Bellevue Fire Fighters Local 1604, International Association of Fire Fighters, AFL-CIO, CLC
And
City of Bellevue
Interest Arbitration
Arbitrator: Howard S. Block
Date Issued: 06/30/1982

Arbitrator: Block; Howard S.
Case #: 03642-I-81-00083
Employer: City of Bellevue
Union: IAFF; Local 1604
Date Issued: 06/30/1982

ARBITRATION OPINION AND AWARD

In the Matter of Arbitration)
)
Between)
) Issues: Contract Terms
CITY OF BELLEVUE)
)
and)
)
BELLEVUE FIRE FIGHTERS)
LOCAL 1604, INTERNATIONAL)
)
ASSOCIATION OF FIRE)
FIGHTERS, AFL-CIO, CLC)
)

Impartial Arbitrator

Howard S Block, Esq.
1226 North Broadway
Santa Ana, California 92701

Hearing Held

March 16, 17 and 18, 1982
City Hall
Bellevue, Washington

Appearances

For the Union:	**James H. Webster, Esq.** **Durning, Webster & Lonnquist** **1411 Fourth Avenue Bldg., Suite 620** **Seattle, Washington 98101**
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PRELIMINARY OBSERVATIONS

This arbitration Proceeding arises out of an impasse in negotiations between the City of Bellevue, Washington (sometimes hereinafter referred to as "City") and the Bellevue Fire Fighters Local 1604 (sometimes hereinafter referred to as "Union") and was conducted pursuant to Chapter 41.56 RCW (Joint Exhibit 1).

The Union and the City are parties to a Collective Bargaining Agreement which expired on December 31, 1981 (Joint Exhibit 2). The parties commenced bargaining in Summer, 1981 for a new labor agreement covering approximately 90 bargaining unit employees in the City's Fire Department. They reached impasse on a number of issues and the Union invoked the provisions of RCW 41.56.430 et seq. for binding arbitration to resolve the impasse on these issues. Several issues were settled by the parties immediately prior to or during the hearing. The unresolved issues submitted for decision in this proceeding are the following:

1. **Monthly Salaries--Appendix A.**
2. **Cost-of-living Adjustment--Appendix A.**
3. **Hours of Duty--Article XII.**
4. **Vacation Leave--Article XVII.**
5. **Insurance Coverage--Article XXVII.**
6. **Disability Leave and Sick Leave for Employees Hired On or After October 1, 1977- -Article XXVIII.**
7. **Performance Recognition Program --Article X and Appendix B.**
8. **Longevity--New Section.**
9. **Communication Procedure (Labor~Management Committee)--Article XXV.**
10. **Prevailing Rights--Article XX.**
11. **Reduction and Recall--Article VII.**

The parties waived the tripartite arbitration panel and

selection procedures provided in RCW 41.56.450 and agreed to submit the foregoing issues to Impartial Arbitrator Howard S. Block, serving as sole Arbitrator, with all powers and duties of an arbitration panel under the statute. A hearing was held before the Arbitrator on March 16, 17 and 18, 1982, at which time all parties concerned were given a full opportunity to present evidence and argument bearing on the issues. Each party concluded its case with the filing of a Closing Brief on May 7, 1982. At the Arbitrator's request, the parties waived the 30 day statutory time limit for rendering the decision (Tr. 673:20-674:3).

The record of this 3-day proceeding is voluminous covering almost 700 pages of transcript and more than 100 exhibits, most of which contain detailed statistical comparisons concerning the issues submitted for decision. In addition, as part of their comprehensive Closing Briefs, the parties submitted both judicial and arbitral case authority to support their respective positions. While the Arbitrator has carefully scrutinized all of this evidence and argument, no constructive purpose would be served by reviewing all of the conflicting contentions of the parties or even most of them. Instead, the Arbitrator will focus his attention solely upon those considerations deemed controlling in resolving the issues presented for decision.

STATUTORY CRITERIA

RCW 41.56.460 (sometimes hereinafter referred to as the "Statute") sets forth the factors by which the Arbitrator must be guided in resolving the disputed issues. RCW 41.56.460(c) stresses the paramount importance of comparisons; it requires:

> **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.**

On first reading, it would appear that the foregoing language offers an unambiguous basis for comparison. Further reflection, however, poses a number of immediate questions. An assumption is warranted that "similar size" refers to Population; but does population mean only within the City limits or does it include contract areas served by the Fire Department - - a significant difference in the instant case which the Union has emphasized.

How close in size to be considered similar? What of intra~city comparisons, a factor of considerable importance in maintaining internal stability, which the City has stressed. Must all West Coast cities of similar Size be given the same weight in comparative analysis? Are the wages and benefits of metropolitan and rural cities truly comparable? Are there "other factors" (RCW 41.56.460(f)) that should be considered? These are just a few of the questions that, in the final analysis, must be considered in order to render a realistic decision that satisfies the statutory intent.

The range of alternatives available for comparison is nowhere more apparent than in the record of this Proceeding. The City and Union have both offered plausible contentions for sharply conflicting interpretations of the statutory criteria. In a prior proceeding between these parties just 2 years ago, the Union offered a somewhat different interpretation of how "similar size" should be construed (City Exhibit 23).

All of which brings us to the main point of this discussion, namely, that the legislature must have intended a flexible application of the statutory criteria in order to satisfy its stated "intent and purpose" as set forth in RCW 41.56.430. Otherwise, how could a single statute be administered equitably to cities as diverse as Seattle, Bellevue and Yakima, to name just a few? For example, on the basis of firmly established principles of wage and salary administration, the most relevant comparison to Seattle would be other large metropolitan cities on the West Coast Since appropriate local comparisons are not available; for Bellevue, the most relevant comparisons would be Puget Sound cities and West Coast cities of similar size that are contiguous to large metropolitan areas (a point elaborated shortly); and for Yakima, located in rural Washington, a separate and distinct basis of comparison is indicated.

In summary, the Arbitrator is convinced that the comparative criteria set forth in RCW 41.56.460(c) must be applied flexibly depending upon the particular city (or county) involved. The Arbitrator finds further support for this conclusion in the provisions of RCW 4l.56.460(f) which requires consideration of:

> **Such other factors, not confined to the foregoing, <u>which are normally or traditionally taken into consideration</u> in the determination of wages, hours and conditions of employment (Emphasis added.)**

The foregoing statutory language provides authority for the Arbitrator's reliance upon area comparisons, intra-city comparisons and the concept of individual issues in the context of a total economic package.

With these general observations in mind, we turn now to an application of these criteria to the instant case.

COMPARATIVE CITIES

While the City and Union both agree that comparisons of terms and conditions of employment are critical in this case, they have sharply divergent perceptions of the West Coast cities of "similar size" deemed comparable. That is hardly surprising. After all, the Union's and City's Counsel have an obligation to present their clients' case in the best Possible light. They have done so with resourcefulness and great conviction. Ambiguities in the Statute have been resolved in away most favorable to their respective client's Position. As a result, the evidence submitted reflects their highly Partisan views.

The comparative data offered by both the City and Union are useful and illuminating, but both are flawed in significant respects. For example, in the selection of its 15 comparative cities from Washington, Oregon and California (5 from each state), Bellevue has ignored one crucial fact namely, that it is located in the midst of a large metropolitan area. It is clear from the record of this proceeding and undisputed by the parties that compensation levels in large metropolitan cities and their environs are higher than those in less densely populated areas.[1] On the other hand, the comparative cities selected by the Union are more relevant, but the population spread of those cities (up to 249,999) is overbroad; furthermore, there is considerable merit to the City's arguments that the comparative data presented by the Union do not represent a true picture A further analysis of these comparative data is presented in the discussion of "Monthly Salaries."

[1] **Mr. Dow, the City's negotiator, concurred with Professor Knowles, the Union's economist, that higher wages generally prevail in metropolitan areas (Tr. 353:19-21).**

What then constitutes an appropriate basis for selecting comparative cities bearing in mind that exact comparisons are rarely, if ever, possible? Understandably, the parties were

faced with a dilemma in attempting to select cities of "similar size" within Washington that are truly comparable. No matter how loosely the "similar size" criterion is construed, few Washington cities other than Everett are truly comparable to Bellevue. Almost all Oregon cities of similar size are located outside of major population centers and, therefore, lack an important ingredient of comparability.

In interest arbitration, we usually look first for relevant local and regional comparisons because area peer parity is most meaningful to all those involved. The reasons have been explained with exceptional clarity by UCLA Professor Irving Bernstein, a distinguished arbitrator, in the following excerpt from his authoritative work on wage arbitration:

> **Comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood They are vital to the union because they provide guidance to its officials upon what must be insisted upon and a yardstick for measuring their bargaining skill. In the presence of internal factionalism or rival unionism, the power of comparisons is enhanced. The employer is drawn to them because they assure him that competitors will not gain a wage-cost advantage and that he will be able to recruit in the local labor market. Small firms (and unions) profit administrative~y by accepting a ready-made solution; they avoid the expenditure of time and money needed for working one out themselves. Arbitrators benefit no less from comparisons. They have 'the appeal of Precedent and awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public'. (Emphasis added.)** [2]

In short, area comparisons of like jobs is a criterion of fundamental importance in interest arbitration.

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2. Arbitration of Wages Publications of the Institute of Industrial Relations (Berkeley: University of California Press, 1954), p. 54.

Bellevue, it must be noted, is located centrally in the Puget Sound area, immediately east of Seattle. Puget Sound is an integrated economic area with a common labor market. Therefore, applying the above rationale to Bellevue, the Arbitrator concludes that comparison with cities in the Puget Sound area offers the most Persuasive basis for comparison and a criterion fully sanctioned by RCW 41.56.460(f). Furthermore, data submitted for Puget Sound cities are the most relevant comparative data contained in the record of this Proceeding for reasons elaborated in the discussion below.

To further implement the statutory mandate, comparison must also be made with other West Coast cities outside the Puget Sound area. In order to maximize the relevancy of such comparative data to Bellevue's Fire Department, these additional cities Should be: (1) cities of similar size (including contract areas served)[3]; and (2) located in a major metropolitan area. Most of the California cities and all of the Oregon cities offered for comparison by Bellevue do not satisfy this latter point. On the other hand, most of the Union-selected cities meet this two-fold test. However, the Union has not submitted specific comparative data for Washington and Oregon cities on wages, hours or conditions of employment Its "per compensable hour" comparisons provide a general indication of how these cities compare but these data do not offer sufficiently specific criteria for determining the particular issues submitted for decision in this case.

[3] **Bellevue's Fire Department provides fire suppression services to a total population of approximately 95,000 persons, including contract areas served.**

To summarize, in arriving at his decision on the issues in this case, the Arbitrator has considered cities of similar size on the West Coast of the United States as mandated by Statute; he has also taken into account other factors customarily considered in interest arbitration cases. On the basis of the record before him, the Arbitrator concludes that the comparative data submitted for Puget Sound cities are more relevant to the decision in this case and, therefore, entitled to much more weight than data from other West Coast cities. All comparative data, like all other evidence, are not necessary entitled to equal weight.

Before leaving this general discussion of comparisons, one additional point must be mentioned. In its evidence and argument, the City has stressed internal comparisons -- i.e.

comparisons with other employee groups employed by the City. The Arbitrator agrees that such comparisons are entitled to significant weight, Particularly when dealing with a general city-wide benefit like group insurance, for example. This criterion of intra~city comparison will be amplified as it relates to particular issues discussed below.

Finally, the Arbitrator will simply note here that he has carefully reviewed and taken into account the judicial and arbitration decisions interpreting RCW 41.56.460 (Exhibits A, B~ C and D attached to City's Closing Brief) before arriving at his interpretation of this statutory language.

MONTHLY SALARIES APPENDIX A

Proposals of the Parties

The City proposes that all 1982 monthly salary rates be increased by $144 across the board which amounts to 7.2% for a top-level Fire Fighter[4]

[4] **The City offer is reduced to 6.8% overall because its $144 across the board proposal amounts to a 7.2% increase for top Fire Fighter, 6.3% for top Lieutenant and 5.7% for Captain (City Exhibit 67).**

The Union proposes that all 1982 monthly salary rates be increased by 20.2% ($2,411 for a top-step Fire Fighter) and that Paramedic classifications be amended to reflect a 10% higher rate than the same classification without Paramedic qualification.

Positions of the Parties

The City's Proposed increase in monthly salaries would place its top-step Fire Fighters third in rank among the 15 similar size West Coast cities (City Exhibit 11) and at the median of Puget Sound cities used as comparators by the Union during negotiations (City Exhibit 14). The City's salary offer, when considered in conjunction with its total proposed economic package, also treats Fire Fighters favorably in comparison with other City employee groups (City Exhibit 67) and maintains the historic relationship between Police Officers and Fire Fighters. The City also proposes a flat dollar increase instead of a uniform percentage because the present rank differentials

are much wider than those found in comparable cities. Finally, contends the City, the Union's proposed increase for Paramedics cannot be justified by the comparative data (City Exhibit 28) and it urges that Paramedic pay increases be included in the Performance Recognition Program (PRP) as it has Proposed.

The Union maintains that its comparative data should be accepted by the Arbitrator because its figures are based upon comparable metropolitan cities not the rural comparisons offered by the City. According to the Union's compensable hour comparisons, the disparity which prevails between the level of overall Fire Fighter compensation in Bellevue and the norm for overall compensation in fairly comparable cities lies between 39.5% and 43.2% (Union Exhibit 9). Thus, contends the Union, its proposed 20.2% across the board salary increase would represent reasonable progress toward parity but by no means eliminate existing differentials. Next, the Union claims that its Proposal for Paramedic premium pay is justified by comparison with other medics' salary levels (Union Exhibit 27), by the skills and training they acquire, by their proven value to the City and the adjacent areas they serve, by community support for the program, and by their special responsibilities and difficult working conditions. Finally, contends the Union) Bellevue is an affluent community with an extremely favorable fiscal Status and potential revenue sources far in excess of any amounts required to bring its compensation for Fire Fighters into parity with other comparable cities (Union Closing Brief, p 32).

<u>Opinion of the Arbitrator - Monthly Salaries</u>

The provisions of RCW 41.56.460 are necessarily broad with considerable latitude for interpretation. In construing it, the parties have applied their own perceptions of equity and, not surprisingly, have reached conflicting conclusions concerning appropriate salary levels.

Bellevue is located in a major metropolitan area. Yet, over half the cities selected for comparison by Bellevue are located outside of major population centers i.e. all S Oregon cities, Yakima, Bellingham, El Cajon and Santa Barbara. Both the testimony and documentary evidence establish that generally lower levels of compensation prevail outside metropolitan areas. The substantial wage disparity between metropolitan and rural cities is confirmed by an analysis of the City's comparative salary data which reveal a direct correlation between salary levels and Proximity to metropolitan areas. Consider, for example, the

significant difference in Fire Fighter salary levels between Richmond ($1,854-$2,245) located in the metropolitan San Francisco~Oakland Bay area and Springfield ($1,301-$1,582) located in rural Oregon (City Exhibit 11). Yakima, located in rural Washington, has the lowest salary levels of all Washington cities offered for comparison by both the City and Union. These are, by no means, isolated examples. In short, the City's data have a distinctly rural or non-metropolitan bias.

The Union's selection of West Coast comparative cities is more representative although its outer parameter (250,000 Population) is overbroad. In any event, the Arbitrator is not persuaded that the Union's "per compensatable hour" data supports its conclusions for at least three principle reasons: First, the 1981 International City Management Association yearbook data (Union Exhibit 13) are useful to provide broad, general comparisons of diverse economic benefits among a large number of cities but are not sufficiently complete, current or specific to warrant the Arbitrator's reliance on them to support specific findings; Second, the Arbitrator is not convinced that the Union's "per compensable hour" computations offer a reliable common denominator for resolving the specific issues submitted for decision; at some point in the analytic process, the economic data must be subjected to the ultimate test of an issue by issue comparison of each disputed item standing alone; and Finally, when the Union converts its "per compensable hour" data into a salary equivalent, it results in a proposed Fire Fighter monthly salary ($2,411) which cannot be justified by comparative salary levels for any other city listed in the record of this proceeding.

Since neither the City's or Union's data are conclusive, what then is the appropriate basis for comparison in this case. Before arriving at his decision, the Arbitrator has carefully reviewed, evaluated and considered the comparative data for all West Coast cities. In his opinion, the most relevant, reliable and persuasive data in the record are for those Puget Sound cities set forth on Exhibit A (attached hereto). Based upon his analysis, the Arbitrator concludes that a monthly salary increase of $250 across the board[5] is warranted. This will place Bellevue Fire Fighters 4th in the Puget Sound area, behind Everett ($2,350), Tacoma ($2,315), Renton ($2,322) and on a par with Kirkland ($2,254).

[5] **The Arbitrator has awarded a fixed dollar amount instead of a flat percentage increase, as proposed by the Union, to**

reduce present disparities in pay levels (Tr. 335:1-22).

The Arbitrator has also given careful consideration to the City's emphasis upon the long-term relationship between the monthly salaries of its Police Officers and Fire Fighters (City Exhibit 22). While the Arbitrator agrees that this is a factor of considerable importance, he cannot agree that it should be decisive when, as here, the wage data for Fire Fighters in comparable cities so clearly justifies a more substantial increase.

Finally, on the issue of salaries, it should be noted that the citizens of Bellevue enjoy a relatively high standard of living. According to data submitted by the Union, only 5 out of the 72 West Coast cities between 50,000 and 250,000 population exceed Bellevue's per capita income. The general financial status of a community where an employee lives and works is an appropriate factor for consideration although less important than the other criteria discussed above. On a related point, it is noteworthy that the City has not claimed inability to pay (Tr. 416:14-23), although it argues that new funding sources or cuts in other City programs would be necessary to fund the Union's demands - a contention sharply controverted by the Union.

Next and finally is the issue of Paramedic Premium pay. Nowhere is Chief Sterling's emphasis upon excellence and individual initiative more apparent than in Bellevue's Emergency Medical Services (EMS) Program; according to the Chief's testimony, " our Paramedic level of service is Probably the most critical service we are supplying at this time as far as the public demand for service." (Tr. 591:2-5) EMS calls have been escalating dramatically over the past decade; medical emergency calls are now more than twice as frequent as fire calls (Union Exhibit 26). Approximately 60% to 70% of Fire Department responses are now for EMS (Tr. 48:11-20). These emergency services are provided both to the City and, by contract, to adjoining areas with a combined population of approximately 144,000 persons covering a large geographical area.

Paramedics are a highly trained, dedicated group who have earned an excellent reputation for their emergency medical services over the past 10 years. Lt. Norris outlined the extensive training the Department's Paramedics receive to enable them to handle these medical emergencies: 1,800 hours of formal instruction, spanning approximately a year of Fire Fighter's

service. As Norris put it, the skills of these Paramedics can make the difference between life and death (Tr. 304:10).

The current $124 per month pay differential has been in effect for at least S years (Tr. 421:6-9) In the Arbitrator's opinion, an increase to $200 per month is certainly in order on the basis of their skill, training, responsibility for human life and proven record of service to a constantly expanding population area.

Award - Monthly Salaries

All bargaining unit employees are awarded a $250 across the board increase in their monthly base salaries. The Paramedic pay differential shall be $200 per month. Both increases retroactive to January 1, 1982.

COST-OF-LIVING ADJUSTMENT - APPENDIX A

Proposals of the Parties

The City proposes a monthly cost-of-living adjustment for the second year of the Contract (1983) equal to the greater of $130 or 80% of the percentage increase of the Personal Consumption Expenditure Index (PCE) from January, 1982 through December, 1982 with a maximum cap of $200 per month.

The Union Proposes that the second year cost-of-living increase should be equal to the percentage change in the Consumer Price Index for Urban Consumers (1967=100), published by the Bureau of Labor Statistics, adjusted for the Seattle area, from November, 1981 to November, 1982.

The recently expired Contract provided a second-year increase equal to 80% of the Percentage annual increase in the Seattle area Consumer Price Index (CPI), with an upper limit of a 12% total increase.

Positions of the Parties

The City maintains that the CPI measures inflation, not changes in the cost-of-living; furthermore, the following four factors cause an estimated 24.37% upward distortion in the CPI (City Exhibit 3): The home ownership component (16.75%); medical care costs, which are substantially covered by insurance paid for by employers, not individuals (4.62%); substitution by consumers (3%); and increase in quality. Therefore, tying a second-year increase to the total percentage increase in the CPI would

greatly overstate the actual cost-of-living increase experienced by Fire Fighters. The City proposed PCE, by contrast, is considerably more accurate than the CPI in gauging changes in the cost-of-living due primarily to its use of a rental imputation component to measure housing costs. The City insists that its proposal for a second-year increase equal to 80% of the increase in the PCE, with a limit of $200 per month, represents a generous approximation of the actual change of living costs experienced by Fire Fighters.

The Union points out that the CPI is almost universally accepted as an inflation measurement standard and even the City invokes it to explain fiscal matters to its taxpayers (Union Exhibit 34). The City was unaware of any other labor agreement that incorporates the PCE, which is conducted solely on a nationwide basis and its data vary over time because of retroactive adjustment~ In its Closing Brief, the Union has offered a detailed, point~by~point rebuttal to the 4 factors cited by the City as its explanation for rejecting the CPI (Union's Closing Brief, pp 42-46).

Opinion of the Arbitrator - Cost-of-living Adjustment

The CPI and PCE are both broad economic indicators which have charted sometimes above and sometimes below each other (Union Exhibit 12). Both have certain flaws, particularly as a short-term measurement of price change (City Exhibits 3 and 4)

The PCE has some obvious drawbacks when compared to the CPI it is subject to periodic retroactive adjustment and is published only nationally. However, the Arbitrator's main concern is prompted by City Economist Dawson's inability to name a single collective bargaining agreement that uses the PCE (Tr 212:17 - 213:16); nor is the Arbitrator aware of any. An assumption seems warranted that, if the PCE were indeed more accurate than the CPI, its use would be far more evident.

The City's principal concern about distortion in the CPI is based upon estimates of the 1981 home ownership component (City Exhibit 3). There is absolutely no reason to assume, however, that the upward spiral of real estate prices has continued; on the contrary, all current reports indicate that real estate prices have leveled off and may be on their way down a conclusion reinforced by the drastic reduction in the CPI from 1981 levels. The evidence concerning 2 other factors which

allegedly distort the CPI - substitution and increase in quality - is simply not convincing. Fourth and finally, medical care costs as an overstatement of the CPI (4.62%, City Exhibit 3) appear to be more significant in the PCE (9.56%, City Exhibit 4).

In summary, the Arbitrator is not persuaded that evidence in the record warrants a departure from the CPI, the broadly accepted index used to measure changes in the costs of living in both public and private sector collective bargaining agreements. In particular, it seems doubtful that the home ownership component will continue to be a distorting factor in 1982. Finally, based upon reported cost-of-living data for 1982 and annual projections, a cap on the 1982 CPI cannot be justified.

Award - Cost-of-living Adjustment

Effective January 1, 1983, the monthly salaries of bargaining unit employees in effect December 31, 1982, shall be increased by the percentage increase of the Consumer Price Index, adjusted for the Seattle area, November, 1981 to November, 1982 (1967=100).

HOURS OF DUTY - ARTICLE XII

Proposals of the Parties

The City proposes to retain hours of duty at 53.23 and that the last sentence in the current Article XI1[6] be dropped to permit the City flexibility in establishing shift starting times.

[6] The last sentence of Article XII reads as follows:

> **The regularly scheduled duty hours shall be scheduled for periods of twenty~four (24) consecutive hours, beginning at 0800 hours.**

At the arbitration hearing, Mr. Dow clarified the proposal to retain the 24 consecutive hour shift requirement; as modified by Mr. Dow, the only words deleted from the last sentence would be "beginning at 0800 hours.", thus allowing the City to determine the starting time of each Fire Fighter's shift (Tr. 454:4-455:22).

The Union Proposes a reduction in hours to 50.48 hours per week, effective July 1, 1982 and Opposes elimination of the 0800 shift starting time.

Positions of the Parties

The City contends that its current 53.23 hour work week compares favorably with the work week of similar size cities on the West Coast. Fire fighters in the California and Oregon Cities selected for comparison uniformly work a 56-hour week (City Exhibits 33 and 34). The 53.23 hour work week also compares favorably with the Puget Sound cities selected for comparison (City Exhibit 34); as regards this latter comparison, the City insists that Everett, whose 42-hour work week was established by referendum rather than through bargaining, is not comparable on hours of work because Everett shifts are not assigned on a 24-hour basis; its 10 hour day shift/14 hour night shift is an anomaly among all cities surveyed (City Exhibit 33). In addition, the City points out that Fire Fighters already have substantial blocks of time off; counting Kelly days, vacation and holidays, a Fire Fighter's 2,912 hour annual cycle is reduced from 408 to 456 hours. Finally, declares the City, if the Union's Proposal were granted, at least 5 additional Fire Fighters would have to be hired to maintain current service levels; the cost ($73,685) would strain an already overburdened City budget.

The City's proposal to drop the fixed 0800 starting time for the scheduling of shifts is necessary to permit increased scheduling flexibility to meet changing needs. For example, Chief Sterling testified that expanding needs may require adjusting shifts so that more Fire Fighters will be on duty during peak demand periods; also, shift adjustments may be needed to resolve administrative problems, such as the planning of parking space.

The Union asserts that Bellevue Fire Fighters work more regularly scheduled hours per week than Fire Fighters in every other Puget Sound area city except Kent (Union Exhibit 19). The Tacoma and Everett average is 45 hours per week. The weighted average of all 9 Puget Sound cities is 46.6 hours per week. Thus, insists the Union, its proposed reduction from an average of 53.23 to 50.48 hours per week should be adopted.

The Union objects to the City's Proposal to drop the 0800 starting time as unjustified by the evidence and contrary to shift scheduling practices which have worked satisfactorily for years. The only reasons offered to support this claimed need for greater flexibility was Chief Sterling's testimony that he

believed some future parking problem might thereby be avoided and that on occasions he might want to have someone come to work at 6:00 p.m. and be wide awake. No instances of past difficulties were described. The Union argues that these are not sufficient reasons for abandoning the established 8:00 a.m. shift starting time.

Opinion of the Arbitrator - Hours of Duty

The comparative data for Puget Sound cities and the West Coast cities cited by Bellevue stand in sharp contrast with each other as regards hours of duty. The average work week for Puget Sound Cities, as revealed by the record, may be summarized as follows:

1.	**City Exhibit**	**33**	**49.9**	**hours**[7]
2.	**Union Exhibit**	**19**	**48.5**	**hours**[8]
3.	**Exhibit A**		**48.8**	**hours**[9]

On the other hand, Fire Fighters in the California and Oregon Cities included in Bellevue's comparative data uniformly work a 56 hour week (City Exhibits 33 and 34).

[7] **The Arbitrator has considered the City's argument that Everett should not be considered comparable because of its odd shift schedule (10 hour day shifts and 14 hour night shifts) and 42 hour work week adopted by referendum. He cannot agree that this warrants a different treatment of Everett's work week for comparative purposes. Therefore, Everett, which is included in City Exhibit 33, has been included in the average hours set forth above.**

[8] **Union Exhibit 19 reports a weighted average of 46.6 hours; however, this gives undue weight to Seattle and Tacoma; the 48.5 hour figure set forth above represents the mean average.**

[9] **Exhibit A (attached hereto) includes the Puget Sound Cities which the Arbitrator has adopted for comparative purposes.**

That brings us to the principal consideration, namely, which of the comparisons summarized above are controlling. For the reasons already discussed at length earlier in this decision, the Arbitrator has concluded that comparisons with the Puget Sound cities are entitled to more weight than the West Coast cities

cited by Bellevue. The Union's proposed 50.48 hour work week is clearly justified by comparison with Puget Sound cities and, therefore, is granted. The effective date is deferred until September 1, 1982 to give the City sufficient time to make an orderly transition to the new schedule.

As regards the 8:00 a.m. starting time, the Arbitrator is not persuaded of the need to drop it for at least two principal reasons: (1) while there may be occasions when the needs of the Department would warrant a different starting time, the parties should adopt a special provision to meet these exceptional occasions instead of cancelling the long-standing 8:00 a.m. starting time; and (2) the established practice in other fire departments is to have a fixed starting time (Tr. 458).

Award - Hours of Duty

Article XII is amended by changing the number "53.23" to read "50.48" hours, effective September 1, 1982.

VACATION LEAVE - ARTICLE XVII

Proposals of the Parties

The City's vacation leave Proposal was linked to and made contingent upon the Arbitrator's ruling on the Hours of Duty issue (Tr. 476:19-477:22 and City Submission Agreement, footnote 1). Since the Arbitrator has granted the Union's proposed work week reduction from 53.23 to 50.48 hours, the City now proposes no change in its vacation policy.

The Union proposes to amend the vacation schedule appearing in Article XVII, Paragraph A (Joint Exhibit 2, p. 9) as follows:

Years of Continuous Service	Shifts		Hours per calendar month of service
	Present	Proposed	
1 - 4	4	5	10
5 - 9	5	6	12
10 - 14	6	8	16
15 or more	7		
15 - 20		9	18
after 20 years	-	10	20

Opinion of the Arbitrator - Vacation Leave

It may be apropos, at this point, for the Arbitrator to give voice to a problem most neutrals grapple with when dealing with a relatively large number of economic issues in an impasse proceeding. Realistically, even if the Arbitrator deemed the Union's position on all economic items to be meritorious, he would feel the full impact of the Rome-wasn't build-in-a-day principle. Under such pressures, consideration of which items are best deferred to a later period becomes a necessary element of impasse resolution.

In short, all economic issues must be evaluated as part of a total compensation package. Frequently in collective bargaining, some issues which have merit when considered alone, must be deferred because other issues are entitled to a higher Priority. In the instant case, the Arbitrator has placed a high Priority on two substantial cost items, an increase in salaries and a reduction in hours, in addition, other significant cost items are included in this Award. The Union's Proposed vacation leave would add $35,684 (City Exhibit 17) to the total Package. In the Arbitrator's opinion, this sum would increase the amount of total compensation in this Award to a level that cannot be justified Therefore, the Union's Vacation Leave Proposal is denied.

Award - Vacation Leave

Vacation leave shall continue unchanged.

INSURANCE COVERAGE (MEDICAL-DENTAL) - ARTICLE XXVII

Proposals of the Parties

The City proposes to pay 100% of the employee-only rate under either Blue Cross or Group Health, and 80% of the premium for dependent health care coverage) based upon the rates effective January 1, 1982. The remaining 20% of the dependent care coverage would be paid by the employee. Any increase in the stated premiums (City Exhibit 52) which Occurs during the term of the Agreement would continue to be borne on a 50-50 Cost-sharing basis by the City and the affected employee.

The City proposes to pay 100% of the employee-only dental care premium; for dependent coverage in the dental insurance plan, employees would be required to pay $3.00 per month toward

dependent coverage. The City further agrees to provide and pay for a $10,000 life insurance policy for each bargaining unit employee.

The Union proposes to retain the same basic provision as in the prior Contract, with a change in the premium effective date to January 1, 1982. The effect of this Proposal would be to require the City to pay 100% of the current cost of medical and dental benefits for employees, Spouse and dependents, to continue the practice of allocating the cost of increases on a 50-50 basis, but to have employees share in increased costs only to the extent they exceed the maximum premium in effect on January 1, 1982.

Positions of the Parties

The City emphasizes the drastic increases in medical/dental premiums for the same coverage - a 17% increase over City expenditures for medical insurance for Fire Fighters during 1981 and a 13% increase in dental premium costs. Were the City to absorb the full impact of these insurance premium increases, as the Union proposes, increased costs to the City from 1981 to 1982 would be 31% for medical insurance premiums and 23% for dental insurance premiums (City Exhibit 53). It is financially unrealistic of the Union to expect the City to be able to absorb the full impact of such drastic premium increases which are totally beyond the City's control.

Finally, stresses the City, its proposal sets a premium level to be paid for Fire Fighters which is approximately equal to or more than the contributions made on behalf of other groups of City employees (City Exhibit 55). If only to maintain equity among various employee groups, the City's proposal should be adopted as the maximum to be paid by the City.

The Union points out that the parties' practice, at least in recent years, has been for the City to pay 100% of the insurance premiums for medical and dental insurance at the beginning of a Contract, and for any increases in premiums thereafter to be split between the City and the employees on a 50-SO basis. The Union proposes that practice be continued and that the City and any affected employees split the cost of any increases above the maximum premium paid by the City in effect on January 1, 1982.

The Union contends that its proposal is more consistent with the practice of comparable Puget Sound cities, most of whom pay

100% of both employee and dependent coverage (Union Exhibit 38).

Opinion of the Arbitrator - Insurance Coverage

When a general benefit, like group insurance, applies uniformly to a diverse group of City employees, an arbitrator should hesitate to order something different in the absence of clear and convincing evidence to prove an inequity. Deviations from a uniform benefit pattern can be highly disruptive to employee morale. In short, comparisons among employee groups of the same employer are no less important than comparisons with other employers.

The City's proposed maximum monthly medical insurance premium, at $130.33 per month, is the same as that paid on behalf of Police Officers and approximately $12.00 more per month than that paid on behalf of other City groups. The City's proposed dental premium is slightly less than that paid on behalf of Police Officers -- $37.84 per month for Police Officers compared to $36.25 offered to Fire Fighters (City Exhibit 55). (The reason for this slight discrepancy does not appear in the record.)

On the other hand, were the Union's proposal adopted, Fire Fighters would receive substantially more in medical and dental insurance premiums than any other City employee group currently enjoys. The only evidence offered by the Union to support its position shows that most Puget Sound cities offered for comparison pay 100% of both employee and dependent coverage but this evidence does not reveal either the premium cost or actual insurance coverage provided by these cities (Union Exhibit 38). Therefore, cost comparisons cannot be made from these data. This is not the kind of clear and convincing evidence which the Arbitrator deems necessary to justify a departure from the generally uniform insurance coverage provided to the City's other employees.

For the reasons set forth above, the Arbitrator adopts the City's proposal on insurance coverage amended only to provide a maximum monthly dental premium of $37.84 (instead of the proposed $36.25) in order to make both the medical and dental benefits of Police Officers and Fire Fighters identical.

Award - Insurance Coverage (Medical-Dental)

The City's medical and dental insurance coverage proposal

(as set forth in City Exhibit 52) is hereby adopted effective January 1, 1982; provided, however, the maximum monthly dental premium paid by the City shall be $37.84.

DISABILITY LEAVE AND SICK LEAVE FOR EMPLOYEES HIRED ON OR AFTER OCTOBER 1, 1977 - ARTICLE XXVIII

Proposals of the Parties

The City has accepted the Union's proposal to increase the amount of paid sick leave available for new Fire Fighters from 1 shift to 3 shifts, which must be repaid to the City within a prescribed period. The remaining disputed issue is whether the City should pay on behalf of employees hired on and after October 1, 1977, 100% of the insurance premium, currently $12.00 per month for Supplementary Income Replacement insurance for occupational and non-occupational disability.

Positions of the Parties

The Washington State Legislature has established a disability retirement system applicable to all law enforcement officers and fire fighters (LEOFF), which was converted into 2 separate plans in 1977. The first plan (LEOFF I) applies to law enforcement officers and fire fighters employed prior to October 1, 1977; the second plan (LEOFF II) applies to those hired on and after October 1) 1977.

The state plan in effect prior to 1977 provided 6 months paid disability leave to any covered individual, followed by a disability retirement benefit. The generous benefits provided under that system resulted in nearly 60% of all covered employees taking disability rather than normal service retirement. To eliminate such abuses, the Legislature in 1977 sharply curtailed the benefits of LEOFF II personnel by removing disability benefits for non-duty related injuries and placing them under the state's workers' compensation program.

The Union maintains that this $12.00 per month supplementary disability insurance pension premium for LEOFF II employees is the Union's highest priority in these proceedings because of the inadequate coverage now provided LEOFF II Fire Fighters. For example, as reported recently in a local newspaper, a Seattle Fire Fighter was crippled as a result of an on-the-job injury and received a LEOFF II disability pension of $1.56 per month (Union

Exhibit 39).

The City declares that the Union is simply attempting to reinstate, at City expense, a system which the Legislature has determined should be eliminated. Fire Fighters in other comparable cities do not enjoy the kind of coverage the Union is now proposing and similar proposals have been rejected by interest arbitrators in the City of Kent (Exhibit C), the City of Everett (Tr. 580:11-16), and by Arbitrator Champagne in the prior arbitration between the parties to the instant dispute (City Exhibit 23).

Opinion of the Arbitrator Disability and Sick Leave

While Captain Pedee has identified this proposal "as the highest priority on our list of issues", Pedee candidly conceded that he knew of no other city which pays this insurance premium (Tr. 568:11-20 and 572:12-13). Furthermore, it is undisputed that similar proposals have been rejected in 3 prior Washington interest arbitration proceedings.

The Arbitrator has no reason to doubt the Union's sincerity when it denominates this as the highest priority issue. Providing adequate compensation to disabled Fire Fighters is, understandably, an important Union objective. What the Arbitrator questions, however, is whether arbitration is the proper forum to raise the issue. In the past, this issue has been handled on a state-wide basis by the Washington Legislature. If the law deals harshly with LEOFF II employees, as the Union insists, that problem should be addressed to the Legislature for a state-wide solution. The Arbitrator is simply not convinced that this matter should be handled on a city-by-city basis. Therefore, the Union's proposal is denied.

Award - Disability Leave and Sick Leave for Employees Hired on or after October 1, 1977

The second paragraph of Article XXVIII shall be amended by changing "one shift off with pay" to "three shifts off with pay'1. The Union's proposal for Supplementary Income Replacement insurance is denied.

LONGEVITY (UNION PROPOSAL) VERSUS

PERFORMANCE RECOGNITION PROGRAM (CITY PROPOSAL)

Proposals of the Parties

The Union proposes a longevity premium of 2% after 4 years, 4% after 9 years, 6% after 14 years, and 8% after 19 years.

The City proposes to incorporate the Union's proposal for longevity pay, as well as the present Educational Incentive Program, into a comprehensive Performance Recognition Program which would base incentive pay on a combination of educational attainment, performance appraisal and years of service (City Exhibit 40).

Positions of the Parties

According to the Union, Bellevue is the only city in the state with a Population of over 50,000 with no longevity compensation (Union Exhibit 20); only Kirkland (bargaining unit size 22) and Edmonds (bargaining unit size 14) of the other 9 cities in the Puget Sound area do not provide longevity compensation. The Union argues that the City has offered no credible rationale for opposing longevity compensation other than its own ideology.

In its Closing Brief (pp. 57-62), the Union has expressed vigorous Opposition to the City's PRP proposal which is characterized by the Union as "ill-planned, insufficiently detailed, disruptive of labor harmony, totally unworkable and probably unlawful." (p. 62).

The City, for its part, points out that its proposed Performance Recognition Program is designed to provide incentive bonuses which are greater as a Fire Fighter's educational attainment, performance and years of service increase. According to the City, such a performance-linked plan is superior to either a plan based purely on either education or longevity because neither longevity nor educational level per se is related to an employee's value to an organization. The parties have traditionally determined, however, that education is a valued characteristic, while the Union has sought additional longevity pay. The PRP incorporates both these elements in a matrix which adds in a value for job performance as well and, as a result, rewards employees who are actually of greatest value to the

organization.

The City adamantly opposes the Union's longevity proposal on the ground that there is no correlation between length of service and quality of work performance. Furthermore, declares the City, no similar-size West Coast city has both premium pay systems, one based on educational attainment and the other on longevity (City Exhibit 41); nor does any city selected by the Union as comparable have such a double incentive system. Yet, the Union now seeks both. A similar demand by the Union was rejected in arbitration 2 years ago (City Exhibit 23).

Opinion of the Arbitrator - Longevity vs. PRP

Even assuming, arguendo, that the Union's longevity proposal were deemed meritorious, its projected cost ($67,332 - City. Exhibit 17) cannot be justified in the context of the total economic package. In the Arbitrator's opinion, the other economic benefits already approved must be given a higher priority. Therefore, the Union's longevity proposal is denied.

In evaluating the City's Performance Recognition Program, 2 important points stand out which are difficult to reconcile. On the one hand, the PRP requires the cooperation and participation of all bargaining unit employees (Tr. 508:15-21 and 528:21-25). On the other hand, the Union (in its institutional capacity) has expressed ideological differences about the value of this program and, in its Closing Brief, has offered a number of arguments which lend support to its concern - - arguments which deserve more careful consideration than is revealed by the record of this proceeding. How, it must be asked, can a program (any program), dependent on mutual cooperation, hope to succeed when one party is convinced that the Program is contrary to its interests? Until a number of the Union's objections have been more fully explored, the Arbitrator cannot agree that PRP should be included in the parties' Agreement. In arriving at his decision, the Arbitrator also deemed it significant that the City was not able to name any city in Washington or elsewhere on the West Coast with a similar program (Tr. 544:13-545:1).

<u>Award - Longevity vs. Performance Recognition Program</u>

The Union's longevity proposal (Union Exhibit 20) and the City's proposed Performance Recognition Program (City Exhibit 40) are both denied.

COMMUNICATION PROCEDURE - ARTICLE XXV

Proposals of the Parties

The City proposes to amend the existing communication procedure in the following 3 respects: (1) to clarify that subjects discussed under the grievance procedure of the Contract may not also be presented in the communication procedure; (2) to bar the labor-management committee from using the procedure to modify express terms of the parties' Contract; and (3) to substitute the Fire Chief for the City Manager as the City's coordinator.

The Union proposes no change in the existing language of this provision.

Positions of the Parties

The City explains that the reasons for these proposed changes are: (1) to underscore the separation, in the current Contract language, of discussions about grievances from those matters discussed by the labor-management committee; otherwise, informal agreements reached with the Fire Fighters' bargaining unit may be interpreted to apply to other City employees as well; (2) under the City's system of government, department heads are to run their own operations, subject to review by the City Manager an d City Council; it is consistent with this system to have the Fire Chief designated as the City's representative in the communication procedure, rather than the City Manager; of course, points out the City, this would not preclude Union officials from meeting with the City Manager on any appropriate subject.

The Union opposes these proposed changes as completely unnecessary.

Opinion of the Arbitrator - Communication Procedure

The City-proposed changes simply emphasize that the Communication Procedure (Article XXV) and the Grievance Procedure (Article XXIV) are 2 separate and distinct contractual processes. In addition, the Fire Chief is substituted for the City Manager in conducting the initial discussions prescribed by the Communication Procedure. Since the Fire Chief has the

principal responsibility for running the Department, it is appropriate that the Contract make clear his authority to conduct such discussions. In short, the City has advanced persuasive reasons for its proposed changes.

Award - Communication Procedure

Article XXV is amended by adopting the City's proposal (City Exhibit 64) in place of the existing Contract language.

PREVAILING RIGHTS - ARTICLE XX

Proposals of the Parties

The City seeks to enumerate specific rights reserved to it under the existing clause (City Exhibit 61), to the extent permitted by its Contract with the Union.

The Union proposes to modify the existing clause to provide that the Union had not waived its right to bargain on any mandatory subject not covered by the Contract.

Positions of the Parties

The Union insists that an added provision is necessary in order to clarify its continuing right to bargain on mandatory subjects. The Union maintains that its position is supported by a March, 1980 decision by the Public Employment Relations Commission of the State of Washington (PERC), which held that the parties did not waive their rights to bargain on mandatory subjects during the term of their agreement; that an order issued by Bellevue directing Fire Fighters to disclose outside employment to the Fire Chief was a mandatory bargaining subject; and that the City had violated its bargaining obligation by unilateral promulgation of the order (Union Exhibit 40). According to the Union , its proposed contract amendment will avoid confusion in the future.

In opposition to the City's Management Rights proposal, the Union argues that it is unlawful based upon a preliminary ruling of an unfair labor practice charge (Union Exhibit 41) filed during the pendency of these proceedings and summarized in the Union's Closing Brief as follows: On March 18, 1982, the Union filed a complaint with PERC alleging that by insisting to impasse on its Management Rights proposal that the Union waive its rights

for the term of the next collective bargaining agreement to bargain on mandatory bargaining subjects not covered in the agreement, and that by pressing its demands for such a waiver in this proceeding, the City violated RCW 41.56.100 (Union Exhibit 41). On March 30, 1982, the Executive Director of PERC issued his preliminary ruling in the matter as follows (Attachment G to Union's Closing Brief):

> **Assuming for purposes of this preliminary ruling that all of the facts alleged are true and provable, it appears that an unfair labor practice violation could be found.**

Subsequently, by its letter to the Executive Director of PERC dated May S, 1982 (Attachment H to Union's Closing Brief), the Union withdrew its complaint and agreed that the Issue could be decided by this Arbitrator.

Finally, the Union argues that the City's proposal is unjustified by any evidence in the record. In particular, the comparative data submitted by the City (City Exhibits 62 and 63), reveals no prevailing pattern among comparable cities. A review of the examples set forth in City Exhibits 62 and 63, according to the Union, shows great diversity of draftsmanship and possibility of interpretation. Few of the samples are as broad or as sweeping as the City's proposal.

The City, for its part, declares that the parties have come to a point in their bargaining relationship at which the Union frequently challenges the City's decisions on subjects which have traditionally been prerogatives of management. For example, Chief Sterling listed as examples the Union's questioning of overtime assignments, his challenge of the City's determination on minimum manning and its threat to file a similar charge for the City's decision on the areas to be served by Medic I units. These are merely a few examples, asserts the City, which underscores the need for a clear enumeration of Management Rights.

The City claims that the reasonableness of its position is demonstrated by the presence of detailed management rights clauses in the contracts of many similar-sized West Coast cities (City Exhibit 62) and of most Puget Sound area cities (City Exhibit 63).

In rebuttal to the Union's reliance upon the unfair labor practice charge which it filed on the final day of the

arbitration hearing (Union Exhibit 41), alleging the City committed an unfair labor practice by presenting its management rights proposal in interest arbitration, the City maintains that the determination of what subjects may properly be pressed to impasse and to interest arbitration is within PERC's exclusive jurisdiction. The City's position that this issue is properly before the Arbitrator is supported by a May 26, 1982 letter from the Executive Director of PERC to the Arbitrator, written at the City's request.

Opinion of the Arbitrator - Prevailing Rights

The first question that must be addressed with regard to the City's Management Rights proposal is the Union's argument that it is unlawful. If the Union's unlawful argument were correct) the Arbitrator would reject the City's proposal on that ground.

The Union's "unlawful" argument is based upon: (1) its belated unfair labor practice charge (Union Exhibit 41) contending that the City's Management Rights proposal violates the Union's statutory rights and (2) a March 30, 1982 preliminary ruling by the Executive Director of PERC.[10] After carefully reviewing all of the evidence and argument on this point, the Arbitrator has concluded that the City's proposal is not unlawful; he has reached this conclusion for the following three principal reasons: (1) PERC's March 30, 1982 ruling on the unfair labor practice charge is preliminary, not a ruling on the merits (see PERC's May 26, 1982 letter); (2) this issue was certified to arbitration by PERC in accordance with statutory procedures without Union objection; in view of this, any doubts about the legality of this proposal must now be resolved against the Union; and (3) based upon a review of the Statute, the Arbitrator is simply not persuaded that the City's proposal is unlawful. Finally, it must be noted, the Union has agreed that the Arbitrator should decide this issue on the merits (Tr. 671-672).

[10] In addition to this March 30, 1982 post-hearing ruling from PERC's Executive Director, certain other post-hearing evidence was submitted (Attachments G and H to the Union's Closing Brief and a May 26, 1982 letter from PERC's Executive Director to the Arbitrator). Normally, such supplementary evidence would be disregarded. However, since both parties submitted post-hearing evidence on this matter and neither party objected, the Arbitrator has considered this evidence in arriving at his decision.

We turn now to the merits of the City's proposal, which expands the current clause by adding a list of specific management rights exempt from negotiation during the term of the Contract (City Exhibit 61). Quite clearly, City Management must have the right, during the Contract term, to exercise the administrative initiative and managerial discretion necessary to carry out its responsibility for running the Department on a day-to-day basis. On the other hand, the Union's determination to retain its statutory right to bargain on mandatory subjects that neither party could foresee when the Contract was negotiated, is also understandable. Selecting a proper balance between these two competing objectives has been a continuing source of controversy over the years in both the public and private sectors.

The Arbitrator has carefully reviewed the specific provisions proposed by the City. Several of these provisions are extremely broad in scope, much broader than the language found in most of the management rights clauses which the City has offered for comparison (City Exhibits 62 and 63). Furthermore, the City's proposal goes considerably beyond the specific types of problems mentioned by Chief Sterling (Tr. 608:17-609:3). Unfortunately, an arbitration proceeding does not lend itself to the type of give-and-take necessary to formulate a more appropriate provision. In its present form, the Arbitrator must reject the City's proposal as overbroad.

The Union's proposal regarding mandatory subjects of bargaining is covered by the Statute. No constructive purpose would be served by including its proposal in the Agreement.

Award - Prevailing Rights

The changes proposed by the City and Union in the Prevailing Rights provision are denied.

REDUCTION AND RECALL ARTICLE VII

Proposals of the Parties

The City proposes to modify the existing provision covering reduction and recall to permit it to retain key personnel in the event of any reduction in force based upon the following criteria (City Exhibit 57):

1. **The needs of the Fire Department.**
2. **Qualifications.**
3. **Experience.**
4. **Performance.**
5. **Special training or skills.**

If, in the judgment of the City Manager or her designated representative, two or more firefighters are deemed to be equal as a result of the consideration of the above criteria, the firefighter with the least amount of seniority shall be selected for layoff.

The Union proposes no change, thus retaining seniority as the sole criterion.

Positions of the Parties

The City explains that, even though no reduction in force is contemplated during the term of this Contract, it must be prepared to meet that situation should it arise. The importance of the City's medical emergency program is well established by the record in this case. paramedics have been given extensive training to enable them to handle medical emergencies. The City must be able to retain these valuable skills and its substantial investments in them should a lay-off become necessary. In addition, the Department is developing a program to train certain Fire Fighters to deal with the peculiar characteristics of hazardous waste emergencies. The City must also have the flexibility in cases of lay-off to retain these special skills as well. In rebuttal to the Union's claim that this proposal is unlawful, the City has submitted a Memorandum of Authorities (City Exhibit 60) which refutes that contention.

The Union offers the following principal arguments in its opposition to the City's proposal: (1) RCW 41.08.080 and Bellevue Ordinance No. 700 establish seniority as the controlling criterion for a reduction in force; the City's proposal represents an unlawful departure from these provisions; (2) the City's proposal cannot be justified by comparative data; (3) the City has offered no proof to establish that the current lay-off provisions are unworkable; and (4) the only rationale advanced by the City for its proposal was to retain highly trained medics in place of lesser trained senior employees; by rational selection of candidates for medic training, the City can easily maintain a

reasonable number of junior employees who have not undergone medic training.

Opinion of the Arbitrator - Reduction and Recall

In the overwhelming majority of collective bargaining agreements in both the public and private sectors, seniority has been adopted as the sole criterion covering lay-offs. The principal reasons are: (1) seniority (i.e. length of service) is a completely objective criterion; when subjective factors are introduced, such as those proposed by the City, favoritism is almost always suspected when a senior employee is laid off and a junior employee is retained; this can cause serious dissatisfaction in the work force that far outweighs any presumed benefits derived from alternative selection procedures; and (2) in a lay-off situation (contrasted with a promotion, when subjective criteria are often used in addition to seniority), current incumbents are presumably capable of performing the work in a satisfactory manner.

The foregoing reasons for using seniority as the sole criterion to determine lay-offs are just as applicable to the City's Fire Fighters with one exception -- paramedics. The City has advanced persuasive reasons for retaining Paramedics in the event of a lay-off. Their special skills and training are vital to provide emergency medical services both to the City of Bellevue and, by contract, to adjoining areas with a combined population of approximately 144,000 persons. The City should have the discretion to retain sufficient Paramedics to meet the needs of this critical medical program.

Finally, the Arbitrator has carefully studied the Union's illegality argument and the City's rebuttal (City Exhibit 60). He is convinced that a lawful provision can be drafted.

Award - Reduction and Recall

Article VII shall be modified to include a provision which allows the City to retain, out of seniority order, sufficient Paramedics to meet the needs of its emergency medical services program. This issue is remanded to the parties for the purpose of drafting a suitable provision. The Arbitrator retains jurisdiction to resolve this issue if the parties are unable to do so.

AWARD SUMMARY

Based upon a careful consideration of all of the evidence and argument, it is the decision of the Arbitrator that:

1. **Monthly Salaries: All bargaining unit employees are awarded a $250 across the board increase in their monthly base salaries. The Paramedic pay differential shall be $200 per month. Both increases retroactive to January 1, 1982.**

2. **Cost-of-living Adjustment: Effective January 1, 1983, the monthly salaries of bargaining unit employees in effect December 31, 1982, shall be increased by the percentage increase of the Consumer Price Index, adjusted for the Seattle area, November, 1981 to November, 1982 (1967=100).**

3. **Hours of Duty: Article XII is amended by changing the number"53.23" to read "50.48" hours, effective September 1, 1982.**

4. **Vacation Leave: Vacation leave shall continue unchanged.**

5. **Insurance Coverage (Medical-Dental): The City's medical and dental insurance coverage proposal (as set forth in City Exhibit 52) is hereby adopted effective January 1, 1982; provided, however, the maximum monthly dental premium paid by the City shall be $37.84.**

6. **Disability Leave and Sick Leave for Employees Hired on or after October 1, 1977: The second paragraph of Article XXVIII (covering LEOFF II employees) shall be amended by changing "one shift off with pay ti to "three shifts off with pay". The Union's proposal for Supplementary Income Replacement insurance is denied.**

7. **Longevity vs. Performance Recognition Program: The Union's longevity proposal (Union Exhibit 20) and the City's proposed Performance Recognition Program (City Exhibit 40) are both denied.**

8. **Communication Procedure: Article XXV is amended**

by adopting the City's proposal (City Exhibit 64) in place of the existing Contract language.

9. **<u>Prevailing Rights</u>: The changes proposed by the City and Union in the Prevailing Rights provision are denied.**

10. **<u>Reduction and Recall:</u> Article VII shall be modified to include a provision which allows the City to retain, out of seniority order, sufficient Paramedics to meet the needs of its emergency medical services program. This issue is remanded to the parties for the purpose of drafting a suitable provision. The Arbitrator retains jurisdiction to resolve this issue if the parties are unable to do so.**

HOWARD S. BLOCK
Impartial Arbitrator

Santa Ana, California
June 30 1982

PUGET SOUND CITIES (EXCLUDING SEATTLE) WITH FIRE DEPARTMENTS SERVING 25,000 OR MORE POPULATION[11]

	Fire Fighters Salary Top-Step	Hours
AUBURN	$ 2,146	49.3
BELLEVUE	2,256	50.48
BREMERTON	2,024	52.31
EDMONDS	n/a	48.0
EVERETT	2,350	42.0
KENT	2,122	54.0
KIRKLAND	2,254	50.48
RENTON	2,322	46.5
TACOMA	2,315	48.0

[11] **The Bellevue Fire Department provides fire suppression services to a population of approximately 95,000 people, including contract areas served (see City Exhibits 9, 20 and 21, and the post-hearing Affidavits of Ron Pedee and Cabot**

Dow).

EXHIBIT A