benefit packages shown above and a cost of living change of roughly 11% over the last year,* the Arbitrator concludes an 11.5% salary increase is warranted for the 1980 contract. This increase will not only keep the average monthly salary in Summit ahead of those in the other 3 districts in 1980 as they were in 1979, but also provides a larger salary differential as an offset for the significantly large contributions made in these other districts to medical and dental insurance premiums. The Arbitrator would have preferred to allocate the money represented by .5% of the awarded salary to increases in medical and dental insurance contributions but was precluded from doing so by the parties' settlement of that figure prior to arbitration. This preference is based on the fact that the same amount of dollars provides more real compensation gain to the employees at less ultimate cost to the District when social security and income tax factors are considered. The

Arbitrator would note that the parties are free to mutually modify the salary award to accomplish a greater allocation of total compensation dollars to medical and dental premiums.

***11.7% if measured July to July and 10.7% if measured September to September; based on changes in Seattle urban and clerical workers index.**

Also, as a matter of basic equity, this Arbitrator finds no reason to award any larger salary increases in the context of a current negative trend in real compensation for the average American worker. Recent published figures from the Bureau of Labor Statistics (USDL-79-307) reveal that in the twelve month period beginning April 1, 1978, the real compensation of the average private sector worker in the U.S. declined at an annual rate of 0.2%. This measure reflects changes in wages, salaries, holiday pay, vacations as well as employer contributions to employee benefit plans such as medical and pension programs. Given the hike in medical/dental contributions already agreed to by the parties, the Arbitrator estimates that the average fire fighter in Summit will experience significant real compensation gains superior not only to the average worker, but by all appearances, to an elite class of wage earners, namely, unionized building tradesmen. A recent BLS analysis of compensation provisions in building trades contracts across the country disclosed that in the twelve month period beginning April 1, 1978, wage rates rose by only 6.0%. When employer paid benefits for paid insurance, pensions and paid time off are added to the basic wage the increase rose to only 6.4% [USDL 79-324] . During this same period the annual percentage change in the CPI for the U.S. as a whole was 9.9%. Clearly these tradesmen experienced no real compensation growth as a result.

In light of the foregoing, the request of the Union that the Arbitrator further accelerate the rate of real compensation growth for Summit fire fighters is denied. The Arbitrator believes, absent extraordinary justifications, that equity requires a balance be maintamed between real compensation growth among all wage earners, public and private--although recognizing that in some periods one or the other will grow at a somewhat faster rate. Depending on the period, this might justify a tempering of adjustments to the "economic package" of the Union's members as is the case now, while in other periods it may similarly warrant enhancement of a fire fighters compensation package. The Arbitrator acknowledges the validity and well accepted arbitral principle that public employees should not be asked to subsidize public services through the acceptance of substandard wages. But he is also of the opinion that its converse is equally valid as well as relevant to the instant case; namely, that private employees should not be asked to underwrite compensation levels for public employees above the norm

for comparable work in the private sector. All workers desire to maintam and enhance their real compensation levels as well as their relative position within the economy 5 compensation hierarchy. On the basis of the record before him, the Arbitrator can find no compelling reason to further accelerate the rate of real compensation growth for Summit fire fighters through an endorsement of the Union's proposed salary adjustment of 15%.

The Arbitrator further concludes no change in the educational incentive plan is warranted at this time save for a clarification in the language to have the specified incentives apply to all employees regardless of date of hire. The Union did not make a persuasive case as to why incentives above the AA degree should be offered. Moreover, further incentives are not paid in the other three districts. The District presented no persuasive evidence as to why the incentives should be limited to those who were employed at the time the provision was inserted. The language discloses no clear intent to so exclude new hires from the benefit and the District presented no evidence other than heresay that such a limit was the clear mutual intent of the parties.

As to the issue of sick leave the record discloses substantial support for the inclusion of a sick leave provision in the new Agreement. Such provisions are already included in the Lakewood and University Park contracts. Recent changes in the IFOFF System make such provisions appear as a reasonable response to a genuine but different need for both LEOFF 1 and LEOFF 2 employees. In this regard the Arbitrator believes the Union proposal (U7) misses the mark. It fails to distinguish between the two. It also provides for benefits far out of line with the pattern found in the Lakewood and University Park contracts. The Arbitrator has therefore awarded a sick leave clause that closely parallels this pattern and reflects some of the concerns raised by the District on this issue.

There is little evidence regarding the issue of industrial insurance in the record of this proceeding. In the absence of any evidence to the contrary it does not appear to be the practice in any of the three comparative jurisdictions or the fire service in Washington generally. Moreover, the equity argument forwarded by the Union is not persuasive in and of itself since it is not uncommon to find employees in the same organization enjoying some differential benefits based on date of entry into the system. In the face of such a record the Arbitrator is constrained at this time to deny the Union proposal on this issue.

As to the issue of hours it is the District who seeks to change

the current language which provides for a "Detroit 56 hour/24 hour shift schedule" to permit a change to a 40 hour, five day staggered shift schedule. Since such a change would admittedly alter a long standing shift practice codified in the current Agreement as well as the patterns of the comparison jurisdictions, the District bears an especially heavy burden of demonstrating the need for such a radical change. The District presented a woefully inadequate case to justify such a severe modification of this long standing provision of the contract. Moreover, since the parties have stipulated this shall be only a one year Agreement, the District will have an opportunity shortly to achieve this change over the bargaining table--a more proper place to make fundamental changes in working conditions than an Arbitration proceeding. Therefore the Arbitrator denies the modification language change in the hours provision of the new Agreement as requested by the Employer.

For many of the same reasons the Arbitrator denies the Employer's proposal to change the Agreement language on shift changes. The Employer has failed to convince the Arbitrator that this language has caused any problems and was therefore in need of reformation. The same is true regarding the Union's proposed modification.

As to the remaining issues the parties appear to be in substantial agreement. Regarding holidays the Arbitrator concludes from the positions of the parties and similar provisions in the three comparison jurisdictions that the addition of one floating holiday (for a total of 10) for day shift people and one additional shift (for a total of 7) for 24-hour-personnel is warranted and so awards. At the time of the hearing the parties stipulated that a one year Agreement was their joint request of the Arbitrator.

AWARD

1. Wages:

Increase base monthly salaries in the current Agreement by eleven and one-half percent (11.5%).

2. Hours:

Current Agreement language.

3. Shift Changes:

Current Agreement language.

4. Holidays:

Add one (1) new undesignated or floating holiday for a total of ten (10) with 24 hour shift employees being given one (1) additional shift off per year for a total of seven (7) during 1980. All other language in the holiday provision to remain unchanged.

5. Educational Incentive:

Revision of current language under subsection Incentive Pay, Appendix E.

> **In order for employees to better serve the department, a six percent (6%) pay increase shall be awarded to any employee, regardless of date of hire, who receives the Associate Degree in Fire Command and Administration. Three percent (3%) to be awarded when the Certificate Award is earned and three percent (3%) when the Degree is earned. Those employees hired after January 1, 1978 shall be required to earn the degree while with the department.**

6. Industrial Insurance:

Union request for addition of language to provide Employer payment of total premium denied.

7. Term:

One (1) year: January 1, 1980 through December 31, 1980.

8. Sick Leave:

Addition of the following Article to the new Agreement:

Section 1. LEOFF Plan I covered employees:

a. Shift personnel shall be granted three (3) shifts and day personnel five (5) working days cumulative sick leave per year to a maximum of 12 shifts or 24 working days to be used prior to application for Disability Leave under the Washington Law Enforcement Officers and Firefighters Retirement System.

b. Employees having accumulated sick leave, who are absent due

to reasons listed in Section 3 of this Article, for more than twelve (12) shifts or twenty-four (24) working days, as applicable, shall charge the absence to accumulated sick leave commencing on the~first hour the employee was unable to report for work.

c. Employees having accumulated sick leave shall exhaust such sick leave prior to applying for LEOFF Disability Leave and such disability leave shall be effective as of the first hour the accumulated sick leave is exhausted.

d. When an employee, who has no accumulative sick leave, applies for disability leave, the commencement of the disability leave shall be as of the first hour that the employee was unable to report to work.

Section 2. LEOFF Plan II covered employees:

a. Full-time employees assigned to a 56-hour work week shall accumulate paid sick leave at the rate of twelve (12) hours for each full month of service up to a maximum accumulation of seven hundred twenty (720) hours.

b. Full-time employees assigned to a forty (40) hour work week shall accumulate paid sick leave at the rate of eight (8) hours for each full month of service. Maximum accumulation for employees shall be five hundred forty (540) hours. Sick

c. Shift personnel shall be granted three (3) shifts and day personnel five (5) working days nonaccumulative sick leave. Employees who are absent due to reasons listed in Section 3 of the Article, for more than three (3) shifts or five (5) working days, as applicable, shall charge the absence to accumulated sick leave commencing on the first hour the employee was unable to report for work.

d. In the case of employees who are absent due to illness or injury for which they are receiving payment from State Industrial Insurance, the Employer's obligation shall be limited to the difference between the employee's basic salary and the amount received from the State. Sick leave shall be charged on a pro rate basis in such case until exhausted.

Section 3 Sick leave shall be granted for the following reasons:

a. Personal illness or incapacity of the employee;

b. Enforced quarantine of the employee by a public health official.

Section 4.

When an employee goes on sick leave he must notify his supervisor immediately. Failure to do so may result in denial of sick leave pay. The Chief or his designee may require certification of the employee's condition by a physician upon the employee's return after the third sick leave absence in any calendar year.

Section 5.

No compensation for accrued sick leave shall be paid at the termination of employment.

Section 6.

Sick leave shall not accrue during leaves of absence without pay or layoffs.

9. The Arbitrator reserves jurisdiction to resolve any disputes arising over the implementation of this Award.

Philip Kienast
December 18, 1979
Seattle , Washington