IN THE MATTER OF INTEREST ARBITRATION

BETWEEN

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS, LOCAL 2053

AND

CITY OF MOSES LAKE, WASHINGTON
(PERC. NO. 8474-I-90-00195)

Arbitration Panel Members:

Danny Downs

Arbitrator Appointed by the Association:

Gary Persons

Arbitrator Appointed by Employer:

Professor Carlton J. Snow
Neutral Arbitrator and Chairman of the Panel

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I. INTRODUCTION

Pursuant to RCW 41.56.450, this interest arbitration proceeded to hearing before panel members Danny Downs, Executive Board Member of the Washington State Council of Firefighters; Gary Persons, Division Director of Employee Relations for the City of Spokane, Washington; and Professor Carlton J. Snow of the Willamette University Law School in Salem, Oregon.

The arbitration panel proceeded in accordance with requirements set forth in RCW 41.56.450-460 as well as WAC 391-55-250-255 in resolving this dispute. Professor Carlton J. Snow served as the Chairman of the arbitration panel. There were no challenges to the jurisdiction of the abitrators, and the parties stipulated that the matter properly had been submitted to the panel for a decision.

A hearing in the matter occurred on August 28, 1990 in a conference room of the Hallmark Inn located in Moses Lake, Washington. The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses, and to argue the matter. All witnesses testified under oath as administered

by the arbitrator. The advocates fully and fairly represented their respective parties. Mr. Alex J. Skalbania of the Critchlow, Williams & Schuster law firm in Richland, Washington represented Local 2052 of the International Association of Firefighters. Mr. James A. Whitaker, City Attorney, represented the City of Moses Lake, Washington. The arbitrator tape-recorded the proceeding as an extension of his personal notes.

The parties elected to submit post-hearing briefs in the matter, and the arbitrator officially closed the hearing on October 8, 1990 after receipt of the final brief in the matter. Illness and a surgery in the arbitrator's family delayed issuing a report in the matter. The arbitration panel gave appropriate weight to relevant statutory criteria in order to make determinations in this matter. Although all statutory criteria to be used in interest arbitration were considered, the legislation has not set forth the weight to be accorded any particular criterion; and no single statutory factor has been dispositive in the case.

The chairman of the panel submitted a tentative report to his arbitrator colleagues in December, 1990. Scheduling problems made it impossible for them to confer until January 10, 1991 on which date they held an executive session by telephone. The arbitrators discussed a range of issues, and the chairman submitted a modified version of the report to the party-appointed arbitrators at which time they concurred with the result. On January 28, 1991, the Association's arbitrator returned signature pages to the chairman of the panel

indicating that he concurred with the result, and the Employer's arbitrator had stated his concurrence and that he, too, intended to return his signature pages.

On February 1, 1991, the Employer's arbitrator requested that the reference in the draft to "U.S. All City Average" be deleted, and the panel agreed to do so. The arbitrator submitted a copy of that revised draft to the panel members, and they approved it. Then, on February 27, the Association's arbitrator requested that language with regard to the "sick leave" proposal be revised; and the panel adopted the revision. The panel also adopted the Employer's proposal that language with regard to the "cap" on sick leave be clarified. Mr. Downs had been concerned with the accrual rate, and Mr. Persons had been concerned with the limitation on the total number of hours to be accrued, and the panel reached a mediated settlement with regard to this matter.

On March 20, 1991, Mr. Rex Lacy, Senior Staff Mediator for the Washington Public Employment Relations Commission, inquired about the status of the report. The chairman of the panel indicated to him that the report had not been finalized and that the chairman was mediating refinements in the report because it appeared highly likely that the panel would be able to issue a unanimous decision. All conversations had been unduly cordial, and all panel members had shown considerable flexibility and cooperativeness in an effort to issue a report consistent with the needs of the parties.

At the end of the conversation on April 5, 1991, Mr. Persons again indicated his intent to forward concurring signature pages for the report to the chairman of the panel.

Then, on April 16, 1991, the Employer's party-appointed arbitrator sent the chairman the following letter:

> Gentlemen:
>
> First of all, let me apologize causing [sic] a delay in finalizing the arbitration award as well as an error in my judgement and recommendation to the panel.
>
> I find that I erred, in a fairly substantive way, in the recommendation in my February 1, 1991 letter to Professor Snow.
>
> My intention was to both personally apologize to you gentlemen as well as discuss the situation in a conference call. However, in finding that Mr. Downs is not available until Friday, April 19 to even schedule a conference call, I am reducing it to writing in an effort to not delay the process any further.
>
> You will note that in my letter of February 1, 1991, in an effort to clarify the language in the award concerning "salaries," I urged the panel to consider striking "U.S. City Average" from the method of providing salary increases based on changes in the U.S. Consumer Price Index. The error that I found quite accidentally since our last telephone conversation, was that the urging should have been to strike the reference to "Seattle-Tacoma, WA" instead.
>
> Throughout this proceeding, the union has proposed that the U.S. All-Cities Index be used. On review I can find no evidence either in the bargaining history, the proposals to arbitration, post-hearing briefs, nor analysis in Professor Snow's award that would suggest that the 1992 and 1993 salary increases be based on an other than U.S. Consumer Price Index U.S. City Average. Frankly, I simply made a mistake in suggesting otherwise.
>
> This conclusion is based on the following:

A. Current Contract Language - The existing contract between the firefighters and the city of Moses Lake, in addressing how to determine future salaries, says in part "... the CPI, all U.S. Index(W) September to September..."

B. Union Proposal - A letter of August 20, 1990 to Professor Snow from Alex J. Skalbania details of [sic] the union's proposal to the arbitration process for future adjustments to firefighters salary. Their proposal states in part "...salaries...shall be increased by an amount equal to the percentage change in the U.S. Consumer Price Index Urban Wage Earners, All-Cities as measured for the preceding year from July to July..." It appears the only deviation from the existing contract and past practice was to suggest using the month of July rather than the month of September as a basis point for determining what percentage salaries would be increased.

C. Union's Post Hearing Brief: On page 15 of the brief it states in part, "Members of Local 2052 should receive an increase in their base salary of 5.1 percent during 1990 an amount which is equal to the U.S. Consumer Price Index for Urban Wage Earners, All-Cities, for the period between July 1988 and July of 1989..."

D. City's Post Hearing Brief - On page 11 of the brief, under IV, Salaries, it states in part, "...the 3.5 percent increase proposed by the city was calculated by taking the September 1988 to September 1989 CPI of 4.1 percent and reducing it...."

It further states that "...the city argues using a July to July CPI is unfair and unwarranted. The September to September CPI figure has been used in negotiations with the union for years, going back to at least 1980 (city exhibit No. 15). For consistency sake a September to September CPI should continue to be used." Since the Seattle-Tacoma Index is not published in September (it only comes out in January and July), this reference was clearly intended to be for the All-Cities Index.

E. Arbitrator's Award - In the draft award submitted by Professor Snow under X, Duration

of the Agreement, B. Discussion, page 43, reads in part "...in contrast with the CPI-W, the CPI-U is based on expenditures reported by all consumer units in urban areas with an exception not relevant in this case. It seems appropriate to use a more broadly based Index in the parties agreement." While changing from the use of the "W" Index to the "U" is a deviation from the data previously mentioned, it is not as a substantive issue as would be a change from the use of the "U.S. City Average" to a use of "Seattle-Tacoma."

F. Conclusion - Based on the above, I would suggest that the award be returned to its original state by providing that salaries for Moses Lake Firefighters be adjusted on January 1, 1992 and 1993 by the increase in the U.S. Consumer Price Index U.S. City Average for all urban consumers from July 1989 to July 1990 for 1991 and July 1991 to July 1992 for 1993.

This in essence would:

1. follow past practice and current contract language
2. address the union's proposal and desires; and
3. be in concert with the information contained in its post hearing brief.

Obviously, the only difference of opinion between the city and the Firefighters is what months would be used for comparison purposes. The union's wishes being July and the city's September. No where in any of the documentation or testimony, to the best of my knowledge, has there been any discussion or proposal concerning a change in the Index which is used. The change resulted solely from my error: without checking first, I erroneously assumed the parties had historically been using the Seattle-Tacoma Index. Since the parties practice, and all evidence introduced at the hearing supports the use of the All-Cities Index, I request that we agree to remedy my error and that the award use the All-Cities Index.

Again, I apologize for suggesting the February 20, 1991 change to the panel. It appears that in my efforts to clarify an issue, I unintentionally may have completely "muddied the waters."

I would be happy to discuss this with you at your convenience.

Sincerely,

Gary Persons
Division Director

The issue raised in Mr. Persons's letter never had been discussed by the panel.

In response to Mr. Persons's letter of April 16, Mr. Downs submitted the following letter on April 23, 1991:

Gentlemen:

It was with some dismay that I received Mr. Persons' letter requesting additional changes to the Moses Lake arbitration award as I was of the understanding at the completion of our last conference call that we were in agreement, after considerable review of the award drafts, and that Mr. Persons was going to submit his signature page to finalize the award.

In view of my understanding of the finalized status of the Award, and the following, I find I cannot concur with Mr. Persons' request.

A. I believe the award as finalized during our last conference call constitutes a fair and equitable award for the parties.

B. It is my belief that the Seattle area index more closely reflects the economic climate in the State of Washington than does the All Cities index, as is indicated and recognzed by the fact that the State did not experience the recent recession felt by much of the U.S.

C. Finally, a change at this late date, of the magnitude suggested by Mr. Persons, would require considerable change in the award resulting in the need for further draft review and additional delay in submission of the award to the parties. While delay of the award may be beneficial to the employer, who is earning interest on monies budgeted for pay increases but not paid out, it most certainly is not beneficial to the Fire

Fighters who have not had a pay increase since January of 1989.

D. The City of Moses Lake did not produce evidence of inability to meet the salary increases agreed to in the award draft as finalized at our last conference call, but only a reluctance to do so.

As everyone has had considerable time to review the award draft prior to our last conference call and in consideration of the fact that it is approximately eight months since the hearing date of this arbitration and the parties are well into the second year of the term of the agreement as set by this award. I urge the award be submitted as determined and agreed during our last conference call.

Sincerely,

Dan Downs
IAFF Rep.

It is inaccurate to describe the measurement set forth in the report as a "mistake," for the chairman selected it deliberately and thoughtfully. The matter was never a focal point of the parties' attention either at the hearing or in their post-hearing briefs. The measurement selected by the chairman is the one most highly recommended by economists for the Bureau of Labor Statistics. Negotiations within the arbitration panel had dragged on for months, and the proposed revision was a significant one with the sort of substantive content that signalled a major change in the nature of the discussion by the arbitration panel. Even though the parties had waived all relevant time constraints with regard to issuing the report, there is an appropriate time to call a halt to further revisions; and that time has been reached in this case.

II. THE COMMUNITY OF MOSES LAKE

Moses Lake, Washington is a community in the central part of the state east of the Cascade Mountain range. It is a community of approximately 11,000 citizens with an economy based primarily on agriculture. There are a number of food processing plants in the area and conventional "support" industries to nourish any community of this size. A shopping mall is under construction in the community.

The Moses Lake Fire Department has a total personnel complement of thirteen individuals. The Chief and Assistant Chief are not in the bargaining unit, and the eleven member bargaining unit includes three captains. There is one fire station equipped with three Class A, 1500 gallon a minute pumpers. The Department operates a rescue boat and salvage equipment. The hospital district owns an ambulance, and the Fire Department staffs it. All members of the bargaining unit are EMT certified, and a number have earned Advanced Life Support certification.

The population of the community has remained relatively stable since 1955, experiencing a growth of approximately 1000 people in that time. There are approximately 26,000 citizens in the Greater Moses Lake area, and there have been two annexations during the past five years that added approximately one square mile of land to the City of Moses Lake. The annexations has added approximately fifteen to sixteen dwelling units to the city. The Fire Department provides fire suppression protection only for the City of Moses Lake,

but the ambulance service provided by the Department covers Hospital District No. 1, an area that is larger than that of Moses Lake.

III. NEGOTIATION HISTORY

This is not the parties' first agreement, and they have successfully negotiated a number of collective bargaining agreements with each other over the years. In May of 1989, the Association sent the Employer a Letter of Intent indicating its desire to negotiate a new agreement between the parties. The parties first met on September 8, 1989 and discussed proposals, but the Employer requested not to make a wage proposal until later. The parties met again on September 19, 1989 at which time management offered a two percent wage increase. A third meeting was held on November 1, 1989, and the Employer increased its wage offer to three percent. Their last regular bargaining session occurred on November 21, 1989.

There followed two to three mediation sessions between the parties, but they proved to be unproductive. The parties, then, sought interest arbitration, and the matter came for hearing in late August, 1990. The parties submitted five issues to the arbitration panel, namely, (1) health and welfare insurance; (2) holiday pay; (3) salaries; (4) length of the agreement; and (5) sick leave.

IV. THE ISSUE OF COMPARABLE JURISDICTIONS

RCW 41.56.460 lists statutory criteria to be used as standards and guidelines in reaching an interest arbitration decision. In this case, it has not been necessary to evaluate the Employer's ability to fund the economic program sought by the Association because management never alleged inability to pay. The debate between the parties has been about which communities ought to be compared with Moses Lake, Washington. Arbitrators long have recognized comparisons among jurisdictions as "preeminent in wage determination" because such comparisons offer "a presumptive test of the fairness of a wage." (See, Feis, Principles of Wage Settlement, 339 (1924)). As Arvid Anderson, past President of the National Academy of Arbitrators, has stated, "The most significant statutory standard for arbitration in the public sector is comparability." (See, 56 Fordham L. Rev. 153, 161 (1987)). The parties, however, did not challenge the importance of comparisons as much as they disagreed about an appropriate methodology for selecting a list of comparable jurisdictions.

In explaining the basis for comparable jurisdictions selected by the City, Mr. Gavinski, City Manager, testified that the Employer (1) used a range covering cities half as small to those half again as large as Moses Lake; (2) only cities east of the Cascade Mountains; (3) all full-time fire departments; and (4) only fire departments not funded as a fire district. The Association, on the other hand, used a methodology that "attempted to identify all of the public fire

departments in the State of Washington that were within plus or minus fifty percent in size of Moses Lake's Fire Department in terms of: the number of employes that were within the bargaining unit of the Department; the number of employes that were within the fire department as a whole; and the department budget size." (See, Association's Post-hearing Brief, p. 6).

The objective, of course, of seeking comparable jurisdictions is to establish a test of fairness for proposals parties seek to place in a collective bargaining agreement. The objective is not to produce a "result oriented" list of comparable cities. The purpose is to avoid the scenario described by one scholar as follows:

> Pick the criterion you want to show that you're worse off compared to your neighbor: rates in "X" community, rates in the average of neighboring commnities, closing the gap between you and the competitor, the cost-of-living increases, rates of increase in past years compared to this year, keeping at a fixed position in the scale of salaries, starting or top, of "X" communities within "Y" miles. And the list goes on. (See, Zack, "Arbitration and the Public Interest," Proceedings of the Twenty-fourth Annual Meeting of the National Academy of Arbitrators, 161, 189 (1971)).

The purpose of comparisons is to provide a rational standard and not to create a method for splitting the differerence in interest arbitration. Parties do not seek the weighted average of an arbitrator's notion of equity but, rather, a principled basis for resolving their impasse.

Neither list of comparable jurisdictions selected by the parties is consistent with the stated methodology used by either

of them. Some jurisdictions included on the parties' list are simply incompatible with the criteria supposed to have been used. Other jurisdictions on a list were included by a party inadvertently or by mistake.

Jurisdictions chosen by the parties are as follows:

City's List	Association's List
Cheney	Centralia
Clarkston	Clarkston
Ellensburg	Ellensburg
Pasco	Kitsap Co. Fire Dist. No. 1
Pullman	Mountlake Terrace
Sunnyside	Pullman
Toppenish	Shelton
Walla Walla	Snohomish Co. Fire Dist. No. 4
Wenatchee	

There are significant problems with some entries on each list. Pasco, Washington, for example, has a bargaining unit twice the size of Moses Lake with a wage and benefit budget that is only two-thirds larger than Moses Lake. (Pasco data were not made available to the arbitration panel for the 1990 agreement). Walla Walla has a bargaining unit almost four times Moses Lake with 41 members in the unit as compared with 11 in Moses Lake. Wenatchee has an assessed valuation of $608,000,000 in contrast with $239,000,000 in Moses Lake. Mountlake Terrace, on the other hand, has a bargaining unit only four employes larger than the one in Moses Lake with a total departmental budget almost twice the size of that in Moses Lake. With only four additional fire fighters, Mountlake Terrace serves a

population that is approximately 145% greater than the population served by the Moses Lake Fire Department. Snohomish County Fire District No. 4 and Kitsap County Fire District No. 1 enjoy departmental budgets that range from 45% to 15% greater than that of Moses Lake. All these disparities make for difficult comparisons.

There is also the dilemma of inconsistent data. For example, which is the correct departmental budget size, $699,911 as set forth by the Association or $584,902 set forth in the survey produced by the Washington State Council of Firefighters? (See, Association's Exhibit No. 2). Is a firefighter in Toppenish paid $1,999 monthly or $2,079? (See, City's Exhibit No. 10). In fairness, the Employer changed this figure in Appendix C of its Post-hearing Brief. Is the assessed valuation of Moses Lake $295,000,000, $269,000,000, $291,000,000, or $239,000,000? (See, Association's Hearing Handbook, p.3; Association's Exhibit No. 3; City's Exhibit No. 10; and City's Post-hearing Brief, App. B).

There is also the issue of fire districts. The Association argued that fire districts are appropriate comparable jurisdictions with which to measure a fair wage in Moses Lake. The Employer argued just as vigorously that it is highly inappropriate to include fire districts in the list of comparable jurisdictions.

Mr. Gavinski, City Manager, testified that a fire district is a "junior taxing district" which is "an entirely different animal" from a municipal organization such as a city.

He testified as follows:

> A fire district is different because the taxes it receives fall in a lower category, if you want to put it that way, from taxes that a city like Moses Lake receives. In other words, there are priorities which are given to taxes which are assessed and collected; and if, in fact, under the system we have, certain taxing authority by the cities, counties, state, etc., used by whatever taxing authority is available, junior taxing districts such as fire districts will have its tax collection shaved or reduced in proportion to the other junior taxing districts in order to come up with the total amount of money which is equal to whatever statutory and constitutional limits exist.

He testified without rebuttal that a fire district uses its funds solely for fire suppression and fire prevention purposes and that a special assessment exists only for that use. By contrast, a fire department is funded from general tax revenues along with other city departments such as police, finance, parks and recreation, library, airport, and engineering.

Mr. Penrose, President of the Association, testified that the Washington Legislature had amended the public employes' collective bargaining law to permit employes in city fire departments to compare themselves with fire districts. In 1985, RCW 41.56.460(c) instructed an arbitration panel to be guided by:

> Comparison of the wages, hours and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment <u>of like personnel of like employers of similar size</u> on the West Coast of the United States. (See, Association's Exhibit No. 2, emphasis added).

In 1987, the Washington Legislature amended RCW 41.56.460(c) to state:

> (c)(i) For employees listed in *RCW 41.56.030(6)(a) and (c), comparison of the wages, hours and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment <u>of like personnel of like employers of similar size</u> on the west coast of the United States;
>
> (ii) For employees listed in *RCW 41.56.030(6)(b), 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 <u>of public fire departments</u> 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; . . .
>
> (See, Association's Exhibit No. 1, emphasis added).

Mr. Penrose testified he had been told that the legislative intent was to permit a comparison of wages and employment conditions between cities and fire districts. It was unclear whether the Employer failed to rebut the testimony because it assumed the hearsay nature of the evidence would cause it to be disregarded or because there was no rebuttal available for presentation.

There is also the "labor market" problem with respect to an appropriate selection of comparable jurisdictions. A "labor market" theory is concerned with how a system employs the available labor force and how workers are allocated to alternative types of employment. Although there might be much debate about their nature, systematic forces are believed to be at work guiding the operation of the labor market. While there are many, one traditional conceptual framework of a labor market involves a supply and demand analysis. The objective is to understand the pricing of labor based on an

understanding of the supply and demand for labor.

The Association's desire to use a statewide list of comparable entities is based not only on statutory language but on an underlying assumption that there is a perfect labor market from which workers are drawn who should receive the same compensation for doing essentially the same work. Implicit in this model of the labor market is an unspoken assumption that potential employes for Moses Lake have perfect information about opportunities and wage rates in the city; that workers respond to differences in wage rates and move toward the higher rate; that workers are able to move when a higher paying opportunity arises; and that each employer is attempting to maximize the best use of resources for that particular entity.

It, however, is not accurate to view the State of Washington as one giant labor pool from which employers may pull prospective firefighters. As one scholar noted many years ago:

> At any time in any labor market one finds a great diversity of rates for identically defined jobs . . . . There are vast differences in the rates paid for comparable work in a given industry in a given labor market area. Cross-sectionally, one finds that large firms tend to pay higher wages than small firms. (See, Reynolds, "Research on Wages," Social Science Research Council, 27 (1947)).

Modern labor market theory has refined markets for a particular occupation and has become increasingly conscious of primary labor markets that might be more regional than statewide. (See, Freeman, "What Do Unions Do?" (1984)). Some educational systems, for example, are now being viewed

as central labor market institutions.

The comparability data put forth by the Association implicitly were premised on an equilibrium in the competition for similar workers with the theory being that an employer paying a smaller wage than the "going rate" would lose workers because they would move to the higher wage rates. Likewise, the unspoken assumption was that no municipality would be willing to pay more than the "going rate" because of its desire to maximize the use of its resources. Theoretically, this model would produce the most efficient use of labor. But the model implicit in the Association's data failed to take into account an imperfect world.

Employers sometimes fail to maximize the use of their authority. Potential employes often have imperfect information about the availability of positions. Even if they have the information, they may not be able to move. They might be sufficiently satisfied with their present employment not to pay attention to an opportunity with a higher wage, and it would be necessary for the higher wage to offset the cost of moving. In other words, it is not clear that wage rates for firefighters in Washington truly are set by the impersonal forces of supply and demand. While the wage rates probably are not immune to labor market forces, one suspects that they respond very slowly and only gradually to competitive conditions.

Data submitted to the panel of arbitrators in this case suggested that a significant proportion of the labor force used by the Employer as well as the labor pool from which

the Employer draws job applicants are far more immobile than a competitive model of labor market theory would suggest. In other words, the immobility of the labor force undermines any theory that there is a competition for workers. Since 1984, a majority of job applicants for Moses Lake have been drawn from Eastern Washington applicants. The data reveal the following pattern:

1984 -- 53.7% from Eastern Washington

1986 -- 55.6% from Eastern Washington

1989 -- 63% from Eastern Washington.

In actuality, 66.7% of fire fighters hired by Moses Lake since 1975 have been drawn from Eastern Washington job applicants. (See, City's Exhibit No. 5). Nor has the "turnover" rate of the existing work force revealed a different pattern. During the past fifteen years, the Employer has lost seventeen employes; but only four of those have been lured away by other fire departments. (See, City's Exhibit No. 11).

Labor market theory is concerned with the efficient allocation of resources based on appropriate wage rates. Another guiding force in determining an appropriate wage rate is the equity with which the labor market functions. In other words, fairness is a legitimate consideration in evaluating the impact of the labor market on the wage rate. Fire fighters are hired to serve the public in various capacities, and it is logical to assume that poorly rewarded fire fighters who are subjected to arbitrary treatment will not be as motivated to perform most effectively. It is reasonable to conclude

that an inequitable wage rate will gradually poison relationships in the work place and cause the emergence of antisocial activity. It is appropriate to demand that the labor market operate in such a way that it encourages workers to perform effectively and to develop their skills and abilities for the benefit of the public.

A final consideration with respect to selecting an appropriate list of comparable jurisdictions involves the City of Sunnyside. Sunnyside is what was characterized as a "nonunion shop." The Employer argued that the nonunion status of the bargaining unit at Sunnyside did not make it less comparable in terms of duties and responsibilities. One interest arbitrator has agreed with this analysis, stating:

> Jurisdictions properly cannot be ignored simply because the employees in those jurisdictions are not represented by a labor organization or because employees in that jurisdiction are not covered by a collective bargaining law. (See, City of Walla Walla, Washington, PERC No. 6213-I-86-139).

At the arbitration hearing, the Association suggested that it was inappropriate to compare union and nonunion operations. No less an authority than former U.S. Secretary of Labor John Dunlop and now a Professor of Economics at Harvard University has agreed. He stated:

> The simple fact is that workplaces operating under collective agreements are different from those without formal organization, and they operate differently and they are typically managed in quite different ways. No simple comparison or generalization or statistical estimate is likely to be very fruitful. (See, "Policy Problems," Wages, Prices, Profits, and Productivity, 137 (1959)).

The eminent economist Richard A. Lester has explained that

such a comparison is not appropriate because of the impact of unions on benefit packages. He stated:

> Labor unions have played a major part in the shaping and growth of company benefit plans, especially since the Supreme Court ruled in 1949 that pensions and group health insurance are mandatory bargaining subjects under the National Labor Relations Act. (See, Lester, Economics of Labor, 2nd ed. 343 (1964)).

The considerations set forth in the report make it reasonable to draw from each list of comparable jurisdictions submitted by the parties without relying totally on either. The parties are in agreement that Clarkston, Ellensburg, and Pullman are comparable entities. Two other jurisdictions have been drawn from each list, namely Cheney and Toppenish from the City's list and Centralia and Shelton from the Association's list. Accordingly, comparable jurisdictions used by the arbitration panel in this case are as follows:

Centralia

Cheney

Clarkston

Ellensburg

Pullman

Shelton

Toppenish

Looking at selective criteria of comparability used by the parties, the following pattern emerges:

Cities	Population Served For Fire	Assessed Valuation	Wage and Benefit Budget	Bargaining Unit Size
Centralia	12,000	276	$561,634	16
Cheney	10,000	106	457,219(T)	5
Clarkston	6,700	104	533,203	10
Ellensburg	11,500	229	812,313	16
Pullman	17,000	266	487,232	12
Shelton	7,620	221	361,285	6
Toppenish	6,560	78	151,640	5
Averages (Excluding Moses Lake)	10,197	183	480,646	10
MOSES LAKE	10,600	269	496,684	11

It should be noted that there are some differences in data for individual jurisdictions. For example, there are population differences for Cheney, Ellensburg, Clarkston, and Pullman. There are assessed valuation differences for Ellensburg, Centralia, Clarkston, Pullman, Toppenish and Shelton. There are differences in the size of the bargaining unit for Pullman, Centralia, Clarkston, Cheney and Ellensburg. The arbitrator has elected to rely more heavily on data found in Association Exhibit No. 3 than on material set forth in Appendices B, C, and D in the Employer's Post-hearing Brief because Association Exhibit No. 3 was the focus of cross-examination while the appendices were not. It should also be recognized that Mr. Penrose testified that Cheney has a bargaining unit size of four members and Clarkston a size of six

members, but data in Association Exhibit No. 3 differed from this testimony. Mr. Penrose testified that his information had been obtained either from a 1988 document or from hearsay sources, and the data in Association Exhibit No. 3 is from 1990. It should also be noted that the total departmental budget for Cheney has been used instead of the wage and benefit budget due to its unavailability.

There was discussion at one point during the arbitration hearing about the Public Employment Relations Commission's decision in City of Clarkston. (See, City's Exhibit No. 6). Moses Lake contended that the City of Clarkston decision was relevant in this case because the Association had changed its list of comparable jurisdictions during negotiations between the parties. There, however, was unrebutted evidence that the Association gave management considerable notice of the change, and the Employer never established any prejudice to its case which had been caused by the change. In City of Clarkston, the Hearings Officer stated:

> It is clear that the Union changed its set of proposed comparables without notifying the Employer. While the record indicates that the change was made in response to changes in RCW 41.56.460, the record is equally clear that the Union never communicated its intentions to the Employer. (See, Decision 3246(PECB), p. 12 (1989)).

Evidence submitted to the arbitration panel established that the Employer had sufficient notice of the Association's changed list of comparable jurisdictions to prepare its case for negotiation, mediation, and interest arbitration. There was no assertion that the panel is without jurisdiction to rely

on a set of comparable jurisdictions different from either party but on jurisdictions used by at least one of the parties. In fact, the Employer itself proposed such a methodology. (See, Employer's Post-hearing Brief, p. 5).

V. THE ISSUE OF HEALTH AND WELFARE

A. Position of the Parties

1. The Union's Proposal

The Union makes the following proposal:

> The City will continue to provide its current level of dental and vision coverage for the members of Local 2052; the City will increase the medical insurance coverage which it provides to its LEOFF II members and to the dependents of its LEOFF I and LEOFF II members so that the City is paying an amount for the coverage that is at least equal to 100% of the premiums for the A.W.C. Medical Plan "B" insurance coverage that is available to those individuals; the City will otherwise maintain the current system that is in place for determining which medical insurance plans the members of the bargaining unit will choose to accept in a particular instance. (See, Association's Post-hearing Brief, p. 23).

2. The City

As its proposal on this issue, the City takes the folloowing position:

> The City proposes remaining with the insurance plans that the city currently provides. The city would pay 100% of the premiums for the employee and his/her dependents. (See, City's Post-hearing Brief, p. 7).

B. Discussion

In accordance with RCW 41.26.005, the state legislature has divided fire fighters into LEOFF I and LEOFF II classifications. Employes who joined the department before October, 1977 enjoy a LEOFF I classification, and these employes enjoy coverage for basic medical services when there is an on-duty or off-duty accident. Employes classified as LEOFF II use the benefits of the Workers Compensation System for duty-related injuries, and an employe's available sick leave account must be used for any off-duty injuries.

The 'LEOFF I system provides an employe with 100% coverage for six months, whether an on-duty or off-duty accident. At the end of six months, a LEOFF I employe may apply for disability retirement; and the individual receives as much as 60% of his or her compensation with the City paying for medical benefits. Such protection is not under state worker compensation law. But LEOFF II employes are covered by worker compensation laws, and they are permitted to use one fourth of their sick leave accumulation, one fourth of their

disability payment from the City, and the State Industrial payment in order to fill out their disability benefit for the first six months. If the LEOFF II employe's injury is not related to duty, the individual is required to use all of his or her sick leave and is granted no retirement option.

LEOFF I employes enjoy the benefit of Plan A, a high quality benefit made available by the Associated Washington Cities insurance division. The Employer also has available Plan B and the Guardian Plan from the Associated Washington Cities as well as an HMO arrangement. Although LEOFF I employes receive the benefit of Plan A, LEOFF II employes receive only the Guardian Plan from the Employer. It provides the least benefits of Plan A, Plan B, or the Guardian Plan.

Each year members of the bargaining unit, knowing that the Employer will pay 100% of the premium for the Guardian Plan, vote on which plan to adopt. If they adopt anything other than the Guardian Plan, all LEOFF II employes must make up the difference between premium costs for the Guardian Plan and the higher costing Plan B or Plan A. They may always opt for the HMO. Dependents are covered under the plan selected by a majority of the group, whether they are dependents of LEOFF I or LEOFF II employes.

The Association maintains that the Employer ought to pay 100% of the premium for Plan B, instead of 100% of the lower costing Guardian Plan for not only employes but also dependents of both LEOFF I and LEOFF II employes. (Dental and vision

insurance are not an issue before the arbitration panel because the City pays 100% for these benefits). Plan B currently has been selected by the Association, and members of the bargaining unit are now paying $23.86 a month beyond premium costs being funded by the Employer. Six members of the bargaining unit plus all dependents would be affected by the Association's proposal, as five bargaining unit members are LEOFF I employes. It was unrebutted that there has been at least one LEOFF II employe who was injured on duty and was compelled to exhaust all sick leave for benefits.

The topic of insurance has been the subject of extensive negotiation between the parties. The current system has been in place at least for the last three collective bargaining agreements. The City provides LEOFF I employes with Plan A coverage in order to meet its statutory obligation to make available medical services for on- and off-duty injuries. In other words, the Employer must insure against this contingency or be prepared to absorb costs on an individual basis from its general fund.

A review of data from comparable jurisdictions with respect to health insurance premiums shows the following pattern:

Cities	Amount of Premium Paid by Employer
Centralia	$ 314
Cheney	342
Clarkston	381
Ellensburg	316
Pullman	355
Shelton	357
Toppenish	373
Average excluding Moses Lake	348
MOSES LAKE	332

It should be noted that there are some minor dissimilarities in figures used by the parties for this topic, but the only significant one involved the City of Pullman and whether or not the employer pays a monthly premium of $324 or $355.18. The higher figure from the Association's material has been used because the figure of $324 was presented in the Employer's Post-hearing Brief where no cross-examination could take place. The data show that Moses Lake pays $16 below the average for health care coverage it provides members of the bargaining unit. Accordingly, it is reasonable for the Employer to retain the Guardian Plan while also making a monthly $16 payment to the insurance company in order to defray the $23.86 payment now being made by employes in order for them to enjoy benefits of Associated Washington Cities Medical Plan B.

C. Award

Article 10 of the next agreement between the parties will state:

Article 10 - Health and Welfare

10.01 Effective January 5, 1990, the City will provide fully paid medical, dental, and vision insurance coverage for employees and their dependents. Coverage will be paid for those employees who were paid for the full pay period and were employed on the last regular day for which pay was due and payable within the month.

10.02 The City will pay 100% of the insurance premiums for the Associated Washington Cities benefit trust's Guardian Plan, Washington Dental Service (Plan B), and Western Vision Plan vision insurance during the term of this agreement. If an employee selects an optional health and welfare package, the difference in premium costs beyond the $16 will be paid by the employee as a miscellaneous payroll deduction. The Employer, however, will pay to the insurer the first $16 for any optional coverage costing more than the Guardian Plan.

10.03 If agreed to by the Labor/Management Committee that the level of benefits will remain substantially the same, the benefits provided by this article may be provided through a self-insured plan or under group insurance policy or policies issued by an insurance company or companies selected by the City.

10.04 This provision of Article 10 was not in contention before the arbitration panel.

VI. HOLIDAY PAY

A. Proposal

1. Association's Proposal

The Association proposed to amend current contract language as follows:

> Employees shall be paid One Hundred and Twenty-four (124) hours of straight time pay compensation for holidays (including the personal floating holiday).

2. Employer's Position

The Employer seeks current contract language with respect to holiday pay.

B. Discussion

A review of the comparable jurisdictions has provided the following information about holiday pay:

Cities	Employer's Data	Association's Data
Centralia	88 holiday hours	$2164 value
Cheney	88 holiday hours	N/A
Clarkston	0 holiday hours 3 floating holidays $95 if holiday worked $70 if holiday not worked	$1476 value
Ellensburg	0 holiday hours Comp time as a holiday is earned	$2428.80 value (264 hours)
Pullman	88 holiday hours Receive pay for 3-2/3 shifts	$930.23 value (88 hours)
Shelton	0 holiday hours	$3808 value (366 hours)
Toppenish	0 holiday hours CBA is silent on the issue	N/A
MOSES LAKE	100 holiday hours	$1,044.23 value (264 hours)

Cities	Collective Bargaining Agreements
Centralia	11 paid holidays; time and a half pay if holiday is worked, otherwise, 8 hours of straight time pay.
Cheney	11 paid holidays; time and a half pay if holiday is worked, otherwise 8 hours of straight time pay.
Clarkston	12 paid holidays; $95 of pay if holiday is worked, otherwise $70 of pay.
Ellensburg	11 paid holidays. The holidays "are earned as they come in the year." The contract also states that "personnel on regular duty during a holiday will not be eligible to receive extra pay for that shift."
Pullman	"Holiday pay equivalent to 3-2/3 twenty-four hour shifts in lieu of paid holidays."

Shelton	12 paid holidays. Time and a half pay if holiday is worked; an earned holiday equals one shift off.
Toppenish	There is no reference to holidays or holiday pay in the 1989-91 Toppenish labor contract.
MOSES LAKE	100 hours straight time as compensation for holidays

The Association sought to increase the hours of paid holiday compensation from 100 to 124 hours. The Employer argued that there was no justification for such an increase and that, alternatively, if holiday pay were to be increased, it would be fairer "to eliminate holiday pay entirely and to require the city to give an employee working a holiday a day off because of working the holiday or requiring the city to pay time and a half or double time to every employee working on a holiday." (See, Employer's Post-hearing Brief, p. 10).

The parties vigorously disagreed about the meaning of

comparability data with respect to the topic of holiday pay, and it is no wonder. Jurisdictions approach this topic differently, and a comparison of practices produces more of a holiday hash than an orderly picture. One comparable jurisdiction (Toppenish) makes no mention at all of holiday pay in the parties' collective bargaining agreement, but it is difficult to believe that the matter is not covered by employment practices between those parties.

In Moses Lake, an employe's 100 hours is accumulated in increments of 3.85 hours a month and paid out in 26 equal pay periods. The Association attempted to place a dollar value on time worked and not worked in an effort to compare holiday pay practices. The dilemma with the methodology is that it is difficult to compare a payment of money for holidays with providing compensatory time off or even noncompensatory time off for holidays worked. Additionally, some jurisdictions use a payment formula based on time and a half premium pay, while it is higher in other jurisdictions. Nor is it accurate to compare the impact of this benefit on various departmental budgets by using the top fire fighter rate for assessing the "value" of the holiday without also submitting data about the number of fire fighters at the top rate in each department. The picture of comparability is also blurred to some extent by the fact that the Association based its formula on twenty-four hour shifts, but a seventeen/seven schedule is used in Moses Lake.

The Association did not join issue with the Employer's

contention that the application of the holiday schedule in Moses Lake has been less intrusive than in other cities because of the way shifts have been scheduled. Unrebutted data submitted by the Employer established that the following average number of holiday hours has been worked by each shift from 1986 to 1989:

A Shift -- 70.25 hours

B Shift -- 79.75 hours

C Shift -- 66 hours.

Moreover, during an actual holiday, there is a change in the duties routine; and the parties follow a "holiday routine" which includes checking trucks, cleaning the station, and then enjoying free time. It is recognized that this time is not authentically "free," but in some minimal way the "holiday routine" mitigates the intrusiveness of working on the holiday.

Some better methodology needs to be devised for comparing jurisdictions that provide time off with those that make a lump sum payment for holidays that are worked. The answer may lie in refining and clarifying the methodology used by the Association, but it is unrealistic to argue that compensatory time off is the same sort of benefit as is a lump sum payment for holidays. The Association, however, compared days off with straight time holiday pay with time and a half holiday pay. In order to give clearer guidance, the data need to flow from a better methodology.

C. Award

The next agreement between the parties shall contain Article 15 -- Holiday Pay as it appeared in the last collective bargaining agreement between the parties, with the following addition:

> The parties shall form a Study Committee consisting of one individual appointed by the Fire Chief and another by the President of the Association whose mission shall be studying holiday pay in order to present a proposal on the subject for consideration by the parties when they next negotiate after the expiration of this agreement and no later than December 31, 1992. The Study Committee shall base its study and any proposal on the same comparable jurisdictions used by the arbitration panel in this report.

VII. SALARIES

A. Position of the Parties

1. The Association

The Association proposed to modify Article 19 as follows:

> 19.01 Beginning January 1st of each year, 1990, 1991, 1992, the salaries of all positions shall be increased by an amount equal to the percentage change in the U.S. Consumer Price Index Urban Wage Earners, All Cities, as measured for the preceding year from July to July, as identified by the U.S. Department of Labor.
>
> The above-described CPI for the period between July of 1988 and July of 1989 is 5.1%. Therefore, salaries for members of the bargaining unit for 1990 would be increased by 5.1% during 1990 over and above what each member of the bargaining unit received as a salary as of December 31, 1989. Subsequent wage increases for 1991 and 1992 will be based upon the appropriate CPIs as described above.

2. The Employer

The Employer proposed to increase salaries for members of the bargaining unit by 3.5% in 1990.

B. Discussion

The parties disagreed about the relative ranking of bargaining unit members with respect to salary, but the underlying disagreement was with the list of comparable jurisdictions used by each party. As previously explained, the Association used communities such as Mountlake Terrace, Washington which has experienced some of the dramatic growth of the Puget Sound basin. The Employer argued that such a comparison failed completely to take into account differences in the appreciation of residential real estate between the two regions. From approximately 1980 to 1990, overall appreciation in Moses Lake has approximated 12%. The average increase in assessed valuation for the period from 1980 to 1990 due to inflation and annexations has averaged 2.9% a year. (See, City's Exhibit Nos. 16 and 17). The Employer's data caused it to conclude that members of the bargaining unit are only 3.5% behind wages paid in comparable jurisdictions, but the Association's data supported its conclusion that it is 13.7% behind comparable jurisdictions.

The Association also justified its proposed wage increase of 5.1% by pointing to the average increase of 7.18% as the wage increase granted nonunion employes for 1990, as well as

to the fact that wages for people such as the City Manager or the Municipal Services Director had increased by 5.84% and 5.37% respectively this year. The Employer responded by pointing out that from 1977 to 1989, the increase for the City Manager had been 66.96% and the Municipal Services Director 69.39% as contrasted with a wage increase for fire fighters during this period of 102.33%. (See, City's Exhibit No. 12).

Information submitted to the arbitration panel failed to justify as large an increase as the one sought by the Association, but the data, nevertheless, justify an increase larger than the one proposed by the Employer. Justification is found in the increased productivity of bargaining unit members. For example, there has been the same size work force from 1983 to the present. During that time, there has been a 49% increase in the number of alarms processed by the bargaining unit. In the last five years, there has been a 25% increase in the workload and an 11.6% increase in 1988-89. Even isolating the number of calls devoted only to fires, there has been a 20% increase in the workload since 1983 with no commensurate increase in the size of the work force.

Equity also dictates a larger increase than 3.5%. Mr. Gavinski, City Manager, testified at the arbitration hearing that there is an effort made to maintain relative parity between the police and fire departments. Yet, from 1977 to 1989, police officers realized a wage increase of 108.72% compared with 102.33% for fire fighters. This included an increase of 16.1% during the last five years for police

department employes compared with 12.2% during the same period for fire fighters. (See, Association's Post-hearing Brief, p. 17).

The comparability data justify a wage increase of 4.79%. A review of those data show the following pattern:

Cities	Salaries
Centralia	$2,494
Cheney	2,222
Clarkston	2,061
Ellensburg	2,233
Pullman	2,241
Shelton	2,605
Toppenish	2,079
Averages Excluding Moses Lake	2,276
MOSES LAKE	$2,172

A wage increase of 4.79% would produce a dollar increase of $104 on average for a top fire fighter wage of $2,276. This increase would produce the following rank order for jurisdictions comparable with Moses Lake:

Shelton	$2,605
Centralia	2,494
Moses Lake	2,276
Pullman	2,241
Ellensburg	2,233
Cheney	2,222
Toppenish	2,079
Clarkston	2,061

C. Award

The next agreement between the parties shall state:

Article 19.01 Effective January 1, 1990, salaries for members of the bargaining unit will be increased by 4.79% as applied to "A" Step for Fire Fighter and Captain.

VIII. MEDICAL CERTIFICATIONS

A. Position of the Parties

1. The Association

The Association proposed as Article 19.02 the following provision:

> Beginning January 1, 1990, members of the bargaining unit obtaining and maintaining the following medical certifications shall be compensated at the rate of $25.00 per month for each certification held up to a maximum of $75.00 per month: EMT, Airway; IV; and Defibrilation Technician.

2. The Employer

The Employer proposed the status quo with regard to medical certification compensation.

B. Discussion

The arbitration panel received unrebutted evidence that there were approximately 1500 alarms turned in to the Moses Lake Fire Department in 1989 and that approximately 1200 of those alarms required a fire fighter to use knowledge gained from a medical certification training program. A fundamental program is the Emergency Medical Technician certification which trains fire fighters to provide basic life support services. An individual invests 110 hours to obtain the certification, including hospital training. The Employer currently requires its job applicants already to have earned the EMT certification. There is also a continuing education requirement of ten hours a year for three years, but the arbitrators received no evidence with respect to whether or not this training is conducted internally by departmental staff, and if done externally, whether or not members of the bargaining unit must pay for it.

There are other advanced life support certifications. For example, one can obtain a certification in Intravenous Transfusions to assist trauma patients. This program requires approximately 80 hours beyond the EMT certification to obtain it. It requires an individual to maintain 20 hours a year of continuing education course work. There is also a Defibrilation certification which certifies an individual as a Defibrilation Technician. Such training enables a fire fighter to assist heart attack victims more effectively. Finally, there is an Airway certification which trains fire fighters in various

ways of opening respiratory passages.

Although the comparability data for this topic contains a mixed message, they do provide valuable guidance. They show the following pattern:

Cities	Pay for Emergency Medical Technician Compensation	Pay for Advanced Life Support Certification
Centralia	$65 monthly	No added pay
Cheney	No added pay	No added pay
Clarkston	No added pay	$35 monthly
Ellensburg	Paramedics	No added pay
Pullman	$22.40 monthly	$75 monthly
Shelton	$40 monthly	No added pay
Toppenish	No added pay	No added pay
MOSES LAKE	No added pay	No added pay

The Employer argued that medical certification compensation is not appropriate because it has been "considered when establishing basic salaries." (See, Employer's Post-hearing Brief, p. 14). It, however, is reasonable to conclude from the data that medical certification pay has not been equitably considered by the Employer when setting its basic wage rate. If so, it is difficult to explain why Shelton provides a salary that is 14% higher while also providing an additional $40 for EMT certification. Likewise, Centralia provides a basic salary that is 10% higher than Moses Lake while also providing $65 a month for EMT certification pay. Pullman, with a

salary behind the 1990 salary for Moses Lake, still pays $2240 a month as EMT certification pay and $75 a month for other advanced life support certification.

At the same time, EMT certification is a basic job requirement in Moses Lake. The arbitration panel received no evidence with respect to whether or not EMT certification is an entry level requirement in Shelton, Centralia, or Pullman.

Guidance drawn from the comparative data suggests that municipalities with a higher basic wage than Moses Lake also provide medical certification pay. Since, however, the EMT certification is a basic requirement of entry level employes, there is some logic in the Employer's contention that this basic certification does not merit additional compensation. In an effort, however, to provide a financial incentive for members of the bargaining unit to obtain further training in an area involving 80% of the alarms received by the Department, it is reasonable for the Employer to make available some level of certification pay.

C. Award

Article 19.02 of the parties' next agreement shall state:

> Beginning January 1, 1991, members of the bargaining unit who have obtained, are obtaining, and who maintain the following medical certifications, shall be compensated at the rate of $20.00 a month for each certification held to a maximum of $60.00 a month. Airways; IV; and Defibrilation Technician.

Article 27 of the 1988-89 agreement between the parties shall be deleted from their next collective bargaining agreement.

IX. LONGEVITY PAY

A. Position of the Parties

1. The Association

The Association submitted the following proposal with regard to longevity pay:

> 19.03 Beginning January 1, 1991, members of the bargaining unit shall have their base salary increased by the following amounts per tenure of service:

Completed Years of Service	Percent Increase
5	2%
10	4%
15	6%

2. The Employer

The Employer proposed that the Association's proposal with regard to longevity pay not be made a part of the next agreement between the parties.

B. Discussion

A review of data from comparable jurisdictions with respect to longevity pay reveals the following pattern:

Cities	Longevity Pay
Centralia	No pay
Cheney	No pay
Clarkston	1st yr.--$3 mo.; 2nd yr.--$6 mo.; 3rd yr.--$9 mo.; 4th yr.--$12 mo.; 5th yr.--$15 mo.
Ellensburg	No pay
Pullman	No pay
Shelton	6-10 yrs.--$50 mo.; 11-15 yrs.--$100 mo.; 16-20 yrs.--$150 mo.; 21-25 yrs.--$200 mo.; 26 yrs.--$250 mo.
Toppenish	2-5 yrs.--$10 mo.; 5-10 yrs.--$15 mo.; 10-15 yrs.--$20 mo.; 15-20 yrs.--$25 mo.; 21 yrs.--$30 mo.
MOSES LAKE	No pay

Three of the seven comparable jurisdictions make use of the concept of longevity pay, and the Association concluded that "this is not surprising in light of the benefits to the departments involved that are provided by 'longevity pay.'" (See, Association's Post-hearing Brief, p. 20). What the

arbitration panel failed to receive, however, was any kind of empirical evidence detailing the benefits to fire departments from longevity pay. This is not to suggest that such benefits do not exist but only that the panel received no evidence of any benefits. The Employer submitted evidence showing that, from 1975 to 1990, seventeen workers have left the department. Three retired. Six took disability retirements. Management fired one worker. Three left fire suppression work entirely. Only four employes went to other fire departments. The arbitration panel received no objective evidence showing that longevity pay would have had any significant impact on the employment status of these former employes. (See, City's Exhibit No. 11). Nor should it be overlooked that none of the comparable jurisdictions use the sort of percentage formula set forth in the Association's proposal.

C. Award

The next collective bargaining agreement between the parties should not contain the Association's longevity pay proposal.

X. DURATION OF THE AGREEMENT

A. Position of the Parties

1. The Association

The Association proposed that the term of the Agreement be effective from January 1, 1990 to December 31, 1992 with a July to July CPI wage increase in 1991 and 1992.

2. The Employer

The Employer proposed a one year agreement expiring in December, 1990 or, alternatively, a multi-year agreement with a wage reopener provision.

B. Discussion

The parties have disagreed about the duration of their next agreement as well as about the nature of any negotiations during the term of their agreement. If the parties entered into a one-year agreement, they would already be late in entering negotiations for a successor agreement. Negotiations for this collective bargaining agreement officially began in May of 1989 and only now are coming to fruition. It was evident from relationships at the hearing that the parties need a respite from negotiations and time to heal tensions caused by such an experience in a smaller community.

The Employer sought a multi-year agreement with wage reopener provisions, but there was no indication in the relationship between the parties that resolution of a "wage reopener" provision would be accomplished any easier than have been these negotiations. A multi-year agreement tied to a relative CPI wage rate is beneficial to the parties and should permit both of them to reduce the expense, the amount of staff time, and the relational difficulties of frequent negotiations. A longer term agreement should give the parties more time for research and more of an opportunity to plan their objectives so that the quality of negotiations and the results to be reached will be better.

To protect the expectations of both parties, it is prudent to include a "floor" and a "ceiling" in a wage provision tied to changes in an index of consumer prices. Such provisions are not at all new and have been used routinely in

the United States since 1948 when the management staff at General Motors originated the idea. When a "ceiling" exists in the provision, it "caps" any wage increase; and a "floor" provides an assurance of some basic wage increase. It, of course, is easier to devise a self-actuating wage proposal tied to changes in costs of living than it is to predict the nature of that price behavior itself.

There, however, is some evidence to suggest that the impact of CPI fluctuations is less severe in smaller cities. There is substantial evidence to show that some costs, such as life insurance, will not change appreciably. Other costs, for example, housing and housing expenses, cost considerably more to buy the same real estate and services in large metropolitan areas. Testimony from Mr. West, Human Resources Director, about assessed valuations in Washington confirmed this conclusion.

Moreover, Mr. Gavinski testified that, while growth in Moses Lake has occurred, it has not been statistically significant. He is active in the City Managers Association of the State of Washington, the Association of Washington Cities Legislative Committee and Trust Users Committee, as well as serving on the State of Washington Public Works Board. That background has given him considerable insight into the growth of commnities in the Puget Sound Basin, and he maintained that an individual can expect to experience significant savings by moving to a smaller town. Housing and transportation costs are so much less in a smaller city that it is

not unusual for overall expenses to be reduced.

The Association has proposed that any wage adjustments for future agreements be based on the United States Consumer Price Index for Urban Wage Earners, All Cities, using September to September figures. The Consumer Price Index measures average changes in consumer prices over time when consumers purchase a fixed market basket of goods and services. The CPI is the most widely used measure of inflation in the United States and is an important tool in effectuating economic policies of the federal government. The Index has a direct impact on the income of millions of people in the United States, some as a direct result of legislative enactments.

The Consumer Price Index is divided into the All Urban Consumers (CPI-U) or the Urban Wage Earners and Clerical Workers (CPI-W). The CPI-W came into use during World War I. The Bureau of Labor Statistics has indicated that, in 1982-84, the CPI-W included 28% of the U.S. population. It, however, is the CPI-U which is the more broadly based index, representing 81% of the population in 1990. In contrast with the CPI-W, the CPI-U is based on expenditures reported by all consumer units in urban areas with an exception not relevant in this case. It seems appropriate to use the more broadly based index in the parties' agreement.

There was considerable debate about whether or not to use September to September or July to July CPI dates, but the arbitration panel received inconclusive evidence about precisely which schedule the parties had followed over the years; and the

Bureau of Labor Statistics modified the Consumer Price Index in 1987, causing some CPI schedules to be published on a new time table. The CPI for Seattle-Tacoma, Washington is now published only on a semi-annual basis. The schedule for the Western Region of the United States is published monthly but includes the volatile Los Angeles Basin market. Although the Seattle-Tacoma, Washington average covers a six month period from January through June, it is not released until August and well may be the September to September schedule used by the parties for at least the last two years.

C. Award

The next agreement between the parties shall be in full force and effect on January 1, 1990 and shall remain in full force and effect through December 31, 1992.

On January 1, 1991 and again on January 1, 1992, salaries for members of the bargaining unit will be increased by the amount of the Consumer Price Index (CPI-U), U.S. City Average for Seattle-Tacoma, Washington, covering all items in the Index using 1982-1984 as the standard reference base period. Should the Bureau of Labor Statistics change the Index base during the term of this agreement, the parties agree to use the new measure used by BLS. For the wage adjustments to be made on January 1, 1991 and January 1, 1992, the percentage increase using the CPI-U guideline as applied to the "A" Step for firefighter and captains shall not be less than four percent nor more than six percent. Although the wage adjustments will be computed from January 1, they will not be implemented until the second pay period in March because the relevant CPI schedule will not be released by BLS until then.

XI. SICK LEAVE ACCRUAL

A. Position of the Parties

1. The Association

The Association proposed current contract language for Article 24 as well as the following modification of the "sick leave" provision:

> 24.01 Beginning January 1, 1990, LEOFF II members shall receive sick leave at the rate of 11.08 hours per bi-weekly pay period. Bargaining unit members having a total sick leave accrual in excess of 1,552 hours shall accrue sick leave at the rate of 2.8 hours per bi-weekly pay period.

2. The Employer

The Employer proposed that sick leave be accrued at 5.4 hours per bi-weekly payroll period or 144 hours a year.

C. Discussion

Currently, a fire fighter in Moses Lake accrues 5.08 hours of sick leave per pay period, or approximately 11 hours a month. On January 1 of each year, a LEOFF I employe receives six 24-hour shifts of sick leave or 144 hours to begin the calendar year. LEOFF II employes, on the other hand, accrue approximately 11 hours a month, or 132 hours by the end of each year. The Association maintains that those most

needing sick leave are at a disadvantage in terms of accruing it because LEOFF I employes are covered by state statutes which assure them of six months of disability leave and the opportunity to apply for disability requirements; while LEOFF II enjoy no such benefits.

What the Association wants as much as anything is the opportunity for employes to accrue at least a shift of sick leave a month instead of using the "hours" formula now used by management. In other words, if an individual is sick, the Association believes it is more realistic to view the illness in terms of lost shifts more than in terms of hours away from the job. Other city employes, according to the Association, "receive at least one shift of sick leave per month." (See, Association's Post-hearing Brief, p. 22). But, as Mr. Penrose testified, if members of the Association are ill, "it takes us two and a half months to get the sick leave back. But other city employees miss a day of work and get it back by the end of the month."

Comparability data with regard to sick leave accrual show the following pattern:

Cities	Sick Leave Hours	Sick Leave "Cap"
Centralia	144	1200
Cheney	144	960
Clarkston	288	1440
Ellensburg	288	0
Pullman	288	1120
Shelton	288	2880
Toppenish	288	1440
Average, excluding Moses Lake and Ellensburg	247	1507
MOSES LAKE	132	0

Comparability data submitted to the arbitrators suggest that the Employer is not equal to comparable jurisdictions with regard to this benefit for LEOFF II employes. They receive fewer sick leave hours than any comparable jurisdiction by a considerable amount, and the absence of a sick leave "cap" is of no benefit to members of the bargaining unit. The accrual rate is simply too slow to turn the absence of a "cap" into a significant benefit, assuming no "cash out" value to the benefit.

If it is assumed that (1) an employe receives 11 hours of sick leave a month; (2) the individual accumulated sick leave for every month throughout every year being considered; and (3) during the time being considered, the employe never used any sick leave at all, it would require 11.4 years for an employe in Moses Lake to reach the average sick leave "cap"

for those comparable jurisdictions making use of a "cap." If one assumes the same hypothetical facts except that an occasional illness caused an individual to use two days of sick leave a year, it would require almost 14 years for an employe to reach the sick leave "cap."

The Association's proposal provides more symmetry in the Employer's treatment of LEOFF I and LEOFF II employes by allowing an individual to accumulate sick leave at a quicker rate for use in the event of a major accident to which firefighters are more routinely exposed than are most other workers. By increasing the accrual rate while also "capping" the total amount of sick leave accrual, the Employer is more similar to its comparable jurisdictions. Nor did the arbitrators receive any evidence indicating that this approach to the issue of sick leave accrual would expose the Employer to any financial risk, in view of the absence of a "cash out" provision for sick leave.

C. Award

Article 24 as it appeared in the last agreement between the parties shall remain the same in the parties' next labor contract except for the following modification to Article 24.01:

> Beginning January 1, 1990, LEOFF II members shall receive sick leave at the rate of 11.08 hours per bi-weekly pay period, with a limit of 1507 hours on the total accrual of sick leave.

XII. CONCLUSION

Interest arbitration is a unique dispute resolution process that has distinctly a legislative cast to it, and statutory criteria have been designed so that the arbitral results should advance a more productive relationship between the parties. The theme sounded by the Employer in its opening statement at the arbitration hearing was one of desiring to provide equitable wages and working conditions as measured by comparable jurisdictions. The Association presented the following theme, stating:

> All the Association is asking for in this interest arbitration is to be brought closer to the level of wages and benefits that are being received by members of comparable departments. The Local is not asking to be brought even with benefits being received by those other departments, but rather just to be brought closer. That's the primary issue.

These themes have been heeded in the arbitrator's study of the evidence and in this award. It is the belief of the arbitration panel that the values espoused by the parties are consistent with the following award:

AWARD

Article 10 of the next agreement between the parties will state:

> Article 10 - Health and Welfare
>
> 10.01 Effective January 5, 1990, the City will provide fully paid medical, dental, and vision insurance coverage for employees and their dependents. Coverage will be paid for those employees who were paid for the full pay period and were employed on the last regular day for which pay was due and payable within the month.

10.02 The City will pay 100% of the insurance premiums for the Associated Washington Cities benefit trust's Guardian Plan, Washington Dental Service (Plan B), and Western Vision Plan vision insurance during the term of this agreement. If an employee selects an optional health and welfare package, the difference in premium costs beyond $16 will be paid by the employee as a miscellaneous payroll deduction. The Employer, however, will pay to the insurer the first $16 for any optional coverage costing more than the Guardian Plan.

10.03 If agreed to by the Labor/Management Committee that the level of benefits will remain substantially the same, the benefits provided by this article may be provided through a self-insured plan or under group insurance policy or policies issued by an insurance company or companies selected by the City.

10.04 This provision of Article 10 was not in contention before the arbitration panel.

The next agreement between the parties shall contain Article 15--Holiday Pay as it appeared in the last collective bargaining agreement between the parties, with the following addition:

The parties shall form a Study Committee consisting of one individual appointed by the Fire Chief and another by the President of the Association whose mission shall be studying holiday pay in order to present a proposal on the subject for consideration by the parties when they next negotiate after the expiration of this agreement and no later than December 31, 1992. The Study Committee shall base its study and any proposal on the same comparable jurisdictions used by the arbitration panel in this report.

The next agreement between the parties shall state:

Article 19.01 Effective January 1, 1990, salaries for members of the bargaining unit will be increased by 4.79% as applied to "A" Step for Fire Fighter and Captain.

Article 19.02 of the parties' next agreement shall state:

> Beginning January 1, 1991, members of the bargaining unit who have obtained, are obtaining, and who maintain the following medical certifications shall be compensated at the rate of $20.00 a month for each certification held to a maximum of $60.00 a month. Airways; IV; and Defibrilation Technician.

Article 24 as it appeared in the last agreement between the parties shall remain the same in the parties' next labor contract except for the following modification to Article 24.01:

> Beginning January 1, 1990, LEOFF II members shall receive sick leave at the rate of 11.08 hours per bi-weekly pay period, with a limit of 1507 hours on the total accrual of sick leave.

Article 27 of the 1988-89 agreement between the parties shall be deleted from their next collective bargaining agreement.

The next collective bargaining agreement between the parties should not contain the Association's longevity pay proposal.

The next agreement between the parties shall be in full force and effect on January 1, 1990 and shall remain in full force and effect through December 31, 1992.

On January 1, 1991 and again on January 1, 1992, salaries for members of the bargaining unit will be increased by the amount of the Consumer Price Index (CPI-U) for Seattle-Tacoma, Washington, covering all items in the Index using 1982-1984 as the standard reference base period.

Should the Bureau of Labor Statistics change the Index base during the term of this agreement, the parties agree to use the new measure used by BLS. For the wage adjustments to be made on January 1, 1991 and January 1, 1992, the percentage increase using the CPI-U guideline as applied to the "A" Step for firefighter and captains shall not be less than four percent nor more than six percent. Although the wage adjustments will be computed from January 1, they will not be implemented until the second pay period in March because the relevant CPI schedule will not be released by BLS until then.

Pursuant to authority from the parties, the arbitration panel shall retain jurisdiction in this matter for sixy days from the date of this report. It is so ordered and awarded.

Respectfully submitted,

_____

Danny Downs
Washington State Council of
Fire Fighters

Date: _____

_____

Gary Persons
Employee Relations, City of Spokane

Date: _____

_____

Carlton J. Snow
Professor of Law

Date: _____

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Pursuant to authority from the parties, the arbitration panel shall retain jurisdiction in this matter for sixy days from the date of this report. It is so ordered and awarded.

Respectfully submitted,

Danny T. Downs

Danny Downs
Washington State Council of
Fire Fighters

Date: January 28, 1991

Gary Persons
Employee Relations, City of Spokane

Date:

Carlton J. Snow

Carlton J. Snow
Professor of Law

Date: January 22, 1991

DISSENTING OPINION

I dissent from the opinion of the panel to the extent that it applies the Seattle-Tacoma CPI Index. There is absolutely no basis in the evidence presented at the hearing to support use of that index. Use of the Seattle-Tacoma rather than U.S. All Cities Index resulted solely from an inadvertent error made during the panel discussions, and inclusion of the local index in the final award is factually inappropriate and legally improper.

The basis for my dissent is best understood through an understanding of the chronology. The neutral chairperson sent a draft of his award to each of the partisan arbiters. Upon review of the award, I noticed that the draft award referred to the U.S. All City Average - Seattle-Tacoma Index. There is no such index. In previous bargaining agreements, the parties have used the U.S. All Cities Index. In all of the evidence presented at the hearing, the U.S. All Cities Index was the only index ever proposed by either the Union or the City.

On February 1, 1991, I wrote a letter to my fellow panel members seeking clarification of the language. I pointed out that the draft language needed to be corrected. Inadvertently I proposed striking "U.S. All City Average" rather than "Seattle-Tacoma." My suggestion was adopted.

Over the next couple of months, but prior to the time the final award had been issued, I discovered my error. I wrote a letter to the other members of the panel and requested that the error be corrected. A copy of that letter is attached hereto. Without explanation, the neutral chairperson has refused to have the error corrected.

The record at the hearing is devoid of any evidence upon which to support a change in the use of the U.S. All City Average. The current collective bargaining agreement refers to "The CPI, All U.S. Index (W) September to September." In setting out the issues for interest arbitration, the Union stated that, "Salaries... shall be increased by an amount equal to the percentage change in the U.S. Consumer Price Index, Urban Wage Earners, All Cities as measured for the preceding year from July to July...." See letter of August 20, 1990. The Unions post hearing brief proposed a wage increase of 5.1 percent, which was equal to the U.S. Consumer Price Index for Urban Wage Earners, All Cities, for the period between July 1988 and July of 1989. The City's post hearing brief also referred to the All Cities Index and not the Seattle-Tacoma Index.

The Bureau of Labor Statistics cautions against use of local indexes and rather suggests that a broader index such as the All Cities Index is more appropriate for purposes of setting wage increases in a collective bargaining agreement. There was no evidence in the record to support a change from the party's established past practice. Neither party ever proposed such a change. It is well established that an interest arbiter has no authority to change established practice without the party who is proposing a change establishing it by preponderance of the evidence. Here, there has been absolutely no evidence put forward to support a change. Only through an inadvertent error made by the City's

partisan arbiter, corrected prior to the time that a decision had been issued, has the practice of using the U.S. All Cities Index been switched to use of the Seattle-Tacoma Index.

As the City's partisan arbiter, I fully recognize that an interest arbitration award should be final and binding. In most cases, although I might not agree with parts of a decision on which I am a panel member, I would not dissent. Here, however, there is absolutely no basis whatsoever for the award as it is written. A collective bargaining agreement should be created through reasoned discussion and persuasive evidence, not through mistake. I respectfully dissent.

DATED this 9th day of May, 1991.

Gary Persons

attachment: 1