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PUBLIC EMPLOYMENT
RELATIONS COMMISSION
OLYMPIA, WA

IN INTEREST ARBITRATION

between

KENNEWICK POLICE OFFICERS'
BENEFIT ASSOCIATION

and

THE CITY OF KENNEWICK

OPINION

and

AWARD

Place of Hearing:

Kennewick City Hall

Date of Hearing:

October 5, 1984

Post Hearing Briefs:

November 16, 1984

Date of Award:

February 27, 1985

Arbitrator:

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I FACTS

On November 10, 1983, the City of Kennewick and the Kennewick Police Officers' Benefit Association began negotiations for a successor agreement, and on February 7, 1984, they requested mediation. After the two mediation sessions of March 14, 1984, and April 18, 1984, the Executive Director of PERC, on July 16, 1984, declared an impasse and certified 31 items subject to arbitration. Since the certification and before the arbitration hearing on October 15, 1984, the parties reduced the number of items subject to arbitration to those discussed in this Opinion and Award.

My Opinion and Award is based on the hearing of October 15, 1984, the transcript of the hearing (263 pages), the Association's first Brief and Exhibits (135 pages), the Association's second Brief (75 pages), the City's Brief (114 pages), the City's fifteen (15) Exhibits, and a Joint Exhibit which contains previous interest arbitration awards, three fact finding opinions in Washington and Oregon, an essay by Dr. Richard O. Zerbe, Jr., entitled A Selection of Comparable Cities by Statistical Methods, and a LERC monograph on Ability to Pay. On January 22, 1985, I mailed the parties, for their review, a preliminary draft of my Opinion and Award, which set forth my understanding of their respective positions. This Opinion and Award is my considered opinion on all matters before me.

II THE APPLICABLE STATE LAW

RCW 41.56.430 UNIFORMED PERSONNEL - LEGISLATIVE DECLARATION

The intent and purpose of this 1973 amendatory act is to recognize that there exists a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling strikes.

RCW 41.56.460 UNIFORMED PERSONNEL - INTEREST ARBITRATION PANEL - BASIS FOR DETERMINATION.

In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and as addition standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:

- (a) The constitutional and statutory authority of the employer;
- (b) Stipulations of the parties;
- (c) Comparison of the wages, hours and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;
- (d) The average consumer prices for goods and services, commonly known as the cost of living;
- (e) Changes in any of the foregoing circumstances during the pendency of the proceedings; and
- (f) Such other factors, not confined to the foregoing which are normally and traditionally taken into consideration in the determination of wages, hours, and conditions of employment.

III INTERPRETATION AND APPLICATION OF RCW 41.56.460

Three principles inform my evaluation of the parties' interpretation and application of RCW 41.56.460. First and foremost, I have sought to fashion a "total package" award, an award that reflects, no matter how imperfectly, the "probable" agreement, an agreement that the parties would have struck by themselves in free, robust, give-and-take

negotiations, the ultimate political-economic reality of labor relations. No party should get in arbitration what it could not get at the bargaining table. Therefore, I have given very little weight to the statistical data, no matter how logically or mathematically correct, that contravened this first principle of labor relations because the relative bargaining strength of the parties, not statistical evidence, determines the collective bargaining agreement. Second, I have discounted the Association's morally attractive "catch-up" argument, an equity argument, because the argument is arguable forever, and because it incorrectly assumes that an injustice exists and that mathematical equality will remedy that injustice. Third, where possible, I have retained the status quo because the status quo, admittedly imperfect, has moral legitimacy. Collective bargaining history and law have sanctioned the principle, *quieta non movere*. Parties reluctantly and slowly change the status quo, a congeries of all those past practices and prescriptive rights which have arisen out of the continual, gradual, accommodated, ever-evolving relationship between them. Parties change the status quo only if the proposing party can adduce overwhelmingly hard, concrete, positive, and persuasive evidence to show a proposal is not only desirable but practical and necessary.

(c) Comparison of the wages, hours, and conditions of employment of personnel involved in the proceeding with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.

A. The Association's Interpretation and Application of Guideline (c)

To find the cites that are comparable to Kennewick, the Association adopted the method enunciated by Dr. Richard Zerbe, an economist at the University of Washington, in his study A Selection of Comparable Cities by the Statistical Method. The Association thought that Zerbe's method was superior to all previous interpretations of the expression "similar size." Previously, advocates and arbitrators had interpreted the expression "similar size" in population or geographic terms. The Association thought that Zerbe's method was superior to the old interpretations not only because the Zerbe method had an "intuitive rationale" but also because it relied on empirical objective data. And, because many advocates and arbitrators have accepted Zerbe's method, a "fairly consistent approach" to the issue of comparability has emerged. According to the Association, Zerbe had concluded that there was a statistically significant relationship between the presence of certain demographic variables and the levels of law enforcement salaries. These demographic variables not only have a compelling intuitive rationale, but when applied to police officers, they produce comparable jurisdictions. Professor Zerbe's criteria are:

1. Population
2. Number of law enforcement officers
3. Officers per population
4. Per capita income
5. Assessed valuation
6. Assessed valuation per capita
7. Part I Crimes
8. Part I Crimes per officer
9. Part I Crimes per capita
10. Rate of population increase

Each criterion by itself and each criterion combined with another or several criteria says something about the economic activity of a particular city and produces a "good measure of comparability."

To arrive at its comparable cities, the Association applied each criterion to every city in Washington, Oregon, and California, and then gathered the figures for each of the comparability criteria. Against this data, the Association established the comparability range for each criterion by multiplying and dividing Kennewick's population (35,000) by two. If the Association found that a city fell outside Kennewick's range, i.e., below 17,500 or above 70,000 for each of the comparability criteria, the Association excluded that city from consideration as a comparable city. This method led to the Association's comparable cities. The cities are:

Beaverton, Oregon
Carlsbad, California
Escondido, California
Gilroy, California
Gresham, Oregon
Hemet, California
Hillsboro, California
Manteca, California
Redding, California
Turlock California
Visalia, California

To determine the wages of Kennewick's police officers, the Association used the wage of the top step police officer, the "benchmark" wage, and the "adjusted" wage. The adjusted wage, the Association added the amount of the employee's pension contribution "picked up" by the employer to the employee's base salary. The Association compared Kennewick's adjusted wage with the average paid in its comparable cities and concluded that Kennewick police officers are entitled to a 5.5% "catch-up" wage increase. The 5.5% request is fair because Kennewick police officers work between 3.11% and 2.32% longer hours than police officers in its comparable cities; Kennewick police officers are required to work an unpaid 15-minute briefing period. Other cities pay for the briefing time. The Association calculated hourly wages for employees with 5, 10, 15, and 20 years of tenure, with their education levels: either a high school education, an associate's degree (or its police certification equivalent), or a bachelor's degree (or its certification equivalent). The Association concluded that the catch-up percentages necessary to bring Kennewick to the average wage in the comparable jurisdictions range between 7.19% to 9.6%, depending on tenure or education (Brief, p. 18). From its Exhibit 20, an exhibit which summarized all the previous wage exhibits, the Association concluded that the average wage increase necessary to bring Kennewick to the average wage in its comparable jurisdictions was 8.7%.

To arrive at "total compensation," the Association analyzed wages, incentive payments, retirement costs, insurance costs, holiday costs, vacation costs, uniform allowances, and cleaning allowances, and it converted the accrued but unused sick leave to cash benefits upon retirement (Exhs. 21-24). Then the Association compared Kennewick's total compensation with the total compensation in its comparable cities. The Association concluded Kennewick is 10.34% behind the average total compensation of its comparable cities.

The Association believed that its method of selecting comparable cities was empirically objective and that its statistics show that Kennewick's police officers are 5.54% behind the average paid to police officers in comparable jurisdictions. If incentive plans and the hourly rate are included in the calculations, police officers need an 8.78% catch-up increase. And, if the total compensation figures are compared, Kennewick police officers would need 10.34% to catch up to officers in the Association's comparable cities. By any measure, the range of increase should be from 5.5% to 10.34%.

B. The City's Criticism of the Association's Comparability Method

The City urged the arbitrator to reject the Association's comparability methodology and the Association's comparable cities. The City rejected the Association's assertion that arbitrators have accepted the Zerbe criteria, that these

criteria are significantly related to the levels of law enforcement salaries, that a "fairly consistent" approach to comparability has emerged, and that Washington arbitrators have accepted the Zerbe method. Only two arbitrations, the Renton and Olympia arbitrations, used all of Zerbe's criteria. And, even these two arbitrations do not support the Association's analysis. One arbitrator used only population and assessed valuation; the arbitrator explicitly rejected other factors. Another arbitrator did not use three of the ten factors. Further, Zerbe's analysis is incomplete because he failed to test the effect that per capita income and population increase have on police salaries. Also, statistics on Part I Crimes per officer and Part I Crimes per capita are unreliable statistics: they not only fluctuate but also are subject to budgetary considerations. Fluctuating criteria should not be used in any comparable cities analysis. Redding, the only city selected by both parties as a comparable city, clearly illustrates the fluctuation. Moreover, the Association listed Redding's wage as \$2,170; the actual wage for Redding police officers is \$1,966.

The City also said that the Association's analysis was flawed in a number of respects. First, the Association used old data, i.e., the data from 1970 through 1980, when it analyzed the effect of population increase on salaries. The outdated data does show that Kennewick had grown 126% during these ten years. It is true that during the early seventies

Kennewick's population did increase at a rate from 1% to 4% per year, and that from 1975 through 1980, Kennewick's population did increase at an annual rate of 10% to almost 17%. However, in 1981, Kennewick's population grew at a rate of .01%; in 1982, the increase was 2.7%, but in 1983, the population decreased. During the last 3 years, the years omitted in the Association's analysis, Kennewick grew only 2.2% or .7% annually. Prorated over a ten year period, Kennewick's population growth rate is between 7% and 8%. Kennewick's population has increased because Kennewick has annexed certain areas. If Kennewick had not annexed these areas, Kennewick's population would have decreased by about 2,000 during the past three years. Today, Kennewick is not a rapidly expanding city. It is unfair and inaccurate to omit the figures for the last three years and to assert that Kennewick's growth rate is 126% and to compare Kennewick only with cities that had a growth rate of from 63% to 252% during 1970 to 1980. Further, the Association unfairly excluded 78 cities and seven of the City's proposed cities; viz., Bellingham, Bremerton, Chico, Medford, Olympia, Richland, and Yuba City, solely because they were growing too slowly. All but three of the City's comparable cities would have been included as comparable cities if the Association had not used the population increase factor. Kennewick is not longer a vibrant growing and expanding city. WPPSS has cancelled two plants and completed a third. As a result the whole Tri-

Cities area now suffers a massive economic slowdown.

The Association also used old data for per capita income; the Part I Crimes data is from 1981; the Part I Crimes per capita uses the 1980 population, and the Association failed to indicate the year of the data for assessed valuation and for the number of police officers. More recent figures are available, the Association should have used them.

Second, the Association ignored one of Zerbe's own critical criterion: distance from the hub city, a factor which Zerbe said was "powerfully" related to police salaries. Zerbe had concluded that police salaries decline as the distance from a hub city increases. The Association unfairly used as comparable cities those cities near metropolitan areas. It did so because police salaries of cities near metropolitan areas are higher. The City set the estimated distance between the Association's comparable cities and a major metropolitan city.

Oregon Cities:

Beaverton	five miles from Portland
Gresham	nine miles from Portland
Hillsboro	eighteen miles from Portland

California cities:

Gilroy	twenty miles from San Jose
Escondido	twenty-two miles from San Diego
Carlsbad	twenty-five miles from San Diego
Manteca	forty miles from Oakland
Hemet	fifty-eight miles from San Diego
Turlock	fifty-nine miles from San Jose
Visalia	one hundred ninety-five miles from San Jose
Redding	two hundred miles from San Francisco

Third, the Association unfairly excluded Fountain Valley although Fountain Valley met all of the Association's dropout criteria; Clouis and Chino met eight (8) of the criteria, but the Association excluded these cities. Fourth, the Association did not include one city in the entire state of Washington, or one city in the local area.

The City concluded "...the Association has used a highly questionable approach to arrive at a group of cities which the City believes are generally not comparable with Kennewick...." "The Association's comparable cities analysis should be rejected." (Brief, p. 31).

C. The City's Interpretation and Application
Guideline (c)

The City thought that the expression "similar size" embraces more than population. To be comparable, one city must be "like" another city. To determine whether one city is "like" another city, the advocate and the arbitrator first must determine whether or not a city is or is not near a major metropolitan center because geographic proximity determines the economic and political life of the city.

To emphasize the importance of distance, the City at first compared wages of top-step police officers, top-step firefighters, a senior secretary, a building inspector, a mechanic, and a finance director on the east and west sides of the Cascades. The City concluded that "In each and every case, the average wage paid east of the mountains was substantially less

than that paid west of the mountains. The variations ranged from approximately 6% for finance directors to 18% for senior secretaries" (Brief, p. 13). To test the relationship between salaries and proximity to a major metropolitan center, the City compared the statistical relationship between top-step police officer salaries and distance from Seattle in miles. The City concluded "with 99.9% confidence" that distance from Seattle and top-step monthly salary of police officers are linearly related. The City then developed a linear formula to compare the relationship between distance and salaries. Applied to Kennewick (216 miles from Seattle) and "all other factors being equal," Kennewick's top-step police officer salary should be \$2,088.33. The 71.6% difference in salaries between Washington cities can be explained solely by their distance from Seattle.

The City said that the proximity to a major metropolitan center also affects assessed valuation and assessed valuation per capita. The City compared these two factors in metropolitan and non-metropolitan cities in Washington that were within fifty percent of Kennewick's population. The City found that in 1983 metropolitan cities (based on proximity to Seattle or Portland) had an average assessed valuation of \$1,355,400,000; non-metropolitan cities had an average assessed valuation of \$77,457,000. Similarly, metropolitan cities had an assessed valuation per capita of \$41,308.00; non-metropolitan cities had an assessed valuation per capita

of \$24,710. The City concluded that there are "substantial economic differences between cities based on metropolitan proximity" (Brief, p. 14).

To arrive at its list of comparable cities, the City used three criteria. First, it used the same population range used by the Association, viz., a city's 1983 population must range from 17,570 to 52,709, i.e., 50% below or 50% above Kennewick's 1983 population. Second, the City said that a city must be located in a metropolitan statistical area (MSA) which has a population within the parameters of 50% above and 50% below the Tri-Cities' MSA. Third, the City must not be in a consolidated metropolitan statistical area (CMSA).

The City ultimately rejected the straight mileage criterion and adopted the federal government's metropolitan statistical area groupings, MSAs. The City rejected the mileage criterion because it was both "arbitrary" and troublesome, especially if a city is near a metropolitan area. For example, Bremerton and Renton, both about 10 miles from downtown Seattle, cannot be compared because Puget Sound forms a natural geographic barrier between Bremerton and Seattle. No such barrier exists between Renton and Seattle. The MSA criterion overcomes the geographical problem because the MSA embraces a large population nucleus, together with adjacent communities which have a high degree of social and economic integration with that nucleus. Sometimes, small MSAs become

so interdependent and integrated that they form a larger area called consolidated metropolitan statistical area (CMSA). On the west coast there are four CMSAs: Seattle-Tacoma, Portland-Vancouver, San Francisco-Oakland-San Jose, Los Angeles-Anaheim-Riverside. However, not all contiguous MSAs combine into a CMSA. Therefore, the City looked for cities within similarly sized MSAs, i.e., MSAs that were plus or minus fifty(50) percent the size of the Tri-Cities MSA. Cities within smaller or larger MSAs would not be "like" Kennewick.

RANK ORDER OF CITY'S COMPARABLE MSA'S
BY 1983 POPULATION

1.	Yakima	178,512
2.	Chico-Paradise	153,670
3.	Bremerton	152,613
4.	Richland-Kennewick-Pasco	149,787
5.	Medford	134,024
6.	Olympia	129,886
7.	Redding	123,005
8.	Bellingham	109,969
9.	Yuba City	109,119

AVERAGE 136,350

The City excluded Pullman and Walla Walla because these two cities are not in an MSA.

The City concluded that its methodology was "consistent with and, indeed, closely tailored to the statutory mandate to find 'like' employers of similar size" (Brief, p. 20).

The City applied this criteria and proposed that the arbitrator select the following cities as cities comparable to Kennewick: Yakima, Bellingham, Redding, Medford, Bremerton, Richland, Olympia, Chico, Paradise, Yuba City and Pasco.

RANK ORDER OF CITY'S COMPARABLE JURISDICTIONS
BY 1983 POPULATION

1.	Yakima	51,721
2.	Bellingham	47,823
3.	Redding	44,934
4.	Medford	40,284
5.	Bremerton	37,442
6.	Kennewick	35,139
7.	Richald	35,033
8.	Olympia	28,709
9.	Chico	28,274
10.	Paradise	24,049
11.	Yuba City	20,082
12.	Pasco	17,784

These cities have an average population of 34,194; Kennewick's population is 35,139, a difference of only 2.7%. Not only do all these cities range within a plus or minus 50% of Kennewick's assessed valuation per capita of \$26,202.00, but the overall average is \$26,598.00, a difference of 1% to Kennewick's assessed valuation per capita.

The City recognized the inherent difficulties in any comparability study (Brief, p. 43). State laws in Washington, Oregon, and California are different and the effective date of wage increases is often different. Some increases take effect on July 1, other increases take effect on January 1. To cope with the second difficulty, the City used an annualized average wage figured on a calendar year basis. For example, Bellingham's salary wage was \$2,160, but the July wage increased it to \$2,292. The City averaged the \$2,125 Kennewick police officers received under the City's proposal in January 1984 with the \$2,168 the officers would have received beginning July 1984. The averaged wage for Kennewick is \$2,146.

The City thought that because Kennewick contributes 7% of each officer's salary to Social Security in addition to PERS payments, these amounts should be treated as income. All retirement benefits should be added to the base wage calculations because Kennewick's police officers will be substantially better off at retirement than their counterparts in those cities which have withdrawn from Social Security. The City's contributions to Social Security should be credited to the City (Brief, p. 46). The City rejected the Association's view that contributions to Social Security are "illusory." The City would not make these payments if it thought that no benefit would accrue to its employees.

If the arbitrator adds the City's PERS and Social Security contributions to the base wage and if he compares this wage with the City's comparable cities, he will find that Kennewick is 5.8% above the average of its comparable cities (Brief, p. 47). And, if he compares the adjusted base wage, he will find that Kennewick is substantially above the average of its comparables. Kennewick ranks third out of twelve cities and is only third behind Medford. And, even if the arbitrator excluded Social Security contributions, Kennewick would still be average. The 1984 adjusted wage for the City's comparables excluding Social Security contributions is \$2,131; Kennewick's adjusted wage is \$2,146. If the arbitrator adopts the City's 1984 proposal, Kennewick would be slightly above the average of its comparable cities.

The City compared the education incentive and longevity pay plans of its comparable cities with Kennewick's educational incentive and longevity pay plans. To determine how Kennewick's police officers compared with officers in comparable jurisdictions, in educational incentive and longevity, the City used a hypothetical model: an officer with an A.A. and five years of service, an officer with a B.A. and five years of service, an officer with ten years of service, an officer with fifteen years of service and an AA, and an officer with twenty years of service. In each case, Kennewick officers came out substantially ahead of their comparable cities' counterparts. The differences are as follows:

	<u>Comparable Cities</u>	<u>Kennewick</u>	<u>% Difference</u>
Five years/A.A.	\$2,111	\$2,360	11.7%
Five years/B.A.	2,352	2,414	7.1%
Ten years	2,164	2,328	7.6%
Fifteen years/A.A.	2,183	2,360	8.1%
Twenty years	2,184	2,414	10.5%

The City admits that there might be many permutations possible, yet the conclusion is the same: the data shows that Kennewick officers are doing substantially better than the police officer in the comparable cities (Brief, p. 48)

The City also offered a "total package comparison," admittedly "fraught with problems," because different jurisdictions work different hours, different jurisdictions pay different amounts for the same benefit, e.g., medical or dental benefits, and vacation schedules are different. Admittedly, it is not an "apples to apples" comparison (Brief, p. 49).

of service, and concluded that the Kennewick police officers were substantially better off than their comparable city counterpart on a net hourly compensation basis. The following are the City's figures:

	<u>Comparable Cities</u>	<u>Kennewick</u>	<u>% Difference</u>
Five years	\$14.16	\$15.05	6.3%
Ten years	14.41	15.67	8.7%
Fifteen years	14.43	16.10	11.6%
Twenty years	14.92	16.47	10.48%

D. The Association's Criticism of the City's
Comparability Method

First, the Association said that the City's approach to comparability produced a list of cities that have virtually nothing demographically in common with Kennewick because many of the City's comparable cities have considerably less economic vitality than Kennewick (Transcript, passim, Brief, p. 10).

Second, the City's approach is untried, untested, and without sufficient factual foundation. It is true that the federal government has classified and grouped certain cities into MSAs, CMSAs, and PMSAs, but the classification is geographical, not according to population. And, "it is completely uncertain whether such classifications make any sense in the context of comparability analysis." Simply because cities are grouped into a geographical MSA, CMSA, or PMSA does not make the cities comparable.

Third, the City's approach to comparability has produced a group of cities that are vastly dissimilar in "size."

Kennewick is 100% larger than Pasco in population; and Kennewick's growth rate is four times the growth rate of Pasco.

Fourth, the City has disregarded simpler and more widely accepted demographic methodology, a methodology used in many arbitrations. Fifth, the Association's methodology is significantly superior to the City's "stark" geographical and loosely defined population groupings (Brief, p. 14).

E. The Arbitrator's Evaluation of the Parties' Interpretation and Application of Guideline (c)

I have given no weight to the parties' arguments on comparability for a variety of reasons. First, the parties admitted that the many and inherent logical and practical difficulties made it almost impossible to arrive at comparable cities. The Association admitted that the best it could achieve was "a measure of comparability"; and the City rightly asserted that comparability is as "ephemeral as ever." In their search for comparable cities the parties found that one city might be similar to another city in one respect, but dissimilar in other respects. And, even if one city were similar to another city in many respects, that city was not necessarily comparable because the one or two differences might be substantive economic, political, social, legal psychological differences.

Second, the parties' different methodology led them to different "comparable" cities. The Association warmly embraced Zerbe's method, an attractive but deceptively simple

method. The method, perhaps useful as an academic model, is deficient because it does not and cannot reach, much less measure, all the factors that shape the life of a city. Specifically, the method can only reach a very small portion, and only the economic portion of the life of a city. The method necessarily neglects the other known causes, the many psychological-political causes that shape a collective bargaining agreement. For example, the method does not take into account, as here, the City's "unwillingness to pay." The method also incorrectly assumes that an analysis of comparative statistics, the abstract "averages", can measure and ultimately locate comparable cities. Some arbitrators have noted the limitations inherent in the Zerbe method; they have not, as the Association said, "consistently" adopted the Zerbe method. Arbitrators have used other criteria to determine "comparability", notably population and geography. The seminal Zerbe method is one way to proceed, not the only way. The Association's application of the Zerbe method contradicts its high praise of the method. Zerbe unequivocally stated that distance from a metropolitan area was "powerfully" related to wages. Yet, the Association failed to use this criterion. Common sense tells us that a city near to or far from Kennewick might be statistically comparable to Kennewick but that city is not necessarily comparable to Kennewick. A host of demographic forces, the legal framework, the culture, the climate, and the mores of

of that city might be decidedly different from Kennewick. A city in Southern California might be statistically comparable to Kennewick, but it cannot be "like" Kennewick. It is these demographics, not statistics, that determine the wages, hours, and conditions of employment of police officers.

The City's methodology was logically inconsistent. The City placed primary emphasis on the local conditions in the Tri-Cities area, yet it offered cities far removed from the local areas as cities comparable to Kennewick. The City also incorrectly assumed that because Kennewick is part of the Tri-Cities MSA, that cities in the MSA are comparable to Kennewick. As the Association pointed out, Richland and Pasco are not comparable to Kennewick just because they belong to the same MSA.

Third, the parties could not agree on what elements constituted a total compensation package for comparison purposes. Specifically, the parties could not agree on whether or not social security should be included in the total package comparison.

Fourth, the search for comparability necessarily failed because the parties used different data, and because advocates, by very profession, are result-oriented. In sum, the parties did not make an "apples to apples" comparison.

(d) The Average Consumer Prices for Goods and Services,
Commonly Known as the Cost of Living

A. The Association's Interpretation and Application
of Guideline (d)

After a lengthy analysis of the relative merits of the PCE deflator and the CPI, the Association rejected the PCE deflator as a true measure of the cost of living (Brief, pp. 50-52). The Association also rejected the view that the CPI should be discounted for housing costs and for medical costs. To counter the usual argument that consumers rent houses and that not all consumers purchase a new house every year, the Association quoted the BLS. Paraphrased, the BLS said that the CPI does not assume that everyone buys a new house every month. The house price and mortgage interest components in the CPI represent the expenditures only of those who actually purchased their own home in the base period. In effect, those who purchased their own homes before the base period are assumed to have no house price or mortgage interest costs. Further, the housing cost for those who purchased their homes before the base period are represented in the index only by property taxes, insurance, and maintenance and repairs. House prices and contracted mortgage interest costs represent a small group of families, roughly 6% of the total of those who actually purchased a home in the base period. Further, the CPI's housing component assumes that consumers purchase a new house not every year but approximately every 7 years. The 1970 census figures show that Washington

consumers purchased a new home every 7.1 years. And, the rate of increase of the CPI's housing component has risen at the slowest rate of any other housing cost index. For example, the CPI home purchase component of the housing cost portion of the CPI reported an annual increase of 6.7% a year during 1968-1978. But other indices of house prices show a more rapid annual rate of inflation. Further, the argument that the CPI's housing component does not take into account those consumers who rent rather than purchase their homes has no force today because the CPI-U currently uses a "rental equivalency" housing component which does incorporate rentals. The Association also cited the facts and the arguments from an article by Daniel J.D. Mitchell in the May 1980 Monthly Labor Review, and Jack Triplett's review of Mitchell's study. The Association concluded that "not only does the housing component of the CPI not overstate the effect of inflation but, if anything, it results in a downward bias in the CPI" (Association Exhibit on the Cost of Living, pp. 59-61, and Brief, p. 27).

The Association also rejected the argument that the CPI overstates the cost of living because employers, not employees, pay for all or part of medical premiums. The Association believed that the CPI should not be discounted for medical costs because medical coverage paid by the employer is a "type of income" for the employee and part of the overall cost package to the employer. Further, "it has yet to be calculated what an employee does with the surplus monies not spent on the

medical component." The Association theorized: "If those expenditure categories are categories in which the CPI is increasing faster than medical expenditures, the result would be a downward bias in the CPI as a measure of the employee's cost of living. If, however, the expenditure categories that receive the additional income are experiencing price increases lower than the medical coverage, the CPI would give an upward bias of the changes in the cost of living of the employee." The Association concluded that unless and until it is determined where employees, covered by employer-paid medical insurance, spend their money, it is inappropriate to make any adjustments to the CPI with respect to the CPI's medical component (Brief, pp. 60-63).

The Association preferred the Seattle CPI-U (all urban consumers) to the Seattle CPI-W (excludes certain consumers) as the appropriate measure of the rate of inflation. The Association acknowledged that the CPI-W would "appear to be the better index" for active employees because the CPI-U includes retirees. But the Association preferred and used the CPI-U "with some reservations" because the BLS, in 1982, included a rental equivalency to replace the old housing component. The CPI-W will not incorporate the rental equivalency until at least after January 1985. The CPI-U is preferable for another reason: the CPI-U has been a "smoother" index for the past two (2) years, not subject "to wild variations dependent upon small changes in the prime rate of interest" (Brief, p. 66).

The Association rejected the ACCRA index, the index of the American Chamber of Commerce Researchers Association, because the index is not only inapplicable to the police officers but it is seriously flawed in its methodology (cf. infra the City's use of ACCRA). The ACCRA index is applicable only to "a mid-management executive family's pattern of expenditures for consumer goods and services," not to police officers. The ACCRA index would naturally rank Kennewick comparatively "lower" in the cost of living index because costs dominate the ACCRA index. The ACCRA is not a predictive tool for comparison purposes. The ACCRA index has serious deficiencies: the number of items priced is very limited, it completely ignores taxes, and it completely fails to take into account advertising; its data is compiled by representatives of individual Chambers of Commerce throughout the country. ACCRA "is fraught with the peril for error" (Brief, p. 36).

The Association admitted that the CPI is imperfect and that to use the CPI to forecast economic changes is "fraught with uncertainty" because the CPI "can and does fluctuate significantly, depending not only on the general economic conditions extant at a particular moment, but on the vagaries of politics and isolated economic events as well" (Brief, p.67). Nevertheless, the Association adduced figures based on the wages of top-step police officers to show (Exh. 25) that Kennewick police officers are, at a minimum, 5.6% behind in-

flation. If the actual wages had matched inflation, the "real wages" would be \$2,244.10, not \$2,125.00. Even if the salary of a Kennewick police officer had kept up with the CPI, his salary would not have kept up with and will not keep up to the CPI because the City's offer does not take into account the "timelag" effect of salary increases. Wages increase annually but prices increase continually. To fully reflect the cost of living, changes in wages would have to change in step with prices; wages that change less frequently than prices result in wage losses even if the percentage wage change is equal to the percentage change in price. The Association calculated that a police officer with an income of \$20,000 per year in the initial year with an assumed change in the cost of living at 10% would lose \$900.90 or 5% of his yearly salary. Even the 5% loss is understated because it assumes that prices only change each month rather than continually. When prices continually change, the total loss is \$946.07, not \$900.67. To make up the loss in wages when wages are not adjusted during the year, the Association said that 4.7% should be added to any other adjustments made to wages for inflation if it is assumed prices change only monthly, and 4.8% if it is assumed prices change continually (Brief, p. 74). This is the proper way to take the "time lag" into account. The Association's conclusion was: "To be completely adjusted for inflation over the last thirteen (13) years, the wages of police officers would need to be increased

by 8.72%, the 5.6% "real wage" adjustment plus the 3.07% "time lag" adjustment" (Brief, pp. 33-34).

B. The City's Interpretation and Application of Guideline (d)

The City used the Seattle September-September CPI-W because the parties have used that index since 1978. The City thought that its 2% wage increase offer for 1984 is consistent with the 0.9% decrease in the CPI-W as of September 1983. In October 1984 the CPI-W had increased to 3.8%, but now it has declined to 3.2%. The CPI-U was at 3.4% and is now at 3.3%. The arbitrator should use the 3.2% CPI-W figure.

The arbitrator should use CPI-W, not the CPI-U, because the CPI-W more closely measures the effect of inflation on police officers; the CPI-U includes retirees and social clubs. The CPI-W should be discounted for the medical premiums picked up by the City, but the City did not know how much because no one knows how police officers spend the money not spent on medical premiums.

To counter the Association's argument that inflation has eroded police officers' "real wages," the City adduced figures to show that over the last five (5) years, Kennewick police officers' salaries have increased substantially more than the rise in the CPI-W. The City figures follow:

<u>Time</u>	<u>CPI-W</u> (Sept. to Sept.)	<u>Kennewick Salaries</u>
1978-1983	48.1%	60.3%
1979-1983	33.8%	45.8%
1980-1983	16.1%	34%
1981-1983	4%	15%
1982-1983	- 0.9%	6%

To arrive at the "real wage," the City divided the actual wage by the CPI figure for the period and then multiplied by 100. The resulting figures are: in 1974 the real wage increase was \$622.04; over the next five or six years the real wage increased and decreased slightly but in 1980 the real wage went to \$623. But over the last few years, the real wage has increased dramatically: to \$710 in 1983. The City concluded that Kennewick police officers are approximately 14% better off today than they were in 1980; and the City's present offer will increase the real wage of police officers again up to \$715.00. In short, Kennewick police officers have been treated "exceedingly well" (Brief, p. 60).

The City believed that the average police officer who came into the department seven years ago has not suffered from inflation. In 1977 the salary was \$1005. During the first 3 to 4 years, his salary increase was minimal, but the wage adjustment for the period from 1977 to 1983 has been 115% compared to the CPI of 68%.

The City rejected the Association's contention that because the amount of money differential is 40% higher in San Francisco "a similar differential would seem to be called for" (Brief, p. 62). The City cited studies by the American Chamber of Commerce Research Association which compares the cost of living in the various MSAs and PMSAs throughout the United States. Its figures show that for 1984 most of the major metropolitan areas on the west coast have a cost of

living substantially higher than the national average of 100. For example, the cost of living for the San Francisco PMSA is 134.6, but the cost of living for the Richland-Kennewick-Pasco MSA is 94.9. The City concluded that because there is a substantial cost of living difference between Kennewick and a city in the San Francisco area, those police officers in cities in or near metropolitan areas are not comparable and should not receive equal pay.

The City rejected the Association's "time lag" argument. The City pointed out that when parties set salaries, they set them for the year, not for January (Brief, p. 64). Further, the Association manipulated figures to make the time lag argument. It, too, could manipulate figures and it did so. The City adjusted the timing one month and showed that an officer would have a \$932 gain rather than a \$901 loss. (The Manipulated Figures are on p. 64-65 of the City's Brief) Further, whether there is a time lag or a time gain, the fact is that all officers everywhere are subject to it.

C. The Arbitrator's Evaluation of the Parties' Interpretation and Application of Guideline (d)

I have given no weight to the parties' cost of living arguments. First, the CPI is an imperfect, inadequate measure of the cost of living because it contains many intractable variables, and because it measures prices retrospectively. Second, I find it difficult to understand how the Seattle CPI, either the CPI-W or CPI-U, is relevant to Kennewick's cost-of living. The parties' arguments are perplexing. The

Association rejected the CPI-W, favored the CPI-U, but admitted that it used the CPI-U "with reservations." The City emphasized local factors, but it would apply the Seattle CPI-W to Kennewick, a city 216 miles from Seattle. Third, the ACCRA index is wholly inappropriate because it does not cover or take into account the hours, wages, and conditions of employment of police officers.

(e) Such Other Factors Which Are Normally Taken Into Consideration in the Determination of Wages, Hours, and Conditions of Employment

1. Work Load

(a) The Association on Productivity

The Association argued that the increased productivity of Kennewick's police officers justified its request for a 5.5% increase. The Association admitted that the attempt to measure productivity in law enforcement is "fraught with uncertainty" but statistics "can be fairly used to measure both work 'inputs' and 'outputs' necessary for a work load analysis" (Brief, p. 78). The Association's statistics show that from 1976 to 1983 Part I Crimes had risen 90.6%. In 1983 Part I Crimes had risen 112.80%; Part I Crimes from 1976 to 1983 had also risen 13.7%. Requests for patrol services have risen by 21.73%; in 1983 these requests were 2.84% higher than the average for the period between 1976-1983. Kennewick police officers have issued 4.78% more moving traffic citations than they did since 1976. Kennewick's police officers' work load is relatively high because Kennewick has a low level of

officers per 1000 persons but a relatively high and increasing crime rate. In spite of the rising crime rate, the reduction in staff of police personnel and the low level of policing, Kennewick police officers had a clearance rate 30.9% in 1983, 50% higher than the national average. The clearance rate for all cities with populations between 25,000 and 49,999 is about 30% lower than the clearance rate in Kennewick, and the clearance rate for all jurisdictions in the Pacific states is almost 37% lower than the clearance rate in Kennewick. Kennewick's clearance rate, on the rise since 1976, is "truly astounding."

(b) The City on Productivity

Although the City is proud of its police officers and its police administration, the City believed that its police officers are not entitled to a productivity "bonus" because the Association's statistics do not support its claim. The City admitted its statistical dilemma. If the statistics show that crime has gone down or is going down, police officers can argue that their productivity has increased; if statistics show crime has risen or is rising, police officers can argue that they deserve more money because they are working harder. The City criticized the Association's statistics. The City thought that the Association unfairly compared 1983 statistics with 1977 statistics. In the late seventies, the City was growing rapidly because nuclear plants were being built, but in 1983 and 1984, the nuclear plant construction had ceased.

In 1979, the number of Part I offenses per officer was 58.6; in 1983, it was 52.3. The number of Part I offenses has dropped dramatically. In 1979 there were 86 Part II offenses per officer; in 1983 there were only 42 Part II offenses per officer. Both types of offenses have dropped every year since 1979. Further, these offenses are a small part of the overall police work. The total number of annual calls has decreased from 30,400 in 1979 to 26,270 in 1984. Over the last five years, the clearance rate for Kennewick police officers has remained relatively constant. The five year average is 30.9%; the 1983 clearance rate is 30.7%. Although Kennewick's clearance rate is above the national average, Kennewick has been above the national average for the last five years. Further, the Association did not compare Kennewick's clearance rates with the clearance rate of its comparable cities. The Association inappropriately relied on regional statistics, statistics unrelated to cities "like" Kennewick.

2. Turnover Rate

The Association said that the arbitrator must consider Kennewick's "startling", "absolutely appalling" turnover rate. A crisis is approaching. The Association's Exhibit 36 shows the turnover rate for the past five years to be 25%; 10 out of 39 officers have left the department to take higher paying jobs in law enforcement elsewhere, a turnover rate directly attributable to low wages (Brief, p. 97). Low wages do not save the City money because it costs approximately \$20,000

to \$30,000 to fully train a new police officer, and it takes approximately five years to develop an experienced and mature police officer. Experience is significant because one police officer must "back up" another police officer in emergencies. Kennewick's high turnover rate and the inexperience of many low tenured officers tends to remove the margin of safety needed to protect police officers.

The City countered. It should not come as a surprise that many police officers have been with the City only 4 to 6 years. In the late seventies, Kennewick created ten (10) new officer positions because Kennewick was expanding economically. These officers are now reaching the four, five, and six year point in their careers. The Association misstates the facts: only three (3) officers have voluntarily left the department over the last four years. The turnover in the late seventies has now ceased. The police department has lost fewer employees on a percentage basis than other departments.

3. Ability to Pay

The City rejected the Association's request for a 5.5% increase for 1984 not because it could not pay but because it was inadvisable to pay. The City refused to pay because Kennewick is in a "pathetic" economic condition. The City unequivocally and directly challenged the Association's assertion that Kennewick is a fast growing, economically vibrant city, a city in a turnaround condition whose future looks

bright. The City did not deny that Kennewick had grown substantially during the 1970s, primarily because WPPSS employed many people to build the three (3) nuclear plants. Today, however, one plant has been completed, one has been terminated, and the other mothballed. This substantial decrease in work, a layoff of 9,000 employees, has interrupted Kennewick's previous prosperity. Kennewick's population grew during the last three years not because its economy was vibrant or booming, but because Kennewick has annexed territory. If the City had not annexed territory, the City would have lost almost 2,000 persons. The facts show that Kennewick suffers economic stagnation. During the last few years, the non-agricultural payroll within Benton County has decreased by almost 10%. Kennewick has the highest unemployment rate of any west coast city, currently at 15.1%, a rate higher than the rate of the whole Tri-Cities area. Kennewick's economic downturn is evident in other ways. The value of all building permits, residential and commercial, for new and remodel work, has decreased from \$56 million in 1979 to \$9 million in 1983. Occupancy rates for multiplexes, mobile homes and apartment complexes have decreased substantially over the last three years. Although sales tax receipts in the late seventies had increased from 8% to 37% per year over the last five years, sales tax receipts have increased at an average rate of less than 1% per year. And, in two of the last three years, there has been a decrease in sales tax revenues. Kennewick ranks

19th in per capita distribution of state collected revenues distributed to Washington cities. The revenue available to Kennewick is \$277.44, but the state-wide per capita revenue yield for cities is \$446.08. Further, since 1978 the CPI has increased 56.3% but general government revenue has increased only 36.8%. The City estimated that its revenue projections (admittedly quite sketchy) for 1985 would increase from 1.3% to 4.7%, depending on how much additional territory the City annexes. But the increase would be offset by the City's obligation to provide governmental services.

The City cannot easily raise revenue. It could impose an optional local sales tax, but this is not a real alternative because Kennewick is close to the Oregon border where there is no sales tax. A local sales tax could drive consumers to Oregon to shop. Neither Richland nor Pasco, nor Benton or Franklin counties has a local sales tax. Over the last six years, the citizens of Kennewick have consistently rejected ten (10) different bond elections or tax initiatives, whether the issue was street improvements, parks, emergency dispatch, or hospitals. The City has reduced the number of its employees: in 1983 the City reduced the 1982 payroll by 10%, the equivalent of 25 full time positions (the actual number of positions left unfilled is about 35 to 40). The number of city employees per thousand population decreased significantly in 1983; in 1982 Kennewick had 6.60 employees per thousand citizens; in 1983 Kennewick had 6.02 employees

per thousand. From 1982 through 1984 the City reduced the total number of its employees by 11.9%, but the City reduced the police department by only 7.2%. Contrary to the Association's view, the police officers have not suffered the brunt of the reductions.

The Association (Exhibits 40-42) incorrectly asserted that there has been a 566% increase in expenditures. The ending fund balance shows a surplus because the state auditor informed the City that the City must actually budget 10% of its general funds into the ending fund balance category. The City now has a favorable ending fund balance because the City made personnel cuts and took other savings measures. If the ending fund balance figure is inserted into the Association's Exhibit 40, the figures would show very little increase in expenditures. The Association's Exhibit 41 makes a similar mistake: it does not include the ending fund balance. If that amount were added, the total would be \$7,744.926. Thus, the overall increase from 1982 to 1984 is only 7.7%. The 7.7% compares favorably with an 11% increase in the police budget. Further, the Association's Exhibit 42 uses actual dollars, not the budgeted amounts. If actual dollars were used, the 1983 and 1984 figures would be close to the figures for 1982. The Association knows that Kennewick is not an economically healthy and robust city. In fact, Kennewick's poor economic conditions could justify no increase at all in wages. This explains why the City, at first, suggested a wage freeze.

Only after July 1, when it found it could pay something more, did the City raise its offer to a 2% increase for 1984 (Brief, p. 41).

4. Other Wage Settlements

The Association pointed out that arbitrators sometimes use other wage settlements as a factor to arrive at wages. The Association pointed to the following facts. The average wage settlement throughout the State of Washington for 1984, for cities with service populations above 15,000, was 3.7%. In Eastern Washington, Pullman had settled for 7.2%; Spokane for 5.5%, Yakima for 3.5%, and Pasco and Richland had agreed to a wage freeze. The average settlement in Eastern Washington cities was 3.6%. The Pasco police officers have received a 2% wage increase each quarter of 1985; the Yakima police officers have received a 5% wage increase effective January 1985, and a 2.5% increase effective July 1985; Kennewick's firefighters have received a 4% wage increase effective January 1, 1985; the average wage award in five law enforcement factfindings and interest arbitrations in Oregon and Washington in 1984 (Olympia, Seattle, Portland, Washington County and Hermiston) is 5.9%. The Association said that "it appears" that the average settlement in Washington police agencies for fiscal year 1985 is between five and seven percent. Five (5) percent to seven (7) percent for 1985 is reasonable because the economy in the Tri-Cities area in general and in Kennewick in particular has not only been improving over the

past year, but is "stable" and "likely to improve" in the future (Brief, p. 115).

5. How Kennewick Ranked in Relation to Other Washington Cities

The Association's Exhibits show that, although Kennewick is the tenth largest city in Washington, Kennewick ranks 25th in the wages it pays to its police officers. Further, the City's expenditures per capita for police officer salaries are the third lowest in the state, and these expenditures are significantly lower than every other Eastern Washington city, save one. And, Kennewick has one of the lowest ratios of per capita income to police salaries in Washington.

6. The Local Labor Market

The City considered the local labor market a significant factor, probably the most significant factor in any determination of wages. The City urged the arbitrator to give great weight to the local labor market because the local labor market has more effect on Kennewick's police officers than any other factor (Brief, p. 50-51). The local labor market embraces similar social, geographic, and economic units. Officers are recruited from the same pool and they have similar job duties and responsibilities. It is the local labor market that has produced freely negotiated agreements and the historic relationship between Kennewick, Richland, and Pasco. Every year since 1974 Richland police officers have received more than Kennewick officers and Kennewick officers

have received more than Pasco officers (Brief, p. 53). The City's 2% offer will continue this historic relationship: it will bring Kennewick police officers to within \$32.00 of the Richland police officers, a differential less than the differential between Richland officers and Kennewick officers at any time over the last eleven years. Previously, the smallest differential between the two cities was the \$45.00 differential in 1975. For 1984 Richland and Pasco officers both agreed on a wage freeze; Kennewick firefighters and operating engineers also agreed to a wage freeze. However, because the City found that it was in slightly better fiscal condition than it had expected to be, the City decided to give a 2% raise effective July 1, 1984 to firefighters, to operating engineers and to other City employees.

The figures show that Kennewick and Richland officers' salaries continued to climb, but Pasco officers have not kept up with the historic relationship. To preserve this historic relationship, the City of Pasco and the Pasco Police Officers Guild have agreed to a wage increase of 8% for 1985. Pasco police officers' wages will rise to \$2,164, and if the arbitrator awards 4% to the Kennewick officers for 1985, Kennewick officer salaries will rise to \$2,254. Richland and Pasco police officers have both agreed to a wage freeze.

Many other public and private sector employers and unions in the Tri-Cities have agreed to a wage freeze, including the Plumbers and Pipefitters Union, a militant union (Tr. p. 107

and Brief, p. 56). The City's 2% wage increase offer not only reflects the local labor market conditions, it preserves the historic relationship between Richland, Kennewick, and Pasco.

7. Kennewick Belongs to the Tri-Cities MSA

The Tri-Cities is an economically and socially integrated area, an MSA. In the Tri-Cities area, police officers frequently interact with each other. The three cities operate a centralized emergency dispatch system for the entire Tri-Cities region. The three cities coordinate many functions: they have a common Justice Center (shared with Benton County); they have a joint training program, a common computer system to maintain crime statistics and to spot regional trends; they all belong to the Tri-Cities Good Roads Association, to the Mid-Columbia Building Inspection Association, and to the Columbia River Association of Planners; they form a Tri-Cities library district (with Benton-Franklin Governmental Conference) which has a mutual aid pact. In short, the interaction between these three cities, and Benton and Franklin Counties as well, is substantial and ongoing (Tr. p. 156-157; Brief, p. 55).

8. Consideration of Equity

The City pointed out that all other City employees have accepted or received 2% for 1984 and 4% for 1985. It is true that the police officers and firefighters have not always moved in tandem from 1974 to 1983, but the total percentage increase has been almost equal: 154.4% for police officers

and 154% for firefighters. Equity demands that all employees share the economic hardship equally (Brief, p. 57).

The Arbitrator on "Other Factors"

I have given no weight to the parties' arguments on productivity, on the turnover rate, and on ability to pay.

1. On Productivity

As the Association admitted, statistics on productivity are "fraught with uncertainty": there is just no way to measure productivity in professional occupations. The crime rate incidence caused by criminals fluctuates and is beyond the control of the City. Further, crime figures are only a small part of a police officer's work load; police officers perform many other functions.

2. On the Turnover Rate

Although the figures seem to support the City, I am very suspicious about the avowed or putative reasons why persons enter or leave law enforcement. The reasons are as varied as they are mysterious. Wages alone do not determine the entry or the leave rate. A variety of reasons, not subject to statistical analysis, determine entry or leave rate: economic necessity, morale in a particular police department, benevolent and vigorous police administration, recreational facilities, established roots, and safe neighborhoods.

3. Ability to Pay

The Association's argument that the City could pay 5.5% for 1984 is of no consequence because the City admitted that

it could pay, and would pay if the arbitrator so ordered. Therefore, the Association's lengthy discussion on the monograph Ability to Pay: A Search for Definitions of Standards and Arbitration, has no relevance here.

Issue No. 1 Wages

A. The Association's Conclusion on Wages

The Association believed that all its statistics - on comparability, on the cost of living, on workload, on turnover rates, on productivity - persuasively argue that its request for a 5.5% wage increase for 1984 is not only equitable but conservative. Statistics on the comparable jurisdictions show that Kennewick is about 5.8% behind its comparable cities and its analysis of the cost of living shows that Kennewick is 5% to 8% behind the rate of inflation. Kennewick police officers' work load is incredible; the police department is productive; Kennewick ranks low both in staffing levels and expenditures per capita among Washington cities, and low in relationship to police salaries in the community. The arbitrator should not Award a wage increase less than 5.5%.

B. The City's Conclusion on Wages

The City proposed a two-year agreement: a 2% wage increase effective July 1, 1984, and 4% wage increase effective January 1, 1985.

The City believed that its proposal is fair, reasonable, and justified because the proposal is equal to the salary in-

crease offered to, and accepted by all other represented employees in the City; because the increase is equal to the salary increase given to all non-union employees of the City; because the increase compares favorably with increases given police officers in Richland and Pasco; because the City's proposal will, during 1984 and 1985, maintain the historical wage relationship between the police officers in Kennewick and the police officers in Richland and in Pasco; because the City's proposal is consistent with its comparable cities; because the existing adverse economic conditions existing in the Tri-Cities justify the proposal; and because other public and private sector employees in the Tri-Cities have received similar raises.

The arbitrator should adopt the City's proposal.

C. The Arbitrator's Conclusion on Wages

What shall the wages of Kennewick police officers be? Shall the arbitrator award the City's offer: 2% for 1984 and 4% for 1985? Or, shall the arbitrator award 5.5% for 1984 and from 5% to 7% for 1985, as the Association requested? To answer this question, I have asked myself: what would have been the "probable" agreement? Would the Association's statistics and arguments convince the City? Given the political, economic, and psychological context, what would the parties have agreed to in free collective bargaining?

I have attached great significance and decisive weight to two local conditions, the financial condition of the City

and the wage settlements in the Tri-Cities and in the City of Kennewick, because these two local conditions, more than statistical analysis, directly affect and ultimately determine the collective bargaining agreement.

Kennewick belongs to the Tri-Cities MSA, an economically and socially integrated area. Kennewick, the largest of these three cities, has a population of 35,000; Richland's population is 31,000; and Pasco's population is 19,000. Kennewick, bounded on the west by a joint border with Richland and on the north by the Columbia River, has some growth potential to the south and southeast. The City, a bedroom community, has moderate commercial activity but a very limited industrial tax base. Territorially, Kennewick embraces several islands within its confines. Persons on these islands, county residents, do not pay toward the general city government operations for street, parks, and other amenities, but they benefit from its government. These county residents, however, do pay higher fees for services such as water, sewer, and special park programs.

1. The Financial Condition of the City

First, Kennewick is not, as the Association said, a vibrant, economically stable city with a bright future. The City's analysis of its financial position, uncontested by the Union, shows that the decline of WPPSS has caused high unemployment in the Tri-Cities area. As a result, the City

has had to reduce expenditures, lay off employees, and initiate savings programs. Second, and very important, citizens have rejected outright all City proposals to raise revenue. Third, the City's power to tax is very limited.

2. Wage Settlements in the Local Market

Wage settlements in the Tri-Cities area directly affect the wages of Kennewick police officers. Most wage settlements for the Tri-Cities area range from zero (0) percent to two (2) percent for 1984. Only Benton County settled for 3½%; Kennewick General Hospital settled for 4% in 1984 but for 2% for 1985; and Kadlec Hospital settled for 3% for 1984. In the City of Kennewick, firefighters, operating engineers, and other City employees accepted or received 2% for 1984 and 4% for 1985. These local conditions impose severe economic, political, and psychological restraints on the City. Therefore, I conclude that it is highly unlikely that in free collective bargaining the City would grant the Association 5.5% for 1984 and 5% to 7% in 1985.

What, then, shall be the wages for police officers in 1984 and in 1985? Shall it be the City's 2% offer? I cannot award the City's offer of 2% for 1984 or 4% for 1985 because the offer does not take into consideration the historical disparity in wages between police officers and firefighters. This historical wage pattern is an excellent barometer to determine wages because free collective bargaining, not compulsory arbitration (except in one case) has pro-

Issue No. 3: Hours of Work

Article 7(c) of the current agreement requires police officers to appear for an unpaid fifteen (15) minutes "line-up" time before their regular work shift to get assignments. The Association's proposal, "clearly the most important in these proceedings," would delete Article 7(c) (Brief, p. 116). The arbitrator should award the Association's proposal because officers should be paid for all work that they perform. The total unpaid time is not insignificant: fifteen minutes a day amounts to 1.25 hours per week or the equivalent of 3.13% in wages. Police officers in Kennewick's comparable jurisdictions work an average of 3.2% less hours per year than do police officers in Kennewick; only one of the comparable jurisdictions has an unpaid briefing time.

The City urged the arbitrator to reject the Association's proposal because the proposal is a radical departure from long established past practice. The issue is not unpaid time. Police officers are paid for eight (8) hours and fifteen (15) minutes, the fifteen minutes is part of the police work day. Officers are paid on a monthly basis, not an hourly basis. The majority of the City's comparable cities have uncompensated lineup time; Richland and Pasco have uncompensated lineup time. Police officers in Kennewick get a paid lunch benefit; hence, they actually work only seven hours forty-five minutes per day. The cost of the Association's proposal is

not insignificant: at a straight time rate, the cost to the City would be 3.13%; at overtime rate, the cost for the coming year would be \$48,000, a very costly item (City Brief, p. 92).
Award: Retain the status quo.

The City's financial condition, past practice, and area practice argue for the status quo. However, because this subject matter is of great importance to the Association, the parties are hereby ordered to consider this matter during the 1985 negotiations.

Issue No. 4: Call Back Time

Article 8(a) of the current agreement guarantees police officers a minimum three hours overtime pay whether or not their court appearance lasts three hours. The City proposed that, if an officer's court appearance lasts less than three hours, the City be empowered to assign work to the police officer for the remaining time. The City said that its proposal simply asks "an hour's work for an hour's pay" because a police officer is seldom in court for the entire three hours. The proposal is fair because the City now is experiencing economic difficulties; police officers should share the economic burden; police officers should be more productive especially because the staffing levels in the police department have been reduced by 7%. Police officers would be required to work only if there is actually work to do. Police officers could do the paper work which they sometimes

do on overtime hours. The time also could be used for training and for many other purposes.

The City estimated that in 1983 the City paid officers for 786 hours for court time, time for which the officers did not work. The premium pay more than adequately compensates the employees for the disruption and the inconvenience caused by recall. Although its proposal is not supported by the data on its comparable cities, the City noted that Richland, adjacent to Kennewick, is one of the two cities that does have this call back requirement. The City believed that this is a proposal "whose time has come" (Brief, p. 98).

Award: Retain the status quo.

The City's proposal is vague and indefinite; past practice argues for the status quo.

Issue No. 5: Vacation Scheduling

In its application of the vacation provision, the City's practice has been to allow police officers to use vacation time in increments of five (5) days or more. To allow police officers to take vacation in increments of less than five days, the Association proposed the following provision:

Subject to the reasonable operational needs of the department, employees shall be allowed to schedule vacation time in increments of less than five (5) days.

The Association thought its proposal fair because virtually all employees in the public or private sector allow it, the practice in the comparable jurisdictions, where that

practice is ascertainable, allows employees to take vacation time in increments of less than five (5) days, and the City's interpretation of the current collective bargaining agreement "appears to stray far" from the intent of the language because the current agreement does not restrict the use of vacation time (Brief, p.125-127). Finally, the use of vacation time is always subject to the operational needs of the City.

The City rejected the Association's proposal because the current system is working. The City does not require police officers to take vacations in increments of more than five days - last year, 139 vacations of 174 vacations taken were for less than five days. The City will generally schedule police officers's vacations for five days or longer because longer vacations relieve stress and refresh officers. The City opposes the Association's proposal to make sure that the City can continue to exercise this preference. The present practice does not adversely affect police officers. Police officers may take vacation for fewer than five days. All other employees use the current and long established vacation allocation system. The Association has failed to adduce sufficient evidence to support its proposal.

Award: Retain the status quo.

The City must have administrative discretion to schedule vacations. The Association's language "subject to the reason-

able operations" of the City is ambiguous and potentially troublesome language.

Issue No. 6: Required Utilization of Vacation Time

The Association proposed to eliminate the current language which requires a police officer to use at least 75% of his accrued vacation during the fiscal year. The Association's substitute proposal was: "No employee shall be allowed to carry over from one year to the next any more than one year's accrual of vacation time." The Association made this proposal because those officers in the department a short time accrued little vacation time. These officers cannot take vacations of two weeks or more "even though their levels of accrual would normally permit them to do so" (Brief, p. 128). The Association made its substitute proposal because the Association recognized the City's concern for unfunded liability. The arbitrator should award the Association's proposal because the proposal is fairly common in law enforcement, and because it provides the City with the necessary protection against substantial unfunded liability. At the same time, the proposal grants police officers the necessary flexibility to take meaningful and important vacations with their families. And, the proposal would also bring Kennewick more in line with the practice in the comparable cities.

The City believed that the current requirement that a police officer use 75% of his annual vacation should be retained. The City favors and encourages police officers to

City agreed to pay \$20.00 per month premium increase, an increase of almost 1% of a Kennewick officer's base wage. And, the City is willing to pick up another \$25.00 for 1985, another 1% increase. Employees often share the cost of medical insurance; only three cities of the City's twelve comparable cities fund the entire medical plan. The operating engineers have agreed to the proposal; the firefighters have agreed to a \$100/\$300 deductible.

The Association said that the arbitrator should not consider such a dramatic change unless the City can show that it has taken measures to contain costs. The City has not done so. The Association would be ready to participate in cost containment discussions. For example, the Association would be willing to negotiate a "wellness" program. The City's cost is currently \$15.72 per month per employee, less than the costs in the Association's comparable cities.

Award: Retain the status quo.

However, since this matter is of great concern to the City, the parties are hereby ordered to consider this matter during the 1985 negotiations.

Issue No. 8: LEOFF II Benefits

a. Off Duty Disability

The Association proposed that the City fund (1) an off-duty disability insurance policy for LEOFF II officers. In 1976 the Legislature, concerned with the substantial unfunded

The City rejected the proposal for a variety of reasons. First, the proposal would create an unfunded liability for 50% of all of the accumulated sick leave which, at current rates, would amount to \$35,000. Second, the cost is not minimal; responsible fiscal management requires that the liability be funded. Third, LEOFF II officers would not use less sick leave because the City does not have a problem with the use of sick leave. Studies suggest that payoff systems do not effectively control sick leave. Fourth, the proposal is a form of severance pay; sick leave is to be used for sick leave, not for retirement. LEOFF II pension payments and Social Security payments provide for retirement. Under the present system, police officers will receive generous and substantial pension payments. A 20 year LEOFF II officer who retires in 1985 would receive \$1,652, which is about 75% of his base wage. Fifth, the Association did not base its proposal on its comparability criterion; the Association only chose cities in Washington. Sixth, eight of the City's eleven comparable cities do not have a sick leave cash-in plan. In the last negotiations, the City bought out of a previous sick leave conversion system for LEOFF II firefighters. The City hopes to buy out of the sick leave conversion system for the operating engineers. The Association unfairly requests such a system for LEOFF II officers.

Award: Retain the status quo.

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PUBLIC EMPLOYMENT
RELATIONS COMMISSION
OLYMPIA, WA

CHARLES S. LACUGNA Ph.D.
Mediator • Fact Finder • Arbitrator
906 - 20th Avenue East
Seattle, Washington 98112

*Case I case
- 2 copies -*

(206) 322-3803

February 27, 1985

To the Parties:

Re: In Interest Arbitration between Kennewick
Police Officers Benefit Association and
The City of Kennewick-PERC 5109-M-84-2146

Enclosed is a copy of my Opinion and Award and
my billing.

Many thanks for the opportunity to serve you.

Very truly yours,

Charles S. LaCugna
Charles S. LaCugna

CSL:cm

Enclosures

cc: Will Aitchison (3 copies)
Otto G. Klein, III (2 copies)
Greg Cuoio, Ass't. City Manager
Rick Dopke, Pres. of the Association
Marvin L. Schurke, PERC ✓