

**City of Bellingham
And
Staff Officers of I.A.F.F. Local No. 106
Interest Arbitration
Arbitrator: Val D. Spangler
Date Issued: 05/01/1981**

**Arbitrator: Spangler; Val D.
Case #: 03430-I-81-00081
Employer: City of Bellingham
Union: IAFF; Local 106
Date Issued: 05/01/1981**

**Arbitration Opinion
and
Award**

In the matter of interest arbitration between Staff Officers of I.A.F.F Local # 106, Union and City of Bellingham, City.

Case. no. 3430-I-81-81. Arbitrator, Val D. Spangler.

I. Background:

On October 29, 1976, the City of Bellingham filed a petition with the Public Employment Relations Commission seeking clarification of an existing bargaining unit. Substantial delay occurred in the processing of the case while the parties awaited rulings on similar issues on other cases then pending before the Commission. The City made a request to proceed on May 3, 1978. A hearing was held by a P.E.R.C hearing officer on August 14, 1978, with both parties filing post-hearing briefs, the last of which was received by the hearing officer on October, 1978.

The order clarified the existing bargaining unit of "all regular full time uniformed employees of the Bellingham Fire Department except the Fire Chief and the Assistant Chief" "to exclude the Battalion Chiefs) the Fire Marshall and Medical Services Officer in addition to the previous exclusion of the Fire Chief and Assistant Chief." That order was dated January 17, 1979.

This bargaining unit of Staff Officers of I.A.F.F. Local #106 was formed in 1980. Present positions in the bargaining unit include 3 Battalion Chiefs, one Fire Marshall, one Medical Services Officer and one Chief Training Officer.

Negotiations for this contract commenced September 4, 1980. Eight negotiations sessions were held through January 30, 1981. Mediation was conducted commencing March 27, 1981, for four sessions, the last being April 26, 1981. Additional efforts were made to settle but were not successful. The parties

were declared to be at impasse and were directed to proceed with interest arbitration in a letter of May 4, 1981, from Mr. Marvin Schurke, Executive Director, P.E.R.C..

The parties agreed to submit the remaining issues in dispute to this single arbitrator. A hearing was held on June 24 and June 25, 1981, for a total of 15 hours. The hearing was formally closed by operation of the arbitrator's receipt on July 8, 1981, of a letter from the representative of the City dated July 6, 1981, accepting the Union's withdrawal of its proposed Article - Position Elimination. This issue had remained unsettled because of the parties' desire to obtain legal opinions on the jurisdictional matter raised by the arbitrator at the hearing regarding this issue.

II. Issues:

1. Purpose
2. Union membership
3. No strike
4. Prevailing rights
5. Management rights
6. Position elimination
7. Bereavement leave
8. Hours of work
9. Overtime
10. Vacation
11. Union management relations
12. Longevity
13. Educational incentive
14. Wages
15. Duration

III. Positions of the Parties:

Purpose. Agreement reached by the parties at the hearing.

Union membership. The Union seeks an agency shop type clause that is modified to allow non-members of the Union to have voting rights on "any and all collective bargaining matters (but not internal Union functions)." Provisions for dues deduction also is requested. The gist of the Union's argument for this clause was that of "past practice." The contention being that these employees had the right and protection when members of the regular firefighters' unit and should not lose that right because of the clarification of that unit. Comparison to the conditions of employment in other cities and counties was not made.

The City bases its firm opposition to the institution of compulsory union membership or compulsory service charges in lieu thereof for several reasons but particularly because of the management nature of this group and

the fact that five out of six members of the bargaining unit already have dues deductions operating. The City indicates, "where mandatory membership exists in labor agreements in comparable cities, such provisions have been included by mutual agreement of the parties," not by interest arbitration. The vast majority of management personnel in fire departments in comparable cities have no obligations for involvement in union membership whatsoever.

No strike. Agreement reached by the parties just prior to the hearing.

Prevailing rights. The Union indicates its desire to maintain as broad protection for the employee as possible while respecting the need for a simple agreement that is "management oriented." This language was available in the previous bargaining unit agreement and the Union feels the employees have been hurt in the two years they have been without coverage by a collective bargaining agreement. The Union wants "at least the same protections as the employees they supervise."

The City's position is basically two-fold. First, the ambiguity and uncertainty created by such a clause threatens to destabilize the Agreement and the Union-City relationship. Second, the clause is inconsistent with the statutory framework for bargaining in that it discourages good faith bargaining efforts of the parties to achieve a definitive and administrable agreement.

Management rights. The City proposes its detailed and strong management rights clause as being consistent with sound labor-management relations, contributing to full and mutual understanding as an appropriate quid pro quo for rights agreed to by the City and not inconsistent with the clauses in comparable cities.

The Union's position is that no management rights be included at all and particularly not one that is so strong. The city's position is viewed as impugning the integrity of the employees of the unit who consider themselves to be a part of management and not susceptible to the conflict of interest problems the City views as inherent in having supervisory employees represented by the same exclusive bargaining representative as that of the employees they supervise.

Position Elimination. Proposed article withdrawn by Union.

Bereavement leave. Agreed to by the parties just prior to the hearing.

Hours of work. Agreed to by the parties just prior to the hearing.

Overtime. The Union is seeking time-and-one-half pay for all hours worked in excess of normal hours on the basis of two thousand eighty hours per year for all employees in the unit. Employees shall have a choice of receiving a cash compensation or compensatory time. Although not clearly

indicated by the language of its proposal the Union expects the overtime pay to be applied to emergency call back not regular (e.g., staff meetings) type duties in excess of 40 hours per week. The Union again stated its belief that the benefits available to the staff officers should be no less than that of the employees they supervise.

The City presented its position as being a package proposal including its offers on both overtime and vacation. Unless the City's offer regarding improved overtime pay is coupled with a change in the vacation benefits available to Battalion Chiefs, the City's position is that there can be no change in either. The City indicates strong opposition to the idea of the Battalion Chiefs having the best of both worlds by getting time and one half for overtime and staying on the comparatively better exempt employee vacation plan. Comparability data indicates the position of the City to be better than all but one of the 12 comparable cities used by the City.

Vacation. As explained in the preceding section on overtime the City is seeking to modify downward the benefits available to staff officers on the exempt employee plan if they are to be paid overtime according to the terms proposed.

The Union seeks to continue to receive the favorable vacation schedule and be eligible for time and one half for the overtime.

Union management relations. The Union is seeking to have, after appropriate notice, the City pay for the replacement of one of the Battalion Chiefs for each session of negotiations when that Battalion Chief is working a 24 hour shift and for no loss of pay for any staff officer attendance at any of these sessions during his normal working hours. The small number of people in the unit makes such a release imperative for effective representation during negotiations.

The City is not opposed to allowing the time off for negotiations or other employee relations matters as long as it does not force the City into an overtime situation.

Longevity. The Union considers longevity to be a small allowance that recognizes an employee's increased worth through time. Because these staff positions are career positions with limited advancement opportunity within the system and less without, longevity provides incentive and reward for continued service and loyalty to the City. Three Washington cities provide longevity plans for their firefighter bargaining units.

The City considers additional pay solely for endurance to be inconsistent with sound management practices in compensation and particularly the underlying principles of the City's pay-for-performance. Reward for improved performance is provided for in the City's pay plan. Longevity is not the practice for staff officers outside rank-and-file units in comparable cities. It is not provided any other group of managerial employees in the City.

Educational incentive. Agreed to by the parties during the hearing.

Wages. The Union's Salary Plan rests upon the assumptions that all positions within the bargaining unit are of corresponding responsibility and rank and that they should be distinguished from the positions they supervise by a set minimum differential of 6% between the top Captain's pay and that of the minimum of the staff officers' salary range. Steps increments are for 6% per year for three years to the "fully competent" level. Additionally, all appointed to staff positions are to be paid within the established salary range.

The base figure used by the Union of \$2,425 represents 6% over the top Captain's pay excluding longevity. This aspect of the plan reflects a prime concern of the Union--preventing the dramatic compression of the pay spread between staff officer (supervisor) and supervisee. Opposition to the City's salary plan focused on the disagreement with the relative job values assigned to the positions within the unit, the failure to acknowledge factors relevant to staff officers but not to other management positions (e.g., risks to health and safety, requirement of 24 hour "pager" use and unusual hours of work). Concern was also stated about possible devaluation of job values for pay purposes.

The Union's salary plan proposal at the hearing was substantially different in size, distribution and rationale from the last one proposed in mediation. The mediation salary plan had been more a reflection of the City's proposal and underlying salary plan. The Union hearing proposal did not differentiate between staff officer position requirements. It was significantly higher. The plan provided for one year with a reopener proposed in 1982.

SALARY PLAN

The positions represented by the bargaining unit all share levels of rank and of corresponding responsibility which distinguish them from the positions they supervise. Equity within the department salary structure requires that the salary range for these positions should reflect this.

**MINIMUM OF THE STAFF SALARY RANGE WILL BE 6% ABOVE TOP CAPTAIN.
ALL APPOINTEES TO STAFF POSITIONS WILL BE PAID WITHIN THE
SALARY RANGE.**

Normal development within a staff position will result in the officers' progressing to a fully competent level in three years.

**THAT PROGRESS WILL BE REFLECTED IN ANNUAL SALARY INCREMENTS
OF 6 PER YEAR WHICH IS CONSISTENT WITH THE DEPARTMENT'S
ADVANCEMENT STRUCTURE AND IS A REASONABLE SALARY ADJUSTMENT**

FOR SATISFACTORILY DEVELOPING PERFORMANCE IN CAREER POSITIONS.

Entry pay upon promotion to a Staff Officer Supervisor & Unit position will be: **\$2,425.00**

Utilizing a City plan for supervisory approval that the employee is performing at a fully competent level, the following salaries are in effect:

After one year of competent performance	\$2,570.00
After two years of competent performance	\$2,724.00
After three years of competent performance	\$2,888.00

The City made many comparisons between its proposed plan (developed by using the Willis Job Evaluation System) and that of the Union. Its plan was characterized as a move forward to a rational performance based system away from the traditional "keep ahead of the employees supervised" approach. The City relied on the statutory criteria while the Union did not. The Union proposal was criticized for making no distinction between positions and position holders for pay purposes. If the Union's plan was to be adopted it was alleged that it would be likely to lead to more impasses and interest arbitration. The consideration that was labeled pivotal by the City was that the City justified its plan through reason and a well organized presentation reflective of the statutory criteria. Its proposal was identified as an extension of its good faith bargaining. The Union's plan was characterized as a radical departure from the position in mediation, not reflective of good faith bargaining, contrived for interest arbitration purposes and not well prepared with reference to the statutory criteria in R.C.W. 41.56.

The City considered its offer substantial with an adjusted (minus dollar value of job value upgrade) increase in average salary of 15.3%. The City's offer was compared favorably with fire staff officers salaries in cities of similar size on the west coast (that average increase being 10.5%). Favorable comparison was made to other managerial and supervisory employees in the City and to the C.P.I. for the last five years.

SALARY PLAN

1. The City proposes that the 1981 salary plan for fire staff officers be as set forth below. This is consistent with all other management personnel in the City.

a. **Salary Range (monthly salaries).**

<u>Classification</u>	<u>Points</u>	<u>Min.</u>	<u>Range for 1981 Mid-Point</u>	<u>Max.</u>
Training Officer	442	\$1874	2205	2536
Battalion Chief	446	1879	2211	2543

Fire Marshall	446	1879	2211	2543
Medical Service Officer	562	1929	2269	2609

Note: The Training officer range is a newly established range. The above salary ranges were derived by using the Willis Job Evaluation System.

b. Staff Officer Salary Placement (monthly salaries).

<u>Classification</u>	<u>Proposed</u>			
	<u>Salary 1981</u>	<u>1980 Salary Inc.</u>	<u>(\$ Inc.</u>	<u>(% Inc.</u>
Training Officer	\$2162	\$1688	474	28.1
Battalion Chief	2408	2087	321	15.4
Fire Marshall	2348	2087	261	12.5
Medical Service Officer	2276	1958	318	16.2

Note: The increase for the Training Officer includes an 11% job audit adjustment.

SALARY PLAN (continued)

Both the City and Union's last offers in mediation were based upon an effective date of May 1, 1981. (See City offer dated 4/26/81 and Union response dated 4/27/81.)

Accordingly, the effective date of the City's proposed 1981 salaries is May 1, 1981.

The placement of the employees in the pay range is based upon merit in accord with the City's salary administration plan which is applicable to all professional and managerial employees of the City.

2. **Administration of Salary Plan.** According to the City's offer, the pay for the performance plan will be administered as follows:
 - a. **Promotion.** When an employee is promoted to a staff officer unit position, he/she shall receive a minimum 5% promotional increase or the minimum of the applicable pay range, whichever is greater.
 - b. **Advancement to Fully Competent Pay.** After three years in a position in the bargaining unit, the employee shall be compensated at the fully competent level of pay (mid-point); provided the employee's performance is fully competent.
3. The City further proposes that effective May 1, 1982, the salary ranges in effect on April 30, 1982, be increased to the following:

a. **Salary/Range (monthly salaries).**

<u>Classification</u>	<u>Points</u>	<u>Minimum</u>	<u>Range Effective 5/1/82</u>	
			<u>Mid-Point</u>	<u>Maxim</u>
Training Officer	442	1986	2337	268
Battalion Chief	446	1992	2344	269
Fire Marshall	446	1992	2211	254
Medical Service Officer	562	2045	2405	276

b. **Salary Placement (monthly salaries).**

<u>Classification</u>	<u>Proposed 1982</u>			
	<u>Base Salary</u>	<u>1981 Inc.</u>	<u>(\$ Inc.</u>	<u>(% Inc.</u>
Training Officer	\$2292	2162	130	6.0
Battalion Chief	2552	2408	144	6.0
Fire Marshall	2489	2348	141	6.0
Medical Service Officer	2413	2276	137	6.0

c. **Administration of Salary Plan. No change is proposed.**

Duration. The Union proposes a two-year contract beginning May 1, 1981, with reopener on May 1, 1982, on wages, hours, overtime and clothing policies. The purpose of the reopener is to allow comparison with the wage and benefits improvement of the regular firefighter unit in the City. The it Rights (continued).

While recognizing the need of the City, this arbitrator is not prepared to go as far in this direction as the City desires--that kind of a clause should be negotiated. The Management Rights clause of the City of Everett on page 3 of Employer exhibit no. 5ais a better choice under these circumstances.

Overtime and vacation. In recognition of the significant differences between Battalion Chiefs and other staff officers, between staff/supervisory employees and regular, hourly employees, comparability data compiled by the City favorable to their position and the financial condition of the City, the package offer of the City for the two proposals on overtime and vacation is awarded.

Union management relations. Because of the small number of staff officers available for negotiations (5), the City could be faced with significant overtime costs due to negotiations. There would be incentive to maintain a high percentage of staff members on the negotiating team and to prolong negotiations under the Union proposal. Given this incentive and the limited resources of the City it appears reasonable to encourage participation as long as it does not involve additional expenditures of

overtime. Thus, the City's proposal is awarded.

Longevity. Although there is considerable merit to the City's position it does not address the points of the Union's arguments and ignores the potential cost to the City of early retirements and increased turnover that may result from loss of incentive for continued service. The City recognized the value of additional experience in firefighting situations in its arguments concerning overtime and callbacks where Battalion Chiefs might be more desirable than Captains because of this experience factor. Without arguing the other merits of the City's pay plan a longevity provision would recognize the stress factors and community value associated with the performance of the duties in this unit. However, the Union's proposal is too generous for the present City financial circumstances. Accordingly, the longevity pay plan of the City of Bremerton cited by the Union in Union exhibit no. 14 is awarded.

Wages. The Union substantially modified its position on salary taken during mediation prior to its interest arbitration presentation. Such a decision is risky even when the new plan is a sounder, fairer one substantiated with new information, or better organized to justify its substance. Here, the Union made a dramatic but not well-documented change with little reference to the specific statutory criteria of R.C.W. 41.56 or other rationale other than wanting to keep a respectable pay spread between staff officers and the top paid employees in the rank-and-file unit.

The Union's equating of the positions in the unit for pay purposes defies reason even if it satisfies internal political needs. There are significant differences in the responsibilities of the positions, the salary relevant characteristics of the incumbents and job market factors. Realizing comparison with other cities is difficult because of the different positions and conditions present in this unit, little effort was made by the Union in this regard. The Union's position can be summarized by "the right to expect a reasonable pay increase through competence, over time" while "maintaining a proper spread between the unit and subordinates."

The City, on the other hand, presents a well conceived, well documented plan that is internally defensible and compares well when statutory criteria are addressed. However, this effort is made regarding the first year of the plan and not duplicated or approached when justifying the second year of the plan.

Union asserts the necessity for staff officers to get as much as the rank-and-file to prevent supervision problems from arising with the possibly higher paid subordinates. Such relative changes would also cause internal unit morale problems.

The City calls for a term of May 1, 1981, through December 31, 1982--20 months. That amount of time being considered necessary to provide a "shake-down" of the terms of the new agreement and to promote stability between the parties. To initiate a reopener on May 1, 1982, or have a one-

year contract would require negotiations to begin immediately after this arbitration opinion and award. Most comparable cities have two-year contracts.

IV. Discussion and Award:

Union membership. Generally, the agency shop provision is too fundamental and sensitive to be placed in a collective bargaining agreement other than by the direct negotiation and agreement of the parties involved. In the context of a purely supervisory unit, this general consideration has even greater validity.

The Union position ignores the considerations underlying the clarification of the rank-and-file unit in 1978. The application of the concept of "past practice" to this issue is also faulty because this is an interest arbitration for the first collective bargaining agreement between the City and a new bargaining unit even though the new unit is represented by the same exclusive bargaining representative affiliate as the original one was. It is not a grievance arbitration. The agency shop provision is more a Union interest as an institution need rather than an individual right transferred from one bargaining unit to another with the employee.

For these reasons, the City's proposal, Article 4--Union Membership, providing for dues deduction upon employee request and cited as Employer exhibit no. 3 is awarded.

Prevailing rights. No interest arbitration award should contribute to instability between the parties or discourage good faith bargaining efforts of the parties to determine wages, hours and conditions of employment. Part of the trade-off for an employer when its employees gain collective bargaining rights is the prospect of greater stability in union-management relations because of the existence of a known agreement for a set period of time. A clause such as this would result in the potentially continuous demand for bargaining over even minor matters of policy change. That was not the legislative intent behind R.C.W. 41.56. Such a provision, if it is to be included in a collective bargaining agreement, should be there only as a result of the negotiations of the parties not an interest arbitrator's award.

The City's position of no clause is awarded.

Management rights. Generally, the terms of management rights clauses should be determined by the parties through mutual agreement in negotiations. While the members of this bargaining unit are considered supervisory and "management" by both parties, that status is somewhat clouded by the choice of the same Union representative as that of the employees they supervise. The legitimate exercise of this right of choice does have implications in this context. The concerns of the employer were made very evident during the hearing and, it appears, during negotiations. Because of this factor and the implicit threat of conflict of interest, the City's need for such

a clause increases. The City would be remiss in its duties if it did not protect its ability to respond to possible manifestations of such conflict.

In comparison with the other 4 Washington cities in the comparability documents, the first year proposal fares well. The average on the top of the salary range is very close but the City proposed bottom of the range is significantly lower for each position. The first year plan compares favorably with the average figures of both the Oregon cities (3) and California cities (5) used for comparison.

After providing considerable evidence why the last 5 year C.P.I. figures are overstated by from 19-25%, the City makes a proposal for salary increases averaging 15.3% (after adjustments for job audit upgrading) while the average C.P.I. figure provided for the 1976-1981 period is about 11%. If this 11% is adjusted to accommodate the concerns of the City's chosen economic experts, the "real" average C.P.I. for the period ranges from 8.25% to almost 9%.

In contrast, the City, for the second year of the proposal, uses a 6% raise figure with no documentation, no evidence and little explanation. This 6% figure is considerably less than even the adjusted or real C.P.I. averages would tend to indicate. Also, no comparison figures were used to justify these figures.

The substance of the exhibits and testimony and the quality of the presentations leave little choice but to award the City's proposal for the first year of the Agreement. For the second year, adjusted C.P.I. figures and the likelihood of continued double-digit or near-double-digit inflation warrants an award of an 8% salary increase using the same plan with adjusted figures and administrative details of Appendix A of Employer Exhibit no. 14 for both years.

Duration. The duration of the contract is recommended to be May 1, 1981, through December 31, 1982.

Salary adjustments are to be awarded effective May 1, 1981, as agreed to by the parties as a part of the mediation process on April 27, 1981. Because there was no such agreement concerning any other pay matters, the award of longevity pay shall be effective as of September 1, 1981.

V. Summary of Award:

1. Union membership. The City's proposal.
2. Prevailing rights. The City's position of no clause.
3. Management rights. The clause of the City of Everett provided in Employer exhibit 5a.
- 4/5. Overtime and Vacation. The City's package proposal improving overtime and modifying vacation.

6. **Union management relations. The City's proposal.**
7. **Longevity. Longevity pay is awarded of 1% after 5 years, 2% after 10 years, 3% after 15 years and 4% after 20 years. Effective September 1, 1981.**
8. **Wages. First year: The City's proposed plan.
Second year: 8%, using the City's plan adjusted.**
9. **Duration. The City's proposal of a 20 month agreement, May 1, 1981, through December 31, 1982.**

Dated this 31st day of July, 1981.

For the City: Cabot Dow

Val D. Spangler, Arbitrator

For the Union: Stan Snapp