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PUBLIC EMPLOYMENT  
RELATIONS COMMISSION  
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IN INTEREST ARBITRATION  
BEFORE THE HONORABLE GEORGE H. REVELLE,  
NEUTRAL ARBITER AND PANEL CHAIRMAN;  
DANNY T. DOWNS, PARTISAN ARBITER;  
AND ALBERT G. ROSS, PARTISAN ARBITER

In the Matter Between	)	PERC #6260-I-86-142
THE CITY OF RICHLAND,	)	<del>XXXXXXXXXX</del>
Employer,	)	[PERC #6530-M-86-2632]
and	)	87-0945
INTERNATIONAL ASSOCIATION OF	)	<u>Award and Opinion</u>
FIREFIGHTERS LOCAL 1052,	)	
Union.	)	

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For the City

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DANNY T. DOWNS, PARTISAN ARBITER;  
AND ALBERT G. ROSS, PARTISAN ARBITER

In the Matter Between )  
THE CITY OF RICHLAND, ) PERC #6260-I-86-142  
Employer, ) (withdrawn)  
and ) [PERC #6530-M-86-2632]  
INTERNATIONAL ASSOCIATION OF ) 87-0945  
FIREFIGHTERS LOCAL 1052, ) Award  
Union. )

Awards are hereby made as follows:

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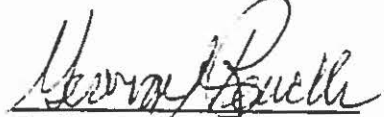
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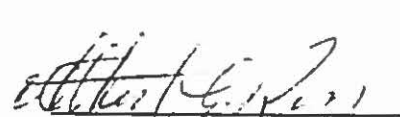
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Jurisdiction is reserved for thirty (30) days from this date to make corrections of errors in transcription.

Done at Seattle, Washington, on March 30, 1988.

  
DANNY T. DOWNS  
 ARBITER

  
GEORGE H. REVELLE  
 ARBITER

  
ALBERT G. ROSS  
 ARBITER

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THE CITY OF RICHLAND,	)	(withdrawn)
	)	
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	)	
and	)	87-0945
	)	
INTERNATIONAL ASSOCIATION OF	)	<u>Opinion of Arbiters</u>
FIREFIGHTERS LOCAL 1052,	)	
	)	
Union.	)	

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I. PROCEDURAL MATTERS

On September 30, October 1 and October 2, 1987 an interest arbitration hearing was held at the Richland, Washington, City Library before an arbitration panel consisting of neutral arbiter George H. Revelle, Chairman; Danny T. Downs, partisan arbiter representing International Association of Firefighters, Local 1052 (Union); and Albert G. Ross, partisan arbiter representing the City of Richland (City). The City was represented by its attorneys, Perkins Coie, J. David Andrews and Nancy Williams. The Union was represented by its attorneys Critchlow & Williams and David E. Williams.

The evidentiary phase was closed October 2, 1987.

///

1 The hearing was closed upon receipt of simultaneously  
2 mailed briefs October 24, 1987.

3 Testimony was given by the following persons:

4 Comparable Jurisdiction - Dan Smolen, Ron Musson, Tim Sharp

5 Union Business - Tim Sharp, Chief Robert Panuccio

6 Occupational Disability Allowance - Dan Smolen, Craig  
7 Williamson, Jeannine Schaffer

8 Prevailing Rights Clause - Tim Sharp, Dan Smolen, Chief  
9 Robert Panuccio, Duane Schrag, Jeannine Schaffer

10 Reduction in Force - Dan Smolen, Chief Robert Panuccio,  
11 Jeannine Schaffer, Tim Sharp

12 Working Out of Classification - Craig Williamson, Jeannine  
13 Schaffer

14 Seniority and Vacancies and Promotions - Chief Robert  
15 Panuccio, Jeannine Schaffer, Dan Smolen, Tim Sharp

16 Hours Worked - John Boardman, Jim Cummins, Dan Smolen,  
17 Jeannine Schaffer, Duane Schrag, Jim Cummins

18 Sick Leave Proposal - Jeannine Schaffer, Dan Smolen, John  
19 Boardman, Tim Sharp

20 Longevity - Dr. Oscar Spurlin

21 Paid Leave - Jeannine Schaffer

22 Leave Conversion - Jeannine Schaffer, Dan Smolen, Tim Sharp

23 Overtime - Dan Smolen, Jeannine Schaffer, Duane Schrag

24 Basis for Negotiations - Dan Smolen

25 Entire Agreement - Dan Smolen

26 Probationary Period - Jim Cummins, Duane Schrag, Dan  
27 Smolen, Jim Cummins

28 Longevity - Jeannine Schaffer, Don Smolen

1        Medical Certification - Kurt Hubele, Jim Cummins, Duane  
2 Schrag, Chief Robert Panuccio, Jim Cummins

3        Wages - Jim Cummins, Dan Smolen, Jeannine Schaffer, Chief  
4 Robert Panuccio, Ron Musson, Neil Shulman

5        Exhibits were admitted as follows:

6        Joint Exhibit No. 1 - 1985 Collective Bargaining Agreement

7        Joint Exhibit No. 2 - PERC Certification Letter

8        Union Exhibit No. 3 - Union Notebook

9        City Exhibit No. 4 - RCW 41.56.460 and Amendments

10       City Exhibit No. 5 - Population Data on City's Comparables

11       City Exhibit No. 6 - Labor Area Summaries Definitions

12       City Exhibit No. 7 - Washington Map Showing Comparables

13       City Exhibit No. 8 - Unemployment Data from City's  
14 Comparables

15       City Exhibit No. 9 - Fire and Ambulance Dispatch Data from  
16 City's Comparables

17       City Exhibit No. 10 - Size, Population and Budget Data for  
18 City's Comparables

19       City Exhibit No. 11 - Lehleitner Arbitration Decision

20       City Exhibit No. 12 - Summary of Historical Expenditure  
21 Reductions

22       City Exhibit No. 13 - Five-Year Revenue Summary

23       City Exhibit No. 14 - General Fund Five-Year Expenditure

24       Summary

25       City Exhibit No. 15 - Revised General Fund Five-Year  
26 Revenue and Expenditure Summaries

27       City Exhibit No. 16 - Summary of Ballot Issues

28       City Exhibit No. 17 - Residential Construction

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City Exhibit No. 18 - Permits for New Construction

City Exhibit No. 19 - Recent News Articles on Economy

City Exhibit No. 20 - Sales Tax Per Capita for Tri-Cities

City Exhibit No. 21 - Sales Tax Per Capita for Tri-Cities,  
Including Equalization

City Exhibit No. 22 - House Bill No. 498

City Exhibit No. 23 - City of Richland Fire Stations  
Locations

City Exhibit No. 24 - Statutory Excerpts on Disability

Leave and Light Duty

City Exhibit No. 25 - City's Comparables on Light Duty

City Exhibit No. 26 - City's Comparables on Occupational

Disability Benefits

City Exhibit No. 27 - City's Disability Experience

City Exhibit No. 28 - RMC 2.28.855, Occupational Disability

Allowance

City Exhibit No. 29 - Abernathy Arbitration Award, City of

Everett

City Exhibit No. 30 - City's Comparables on Prevailing

Rights

City Exhibit No. 31 - In-City Comparison on Prevailing

Rights

City Exhibit No. 32 - RMC 2.28.720 (Reduction in Force)

City Exhibit No. 33 - City's Comparables on Personnel

Reduction

City Exhibit No. 34 - In-City Comparison on Personnel

Reduction

City Exhibit No. 35 - City Personnel Summary

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City Exhibit No. 36 - Upgrade Cost Impacts

City Exhibit No. 37 - City's Comparables on Working Out of Classification

City Exhibit No. 38 - Grievances on Filling of Vacancies

City Exhibit No. 39 - Correspondence Regarding Filling of Vacancies

City Exhibit No. 40 - RMC 2.28.645 and .655 (Vacancies and Promotions)

City Exhibit No. 41 - City's Comparables on Vacancies and Promotions

City Exhibit No. 42 - City's Comparables on Vacancy and Promotion Procedures

City Exhibit No. 43 - City's Comparables Regarding Rule of Three

City Exhibit No. 44 - 1984 Letter of Understanding on Fire Fighter Vacancy

City Exhibit No. 45 - 1985 Letter of Understanding Regarding Vacancies

Union Exhibit No. 46 - 1972 Collective Bargaining Agreement

Union Exhibit No. 47 - Peck Arbitration Award

Union Exhibit No. 48 - September 1987 Panuccio Letter Regarding Jones Vacancy

Union Exhibit No. 49 - Standby Calls for Cummins Shift, September 1987

City Exhibit No. 50 - City's Comparables on Weekly Hours of Work

City Exhibit No. 51 - City's Comparables on Leisure Time

///

1        City Exhibit No. 52 - June 1987 Correspondence with PERC  
2 Regarding Certification of Issues

3        City Exhibit No. 53 - Work Week Reduction History

4        City Exhibit No. 54 - Dot Chart

5        City Exhibit No. 55 - Average Shift Fire Fighter Work Year

6        City Exhibit No. 56 - Federal and State Regulations  
7 Requiring Additional Structured Hours

8        City Exhibit No. 57 - July 1982 Resolution Regarding  
9 Leisure Hours

10       City Exhibit No. 58 - June 1983 Resolution Regarding  
11 Leisure Hours

12       City Exhibit No. 59 - Correspondence Regarding Volunteers  
13 On Leisure Hours

14       City Exhibit No. 60 - In-City Comparison of Sick Leave

15       City Exhibit No. 61 - City's Comparables on LEOFF I Sick  
16 Leave Accrual

17       City Exhibit No. 62 - City's Comparables on LEOFF II Sick  
18 Leave Accrual

19       City Exhibit No. 63 - In-City Comparison of Vacation Accrual

20       City Exhibit No. 64 - In-City Comparison of Personal  
21 Business Time Accrual

22       City Exhibit No. 65 - In-City Comparison of Family Leave  
23 Accrual

24       City Exhibit No. 66 - City's Comparables on Leave Conversion

25       City Exhibit No. 67 - Snow Arbitration Award (Leisure Time)

26       City Exhibit No. 68 - City's Comparables on Overtime Pay  
27 Rate

28       City Exhibit No. 69 - Overtime Rate Comparison

1           City Exhibit No. 70 - Overtime Paid Bases Cost Based on  
2 Actual Hourly Rate

3           City Exhibit No. 71 - FLSA Provisions

4           City Exhibit No. 72 - ULP Charge

5           City Exhibit No. 73 - City's Comparables on Entire  
6 Agreement Clause

7           City Exhibit No. 74 - In-City Comparison on Entire  
8 Agreement Clause

9           City Exhibit No. 75 - RMC 2.28.135 and 2.28.665

10          City Exhibit No. 76 - Observable Hours, Six Months

11          City Exhibit No. 77 - City's Comparables on Probationary  
12 Period

13          City Exhibit No. 78 - City's Comparables on Terms of  
14 Successorship

15          City Exhibit No. 79 - In-City Comparison on Terms of  
16 Successorship

17          City Exhibit No. 80 - Union Longevity Proposal, Monthly Cost

18          City Exhibit No. 81 - In-City Comparison on Longevity Pay

19          City Exhibit No. 82 - City's Comparables on Longevity and  
20 Educational Incentive Pay

21          City Exhibit No. 83 - Fire Calls vs. Ambulance Assists

22          City Exhibit No. 84 - Ambulance Calls vs. Fire Calls

23          City Exhibit No. 85 - Concerned Citizen Letter Regarding  
24 Paramedics

25          City Exhibit No. 86 - Nurses Petition Regarding Paramedics

26          City Exhibit No. 87 - Tri-Cities Comparison of Medical  
27 Certification Benefits

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1           City Exhibit No. 88 - Correspondence Regarding Support for  
2 Paramedic Program

3           Union Exhibit No. 89 - Union's Comparables on Probationary  
4 Period

5           City Exhibit No. 90 - City's Proposed Appendix A Effective  
6 1-1-87

7           City Exhibit No. 91 - City's Proposed Appendix A Effective  
8 1-1-88

9           City Exhibit No. 92 - City's Comparables on Salary Data

10           City Exhibit No. 93 - City's Comparables on Salary Data  
11 (Outside Seattle PMSA)

12           City Exhibit No. 94 - City's Comparables on Salary Data  
13 (Eastern Washington)

14           City Exhibit No. 95 - City's Comparables on EMT and  
15 Paramedic Premium Pays

16           City Exhibit No. 96 - City's Comparables on IV Tech and  
17 Airway Tech Premium Pays

18           City Exhibit No. 97 - CPI Data

19           Union Exhibit No. 98 - Historical Salary Comparisons  
20 between Richland and Pasco

21           Union Exhibit No. 99 - Pierce County Fire District 9  
22 Collective Bargaining Agreement

23           City Exhibit No. 100 - In-City Comparison on Salary  
24 Increases

25           City Exhibit No. 101 - Cost of Union Wage Proposal

26           City Exhibit No. 102 - Cost of City Wage Proposal

27           City Exhibit No. 103 - City Salary Proposal with Current  
28 Educational Incentive Pay

City Exhibit No. 104 - Substitute House Bill No. 1388

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TABLE OF ISSUES

<u>1985 Article No.</u>		<u>Union Issues</u>	<u>City Issues</u>	<u>PERC Issues</u>	<u>1985-88 Issues Agreed Before Hearing</u>	<u>1985 Tentative Agreed Issues</u>	<u>Page Reference</u>	<u>Remarks</u>
1	Recognition				X		19	
2	Nondiscrimination				X		19	
3	Union Security				X		19	
4	Union Business	X	X	X			26	
5	Payroll Deduction				X		19	
6	Occupational Disability	X	X	X		X	30	
7	Holidays				X		19	
8	Union Bulletin Boards				X		19	
9	Employer Rights & Responsibilities				X		19	
10	Prevailing Right	X	X	X		X	34	
11	Performance of Duty				X		19	
12	Uniforms				X		19	
13	Shift Change				X		19	
14	Personnel Reduction	X	X	X		X	19 & 40	
15	Working Out of Classification	X	X	X			44	
16	Vacancies & Promotions	X	X	X			48	
17	Grievance Procedure		X	X	X	X	19 & 52	
18	Wages (except App A or App B Hours)	X	X	X	X	X	19 & 53 54	
19	Fire Incentive Program				X		19	
20	Sick Leave	X	X	X			63	
21	Paid Leaves	X	X	X		X	69	
22	Leave Conversion	X	X	X		X	75	
23	Overtime Pay	X	X	X			77	
24	Insurance Benefits	(1)	X	X	X(1)		19 & 81	(1) Union record or brief does not discuss
25	Productivity				X		19	
26	Basis for Negotiations	X	X	X		X	82	
27	Terms of Agreement		X		(2)		84	(2) PERC states agreed 1986 through 1988 (JE #2)
28	Savings Clause				X		20	
29	Signature Page				X		20 & iv	
30	Appendix A-Salary Schedule	X	X	X			85	
A	Appendix B-Premium Pay Schedule	X	X	X			93	
B	Call In for Absences	(3)	X	X	X		20 & 97	(3) Union record or brief does not discuss
New	Medical Certification/ Recertification & Training	X	X	X			98	
New	Longevity	X	X	X			104	
New	Terms of Successorship	X	X	X			107	
New	Management Grievance Procedure	(4)	X				20-110	(4) Union record or brief does not discuss
New	Entire Agreement	X	X	X			111	
New	Probationary Period	X	X	X			113	
New	Standards of Safety	(5)	(5)	(5)	(5)		115	(5) Removed by PERC pending decision of grievance

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II. STANDARDS APPLICABLE

A. STATUTES AND REGULATIONS INVOLVED.

1. RCW 41.56 in its entirety but especially:

a. 41.56.010 Declaration of purpose. The intent and purpose of this chapter is to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers.

b. 41.56.030 Definitions. As used in this chapter:\*\*\*

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.\*\*\*

(6) "Uniformed personnel" means (a) law enforcement officers as defined in RCW 41.26.030 as now or hereafter amended, of cities with a population of fifteen thousand or more or law enforcement officers employed by the governing body of any county of the second class or larger, or (b) fire fighters as that term is defined in RCW 41.26.030, as now or hereafter amended.

c. 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

1 public service there should exist an effective  
2 and adequate alternative means of settling  
3 disputes.

4 d. 41.56.450 Uniformed personnel--Interest  
5 arbitration panel. \*\*\*The arbitration panel  
6 so constituted shall promptly establish a  
7 date, time and place for a hearing and shall  
8 provide reasonable notice thereof to the  
9 parties to the dispute. A hearing, which  
10 shall be informal, shall be held, and each  
11 party shall have the opportunity to present  
12 evidence and make argument. No member of the  
13 arbitration panel may present the case for a  
14 party to the proceedings. The rules of  
15 evidence prevailing in judicial proceedings  
16 may be considered, but are not binding, and  
17 any oral testimony or documentary evidence or  
18 other data deemed relevant by the chairman of  
19 the arbitration panel may be received in  
20 evidence. A recording of the proceedings  
21 shall be taken. The arbitration panel has the  
22 power to administer oaths, require the  
23 attendance of witnesses, and require the  
24 production of such books, papers, contracts,  
25 agreements, and documents as may be deemed by  
26 the panel to be material to a just  
27 determination of the issues in dispute. If  
28 any person refuses to obey a subpoena issued  
by the arbitration panel, or refuses to be  
sworn or to make an affirmation to testify, or  
any witness, party, or attorney for party is  
guilty of any contempt while in attendance at  
any hearing held hereunder, the arbitration  
panel may invoke the jurisdiction of the  
superior court in the county where the labor  
dispute exists, and the court has jurisdiction  
to issue an appropriate order. Any failure to  
obey the order may be punished by the court as  
a contempt thereof. The hearing conducted by  
the arbitration panel shall be concluded  
within twenty-five days following the  
selection or designation of the neutral  
chairman of the arbitration panel, unless the  
parties agree to a longer period.

The neutral chairman shall consult with the  
other members of the arbitration panel, and,  
within thirty days following the conclusion of  
the hearing, the neutral chairman shall make  
written findings of fact and a written  
determination of the issues in dispute, based  
on the evidence presented. A copy thereof  
shall be served on the commission, on each of  
the other members of the arbitration panel,

1 and on each of the parties to the dispute.  
2 That determination shall be final and binding  
3 upon both parties, subject to review by the  
4 superior court upon the application of either  
5 party solely upon the question of whether the  
6 decision of the panel was arbitrary or  
7 capricious.

8 e. 41.56.452 Interest arbitration panel a  
9 state agency. An interest arbitration panel  
10 created pursuant to RCW 41.56.450, in the  
11 performance of its duties under chapter 41.56  
12 RCW, exercises a state function and is, for  
13 the purposes of this chapter, a state agency.  
14 Chapter 34.04 RCW does not apply to  
15 proceedings before an interest arbitration  
16 panel under this chapter.

17 f. 41.56.460 Uniformed personnel--Interest  
18 arbitration panel--Basis for determination.  
19 In making its determination, the panel shall  
20 be mindful of the legislative purpose  
21 enumerated in RCW 41.56.430 and as additional  
22 standards or guidelines to aid it in reaching  
23 a decision, it shall take into consideration  
24 the following factors:

25 (a) The constitutional and statutory  
26 authority of the employer;

27 (b) Stipulations of the parties;

28 (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  
public fire departments of similar size on the  
west coast of the United States. However,  
when an adequate number of comparable  
employers exists within the state of  
Washington, other west coast employers shall  
not be considered.

(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 or  
traditionally taken into consideration in the  
determination of wages, hours, and conditions  
of employment (as amended 1987).

g. 41.56.495 Advanced life support  
techniques--Application of RCW 41.56.430  
through 41.56.490. In addition to the  
classes of employees listed in RCW



1 41.56.030(6), the provisions of RCW 41.56.430  
2 through 41.56.490 shall also be applicable to  
3 the several classes of advanced life support  
4 technicians that are defined under RCW  
5 18.71.200, who are employed by public  
6 employers, other than public hospital  
7 districts.

8 h. 18.71.200 Physician's trained mobile  
9 intravenous therapy technicians, physician's  
10 trained mobile airway management technicians,  
11 physicians trained mobile intensive care  
12 paramedics--Definitions. (1) As used in this  
13 chapter, a "physician's trained mobile  
14 intravenous therapy technician" means a person  
15 who:

16 (a) Has successfully completed an  
17 emergency medical technician course as  
18 described in chapter 18.73 RCW;

19 (b) Is trained under the supervision of  
20 an approved medical program director to  
21 administer intravenous solutions under written  
22 or oral authorization of an approved licensed  
23 physician; and

24 (c) Has been examined and certified as a  
25 physician's trained mobile intravenous therapy  
26 technician by the University of Washington's  
27 school of medicine or the department of social  
28 and health services;

(2) As used in this chapter, a  
"physician's trained mobile airway management  
technician" means a person who:

(a) Has successfully completed an  
emergency medical technician course as  
described in chapter 18.73 RCW;

(b) Is trained under the supervision of  
an approved medical program director to  
perform endotracheal airway management and  
other authorized aids to ventilation under  
written or oral authorization of an approved  
licensed physician; and

(c) Has been examined and certified as a  
physician's trained mobile airway management  
technician by the University of Washington's  
school of medicine or the department of social  
and health services; and

(3) As used in this chapter, a  
"physician's trained mobile intensive care  
paramedic" means a person who:

(a) Has successfully completed an  
emergency medical technician course as  
described in chapter 18.73 RCW;

(b) Is trained under the supervision of  
an approved medical program director:

1 (i) To carry out all phases of advanced  
cardiac life support;

2 (ii) To administer drugs under written  
or oral authorization of an approved licensed  
3 physician; and

4 (iii) To administer intravenous solutions  
under written or oral authorization of an  
approved licensed physician; and

5 (iv) To perform endotracheal airway  
management and other authorized aid to  
6 ventilation; and

7 (c) Has been examined and certified as a  
physician's trained mobile intensive care  
8 paramedic by the University of Washington's  
school of medicine or by the department of  
social and health services.

9 i. 41.56.460 Uniformed personnel--  
Provisions additional--Liberal construction.  
10 The provisions of this chapter are intended to  
be additional to other remedies and shall be  
11 liberally construed to accomplish their  
purpose. Except as provided in RCW 53.18.015,  
12 if any provision of this chapter shall control.

13 2. Washington Administrative Code Provisions (WAC) as

14 follows:

15 a. WAC 391-55-215 Uniformed personnel -- Conduct  
of interest arbitration proceedings. Proceedings  
16 shall be conducted as provided in WAC 391-55-200  
through 391-55-260. The neutral chairman shall  
17 interpret and apply these rules insofar as they  
relate to the powers and duties of the neutral  
18 chairman. Any party who proceeds with arbitration  
after knowledge that any provision or requirement  
19 of these rules has not been complied with and who  
fails to state its objection thereto in writing,  
20 shall be deemed to have waived its right to object.

21 b. WAC 391-55-230 Uniformed personnel--Order of  
proceedings and evidence. The order of  
22 presentation at the hearing shall be as agreed by  
the parties or as determined by the neutral  
23 chairman. The neutral chairman shall be the judge  
of the relevancy of the evidence. All evidence  
24 shall be taken in the presence of all parties,  
unless a party is absent in default or has waived  
25 its right to be present. Each documentary exhibit  
shall be filed with the neutral chairman and copies  
26 shall be provided to the appointed members and to  
the other parties. The exhibits shall be retained  
27 by the neutral chairman until an agreement has been  
signed or until any judicial review proceedings  
28 have been concluded, after which they may be



1 disposed of as agreed by the parties or as ordered  
2 by the neutral chairman.

3 [Statutory Authority: RCW 28B.52.080, 41.56.040,  
4 41.58.050, 41.59.110 and 47.64.040. 80-14-049  
5 (Order 80-8), = 391-55-330, filed 9/30/80,  
6 effective 11/1/80.]

7 B. ADDITIONAL BASIS FOR DETERMINATION.

8 1. Under RCW 41.56.030(4), which requires written  
9 collective bargaining agreements between public employers and  
10 their employees, an oral agreement between the parties is  
11 unenforceable. Klauder v. Deputy Sheriffs Guild, 107 Wn.2d  
12 338, 728 P.2d 1044 (1986).

13 2. In a case where the trial court made a finding that  
14 the, "plaintiff (union) and defendants (county) orally entered  
15 into a tentative agreement relative to certain increases in  
16 salaries . . . and in certain . . . medical payments to  
17 employer of Clallam County", the Washington Supreme Court held  
18 oral and tentative agreements are unenforceable. State ex rel.  
19 Bain v. Clallam County, 77 Wn.2d 542, 463 P.2d 617 (1970).

20 3. We seek a determination which will:

21 a. Provide a solution that will be fair, equitable  
22 and satisfactory enough to both sides to be workable;

23 b. Be what the parties, as reasonable persons,  
24 should have agreed upon by negotiation;

25 c. Contribute to the future relationship between  
26 the parties so that collective bargaining will be successful in  
27 the future.

28 d. Clarify the public interest in the dispute for  
the furtherance of public understanding.

1 C. TENTATIVE AGREEMENTS.

2 1. Union Position.

3 a. The City has departed from the following  
4 tentatively agreed articles: Article 6 - Occupational  
5 Disability Allowance, Article 10 - Prevailing Rights,  
6 Article 14 - Personnel Reduction, Article 22 - Paid Leaves,  
7 Article 23 - Leave Conversion, and Article 27 - Basis of  
8 Negotiations. (Union Brief, p. 5)

9 b. The parties bargained in 1985 and 1986 without  
10 reaching an agreement on a new contract. The City changed  
11 negotiators, causing the continuity of the discussions to be  
12 "diminished to an appreciable degree when the new City  
13 negotiator did not agree to some of the "tentative agreements"  
14 made by his predecessor. Rather than file an unfair labor  
15 practice against the City, the Union decided to "present its  
16 position relative to the TA's in the instant forum in reliance  
17 on the principle whereby one party or the other to serious  
18 collective bargaining negotiations should not be permitted to  
19 depart from commitments made admittedly with the objective of  
20 achieving an entire agreement, step by step." (Union Brief,  
21 pp. 3-4)

22 2. City Position.

23 a. During formation by PERC of issues to be  
24 certified, both parties made and agreed to corrections  
25 (Ex C-5E) resulting in PERC certification of the disputed  
26 issues, Articles 6, 10, 14, 22, 23, and 27, without Union's  
27 subsequent objections as required by WAC 391-55-215. (City  
28 Brief, p. A-2)

1           b. The Union and the City also reopened other  
2 Articles for 1987 on which there had been TA's for 1986.  
3 Tr. 290:14-16. (City Brief, p. A-2)

4           c. The Union never, until it was before the  
5 arbitration panel, lodged any complaint about the propriety of  
6 these issues being certified. (Tr. 3, Ex:21-325:9; City Brief,  
7 p. A-2)

8           3. Decision by Arbiters.

9           "Tentative agreements" are not binding on the  
10 parties or the arbitration panel. Nor are they relevant to the  
11 issues of the arbitration except as evidence of the position of  
12 the parties at the earlier nonbinding time, or positions taken  
13 in contemplation of a later complete, final, signed agreement.  
14 PERC's certification to this panel of issues which were the  
15 subject of tentative agreements, without limitation, supersedes  
16 any effective previously considered tentative agreements.

17           4. Discussion.

18           a. RCW 41.56.030(4), *infra*, which defines  
19 collective bargaining to include the execution of a written  
20 agreement for the purposes of collective bargaining by  
21 employees of political subdivisions of the State, renders oral  
22 and tentative agreements unenforceable. In Re Bain v. Clallam  
23 County, 77 Wn.2d 542, 463 P.2d 617 (1970). Any understanding  
24 arrived at in collective bargaining negotiations necessarily,  
25 therefore, remains preliminary, or as the court found here,  
26 merely tentative until merged into a written agreement. In Re  
27 Bain, at 547. In this present arbitration and in the context  
28 of the general give-and-take involved in the negotiations of a

1 labor contract, proposals are put on and drawn off the table in  
2 contemplation of a final agreement. In that context, the  
3 tentative agreements reached in this arbitration are  
4 unenforceable.

5 b. In addition, "the duty to bargain and the  
6 authority of an interest arbitrator are concepts which must not  
7 be commingled as they are not responsibilities which overlap."  
8 Klauder v. Deputy Sheriff's Guild, 107 Wn.2d 338, 342-43, 728  
9 P.2d 1044 (1986). In the Union's Brief on page 3 in relation  
10 to the City's repudiation of the tentative agreements,  
11 according to PERC, the Union's ". . . only remedy was to lodge  
12 a complaint of unfair labor practice against the City with PERC  
13 relative to each TA which Smolen had disclaimed." Here the  
14 Union has attempted to commingle the duty to bargain and the  
15 authority of the interest arbitrator, which clearly cannot be  
16 done according to Klauder.

17 c. As regard to PERC's certification of the issues  
18 for arbitration, ". . . under the APA, PERC's findings of fact  
19 as well of its expertise in interpreting labor relations law  
20 should be accorded 'great deference'." International  
21 Firefighters v. PERC, 38 Wn. App. 572, 575, 686 P.2d 122  
22 (1984). PERC, in their letter of June 11, 1987 to both the  
23 City and the Union, certified the issues for the interest  
24 arbitration. Because of PERC's knowledge in the field of labor  
25 relations and its knowledge and addressing of the articles for  
26 arbitration, the arbiters should defer to PERC for the  
27 certification of issues to be resolved.

1 d. Also, "Washington courts define waiver as an  
2 intentional and voluntary relinquishment of a known right."  
3 International Firefighters, at 576. PERC, in their letter,  
4 outlined the remedy for the Union as to the City's retraction  
5 on various issues. Since the Union chose to forego that  
6 remedy, it can be said that effectively they have waived their  
7 correct remedy for the potential unfair labor practice.

8 e. Rightfully, the "tentative agreements" Article  
9 will not be enforced by the arbiters as such, but will be  
10 reviewed in the same context as other issues for interest  
11 arbitration as certified by PERC. The partisan arbiters  
12 disagree on the weight to be afforded the tentative agreement.

13 D. AGREED BEFORE HEARING

14 1. The term of the agreement was agreed upon by the  
15 parties and established by PERC Certification as being for  
16 1986, 1987 and through 1988. (JE #2)

17 2. Considering the admissions in the Union brief,  
18 pp. 1-6, together with City brief, pp. 1-3, the Table of  
19 Issues, infra, declares that the following 1985 contract  
20 articles are agreed to be in the new agreement: Article 1;  
21 Recognition; Article 2, Non-discrimination; Article 3, Union  
22 Security; Article 5, Payroll Deductions; Article 7, Holidays;  
23 Article 8, Union Bulletin Boards; Article 9, Employer Rights  
24 and Responsibilities; Article 11, Performance of Duty;  
25 Article 12, Uniforms; Article 13, Shift Change; Article 14,  
26 Personnel Reduction; Article 17, Grievance Procedure;  
27 Article 18 Wages (except App. A or App. B); Article 20, Fire  
28 Incentive Program; Article 25, Insurance Benefits; Article 26,

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Productivity; Article 29, Savings Clause, Article 30, Signature Page; new, Call-In for Absences. The following new article, Management Grievances, was resolved by the parties prior to hearing.

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III. FINDINGS OF FACT, GENERAL

A. CONSTITUTIONAL AND STATUTORY AUTHORITY OF EMPLOYER.

The City of Richland is a "public Employer" within the meaning and scope of the Public Employees' Collective Bargaining Act, RCW 41.50. The Union, Local 1052, is a statutory "bargaining representative" which has, as its principal purpose, the representation of firefighters ("uniformed personnel") in their employment relations with the City.

The City of Richland is a First Class city with authority as established in the following statutes relevant here:

RCW 35.22.020 -- Mode of exercising power, functions, and duties.

RCW 35.22.280 -- Specific powers enumerated.

RCW 35.18 -- City Manager form of government with a Mayor, Council and City Manager (Tr. 622).

State Constitution Art. 7 § 2 (Amend. 55, 59); Art. 8 § 6; Amendment 27, RCW 39.36 -- prohibit the City from deficit financing. It must have a balanced budget (TR 32). City used up its ability to increase the sales tax (TR 33) RCW 82.14.

RCW 35.22.280(5) -- authorizing the City to issue bonds for indebtedness.

RCW 82.14.210 -- equalization of sales tax results in Richland receiving additional funding from the state to make its sales tax collections comparable to average for the state.



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B. STIPULATIONS OF THE PARTIES.

1. Article 28 -- Term of Agreement shall be for 1986, 1987 and through 1988 as agreed by the parties prior to hearing. (JE #2)

2. New article -- Medical Certification, has been agreed to in part between the parties subsequent to the arbitration hearing and before completion of this Award and Opinion. Letter dated November 17, 1987, and received December 3, 1987, signed by Jim Cummins for the Union and Daniel S. Smolen for the City, post-hearing, states: parties have settled issue of length of paramedic certification maintenance (City proposal paragraph 2 and Union proposal paragraph 1.

C. COMPARATIVE DATA.

1. RCW 41.56.460(c)(ii) states:

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 public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exist within the State of Washington, other west coast employers shall not be considered.

2. Union Position.

The Union selected the fire departments of Redmond, Olympia, Snohomish, Clark #5, Bremerton, Kirkland, Longview, Aberdeen, Walla Walla, Kennewick, Bothell, Tukwila and Summit as being comparable size fire departments with like personnel (Ex. UE#3). This used a range of 25% above or below the size of Richland's Department.



1           3. City Position.

2           The City proposed that Bremerton, Kennewick,  
3 Longview, Olympia, Redmond and Walla Walla be selected as  
4 common to Union and City list. This rejects fire districts as  
5 distinguished from departments because districts exist for a  
6 single limited purpose, are different from those of a city in  
7 function by statute and in terms of population, area served,  
8 services provided or ability to raise revenue and make  
9 expenditures. These cities are in a range 20% above or below  
10 the size of the City of Richland.

11           4. Decision by Arbiters.

12           a. For general comparisons and where no  
13 identifiable differentials exist, the majority accepts as  
14 comparable the departments of Bremerton, Kennewick, Longview,  
15 Olympia, Redmond, and Walla Walla.

16           b. For some specific applications in Articles, we  
17 add some of the Union or City comparables where differentials  
18 distinguish their relevance. Reference to these will be made  
19 in the discussions of those specific articles in the Award and  
20 Opinion.

21           5. Discussion.

22           a. The selected departments appear in the  
23 comparables selected by both the Union and the City. There are  
24 important differences between departments and districts in  
25 their population and area served, or ability to raise revenues  
26 and make expenditures. The evidence does not provide detailed  
27 facts of departments to enable selection of other departments  
28 than those both parties proposed.

1           b. The purpose of using comparables is to rely on  
2 precedent established by similar parties as a result of  
3 collective bargaining and a guideline for what should be  
4 acceptable and workable by those before us as shown by what  
5 similar negotiators accepted and found workable.

6           c. This is not a statutory mandate to apply the  
7 comparables selected to every changing subject or issue where  
8 an impressive differential can be identified in the record.

9           D. AVERAGE CONSUMER PRICES -- COST OF LIVING.

10           a. Except for discussion of Article 27 - Basis for  
11 Negotiations and Appendix A - Salaries, where cost of living is  
12 referred to, neither party submitted complete data as to the  
13 cost of living or "average consumer prices" guidelines  
14 established in RCW 41.56.460(d). The Union highlights the cost  
15 of living remarks in the 1986 City Budget Message (Ex. N-3,  
16 Appendix A) to state that Richland refrained from providing  
17 cost of living raises for 1984 and 1987 but "[it] may be  
18 appropriate for 1987."

19           b. Ex. C-97 purports to show CPI-W for Seattle-Tacoma  
20 but doesn't explain the entries or the application to the  
21 arbitration except in general terms. The difference from 1985  
22 is not shown.

23           c. It appears that the only use that can be made of  
24 this factor is that from 1985 through July, 1987 the cost has  
25 gone up but why, how much, and its relative weight are left to  
26 conjecture. The "prediction" for 1988 is not discussed, if  
27 relevant.

1 E. CHANGES IN ANY OF THE FOREGOING CIRCUMSTANCES DURING  
2 PENDENCY OF PROCEEDINGS.

3 1. New Article - Medical Certification/Recertification  
4 and Training. The issue of length of retention of paramedic  
5 certification in this Article was settled by the parties in  
6 Letter, dated November 17, 1987, signed on behalf of the Union  
7 by Jim Cummins, President, and on the behalf of the City by  
8 Daniel S. Smolen, Labor Relations Consultant and received by  
9 Chairman December 3, 1987.

10 2. Article 27 - Basis for Negotiations was certified  
11 on June 11, 1987, by PERC as before this panel. On  
12 September 29, 1987, the day before the Arbitration hearing, the  
13 Union filed an unfair labor practice with PERC regarding this  
14 article. See Article 27 discussion in this opinion.

15 3. By Letter dated February 22, 1988 from counsel for  
16 the City and a response by Letter dated February 26, 1988 from  
17 counsel for the Union, we have considered the additional  
18 evidentiary matter on the issue of the economic situation of  
19 the City of Richland.

20 F. OTHER FACTORS NORMALLY OR TRADITIONALLY TAKEN INTO  
21 CONSIDERATION IN THE DETERMINATION OF WAGES, HOURS AND  
22 CONDITIONS OF EMPLOYMENT.

23 See Paragraph B, II. Standards Applicable, page 10 in  
24 this opinion.  
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1 IV. DETERMINATION OF ARBITERS

2 A. ARTICLE 4 -- UNION BUSINESS.

3 1. Union Proposal.

4 4.1 A Union member who is an employee in the  
5 bargaining unit will be granted time off without  
6 pay while attending Union associated conventions,  
7 seminars, meetings, and Union/Employer litigation  
8 matters, provided (1) he notifies the Operations  
9 Chief or above in writing at least forty-eight  
10 (48) hours prior to the time off. (2) The  
11 Employer will have sufficient employees available  
12 to man the department during this time off.  
13 (3) An employee called in to replace another  
14 employee who is off on Union Business (including  
15 time spent in face to face negotiations), will  
16 receive straight time pay and overtime pay as  
17 required by the FLSA. The Union will reimburse  
18 the City the amount over straight time pay if the  
19 cost of replacement exceeds the members pay at the  
20 regular hourly rate. It shall be optional for the  
21 employer to replace an employee off on Union  
22 Business Leave if the absence does not drop the  
23 shift below the minimum on duty personnel.  
24 Members of the negotiating team while on duty at  
25 said time they are negotiating, shall be paid a  
26 total of 50 man-hours in the aggregate for  
27 regular, scheduled on-duty time spent in face to  
28 face negotiations with the Employer for a labor  
agreement. Time spent in excess of 50 hours while  
within the City of Richland shall be on-duty  
available for response.<sup>1</sup>

18 4.2 The Union shall retain the privilege of  
19 holding Union Meetings at the Central Fire State  
20 [sic] during standby/non-structured duty hours.

20 Paragraphs 4.2 and 4.3 shall be as contained in  
21 the 1985 agreement without change.

22 2. City Proposal.

23 a. City agrees to accept union proposal 4.1 for  
24 capping overtime liability (Tr. 86.5-11) (City Brief p. 8) but  
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26 <sup>1</sup>Here and in this opinion underlining indicates new language  
27 added or substituted for 1985 language.

1 objects to inclusion of sentence stating, "It shall be optional  
2 for the employer to replace an employee off on Union Business  
3 Leave if the absence does not drop the shift below the minimum  
4 on duty personnel."

5 b. City objects to proposed elimination of  
6 language for paragraph 4.2 concerning new satellite stations  
7 when established, and wants to retain 1985 language as follows:

8 4.2 The Union shall retain the privilege of  
9 holding Union Meetings at the Central Fire Station  
10 during standby/non-structured duty hours, provided  
11 that on-duty employees shall, with the exception  
12 of the Union President, Vice President and  
13 Secretary, remain at their respective duty  
14 stations. If a third station is established,  
15 speaker-phones linking the Central with the other  
16 stations on a private line will be installed by  
17 the Employer by the time that the new station is  
18 fully operational, and said speaker-phones may be  
19 used by the Union for its meetings. Operating  
20 costs will be shared equally by the Employer and  
21 the Union. In the event the speaker phone is out  
22 of order, one company within four miles of the  
23 Central Station may move up to the Central Station  
24 for Union meetings.

25 c. Paragraphs 4.3 and 4.4 shall be as contained in  
26 the 1985 agreement without change.

27 3. Decision of Arbiters.

28 a. Article 4 -- Union Business shall be as follows:

4.1 A Union member who is an employee in the  
bargaining unit will be granted time off without  
pay while attending Union associated conventions,  
seminars, meetings, and Union/Employer litigation  
matters, provided (1) he notifies the Operations  
Chief or above in writing at least forty-eight  
(48) hours prior to the time off. (2) The  
Employer will have sufficient employees available  
to man the department during this time off.  
(3) An employee called in to replace another  
employee who is off on Union Business (including  
time spent in face to face negotiations), will  
receive straight time pay and overtime pay as  
required by the FLSA. The Union will reimburse

1 the City the amount over straight time pay if the  
2 cost of replacement exceeds the members pay at the  
3 regular hourly rate. Members of the negotiating  
4 team while on duty at said time they are  
5 negotiating, shall be paid a total of 50 man-hours  
6 in the aggregate for regular, scheduled on-duty  
7 time spent in face to face negotiations with the  
8 Employer for a labor agreement. Time spent in  
9 excess of 50 hours while within the City of  
10 Richland shall be on-duty available for response.

11 4.2 If a third station is established, the  
12 Union shall retain the privilege of holding Union  
13 Meetings at the Central Fire Station during  
14 standby/non-structured duty hours, provided that  
15 on-duty employees shall, with the exception of the  
16 Union President, Vice President and Secretary,  
17 remain at their respective duty stations.  
18 Speaker-phones linking the Central with the other  
19 stations on a private line will be installed by  
20 the Employer by the time that the new station is  
21 fully operational, and said speaker-phones may be  
22 used by the Union for its meetings. Operating  
23 costs will be shared equally by the Employer and  
24 the Union. In the event the speaker phone is out  
25 of order, one company within four miles of the  
26 Central Station may move up to the Central Station  
27 for Union meetings.

28 4.3 No Union member or officer shall conduct  
any Union business on Employer scheduled active  
duty/ structured duty work time on the Employer's  
premises, except during breaks, lunch, or as  
provided within Article 4.

4.4 Nothing in this Article shall preclude  
the two parties from meeting at reasonable times  
to discuss areas of mutual concern when mutually  
agreed to.

#### 4. Discussion.

a. The decision incorporates that part of the  
Union's proposal agreed to by the City as it accomplishes  
economically and reasonably the requirements of the Federal  
Fair Labor Standards Act.

b. The sentence concerning "minimum on duty  
personnel" interferes with the City's prerogative to establish



1 appropriate manning levels. Past practice as evidenced by  
2 Article 9.1.2.3 approved for inclusion in this agreement from  
3 the 1985 agreement corroborates the city's "right to determine  
4 methods, means, and personnel necessary for the Department  
5 operations." PERC decisions confirm this management  
6 prerogative. (City Brief, pp. 8-9) The setting of minimum  
7 personnel requirements is a management function, with  
8 management being always mindful in these decisions of its  
9 requirement to provide for public safety and its duty to  
10 protect the safety and health of its employees.

11 c. The proposed locations of planned future  
12 stations support the need for the retention of provisions of  
13 paragraph 4.2 concerning employees remaining at respective duty  
14 stations. The provision's non-use since 1985 is not ground for  
15 removal presently from the agreement. This provision would  
16 serve the dual purposes of providing for public safety and for  
17 the encouragement of union activities by the members at these  
18 satellite stations who would be unable physically to attend.

1 B. ARTICLE 6 -- OCCUPATIONAL DISABILITY ALLOWANCE.

2 1. Union Proposal.

3 6.1 For those employees hired on or after  
4 October 1, 1977, who are LEOFF Plan II members,  
5 the Employer will provide an occupational  
6 disability allowance for such employees injured in  
7 the line of duty pursuant to the provisions of  
8 RMC 2.28.855, except that such allowance shall be  
9 limited to the number of fire fighter shifts  
10 normally scheduled for employees during a calendar  
11 year. The allowance shall begin with the date of  
12 the job-incurred injury which the employee would  
13 have worked had an on-duty injury not occurred.  
14 The total time period covered by Article 6  
15 (Occupational Disability Allowance), shall be  
16 limited to one (1) year per incident (injury,  
17 disease, or infection).

18 6.2 The first two shifts shall be paid at  
19 straight-time wages less any Industrial Accident  
20 or other compensation, except holiday pay, which  
21 may be applicable. The remaining shifts, up to  
22 the maximum limit specified above, shall be paid  
23 at 80% of straight time base wages less any  
24 Workmen's Compensation or other applicable  
25 compensation. Payment will be made only when it  
26 has been determined that a job-related  
27 injury/occupational disease has occurred and will  
28 continue as long as such job related  
injury/occupational disease continues, subject to  
the maximum limit stated above. Employees  
receiving holiday pay specified in Article 7 of  
this Agreement shall not have holidays credited to  
occupational disability leave.

19 2. City Proposal.

20 a. City agrees to accept Union proposal 6.1 (City  
21 Brief, p. 11), but objects to inclusion of sentence stating  
22 "The total time covered by Article 6 (Occupational Disability  
23 Allowance), shall be limited to one (1) year per incident  
24 (injury, disease, or infection)."

25 b. City proposes to add 6.1.1 as follows:

26 6.1.1 The total time covered by occupational  
27 disability allowance, including holidays, shall be  
28 limited to one year per eligible, unrelated



1 incident. Eligibility for any occupational  
2 disability benefits shall be determined pursuant  
3 to the Washington State Workmen's Compensation Act.

4 c. City agrees to accept Union proposal 6.2, but  
5 objects to the inclusion of holiday pay in the compensation  
6 received by a disabled firefighter (Tr. 109:18-24) (City Brief,  
7 p. 11).

8 d. City proposes to add a new paragraph 6.3 as  
9 follows:

10 6.3 An employee receiving an occupational  
11 disability allowance pursuant to this Article  
12 shall perform light duty tasks subject to the  
13 approval of his treating physician, provided such  
14 light duty tasks will not continue more than six  
15 months from the date the employee is determined to  
16 be disabled for purposes of receiving benefits  
17 under the Washington State Workmen's Compensation  
18 Act.

19 3. Decision of Arbiters.

20 Article 6 -- Occupational Disability Allowance shall be  
21 as follows:

22 6.1 For those employees hired on or after  
23 October 1, 1977, who are LEOFF Plan II members,  
24 the Employer will provide an occupational  
25 disability allowance for such employees injured in  
26 the line of duty pursuant to the provisions of RMC  
27 2.28.855, except that such allowance shall be  
28 limited to the number of fire fighter shifts  
normally scheduled for employees during a calendar  
year. The allowance shall begin with the date of  
the job-incurred injury which the employee would  
have worked had an on-duty injury not occurred.

6.2 The first two shifts shall be paid at  
straight-time wages less any Industrial Accident  
or other compensation which may be applicable.  
The remaining shifts, up to the maximum limit  
specified above, shall be paid at 80% of  
straight-time base wages less any Workmen's  
Compensation or other applicable compensation.  
Payment will be made only when it has been  
determined that a job-related injury/occupational

1           disease has occurred and will continue as long as  
2 such job related injury/occupational disease  
3 continues, subject to the maximum limit stated  
above. Employees receiving holiday pay specified  
in Article 7 of this Agreement shall not have  
holidays credited to occupational disability leave.

4           6.3 An employee receiving an occupational  
5 disability allowance pursuant to this Article  
6 shall perform light duty tasks subject to the  
7 approval of his treating physician, provided such  
8 light duty tasks will not continue more than six  
9 months from the date the employee is determined to  
10 be disabled for purposes of receiving benefits.

11           4. Discussion.

12           a. This benefit provided in the 1985 contract to the  
13 LEOFF II firefighter is a valuable benefit equal to full salary  
14 up to a year when he cannot fully perform his job due to a  
15 work-related injury or occupational disease. It provides  
16 greater compensation for disabled firefighters than for those  
17 on regular duty (Tr. 142:8-15). This results from the fact  
18 that disability payments are not subject to income and social  
19 security taxes (Tr. 142:12-15) (RCW 41.04.505).

20           b. Comparative data offered by the City demonstrates  
21 that the limitations proposed by the City and adopted here as  
22 to time and holiday pay still leave Richland giving greater  
23 benefits than any of the other departments. Limiting the time  
24 to one year per eligible unrelated incident is a reasonable  
25 restriction of time per unrelated incident. Otherwise, it  
26 could be argued that an aggravation of injury would begin  
27 another year.

28           c. There are no other employees who receive holiday  
pay for not working. A firefighter on disability leave is not  
scheduled to work on holidays, but the special allowance of

1 holiday pay normally is justified for full duty firefighters as  
2 they are scheduled for duty on holidays (Tr. 110:1-3). It is  
3 reasonable to equate the disabled and full duty firefighters  
4 equal status on this computation of disability pay since it is  
5 a misnomer to say that a disabled person is being benefitted by  
6 being disabled.

7 d. With respect to paragraph 6.3 above concerning  
8 light duty, the union argues that the subject is covered by RCW  
9 41.04.500 through 41.04.530. The subject is covered by RCW  
10 41.04.515 which refers to RCW 41.04.500 through RCW 41.04.530  
11 stating that the disability leave supplement shall continue as  
12 long as the employee is receiving benefits under RCW 51.32.090  
13 up to a maximum of six months from the date of injury or  
14 illness. Paragraph 6.3 above does not and can not change the  
15 meaning of the statute, but it is helpful to have a ready  
16 reference of its subject matter.

1 C. ARTICLE 10 -- PREVAILING RIGHTS

2 1. Union Proposal.

3 a. Sections 10.1 and 10.1.1 shall be as contained  
4 in the 1985 agreement without change.

5 b. Sections 10.1.2 and 10.1.2.1 are to be placed  
6 under Article 19.

7 c. Sections 10.1.2, 10.1.3 and 10.1.4 are as  
8 contained in the 1985 agreement, except they are renumbered  
9 respectively 10.1.3, 10.1.4 and 10.1.5.

10 10.1.2 Employees shall maintain the right to  
use "crew room" during leisure hours.

11 10.1.3 Employees shall maintain kitchen and  
12 sleeping rights

13 10.1.4 Employees shall retain guest and  
14 personal telephone privileges in local area and  
agree to charge all personal long distance calls  
to non-employer number.

15 2. City Proposal.

16 a. Section 10.1 shall be amended as follows:

17 10.1 All rights and privileges held by the  
18 employees at the present time are included in this  
19 Agreement and shall remain in force, unchanged and  
unaffected in any manner. These rights and  
20 privileges are (\_\_\_):

21 b. City agrees to accept Union's Section 10.1.1 as  
22 contained in the 1985 agreement without change.

23 c. Sections 10.1.2(A)-(M), shall be as contained  
24 in the 1985 agreement without change, except for 10.1.2(L) to  
25 be amended to exclude reference to the "month of October 10."

26 d. City proposes to amend Section 10.1.2.1 to  
27 provide that payback of compensatory leisure time be

1 coordinated by the Operations Chief (Tr. 150:19-151:5) (City  
2 Brief, p. 16) to read as follows:

3 10.1.2.1 Employees who, upon request  
4 authorized by the Operations Chief, agree to work  
5 beyond structured duty hours into their leisure  
6 time, shall have leisure time worked paid back on  
7 an hour-for-hour basis, provided that duties  
8 performed during leisure time pursuant to  
9 paragraphs A through M of Section 10.1.2 shall not  
10 be eligible for payback except duties performed  
11 during leisure time pursuant to paragraphs K  
12 and L, which shall be paid back on an  
13 hour-for-hour basis.

14 e. City agrees to accept Union proposed  
15 Sections 10.1.2, 10.1.3 and 10.1.4 as contained in the 1985  
16 agreement without change. City has these proposals numbered as  
17 Sections 10.1.3, 10.1.4 and 10.1.5, respectively.

18 3. Decision of Arbiters.

19 Article 10 - Prevailing Rights shall be as follows:

20 10.1 All rights and privileges held by the  
21 employees at the present time which are not  
22 included in this Agreement shall remain in force,  
23 unchanged and unaffected in any manner. These  
24 rights and privileges shall include but not be  
25 limited to the following:

26 10.1.1 Employees shall have the right to  
27 retain store call in its present form, provided  
28 that shift officers shall consider energy  
conservation in scheduling and implementing store  
call.

10.1.2 Employees shall maintain the right to  
use "crew room" during leisure hours.

10.1.3 Employees shall maintain kitchen and  
sleeping rights.

10.1.4 Employees shall retain guest and  
personal telephone privileges in local area and  
agree to charge all personal long distance calls  
to a non-employer number.

1           4. Discussion.

2           a. The proposal of the City to limit the  
3 prevailing rights clause only to those included specifically in  
4 the agreement is based on three propositions that "open-ended  
5 clause has caused limitless disputes"; "open-ended clause is  
6 unnecessary in mature relationship"; and "contracts from  
7 comparable jurisdictions support City position." These  
8 constitute legitimate labor-management concerns and principles  
9 applicable, however, only if the record supports them in the  
10 particular bargaining contract or arbitration.

11           (1) First, we must define the phrase,  
12 "prevailing rights and privileges" and particularly, its  
13 difference from "prevailing practices," if any, and the meaning  
14 and effect of management rights on this issue. The record here  
15 mentions this issue briefly in the testimony of Mr. Smolen  
16 (Tr. 52), Mr. Sharp (Tr. 146. Nowhere, except in the 1985  
17 contract, Article 10.1.2, are specific "prevailing rights and  
18 privileges" defined. There appears to be a listing of duties  
19 pertaining to hours rather than rights which supports the  
20 Union's position to transfer these to Article 19.

21           (2) We turn to the standard dictionary and the  
22 treatise How Arbitration Works, Elkouri and Elkouri, 4th  
23 edition, pp. 412-417, to determine the status of any  
24 definition. There we find:

25                           "Views Regarding Management Rights

26           Under the common law, owners of business  
27 establishments possess certain freedoms of action,  
28 incidental to their legal status, which are  
commonly called management rights or management  
prerogatives. The word 'right' has been defined



1 by Webster to mean 'any power, privilege, or  
2 immunity, vested in one by authority, social  
3 custom \*\*\* or \*\*\* by the law \*\*\*,' Webster has  
4 defined the word 'prerogative' to mean the 'right  
5 to exercise a power or privilege in priority to,  
6 or to the exclusion of, others \*\*\* for the  
7 exercise of which in theory there is no  
8 responsibility or accountability as to the fact  
9 and the manner of its exercise.'"

10 Elkouri at p. 415:

11 "Various conclusions have at different times  
12 been reached by objective observers concerning how  
13 far unions may desire or be inclined to push into  
14 management areas:

15 "(A) Some unions appear constantly to seek a  
16 larger share in the governance of the industry  
17 while others believe that they should avoid  
18 responsibility for the conduct of the business.'"

19 "(B) There is no consciousness of invading  
20 managerial prerogatives. By the same token there  
21 is no area of management which most [unions] would  
22 hesitate to put on "next year's list" if they felt  
23 the interest of the union were involved.'"

24 "(C) In the daily shop work of job  
25 assignments, skill classification, production  
26 standards, and maintenance of discipline, union  
27 officers show little desire to join in managing  
28 and in initiating action; they prefer to retain  
their freedom to protest management's decisions  
and to stay out of the cross fire of criticism and  
avoid the wounding resentments of their own  
members.

"Unions have not pushed massively and  
inexorably into vital policy areas. They have  
pushed when they could and when it was in their  
clear interest to do so, advancing when management  
was careless or weak and retreating when  
management aggressively resisted them. When  
unions do enlarge their powers, it is almost  
always in those areas where they have long been  
established: wages, hours, and conditions of  
employment.'"

The record before us is not complete enough on past  
practice for us to enter this thicket. The problems of the  
conflict of Article 9 Management's Rights with the rights of



1 Article 10 as presently constituted (being Union "prevailing  
2 rights") could not as a practical matter be limited, even if it  
3 were possible to achieve on the record and briefs here.

4 But Article 9 rights and Article 10 rights must be defined  
5 on a case-by-case basis in accordance with "long-established  
6 past practice provable in each instance, as being so ingrained  
7 in the work place that it would be unreasonable to change them"  
8 (emphasis added). This is the only type of right protected  
9 under Section 10.1, and if it is not of this type, the right is  
10 not properly grievable by the employee or union. "Unknown  
11 rights" are not under this clause. They must be based on past  
12 practice.

13 (3) We must accept the fact that the  
14 "open-ended clause has caused many disputes" in view of the  
15 situation described in Elkouri concerning management and  
16 employee or Union rights as discussed above. Whether these  
17 issues are viewed as management rights or employee rights  
18 disputes will arise whether Article 9 or Article 10 is viewed  
19 as the culprit.

20 (4) There is not enough showing in the record  
21 here to conclude these parties have developed a mature enough  
22 relationship as urged by the City to specifically define  
23 "prevailing rights" with a limitation. The limitations of  
24 proof of past practice is sufficient.

25 (5) Examination of the comparatives furnished  
26 by the City (City Exhibit 30) indicates they are not generally  
27 limited but in the instances of Kennewick, Kent and Lynnwood,  
28

1 the prevailing rights are marshalled by some restrictive  
2 procedures.

3 b. The proposal of the Union to transfer  
4 Sections 10.1.2, 10.1.2 and 10.2.1 is reasonable and appears in  
5 Article 19, infra.

6 c. The proposal of the City to change  
7 Section 10.1.2(A)-(M) and Section 10.1.2.1 is discussed in  
8 Article 19, infra.

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1 D. ARTICLE 14 -- PERSONNEL REDUCTION

2 1. Union Proposal.

3 Sections 14.1, 14.2 and 14.3 shall be as contained  
4 in the 1985 agreement without change.

5 2. City Proposal.

6 a. Sections 14.1, 14.2, 14.3 and 14.4 shall be  
7 amended as follows:

8 14.1 Personnel reduction, as determined by  
9 the Employer, shall be based on employee merit and  
10 qualification relative to the City's needs as  
11 determined by the Employer.

12 14.2 When employees are laid off, they shall  
13 be placed on a reemployment list for two years.  
14 Employees will be recalled in inverse order of  
15 layoff. Employees who have been laid off who wish  
16 to return to work shall keep the Human Resources  
17 office advised of their current addresses.

18 14.3 In the case of reduction in rank, the  
19 criteria used shall be employee merit and  
20 qualification relative to the City's needs, as  
21 determined by the Employer. Employees reduced in  
22 rank shall be placed on a repromotion list for a  
23 period of two years and will be promoted in  
24 inverse order of reduction.

25 14.4 Employees recalled from personnel  
26 reduction or repromoted from reduction in rank  
27 within six months will not have to serve a  
28 probationary period unless they were on probation  
prior to the layoff or reduction in rank. Those  
recalled or repromoted after six months shall  
serve a probationary period of at least one year.

29 b. As a less desirable alternative, City would  
30 propose that reductions be governed by City Ordinance  
31 (Tr. 183:20-184:2) (City Brief, p. 21).

32 3. Decision of Arbiters.

33 a. Article 14 -- Personnel Reductions shall be:

34 14.1 In the case of personnel reduction, the  
35 employee having the least seniority in the Fire

1 and Emergency Services Department shall be laid  
2 off first. Time in the Fire and Emergency  
3 Services Department shall be given first and  
4 utmost consideration. In the case of reduction in  
5 rank, time in position shall be given first  
6 consideration. If time in position is equal,  
7 scores on the Certification List(s) shall govern,  
8 such that the employee with the lowest score on  
9 the most recent certification list shall be  
10 reduced-in-rank first. If scores on the  
11 certification list are equal, then time in the  
12 Fire and Emergency Services Department shall  
13 govern such that the employee with the least time  
14 shall be reduced-in-rank first.

15  
16 14.2 When employees are laid off, their names  
17 shall be placed on an employment list in order of  
18 seniority, with the employee having the most  
19 seniority at the head of the list, and the person  
20 with the least seniority at the bottom. This list  
21 shall stand for a period of two years and no new  
22 employees may be hired during that period until  
23 the laid-off personnel have been given the  
24 opportunity to return to work.

25 14.3 Persons being repromoted to positions  
26 held prior to being reduced in rank shall be  
27 repromoted in the reverse order from which they  
28 were reduced in rank.

#### 4. Discussion.

1 a. The Union argues that: (1) this seniority  
2 clause was agreed to in a Supplemental Agreement of January 6,  
3 1986 which continues to be binding; (2) the City is acting in  
4 "bad faith"; and (3) the seniority system protects against the  
5 "good old boy" system.

6 b. The City argues that: (1) the seniority system  
7 cripples the City's efforts to retain individuals who have  
8 obtained valuable skills in emergency medical aid; (2) for last  
9 renewal year the City, for economic reasons, has steadily  
10 reduced service and personnel but refrained from making  
11 substantial cuts in those areas (Tr. 626:1-13, Exs. C-13,  
12

1 C-35); and (3) seniority system would not permit City to retain  
2 the most needed skills (Tr. 190:20-191:7).

3 c. Our conclusion to retain the seniority system  
4 recognizes that the seniority system does protect against a  
5 "good old boy" system and subjectivity in decision-making, and  
6 will, at present, if unpredictable reductions occur, reduce the  
7 greatest number of medical skilled personnel for medical  
8 emergency services. We do not find any bad faith on the part  
9 of the City nor consider the supplemental agreement here to be  
10 any more efficacious than other supplemental and tentative  
11 agreements. (See para. II.C, above). It also suggests that  
12 the present situation results from the manner of training or  
13 recruiting by the City and in a reasonable time could be  
14 corrected to qualify more seniors, if necessary. This  
15 situation does not seem to be of sufficient detriment to  
16 abandon the entire seniority system.

17 d. The comparative evidence shows the seniority  
18 principle to be used in every comparative department considered  
19 by the panel without exception and, in addition, other  
20 departments in the evidence which, for other reasons, are not  
21 considered closely comparative.

22 e. This system also protects seniors who are  
23 highly trained and proven from being victims of subjective  
24 decision-making involving reductions in force when the City  
25 professes to be on a limited budget. It protects them from  
26 falling victim to the financial ax rather than the lower paid  
27 junior member when all other factors are equal. We do not find  
28 or mean to suggest bad faith on the part of the City in this

1 regard, but just profess the City's admissions of budgetary  
2 reality.

3 f. Firefighting is also acknowledged to be a very  
4 dangerous profession, involving the firefighter's and the  
5 public's health and safety. Whatever slightly diminished  
6 physical capacity a senior firefighter may suffer, those years  
7 of experience could result in greater protection for the  
8 public, and the firefighter's co-workers.

9 g. The Union argument of this being a tentative  
10 agreement has been discussed in Paragraph II.C., above.

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1 E. ARTICLE 15 -- WORKING OUT OF CLASSIFICATION -- EFFECT  
2 ON PAY

3 1. Union Proposal.

4 a. Section 15.1 shall be as contained in the 1985  
5 agreement without change.

6 b. Section 15.1.1 shall be amended as follows:

7 15.1.1 Employees working a minimum of  
8 12 hours out-of-classification shall be  
9 compensated for the "E" step rate for the  
10 out-of-class position worked. In the event  
11 2 employees work an equal 12 hours  
12 out-of-classification for the same position,  
13 during a 24-hour shift, the employee working the  
14 8:00 a.m. to 8:00 p.m. portion shall receive the  
15 out-of-classification pay. Any employee working  
16 out-of-classification will be paid the higher  
17 amount only for those shifts he works out-of-  
18 classification. At the completion of six (6)  
19 continuous months out-of-classification, the  
20 employee will be entitled to a merit increase in  
21 the out-of-classification position, so long as the  
22 employee continues to work the  
23 out-of-classification position. This provision  
24 shall apply to all suppression officer positions  
25 covered by this Agreement.

17 c. Paragraph 15.1.2 shall be as contained in the  
18 1985 agreement without change.

19 2. City Proposal.

20 a. City accepts Union's proposed Section 15.1,  
21 which is as contained in the 1985 agreement without change.

22 b. Section 15.1.1 shall be as contained in the  
23 1985 agreement without change.

24 c. City accepts Union's proposed Section 15.1.2,  
25 which is as contained in the 1985 agreement without change.



1                   3. Decision of Arbiters.

2                   a. Article 15 -- Working Out of Classification --

3 Effect on Pay shall be as follows:

4                   15.1 Any person covered by this Agreement who  
5 is required to accept the responsibilities and  
6 carry out the duties of the position or rank above  
7 that which he normally holds shall be compensated  
8 in the following manner:

9                   15.1.1 An employee shall receive \$10.00 per  
10 shift for a minimum of 12 hours worked  
11 out-of-classification. In the event two employees  
12 work an equal 12 hours out-of-classification for  
13 the same position, during a 24-hour shift, the  
14 employee working the 8:00 a.m. to 8:00 p.m.  
15 portion shall receive the out-of-classification  
16 pay. No more than \$10.00 per position, per shift,  
17 shall be paid. Any employee working  
18 out-of-classification will be paid the higher  
19 amount only for those shifts he works  
20 out-of-classification. At the completion of six  
21 (6) continuous months out-of-classification, the  
22 employee will be entitled to the E step rate of  
23 pay in the out-of-classification position, so long  
24 as the employee continues to work the  
25 out-of-classification position. This provision  
26 shall apply to all suppression officer positions  
27 covered by this Agreement.

17                   15.1.2 It is the intent of both parties that  
18 the new lieutenant position on each shift,  
19 established in April, 1981, would not be filled by  
20 upgrade. The existing lieutenant position would  
21 be filled by upgrade as outlined in the Upgrade  
22 Policy dated April 9, 1980.

20                   15.1.3 If a permanent vacancy should occur,  
21 the City may not through a series of "out of  
22 classification" appointments avoid promoting  
23 individuals to gain advantage of the lower pay  
24 scale provided by this article.

23                   4. Discussion.

24                   a. Bargaining unit members are selected for  
25 out-of-classification assignments from firefighter to  
26 lieutenant only if they have volunteered for an upgrade list  
27 (Tr. 208:8-25). There are plenty of volunteers at the \$10.00  
28

1 per shift premium, probably because it makes them  
2 better-qualified for promotion. For the officer level  
3 (Lieutenants as Captains, Captains as Battalion Chiefs), the  
4 out-of-classification is one of the duties of the job  
5 descriptions (Tr. 209:7-6), yet they receive the premium pay  
6 (Tr. 210:3-14). It makes them better qualified for promotion.  
7 The comparable departments offered in the evidence are mixed in  
8 response to this issue: Redmond - \$1 per hour; Olympia - \$.65  
9 per hour; Bremerton - two hours O/T pay per shift; Longview -  
10 rate of pay for positions worked; Walla Walla - Lt/10% per day,  
11 Capt/5% per day; and Kennewick - Lt/\$5.50 per day, Capt/\$8.50  
12 per day. Only one, Longview, pays rate of pay for positions  
13 worked out of classification. The other comparables selected  
14 by us report differences in hours and applications that make  
15 comparison less reliable for this issue. These pay levels in  
16 comparable departments do not demonstrate a need to change the  
17 present premium pay level even though that level is less than  
18 all of the comparables except Kennewick.

19 b. The opportunity for improvement and advancement  
20 provides a valuable compensation to the upgraded employee.  
21 Volunteers presently furnish the needs of the City, so that  
22 adequate staffing is maintained for "temporary" work out of  
23 classification.

24 c. It is intended by the arbiters that this  
25 working out of classification pay scale and system is to be  
26 read in conjunction with Article 16 -- Vacancies and  
27 Promotions, and not subvert that system. If a permanent  
28 vacancy should occur, the City may not through a series of "out

1 of classification" appointments avoid promoting individuals to  
2 gain advantage of the lower pay scale provided by this  
3 article. If this type of scenario were to occur, it would be  
4 contrary to the City's position that these temporary  
5 appointments are stepping stones to an employee's advancement  
6 in the department. The six month limitation speaks to this  
7 provision as a limitation.

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1 F. ARTICLE 16 -- VACANCIES AND PROMOTIONS

2 1. Union Proposal.

3 a. Section 16.1 shall be amended as follows:

4 16.1 When a permanent vacancy occurs in any  
5 position, it shall be filled within thirty (30)  
6 days of the official severance of the departing  
7 member from the Fire and Emergency Services  
8 Department. A vacancy shall be filled from the  
9 point where the vacancy occurred, provided,  
10 however, that in the event the initial vacancy is  
11 the result of a disability leave, the lowest  
12 unfilled vacancy may remain open for the period of  
13 such disability leave.

14 b. Sections 16.2 and 16.3 shall be as contained in  
15 the 1985 agreement without change.

16 c. Section 16.4 shall be amended as follows:

17 16.4 Promotional lists shall be in effect for  
18 two years provided that there are at least three  
19 names on the list.

20 2. City Proposal.

21 a. Section 16.1 shall be amended as follows:

22 16.1 The right to determine whether or not a  
23 vacancy in any position covered by this Agreement  
24 is to be filled, and, if so, when, is vested  
25 solely in the Employer.

26 b. Section 16.2 shall be amended as follows:

27 16.2 All vacancies shall be filled through a  
28 competitive examination process determined by the  
City of Richland Personnel Board.

c. Section 16.3 shall be amended as follows:

16.3 When it is determined by the Employer  
that a vacancy in a position covered by this  
Agreement is to be filled, appointment to the  
position shall be made by the appointing authority  
from among the top three names on the  
certification list established for the position.

d. Section 16.4 shall be amended as follows:

1           16.4 The provisions of this Article do not  
2 apply to the filling of vacancies in positions not  
3 covered by this Agreement.

3. Decision of Arbiters.

4           Article 16 -- Vacancies and Promotions shall be as  
5 follows:

6           16.1 The right to determine whether or not a  
7 vacancy in any position covered by this agreement is to  
8 be filled, and, if so, when, is vested solely in the  
9 Employer.

10           16.2 All vacancies shall be filled through a  
11 competitive examination process determined by the City  
12 of Richland Personnel Board.

13           16.3 When it is determined by the Employer that a  
14 vacancy in a position covered by this agreement is to  
15 be filled, appointment to the position shall be made by  
16 the appointing authority from among the top three names  
17 on the certification list established for the  
18 position. For information purposes only, the  
19 appointing authority shall give the two losing  
20 candidates written reasons for not being selected.

21           16.4 Promotional lists shall be in effect for one  
22 year provided there are at least three (3) names on the  
23 list.

24           16.5 The provisions of this article do not apply  
25 to the filling of vacancies in positions not covered by  
26 this agreement. See Article 1.1.

27 4. Discussion.

28           a. Consistent with our discussion of Management  
Rights in Article 10 at pages 35-38, we apply here the  
principle that management rights are that authority that  
management must have with freedom, at the risk of failure, to  
carry out its function of managing the enterprise. This is  
particularly necessary in a public employment relationship,  
such as firefighting, where accountability to the body politic

1 must not be diluted or borne by the Union or individual  
2 employee.

3           b. The past practice here has weakened that  
4 responsibility under the provisions of the 1985 contract here  
5 urged by the Union to continue with minor changes. The Union  
6 is not to be criticized for following the provisions of the  
7 1985 contract vigorously which permitted positions of grievance  
8 because of the words "immediately" in 16.1 and "just cause" in  
9 16.3 (Tr. 39.44.45 and 3), nor do we second guess the arbiter's  
10 decision by Lumley (Ex. U-3). Whether an explanation amounts  
11 to explaining just cause is an individual judgment best left  
12 with management who must answer to the people for mistakes and  
13 misjudgments, rather than come to grievance procedures.

14           c. Comparable jurisdictions utilized by us do not  
15 have any agreement specifying procedure for filling position  
16 vacancies or promotions (Ex. 42). Similarly, only Olympia  
17 requires that reasons be explained for pass-over (Ex. C-43).  
18 Not one requires just cause be shown.

19           d. However, it is reasonable to expect to explain  
20 privately in writing to the unsuccessful candidate the reason  
21 for his or her pass-over. This provision tends to legitimize  
22 the process.

23           e. This Article is to be read and interpreted in  
24 conjunction with the discussion in Article 15 -- Working Out of  
25 Classification. Even though management has the sole discretion  
26 to decide when to fill a position, and it is understood that  
27 temporary working out of classification is a means of filling  
28 vacancies while the promotion process occurs, this time period

1 is not unlimited when the position is needed to be filled. It  
2 could be inferred from Article 15 that six months would be an  
3 ultimate cap for filling a position, but practically the time  
4 will vary depending on the situation. As previously mentioned,  
5 management must fulfill its responsibility to the public, and  
6 to maintain adequate staffing to protect its own employees.

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G. ARTICLE 17 -- GRIEVANCE PROCEDURE

Agreed - See paragraph II.D, page 19.

1 H. ARTICLE 18 -- WAGES

2 a. Note Article 18, except for Appendix A and  
3 Appendix B, was resolved by the parties (City Brief, p. 3;  
4 Union Brief, p. 5).

5 b. See Appendix A and Appendix B, following  
6 Article 28 herein.

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1 I. ARTICLE 19 -- HOURS

2 1. Union Proposal.

3 19.1 The hours of duty shall be approximately  
4 50.6 hours a week as per those presently worked,  
5 provided a total of ten (10) shifts off will be  
6 periodically scheduled on a rotating basis for  
7 each employee. Two (2) additional shifts off will  
8 be taken by each employee on a manpower available  
9 basis.

10 19.2 Employee structured work hours shall be  
11 8:00 a.m. to 4:30 p.m. everyday except Saturdays,  
12 Sundays and holidays. Saturdays and Sundays shall  
13 be 8:00 a.m. to 12:00 noon and holidays shall be  
14 8:00 a.m. to 10:00 a.m. Non-structured work hours  
15 (standby time) shall be 4:30 p.m. to 8:00 a.m.  
16 everyday except Saturdays, Sundays and holidays.  
17 Holidays shall be at 10:00 a.m. to 8:00 a.m.,  
18 Saturdays and Sundays shall be 12:00 noon to  
19 8:00 a.m.

20 19.3 (1985 10.1.2) The following specific  
21 duties will continue to be performed as they have  
22 been in the past when they occur during  
23 non-structured (standby) hours:

- 24 A. Registering bicycles
- 25 B. Registering voters
- 26 C. Officers' reports
- 27 D. Log book entries
- 28 E. Routine paper work
- 29 F. Ambulance and fire reports
- 30 G. Assuring the front line readiness of  
31 emergency apparatus; i.e., cleaning up of  
32 vehicles, replenishing air supplies,  
33 hoses, etc.
- 34 H. Assuring operational readiness of radio  
35 alarm system, i.e., testing (excluding  
36 normal box tests), shunting, response to  
37 non-emergency messages.
- 38 I. Special request helicopter standby
- 39 J. Medication and drug checks as required
- 40 K. Assist in testing entry level applicants  
41 during two (2) consecutive work days each  
42 calendar year.
- 43 L. Participate in Department Open House on  
44 one Saturday in October until 1600 hours  
45 and clean-up thereafter.
- 46 M. Other past duties which may later be  
47 identified and agreed to by the parties to  
48 this Agreement.

1 19.3.1 (1985, Section 10.1.2.1) When duties  
2 "K" and "L" are performed during non-structured  
3 hours, the employee(s) who perform such duties  
4 shall be given compensatory time during structured  
5 hours in the form of additional non-structured  
6 hours, on a one (1) hour of compensatory time for  
7 one (1) hour of work basis.

8 19.3.2 Employees agreeing to and performing  
9 employer requested work, other than that  
10 identified in 19.3.1, during non-structured hours,  
11 receive compensatory time at a rate of 1-1/2 hours  
12 of compensatory time for each hour of work.

13 2. City Proposal.

14 a. Section 19.1 shall be as contained in the 1985  
15 agreement without change.

16 b. City would amend Section 19.2 as follows:

17 19.2 Employee work hours, for scheduled  
18 activities, shall be 8:00 a.m. to 5:00 p.m. every  
19 day. The activity schedule for Thanksgiving Day  
20 and Christmas will be 8:00 a.m. to 10:00 a.m.

21 c. City proposes the addition of Section 19.3  
22 as follows:

23 19.3 Both parties recognize the need to  
24 schedule additional activities after 5:00 p.m.,  
25 and that Employer retains the right to do so,  
26 provided that the City shall not schedule more  
27 than 18 activity hours per shift after 5:00 p.m.  
28 per calendar year.

3. Decision of Arbiters. (Effective April 1, 1988)

Article 19 - Hours shall be:

19.1 The hours of duty shall be 50.923 hours  
a week as per those presently worked provided a  
total of ten shifts off will be periodically  
scheduled on a rotating basis. One additional  
shift off will be taken by the employee on a  
manpower available basis.

19.2 Employee structured work hours, for  
scheduled activities, shall be 8:00 a.m. to  
5:00 p.m. Monday through Saturday. Structured  
work hours for Sunday and New Year's Day,

1 Presidents Day, Memorial Day, Independence Day,  
2 Labor Day, Veterans Day, Thanksgiving and Christmas  
3 shall be from 8:00 a.m. to 12:30 p.m.

4 19.3 Both parties recognize the need to  
5 schedule additional activities after 5:00 p.m. and  
6 that the employer retains the right to do so,  
7 provided that the City shall not schedule more  
8 than 18 activity hours per shift after 5:00 p.m.  
9 per calendar year.

10 19.4 The following specific duties will  
11 continue to be performed as they have been in the  
12 past when they occur during leisure hours:

- 13 A. Registering bicycles
- 14 B. Registering voters
- 15 C. Officers' reports
- 16 D. Log book entries
- 17 E. Routine paperwork
- 18 F. Ambulance and fire reports
- 19 G. Assuring the front line readiness of  
20 emergency apparatus; i.e., cleaning up of  
21 vehicles, replenishing air supplies,  
22 hose, etc.
- 23 H. Assuring operational readiness of radio  
24 alarm system; i.e., testing (excluding  
25 normal box tests), shunting, response to  
26 non-emergency messages
- 27 I. Special requests helicopter standby
- 28 J. Medication and drug checks as required
- K. Assist in testing entry-level applicants  
during two (2) consecutive work days each  
calendar year
- L. Participate in Department Open House on  
one Saturday until 1600 hours and clean-up  
thereafter.
- M. Other past duties which may later be  
identified and agreed to by the parties to  
this agreement.

19.4.2 Employees, who, upon request  
authorized by the Operations Chief, agree to work  
beyond structured duty hours into their  
non-structured time, and employees engaged in  
activities after 5:00 p.m. scheduled by employer,  
shall have non-structured time worked paid back on  
an hour for hour basis, provided that duties  
performed during non-structured time pursuant to  
Sections "A" through "M" of Section 19.4.1 shall  
not be eligible for payback except duties  
performed during non-structured time pursuant to  
"K" and "L" which shall be paid back on an hour  
for hour basis.

1           4. Discussion.

2           a. Unlike eight-hour-per-day and 40-hour-per-week  
3 employees, firefighters are scheduled on 24-hour shifts  
4 (Tr. 293:5-12). If three sets of shift workers divide the  
5 hours of a year into equal thirds, each group would be  
6 scheduled for an average of approximately 56 hours per week  
7 (Tr. 293:5-10). When the City's current scheduling system was  
8 begun many years ago, each firefighter's scheduled shift hours  
9 averaged approximately 56 hours per week over a year's time  
10 (Tr. 293:5-10; Ex. C-53). Rather than simply rotating the  
11 shift groups each third day, each shift group is scheduled in  
12 sequences of one shift on, one shift off, one on, one off, one  
13 on, followed by four shifts off (Tr. 294:2-10; Ex. C-54).

14           b. To reduce the average weekly hours for  
15 firefighters on 24-hour shifts, additional 24-hour shifts off  
16 are scheduled for each firefighter throughout the year  
17 (Tr. 295:11-12). To achieve the average 50.923 weekly hours  
18 provided for in the parties' expired agreement, 11 of these  
19 additional shifts off were scheduled for each firefighter  
20 (Tr. 294:12-14). Vacation (paid) and other leaves (paid)  
21 reduce further the average weekly hours (Tr. 294:21, 296:2;  
22 Ex. C-54). The result is that the average firefighter is  
23 scheduled for just over eight shifts per month (Tr. 296:3-6).  
24 By the time that various leaves are deducted from scheduled  
25 shift hours, the average firefighter has only about 45 hours  
26 per week duty (Ex. C-55, page 63A supra). Thus, no single  
27 firefighter is on duty for even a third of the 24-hour shifts  
28 scheduled each year.

1 c. Although shifts are scheduled on both Saturdays  
2 and Sundays, the shift scheduling pattern presently takes away  
3 any significance these days have on "weekend" days  
4 (Tr. 309:15-25). Essentially, the firefighter's "weekend" is  
5 the minimum of four days off each has between sets of three  
6 scheduled shifts. Although shifts are scheduled on holidays,  
7 the chance of being on duty on a holiday is met by holiday  
8 premium pay (Ex. J-1 at §§ 7.1 and 7.4; Table of Issues,  
9 infra). Any given firefighter has less than one chance in  
10 three of actually being on duty on any particular holiday.

11 d. Scheduled shift hours (duty hours) cannot,  
12 however, be equated with actual hours of structured work. They  
13 include non-structured hours for standby to be ready for the  
14 stressful structured hours of work. By the 1985 and this  
15 agreement, the parties have limited the period within each  
16 24-hour shift during which the City may assign routine duties  
17 (Ex. J-1, § 19.2). Presently, structured duty hours have been  
18 limited on weekdays to the period from 8:00 a.m. to 4:30 p.m.  
19 (less an hour for lunch); on Saturday or Sunday from 8:00 a.m.  
20 to 12:30 p.m.; and on 11 recognized holidays from 8:00 a.m. to  
21 10:00 a.m. (Tr. 296:12-21; Ex. J-1 at § 19.1). Firefighters  
22 perform certain tasks such as bicycle registration and voter  
23 registration, during the non-structured hours (Ex. J-1 at  
24 § 10.1.2; Section 19.4, above). During these non-structured  
25 hours (sometimes misnamed "leisure hours"), the firefighter is  
26 available for emergency response at any time during his 24-hour  
27 shift. However, on an average, emergency responses during  
28 non-structured portions of the shift took up less than 22 hours



1 per firefighter per year over the last two year period (Ex. 55;  
2 Tr. 300:3-5). Taking into account both structured duty hours  
3 and emergency responses during the non-structured portion of  
4 the shift, the average firefighters had actual work time of  
5 something less than 685 hours per year. If this work time were  
6 concentrated in 40-hour work weeks, it would amount to just  
7 over 17 work weeks per year. It is recognized that if more  
8 firefighters become medically trained as paramedics so that the  
9 department responds to more medical emergencies, these  
10 emergency response times will rise during structured and  
11 non-structured hours.

12 e. The Union's proposals would reduce the average  
13 weekly scheduled hours to 50.6 by adding an additional shift  
14 off to the one allowed by the 1985 agreement (Ex. J-1,  
15 § 10.1). Its evidence and record does not justify this  
16 reduction. The comparative departments urged by the Union have  
17 an average work week of 51.9 hours greater than the 50.923  
18 proposal by the City and adopted here.

19 f. Contrary to a reduction in hours, the record  
20 supports 50.923 hours without change as a more economical  
21 arrangement of time to increase structured duty hours within  
22 the 50.923 hours by reducing non-structured hours. We approve  
23 this concept by changing structured hours to 8:00 a.m. to  
24 5:00 p.m. Monday through Saturday. Structured work hours for  
25 Sunday and New Year's Day, Presidents Day, Memorial Day,  
26 Independence Day, Labor Day, Veterans Day, Thanksgiving and  
27 Christmas shall be from 8:00 a.m. to 12:30 p.m. This change is  
28 supported by the following reasonable circumstances:

1 (1) Because of the arrangement of hours the  
2 City has gradually reduced the frequency of a number of safety  
3 programs in order to keep up with training and other  
4 requirements. These include changing the hydrant testing  
5 program from annual to a five-year program (Tr. 306:3-5); the  
6 fire inspection program reduced from annual to bi-annual  
7 (Tr. 306:5-9); all normal work details were suspended in  
8 February 1986 so that pending projects could be completed  
9 (Tr. 306:10-21).

10 (2) New federal and state statutes will  
11 require additional training to be done during structured duty  
12 hours (Ex. C-56; Tr. 307:6-308:17). To bring the City's 33  
13 firefighters and three battalion chiefs up to the training  
14 level required will use 26,000 man-hours (Tr. 307:22-25).

15 (3) Current limits on Saturday and Sunday work  
16 schedules have prevented the City from taking advantage of free  
17 state-sponsored training which is available on these days only  
18 (Tr. 308:23- 309:14).

19 (4) Of the 13 comparatives urged by the Union  
20 (Ex. U-3), five have a standard structured work day (8:00 a.m.  
21 to 5:00 p.m.) (in several cases longer than that worked by the  
22 Richland firefighters) in effect every day (Ex. U-3). Another  
23 four have a standard structured work day (in most cases longer  
24 than Richland) every day except Saturday and Sunday. Only  
25 three have reduced schedules on holidays (Ex. U-3).

26 (5) To accomplish the mission of the  
27 department, it is reasonable for the City to have flexibility  
28 to fairly schedule limited duties outside normal structured

1 hours. The City's emergency services department is called on  
2 from time to time to provide standby emergency services at  
3 community events, such as the Richland air races and annual  
4 disaster exercises (Ex. C-59). When such activities are  
5 scheduled outside the structured duty hours, the City is  
6 unable, under the expired agreement, to require firefighters to  
7 participate, even though they would be "paid back" with  
8 compensatory, non-structured leisure hours. These limitations  
9 not only preclude the City from participation in special  
10 community events; they also preclude the City from taking  
11 advantage of training opportunities offered outside structured  
12 duty hours. (See, e.g., Exs. C-59, U-67; Tr. 309:3-14.) In  
13 fact, the Union passed a resolution forbidding any member to  
14 volunteer for activities during leisure hours unless a majority  
15 of the membership voted in favor of such volunteering  
16 (Ex. C-57).

17 (6) Presently, in order for firefighters to  
18 participate on a voluntary basis in these special activities,  
19 the City must contact the Union, seek a vote of the membership  
20 regarding the specific event, then determine whether any  
21 firefighter wishes to volunteer (Tr. 310:11-19). The City  
22 often receives short notice of special events, the process  
23 itself at times cannot be concluded in time to obtain  
24 volunteers, even if the Union membership votes to permit  
25 volunteering (Tr. 310:20-311:5). Moreover, on a number of  
26 occasions, the Union has precluded its members from  
27 volunteering. For example, the Union membership passed a

1 motion barring any member from volunteering assistance at a  
2 fire chiefs conference scheduled in the Tri-Cities (Ex. C-58).

3 (7) Although failure to participate in the  
4 fire chiefs conference may have had little impact on public  
5 safety, the Union's refusal to permit its members' voluntary  
6 participation has at times left the public without needed  
7 protection. For example, in 1986, the Union refused to permit  
8 members to provide emergency protection at the Richland air  
9 races, as the City had requested (Ex. C-59). Firefighters put  
10 on a demonstration and stood by at the races with a rescue  
11 truck until 12:30 p.m., when their structured duty hours ended  
12 (Tr. 314:1-11. Promptly at 12:30 p.m., the firefighters  
13 returned to the station to observe their "leisure" hours,  
14 removing essential fire and emergency medical protection for  
15 the large crowd gathered at a somewhat hazardous community  
16 event (Tr. 313:21-25, 314:9-11). The City's operations chief  
17 was left there single-handed to provide services as best he  
18 could (Tr. 314:15-21). On another occasion, when the City  
19 requested participation in a regional disaster exercise, the  
20 Union voted to take no action on the request, thus precluding  
21 its members from volunteering (Ex. C-59).

22 (8) The time spent on such tasks would be  
23 "paid back" with compensatory non-structured time, so this  
24 change would not increase in total structured time. This  
25 change in Article 19 is limited to 18 hours of such activities  
26 per shift per year.

1 J. ARTICLE 21 -- SICK LEAVE

2 1. Union Proposal.

3 Union proposes to retain Article 21 as contained in  
4 the 1985 agreement without change.

5 2. City Proposal.

6 City proposes extensive modifications to  
7 Article 21. The proposed Article is reproduced herein:

8 21.1 Sick Leave for LEOFF I Employees.

9 Effective January 1, 1988, permanent,  
10 full-time LEOFF I employees shall be granted a  
11 sick leave allowance each calendar year as follows:

<u>40-hour week employees</u>	<u>80 hours</u>
<u>24-hour shift employees</u>	<u>72 hours</u>

12 Sick leave will no longer accumulate or be  
13 carried over from year to year. If an illness or  
14 injury requires sick leave beyond that provided  
15 herein, the employee shall obtain an additional  
16 required disability leave from the appropriate  
17 pension/disability board as provided for in  
18 Chapter 41.26 RCW and applicable provisions of RMC  
19 2.28.85. Twenty-five percent (25%) of unused sick  
20 leave accrued by each LEOFF I employee prior to  
21 January 1, 1988, will be paid for by the employer  
22 if and when such employee reaches regular service  
23 retirement with twenty or more years regular  
24 service.

25 21.2 Sick Leave for LEOFF II Employees.

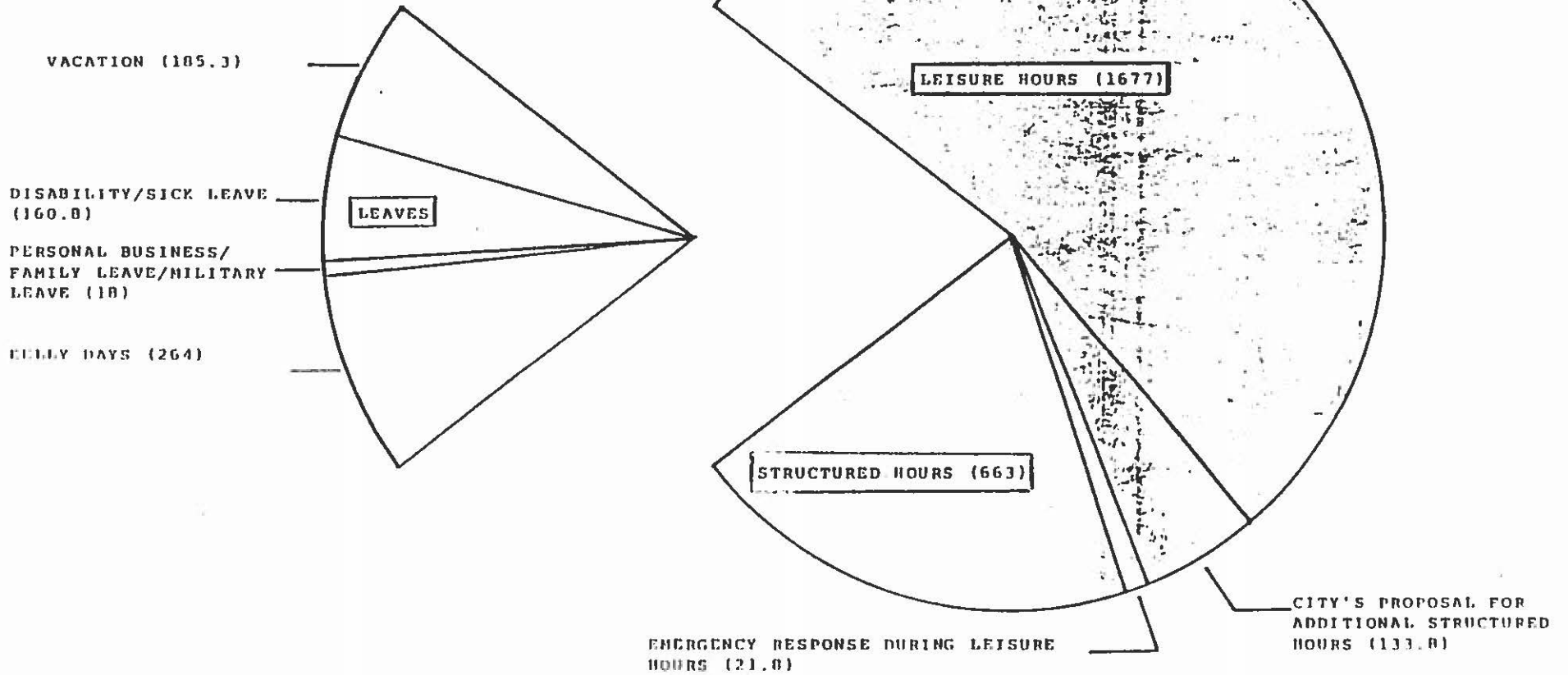
26 Effective January 1, 1988, permanent,  
27 full-time LEOFF II employees shall accrue sick  
28 leave as follows:

	<u>Accrual</u>	<u>Maximum</u>
	<u>Rate</u>	<u>Accrual</u>
<u>40-hr week employees</u>	<u>8.0 hrs/mo</u>	<u>1,056 hrs</u>
<u>24-hr shift employees</u>	<u>10.18 hrs/mo</u>	<u>1,440 hrs</u>

29 Twenty-five percent (25%) of unused sick  
30 leave accrued by each LEOFF II employee will  
31 be paid for by the employer, up to a maximum  
32 payout of \$1,500.00, if and when such  
33 employee reaches regular service retirement  
34 with twenty or more years' regular service.

A City #55

# AVERAGE SHIFT FIREFIGHTER WORKYEAR



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1           21.3 Advance of Sick Leave for New  
2           Employees.

3           New employees will be advanced a sick  
4           leave allowance equal to that which would be  
5           accrued in six months at the LEOFF II accrual  
6           rate, and will begin their regular LEOFF II  
7           accrual at the end of six months employment.  
8           An employee whose employment terminates for  
9           any reason during the first six months must  
10           repay the Employer for sick leave used in  
11           excess of the LEOFF II accrual rate for the  
12           period of actual employment.

13           21.4 Conditions on Use of Sick Leave.

14           Use of sick leave will be granted subject  
15           to the following conditions:

16           a. Employee must report reason for  
17           absence at least thirty minutes before the  
18           beginning of each scheduled work day or shift  
19           for which sick leave is requested.

20           b. At Employer's request, employee must  
21           submit physician's certificate of nature and  
22           duration of incapacitating condition and/or  
23           submit to, at Employer's expense, a nursing  
24           visit or medical examination to evaluate the  
25           condition.

26           21.5 Changes in Statutory LEOFF II  
27           Benefits

28           If LEOFF II sick leave and/or disability  
29           benefits are increased by the Washington  
30           legislature during the term of this  
31           Agreement, sick leave and disability benefits  
32           provided by City ordinance and this Agreement  
33           shall be reduced proportionately.

34           3. Decision of Arbiters. (Effective April 1, 1988)

35           Article 21 - Sick Leave shall be as follows:

36           21.1 Sick Leave for LEOFF I Employees.

37           Effective January 1, 1988, permanent,  
38           full-time LEOFF I employees shall be granted a  
39           sick leave allowance each calendar year as follows:

<u>40-hour week employees</u>	<u>80 hours</u>
<u>24-hour shift employees</u>	<u>72 hours</u>



1           Sick leave will no longer accumulate or be  
2 carried over from year to year. If an illness or  
3 injury requires sick leave beyond that provided  
4 herein, the employee shall obtain an additional  
5 required disability leave from the appropriate  
6 pension/disability board as provided for in  
7 Chapter 41.26 RCW and applicable provisions of RMC  
8 2.28.85. Twenty-five percent (25%) of unused sick  
9 leave accrued by each LEOFF I employee prior to  
10 January 1, 1988, will be paid for by the employer  
11 if and when such employee reaches regular service  
12 retirement with twenty or more years regular  
13 service.

14           21.1.1 If the employee applies for Disability  
15 Retirement Benefits or the employer directs the  
16 employee to take time off because of disability  
17 and the Disability Board or State does not approve  
18 the application of statutory benefits, the  
19 employee shall not lose pay or benefits as a  
20 result of a denial. If the approval of LEOFF I  
21 disability leave by the Disability Board or State  
22 takes more time than 72 hours (three shifts), the  
23 employer will ensure the employee will not thereby  
24 lose pay and benefits, present or accrued.

25           21.2 Sick Leave for LEOFF II Employees.

26           Effective January 1, 1988, permanent,  
27 full-time LEOFF II employees shall accrue sick  
28 leave as follows:

	<u>Accrual</u> <u>Rate</u>
<u>40-hr week employees</u>	<u>8.0 hrs/mo</u>
<u>24-hr shift employees</u>	<u>10.18 hrs/mo</u>

29           Twenty-five percent (25%) of unused sick leave  
30 accrued by each LEOFF II employee will be paid for  
31 by the employer, up to a maximum payout of  
32 \$1,500.00, if and when such employee reaches  
33 regular service retirement with twenty or more  
34 years' regular service.

35           21.3 Advance of Sick Leave for New Employees.

36           New employees will be advanced a sick leave  
37 allowance equal to that which would be accrued in  
38 six months at the LEOFF II accrual rate, and will  
39 begin their regular LEOFF II accrual at the end of  
40 six months employment. An employee whose  
41 employment terminates for any reason during the  
42 first six months must repay the Employer for sick

1 leave used in excess of the LEOFF II accrual rate  
2 for the period of actual employment.

3 21.4 Changes in Statutory LEOFF II Benefits.

4 If LEOFF II sick leave and/or disability  
5 benefits are increased by the Washington  
6 legislature during the term of this Agreement,  
7 sick leave and disability benefits provided by  
8 City ordinance and this Agreement shall be reduced  
9 proportionately.

10 4. Discussion.

11 a. LEOFF I employees are provided disability  
12 leave by state statute in any case of illness or  
13 disability (Tr. 332:23-333; RCW 41.26). Thus, they have  
14 no need for paid sick leave other than to cover (1) the  
15 period before leave is approved by the state or (2) where  
16 the employer directs them to take such leave and the state  
17 denies leave approval. Accrued sick leave for LEOFF I  
18 firefighters affects the buy-back to which they are  
19 entitled upon retirement (Ex. J-1, § 24.1). The City  
20 proposal retains this feature for all such leave accrued  
21 by them before January 1, 1988. Since the 1985 agreement  
22 recognized that all LEOFF I employees were at the maximum  
23 sick leave accrual for these employees (Ex. U-3), the  
24 change will not diminish this benefit for any firefighter.

25 b. Average weekly duty hours for the  
26 firefighters have declined from 72 hours per week in the  
27 1950's to the current 50.923 hours per week (Ex. C-53) but  
28 since sick leaves were computed by "24 hour shifts"  
instead of "hours" the sick leave provisions have resulted  
in an increase in sick leave in proportion to work hours

1 (Ex. C-60). Other employees of the fire department and of  
2 the City who work 40 hours per week accrue one eight hour  
3 shift of sick leave a month.

4 The relative value of available sick time has  
5 remained constant for 40 hour employees. When firefighter  
6 sick leave accrual is combined with shift scheduling, the  
7 result is that the firefighter earns with one month's sick  
8 leave accrual more time off to recover from illness than  
9 does the 40 hour a week employee (Tr. 332:12-17). In one  
10 year, a 40 hour employee accrues 2.4 weeks total sick  
11 leave, while a shift firefighter accrues 5.65 weeks  
12 (Ex. C-60). Comparing "shift" of 24 hours on one hand  
13 with "shift" of 8 hours on the other, without special  
14 reason, is fundamentally and logically unsound.

15 c. Ordinarily, in industrial relations,  
16 "leave," when granted, is absence from work without the  
17 imposition of penalties that might otherwise be suffered  
18 for failing to report when scheduled for work. (Elkouri  
19 and Elkouri, p. 704, with citations.) The allowance is  
20 generally based on time expressed in hours by allowing  
21 hours of duty to equal a proportionate number of hours of  
22 sick leave, vacation leave, maternity leave, etc. More  
23 hours of work performed produces more hours of leave.

24 The evidence before us shows only the element of  
25 past practice for varying from the hourly standard. This  
26 is not a reason for continuing a fundamentally unequal  
27 relationship of "shift" to "shift" except as to sick leave  
28 accrued up to January 1, 1988. The fair relationship of

1 hours should be the basis for allowance in the future to  
2 make all employees of the department and the other City  
3 departments comparable. Thus, the City's City's request  
4 for fire department personnel to have a maximum accrual is  
5 rejected.

6 d. The 1985 agreement provides new employees  
7 with advance sick leave accrual (Ex. J-1, § 21.2.2). This  
8 feature is retained but making it proportional to other  
9 employees during the same time period.

10 e. Examination of the selected comparables  
11 show monthly accruals for Richland at 10.18 hours per  
12 month and compares favorably with Bremerton at 10.5 hours,  
13 Longview at 10.25 hours, and Redmond at 12 hours, the  
14 comparables that have such provisions.

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2 make all employees of the department and the other City  
3 departments comparable. Thus, the City's request for fire  
4 department personnel to have a maximum accrual is rejected.

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6 with advance sick leave accrual (Ex. J-1, § 21.2.2). This  
7 feature is retained but making it proportional to other  
8 employees during the same time period.

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10 show monthly accruals for Richland at 10.18 hours per  
11 month and compares favorably with Bremerton at 10.5 hours,  
12 Longview at 10.25 hours, and Redmond at 12 hours, the  
13 comparables that have such provisions.

1 K. ARTICLE 22 -- PAID LEAVE

2 1. Union Proposal.

3 a. Union proposes to amend Section 22.1 as follows:

4 22.1 Vacation Leave. Permanent employee(s)  
5 shall accrue vacation time as set forth in this  
6 Article, based on length of service with the  
7 employer. An employee shall not be eligible to  
8 use vacation time accrued until he has worked for  
9 the employer for a minimum of six (6) calendar  
10 months.

11 b. Sections 22.1.1 and 22.1.2 shall be as  
12 contained in the 1985 agreement without change.

13 c. Union proposes to amend Sections 22.2 and  
14 22.2.1 as follows:

15 22.2 Vacation Accumulation shall be limited  
16 to 408 hours, including vacation bonus days, for  
17 all employees. Employees working a 40 hour base  
18 week shall be limited to a maximum vacation usage  
19 of 28 days (shifts) in any calendar year unless  
20 approval is granted, in writing, prior to the  
21 usage, by the Operations Chief or above.

22 d. Sections 22.3, 22.4, 22.4.1, 22.5, 22.5.1,  
23 22.5.2, and 22.5.3 shall be as contained in the 1985 agreement  
24 without change. [NOTE: Sections 22.4 - 22.5.3 were numbered  
25 22.5 - 22.6.3 respectively in the 1985 agreement in which there  
26 was no section 22.4 by omission.]

27 2. City Proposal.

28 a. Section 22.1 shall be as contained in the 1985  
agreement without change.

b. City proposes to amend following Sections:

22.1.1 Employee(s) working a 40-hour base  
week shall accrue vacation time on the following  
basis:







1 22.1.2 Employee(s) working 24-hour shifts  
2 shall accrue vacation time proportional to that of  
3 40-hour week employees, based on average weekly  
4 hours of shift personnel, i.e., presently 50.923  
5 hours per week. At that rate, vacation time for  
6 shift employees is as follows:

<u>Length of Service</u>	<u>Monthly Rate of Vacation Credit in Hours</u>
1 through 9 years	14
10 through 15 years	16
16 through 20 years	19
Over 20 years	21

8 If average weekly hours of shift personnel are reduced,  
9 their vacation leave accrual would be reduced to  
10 maintain proportionality to 40-hour week employees.

11 22.2 Vacation Accumulation. (Effective  
12 December 31, 1988)

13 22.2.1 For employee(s) working a 40-hour base  
14 week, maximum vacation accrual shall not exceed 28 days  
15 (224 hours), including perfect attendance vacation  
16 bonus days.

17 22.2.2 For employee(s) working 24-hour shifts, the  
18 maximum vacation accrual shall be proportional to that  
19 of 40-hour week employees based on average weekly hours  
20 of shift personnel, i.e., presently 50.923 hours per  
21 week. On that schedule, maximum vacation accrual for  
22 shift employees shall not exceed 285.1679 hours,  
23 including vacation bonus days.

24 22.3 Vacation Bonus Day.

25 Permanent fulltime employee(s) working a 40-hour  
26 base week and with one continuous year of service shall  
27 be eligible to earn one vacation bonus day (8 hours)  
28 after non-use of sick leave and leave without pay  
collectively. Permanent fulltime employee(s) working  
firefighter (24-hour) shifts who have completed one  
continuous year of service shall be eligible to earn  
one (1) vacation bonus firefighter shift (24 hours)  
after non-use of sick leave and leave without pay  
collectively.

22.4 Personal Business Leave.

22.4.1 Effective January 1, 1988, Personal  
Business Leave shall not apply.

22.5 Family Leave.

1           22.5.1 Permanent fulltime employee(s) working a  
2 40-hour base week shall be eligible for Family Leave as  
3 provided in RMC 2.28.860 and subject to the provisions  
4 of Personnel Policy #17; provided that employees  
5 working more than a 40-hour base week may be granted a  
6 proportionate amount of leave, and subject to the same  
7 provisions.

8           4. Discussion.

9           a. 22.1 - Vacation Leave is changed as proposed by  
10 the Union in accordance with past practice (Tr. 390:1-15;  
11 Ex. J-1.

12           b. 22.1.1, 22.1.2 - Vacation Accumulation is  
13 mainly changed as proposed by the City for the proportionality  
14 reasons discussed in Article 21 - Sick Leave, pp. 66-67,  
15 above. We also add hours to compensate for loss of personal  
16 business leave.

17           c. 22.3 - Vacation Bonus Day amends both Union and  
18 City proposals by giving 40-hour per week employees one  
19 eight-hour shift vacation bonus day for non-use of sick leave  
20 and leave without pay collectively, and by giving one 24-hour  
21 shift as a vacation bonus to 24-hour shift employees.

22           (1) The net result of this is to increase the  
23 vacation bonus amount as to the 24-hour shift employees as to a  
24 more reasonable amount than is proposed by the City.

25           (2) The elimination of vacation bonus days for  
26 non-use of personal business leave recognizes the elimination  
27 of personal business leave for firefighters and all other  
28 employees.

          (3) The totality of this Article shows a total  
reduction from 1985 contract levels from a total of straight

1 vacation time and potential vacation bonus days. For example,  
2 one class of 24 hour firefighters is reduced from 216 total  
3 vacation hours to 176.76 hours. The City proposal would reduce  
4 this 176.76 hours to 162.95 hours using the proportionality  
5 concept.

6 d. 22.4 - Personal Business Leave is eliminated in  
7 conformance with the action of the City in eliminating it for  
8 all other employees (Tr. 383:8-22). There is no net loss to  
9 the firefighters because they receive more vacation time at the  
10 end of the year than others are able to earn (Tr. 384:1-10;  
11 Ex. C-63, Ex. C-64). Firefighters on a shift basis have an  
12 opportunity to do their family business on their own off-duty  
13 time between shifts, whereas 40-hour per week employees do  
14 not. This change is less onerous for the firefighters than the  
15 other City employees since firefighters have business days off  
16 work free to do personal business.

17 e. 22.5 - Family Leave is changed to conform to  
18 other employees of the City as provided in RMC 2.28.260 and  
19 Personnel Policy #17, thus making firefighters treated the  
20 same, there being no reason shown for a variance  
21 (Tr. 385:18-25; Ex. C-65).

22 f. Comparative data show no convincing factor  
23 persuasive in either direction on these issues (Ex. U-3).  
24  
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1 L. ARTICLE 23 -- LEAVE CONVERSION

2 1. Union Proposal.

3 23.1 When employees transfer from 24-hour  
4 shifts to 40-hour weeks (or vice versa), leave  
5 accruals shall be converted as follows:

6 23.1.1 Personal Business and Family Leave  
7 hours shall be divided by three (3) when going to  
8 40-hour weeks and multiplied by three (3) when  
9 going to 24-hour shifts.

10 23.1.2 Sick Leave and Vacation accruals shall  
11 be converted to a dollar amount at the employee's  
12 rate of pay at the time of the transfer and then  
13 shall be converted to accrued hours at the  
14 employee's new position's pay. The following  
15 method will be used for the conversions:

16 1) Figure the employee's hourly rate of pay  
17 in both the old and the new positions as  
18 follows: monthly rate of pay X 12 months  
19 divided by 52 weeks divided by the average  
20 number of hours worked per week in that  
21 position.

22 2) Multiply the employee's old leave accruals  
23 by his old hourly rate of pay and then divide  
24 that amount by the employee's new hourly rate  
25 of pay. The result is the number of hours  
26 accrual the employee is to be credited upon  
27 his transfer.

28 23.1.2.1 If the transfer involves a promotion  
29 or a demotion, the conversion listed in 23.1.2  
30 shall be made using pay scales of equal rank;  
31 i.e., for a Fire Fighter promoted into the Fire  
32 Inspectors position, he would first be promoted to  
33 lieutenant and then the conversions would be made.

34 2. City Proposal.

35 23.1. Leave Conversion for Employees  
36 Transferring from Shift to Days, or Vice Versa

37 When employee(s) working day shift (a 40-hour  
38 base week) transfer to 24-hour shifts (a base week  
39 of over 40 hours), or vice versa, accrued leaves  
40 shall be converted to a proportionate amount,  
41 provided, that maximum accruals shall not exceed  
42 maximum leave accrual limits set forth in this  
43 Agreement.

1 2. Decision of Arbiters. (Effective April 1, 1988)

2 Article 23 -- Leave Conversion shall be:

3 23.1 Leave Conversion for Employees  
4 Transferring From Shift to Days, or Vice Versa.

5 When employee(s) working day shift (a 40-hour  
6 base week) transfer to 24-hour shifts (a base week  
7 of over 40 hours), or vice versa, accrued leaves  
8 shall be converted to a proportionate amount,  
9 provided, that maximum accruals shall not exceed  
10 maximum leave accrual limits set forth in this  
11 Agreement.

12 4. Discussion.

13 a. This proposal provides a simple formula for  
14 conversion of accrued leaves upon transfer. It results from  
15 the clauses adopted in Articles 21 and 22 based on  
16 proportionality as the most reasonable, mathematically simple  
17 solution of using hours as a common base.

18 b. Comparable departments disclose that only three  
19 (Auburn, Bremerton and Kent) had any formula for leave  
20 conversion (Ex. C-66). These vary one from the other but each  
21 recognizes the ratios between 40-hour week and shift schedule.

22 c. The Union proposal is more difficult to apply.  
23 It results in substantial increases above current maximum  
24 vacation accrual and the change of status also gives the  
25 transfer higher pay plus an extra week of vacations (Ex. J-1,  
26 App. A; Ex. U-31; Tr. 395:19-398:22).



1 M. ARTICLE 24 -- OVERTIME PAY

2 1. Union Proposal.

3 a. Section 24.1 shall be as contained in the 1985  
4 agreement without change.

5 b. Union proposes the addition of Section 24.2, as  
6 follows:

7 24.2 The formula and rates used to determine  
8 the regular hourly rate of pay for FLSA and  
9 off-duty medical training as provided by this  
10 Agreement shall be attached in Appendix "C" and by  
11 this reference incorporated herein.

12 2. City Proposal.

13 a. City proposes to amend Section 24.1 as follows:

14 24.1 All overtime work shall be compensated  
15 at 1-1/2 times the regular hourly rate of pay,  
16 except as provided in Section 24.2.

17 b. City proposes the addition of Section 24.2 as  
18 follows:

19 24.2 When mutually agreed, the Employer may  
20 grant day shift employees (40 hour per week  
21 workers) compensatory time off in lieu of overtime  
22 pay. Such compensatory time shall be granted at  
23 1-1/2 times overtime hours worked and shall be  
24 scheduled for use at a time which is mutually  
25 agreeable to the Employer and employee. In no  
26 event shall compensatory time accrual exceed 200  
27 hours; and compensatory time shall either be used,  
28 or overtime hours be paid at 1-1/2 times the  
regular hourly rate of pay, within 12 months of  
when the overtime was performed.

3. Decision of Arbiters. (Effective January 1, 1988)

Article 24 -- Overtime Pay shall be as follows:

24.1 All overtime work for 24-hour shift  
employees shall be compensated at 1.75 times the  
regular hourly rate of pay, except as provided in  
Section 24.1.1.



1           24.1.1 When mutually agreed, the Employer may  
2 grant day shift employees (40 hour per week  
3 workers) compensatory time off in lieu of overtime  
4 pay. Such compensatory time shall be granted at  
5 1-1/2 times overtime hours worked and shall be  
6 scheduled for use at a time which is mutually  
7 agreeable to the Employer and employee. In no  
8 event shall compensatory time accrual exceed 200  
9 hours; and compensatory time shall either be used,  
10 or overtime hours be paid at 1-1/2 times the  
11 regular hourly rate of pay, within 12 months of  
12 when the overtime was performed.

13  
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15           4. Discussion.

16           a. The Union's proposal would continue the present  
17 (1985) practice of paying overtime pay at a rate which assumes  
18 that the total compensation was paid for a 40-hour week  
19 (Tr. 406:2-8). This basis was established as the result of  
20 1985 arbitration award (Tr. 409:19-21; Ex. U-47). Professor  
21 Peck observed:

22           Firefighter 56 hour week has been established and  
23 continued in large part in recognition that a  
24 substantial part of that time, presumably 16 hours a  
25 week, is spent in repose or sleep.

26           Thus, the firefighters' active work time is equal  
27 to that of a policeman. For this reason, the  
28 firefighter would seem to be entitled to equal  
treatment with policemen insofar as the rate of pay  
for overtime work is concerned.

(Ex. U-47 at 17)

          The evidence before us shows that a firefighter's  
structured work hours are far fewer than 40 per week  
(Exs. C-54; C-55). The average firefighter is now scheduled  
for slightly over eight shifts a month and puts in only seven  
structured work hours per weekday shift (less on weekends).  
Time devoted to emergency calls during non-structured hours  
amounts to less than two hours per month on average (Ex. C-55,

1 Incl. 62A herein). Thus, unlike a police officer, a  
 2 firefighter presently does not put in 40 hours of structured  
 3 work per week. In a typical rotation, a firefighter would work  
 4 approximately three weeks before having 40 hours of structured  
 5 duty time (Tr. 407:1-20). This award changes the present  
 6 situation by increasing the firefighters' structured work week  
 7 hours daily and on weekends so that weekdays increase one-half  
 8 (1/2) hour (from 4:30 p.m. to 5:00 p.m.), Saturday increases  
 9 four and one-half (4-1/2) hours (from 12:30 p.m. to 5:00 p.m.),  
 10 and Sundays and holidays increase two and one-half (2-1/2)  
 11 hours (from 10:00 a.m. to 12:30 p.m.). Under this award,  
 12 firefighters reach 40 hours of structured time in fewer shifts.

13 b. City #69 computes the Overtime Rate Comparison  
 14 in the following terms (note that the 40 hour rate is nearly  
 15 double the actual rate):

16 Overtime Rate Comparison

	<u>Actual Regular Hourly Rate</u>	<u>Overtime Rate Based on Artificial 40-Hour Week Base</u>	<u>Proposed Overtime Rate Based On Actual Regular Hourly Rate</u>
21 Captain (F)	\$11.77	\$22.47	\$17.65
22 Lieutenant (F)	10.90	20.81	16.35
23 Firefighter (F)	10.09	19.26	15.13
24 Firefighter (E)	9.84	18.79	14.76
25 Firefighter (C)	9.38	17.91	14.07

26  
 27 Actual Regular Hourly Rate = Monthly wage X 12 months ÷ 52  
 weeks ÷ 50.923 hours.

1 Overtime Rate Based on Artificial 40 Hour Week Base =  
2 Monthly wage X 12 months ÷ 52 weeks ÷ 40 hours X 1.5.

3 Proposed Overtime Rate = Monthly wage X 12 months ÷ 52  
4 weeks ÷ 50.923 X 1.5.

5 c. Both the Union and City surveys demonstrate  
6 that comparative departments use the actual hourly pay rate  
7 rather than a 40 hour week except Aberdeen, Bothell, Kennewick  
8 and Edmonds. It is persuasive that the use of a 40-hour work  
9 base rests on artificiality. A more logical, easily computed  
10 simple system is to base overtime rate upon an actual 50.923  
11 hours of work per week for time worked over a scheduled work  
12 day, work week or given pay period described in RMC 2.28.520  
13 quoted above.

14 d. It appears reasonable to use the actual real  
15 rate rather than one based on an unreal premise such as the 40  
16 hour week they don't work. This meets Fair Labor Standards Act  
17 requirements.

18 e. The JE#2 system of computation on a 40-hour  
19 work base has resulted in a pay system demonstrated in  
20 paragraph b above being in place since 1974 which is  
21 substantial past practice, and it would be unreasonable to  
22 reduce the firefighters' overtime pay received. However, the  
23 other changes in their work hours and pay by increases and  
24 impositions make it reasonable to figure the overtime at 1.75  
25 times actual regular hourly rate.

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N. ARTICLE 25 -- INSURANCE BENEFITS

See Paragraph II.D, Agreed Before Hearing, page 19.

1 O. ARTICLE 27 -- BASIS FOR NEGOTIATIONS

2 1. Union Proposal.

3 a. Union proposes that this Article is a  
4 permissive subject of bargaining and should be deleted from the  
5 agreement.

6 2. City Proposal.

7 a. Article 27 should be as contained in the 1985  
8 agreement without change, as follows:

9 27.1 The Employer and the Union will develop and  
10 document respective positions at the bargaining table  
11 as reasonable and responsive to:

12 27.1.1 The financial capabilities of the Employer.

13 27.1.2 Comparison of wages, hours and working  
14 conditions of employment of firefighter personnel  
15 involved in the proceedings with the wages, hours and  
16 conditions of employment of like Employers of similar  
17 size on the West Coast of the United States.

18 27.1.3 The consumer price index as published  
19 bi-monthly by the Bureau of Labor Statistics for the  
20 Seattle Metropolitan Area to reflect a measurement of  
21 the changes in the cost of living.

22 27.1.4 Joint consideration of salaries and  
23 benefits based upon advantages to both the Employer and  
24 Union.

25 27.1.5 Changes in productivity of the Fire and  
26 Emergency Services Department.

27 3. Decision of Arbiters.

28 Article 27 -- Basis for Negotiations shall be  
eliminated from the labor agreement.

4. Discussion.

a. Since this issue has been certified to this  
panel by PERC and not withdrawn by subsequent directions to us  
we give it full consideration.

1           b. The Union argument that the clause is "a  
2 permissive subject" not mandated for negotiations or for  
3 bargaining by statute 41.56 is not persuasive. Every provision  
4 proposed is relevant and would lead to influencing wages, hours  
5 and working conditions. It is better practice to assume all  
6 matters are included in the process of bargaining, subject to  
7 bargaining where basic standards are mutually presented as a  
8 part of the process rather than being pre-ordained. (Ex. U-3;  
9 Tr. 417-24).

10           c. However, this article doesn't accomplish its  
11 purpose of setting standards except as to designating the  
12 "Bureau of Labor Statistics for the Seattle Area to Reflect the  
13 Cost of Living" and § 27.1.2 concerning comparisons. The  
14 expression of the entire article otherwise is only to "develop"  
15 and "document" which doesn't bind either party to an  
16 enforceable position as a base of negotiations.

17           d. The proposals by the City were to assist the  
18 parties forming a basis to negotiate successor agreements  
19 (Tr. 423:4-10). But legislation in RCW 41.56 has announced  
20 different standards than contained in this former article and,  
21 even then, those standards are guidelines for interest  
22 arbiters, but not necessarily for the parties during bargaining.

23           e. The parties in this arbitration and presumably  
24 in their negotiations, reaching an impasse here, have hardly  
25 relied at all on 27.1.3 concerning the consumer price index and  
26 27.1.5 as to "productivity" in their proposals to this panel.  
27 There does not seem to be any utility in Article 27 to warrant  
28 its extension. Free bargaining is preferable.

1 P. ARTICLE 28 -- TERMS OF AGREEMENT

2 Stipulated by the parties to PERC to be January 1 to  
3 December 31, 1986; January 1 to December 31, 1987; and  
4 January 1 to December 31, 1988 (Ex. J-2).  
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1 Q. APPENDIX A -- SALARY SCHEDULE

2 1. Union Proposal.

3 a. Union proposes to amend Appendix A as follows:

4 Appendix "A" shall consist of three salary  
5 schedules patterned after the 1985 Agreement and  
6 reflecting the following pay increases:

7 1986 Schedule:

8 Beginning January 1, 1986, all salaries shall  
9 be increased to seven percent (7%) above the 1985  
10 Agreement rates.

11 1987 Schedule:

12 Beginning January 1, 1987, all salaries shall  
13 be increased a minimum of seven percent (7%) above  
14 the 1986 rates. Fire Lieutenants shall be paid at  
15 least 109% of the corresponding Fire Fighter rate;  
16 i.e., "E" step FF pay x 1.09 = "E" step Lt. pay.  
17 Fire Captains shall be paid at least 109% of the  
18 corresponding Fire Lieutenants rate. Salaries for  
19 those classifications working 40-hours-per-week  
20 (day shift), shall be increased to and maintained  
21 at 106% of the corresponding suppression officer  
22 pay.

23 1988 Schedule:

24 Beginning January 1, 1988, all salaries shall  
25 be increased a minimum of four percent (4%) above  
26 the 1987 rates. Fire Lieutenants shall be paid at  
27 least 110% of the corresponding Fire Fighter  
28 rate. Fire Captains shall be paid at least 110%  
of the corresponding Fire Lieutenants rate.  
Salaries for those classifications working  
40-hours-per-week (day shift), shall be maintained  
at 106% of the corresponding suppression officers  
pay. Fire Paramedic positions shall be added to  
the salary schedule at the rate outlined in  
Appendix "B".

2. City Proposal.

a. City proposes to amend Appendix "A" as follows:

It is noted that the City proposal includes the addition of portions of Appendix "B" within its body because of the City position that all firefighters will become medically trained,

1 and any EMT and paramedic pay shall be included in the base  
2 rate) (City Brief, pp. 71-72, 76-77, 87-88).

3 A. Include current EMT pay in Firefighter  
4 base monthly rate, since all firefighters will be  
5 EMT certified.

6 B. Establish the following pay for the listed  
7 new positions effective the first of the month  
8 following contract ratification.

9 <u>Position</u>	10 <u>Maximum No.</u> 11 <u>of</u> 12 <u>Incumbents</u>	13 <u>Pay</u> 14 <u>(create new</u> 15 <u>base)</u>
16 <u>Firefighter/EMT</u>	17 <u>All FF</u> 18 <u>required to</u> 19 <u>maintain EMT</u>	20 <u>FF Base plus</u> 21 <u>\$35 added in</u>
22 <u>Lieutenant/EMT</u>	23 <u>No maximum</u>	24 <u>LT Base plus</u> 25 <u>\$35 added in</u>
26 <u>Captain/EMT</u>	27 <u>No maximum</u>	28 <u>Capt. Base</u> <u>plus \$35</u> <u>added in</u>
29 <u>Firefighter/P<sup>1</sup></u>	30 <u>12</u> 31 <u>(FF/P) 1, 2, 3</u>	32 <u>FF Base plus</u> 33 <u>\$150 added in</u>
34 <u>Firefighter/P<sup>2</sup></u>		35 <u>FF Base plus</u> 36 <u>\$175 added in</u>
37 <u>Firefighter/P<sup>3</sup></u>		38 <u>FF Base plus</u> 39 <u>\$200 added in</u>
40 <u>Lieutenant/P</u>	41 <u>3</u>	42 <u>LT Base plus</u> 43 <u>\$150 added in</u>
44 <u>Captain/P</u>	45 <u>1</u>	46 <u>CAPT Base</u> 47 <u>plus \$150</u> 48 <u>added in</u>

49 (Firefighter/P<sup>1</sup> is 0-2 years of service in the Richland  
50 Fire Department as a certified paramedic.)

51 (Firefighter/P<sup>2</sup> is the 3rd and 4th years of service in  
52 the Richland Fire Department as a certified paramedic.)

53 (Firefighter/P<sup>3</sup> is the 5th year of service in the  
54 Richland Fire Department as a certified paramedic.)

55 The effective date of medical position pays shall be the  
56 date the Department receives the appropriate written  
57 certification.

1 Position pays include reimbursement for meetings and  
2 recertification time necessary to maintain said  
3 certifications.

4 C. Increase base wages listed as follows:

5 1986 - No change;

6 1/1/87 - 2% across the board;

7 1/1/88 - 3% across the board.

8 3. Decision of Arbiters.

9 Appendix A -- Salaries shall be amended as follows:

10 1. Appendix "A" shall consist of three salary  
11 schedules patterned after the 1985 Agreement  
12 and reflecting the following pay increases:

13 a. 1986 Schedule:

14 Beginning January 1, 1986, all  
15 salaries shall be increased to three  
16 percent (3%) above the 1985 Agreement  
17 rates.

18 b. 1987 Schedule:

19 Beginning January 1, 1987, all  
20 salaries shall be increased a minimum of  
21 four percent (4%) above the 1986 rates.  
22 Fire lieutenants shall be paid at least  
23 109% of the corresponding Fire Fighter  
24 rate; i.e., "E" step FF pay X 1.09 = "E"  
25 step Lt. pay. Fire Captains shall be paid  
26 at least 109% of the corresponding Fire  
27 Lieutenants rate. Salaries for those  
28 classifications working 40-hours-per-week  
(day shift), shall be increased to and  
maintained at 106% of the corresponding  
suppression officer pay.

c. 1988 Schedule:

Beginning January 1, 1988, all  
salaries shall be increased a minimum of  
four and two-tenths percent (4.2%) above  
the 1987 rates. Fire Lieutenants shall be  
paid at least 112% of the corresponding  
Fire Fighter rate. Fire Captains shall be  
paid at least 107% of the corresponding  
Fire Lieutenants rate. Salaries for those  
classifications working 40-hours-per-week  
(day shift), shall be maintained at 107%  
of the corresponding suppression officers  
pay. Fire Paramedic positions shall be  
added to the salary schedule at the rate  
outlined in Appendix "B."

1 (1) Include current EMT pay in  
2 Firefighter base monthly rate, since all  
3 firefighters will be EMT certified.

4 (2) Establish the following pay for  
5 the listed new positions effective the  
6 first of the month following effective  
7 date of this award.

<u>Position</u>	<u>Maximum No. of Incumbants</u>	<u>Pay (create new base)</u>
<u>Firefighter/EMT</u>	<u>All FF required to maintain EMT</u>	<u>FF Base plus \$35 added in</u>
<u>Lieutenant/EMT</u>	<u>No maximum</u>	<u>LT Base plus \$35 added in</u>
<u>Captain/EMT</u>	<u>No maximum</u>	<u>Capt. Base plus \$35 added in</u>
<u>Firefighter/P<sup>1</sup></u>	<u>12 (FF/P) 1, 2, 3</u>	<u>FF Base plus \$150 added in</u>
<u>Firefighter/P<sup>2</sup></u>		<u>FF Base plus \$175 added in</u>
<u>Firefighter/P<sup>3</sup></u>		<u>FF Base plus \$200 added in</u>
<u>Lieutenant/P</u>	<u>3</u>	<u>LT Base plus \$150 added in</u>
<u>Captain/P</u>	<u>1</u>	<u>CAPT Base plus \$150 added in</u>

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20 (Firefighter/P<sup>1</sup> is 0-2 years of service in the Richland  
21 Fire Department as a certified paramedic.)

22 (Firefighter/P<sup>2</sup> is the 3rd and 4th years of service in  
23 the Richland Fire Department as a certified paramedic.)

24 (Firefighter/P<sup>3</sup> is the 5th and succeeding years of  
25 service in the Richland Fire Department as a certified  
26 paramedic.)

27 (3) The effective date of medical  
28 position pays shall be the date the  
Department receives the appropriate  
written certification.

(4) Position pays include  
reimbursement for meetings and  
recertification time necessary to maintain  
said certifications.

4. Discussion.

a. Comparators selected by both the Union, the City and this panel (Bremerton, Kennewick, Longview, Olympia, Redmond and Walla Walla) combined with other demographic evidence demonstrates as to salaries the need for a substantial increase to come up to average:

(1) Top grade firefighters at Richland are \$258 below the average; Lieutenants are \$384 below average, and Captains (with fewer and less reliable comparables) are \$391 below average. (Ex. U-3) Computation follows:

<u>City</u>	<u>Top FF</u>	<u>LTs</u>	<u>Cpts.</u>
Redmond	2,591	2,992	None
Olympia	2,463	2,900	3,150
Bremerton	2,489	2,731	None
Longview	2,426	2,681	None
Walla Walla	2,254	2,741	2,878
Kennewick	2,501	2,689	2,935
<hr/>			
Total	14,904	16,734	8,963
Average	2,484	2,789	2,988
Richland	2,226	2,405	2,597
Above Richland	258	384	391

(2) "Historical" salary comparisons between Richland and Kennewick show that between 1984 and 1987 the gap as to top grade firefighters changed from \$2,120 to \$2,226 for Richland and \$2,161 to \$2,359 for Kennewick. They also show Kennewick 1987 increased from \$2,359 to \$2,501 in furthering the comparative gap. (Ex. U-3). There is no evidence before us to justify this great a difference for neighbors.

1 (3) Some of the suggested Union comparators  
2 involve the influence of larger metropolitan centers of which  
3 they are a part such as Snohomish, Edmonds, etc.

4 b. The City's Current financial circumstances are  
5 an inhibiting factor to be weighed and applied to any  
6 increases. We note:

7 (1) Richland is a single-industry town  
8 dependent in many respects on the Hanford Reservation. Both  
9 the city's population and municipal services grew during the  
10 1970's (Tr. 624:9-15). In the 1980's, that situation changed  
11 in some respects. Development of nuclear powered electrical  
12 generators by the Washington Public Power Supply System was  
13 curtailed (Tr. 624:17-24). Federal activity relative to the  
14 N-reactor dropped off significantly (Tr. 624:24-625:1).

15 (2) The population has dropped, city revenues  
16 have diminished and there have been cutbacks in city personnel  
17 and municipal services (Tr. 625:2-21).

18 (3) The tax base is especially hard hit by  
19 economic turndowns because the share of the retail sales tax,  
20 even though equalized by statute, is less productive than in  
21 Kennewick, where most persons shop at retail shopping centers.

22 (4) The population and valuation for tax  
23 purposes presently indicate no different relationship that  
24 shows any distress situation for Richland.

25 (5) The evidence contains some news articles  
26 and testimony predicting the future in either calamitous or  
27 rosy terms. In this regard, we are able to look at 1985, 1986  
28 and a part of 1987 actually shown in this evidence. It cannot



1 be said that the calamity has happened yet, but may still come  
2 after most of 1988. The city finances appear to have been  
3 budgeted to the known requirements with firefighters at 1985  
4 contract rates. It is proper to surmise that if the  
5 firefighters had received a raise in 1986 and 1987, the city  
6 would have met the obligations by rearranging other  
7 expenditures or increasing revenues.

8 (6) The CPI rate for 1986 and 1987, although  
9 incomplete, in the evidence tends to be in support of the  
10 City's position of only a 5% raise. (Ex. D-97).

11 c. The productivity of the firefighters has not  
12 been questioned. Our comparators show only 8% less number of  
13 calls without disclosing the variables of matters of time,  
14 distance and efficiency or seriousness. The value of the  
15 paramedical service need not be, but is, documented to be of  
16 great importance to the community sense of well-being. It is  
17 also a premise that health, safety, law and order furnished by  
18 police, firefighters and medical services take a priority  
19 position among the services needed to be provided by a  
20 government in its budget. There is no showing there is any  
21 waste in money or personnel in the fire department.

22 d. It appears, upon weighing these and other  
23 factors together, that it is only reasonable and equitable to  
24 make the salaries at least near the average of those bargained  
25 at other comparable locations. This is done by a fair  
26 progression from 1985 through 1986/1987, and 1988. The  
27 progressive yearly salary increases awarded are to bring the  
28 top Richland firefighter pay levels up to the average of



1 comparative departments. This does not yet reach the  
2 determination in the Hay Appeal of a necessary 15% differential  
3 (Ex. U-3). The increase awarded to Lieutenants and Captains  
4 accomplishes the same purpose.

5 e. The lowest increase in 1986 recognizes the  
6 condition of the economy and the fact that other city employees  
7 received no cost of living raises. This increase of 3% is to  
8 begin the rise for firefighters to the average of comparable  
9 departments. Such recognition plus cost of living justifies  
10 1987 -- four per cent, and 1988 -- four and two-tenths percent.

1 R. APPENDIX B - PREMIUM PAY SCHEDULE

2 1. Union Proposal.

3 a. Union proposes to amend Appendix "B" as  
4 follows, effective January 1, 1988:

5 1. Employees in the Firefighter or Lieutenant  
6 classifications who hold a valid Washington State  
7 EMT Certification will be paid \$35.00 per month in  
8 addition to their base pay for each complete  
9 calendar month they maintain said certification.

10 1.1 Employees in the Firefighter  
11 classification hired on or after the effective  
12 date of this Agreement who are not EMT or ALS  
13 Certified shall be required to enroll in the first  
14 EMT Certification course following the completion  
15 of the Firefighter's initial four (4) months of  
16 service in the Department, and will be required to  
17 obtain EMT Certification within one (1) calendar  
18 year from the date that the Firefighter entered  
19 the program. Recertification shall be voluntary.

20 2. Firefighters and Lieutenants holding I.V.  
21 and/or Airway Technician Certifications shall be  
22 paid \$20.00 per month per certification,  
23 accumulative with their EMT pay, and such pay  
24 shall be issued bi-weekly. A maximum of 12  
25 employees having I.V., Airway, or combinations of  
26 both, shall be paid under this section.

27 3. Up to 12 Firefighters and Lieutenants  
28 certified as Paramedics may receive pay as "Fire  
29 Paramedics" as provided below:

30 3.1 The Fire Paramedic positions shall be  
31 paid positions only, and shall not be separate  
32 classified service tested positions and shall be  
33 filled by employees of the Firefighter and/or  
34 Lieutenant ranks.

35 3.2 The positions shall be filled on a first  
36 certified basis until the maximum allowed  
37 positions have been filled. Ties in certification  
38 dates will be decided by Department seniority with  
39 the personnel having the most seniority receiving  
40 the appointment to the position.

41 3.3 Fire Paramedics who do not recertify or  
42 who have their certification revoked shall return  
43 to their respective fire suppression position but  
44 shall not cease to draw Fire Paramedic pay.

1 beginning with the pay period in which the  
2 certification is no longer valid.

3 3.4 If the number of Fire Paramedics in the  
4 Department drops to six (6) or less, scheduled  
5 leave for the Fire Paramedics may be restricted to  
6 allow only one off at a time; provided; the  
7 department will maintain one Fire Paramedic on  
8 duty at all times when possible, utilizing  
9 off-duty Fire Paramedic personnel when needed and  
10 available. In the event "call-in" is required,  
11 Fire Paramedic personnel will not be required to  
12 work in excess of 48 continuous hours.

13 3.5 If leave restrictions are implemented as  
14 provided above, leaves scheduled prior to the  
15 restriction implementation shall be honored.

16 3.6 Salary for the Fire Paramedic positions  
17 shall be included in Appendix "A" of the Agreement  
18 and shall be established with step increases.  
19 Step increases shall be based on the number of  
20 years of service the employee has worked for the  
21 Department with a Paramedic Certification. Said  
22 increases shall be as follows:

<u>Step</u>	<u>Time</u>	<u>Rate</u>
<u>A</u>	<u>1st 2 years</u>	<u>\$140.00 over applicable</u> <u>Firefighter Salary</u>
<u>B</u>	<u>2nd 2 years</u>	<u>\$160.00 over applicable</u> <u>Firefighter Salary</u>
<u>C</u>	<u>3rd 2 years</u>	<u>\$180.00 over applicable</u> <u>Firefighter Salary</u>
<u>D</u>	<u>Over 6 years</u>	<u>\$200.00 over applicable</u> <u>Firefighter Salary</u>
<u>E</u>	<u>N/A</u>	<u>\$140.00 over applicable</u> <u>Fire Lieutenant Salary</u>

23 2. City Proposal.

24 a. City proposes to delete portions of  
25 Appendix "B" because of its position that all Firefighters will  
26 become medically trained, and any EMT and paramedic pay should  
27 be included in the base rate as in their proposal in  
28 Appendix "A"; correspondingly, EMT and paramedic pay proposals  
are now contained in Appendix "A" (City Brief, pp. 76, 87-88).

1           b. City agrees to amend Appendix B by accepting  
 2 Union's proposal above on I.V. and/or Airway Technician's  
 3 Certification (City Brief, p. 88). The City's position is not  
 4 clearly stated in the record. We have interpolated its  
 5 proposal as follows:

<u>Certification</u>	<u>Addl. Monthly Pay Per Certification</u>	<u>Total Maximum Premium Pay Per Month</u>	<u>Total Maximum Officer Premium Pay Per Month</u>	
			<u>Lieutenant</u>	<u>Captain</u>
I.V. Technician (Maximum of 6 employees)	<u>20.00</u>	<u>40.00</u>	<u>40.00</u>	n/a
Airway Technician (Maximum of 6 employees)	<u>20.00</u>	<u>40.00</u>	<u>40.00</u>	n/a

14           3. Decision of Arbiters: (Effective January 1, 1988)

15           Appendix B, Premium Pay shall be as follows:

<u>Certification</u>	<u>Addl. Monthly Pay Per Certification</u>	<u>Total Maximum Premium Pay Per Month</u>	<u>Total Maximum Officer Premium Pay Per Month</u>	
			<u>Lieutenant</u>	<u>Captain</u>
I.V. Technician (Maximum of <u>12</u> employees)	<u>20.00</u>	<u>40.00</u>	<u>40.00</u>	n/a
Airway Technician (Maximum of <u>12</u> employees)	<u>20.00</u>	<u>40.00</u>	<u>40.00</u>	n/a

24           4. Discussion.

25           a. This conclusion adopts the transfer of EMT and  
 26 paramedic premiums to Appendix A as proposed by the City and  
 27 amends Appendix B by adopting the Union's and City's agreed

1 proposal concerning I.V. Technicians and Airway technicians  
2 after interpolating the City statements.

3 b. These premium pay levels are not included in  
4 base pay, and are not to be paid as an addition to those  
5 employees already receiving enhanced base pay under Appendix A  
6 who have Paramedic Certification. These premium pay levels are  
7 to be paid to those employees with either or both I.V.  
8 Technician and Airway Technician Certifications, which  
9 represent intermediate steps on the way to full paramedic  
10 certification.

11 c. A maximum of 12 employees having I.V., Airway,  
12 or combinations of both shall be paid under this section. The  
13 City brief and record is silent as to the number of employees.  
14 Twelve is adopted or awarded from the Union proposal.

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S. ARTICLE \*\* -- CALL IN FOR ABSENCES

Article \*\* -- Call in for Absences was resolved by the parties prior to the hearing (City Brief, p. 3).

1 T. ARTICLE \*\* -- MEDICAL CERTIFICATION/RECERTIFICATION AND  
2 TRAINING

3 1. Union Proposal.

4 The Union proposes the addition of the following  
5 new Article:

6 ARTICLE \*\* -- Medical Certification/Recertification  
7 and Training

8 \*\*.1 All employees hired after January 1,  
9 1985, who hold a medical certification listed in  
10 Appendix "B" on the date of their employment,  
11 shall maintain that certification for the term of  
12 said certification provided the area medical  
13 coordinator concurs. The Union agrees to  
14 encourage their members to seek, obtain, and  
15 maintain medical certifications for which they  
16 might be qualified.<sup>1</sup>

17 \*\*.2 The cost of tuition and books for any of  
18 the medical certifications listed in Appendix "B"  
19 shall be paid initially by the employee and  
20 reimbursed by the employer upon proof of  
21 successful completion of each class. The employer  
22 shall also pay up to \$150.00 per paramedic per  
23 year for tuition and books for the continuing  
24 education credits required for paramedic  
25 recertification. The employee shall be reimbursed  
26 by the employer for expenses other than books and  
27 tuition as provided for in city ordinances and  
28 policies. Expenses except mileage must be  
documented by receipts. In addition, the employer  
will cover up to one 24 hour shift each year by  
call in as necessary, per employee holding a  
paramedic certification, to allow the employee to  
attend recertification classes.

\*\*.3 All approved off-duty class time for  
officers and fire fighters necessary to achieve an  
authorized medical certification listed in  
Appendix "B" shall be paid for at the base hourly  
overtime rate of pay. Class time while on-duty  
shall be allowed when manpower permits and call in  
shall be utilized to allow employees to go to  
class when manpower does not otherwise permit

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26 <sup>1</sup>Issue of length of paramedic certification maintenance  
27 has been settled by the parties (See letter dated  
28 November 17, 1987 to Chairman Revelle).



1 them to go. Class time shall not impact other  
2 employees' rights to schedule vacation time off as  
3 presently allowed, provided there are sufficient  
4 employees available for call in if necessary to  
5 cover the student class time.

6 \*\*4 City of Richland, off-duty, certified  
7 paramedics may be called in to supervise paramedic  
8 trainees on a voluntary basis, provided that if  
9 volunteers are of insufficient number to meet  
10 Department needs, the Department may either  
11 contract or hire a temporary employee to cover the  
12 shifts not covered by volunteering Richland  
13 paramedics. Such contract or temporary employees  
14 shall not be covered by other Articles of this  
15 Agreement. Pay for such supervisory work by  
16 Richland paramedics outside of the regular work  
17 schedule will be at 1-1/2 times the volunteer's  
18 base hourly rate unless the volunteer assumes his  
19 full duties, in which case he shall be paid  
20 pursuant to Article 24 - Overtime.

21 2. City Proposal.

22 ARTICLE \*\* -- Medical Certification  
23 Recertification and Training

24 The City proposes the addition of the following new  
25 Article:

26 All employees in the firefighter  
27 classification shall, as a condition of  
28 employment, be at least EMT certified. Non-EMT  
29 entry level Firefighters will be required to enter  
30 the EMT certification training program with the  
31 first available EMT certification course following  
32 completion of the Firefighter's first four (4)  
33 months of service with the Employer, and said  
34 Firefighter will be required to successfully  
35 complete the EMT Certification training program  
36 within one (1) calendar year from the date that  
37 the Firefighter enters the program. Employees who  
38 are paramedics shall maintain their paramedic  
39 certification for the term of that certification  
40 or the labor agreement, pursuant to state law  
41 requirements, or whichever is longer.<sup>1</sup>

42 <sup>1</sup>Issue of length of paramedic certification maintenance  
43 has been settled by the parties (See letter dated  
44 November 17, 1987 to Chairman Revelle).

1           The cost of tuition and books for any of the  
2 medical certification classes and recertification  
3 tests listed in Appendix "A" and "B" shall be paid  
4 initially by the employee and reimbursed, if  
5 authorized by the Employer, upon proof of  
6 successful completion of each class or test. The  
7 Employer shall also pay for tuition and books for  
8 approved continuing medical education required for  
9 authorized paramedic recertification.

10           Duties of paramedics shall include teaching  
11 Department medical classes as assigned.

12           Off-duty certified Richland paramedics may be  
13 authorized to supervise Richland paramedic  
14 trainees on a voluntary basis, provided that if  
15 volunteers are of insufficient number to meet  
16 Department needs, the Department may either  
17 contract for such work or hire a temporary  
18 employee in which case such persons shall not be  
19 covered by this bargaining agreement. Pay for  
20 such supervisory work by Richland paramedics will  
21 be at 1-1/2 times the volunteer Richland  
22 paramedic's base hourly rate.

23           3. Decision of Arbiters.

24           ARTICLE \*\*. Medical Certification/Recertification and  
25 Training (effective 1/1/88) shall be:

26           \*\*.1 All employees in the firefighters  
27 classification shall, as a condition of  
28 employment, be at least EMT certified. This  
29 requirement shall not be a ground for discharge  
30 for any employee hired originally prior to January  
31 1, 1988. Non-EMT entry level firefighters will be  
32 required to enter the EMT certification training  
33 program with the first available EMT certification  
34 course following completion of the firefighters  
35 first four (4) months of service with the  
36 Employer, and said firefighter will be required to  
37 successfully complete the EMT certification  
38 training program within one (1) calendar year from  
39 the date that the firefighter enters the program.

40           \*\*.2 The cost of tuition and books for any of  
41 the medical certifications listed in Appendix "A"  
42 and "B" shall be paid initially by the employee  
43 and reimbursed by the employer upon proof of  
44 successful completion of each class. The employer  
45 shall also pay up to \$150.00 per paramedic per  
46 year for tuition and books for the continuing  
47 education credits required for paramedic  
48 recertification. The employee shall be reimbursed  
49 by the employer for expenses other than books and

1 tuition as provided for in city ordinances and  
2 policies. Expenses except mileage must be  
3 documented by receipts. In addition, the employer  
4 will cover up to one 24 hour shift each year by  
5 call in as necessary, per employee holding a  
6 paramedic certification, to allow the employee to  
7 attend recertification classes.

8 \*\*.3 All approved off-duty class time for  
9 officers and fire fighters necessary to achieve an  
10 authorized medical certification listed in  
11 Appendix "A" and Appendix "B" shall be paid for at  
12 the base hourly overtime rate of pay. Class time  
13 while on-duty shall be allowed when manpower  
14 permits and call in shall be utilized to allow  
15 employees to go to class when manpower does not  
16 otherwise permit them to go. Class time shall not  
17 impact other employees' rights to schedule  
18 vacation time off as presently allowed, provided  
19 there are sufficient employees available for call  
20 in if necessary to cover the student class time.

21 \*\*.4 Duties of paramedics shall include  
22 teaching Department medical classes as assigned.

23 \*\*.5 City of Richland, off-duty, certified  
24 paramedics may be called in to supervise paramedic  
25 trainees on a voluntary basis, provided that if  
26 volunteers are of insufficient number to meet  
27 Department needs, the Department may either  
28 contract or hire temporary employees to cover the  
shifts not covered by volunteering Richland  
paramedics. Such contract or temporary employees  
shall not be covered by other Articles of this  
Agreement. Pay for such supervisory work by  
Richland paramedics outside of the regular work  
schedule will be at 1-1/2 times the volunteer's  
base hourly rate unless the volunteer assumes his  
full duties, in which case he shall be paid  
pursuant to Article 24 - Overtime.

#### 21 4. Discussion

22 a. The present importance of the medical  
23 qualification of each firefighter is not seriously questioned  
24 by either the City or Union. It is not a sideline service used  
25 only occasionally (Tr. 496:4-497:6). Ambulance calls have  
26 risen from fewer than 600 in 1974 to a range between  
27 1,000-1,200 per year (Ex. C-84). Similarly, ambulance assists  
28

1 have steadily increased over the last decade (Ex. C-83).  
2 During this same period the services rendered have become  
3 increasingly sophisticated. Formerly only basic first aid was  
4 provided (Tr. 496:4-6). Now paramedics and EMT's with advanced  
5 certifications now have the capability to "take the emergency  
6 room" \*\*\* to "wherever the incident occurs" (Tr.496:19-21).  
7 Thus the requirement that every firefighter be certified to the  
8 end of his or her career is now necessary. On-the-job practice  
9 is not the same as certification. Certification is notice to  
10 the world that the City and the firefighters are competent to  
11 perform the task according to acceptable standards. It will  
12 limit tort malpractice liability risk.

13 b. The union's argument that (1) EMT standards  
14 should not be controlled by entities other than the parties,  
15 and (2) that if someone fails the test, that firefighter would  
16 no longer be a member of the Department even though having  
17 earned long seniority (Tr.476:21-476:7) does not refer to  
18 problems that need attention as follows:

19 (1) Standard controls by outside entities is a  
20 common factor condition of employment such as vehicle drivers  
21 licenses, etc. It is not a reason, even if the record shows  
22 some dissatisfaction with state agencies, to counter the  
23 necessity of giving notice to the world of acceptable  
24 competence.

25 (2) The union argues that the provision  
26 requiring all firefighters to be and maintain EMT certification  
27 would require the discharge or non-rehire of employees who  
28 have, for example, 10 years of acceptable service which is not

1 a reasonable provision for those presently employed or new  
2 hires or both. In view of the importance of qualification and  
3 risk of serious liability it seems correct that the service  
4 should be upgraded if it can be done over time and not result  
5 in the discharge or non-rehire of any person presently  
6 employed. Thus we have added a "grandfather provision" so that  
7 discharge or rehire event applies only to those first hired  
8 after January 1, 1988. These new hires have one year to be  
9 qualified as part of their probationary hire status under  
10 Article \*\*.1 above.

11 c. The Union's positions concerning additional  
12 remuneration contained in "supplemental agreements" appear  
13 reasonable in view of the adoption of the City's position  
14 requiring 100% certification and the obvious distaste some  
15 individuals may have or develop while performing this service  
16 (Tr.476:1-14) (Tr. 478:2-480:10) (Tr. 494:5-21).

17 d. Requiring paramedics to teach Department  
18 medical classes is a further recognition of the importance of  
19 the medical service. This makes it a regular part of the total  
20 program rather than requiring acceptance of volunteers as  
21 proposed by the Union's "supplemental agreement".  
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1 U. ARTICLE \*\* -- LONGEVITY

2 1. Union Proposal.

3 a. The Union proposes the addition of the  
4 following new Article:

5 ARTICLE \*\* - Longevity effective 1/1/88)

6 \*\*.1 The employer shall compensate each  
7 employee for years of service at the following  
8 rates:

9 10-14 years service 1% annual salary  
10 15-19 years service 2% annual salary  
11 20-24 years service 3% annual salary  
12 25 or more years service 4% annual salary

13 \*\*.2 Longevity pay shall be computed and paid  
14 through the bi-weekly payroll system. Such pay  
15 shall be in addition to any other pays earned.

16 2. City Proposal.

17 The City opposes the addition of the new Article on  
18 Longevity Pay (City Brief, pp. 67-70).

19 3. Decision of Arbiters.

20 Article \*\* -- Longevity shall not be included in  
21 the agreement.

22 4. Discussion.

23 a. The evidence establishes that longevity pay is  
24 not a useful incentive compared to educational incentive. The  
25 reasoning is well stated by the City in its brief as follows:

26 The key issue with respect to a longevity pay  
27 proposal is, according to Dr. Spurlin, the City's  
28 expert, whether there is any "expected  
relationship between longevity and the  
contribution that the individual would make to the  
organization . . ." (Tr. 360:19-21) Dr. Spurlin,  
an expert in industrial organizational psychology,  
recognized the several year learning curve  
required for a firefighter to reach proficiency  
(Tr. 360:24-361:01). The parties' collective  
bargaining agreement already recognizes the  
increased value of firefighter skills over the

1 learning years through progressive pay steps,  
2 promotional opportunities, increased vacation,  
3 assignment preferences, etc. See Tr. 361:12-25.  
4 However, Dr. Spurlin concluded that there would be  
5 no predictable difference in job performance by  
6 very senior firefighters compared to others who  
7 have reached a "journeyman" level See  
8 Tr. 362:01-20. An individual with three to five  
9 years' experience is as likely to be the top  
10 firefighter as is one with 20 years' experience  
11 (Tr. 362:16-20).

12 b. Dr. Spurlin's research has also determined that  
13 longevity pay plans do not have a positive effect on employee  
14 morale. Tr. 363:23-364:06. In fact, it is likely that junior  
15 employees would be dissatisfied with a plan which rewards more  
16 senior firefighters who are making no greater apparent  
17 contribution to the organization. Tr. 364:06-19. Moreover,  
18 the longevity plan proposed by the Union is unlikely to have  
19 any positive effect on recruitment or retention of employees.  
20 Tr. 364:20-365:06. The city has had no problem retaining  
21 firefighters even without longevity pay and in fact receives  
22 hundreds of applications for the few openings which occur.  
23 Tr. 607:7-16.

24 c. The Union did not refute Dr. Spurlin's  
25 testimony regarding the value of longevity. Instead, in  
26 support of its proposal, the Union contends that "the City of  
27 Richland is one of very few cities that do [sic] not recognize  
28 the value of position experience."

This contention is not suggested by the record of  
comparators since those that have longevity pay (Bremerton,  
Kennewick, Longview, Redmond and Walla Walla) have no, or very  
little, educational incentive pay. What all comparators



1 establish is that the norm is either one or the other, but not  
2 both; and Richland has the most monetarily generous educational  
3 pay (Ex. C-82).

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1 V. ARTICLE \*\* -- TERMS OF SUCCESSORSHIP

2 1. Union Proposal.

3 Union proposes the addition of this new Article as  
4 follows:

5 \*\*.1 This Agreement shall be binding upon the  
6 successors and assigns of the parties hereto, and  
7 no provisions, terms, or obligations herein  
8 contained shall be affected, modified, altered, or  
9 changed in any respect whatsoever by the  
10 consolidation, merger, annexation, transfer, or  
11 assignment of either party hereto; or affected,  
12 modified, altered, or changed in any respect  
13 whatsoever by any change of any kind of the  
14 ownership or management of either party hereto; or  
15 by the change geographically or otherwise in the  
16 location or place of business of either party  
17 hereto.

18 2. City Proposal.

19 City opposes inclusion of this new Article in the  
20 parties' agreement (Tr. 634:6-10; City Brief, p. 65).

21 3. Decision of Arbiters.

22 Article \*\* -- Terms of Successorship shall be:

23 \*\*.1 This Agreement shall be binding upon the  
24 successors and assigns of the parties hereto, and  
25 no provisions, terms, or obligations herein  
26 contained shall be affected, modified, altered, or  
27 changed in any respect whatsoever by the  
28 consolidation, merger, annexation, transfer, or  
assignment of either party hereto; or affected,  
modified, altered, or changed in any respect  
whatsoever by any change of any kind of the  
ownership or management of either party hereto; or  
by the change geographically or otherwise in the  
location or place of business of either party  
hereto.

29 4. Discussion.

30 a. This agreement expires on December 31, 1988.  
31 Thus, the effective time for this provision is twelve months  
32 with earlier renegotiation due for 1989 in 1988. It seems  
33 reasonable that if the Tri-Cities are in any respect combined,

1 it could not occur within the time frame of this agreement;  
2 thus it appears equitable that whatever is provided herein  
3 should be certain for that length of time regardless of  
4 consolidation of cities.

5 b. The legislation passed in 1986 governs the  
6 rights of firefighters upon consolidation of departments or  
7 cities. It recognizes the role of collective bargaining  
8 representatives (Ex. 104, § 2.61, 5(1)). It also preserves  
9 some rights, benefits and privileges to which firefighters were  
10 previously entitled. It states in part that transferring  
11 employees "receive a salary at least equal to that of other new  
12 employees of the fire protection district in the position  
13 filled."

14 Also, the 1986 legislation does not specifically  
15 eliminate collective bargaining agreements presently in place.  
16 If a consolidation occurs, the statute will control with  
17 respect to matters specifically included, and probably controls  
18 the whole consolidation process regardless of whether or not it  
19 conflicts. Presently, however, with the uncertainty of what  
20 the statute covers and absence of case law to construe vague  
21 provisions and the definite lack of provisions which would  
22 eliminate bargaining agreements, it would be inequitable and  
23 arbitrary to say that governmental bodies could unilaterally  
24 quash an agreement with their employees after good faith  
25 bargaining.

26 c. The comparable fire departments do not shed  
27 much factual light on this subject and do not constitute true  
28 comparisons, because there is no evidence the consolidation

1 threat to them is comparable to that of the Tri-Cities  
2 (Ex. 78,79).  
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1 W. ARTICLE \*\* -- MANAGEMENT GRIEVANCE PROCEDURE

2 Article \*\* -- Management Grievance Procedure was  
3 resolved by the parties prior to the hearing (City Brief, p. 3).  
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1 X. ARTICLE \*\* -- ENTIRE AGREEMENT

2 1. Union Proposal.

3 Union opposes inclusion of this new Article in the  
4 parties' agreement, believes it to be a permissive subject of  
5 bargaining (Tr. 425; Union Brief, p. 19).

6 2. City Proposal.

7 City proposes the addition of this new Article as  
8 follows:

9 \*\*.1 The parties have negotiated and agreed  
10 upon all clauses set forth in this contract; and,  
11 except as may be otherwise required by the  
12 statutory bargaining obligations set forth in  
13 Chapter 41.56 RCW, both parties waive the right to  
14 bring up for negotiations or bargaining during the  
15 contract term any items, subjects or matters,  
16 whether included herein or not, and agree that  
17 during the contract term no terms shall be open  
18 for bargaining.

19 3. Decision of Arbiters.

20 New Article \*\*.1 -- Entire Agreement shall be  
21 as follows:

22 \*\*.1 The parties have negotiated and agreed  
23 upon all clauses set forth in this contract; and,  
24 except as may be otherwise required by the  
25 statutory bargaining obligations set forth in  
26 Chapter 41.56 RCW, both parties waive the right to  
27 bring up for negotiations or bargaining during the  
28 contract term any items, subjects or matters,  
whether included herein or not, and agree that  
during the contract term no terms shall be open  
for bargaining.

4. Discussion.

a. Even though the subject matter of this article  
is in a complaint the Union registered with PERC, it has been  
certified to the panel for consideration. As with the

1 Article 27 - Basis of Negotiations, unless withdrawn, we must  
2 consider it here.

3 b. Analysis of the language of this article  
4 proposed by the City leads to the conclusion that it merely  
5 expresses what the law of contracts would enforce with or  
6 without this provision. This result comes from the principle  
7 that a contract provision expressed, together with a time of  
8 effectiveness of one year, will be enforced for that period of  
9 time and is not subject to "mid-term bargaining."

10 c. Nevertheless this explicit statement of the  
11 effect of the law, otherwise effective, places no additional  
12 burden on the parties and it is not reasonable to reject it.

13 d. We note that some comparative bargaining units  
14 have similar entire agreement clauses supporting the inclusion  
15 in this contract (Ex. C-73, C-74).

16 e. There is no conflict between this article and  
17 the article on prevailing rights approved elsewhere in this  
18 contract, because of the strict standard under the prevailing  
19 rights article. Under the entire agreement clause, there is  
20 simply a limitation on mid-term bargaining, but on the other  
21 hand, the City can not eliminate a prevailing right arbitrarily  
22 mid-term either. This article is designed to eliminate those  
23 grievances which don't meet the standard of the prevailing  
24 rights.



1 Y. ARTICLE \*\* -- PROBATIONARY PERIOD

2 1. Union Proposal

3 The Union proposes the following language for the  
4 new proposed article:

5 \*\*.1 Entry level employees shall serve a one  
(1) year probation period.

6 \*\*.2 Employees receiving a promotion in rank  
7 shall serve a six (6) month probation period in a  
new rank.

8 \*\*.3 Probationary Period may be extended in  
9 RMC 2.28.665 for just cause.

10 2. City Proposal.

11 City proposes the following language for the new  
12 proposed Article:

13 All new hires and promotional employees  
14 shall have a continuous 12-month probationary  
period for their permanent classification.

15 3. Decision of Arbiters. (Effective April 1, 1988)

16 Article \*\* -- Probationary Period.

17 All new hires and promotional employees  
18 shall have a continuous 12-month probationary  
19 period for their permanent classification.

20 4. Discussion.

21 a. Comparative departments' agreement supports  
22 clauses of this nature in the agreement (Ex. C-77).

23 b. The need for longer observation periods for  
24 firefighters by the chief and administrative staff is  
25 predicated on their unique work schedule (Tr. 451:16-20).  
26 Adequate observation requires more than six months to observe

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28 Opinion of the Arbiters - 113

1 six months of productive work. A one-year probationary period  
2 is sufficient without an extension.

3 c. Long probationary periods are reasonable.  
4 Arbogast v. Town of Westport, 18 Wn. App. 4, 567 P.2d 244  
5 (1977).  
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Z. ARTICLE \*\* -- STANDARDS OF SAFETY

Removed by PERC from consideration by letter dated June 23, 1986 to await disposition of unfair labor practice charges in Case No. 6289-U-86-1214.