5714-I-85-139

BEFORE THE ARBITRATION PANEL
THOMAS F. LEVAK, NEUTRAL CHAIRMAN
AND IMPARTIAL ARBITRATOR

In the Matter of the Interest Arbitration Between:

CITY OF TUKWILA
THE "CITY"

and

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL NO. 2088
THE "UNION"

FINDINGS OF FACT, DETERMINATION AND AWARD OF THE NEUTRAL CHAIRMAN AND IMPARTIAL ARBITRATOR

I. INTRODUCTION.

This case is an interest arbitration under the terms of RCW 41.56.450 et. seq.

The City and the Union are signatory to a written collective bargaining agreement in effect for the period of January 1, 1983 through December 31, 1984 (Jt. Ex. 1; herein, the "Current Agreement"). In August 1984, the parties commenced negotiations for a new Agreement. State mediation followed in February 1985. Following negotiations and mediation, the parties remained at impasse.

An Arbitration Panel was convened to resolve the dispute, composed of Neutral Chairman Thomas F. Levak, City Arbitrator Franklin L. Dennis and Union Arbitrator Michael J. McGovern. An arbitration hearing was held on July 15, 1985 at the offices of the City, Tukwila, Washington. The City was represented by Gerard F. Gasperini and Arral A. Phipps. The Union was represented by Thomas H. Grimm.

At the conclusion of the hearing, the parties stipulated and agreed that post-hearing briefs would be filed with the Arbitration Panel and postmarked August 15, 1985; that the Neutral Chairman would then draft a tentative Findings, Determination and Award, and would thereafter consult by telephone with the two partisan arbitrators; and, that after such telephone consultation, the Neutral Chairman would write and execute his final Findings, Determination and Award.

On August 23, 1985 the Neutral Chairman drafted his tentative Findings, Determination and Award. On August 26, 1985, the Neutral Chairman held a telephone conference call consultation with the two partisan arbitrators. Based upon the evidence, the arguments of the parties, and his consultation with

the partisan arbitrators, the Neutral Chairman hereby renders the following Findings, Determination and Award.

II. BACKGROUND.

The City is located on Puget Sound, on the eastside of I-5, approximately 3 miles due east of Sea-Tac International Airport, 10 miles south of the City of Seattle, 2 miles west of the City of Renton, and 6 miles north of the City of Kent.

The City encompasses approximately 4.3 square miles, and has a permanent residential population of approximately 4,600 persons, of whom approximately 40% reside in single family units and 60% reside in multi-family units.

The predominant characteristic of the City is that of a commercial industrial center operated and utilized by approximately 50,000 non-resident persons. Over 80% of the buildings within the City are commercial structures larger than 10,000 sq. ft., and 95% of those buildings have been constructed under extremely strict building and fire codes, including the requirement that all such buildings have fire suppressive sprinkler systems.

The City's Fire Department is composed of a Chief and an Assistant Chief, seven lieutenants and eighteen firefighters. As a direct result of the relative "fire-proof" nature of the commercial structures located within the City, fire loss within the City is extremely low, and the risk of injury to firefighters is also very low. Firefighters are largely engaged in preventive fire activities.

Since 1972, the Union has served as the exclusive collective bargaining representative of the bargaining unit members of the Fire Department; and since that time, the parties have been signatory to a continuous succession of written collective bargaining agreements, culminating in the Current Agreement.

III. EXHIBITS.

Jt. Ex. 1: The Current Agreement.
Jt. Ex. 2: The annual fire report, 1984 Jt. 3 RCW 4156.405-.460.

Union Ex. 1: Vita of David Roger Knowles.
Union Ex. 2: Map.
Union Ex. 3: Comparability group no. 1.
Union Ex. 4: Comparability group no. 2.
Union Ex. 5: Summary of data sources.
Union Ex. 6: Kelly day computation.
Union Ex. 7: CPI chart.
Union Ex. 8: Group no. 1 CPI comparison.
Union Ex. 9: Group no. 2 CPI comparison.
Union Ex. 10: City workload history.
Union Ex. 11: Photograph.

Union Ex. 12: 1984 alarm comparison.
Union Ex. 13: Visitors' guide.
Union Ex. 14: Chamber of Commerce materials.
Union Ex. 15: Dependent medical comparisons.
Union Ex. 16: Longevity documents.
Union Ex. 17: Two 1975 comparable cities.
Union Ex. 18: August 1984 comparability chart.
Union Ex. 19: August 3, 1984 Union proposal.
Union Ex. 20: McFarland grievance.
Union Ex. 21: Krebs arbitration award.
Union Ex. 22: Wage survey - 1985 supplement.
Union Ex. 23: March 27, 1980 Clark letter.
Union Ex. 24: May 20, 1983 Lomax letter.
Union Ex. 25: Kent bargaining agreement.
Union Ex. 26: Portion of Gasperini letter.

City Ex. 1A: Seniority list.
City Ex. 1B: Birthdate list.
City Ex. 1C: Fire Department employee profile.
City Ex. 2: City's final proposal.
City Ex. 3: April 6, 1976 arbitration award of Charles S. LaCugna.
City Ex. 4: [none]
City Ex. 5: Washington city employee salary and benefit survey for 1984.
City Ex. 6: Washington city employee salary and benefit survey for 1985.
City Ex. 7: Table 13, official April 1, 1984 population of Washington cities and towns.
City Ex. 8: 1985 scale version of SCSBS data: firefighter.
City Ex. 9A: 1985 actual wage rates between City and comparable cities.
City Ex. 9B: 1985 actual wage rates between City and cities of 15,001 to 50,000 population.
City Ex. 9C: 1985 actual wage rates between City and cities 5,000 to 15,000 population.
CityEx. 10: Work hours, wages, number of employees and populations: comparable cities.
City Ex. 11: [none]
City Ex. 12A: May 1985 CPI.
City Ex. 12B: May 1985 Seattle-Everett CPI.
City Ex. 12C: 1984 Seattle CPI.

IV. WITNESSES.

Union Witnesses:

David Knowles, Asssociate Professor of Economics.
Sam Ruljancich, Firefighter and Union Official.

City Witnesses:

Hubert Crawley, Fire Chief
Don Morrison, City Administrator.

Richard Emberger, Mayor's Intern.

V. THE ISSUES.

Issue No. 1: Article XVII, Wages.
Issue No. 2: Article IX, Hours of Work.
Issue No. 3: Article XXVII, Medical Benefits.

VI. ISSUE NO. 1: WAGES.

Salaries in effect under the Current Agreement are as follows: Captain - $2,656; Lieutenant/Inspector - $2,531; 1st Class Firefighter - $2,296; 2nd Class Firefighter - $2,185; 3rd Class Firefighter - $2,069; Probationary Firefighter - $1,964.

Both parties propose a two-year agreement.

The City proposes a 3.5% across-the-board increase on all current bargaining unit wages effective January 1, 1985, and an additional 4.0% across-the-board increase on all 1985 bargaining unit wages effective January 1, 1986.

The Union proposes a total increase for 1985 of 7%, to be implemented through a 3.5% increase on January 1, 1985, and an additional 3.5% on July 1, 1985. Effective January 1, 1986, the Union proposes to increase all 1985 wages to the average hourly wage of the comparable cities presented by the Union, and in addition a cost of living increase percentage equal to the West Coast Cities Consumer Price Index, with the COLA at a minimum of 4% and a maximum of 6%.

Union Contentions. The Union argument was presented by Associate Professor of Economics David Knowles and by Union Representative Sam Ruljancich. Knowles specializes in the area of labor economics, with particular emphasis on the impact of legislation on wages in the public sector. He has served as an expert witness in at least four other firefighter interest arbitrations.

Knowles testified that in his opinion, the key element to a valid comparison of employee wages is to compare employers and employees in the same labor market, which is now deemed by the federal Bureau of Labor Statistics to be the Seattle-Everett Area. He testified that the most functionally predictable area within that labor market is the I-5 Corridor from Everett to Tacoma. He testified that all economic stimula are relatively the same within that area. He excluded the westside of Puget Sound on the basis that economic stimula are different within that area and not predictable.

Knowles testified that because the City does not have a high resident population, it was impossible to apply the statutory factor of comparability based on population. Instead, he based

comparability upon the relative size of bargaining units within the Seattle-Everett labor market. He testified that bargaining unit size was relevant to the complexity of duties involved within the various fire departments.

Knowles testified that he excluded from his consideration unorganized (non-union) bargaining units under the rationale that conditions within unorganized units are significantly dissimilar from those in organized units. He testified that they exist under different legislative mandates, and that different forces are at work in the two types of departments.

Knowles testified he also excluded from his consideration eastern Washington bargaining units because of significant differences in the cost of living in eastern Washington cities, and because of other variables. He further testified that there are sufficient bargaining units within the Puget Sound I-5 Corridor of similiar size to the City's firefighter unit to perform a valid comparability study using those units alone.

Knowles utilized two groups of fire departments in his comparison analysis: the first group was composed of a list of departments which were supplied to him by the Union, and which the Union represented had been historically used by the parties in making wage comparisons.

He utilized the first group, but also created a second group by removing departments from the first group that he felt were not substantially comparable to the City in size of bargaining unit.

Group no. 1 was composed of the following departments: Kent, Renton, Pierce County Fire District 2, King County Fire District 39, Auburn, Port of Seattle, Snohomish County Fire Department 1, Redmond, King County Fire Department 4, Kirkland, Pierce County Fire Department 9, Lynnwood, Puyallup, Mercer Island, King County Fire District 16, Edmonds and Bothell.

Group no. 2 consisted of Redmond, King County Fire District 4, Kirkland, Pierce County Fire District 9, Lynnwood, Puyallup, Mercer Island, King County Fire District 16, Bothell, Edmonds, King County Fire District 11 and King County Fire District 2. The number of bargaining unit employees in the first group ranges from nineteen to seventy-eight, while the number of bargaining unit employees in the second group ranges from sixteen to thirty-five.

Knowles also testified that he considered assessed valuation and annual alarms in reaching his conclusions, but primarily relied upon bargaining unit size.

In assessing the comparative status of City firefighters, Knowles testified that in his opinion, the average hourly wage of firefighters within a department is the sole relevant variable in the comparison of wages. He testified that there is simply no

other way to compare groups of firefighters than to compare them on the basis of their average hourly wage.

Knowles found that a City firefighter's $2,296 monthly salary and 53.4 average hours per week yielded an hourly pay rate of $9.92. By comparison, he found that the hourly average among the other cities and districts compared in his first group was $11.49, a dollar difference of $1.57, and a percentage difference of 15.8%. Utilizing the same methodology with his second group of bargaining units, Knowles found that City firefighters were 19.9% below the average hourly wage in those cities and districts.

Knowles testified that, in this case, he did not consider the Consumer Price Index to constitute a proper criteria for wage analysis. He reasoned that where a unit is already behind other bargaining units, and all units receive CPI increases, the lower unit will fall still further behind.

Ruljancich testified that all of the cities within Knowles' first group had been used at one time or another, "by the Union and, at times, by the City." He testified that in 1975, the Union and the City agreed that certain other departments were comparable: Kent, Auburn, Redmond, Lynnwood, Puyallup, Edmonds and Bothell.

Ruljancich testified that he had made a study of units within the I-5 Corridor, and had found that those units had settled their 1985 and 1986 wages at rates that were higher than percentage increases in the Consumer Price Index. He also referred to Union exhibits which demonstrated that the 1984-85 average increase for departments in Knowles' first group was 4.6%, while the Seattle-Everett CPI-W 1984 average was only 3.3%. He also referred to a second Union exhibit which demonstrated that the 1984-85 average increase within the second group was 4.1%.

Ruljancich also testified regarding the historical inclusion of Kent and Renton in the cities that have been deemed comparable by the parties, noting that Kent and Renton have mutual aid agreements with the City. He further referred to the large number of specific mutual aid calls between Kent, Renton and the City.

Union Ex. 12 demonstrates that the City does approximately the same kind of work as the comparison units, because its fire calls indicate about the same percentage of work as those other cities.

Union Ex. 6 shows the number of Kelly days that are necessary in conjunction with a percentage pay increase to be equivalent to the $11.49 an hour that the employees in group no. 1 receive and the $11.90 per hour that employees in the second group receive.

Even if the full amount of the firefighters' proposal is granted by the Neutral Chairman, firefighters will not receive the 1985 average salary for either of the two groups cited in Knowles' study.

The City's comparisons are not valid and reasonable. The basic analysis contained in Employer exhibits was not based upon any objective standard. Indeed, the City's chief witness, Richard Emberger, conceded that some comparable cities were not included in the analysis, that he had not reviewed all of the contracts to indicate whether the data was accurate, and that at least the data for Kent was inaccurate. He testified that cities were selected on the basis of the number of employees, work hours and population, but he never did explain the objective standards within these categories that he used to include some cities and exclude others. Thus, his analysis is inherently suspect and deserves little weight, because it appears to have been developed to make a point, not to demonstrate objective fact.

In addition, data utilized by the City in several of its exhibits is 1984 data only. So if the Neutral Chairman utilized the City's skewed results, it would still end up with the City a year behind other groups, trying again for a catch-up in future negotiations.

The City this year speaks in its exhibits to so-called "actual" wages. However, the parties have always bargained based upon the top firefighter salaries. Within the City, most firefighters fit into that top category. The City presented no evidence at the hearing how its "mean" salary was derived, but that salary is lower than the top firefighter salary range figures shown in Employer exhibits. That data suggests that the departments listed in Employer exhibits are not employing firefighters of like longevity and skills to City firefighters.

The Neutral Chairman is also referred to the standard of "changes in comparisons." Negotiations in this case took so long that early comparisons done by the Union and submitted to the City were proven to result in too low a differential between the City and the actual average. Contract data reflected in Union exhibits aptly demonstrate that the discrepancy for 1985 on wages is not the 9.5% originally thought but either 15.8% or 19.9%. As time went on, the comparisons became more accurate because of contract settlements providing more data sets. The firefighters were continually trying to set their sights on a moving target.

This caused the Union to adhere to a one-year duration demand, even after discussions of a two-year agreement. Only days before the arbitration hearing, the Union agreed upon the two-year duration because the greater part of 1985 was already past.

The City then tried to prevent the Union from presenting its final proposals, claiming that those final proposals had not been submitted during negotiations. No authority for the objection

was cited, and this is simply a case of the pot calling the kettle black.

The City's position at the arbitration hearing was also new. The evidence showed that the Union was the only party that made any formal wage proposal. The City presented no evidence of any formal proposals during the hearing. The standards of RCW 41.56.460 make no reference to consideration of the proposals raised during bargaining. Therefore, the real issue is what firefighters deserve, applying the statutory factors.

The firefighters' last proposal presented at the arbitration hearing was the culmination of crash attempts to settle the case prior to the hearing. However, if the Panel chooses to agree with the City position and disregard the Union's last proposal, the only fair thing to do is to implement a 9.5% wage increase for 1985 with a CPI/minimum 3% for 1986, and seriously reduce the average hours worked. Since the City has offered 4% in the second year, the Union proposal for 1986 should then be increased accordingly.

The Neutral Chairman is also referred to the "other relevant factor" standard contained in RCW 41.56.460(f). While the hourly pay of City firefighters has increased since 1976, the manning has essentially been the same, alarms have increased, and the assessed valuation protected by the firefighters has dramatically increased. In short, the hourly pay has fallen seriously behind the amount of work that is required of the firefighters by a factor of approximately 2-to-1. The City concedes that there is increased productivity with reduced resources, and that firefighters are efficient.

City Contentions. First of all, the Neutral Chairman is reminded that the Union has, in effect, submitted two wage proposals. Its first proposal was its initial bargaining proposal submitted during negotiations, which consisted of a demand for a 9.5% salary increase for 1985 and a CPI/minimum increase of 3% for 1986. Then, during the middle of the arbitration hearing, and only when the Neutral Chairman called for a submission of the parties' final bargaining positions, did the Union submit its latest proposal for a 3.5% plus 3.5% increase for the first year and its new CPI formula demand for the second year. The Neutral Chairman should properly consider only the first proposal by the Union.

Turning to the first statutory factor of comparability, that factor does specifically mandate that the comparison be between cities similar in size, and that the pool of comparison be on the West Coast. The statute thus indicates the legislative determination that population is the best indicator of comparability. However, as noted by arbitrator LaCugna in his 1976 interest award, Tukwila is a unique city, and, "the comparability guide fails,***, because no other city is similar to it, much less identical with, Tukwila."

In any event, the Union's selection of comparable cities is fatally flawed since it focused completely on its self-interest and did not comply with the mandate of the controlling statute. Knowles conceded the following on cross-examination: that the "historical comparables" were provided him by Ruljancich, and that he was not aware on what basis they constituted historical comparables; that he considered only the three contiguous counties along the I-5 Corridor on the west coast of Puget Sound; and that he considered the size of the bargaining unit, not the size of the community.

The Union's method for selecting comparable cities is noteworthy because of the criteria used to exclude possible comparison cities. The Union excluded all West Coast cities that were not contained in the three contiguous counties along the I-5 Corridor from Olympia to Everett; it excluded all non-union fire departments; it excluded all cities on the Olympic Peninsula; and it excluded all cities of King, Thurston and Snohomish Counties.

The Union totally disregarded the statutory requirement that the comparison be made with cities of "similar size." Knowles testified that he did not even know the population of the City, nor any of the cities selected as Union comparables. He did not know the mix of commercial, residential and industrial property in Tukwila. He did not know the type of services required of an industrial fire force such as that of the City's. He was unaware of the mix of the industrial, commercial and residential components of the comparison cities; whether the comparison hours included vacation hours or were just scheduled hours; whether the comparison cities had comparative benefits or even that firefighters are paid on a salary basis. Further, he was unable to explain the generally accepted method of the scheduling of firefighters.

It is not unexpected that, given the Union's selection criteria, that the City would have the lowest pay and highest hours worked within the Union's survey. When asked if there was any fire department or district within the three counties that the Union restricted its analysis to, the Union could not name one. From this analysis, Knowles recommended that the Union be awarded a significant increase. That selection criteria is precisely what arbitrator LaCugna meant when he stated that the parties select cities "in the pursuit of their own interests." The Union did not even include one comparison city which pays its firefighters a lower salary than the City pays its own.

In comparison, the City, recognizing the inherent shortcomings of the comparison approach, compared the wages and hours of City employees to all other cities in Washington with populations between 5,000 and 50,000, and between 15,000 and 50,000. The City entered into evidence the Washington Employees Salary and Benefit Survey for 1985 from which all figures were derived. That publication is effective March 15, 1985 and includes wage increases for 1985.

The actual average salary in 1985 for a City firefighter, including the 3.5% wage increase offered during negotiations, is $2,359.80. The average for all cities within the 5,000-15,000 population range was $1,908.58. When the same comparison is made between the City and all cities between 15,000-50,000, the City's actual average salary remains at $2,359.80, whereas the actual mean and weighted average for all other cities within the population range is $2,180.60 and $2,261.18 respectively. The City's average salaries are greater than the average for many cities up to ten times larger in population.

The City arrived at its comparison cities through the following criteria: population, size of the work force, proximity to the City and whether the City had a mutual aid agreement, and formerly utilized comparables. Based on those criteria, the City selected seventeen cities from all parts of Washington, and included cities with both greater and lesser salaries. The actual mean wage and weighted average mean salary of the comparables is $2,201.76 and $2,221.86, respectively; whereas the City's was $2,359.80 and $2,376.36. The City's average salary is approximately $150 a month greater than the comparable cities.

The second statutory factor of Consumer Price Index also favors the City. The uncontroverted Consumer Price Index statistics presented by the City indicate that between May 1984 and May 1985, the CPI for Seattle-Everett was 1.9%. The Consumer Price Index from January 1984 through December 1984 was only 2.75%.

The final factor mandated by the statute consists of those things "normally or traditionally taken into consideration." The LaCugna award referred to those other factors. The City, in 1985, continues to be a very desirable place to work.

Since the time of the LaCugna decision, the Fire Department has had a turnover of only three employees, and the average age of the Department has steadily increased due to the high rate of retention.

When the City opens up applications for firefighter positions, it normally receives several hundred.

The physical facility and equipment of the Department are impressive. The firehouse is a pleasant place to work. The City has an active capital investment program to update its firefighting equipment.

The City has never had a fire-related death among its employees. Fire losses for 1983 and 1984 are extremely low for a City with an assessed valuation of over $800,000,000.

Given the nature of the community, the majority of calls are from the business community and are mostly during the day-time business hours.

Determination and Award. Based upon the evidence and application of the statutory factors thereto, the Neutral Chairman determines that the increases proposed by the City shall be implemented. The following is his reasoning.

(a) The constitutional and statutory authority of the employer.

This factor was not made an issue by either party and is not relevant to the Neutral Chairman's Determination and Award.

(b) Stipulations of the parties.

The parties did not enter into any relevant stipulations of fact or law.

(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.

This factor most strongly supports the position of the City. First of all, the factor mandates that comparability be based upon wages of "like personnel" employed by "like employers." The language of the statute is very specific, and differs significantly from "common law" comparability language developed by labor arbitrators and the language found in the statutes of most other states, in that it restricts the Arbitration Panel to a comparative analysis of the exact same types of governmental units. The common law and most statutes simply direct an arbitrator to compare the wages of employees employed by the unit at issue with wages received by "other employees performing similiar services in public employment and in private employment," a much broader form of directive.

It is readily apparant that "like personnel" are commonly employed by unlike employers. For example, cities, counties and fire districts all employ firefighters. However, cities, counties and fire districts are most certainly not "like employers;" and the statute makes it very clear that the like personnel utilized in any comparability analysis must be employed by like employers.

In the case at hand, the City has placed its focus entirely upon like employers, viz., other cities. The Union has focused its primary attention on both cities and unlike employers, viz., fire districts. Accordingly, the City's analysis is, on its face, more valid under the statute than that of the Union.

The second important mandate of the comparability factor relates to like employers "of similar size." Within the disciplines of public sector political science and labor relations, "size" refers to resident population. Every

governmental assistance agency of which the Neutral Chairman is aware rates and ranks governmental units by their actual population; and it is those statistics that are uniformly used by adversarial parties in factfindings and interest arbitrations. In this case, there has been no evidence presented that would lead the Neutral Chairman to conclude that the legislature intended "size" to encompass either geographical boundaries, the overall employee complement, or the bargaining unit.

It might be argued that population size is not a static term relating only to the night-time resident population, but must be considered a term of art; and that where public employment is concerned, population size should relate to the number of persons actually served by the governmental unit. It might also be argued that an arbitrator should consider the total number of employees employed by the governmental unit, or the total number of employees within the bargaining unit, or the total tax revenues of the unit, or total expenditures of the unit. However, there is no evidence that the legislature intended such applications of the statute. Again, the statute has been very narrowly drafted.

In the case at hand, the City has focused its attention on cities of similar size. Indeed, it has compared itself to cities of much greater size. On the other side of the coin, the Union has taken the position that because of the alleged uniqueness of the City, population cannot be used as a basis for comparison. In substance and effect, the Union has simply ignored the confines of the statutory comparability factor.

The Neutral Chairman concedes that, under the evidence before him, the City appears to be somewhat unique. However, the Neutral Chairman is totally unconvinced that cities comparable to the City do not exist on the West Coast. Indeed, several similiar cities in Northern California readily come to mind. Be that as it may, any regional uniqueness of the City cannot detract from the applicability of the statute. It is not the function of the Neutral Chairman to re-write the statute based upon some concept of equity and uniqueness. That authority rests solely with the legislature. It is the Neutral Chairman's function to apply the evidence to the statute. In this case, that evidence strongly favors the City.

The third important part of the comparability factor relates to a comparison of like employers on the West Coast. In the case at hand, while neither party has examined the States of Oregon and California, the District has at least focused its analysis both on those cities located in geographical proximity to the City, and also those of like size throughout the Puget Sound area and throughout the State. On the other side of the coin, the Union has focused its attention only on cities within the Tri-County area, and only on those in the I-5 Corridor. Such a narrow focus would have been justified only: (1) if comparable cities could not have been found through a thorough search of West Coast cities, and (2) had a sufficient number of "like employers of

similar size" existed on the I-5 Corridor with which to make a reasonable comparison.

Other portions of the Union's comparability evidence are also troublesome. First, the Union's elimination of unorganized, non-union city fire departments and fire districts necessarily taints and renders unreliable the Union's entire comparability study. Most certainly, the statute does not contemplate or allow the exclusion of unorganized employers. Quite to the contrary, the statute mandates a comparison of all like employers. Second, it is impossible for the Neutral Chairman to know what comparable cities the Union may have left out of its study under its "organized v. unorganized" theory.

Next, the Union's evidence is further tainted and rendered unreliable by the exclusion of all statutorily comparable cities that pay a lesser wage than does the City. The exclusion of such evidence must necessarily be deemed to render its study biased and weighted with a specific result in mind.

In summary, the City's evidence established that the actual average salary in 1985 for a City firefighter, including the 3.5% wage increase offered by the City during negotiations, is $2,359.80. The actual average for all cities within the population range of the City was $1,908.58. Even when the City is compared to all cities in the 15,000 - 50,000 population range, the actual mean salary within those cities is $2,180.60, and the weighted average is $2,261.18. Thus, the City's average salary is presently greater than the average within cities much larger in population than the City.

The Neutral Chairman agrees with the City's position that average salary is the strongest measure of comparability. However, the Neutral Chairman has also examined all submitted evidence with an eye to low salaries and high salaries, and finds that City salaries are also comparative at those ranges.

(d) The average consumer prices for goods and services, commonly known as the cost of living.

The City's evidence concerning increases in the Consumer Price Index during recent years was unrebutted and uncontroverted. As noted above, between May 1984 and May 1985, the urban wage earners and clerical workers' CPI for the Seattle-Everett area was 1.9% annually. The Consumer Price Index from January 1984 through December 1984 increased only 2.75%.

Thus, wage increases under the Current Agreement have kept pace with increases in the CPI; and wage increases proposed by the Employer for 1985 and 1986 will most certainly keep pace with increases in the CPI through December 1986.

It should be stressed that the Neutral Chairman is not a fortune teller and cannot see into the future. However, the Neutral Chairman's Award must be based upon the evidence. In

that regard, the Union presented no evidence that the CPI could reasonably be expected to exceed 4.0% during 1986.

(e) Changes in any of the foregoing circumstances during the pendency of the proceedings.

This factor has no direct bearing on the Neutral Chairman's Determination and Award. While the Union poined to some changes which occurred during negotiations and during the pendancy of the arbitration hearing, none of those had any effect on factors (a) through (d). In particular, there were no relevant changes in the wages of like personnel of like employers of similar size that would lead the Neutral Chairman to any different result. To the contrary, the evidence most relied upon by the Neutral Chairman, that presented by the City, took into consideration wages of fire personnel employed by cities of comparable size in effect through May 1985. Similarly, no relevant changes took place within the CPI that were not properly considered by the City.

(f) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

The primary traditional factor relates to an employer's ability to pay a requested wage increase. In the case at hand, the City does not assert that it does not possess the financial ability to implement the Union's proposal. However, ability to pay is viewed by the Neutral Chairman more as a condition precedent to consideration of the statutory factors contained in paragraphs (a) through (e), rather than as a separate, independent basis for a wage increase. In addition, ability to pay is generally considered a relative, rather than an absolute, factor because of the many obligations of a public employer. In any event, ability to pay would only have become a factor had the Union established: (1) that fire department personnel of the City suffered in comparison to like personnel of like employers of similar size, or (2) that the wages of City firefighters had failed to keep pace with increases in the cost of living.

A second traditional factor which favors the City is the qualitative characteristic of the City's work environment. Stability and security within the Fire Department are very strong. The likelihood of a fire-related death is extremely low. Overall conditions of employment are relatively high.

No other traditional factors are applicable to this case.

In conclusion, based upon an application of the statutory factors to the evidence, the Neutral Chairman determines that the City's proposal should be implemented.

AWARD

Effective and retroactive to January 1, 1985, all wages in

the Current Agreement shall be increased across-the-board 3.5% for the period of January 1, 1985 through December 31, 1985. Effective January 1, 1986, 1985-86 wages shall be increased across-the-board 4.0% for the period of January 1, 1986 through December 31, 1986; that is, the 1986 increase shall be a 4% increase over 1985-86 wages, not over 1984-85 wages.

VII. ISSUE NO. 2: HOURS OF WORK.

City firefighters presently work a 24-hour shift. A "Kelly day" is a 24-hour shift for which a firefighter is paid but is not required to work. Kelly days are a means to adjust the average number of scheduled hours worked. Article IX of the Current Agreement provides for six Kelly days.

The Union proposes an additional two Kelly days for 1985, and an additional four more Kelly days for 1986.

The Employer proposes two additional Kelly days for 1985, and one additional Kelly days for 1986. The City also proposes that the Fire Chief should have the right to reschedule two Kelly days at his option. The City further proposes that only one fire suppression firefighter would be able to take a Kelly day on any particular day. The City finally proposes that it should have the right to change to a 40-hour, 8-hour-a-day work schedule with advance notice to the Union.

Union Contentions. The Kelly day issue is tied into wages. Firefighters now work 53.4 hours per week on an average, using a modified Detroit schedule. The average number of weekly hours among bargaining units in the Union's first comparable group is 50.4, and the average among bargaining units in the second group is 49. To reach average hours compared to the first group, City employees would have to receive six additional Kelly days per year, because a Kelly day is equivalent to approximately 1/2 hour fewer per week on the average. The Union's proposal is reasonable, particularly since the second group has nine more Kelly days per year than City employees.

There is no justification whatsoever for the demand by the City to be allowed to move to a 40-hour work week at its own hole in the entire fabric of the parties' bargaining relationship.

The City's claim that re-scheduling rights are necessary because of the Supreme Court's Garcia decision is unsupported by the evidence. It was never explained how the Garcia decision would make such a right necessary. More importantly, Chief Crawley testified that unexpected sick leave or disability was causing problems, not the Kelly days. Firefighters presently schedule Kelly days at the beginning of each two-month period, so there is already sufficient scheduling leeway.

Furthermore, re-scheduling has already been covered in two

prior determinations, including that of arbitrator Krebs. The City offered no evidence why arbitrator Krebs' determination, which allows more than one firefighter to be off on a Kelly day at a time, should now be changed. It is particularly inappropriate for this Arbitration Panel to overturn the recent negotiated settlement and arbitration award. At sometime, there has to be an end to this issue.

The City's problem is related to its failure to have hired sufficient employees so that minimum manning can be met in the event of foreseeable events such as illness or disability. The City now has adequate flexibility in scheduling under the Agreement, if the Chief would only hire the personnel to meet the required manning level.

City Contentions. The weighted average hours per week of comparable cities within the City's exhibits was 52.5. The City's average hours per week, taking into account the City's proposal to increase the number of Kelly days, was 52.46 in 1985 and 52 in 1986. The City's proposal is generous. The Current Agreement provides for six Kelly days per year. By the second year of the new agreement, employees will enjoy a total of nine Kelly days. The City's proposal represents a 50% increase during the course of this agreement in the number of Kelly days. The Union's proposal of a 100% increase is unreasonable.

The City's proposal that the Fire Chief have the right to re-schedule two of the Kelly days is also reasonable. Under the Current Agreement, each employee has the unrestricted right to schedule a Kelly day. Since the start of these negotiations, state and local employees have been brought into the coverage of the Fair Labor Standards Act. See Garcia v. San Antonio Metropolitan Transit Authority, 26 WH Cases 65 (1985). The number of hours a firefighter may work in a pay period prior to the time when overtime is required is more restricted under the Act than under Washington statutes. It has become necessary for the Chief to have some control over the scheduling of Kelly days in order to minimize the amount of overtime.

The City has also proposed that it have the right to establish an 8-hour/40-hours-a-week schedule with prior notice to the Union. The Union argues on one hand that it works an excessive number of hours, while on the other hand states that under no circumstances would it accept a 40-hour work week. The day-on, day-off, 24-hour schedule is common in the firefighting profession and has traditionally resulted in a week for which employees are scheduled in excess of 50 hours. In fact, the Act provides that a firefighter may work an average of 53 hours a week before being entitled to overtime. The City's hours of work proposal would reduce these employees' average scheduled hours of work to 52 hours a week for the second year of the Agreement. Scheduled hours of work per week does not take into account the shifts off for vacation and/or sick leave.

Determination and Award. The Neutral Chairman determines

that the City's proposal should be implemented, with the exception that the City shall not have the right to change to a 40-hour, 8-hour-a-day work schedule. The following is the reasoning of the Neutral Chairman.

First of all, the Neutral Chairman's Determination necessarily must be based upon the parties' evidence regarding comparability. Again, the City's evidence constitutes a much more valid basis for that Determination than does the Union's evidence. Under the City's evidence, it is clear that the City's proposal will allow City employees to keep pace with employees employed by comparable jurisdictions.

In the second place, the City's argument regarding the effect of the Garcia case is well-taken. Since the start of negotiations, City employees have been brought under the coverage of the Fair Labor Standards Act. The effect of that Act is that it will be necessary for the Chief to have greater control over the scheduling of Kelly days in order to minimize the amount of paid overtime.

Next, the City's proposal that only one fire suppression firefighter should be allowed to take a Kelly day at the same time is patently reasonable. As the number of Kelly days increase, so does the City's difficulty in scheduling available manpower increase.

Finally, the Neutral Chairman cannot accept the City's proposal that it have the right to implement a 40-hour, 8-hour-a-day work schedule with advance notice to the Union. Such a modification would constitute a total and drastic revision in the traditional work hours of firefighters. Such a change cannot be allowed lightly.

Quite frankly, the Neutral Chairman would only consider such a change under certain conditions. First, the proposal would have to be for a definite, scheduled implementation, rather than for an open-ended option. Second, the City would have to present much more detailed evidence supporting the need for the change. Third, the City would have to demonstrate that the issue was a fully considered and completely bargained primary subject of dispute, with all options considered.

In the case at hand, the City has no present intention of moving to a 40-hour week within the foreseeable future; the City has presented no detailed evidence supporting the need for the option; and the Neutral Chairman is convinced from the evidence and the City's presentation at the arbitration hearing that the subject has not been fully and seriously considered during negotiations as a primary objective and proposal of the City.

AWARD

Effective and retroactive to January 1, 1985, each employee shall have two additional Kelly days, for a total of eight Kelly

days. Effective January 1, 1986, each employee shall have one additional Kelly day, for a total of nine Kelly days. The Fire Chief shall have the unilateral discretionary right to re-schedule two Kelly days per year as he so desires. Only one fire suppression firefighter shall be entitled to take a Kelly day on any particular day.

VIII. ISSUE NO. 3: MEDICAL BENEFITS.

Article XXVII of the Current Agreement provides:

> Medical coverage for all employees covered under this Agreement shall continue in force and continue to be paid by the Employer. The employee's spouse and minor dependants shall continue to be furnished the opportunity for medical coverage under GHC or WPS. Effective January 1, the cost of coverage shall be born 100 percent by the City based under the rate structure of the WPS plan in effect on 12/31 of the previous year. Any premiums in excess of the above rates shall be borne by the employee.

The Union's proposes no change in the current language. It proposes for LEOFF II employees the addition of a City payment for the supplemental disability plan payment and payment of the $50 annual deductible under the medical program.

The City proposes for 1985 a continuation of payment of 100% of the medical premium under either the WPS or Group Health Plan. The City's offer is retroactive to the first day of the month in which the new agreement is ratified. For 1986, the City proposes to pay the higher of $242 a month or 90% of the medical premium for either medical plan.

Union Contentions. The Union position is supported by the factor of comparability. In the first group of employers used by the Union, nine of the seventeen jurisdictions pay 100% of the medical premium for dependants, while the other eight have some sort of cap. In the second group, the percentage difference is about the same, with seven of the jurisdictions paying for 100% of the medical premium and five having some kind of cap.

Further, under the Current Agreement, the City has a yearly update to 100% of the cost of the lesser expensive of the two plans on December 31 of each year. The Group Health Plan differential cost and any increases to either plan's cost that occur during the year are the responsibility of the employee. Thus, firefighters already have a form of cap applied to them, because they do participate in the payment for their own insurance. The present wording also leaves the parties with a convenient co-payment system and contractual language that does not have to be opened each year.

The City offered no justification for its desire to have the proposal it sought, particularly the lack of retroactivity to January 1, other than it had managed to force the same wording on other bargaining units that do not have binding arbitration. No other evidence of comparable programs was offered.

Regarding LEOFF II employees, those employees do the same work as employees hired before September 30, 1977, but because of financial troubles in the State retirement and disability system (LEOFF I), they do not get the same disability benefits. LEOFF II employees now have to pay for their own supplemental disability plan. The Union's proposal that the City pay the $12 per month cost would be a small cost for the City that provides a large protection for the employee.

The City should also pay the $50 annual insurance deductible applicable to LEOFF II employees. This would bring them commensurate with what the City pays for LEOFF I employees.

City Contentions. The City's proposal is reasonable. The $242 limit in the second year is equal to the maximum rate under WPS for 1985 plus 10%. Thus, the City's proposal represents a benefit increase to each employee.

The Union's proposal that the City pay for the deductible associated with the WPS plan is unsupported by the evidence. Those employees are able to totally avoid any deductibles by enrolling in GHC.

Finally, the Union's proposal that the City pick up the disability premium payments for LEOFF II employees is not reasonable. There is no statutory requirement that the City do this. These are both economic issues which must be evaluated in light of the total economic package proposed by the City.

Determination and Award. The Neutral Chairman determines that the existing language shall remain unchanged for the life of the new Agreement, retroactive to January 1, 1985. The following is the reasoning of the Neutral Chairman.

Again, the starting point is the statutory criteria. The most significant statutory factor is that of comparability. The sole evidence in this case concerning comparability was presented by the Union. No comparability evidence whatsoever was presented by the City. Thus, even though the Union's evidence is somewhat suspect for the reasons already stated, it is the only evidence before the Neutral Chairman.

Of the seventeen comparable jurisdictions in the Union's first group, only eight have some form of dollar or percentage cap. Of the twelve comparable jurisdictions in the Union's second group, only five have some dollar or percentage cap. Thus, the weight of the evidence supports the Union. While the Neutral Chairman has recommended and awarded caps in other cases,

he has done so only where the weight of the evidence supports the position of the employers, or where inability to pay is an issue.

On the other side of the coin, the Union's own comparability evidence supports the City's position with regard to LEOFF II employees. Among the seventeen comparable units in the first group, only five provide for employer contributions, and only three of those pay 100%. Of the twelve comparable units in the second group, only two provide for employer contributions, and only one of those pays 100%.

The City presented no evidence, and advanced no compelling argument, in support of its position that the medical premium increase should not be retroactive. The Neutral Chairman notes that the statutory process for dispute resolution is particularly lengthy. An award against retroactivity would, in effect, penalize a party for utilizing that process. The Neutral Chairman does not deem that such was the intent of the legislature. To the contrary, in the absence of compelling reasons to the contrary, retroactivity should be the normal award under the statutory process.

AWARD

The language of Article XXVII of the Current Agreement shall continue unchanged in the new Agreement.

The Neutral Chairman's Findings, Determination and Award are dated this 28th day of August, 1985.

Thomas F. Levak,
Neutral Chairman and Impartial Arbitrator