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IN THE MATTER OF INTEREST)
ARBITRATION)
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BETWEEN)
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INTERNATIONAL ASSOCIATION OF)
FIREFIGHTERS, LOCAL 1758)
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AND)
)
CITY OF ELLENSBURG, WASHINGTON)

ANALYSIS AND AWARD

BEFORE: Professor Carlton J. Snow,
Neutral Chairperson

Ms. Glenna Bradley-House,
City's Party-appointed Arbitrator

Mr. Danny Downs, Association's
Party-appointed Arbitrator

APPEARANCES: For the Employer:
Mr. Otto G. Klein, III

For the Association:
Mr. Alex Skalbania

HEARING DATES: October 18, 1991
January 8, 1992

POST-HEARING BRIEFS: March 4, 1992

TENTATIVE AWARD: April 2, 1992

EXECUTIVE SESSION: May 12, 1992

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ANALYSIS AND AWARD

Professor Carlton J. Snow, Neutral Chairperson

I. INTRODUCTION

This matter came for hearing pursuant to RCW 41.56.450, and the interest arbitrators have complied with all statutory and administrative requirements in making determinations set forth in this report. Hearings took place on October 18, 1991 and January 8, 1992 in the Council Chambers located in the Emergency Services Building at Pearl and First Street in Ellensburg, Washington.

There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses and to argue the matter. Mr. Otto G. Klein, III of the Heller, Ehrman, White, and McAuliffe law firm in Seattle, Washington represented the City of Ellensburg, Washington. Mr. Alex J. Skalbania of the Critchlow, Williams, Schuster, Malone and Skalbania law firm in Richland, Washington, represented Local 1758 of the International Association of Firefighters. Ms. Susan E. Haney, a certified shorthand reporter in Yakima, Washington, reported the proceedings for the parties and submitted

a transcript of 579 pages.

There were no challenges to the substantive or procedural arbitrability of the dispute, and any objections raised during the course of the hearing were withdrawn by its culmination. (See, Tr. 550). Although the arbitrator tape-recorded the proceeding at the request of one of the parties, there ultimately was a decision to make available a transcript of the proceeding; and the arbitrator has relied on extensive personal notes as well as the transcript, evidence presented at the hearing, and post-hearing briefs. In this case, the parties elected to submit their respective cases entirely instead of proceeding on an issue by issue basis. The arbitrator officially closed the hearing on May 12, 1992 after the executive session of the arbitration panel.

The parties waived statutory time limitations by permitting the arbitration panel extensively to explore the dispute in executive session. They also selected the neutral chair of the panel after statutory time limitations had passed. There were no objections to the extension of time limits in the case.

On May 7, 1992, the arbitrator appointed to the arbitration panel by the IAFF requested an executive session of the panel. There was no protest from anyone to meeting in executive session, but the Employer stated its clear preference for the tentative award as it had been drafted. The parties held a long executive session in a conference room of the Holiday Inn located at the Portland, Oregon Airport at which time the

arbitrator appointed to the panel by the IAFF engaged in an extensive, highly detailed review of the report; and all parties had an unfettered opportunity to participate in the discussion of the draft award.

The neutral arbitrator tape-recorded the executive session of the arbitration panel and alerted them to the fact that there would be a delay in issuing a final report. Since drafting the tentative award, the neutral arbitrator had become involved in a highly complex 4.3 billion dollar subcontracting dispute affecting 19,000 jobs. It caused the arbitrator to be in hearings on the East Coast for large blocks of time making it impossible to issue the final award immediately after the executive session. On May 27, 1992, the Employer submitted a written response to the arbitration panel about the executive session, and it dealt with specific data evaluated by the arbitration panel in executive session and also stated a strong objection to "the wholesale revisions to the award suggested by Mr. Downs."

The issues before the arbitrators are as follows:

(1) Term of agreement

(2) Wages

(3) Deferred compensation

(4) Structured hours.

II. THE NATURE OF INTEREST ARBITRATION

A. An Extension of Collective Bargaining:

Interest arbitration in the United States historically has served as an extension of the collective bargaining process. The design has been taken from private sector negotiations, and interest arbitration served as an adjunct to the collective bargaining process from the early days of collective bargaining in this country. As one scholar observed:

> Throughout most of the long history of interest arbitration, transit was a private industry; and interest arbitration in that era was voluntarily accepted by an individual company and by an individual local union, in certain situations, as an acceptable alternative to the use of economic force. Arbitration in the private transit industry was literally an extension of the collective bargaining process. An arbitrator who served in an interest arbitration involving a privately owned transit system was always probing for what we term the 'area of acceptability.' He was trying to define that area of wage increase and fringe benefit change which, at best he could judge, would approximate and would be in the ballpark of what the parties themselves would have done had they bargained to a conclusion. (See, "Arbitration of Interest Disputes," Twenty-sixth Annual Meeting of the National Academy of Arbitrators, 21 (1974), emphasis added).

Interest arbitration does not occur in a vacuum and is a part of a continuing relationship between the parties. It is part of an arbitrator's obligation to attempt to understand the dynamics of the collective bargaining relationship between the parties. Being faithful to this relationship is one way that the arbitrator attempts to meet his or her statutory obligation. As one observer has stated:

> It is not the role of the arbitrator nor the purpose of [interest arbitration] standards to alter the ultimate balance of power between the parties.

> Rather, the role is to resolve the issues in dispute and, thereby, to restore the disturbed balance between them. (See, LaRue, 42 Arb. J. 13, 21 (1987)).

B. Avoiding the Charade of Comparability:

The parties are in dispute about the appropriate wage policy during the term of their agreement. A major criterion in their collective wage determination has been equity and fairness. They are in disagreement about how to define "fairness." A major factor in defining "equity" in a collective bargaining relationship has been the wage rate paid other workers in the same industry. By using comparisons as a wage determinant, workers have believed that the criterion of equity was satisfied; and employers have believed that their competitive ability to retain and recruit a qualified workforce has been protected. As the economist Veblen pointed out over a half century ago, "the propensity for emulation--for invidious comparison--is of ancient growth and is a pervading trait of human nature." (See, Veblen, The Theory of the Leisure Class, 6 (1934)). By using comparisons, a worker is able to move toward or to attain parity with those whom he or she believes to be comparable. One scholar has suggested that comparisons "seem to offer a presumptive test of the fairness of a wage." (See, Feis, Principles of Wage Settlement, 339 (1924)).

In interest arbitration, it is the task of an arbitrator to render an award that applies statutory criteria. If the process is to work correctly, it should not produce a result that is substantially different from what would have been obtained had the parties resolved the dispute at the bargaining table. Interest arbitration is an extension of the bargaining process, and it is not a forum in which a party should expect to obtain a novel result. As an arbitrator has observed in an Illinois arbitration:

> Interest arbitration is essentially a conservative process. While, obviously, value judgments are inherent, the neutral cannot impose upon the parties contractual procedures he or she knows the parties themselves would never agree to. Nor is it the function to embark upon new ground and to create some innovative procedure or benefit scheme which is unrelated to the parties' particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the peculiar circumstances these particular parties have developed for themselves. To do anything less would inhibit collective bargaining. (See, Will County and Sheriff of Will County v. AFSCME Council 31, Local 2961, Illinois State Labor Relations Board (Nathan, Chair, Aug. 17, 1988).

As an extension of collective bargaining, the parties are under an obligation to proceed in the utmost good faith. In interest arbitration, the requirement of good faith means that an arbitrator should exclude unreasonable positions and should expect the parties to submit a clear-cut, defensible rationale for particular requests. The concept of good faith means that the parties should not turn a useful method of dispute resolution into a legalistic, intensely adversarial process if it means that a concern for the public good has

has been excluded from the parties' decision-making analysis. As one scholar has observed:

> The parties must accept that their duty to the arbitrators must rise to the standard of utmost good faith and full disclosure. The parties cannot discharge their duty to the arbitrators by discharging their duty, narrowly perceived, to their clients or constituencies, as they may in grievance arbitration. In the arbitration of interest disputes, that will not work. The distinction I draw is not between bad faith and good faith; it is between good faith and utmost good faith, and in my view the circumstances of arbitration of interest disputes . . . require adherence to the duty of utmost good faith. (See, Carrothers, Proceedings of the Thirtieth Annual Meeting of the National Academy of Arbitrators, 15, 27 (1977)).

Interest arbitration is a process that is not to be encouraged because of its impact on political democracy, but it remains clearly the best alternative to a negotiated settlement. The parties want to avoid a self-fulfilling prophesy that interest arbitration is a necessary extension of the collective bargaining process. As the eminent Clark Kerr, former Chancellor of the University of California System of Higher Education, has stated:

> Arbitration of interests . . . sometimes may be necessary. It is never desirable. Arbitration of interests, if it becomes the practice, instead of the occasional exception, can become lethal in the long run. It is far, far better for the parties, and for American society, that the parties themselves write their own contracts. They know their own situations better than any outsiders possibly can. They must live with the contract on a daily basis after the arbitrators have left. It is also better that the parties take the responsibility, not only for the terms of the contract, but also for its explanation--where explanation is needed, and even for its defense. It should be 'our' contract, not the contract of a third party. (See, United States Postal Service, 83 LA 1105, 1109 (1984)).

These thoughtful principles teach us, among other things, that data from comparisons must, then, be studied in terms of the relative bargaining power of the parties. There must be some effort to understand the degree of satisfaction to be derived from achieving terms set forth in negotiation proposals. This must be balanced against the probability that achieving such terms would forestall the development of further conflict as well as what would occur in the case of an actual confrontation between the parties. It is recognized that these concerns provide only the broadest guidance for making rough judgments about variables during bargaining, but the variables deserve some consideration to the extent that interest arbitration is an extension of collective bargaining.

It is clear that the standard most often used in public sector wage determination is comparison with similar occupation groups in comparable locales. (See, e.g., City of Birmingham, 55 LA 716 (1970); City of Marquette, 54 LA 981 (1970); Arlington Education Association, 54 LA 492 (1970)). As Arvid Anderson, past President of the National Academy of Arbitrators, has commented:

> Generally, the whole concept of public sector bargaining is based on the concept of comparability, like pay for like work, and not on the proposition that public employees must lead the parade. (See, NAA Proceedings for the Twenty-seventh Annual Meeting, 61, 95 (1974)).

The parties in this case have disagreed robustly about how to make appropriate comparisons. Their disagreement has made clear what "comparability" does not mean. It is clear from Washington law that legislators intended for arbitrators to use comparisons. It is logical to assume that state

legislators wanted the parties to anticipate arbitral use of comparison by negotiating their own list of comparable jurisdictions. The legislative purpose was not to turn a good process into a bad game of forcing on each other result-oriented lists of allegedly comparable jurisdictions. It is reasonable to conclude that the legislative intent was to design a principle-based decision making process, not a charade disguised as a scientifically objective system. There might be an appropriate place in collective bargaining for game theory, but this is not one of them. As one expert at the hearing in this matter stated:

> I'm an objective observer who, you know, interprets, tries to interpret the statute the best one understands it, applies the criteria, and then utilizes the numbers that are given to me. (See, Tr. 94).

It is logical for the parties to negotiate vigorously about benchmark jurisdictions of comparability. Then they can continue their relationship by negotiating about applying their benchmarks and about changes affecting those guidelines. Without negotiated benchmarks, the parties fall back on a highly adversarial use of technical data to support opposite viewpoints, and interest arbitration becomes a search for clarity as it flows from parameters set forth in statutes calling for interest arbitration to take place.

C. The Imprecision of Comparisons:

There is no mathematically precise formula that can be used for producing comparable jurisdictions. Each case is unique and must be handled individually. Relevant criteria are affected by the facts of the case as well as by the manner of presentation. Each advocate in this case did an excellent job of detecting flaws in the other's set of comparable jurisdictions. Whether comparisons are made in terms of occupations or bargaining unit size or geographic location, one soon finds that some seeming similarities do not necessarily guarantee the similarity for which the evidence has been set forth. A firefighter in one city might face quite a different assortment of duties than does a firefighter in another based on the composition of the bargaining unit or the use of volunteer firefighters or the size and composition of the service area. While recognizing their usefulness, the imprecision of comparisons has been noted by one scholar who stated:

> What constitutes a comparable factor is often difficult to ascertain. Public employees are necessarily concerned with labor market factors, while police and firefighters have stressed job similarity. Geographical boundaries, size of population and similarity of urban problems should be jointly considered in selecting comparable communities. How is the appropriateness of a comparison group from among other police and/or firefighters, other public employees and/or private sector employees determined? (See, A Study of Legislated Arbitration, Cornell University Ph.D. Thesis, 173 (1969)).

The Association's expert witness recognized the imprecision of comparisons when he stated:

> Ideally, one wants cities with identical size, identical makeup, with identical cost-of-living. That's what one wants, but one can never get it; so the next best thing, what one then does is the next best thing, to say, OK, let's look at some districts which are fairly close in size and then make adjustments for cost-of-living because there simply aren't enough comparable cities around just like us. (See, Tr. 39).

Imprecision results when one attempts to compare geographically distinct areas like the Seattle area and Ellensburg, Washington. As the Association's expert agreed, "there's a lot of different things which are going on in a metropolitan area like Seattle/Tacoma that just aren't going on here in Ellensburg." (See, Tr. 71). He, then, stated, "You can't compare this area with probably where you live over on the Coast where you have millions, virtually millions of jobs within a fifty mile radius, or something." (See, Tr. 107).

Imprecision is also caused by characteristics unique to a particular area. For example, there was no rebuttal to the assertion that "Spokane is a low-paying area," even though it is the third largest city in the State of Washington. (See, Tr. 70). Likewise, disputes about how to analyze the data create imprecision. Should one average the cost-of-living figures for Wenatchee, the Tri-Cities, and Spokane, in order to set the appropriate figure for Moses Lake, or should one delete the Tri-Cities from the computation? (See, Tr. 255). If there is a college in the town, should one compare only with other cities having a similar college or university? Is it significant that one town with a college has its own fire department while another does not? Should any weight

be given to a million dollar judgment from a law suit when appeal has been taken and there is a reasonable prospect of legislation that will neutralize the verdict? (See, Association's Post-hearing Brief, 24).

The point is that most comparisons abound with ambiguity, and one weighs them and the respective methodologies used to produce comparable jurisdictions in an effort to bring the bargaining process to its logical conclusion. It is not a matter of choosing one party's methodology over another. Neither is impervious to challenge, and each has provided a source of guidance. The objective is to find some principled standards of comparison.

D. Standards of Comparison:

A fundamental disagreement between the parties in this case revolved around their effort to pour content into the concept of comparability. This is a search that has attracted scholars for many years. (See, e.g., Slichter, Basic Criteria Used in Wage Negotiations, 8-9 (1947)). Every wage determination is affected by a variety of market forces. Perhaps the most important is the rate paid similar workers doing similar work in similar locales. This principle has its roots in the private sector and has been absorbed in public sector interest arbitration. As one arbitrator stated in a private sector setting:

> Prime consideration should be given to agreements voluntarily reached in comparable properties in the general area. For example, wages and conditions in Milwaukee, the city of comparable size nearest geographically to Minneapolis and St. Paul, whose transit company is neither bankrupt, municipally owned, nor municipally supported, might reasonably have greater weight than Cleveland or Detroit, both municipally owned and farther distant, or Omaha and Council Bluffs, more distant in miles and smaller in population. Smaller and larger cities, however, and cities in other geographical areas should have secondary consideration. . . . (See, Twin City Rapid Transit Co., 7 LA 848 (1947)).

Given an opportunity, arbitrators customarily have been more persuaded by comparisons geographically close than they have been by jurisdictions farther away.

In addition to looking at similarly situated workers, arbitrators in public sector interest arbitrations of this sort have also given considerable weight to the populations served by an employer. As one arbitrator has observed:

> It is clear that population served is generally considered to be the most appropriate factor to employ in selecting comparators pursuant to the statutory criteria laid out in RCW 41.56.460(c)(ii). (See, Beck, PERC Case No. 8420-I-90-191, p. 20).

Arbitrator Beck also observed that the second most used criterion to select comparative jurisdictions is assessed valuation. (See, p. 21).

In making comparisons, it also has been customary for arbitrators to give some weight to comparison between industries or groups of workers, but such comparisons have been of far less significance than comparing with similarly situated employes. One should not expect wage uniformity between diverse groups of employes, and it is probably impossible to

compare with any degree of accuracy job duties, seasonality of work, and fringe benefit packages. At the same time, such comparison provides some information about wage trends in a community and also about the impact of tax-based wage increases on the citizenry. Admittedly, such considerations are a secondary aspect of the decision making process, but they customarily have not been ignored by arbitrators. (See, e.g., Pittsburgh Railways Co., 14 LA 662 (1949)). Such information is potentially more valuable in smaller, less diverse communities. All workers and employers tend to be more affected by the same local labor market.

III. COST OF LIVING

Another influence on wage determinations is of sufficient importance that state legislators expressly mentioned it in the statute, namely, a cost-of-living index. Such an index allows the parties to link employe compensation to changes in an index of consumer prices. The linkage may be accomplished in several ways, such as increasing wages by a percentage amount in accordance with percentage changes in a price index. It was out of a concern with such wage adjustments that the Bureau of Labor Statistics began publishing a national Consumer Price Index on a regular basis in 1921. In fact, until 1945, the CPI was entitled The Cost of Living Index. The purpose of a cost-of-living index is to attempt to protect

the purchasing power of employe earnings from the full weight of rising prices of consumer goods and services. To accomplish the objective, there is an adjustment of wages in response to the movement of an index of consumer prices.

A cost-of-living index must be distinguished from the Consumer Price Index. A cost-of-living index helps one understand what it will cost to buy the same goods and services in different communities and what wage adjustment is needed in order to do so. The Consumer Price Index provides the relative cost of a market basket of goods and services which is assumed to be a representative market basket of the purchases of most wage earners. Items in the basket are weighted for their relative importance and are priced at certain intervals. Costs of the market basket, then, are reported periodically as index numbers. Changes in the purchasing power of wage earners can be computed as a change in "real" wages. This is done by dividing actual money earnings by the price index. It is the position of the Association that it needs an increase of 33.97% in order to raise wages of the bargaining unit to the state average of comparable workers. (See, Tr. 53-54).

The Consumer Price Index has been calculated for two distinct groups, namely, urban wage earners and urban consumers. The calculation for urban wage earners (CPI-W) is based on the expenditures of urban consumers who earn more than half their income from clerical or wage occupations. The CPI-U is based on expenditures by all consumers except

for farmers and Armed Forces personnel. Both indices, of course, price goods and services with the same specifications.

There was unrebutted testimony that the Employer has used the CPI-U in wage computations for recent labor contracts. It is the index the parties used between 1985 and 1987. (See, Tr. 349). There is no persuasive reason to discontinue its use at this point, and it is reasonable to believe its use is the result the parties would have reached at the bargaining table.

Use of a cost-of-living mechanism as a criterion of wage determination has its roots in the work of Sidney and Beatrice Webb almost three quarters of a century ago. They set forth a doctrime of vested interests which was premised on "the assumption that the wages . . . hitherto enjoyed by any section of workmen ought under no circumstances to be interfered with for the worse." (See, Webbs, Industrial Democracy, 562 (1920)). Underlying the use of a cost-of-living mechanism is an ethical value which presumes that real wages of a worker should not be reduced by price changes beyond an employe's control.

It was unrebutted that base wage rates paid by the Employer have kept pace with CPI-U increases. Each member of the bargaining unit has received wage increases since the individual's date of hire that outpaced the CPI-U. On average, wage increases for bargaining unit members have exceeded the CPI by approximately 52%. (See, Employer's Exhibit No. 2, p.51). This is not to suggest that the Employer's wage determinations have been made primarily to keep pace with the

cost-of-living. These wage increases may also be a result of promotions and new duties. The economic reality for the Employer, however, is that the average payroll cost of bargaining unit members has increased 52% since each person's date of hire. Some employes have fared better than others, based in part on their length of tenure in the department. The data, nonetheless, are unrebutted that, on average, "base hire" wages in the bargaining unit since 1967 have exceeded CPI increases by 52%.

It is reasonable to believe that each bargaining unit member deserves whatever wage increase has been received, but the economic data fully support the proposition that the Employer over the years has shifted municipal resources in order to fund reasonable wage increases for bargaining unit members. It is recognized that, due to experience and training, bargaining unit members serve the public more skilfully and efficiently performing an increasingly greater variety of duties. Evidence submitted to the arbitration panel made clear that money allocated to wage increases for the bargaining unit has been well spent. It also has been customary for the Employer to use a wage adjustment formula that calls for 80%, instead of 100%, of the CPI-U, with a "floor" and "ceiling" for the formula, at least for the last several labor contracts between the parties. (See, Tr. 347).

IV. SETTING FOR THE DISPUTE

The City of Ellensburg is located "at the center" of the State of Washington. It is situated in the Kittitas Valley, and the City has a population of 12,361 people. There is an airport, but it has no scheduled service. (See, Association's Exhibit No. 8, p. 2). There are five primary and secondary schools in the community with approximately 2000 students. It is the home of Central Washington University with a full-time enrollment of approximately 6000 students. The fire department has a total staff of nineteen plus sixteen volunteers, and the police department has a total staff of twenty-one plus nineteen reserves.

Kittitas County extends from the Snoqualmie summit to the Columbia River. People in the area distinguish the upper county from the lower county. There was unrebutted testimony that most of the growth has been in upper Kittitas County in the Cle Elum and Roslyn areas. The City of Ellensburg is located in lower Kittitas County. The entire area is a part of Eastern Washington, and many believe there is a vast difference between the eastern and western parts of the state. Some even refer to the Cascade Curtain (the Cascade Mountains) as a physical barrier that divides two distinctly different regions of the state. (See, Tr. 301).

Bargaining history for this agreement began during the summer of 1990. The last agreement between the parties expired on December 31, 1990, and the Association sent a letter to the Employer on May 21, 1990 indicating its desire to begin

work on a new agreement. (See, Tr. 131). The parties had five negotiation sessions from August to November, 1990. Then they moved to mediation and had four sessions from December to April, 1991. During these efforts to draft a new contract, the parties reached a number of tentative agreements but were unable to formalize a total contract. (See, Association's Exhibit No. 10). They now have proceeded to interest arbitration with the unresolved issues.

The fire department in Ellensburg is organized to consist of three shifts of five people. Additionally, there is a fire marshal and a training officer, plus a departmental secretary and the fire chief. There are seventeen bargaining unit members plus the chief and his secretarial assistant. There is a volunteer program with sixteen part paid personnel. (See, Tr. 439). Chief Alder testified that, on each shift, there is a captain, a lieutenant, and three firefighters. They work 56 hour work weeks in rotating shifts over a fifteen day cycle. In reality, however, there are only four people on a shift. Chief Alder testified that on occasion there might only be three individuals on a shift. (See, Tr. 532).

There has been little population growth in Ellensburg during the last half century. There has been a growth of approximately 628 people during the last decade to reach the 1990 census figure of 12,361 citizens in the community. Nor is there much projected growth for the area during the next decade, approximately half a percent a year. (See, Tr. 286 and 299). Ellensburg is approximately 100 miles from the

more vigorous growth of the Seattle/Tacoma area. The City of Spokane is approximately 180 miles away, and the Tri-Cities area is approximately 100 miles from Ellensburg. Yakima is about 35 miles away, and Moses Lake is some 70 miles from Ellensburg. (See, Tr. 286).

The Employer negotiates with exclusive representatives for five bargaining units in the city. The Office and Professional Employees Union represents clerks at various locations in the city. The City operates its own electric system, and there is a bargaining unit represented by the International Brotherhood of Electrical Workers. The Teamsters Union represents Public Works employes in the city as well as employes in the Communication Center. There is also a Police Officers Guild, and the International Association of Firefighters represents employes in the Fire Department.

Central Washington University has a significant influence in the city. During the academic year, the 6000 students at the University have an important economic impact on the community. There are approximately 2000 students at the University during the summer. Approximately fifteen to twenty percent of total calls for the Fire Department originate with Central Washington University. The City customarily has received a small, symbolic payment for fire services from Central Washington University, and that matter is now in litigation. The City has won an initial judgment which is being appealed.

The economic outlook for the community is not robust.

Evidence submitted to the panel of arbitrators supports a conclusion that Ellensburg, although economically stable, is not experiencing an expansion of the local economy. Even though some slight growth has occurred more recently, economic conditions in the area are little different from those of a decade ago. As the Association's expert witness stated, "I don't want to say that we have been booming." (See, Tr. 369). Unemployment in the city has increased in recent months, while there also has been a modest growth in people getting jobs, an increase of 1.4% from January-November, 1991. (See, Tr. 371). There have been no new industries that have moved to Ellensburg at least in the last five years. (See, Tr. 373). There have been approximately thirty building permits issued during the last year with approximately 30%-40% of those related to Central Washington University. In 1991, the City received approximately 3½% more sales tax revenue than in 1990. (See, Tr. 412 and 418).

V. EXTERNAL COMPARABILITY

The Association seeks a 1991 wage increase of 10%, and the Employer has offered a 3% wage increase. The Association also seeks a wage adjustment of 100% of the all U.S. Cities CPI-W in 1992. The City has offered an 80% adjustment in 1992 and 1993 of the CPI-U with a designated "floor" and "ceiling" in the offer.

The parties have premised their proposals primarily on wage rates in what they believe are comparable jurisdictions. Using bargaining unit size as the most important criterion, the Association sought units one-third below the size of the Ellensburg bargaining unit and two-thirds above, producing a range of eleven to twenty-eight bargaining unit members. Using a multi-step process, the Association, first, considered departmental size and, second, bargaining unit size. Then, the Association made a number of adjustments, for example, for hours worked, for excluding the impact of fire districts, and for limiting the impact of communities in the "Seattle corridor." (See, Tr. 57). The Association made no use of population, assessed valuation, or medical premiums in its selection of comparable jurisdictions. (See, Trs. 75, 103 and 112). The Association's methodology produced the following jurisdictions which it believes are comparable to the City of Ellensburg:

Hoquiam	Centralia
Port Angeles	Mercer Island
Pullman	Spokane Airport
Moses Lake	Edmonds
Pierce County No. 3	King County No. 40
Tumwater	Parkland
Snohomish Co. No. 7	King County No. 25
Kitsap County No. 1	Pierce County No. 7
Kitsap County No. 7	Pierce County No. 10
Spokane County No. 9	Snohomish County No. 11

(See, Union's Exhibit No. 3, p. 9, Exhibit V).

Based on comparing itself with these jurisdictions, the Association has concluded that a top firefighter in the City of Ellensburg would need to increase by the following percentage rates:

Actual Earnings	30.76%
Adjusted Earnings	41.67%
Real Actual Earnings	23.68%
Real Adjusted Earnings	33.97%

The Employer has used a different set of comparable jurisdictions. The Employer has focused on what it characterized as its isolation on the eastern side of the Cascade Mountains; on the presence of a large university in the city; and on an economy that, at least since 1983, has never really been strong. (See, Tr. 294). The Employer also relied on assistance from its expert witness to produce measurements for distinguishing cost-of-living differences in communities throughout the state. The expert for the City used the American Chamber of Commerce Researcher Association's cost-of-living index as well as Employment Security data on average earnings and average employment by county. As its set of comparable jurisdictions, the Employer used:

Anacortes	Toppenish
Cheney	Moses Lake
Clarkston	Pasco
	Pullman

As previously stated, the Association selected comparable jurisdictions, first, by seeking departments of comparable size and, then, refined that list in order to give appropriate weight to the size of the bargaining unit. Arbitrators customarily have not relied only on one or two such limited factors as a basis for comparing similar jurisdictions in order to make wage determinations. An array of factors is generally used. It is especially unwise to give the statute a narrow interpretation when the restrictive factors in the formula for selecting comparable bargaining units, ultimately, are departmental size and size of the bargaining unit.

Such an approach is of mixed value, in part, because there are significant differences in the configuration of departments and bargaining units. Some bargaining units include battalion chiefs, captains, and dispatchers, while others do not. The configuration of the department as well as the bargaining unit could have a substantial impact on the allocation of duties and the nature of the work performed. It is reasonable to conclude that such assignments would have an impact on wages and budgetary allocations, especially with regard to differential pay for ranks. Recognizing a general tendency to standardize the work of firefighters, it, nevertheless, is clear that, generally, the larger the departmental size the more fragmented the duties of bargaining unit members.

Moreover, fire departments vary in their use of a volunteer

workforce to accomplish fire suppression duties. Likewise, the Employer was most persuasive about the impact of the Seattle/Tacoma economic influence on Western Washington communities. Finally, clear and convincing evidence established that the primary labor market of the City of Ellensburg is on the eastern side of the Cascade Mountain range, and there simply was no persuasive evidence that the City of Ellensburg and a majority of the Association's proposed comparable jurisdictions compete in the same labor market. Even the venerable Professor Elkouri has recognized that rarely will any one or two standards be used in isolation as a means to select comparable jurisdictions. As he observed, "arbitrators generally apply a combination of standards, the combination varying from case to case." (See, How Arbitration Works, 805 (1985)).

Using customary statutory factors applied by arbitrators in interest arbitration, the arbitrator initially constructed a set of eight comparable jurisdictions in Washington. A review of the data produced the following chart of instructive material:

Comparable Cities	Population Served for Fire	Bargaining Unit Size	Assessed Valuation	Square Miles Served for Fire	Square Miles Served for EMS	Volunteers	Fire Fighters Per Capita
CHENEY	10,000	6	106 M	2.5	2.5	25	1,666
MOSES LAKE	10,600	11	269 M	7.4	5.25	18	963
PASCO	17,900	22	383 M	25	78	0	813
PULLMAN	17,000	12	266 M	6.2	480	12	1,416
TOPPENISH	6,560	5	78 M	1.8	1.8	25	1,312
WALLA WALLA	25,000	41	490 M	10	1400	6	609
WENATCHEE	18,500	25	554 M	6.4	6.4	0	740
YAKIMA	50,000	74	1,359 M	13	13	0	675
AVERAGES excluding ELLENSBURG	15,166	15	309 M	12.8	361	10	1,024
ELLENSBURG	12,361	17	231 M	6	1,250	16	727

It is possible to refine the comparability of these jurisdictions to Ellensburg so that one is able to move from the restrictive consideration of only geographic remoteness. Cheney, for example, is clearly distinguishable from Ellensburg in terms of its bargaining unit size, assessed valuation, square miles served for fire and for emergency medical services. Walla Walla is substantially different from Ellensburg in terms of population, bargaining unit size, and assessed valuation. Wenatchee constrasts sharply with Ellensburg in terms of its assessed valuation. Yakima differs

noticeably from Ellensburg in terms of its population, bargaining unit size, assessed valuation, and area covered for emergency medical services. Toppenish is distinguishable in terms of its assessed valuation and service area. By process of elimination, this leaves Moses Lake, Pasco, and Pullman as comparable jurisdictions in Eastern Washington with Ellensburg.

If one reviews Ellensburg's placement among the comparable jurisdictions with regard to the shorter list of similar cities, one finds that there is a median population of 17,000, compared with Ellensburg's 12,361. There is a median bargaining unit size of 12 compared with Ellensburg's 17. There is a median assessed valuation of $269 million compared with Ellensburg's $231 million. There is a median square miles served for fire of 7.4 square miles compared with Ellensburg's 6. There is a median of 480 square miles served for emergency medical service compared with Ellensburg's 1250. There is a median of 12 volunteers used in comparable jurisdictions compared with Ellensburg's 16, and there is a median of 963 citizens per capita for paid firefighters compared with Ellensburg's 727.

If one compares economic data with these comparable jurisdictions, it produces the following pattern of information:

Comparable Jurisdictions	Scheduled Hours a Week	Scheduled Hours Annually	Hourly Salary	Monthly Salary	Monthly Medical Costs	Total Compensation Costs
MOSES LAKE	52	2,704	11.38	2,413	332	2,745
PASCO	50	2,600	12.68	2,487	315.50	2,802.50
PULLMAN	53	2,756	11.06	2,364	354.97	2,718.97
AVERAGES excluding Ellensburg	51.67	2,686	11.71	2,421	334.16	2,755
ELLENSBURG	56	2,912	11.23	2,231	491.01	2,722.01

If one focused narrowly on the monthly salary, members of the bargaining unit would appear to be below the average by approximately $8\frac{1}{2}$%, but it is inappropriate to use only the base wage if better information is available. The data show that members of the bargaining unit are behind in terms of total compensation (focusing on salary and medical costs) by only 1.21%. It is reasonable to conclude that, at some point, the Association has chosen to accept an unusually good health plan in lieu of a larger wage increase. The point is that a wage offer of 3% from the Employer is fair. The fact that it is larger than 1.21% is appropriate and should help offset any statistical anomalies that might have resulted from using a relatively small sampling of comparable jurisdictions. Such a result is consistent with internal comparability data. The Employer maintained without contradiction that a majority of city employes had received a 3% wage increase in 1991. (See, Tr.415).

A comparison of wages in several smaller communities in Western Washington supports a conclusion that such communities tend to experience the impact of a different labor market than Ellensburg and also absorb the ripple effect of a robust Seattle economy more than does Ellensburg. The data are as follows:

Comparable Jurisdictions	COL Index	Hours Worked	Assessed Valuation	Population Served for Fire	EMS Population Served	Real Adjusted Wages	Bargaining Unit Size
CENTRALIA	98.6	42	276	12,000	12,000	$3,967	16
HOQUIAM	98.6	51	224	12,000	20,000	2,939	24
TUMWATER	98.6	53	318	8,500	155,100	2,827	16
AVERAGES	98.6	48	272	10,833	62,366	3,244	18
ELLENSBURG	98.0	56	229	11,500	20,000	2,278	17

These data suggest that workers in smaller communities of Western Washington on which the Association has relied are working fewer hours for more money than is the case in Ellensburg. While serving roughly the same size population for fire with approximately the same size fire department, workers in smaller departments of the western Cascade mountains are receiving approximately $1000 more a month than is the case in Ellensburg. Recognizing that the data are fraught with ambiguity, it is clear that some economic or political forces have produced a wage structure noticeably different

from the one used in Ellensburg. What the Association failed to show was a persuasive explanation for the difference, one that mandates a change in Ellensburg based on principles of equity and economic justice. These communities might be much like Ellensburg in all regards except for the influence brought by the effects of Seattle and the daily migration of thousands along I-5, but this is an impact that cannot be ignored, especially in the absence of empirical evidence nullifying the significance of this difference. The Association needed to show that the substantial wage difference has its roots in unfairness and not in merely a rational response of employers to different economic realities.

Part of the explanation for the considerable wage differential between the two regions of the state might be found in the basic supply and demand of what the evidence suggested are, in effect, two different labor markets. There also might be special factors such as taxes, technology influences, or agglomeration economies that help explain why regional wage differentials have developed. Some reasons for regional wage differentials are found in geographic and climatic characteristics special to an area. Another is the difference in housing prices. Local government tax and expenditure policies may also have a significant impact on such differentials. The point is the Association failed to show that wages received by this bargaining unit are unfair and inequitable merely by proving that wages of similar workers are higher in smaller communities located in the western area of the state. There are too many unexplained rational variables to select unfairness as the reason for the asymmetrical wage structures.

VI. AWARD ON WAGES

Having carefully considered all evidence submitted by the parties concerning the issue of wages, the arbitration panel concludes that there shall be a three percent (3%) wage increase over the 1990 top firefighter rate effective on January 1, 1991. The 1991 wage adjustment shall be distributed within thirty days from the date when a majority of the panel signs this report.

Effective January 1, 1992 and again on January 1, 1993, bargaining unit members shall receive wage increases which equal eighty percent (80%) of the All U.S. Cities CPI-U for each year, using November-November computations. The wage adjustment effective on January 1, 1992 shall be distributed to members of the bargaining unit within thirty days of the date when a majority of the arbitration panel signs the arbitration award. There shall be a minimum wage increase of two percent (2%) and a maximum wage increase of five percent (5%) during each year. This agreement and all tentative agreements reached by the parties during the negotiation and mediation phases of bargaining for this agreement shall become effective when a majority of the arbitration panel signs the award.

VII. DURATION OF THE COLLECTIVE BARGAINING AGREEMENT

The Association proposed a two year agreement effective from January 1, 1991 until December 31, 1992. The City proposed a three year agreement from 1991 to 1993.

If the new agreement between the parties is to expire December 31, 1992, there would be a short period of approximately two months for a respite before returning to the bargaining table. The parties' 1989-90 agreement permits neither party to give written notification of a desire to begin bargaining five months before submission of a budget to the Ellensburg City Council. (See, Association's Exhibit No. 17, p. 14). The City Council received a draft of the budget for 1991 on October 22, 1990, and there is no reason to believe a different pattern would be followed in the future. (See, Association's Exhibit No. 36, p.7). This would permit the Association to turn to bargaining on the 1993 agreement in June, 1992.

It is not an efficient use of resources for the parties to return to the bargaining process so soon. Time is needed to sort out the impact of the current agreement. This is the first time the parties have used interest arbitration as a part of the collective bargaining process, and more than two months is needed to assess the experience and to evaluate its impact on the future relationship of the parties and their approach to negotiation. Accordingly, it is reasonable to lengthen the term of the parties' next agreement by a year. The Association has sought a wage increase in the second year of the agreement of 100% of the All U.S. Cities CPI-W

effective on January 1, 1992. The City has proposed that there be an 80% of the All U.S. Cities CPI-U wage adjustment in 1992 and in 1993. The arbitrator has received no external comparability data on this issue, and it is necessary to rely on available internal comparability data.

The Teamsters Union represents Public Works employes in the City of Ellensburg as well as employes in the Communications Center. It was unrebutted that the formula used in the bargaining unit of Public Works employes includes the formula offered the Association in this case. Accordingly, it is equitable to apply the same formula here.

VIII. AWARD ON DURATION OF CONTRACT

The next agreement between the parties shall become effective as of the first day of January, 1991 and shall remain in full force and effect until the last day of December, 1993.

IX. DEFERRED COMPENSATION

The Association presented the following proposal with regard to a deferred compensation plan:

> Local 1758 proposed that a new article should be added to the parties' collective bargaining agreement in which it would be stated that the City was responsible for matching all voluntary employee contributions to the deferred compensation plan which the City currently offers to its employees up to an amount that is equal to two percent (2%) of each employee's base wage rate per term during the term of the parties' collective bargaining agreement. (See, Association's Exhibit No. 16, p. 4).

The Employer opposed the adoption of the Association's proposal.

Comparability data failed to support the Association's proposal. (See, Association's Exhibit No. 32 and Employer's Exhibit No. 2, p. 56). Neither Moses Lake nor Pasco nor Pullman provides a deferred compensation plan paid by the employer. Nor did the arbitration panel receive data setting forth an equitable justification for the Association's proposal.

X. AWARD ON DEFERRED COMPENSATION

The next agreement between the parties shall not include the Association's deferred compensation plan.

XI. THE ISSUE OF STRUCTURED HOURS

The Employer submitted a novel proposal that would add structured hours for members of the bargaining unit between 6:30 P.M. and 9:00 P.M. on weekdays. Chief Alder argued eloquently that the workday needed to be extended because "we just don't have time" to do all the work that needs to be done. (See, Tr. 466).

"Structured hours" is a term of art for the parties. According to Mr. Hanson, "structured hours" has the following meaning:

> Those are the hours during the day that the City would have us doing fire-related projects, assignments. Basically, whatever they would like us to do, we're obligated to do during that time. In our department, that happens to be an 8:00 o'clock A.M. to a 5:00 o'clock P.M. situation out of our 24 hour work shift. (See, Tr. 160-161).

There are also structured hours on Saturday, Sunday, and most holidays for half a day. It is the position of the Employer that an employe has a total of 2912 duty hours, 2264 hours of actual time on the job, and 549.19 structured hours. (See, Tr. 449).

Apart from the fact that comparability data generally failed to support the Employer's proposal, there are other reasons for not adopting it. In 1992, there are eighteen members of the Department, but in 1973 there were twenty-two members. (See, Tr. 504). There was no showing of a reduction in the workload. It is reasonable to conclude that it is not logical to expect to accomplish the same general amount of work with fewer employes, and it is understandable that some chores might not be accomplished as expeditiously as might be desirable.

It is not as though there are major flaws in the service currently being provided by members of the bargaining unit. The Chief himself stated that "I think we've got a very good department." (See, Tr. 491). There exists a first-rate training program in the Department. As the Chief stated:

> I think that our training program has evolved to a point that I'm proud of. We have accomplished many, many things. (See, Tr. 454).

Chief Alder believes that most of the bargaining unit is able to perform duties of a firefighter as if it were "second nature." (See, Tr. 467). It is a department that deserves validation and one of which the Chief is proud.

Evidence submitted to the arbitration panel suggested

that the Chief wants training time to prepare members of the bargaining unit for certification requirements that may some day become law. The National Fire Protection Association has adopted a guideline described as NFPA 1500. It is far more specific than the vertical standards currently set forth in Washington law, and the Chief, who is actively involved in professional associations related to fire protection, is anticipating the adoption of some form of the guideline. The arbitrators, however, received no evidence that the fire department in Ellensburg is not in full compliance with relevant administrative regulations, and the Chief endorsed the conclusion that the department is technically competent and highly skilled in performing its duties. To the extent there was an increase in accidents in 1991, the vast majority of them were driving accidents and insignificant ones in terms of the amount of damage. (See, Tr. 459 and 516). Even with nine driving accidents in 1991, the local experience rate for setting L and I industrial insurance rates for 1992 are less than the base rate for the state, allowing the City to save money on insurance premium payments. (See, City's Exhibit No. 2, p. 119(A)).

Finally, there is some ambiguity about whether or not management currently is using all the hours available to it for accomplishing structured duty assignments. At one point, Chief Alder indicated that structured time on weekends begins at 9:30 A.M. Later, he approached the issue differently. (See, Tr. 441 and 548). The parties' collective bargaining

agreement has been clear about the fact that structured duty hours on weekends have been from 8:00 A.M., not 9:30 A.M., to noon. If management starts weekend structured duty hours at 8:00 A.M. instead of 9:30 A.M., it has the potential of producing approximately 900 additional structured hours for bargaining unit members on a 56 hour shift. Moreover, the Employer already has new structured duty hours on holidays as a result of a tentative agreement reached by the parties in conjunction with settling this agreement.

The Chief is pursuing a laudable goal of trying to provide his community with more and better service, but his approach is inconsistent with the American economic system. He seeks a way to accomplish additional work he believes needs to be done without increasing the size of the workforce. There has been no hint at all that members of the bargaining unit are not working as hard as they have always worked, and, in fact, the Chief has stated that he is proud of their production. At the same time, there is more that needs to be done. He would lengthen the workday in order to accomplish his objective. What this approach does is hide the impact of paying for additional work from the taxpayers. Our economic system teaches that a consumer should be given information about the product so that an individual can decide whether or not to make a purchase. Instead of letting taxpayers decide whether services the Chief proposes to provide merit additional revenue for the Fire Department's budget, he seeks to increase the workload of the existing complement of employes.

According to Chief Adler, this is not a problem unique to the City of Ellensburg. As he stated:

> The work isn't getting done that I want to get done, and the industry standard, the professional ties I've had around the state is that it's not getting done in other departments either. And this is exactly what everybody is looking at doing, is lengthening the structured time. And it's not just a problem in Ellensburg. It's a problem every place else. (See, Tr. 547).

Despite its being "a problem every place else," there was no evidence showing that other employers aside from Pasco have extended the workday into the evening as Chief Adler proposed to do.

XII. AWARD ON STRUCTURED DUTY HOURS

The Employer's structured duty hours proposal shall not become a part of the next agreement between the parties.

XIII. CONCLUSION

In the interim since the parties presented their respective cases to the arbitration panel in this matter, the U.S. Department of Commerce has announced seasonally adjusted CPI-U data; and the Consumer Price Index remains low. The CPI-U rose a seasonally adjusted 0.3% in June for a twelve month period ending in June of 3.1%. The prediction is that inflation will remain subdued during the remainder of 1992 with only slight price increases in 1993. While any proposed wage level must take into account an economic need to adjust pay structures, it is also appropriate to consider whether general economic conditions are such that an employer is dealing with a large budgetary surplus.

Most importantly, data submitted to the arbitration panel with regard to economic conditions in the area are only rough approximations of what, in fact, occurred with regard to the cost of living in this particular city. The duty of the arbitration panel is to reach a result that most closely approximates what a voluntary agreement between the parties would have produced had they bargained to a negotiated settlement. In an effort to do so, the panel has considered all statutory factors and based its decision on data submitted to the arbitration panel at the two and a half days of hearing in this matter. The award has flowed from the circumstances these parties have developed for themselves, and the evidence submitted by the parties supports the various components of the decision in the case.

XIII. SUMMARY

A. Award on Wages

Having carefully considered all evidence submitted by the parties concerning the issue of wages, the arbitration panel concludes that there shall be a three percent (3%) wage increase over the 1990 top firefighter rate effective on January 1, 1991. The 1991 wage adjustment shall be distributed within thirty days from the date when a majority of the panel signs this report.

Effective January 1, 1992 and again on January 1, 1993, bargaining unit members shall receive wage increases which equal eighty percent (80%) of the All U.S. Cities CPI-U for each year. The wage adjustment effective on January 1, 1992 shall be distributed to members of the bargaining unit within thirty days of the date when a majority of the arbitration panel signs the arbitration award. There shall be a minimum wage increase of two percent (2%) and a maximum wage increase of five percent (5%) during each year. This agreement and all tentative agreements reached by the parties during the negotiation and mediation phases of bargaining for this agreement shall become effective when a majority of the arbitration panel signs the award.

B. Award on Duration of Contract

The next agreement between the parties shall become effective as of the first day of January, 1991 and shall remain in full force and effect until the last day of December, 1993.

C. Award on Deferred Compensation

The next agreement between the parties shall not include the Association's deferred compensation plan.

D. Award on Structured Duty Hours

The Employer's structured duty hours proposal shall not become a part of the next agreement between the parties.

Respectfully submitted,

Carlton J. Snow
Neutral Chairperson
Professor of Law

Date: August 24, 1992

Ms. Glenna Bradley-House
City's Party Appointed Arbitrator

Date: 8/28/92

Mr. Danny Downs
Association's Party Appointed
Arbitrator

Date: _____