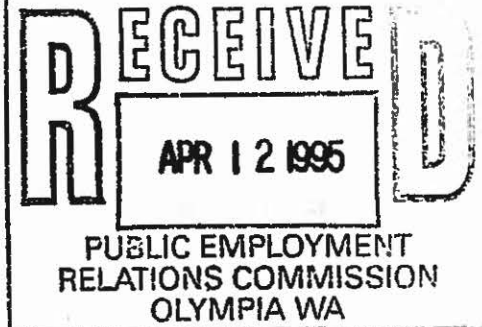


BEFORE THE ARBITRATION BOARD



In the Matter of the Interest)
 Arbitration Between)
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 The City of Pasco)
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)
)
 the Employer)
)
 and)
)
 Pasco Police Officers' Association)
)
)
)
 the Union)
)

ARBITRATORS' *10526-1-93-225*
 AWARD

Appearances:

For the City:

Greg Rubstello
 City Attorney
 City of Pasco
 P.O. Box 293
 Pasco, WA 99301

For the Association:

Jim Cline, Attorney
 Patrick Emmal, Labor Consultant
 Hoag, Vick, Tarantino & Garrettson
 425 Pontius Ave. N., Ste 200
 Seattle, WA 98109

Interest Arbitration Panel Members

Neutral Arbitrator:
 Jane Wilkinson, Attorney

City Panel Member:
 James W. Chase, Assistant Finance
 Director

Association Panel Member:
 Michael D. Aldridge, PPOA Representative

Date of Award: July 12, 1994

WITNESS LIST

For the City:

Donald J. Francis, Chief of Police, Pasco

Daniel Underwood, Finance Director

Gary Crutchfield, City Manager

Jeff Ballie, Economic Development Specialist

For the Union:

Charles B. Cook, Pasco police officer

Cliff Nelson, Pasco police officer

Michael D. Aldridge, Pasco police sergeant

Brian McCullough, Insurance consultant

EXHIBIT LIST

City Exhibits

- C-1. 1991 - 1992 Collective Bargaining Agreement
- C-2. Krebs 1990 Interest Arbitration Opinion and Award In The Matter Of City Of Pasco and Pasco Police Association
- C-3. City of Pasco's Initial Bargaining Proposals - July 28, 1992
- C-4. Memorandum to City Manager reporting first collective bargaining session with PPOA held on August 27, 1992
- C-5. PPOA's Initial Bargaining Proposals - August 7, 1992.
- C-6. Notes of initial bargaining session held August 25, 1992. See page 8. re: Wages
- C-7. Tentative Agreements (TAs) on several economic issues improving the benefits of PPOA members in the new CBA.
- C-8. Sept. 30, 1992 comparison charts on various economic issues open in the negotiations prepared by the city negotiating team. See 1992 CBAs from the jurisdictions referenced in Exhibit 8. for backup data to comparison chart data. Charts numbered 8-1 through 8-11.
- C-9. Open.
- C-10. Open.
- C-11. June 29, 1993 and August 25, 1993 letter from PERC Executive Director Marvin Schurke withdrawing the issues of Management Rights (conditionally), Hours of Work, and Grievance Procedure from the Interest Arbitration.
- C-12. September 17, 1993 letter from PERC Executive Director Marvin Schurke withdrawing the Management Rights issue from interest arbitration.
- C-13. August 30, 1993 letter from Greg A. Rubstello to James M. Cline concerning Arbitrators.
- C-14. August 30, letter from James M. Cline to Greg A. Rubstello concerning Arbitrators.
- C-15. Employer Proposals on Open Issues.
- C-16. PPOA Proposals on Open Issues.
- C-17. Meet the People of the PPOA
- C-18. Officers That Have Left the Dept. w/i last 5 years.
- C-19. Pasco Police Dept. Organization Chart and 94 Budget.
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- C-22. 1993 Data Book, State of WA, OFM.
- C-23. WA STATE Economic Forecast 1993, OFM.
- C-24. 1992 Demographic Info for Area IX, ESD,
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- C-26. 1990 Census Snapshot for all US Places, showing medium Household Income.
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- C-33. Police Dept. Questionnaires for all proposed Wa., Or., and Calif. Cities.
- C-34. Market Feasibility Analysis.
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- C-53. Memorandum of Understanding between the City of Calexico and the Calexico Police Officers Association.
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PROCEEDINGS

This dispute, between the City of Pasco (the City or the Employer) and the Pasco Police Officers' Association (the Association) concerns certain terms of a labor agreement to take effect on January 1, 1993 (and expire December 31, 1994) between the City and a bargaining unit of approximately 39 sworn police employees. The parties reached an impasse in their negotiations on several issues. Pursuant to RCW 41.56.450, those issues were certified for interest arbitration by the Public Employment Relations Commission (PERC) and submitted to a panel of Arbitrators chaired by neutral Arbitrator Jane R. Wilkinson for resolution. Evidentiary hearings were held in Pasco, Washington, on March 29, 30 and 31, 1994. Each party had the opportunity to present evidence, examine and cross-examine witnesses and argue its case. The neutral Arbitrator received the parties' post-hearing briefs on or about May 9, 1994, which shall be deemed the closing date of hearing. She issued a draft for the panel members' comment on June 3, 1994. Both parties responded, the latter of which occurred on July 11, 1994. This final award followed.

STATUTORY CRITERIA

The relevant provisions of the Washington interest arbitration statute are as follows:

RCW 41.56.430 Uniformed personnel—Legislative declaration. The intent and purpose of *this 1973 amendatory act is to recognize that there exists a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes. [1973 c 131 sec. 1.]

RCW 41.56.460 Uniformed personnel—Interest arbitration panel—Basis for determination. In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:

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

(b) Stipulations of the parties;

(c)(i) For employees listed in RCW 41.56.030(7)(a) and 41.56.495, comparison of the wages, hours and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States; (ii) For employees listed in RCW 41.56.030(7)(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 of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers shall not be considered;

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

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

(f) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment. [1988 c 110 sec. 1; 1987 c 521 sec. 2; 1983 c 287 sec. 4; 1979 ex.s. c 184 sec. 3; 1973 c 131 sec. 5.]

In resolving the issues before me, whether or not fully articulated herein, I have been mindful of these criteria and have given consideration to all of the evidence and arguments presented by the parties. Additional considerations which guide my findings are as follows. As to proposed language on non-economic items, I place the burden on the proponent to show an overriding need for new provisions or the abrogation of previously negotiated provisions. Elements of proof include a showing that 1) a problem exists; 2) the proposed language reasonably solves the problem without creating unintended adverse consequences; and 3) the benefit to the interests of the proponent outweighs any detriment to the interests of the opponent. It also is helpful for the proponent to show that language similar to that proposed appears in other relevant collective bargaining agreements.

BACKGROUND INFORMATION

The City of Pasco, Washington has a population of approximately 21,400 people. It is located in a Bureau of Census' "Small Metropolitan Statistical Area" (SMSA) (regionally known as the "Tri-Cities) because it lies adjacent to Richland, Washington (population 34,100) and Kennewick, Washington (population 45,100). The Tri-Cities are situated in Eastern Washington, well over 50 miles from any other MSA. The Hanford reservation and organizations associated with it are the economic backbone of the Tri-Cities. According to the *Washington State Labor Area Summary* for the Tri-Cities, a newsletter published by the Washington State Employment Security Department, 1988 was the low point in the Tri-Cities' economy due to nuclear reactor shutdowns. *Id.*, at 21 (December, 1993). In the past four years, however, population has sharply increased. The newsletter describes a "new record" of local employment "due to the fevered pace of employment growth at the Hanford Nuclear Reservation for environmental restoration and waste management purposes." *Id.*, at 22 (December, 1993). The May, 1993 edition, at 22, described the increase in (mostly seasonal) farm employment as even "more spectacular" than the non-farm sector. "Tri-Cities housing values increase faster this year than anywhere else in the United States," *Id.* Three years ago, the median home price in bi-county region was \$61,000. For the third quarter of 1993, the figure was \$102,900. *Id.*

The City of Pasco is the least affluent of the Tri-Cities when measured by median family income or per capita assessed valuation. (Richland's median family income is 113% higher than Pasco's and Kennewick's median family income is 63% higher than Pasco's). Pasco also has the highest crime rate of the three cities. The Association presented evidence at hearing that Pasco's crime rate is both quantitatively and qualitatively similar to much larger urban areas. The City has succeeded in reducing its overall crime rate by 44% in the past five years.

However, despite this decrease, the number of certain violent crimes (rape and aggravated assault) has risen 33% and 27.7% respectively.

PROPOSALS, ARGUMENTS, DISCUSSION AND AWARD

I. ISSUE: WAGES

A. Proposals and Arguments:

1. *Association's Proposal and Argument:*

- a) The Association proposes an 11.1% wage increase for 1993, the contract's first year, and an additional "CPI + 1%" increase for the contract's second year (1994), with a minimum of 3% and a maximum of 6%.
- b) As comparators, the Association proposes the following: Aberdeen, Mount Vernon, Kennewick, Lacey, Port Angeles, Richland, Walla Walla and Wenatchee.
- c) The Association maintains that its comparator proposal is appropriate because:
 1. Factors which relate to the size, function, wealth, and location of the comparator jurisdictions are most likely to produce comparators most "like" the jurisdiction at issue. Therefore, the Association's multi-factor approach, which took these factors into consideration, is more fair and rational than the City's dual-factor approach.
 2. The City's dual-factor approach is particularly inappropriate for Washington because sales tax revenue makes up a significant, yet highly variable source of revenue that differs from city to city. The City's nearly sole reliance on population and assessed value fails to satisfy the statutory requirement that comparisons be made to "like employers." While assessed valuation is probably the best measure of a city's tax base and, therefore, its ability to pay, relying on assessed valuation without considering retail sales distorts the data, since a retail sales tax generates a significant share of local income. The number of officers employed by a jurisdiction and the number of crimes per officer are factors that, when taken into consideration, result in more accurate comparisons of "like employers." The number of officers employed is both an alternative means of measuring the size of a city, and of

determining whether the city is a "like employer," because as departments grow in size, they generally also grow in sophistication and specialization.

3. Proximity to metropolitan areas should be a factor in selecting comparators because of the effect that such proximity has on labor markets and cost of living. The Association's list of comparators includes both isolated rural cities and cities more proximate to Seattle on Interstate 5. The City, on the other hand, includes only jurisdictions located more than 50 miles from a metropolitan area, except for the other two Tri-Cities.
 4. The Association's method of selecting jurisdictions that fall within half as much and twice as much on the demographic factors leads to a more balanced and fair list of comparators. This variance range was approved both in principle and in logic by Arbitrator Gaunt. The City's plus or minus thirty percent variance range is too narrow and leads to a skewed result.
 5. The City's use of Benton and Franklin County "labor markets" should be rejected by the Arbitrator. Arbitrators have repeatedly held that cities and counties should not be compared to each other.
 6. Selection of comparators should take into account expected trends, as well as current data. For instance, it should be noted that Pasco's 1993 sales tax revenue will be significantly higher than the sales tax reported for 1992, and Pasco's assessed valuation can be expected to climb at a rapid rate.
 7. The comparators should be adopted from an in-state list. Too many differences exist between Washington and other states to make for reasonable and fair comparators, including: different government structures; varying sources of revenue and revenue structures; different collective bargaining laws; different labor markets; different retirement systems; and differences in cost of living. There are more than enough jurisdictions in Washington that are adequately similar to Pasco to result in a fair pool of comparators. However, the pool should not be limited to Eastern Washington jurisdictions. Doing so results in too few comparators, since there are only a few cities that are Pasco's size in that region. Further, except for Kennewick and Richland, the other jurisdictions of like size and tax base in Eastern Washington are rural.
- d) The comparators and other statutory considerations support the Association's proposal.
1. Where general economic conditions allow, a jurisdiction's wages should be brought up to at least the average of the comparable jurisdictions. In 1990, Arbitrator Krebs did not award Pasco's officers a "catch-up" wage

increase because the City's financial condition was poor and because the economy was depressed. However, the Krebs award was a response to temporal conditions which have since passed. Since 1990, the City has gotten its financial house in order, and now has the resources to pay Pasco officers on par with comparable jurisdictions. There is no valid reason under the statutory criteria why the City should not be directed to do so. The entire Tri-City economy is in a near boom and, as the industrial center for the Tri-Cities, Pasco can anticipate future economic growth. Further, Pasco's assessed valuation is rapidly rising and will continue to rise, given the lag time inherent in the assessment process, and the retail sales activity is deemed by city officials to be "astounding." Therefore, the City is well situated to sustain the Association's wage proposal. Tri-City cost of living is growing at a faster rate than the national cost of living, so the CPI indexes fail to capture these cost of living increases.

2. Pasco officers are far behind the market, even when they qualify for incentive pay. Pasco officers are 10.3% behind at the adjusted top-step wage, and the average officer is 14.77% behind when the total compensation package is considered. The comparators indicate that, regardless of what classification, what education level, or how many years of service Pasco officers possess, they are always substantially behind the comparators' wages. There is no reason that Pasco officers should receive lower wages than those awarded in Aberdeen, Port Angeles, and Wenatchee, because these jurisdictions are all similar size and have a similar ability to pay, yet the officers in the comparator jurisdictions have a lower cost of living and a lighter workload.
3. An empirical relationship between compensation and workplace danger for police officers has been established in comparable jurisdictions. The marketplace generally compensates employees at a higher rate when their workload, danger, and stress are greater than those in similar positions elsewhere. The marketplace therefore responds to the need to retain employees and to maintain employee morale. Because Pasco officers face greater stress, a higher workload, and greater on-the-job danger than officers in comparable jurisdictions, if an adequate wage increase is not granted, Pasco will soon face a flood of officers leaving the department. This will even further aggravate the working conditions of those officers who remain.
4. The Association should not have to sacrifice any of its proposed wage increase in order to acquire its health insurance proposal, because the City's health care costs are so low that granting the Association's wage proposal would not alter total compensation.

2. Employer's Proposal and Argument:

- a) The City proposes a wage increase of 3.5% for the first year of the contract and 3.25% for the second year. These increases are equivalent to 90% of the CPI for the year preceding the increase.
- b) The City also proposes that the following jurisdictions be considered comparators to Pasco: Aberdeen, Washington; Oak Harbor, Washington; Pullman, Washington; Klamath Falls, Oregon; Calexico, California; and Delano, California
- c) Regarding the selection of comparators, the City argues that:
 - 1. Comparable jurisdictions should be selected from the west coast states of Washington, Oregon, and California in order to comply with RCW 41.56.430(c). Comparable jurisdictions either should be in the local labor market for Pasco or should be within thirty percent plus or minus of Pasco's population and assessed valuation.
 - 2. Qualifying jurisdictions due to their proximity to Pasco are Richland, Washington; Kennewick, Washington; Hermiston, Oregon; Pendleton, Oregon; Benton County Sheriff's Department; Franklin County Sheriff's Department; and Walla Walla, Washington.
 - 3. Qualifying jurisdictions based on population and assessed valuation are Aberdeen, Washington; Oak Harbor, Washington; Pullman, Washington; Klamath Falls, Oregon; Calexico, California; and Delano, California.
 - 4. The Arbitrator should reject the Association's comparators because the Association used a "result-oriented" methodology in compiling its list.
 - 5. The Association's use of "theoretical" comparison factors, in addition to population and assessed valuation, should be rejected.
 - 6. The Association's allowance for comparators within a range of fifty percent below to one hundred percent above Pasco's population and assessed valuation should also be rejected. This range toploads the Association's comparators list with cities with a tax base and corresponding ability to pay well above that of Pasco. Arbitrator Gaunt's decision is the only Washington arbitration decision adopting such a range absent a stipulation between the parties. All arbitrators since Arbitrator Gaunt's decision have rejected this type of range.
- d) The comparators, along with the other statutory criteria, support the City's proposed wage increase.
 - 1. The methodology for the City's wage increase is ninety percent of the CPI Index for West Coast cities, Class C for urban wage workers published in

October of the year preceding the effective date of the wage increase. This formula was adopted by both Arbitrator Krebs and by Arbitrator Levak for the Pasco firefighters, as well as for Pasco public employees represented by the International Union of Operating Engineers and the non-uniformed police department employees.

2. The proposed wage increase is reasonable. In 1992, when parties were actively negotiating, the top step Pasco police officer wage was number five out of the City's fourteen comparators. The City's proposed increase would keep the top step officer's wage 2.8% above the average of the comparators.
3. When Pasco's demographic factors are measured against either the City's comparators or the Association's comparators, Pasco is at the bottom end of the scale. The Association's assumption that a jurisdiction must "catch up" to at least the average of the comparators is false. Some jurisdiction must be first and another jurisdiction last. The jurisdictions' tax base and ability to pay are prime factors in determining that positioning. Pasco employees' wages across the board are well below those of employees in comparable positions in Richland and Kennewick. There is no reason that the police officers should be an exception.
4. The Association's argument that the City's wage comparison is inaccurate because it does not include the pension pick-up that may be paid by employers in Oregon and California should be dismissed. Pension pick-up is not an add-on to wages, but merely another form of benefit paid by an employer, similar to a vacation or medical premium benefit. The Association's desire to compare pension pick-ups in Oregon and California should be disregarded because the pension systems in Oregon, California, and Washington are not the same. The Association presented no evidence regarding the three states' pension systems that would justify the comparison sought by the Association.

B. Discussion and Findings: Comparability

1. *Selection of Comparables, In General:*

Comparability is not defined by statute. It is a relational concept that cannot be determined with mathematical precision. The interest arbitrator faces the problem of making "apples to apples" comparisons on the basis of imperfect choices and sometimes incomplete data. The arbitrator's task is to review data in evidence and devise a manageable list of employers that more closely resemble the important attributes of the subject jurisdiction than those jurisdictions not on the list.

In determining comparability, arbitrators give the greatest consideration to population, past practice, the parties' stipulations and geographic proximity or labor market.¹ The size of the tax base also is important. Similarity of positions ("like personnel") and similarity of employers ("like employers") are statutory requirements. RCW 41.56.460(c)(i).

The selection of appropriate comparators is a significant item of dispute in this case. The parties vigorously debate methodologies for selecting those comparators, and in addition, disagree on the use of the comparator analysis once a set of comparators is identified.

There are several basic approaches (or several permutations on a basic approach) to utilizing the various demographic factors (such as assessed valuation, retail sales, unemployment rates, median family income) that are frequently advanced by one party or

¹ In Kaplan, *Interest Arbitration and Factfinding, Some Principles and Perspectives*, U. of O. LERC Monograph Ser. No. 13, at 29 (1994) (hereafter cited as "Kaplan"), the author suggests that the two most important comparability considerations are population and geography. *Id.*, 31-33. He indicates that assessed valuation will be an important consideration in public safety units. *Id.*, 33. See also, Bomstein & Gosline, *Labor and Employment Arbitration*, §63.03[2] (Matt. Bender 1990).

the other. One approach is to perform a very simple screen based on population and geographic location to obtain a list of comparators. From that list, one determines where the subject jurisdiction's wages should be, relative to the average, based on a consideration of the remaining relevant demographic factors and ultimately, upon a consideration of the other statutory factors. The advantage of this approach is that it is simple and it tends to produce a sufficient number of comparators for a meaningful analysis. Also, it is highly subjective requiring the arbitrator to exercise sound judgment.

A variation on the above approach is to perform the initial screen, and then use selected demographic data as a justification for retaining or removing jurisdictions that appear less comparable than the others from the list. For example, jurisdictions with abnormally high or low assessed values might be removed from the list. Arbitrator Levak suggests removing jurisdictions that pay an abnormally high or low wage. See, *City of Walla Walla (Police Department)*, (Levak, 1986).

Another approach is to go beyond population and geography in the initial screen. The most frequently used third demographic variable is assessed valuation. If the potential comparator universe is large, one might even use a fourth demographic variable. This approach has the advantage of being more mathematical. It arguably removes a level of subjectivity from the analysis, although one still must exercise discretion in determining the screens to utilize. There are several disadvantages to this approach: 1) the underlying demographic data may be unavailable or inadequate; 2) the choice of demographic

As to the various demographic considerations advanced by the parties in this case, I find that they all have their place, although I might differ with one party or the other as to the method for using the data or the weight it should be assigned. I agree with the Association that arbitrators' past use or nonuse of such considerations may have more to do with what is presented to them than with underlying theoretical notions. I may vary my approach somewhat from case to case because of certain unusual circumstances of a jurisdiction. I make this last point because the parties agree that Pasco is unique, being a smaller, but higher-crime, lower-income, community located in a small, but relatively isolated metropolitan statistical area, whose currently heated metropolitan economy is causing local inflation and growth in assessed values and retail sales, but is also highly dependent upon a single employer-Hanford. No Washington or even west coast jurisdiction comes close to this.

2. *Selection of Pasco Comparators*

a) Geography

Of the specific demographic factors that are disputed in this case, geography is the most important. As I advised the parties at hearing, I do not favor out-of-state comparators, particularly California jurisdictions, when there are a sufficient number of comparators in-state. Although the interest arbitration statute permits an arbitrator to consider "west coast" jurisdictions, I believe the Legislature intended out-of-state comparisons for larger jurisdictions having an insufficient number of in-state comparators.³ Several arbitrators have expressed this view or some variation

³ Contrary to the City's view, the neutral Arbitrator does not believe the Legislature intended to require arbitrators to include out-of-state comparators in the final list of comparators, although arguably arbitrators must give consideration to any proposed out-of-state comparators before deciding to exclude them. The mandatory selection of out-of-state comparators would be an absurd construction of the statute. If it were required, then how many out-state-comparators would have to

characteristics used in the screen may be inappropriate;² and 3) the process may yield an inadequate number of labor market, in-state or regional comparators.

The approach utilized in any given case should be geared to the peculiarities of the case. The arbitrator's overall objective is to obtain a sufficient number of balanced comparators. There are, of course, no prescribed minimum or maximum number of comparators. I prefer a minimum of five to about a maximum of twelve. In addition, no demographic screen should be considered final or exclusive. For example, normally, I require all comparator jurisdictions considered to pass a population and geographical location screen. Here, however, Kennewick would fail a very generous population screen of 200%. Richland also is significantly larger than Pasco. Yet both parties appropriately agree that Richland and Kennewick are comparators (although the City would half-weight those jurisdictions), because of their very close proximity to Pasco.

As to the method for selecting comparators in this case, I first compiled a broad comparator list based solely on population, geography and stipulation. As will be explained more fully below, using location and tax base, I narrowed the Western Washington portion of that list so as to produce an Eastern Washington dominance. Finally, I reviewed Pasco's appropriate ranking on that list after viewing all appropriate factors. I found this approach gave me the best balance for purposes of analysis.

² Kaplan, *supra* note 1, opines that demographic characteristics used in the screen must have a demonstrable nexus to wages. If this correlation is not made, then compelling reasons should be offered "as to why such characteristics are more probative of demographic 'comparability' than indicators such as average annual rainfall, ... or potato chip consumption per capital." *Id.* at 34.

thereon.⁴ This is not merely a statement of parochial vision. Rather, it is recognition that the amount of demographic data presented at an arbitration hearing can not, as a practical matter, paint the whole picture. Differences in assessed valuation cycles, taxing rates and authority, public retirement systems, costs of living, regional economic health and trends, overall service systems, total revenue streams, the policing environment, population patterns and density, service areas and the structure of local government units make comparison more difficult. For example, the City proposes Calexico, California as a comparator, using a population and assessed valuation (plus or minus 30%) screen. While the City points to demographic information that shows some similarities with Pasco (i.e., both are part of small metropolitan statistical area that is distant from a larger metropolitan area, both have high crime rates, low median family income levels, similar assessed valuations, and a high Hispanic population), the City does not compare, among other things, local government revenue sources, nor does it suggest that the area in which Calexico is located is currently enjoying a booming economy. Finally, Calexico's location right on the Mexican border suggests an entirely different regional economy, as compared to the Tri-Cities'.⁵ As will be set forth below, I find there are a sufficient number of

be selected? Would one satisfy the statute or would more be necessary? What if little or no demographic information was presented to the arbitrator on proposed out-of-state comparators. It seems obvious that the Legislature sought to allow discretion as to the choices. The neutral Arbitrator did, in fact, consider out-of-state comparators in reaching a final list. However, after considering them, she determined to exclude them in this case.

- ⁴ E.g., *City of Bothell*, (Beck, 1983). In *City of Walla Walla (Police Department)*, (Levak, 1986) the arbitrator stated: "[T]he states of Oregon, California and Alaska cannot be summarily rejected simply because they are out of state. However, it is proper to give less weight or apply more stringent standards to out-of-state jurisdictions under the circumstances of a particular case in the interest of ensuring that "true" comparability, or as close as possible thereto, is achieved. *Id.*, at 22.
- ⁵ For the record, one should note that the Association proposed a "fall-back" list of partially out-of-state comparators that included Atwater, Seaside and Grover Beach, California and Keizer, Oregon, as well as the Washington cities of Richland, Kennewick, Lacey and Mount Vernon. The Association's preferred list, however, includes only Washington cities. My rejection of California and Oregon comparators includes the Association's out-of-state list also.

appropriate in-state comparators to Pasco, making resort to out-of-state comparators unnecessary.

I gave serious consideration to the use of Hermiston and Pendleton Oregon. I would not, however, entertain the notion that Pendleton, the larger of the two cities, is part of Pasco's "local labor market." It is 65 to 85 miles from Pasco and further from Pasco than is Walla Walla. Both Pendleton and Hermiston are smaller than Pasco, are not located in a MSA, and their economies are primarily agricultural. Hermiston, in fact, has less than half of Pasco's population, and therefore would not qualify for any reasonable population criterion. And, of course, both cities are in a different state. I could find no arbitration award involving a southeast Washington city that considered any nearby Oregon comparators.⁹ I prefer to use the approach taken by arbitrator Axon in *City of Pullman (Police Department)*, (Axon, 1992) where he did not use Moscow, Idaho as a comparator, but still took that city's pay into consideration under the "other factors" criterion of the statute.

I specifically note that in the last arbitration between these parties, Arbitrator Krebs selected a range of comparators that included both in-state and out-of-state comparators. In the interest of continuity and predictability, I would be inclined to utilize Arbitrator Krebs's list, despite my reservations about using out-of-state-comparators. However, neither party proposes that list in this proceeding. The City proposes, in part, a similar list, but makes modifications based on purported demographic changes. The City also adds a list of what it calls "local labor market"

⁹ In *City of Pendleton (Fire Department)*, (Levak, 1991), the arbitrator refused to consider Pasco, Richland, Kennewick or Walla Walla as comparators for Pendleton. Instead, he picked more distant Oregon cities, including Ashland and Astoria.

jurisdictions, so that the final City-proposed list bears little resemblance to the Krebs list. In Washington, the City would drop Wenatchee from the list and add Benton and Franklin Counties. In Oregon, the City would drop Grants Pass, but add Hermiston and Pendleton. In California, the City would drop Barstow and add Calexico. Given this deviation from the Krebs list, I find it useful to give only particular consideration to Arbitrator Krebs's Washington comparators.

In sum, I believe an appropriate balance of comparators can be achieved by using in-state comparators. The comparator list proposed by the Association, with the addition of Oak Harbor and Pullman, would achieve this balance. However, I share the City's concern about using too many Western Washington comparators (although I note that the City stipulated to the use of Aberdeen). Although Western Washington and the Tri-Cities currently share some important economic characteristics (e.g., healthy economy, housing price increases that exceed the CPI), this is not always the case. Therefore, I will limit my selection of Western Washington comparators to two. For reasons set forth below at subsection g), I have selected Aberdeen and Oak Harbor. I will select the remainder of the comparators from Eastern Washington.

b) The Scope of the Screen

There are two parts to this debate: 1) What should be the size of the screen (e.g., plus or minus 25%, 33%, 50% etc.)? 2) Should the range on the upside be adjusted so that the ratio between the largest possible demographic choice and the subject jurisdiction equals the ratio between the subject jurisdiction and the smallest possible demographic choice? For example, if one is to consider jurisdictions with a population (or assessed value) of half of Pasco's, then to preserve the symmetry, should the high

end of the range be twice Pasco's population (the Association's preferred approach) or should it be simply 50% more (the City's preferred approach)?

In my view, the screen utilized is the one needed to produce an adequate number of (usually in-state or local labor market) comparators. The objective, in addition to a sufficient number, is balance. One does not "fine tune" the screen for the sole purpose of adding or omitting a desirable or undesirable (in terms of pay) jurisdiction. In questionable cases, one should initially err on the side of inclusion. The final list should be balanced in terms of population, wealth, degree of rural isolation and the like. The best argument for using the Association-preferred approach (-50% to +100%) for the population screen is that in almost all cases, there are fewer larger jurisdictions from which to choose than there are smaller. Therefore, this approach is necessary to obtain a population balance. On the other hand, the debate is academic when the balance can be obtained without that approach.

In this case, the debate is academic, at least as to the population screen. All of the in-state comparators proposed by either party have a population within 25% of Pasco's. The only exceptions are Walla Walla (35% larger), Kennewick (111% larger) and Richland (59% larger), exceptions that are included by stipulation, and which are discussed further below.

c) Like Employers

The City proposes Benton and Franklin Counties as comparators since they are in the local labor market. While I have carefully considered this proposal and find it tempting because of the unique characteristics of the Tri-Cities area, I am rejecting it on the

grounds that those comparators do not meet the statutory requirement of "like employers." I note that other arbitrators have refused to compare city police departments with county sheriffs' departments. E.g., *City of Pullman (Police Department)*, (Axon, 1992)⁷, *Snohomish County (Sheriff's Department)*, (Krebs, 1987); *City of Olympia (Police Department)*, (DeGrasse, 1984); *City of Walla Walla (Police Department)*, (Levak, 1986); *Whatcom County (Sheriff's Department)*, (Snow, 1986). In fact, I am not specifically aware of any awards that have compared county and city law enforcement wages, at least over the objection of a party.

d) Assessed Valuation/Retail Sales

The parties debate the use of two measures of a Washington jurisdiction's economic health: assessed valuation and retail sales.

While both parties agree that assessed valuation is an appropriate demographic consideration, the City proposes (and the Association disputes) an assessed valuation screen of plus or minus 30%. I find that the problem with the City's screen is two-fold: First, its range is narrow, resulting in the questionable elimination of certain jurisdictions. I am particularly concerned that it eliminates Wenatchee, a jurisdiction that was on the comparator list approved by Arbitrator Alan Krebs. Second, it ignores the retail sales factor, discussed next.

While the City is correct that retail sales are not widely used as a demographic screen or significant demographic factor, this probably is because assessed valuation is

⁷ Arbitrator Axon stated, however, that he would consider the county wage under the "other factor" statutory criterion, a view to me that seems reasonable so long as the evidence shows that comparison is being made to substantially similar jobs (i.e., skills, duties, risks and responsibilities).

assumed to suffice as a measure of a jurisdiction's underlying tax base.⁸ It also may be considered a surrogate for other revenue sources. In Pasco, retail sales are such a significant source of revenue that on a per capita basis it eclipses that of most of the proposed comparators (even though most have higher per capita assessed valuations). In fact, Pasco's retail sales tax revenue substantially exceeds its property tax revenue. One cannot justifiably ignore sales tax revenue in this case. Therefore, I conclude that the Association's preference for considering both per capita assessed valuation and retail sales is a fair one.

e) Stipulations

The parties agree on the use of Walla Walla, Kennewick and Richland as comparators. The only serious concern with Walla Walla is that it is not in a metropolitan statistical area. Its population is about 34% higher than Pasco's. Richland and Kennewick are part of the local labor market and there is considerable precedent for each of these cities to be considered a comparator of the other two. *City of Pasco (Police Department)*, (Krebs, 1990); *City of Richland (Police Department)*, (Beck, 1987); *City of Pasco (Fire Department)*, (Levak, 1990). In the Levak award, the arbitrator half-weighted Kennewick and Richland, however, which the City urges me to do here. I agree half-weighting Kennewick (but not Richland) is appropriate because it has over twice the population as Pasco. Half-weighting, however, does not significantly affect the outcome, as will be shown below.

⁸ In Oregon, consideration of retail sales is not useful because Oregon does not have a retail sales tax.

f) Crime Rate

The parties also vigorously debate the use of crime rate or crimes per officer as a significant demographic factor. I do not agree with the City that this is a factor that arbitrators routinely disregard. It is not, however, an appropriate factor to use in an initial comparability screen. It is something to consider after the list of comparators has been identified to determine the extent to which the jurisdiction in question compares.⁹

g) Final List of Comparators

Before discussing my final list, I must point out that there are a number of reasonable variations on a final list of comparators in this case. In fact, I tested some variations for "results" to see whether there is some characteristic that was overlooked or improperly included that would produce distorted results. What I found was that any reasonable combination of proposed Washington city comparators produces an average wage that supports the Association's 11.1% proposal. Given the various combinations before me, all of which lend good support to the Association's proposal, it is not absolutely necessary for me to compile a "preferred" comparator list in order to decide this case. I recognize, however, that this exercise could be useful to the parties in later cases. Therefore, I will make a selection.

⁹ Kaplan, *supra* note 1, suggests that such demographic factors as "type of industry, retail sales, number of employees, poverty rates, and physical area" along with workload factors should be considered, if at all, when justifying deviations from the comparator average. They should not be considered when compiling a comparator list. The employer in *City of Walla Walla (Police Department)*, (Levak, 1986), at 14, essentially made this argument by maintaining that the number of officers, crime index, officers per 1,000 "are indicative of the degree to which a particular city is more or less comparable, but this is much different from factors which are appropriate in the selection of a particular city from the rest."

My final list of comparators for this case has some diverse characteristics, but is necessary to achieve for balance, considering the unique circumstances of Pasco.¹⁰ My list, of course, includes the stipulated jurisdictions of Aberdeen, Walla Walla Richland and Kennewick. I also will include Pullman, although I recognize the unique circumstances of that community. Finally, I will include Wenatchee. Despite its relatively high assessed valuation, it is an Eastern Washington city of similar size. There is considerable precedent for the inclusion of both Pullman and Wenatchee. Arbitrator Axon in the *City of Pullman* case, *supra*, selected Wenatchee, Pasco, Walla Walla, Richland and Kennewick as comparators for Pullman. Several years before that, Arbitrator Levak selected this same group of cities (including Pullman) as comparators for Walla Walla. Arbitrator Krebs used these cities in the prior arbitration between the parties in this case. Given this precedent, and given the many similar characteristics shared by those cities, those comparators are reasonable Eastern Washington choices in this case. In Western Washington, Aberdeen is selected by stipulation. I also am picking Oak Harbor because Oak Harbor is closer than the Association's other proposed comparables on per capita assessed valuation. It is low on per capita retail sales, but while the revenues from the retail sales tax can be significant for some jurisdictions, including in Pasco, the absence of a high sales figure may have more to do with the non-retail nature of the community than with an inherent poor financial condition. Oak Harbor is just outside the Seattle metropolitan area, but is close enough to enjoy some of its economic benefits. Rejecting Port Angeles and Mount Vernon, two of the Association's other three Western Washington comparators, was a difficult decision because their inclusion, in this case, would be

¹⁰ In compiling this list, I considered only jurisdictions that were proposed as a comparator by one party or the other.

beneficial to the City. However, on a "wage-blind" basis, I have decided not to include them because I believe the regional balance should favor Eastern Washington.¹¹

My final list of comparators is, therefore, as follows:

Aberdeen
Kennewick
Oak Harbor
Pullman
Richland
Walla Walla
Wenatchee

The average top step base wage of these comparators is 12.11% ahead of Pasco's. If Kennewick is half-weighted, Pasco is 11.7% behind the average.¹² (The average of only the Eastern Washington cities is 112% of Pasco; the average of the comparators I have selected here, with the Association-proffered comparators of Port Angeles and Mount Vernon added, is \$3050, or 110.3% of Pasco).

¹¹ Lacey, which is part of the Olympia-Seattle-Everett corridor is not appropriate as a comparator because of this location. Also, its per capita assessed valuation is 188% of Pasco's. Mount Vernon, located along I-5, is close to the above-described corridor, and has a per capita assessed valuation that is 201% of Pasco's. Port Angeles, which would be my next choice for inclusion, lies a distance (172 miles from Everett) away from the Seattle metropolitan area. I preferred a choice that was closer to the Seattle PMSA, but not in it. Oak Harbor met that criterion. Port Angeles' per capita assessed valuation is 189% of Pasco's. Retail sales, on a per capita basis, for Lacey, Mount Vernon and Port Angeles are within a -20% of Pasco's, which is reasonably close. Oak Harbor's retail sales are only 38% of Pasco's, but assessed valuation is 147% of Pasco's, which tends to balance out.

¹² The parties' expired Collective Bargaining Agreement contains five steps. The labor agreements of the comparators are structured more or less similarly. The parties agree that the appropriate "benchmark" classification for purposes of comparison is top step base wage.

Of the jurisdictions on this list, I find Walla Walla to be the "most comparable" based on the various demographic data provided at hearing. It is in the Tri-Cities' region, (only about 45 miles away), and it enjoys a somewhat diversified economy. Its 38-person police force is nearly the same size as Pasco's and its per capita assessed valuation is 98% of Pasco's, which is very close. Its population is 35% larger than Pasco's, which is well within a range of reason. And, like Pasco, it has the misfortune of a relatively high crime rate. Its most significant "negative" is the fact that it stands alone. It is not part of a metropolitan statistical area and the Hanford reservation does not have the economic impact on Walla Walla as it does on Pasco. It is, however, situated only 45 miles from the Tri-Cities. Its 1993 top step base police officer wage was 9.3% higher than Pasco's 1992 wage.¹³

C. Discussion and Findings: Other Statutory Considerations

1. *Total Compensation*

The interest arbitration statute directs the arbitrator to go beyond the base hourly wage. There are both direct and indirect variables in a compensation package that paint the true picture of compensation. The problem for an arbitrator, however, is determining 1) what variables most appropriately apply to the bargaining unit as a whole and 2) how to make wage premium and benefit comparisons among comparable bargaining units. As to the latter, wage premium and benefit packages have numerous variations, making comparison difficult.

¹³ One also should note, when comparing Walla Walla's police wage with Pasco's, that Walla Walla has higher compensation in the categories of holiday and vacation pay, court time minimum, training pay, graveyard shift differential and standby pay.

Since I have already determined that the base wage comparison between Pasco and its comparators supports the Association's position, my next step is to determine whether there are benefits available to Pasco officers that are not available to its comparators that would place Pasco's status quo in a better position relative to its comparators.

After reviewing the evidence of "total compensation," I find that Pasco's lag behind the average of comparators is significantly greater, and not less, on a total compensation basis than it is on a base wage basis. Looking at the number of vacation days, holidays and resulting total hours worked, along with benefits and various specialty or premium pays, Pasco tends to lag in all areas except that its educational/longevity premium is fairly competitive. (See discussion under Issue 2, below).

2. *Ability to Pay/Fiscal Considerations*

Next to comparability, the City's financial condition is the most important consideration in this case. The City portrays itself as a poor community surrounded by two relatively affluent cities. While its hard times of a few years ago have passed, the City maintains it is not enjoying the surge in prosperity that Richland and Kennewick are experiencing, and any unexpected increases in revenues are probably only temporary. It also maintains it must prudently use what revenue it has to develop the infrastructure needed to promote the long-term economic health of the City. The Association, while conceding that Richland and Kennewick are more prosperous, maintains that Pasco is, nevertheless, riding on the coattails of that prosperity. In fact, the City has experienced such a sharp and unanticipated growth in revenues that it can well afford the Association's proposal.

Part of an ability to pay analysis pertains to that consideration as a stand-alone criterion. Another part, however, relates to comparability. That is, financial strength or weakness, particularly to the extent one is looking at the community generally, is a relative matter, and therefore, must be viewed against the communities comparators.

On a comparative basis, Pasco is clearly the "poor sister" of the Tri-Cities. It also lags its comparators on the basis of either assessed valuation or median family income, and often both. On the other hand, Pasco has the industrial base for the Tri-Cities, and, importantly for City coffers, has a large number of automobile dealerships. At hearing, its relatively large (and growing) income from retail sales tax was attributed to strong vehicle sales. Pasco is also experiencing a Hanford-induced economic boom. While not benefiting to the same extent as Richland and Kennewick, its benefits, in terms of employment, retail sales, assessed valuations and other measures, have been substantial, and the trend is upward. For example, retail sales within Pasco were \$258.5 million in 1987. The 1993 annualized retail sales figure for the Pasco was about \$396 million, which is a 53% increase over 1987. The City's retail sales tax revenue would have increased by the same ratio. The City's beginning fund balance was \$318,000 in 1988. By 1992, its budgeted beginning fund balance was \$1,245,000, a nearly four-fold increase. The Franklin County Assessor anticipates assessed values rising by 15% in 1995.¹⁴ (Pasco, but not Richland or Kennewick, is in Franklin County). And, the City has enjoyed substantial unanticipated revenues of late.

¹⁴ I note, however, as pointed out by the City, that Pasco's current assessed values are only now returning to the level the City enjoyed in the early 1980's.

In sum, I find that the City clearly has the ability to pay a wage increase up to and including the amount of the Association's proposal. I have considered whether a downturn in the region's economy would allow it to continue to absorb this increase, and while I recognize the risks, I believe that the Association's interest in a fair and competitive wage is paramount here. I have particularly in mind the fact that Arbitrator Krebs did not award the Association a substantial increase in his 1990 award because the region (and the City's coffers) were in an economic slump. The timing was not appropriate. Conditions have changed markedly since then, making the timing now very appropriate.

3. *Cost of Living*

There are three aspects to the cost of living consideration: 1) whether the increase in wages over time have kept pace with (or outpaced) changes in the cost of living; 2) how the cost of living in the subject jurisdiction compares to its comparators; and 3) the appropriate measure of cost of living for computing any cost of living increases.

As to the first inquiry, the Association presented evidence that the bargaining unit's wages, since 1988, has lost significant ground relative to cost of living increases.

The subject of comparable cost of living is difficult because of the absence of reliable data. The Consumer Price Index published by the Bureau of Labor Statistics does not compare the cost of living in various geographic areas. Instead, it measures changes in the cost of living in metropolitan areas, regions of the U.S., and nationally. The Association presented the U.S. Chamber of Commerce's ACCRA index as evidence of the relatively high cost of living in the Tri-Cities. That index shows that the Tri-Cities' cost of living is second in the state, ranking only behind the Seattle PMSA. While keeping in mind

concerns about the ACCRA index's reliability, I find the information fairly credible based on the independently produced information concerning the rapid increase in housing prices in the Tri-Cities, as previously cited.

As to the cost of living measure for this bargaining unit, the parties agree that it should be the CPI-W (West Coast-C). The City, however, proposes that the 1994 cost-of-living increase be reduced by 10%. The Association argues that it should be increased by 1%. I see no reason to do either. Arbitrator Krebs and Levak awarded a 90% increase in City of Pasco cases because, at the time, the region was economically depressed and actual cost of living increases were less than many cities in the CPI index, particularly those in California. That situation has now changed. While local cost of living figures are not considered particularly reliable, the evidence is that, if anything, Pasco's current cost of living is higher than the CPI-W west coast average, primarily because of rapidly rising housing prices. As to cost of living increases, however, I prefer to keep the matter simple by awarding a second-year cost of living increase equal to the CPI.

4. *Other Considerations*

Evidence pertaining to "internal equity" is only relevant to the subject jurisdiction's ability to pay. I find that there is ample evidence that the City has the ability to pay the Association's proposal. Therefore, I will not consider the City's internal equity argument further. I found the evidence as to turnover to be inconclusive.

As previously set forth, Pasco's wage lag relative to its comparators is 11.7%. I have not as yet addressed the question of whether Pasco wage should be the average of its comparators or whether it should be above or below that average. It is at this point that

the Arbitrator must determine what increase is within a range of reasonableness relative to the average, considering the subject jurisdiction's ability to pay and other factors identified previously in this discussion. In this case, the Association's proposed 11.1% increase will produce the following 1993 wage ranking for officers with five years of service (bold-face type).¹⁵ (For purposes of discussion, this analysis assumes the entire 11.1% is implemented the first day of the contract):

	<i>Top Step Base Wage</i>	<i>W/ 5 yr. Longevity</i>	<i>W/ 10 yr. Longevity</i>
Kennewick	\$3247	\$3247	\$3247
Wenatchee	\$3207	\$3239	\$3271
Richland	\$3236	\$3236	\$3256
Aberdeen	\$3227	\$3227	\$3227
Average*	\$3089	\$3105	\$3124
Pasco	\$3072	\$3072	\$3072
Oak Harbor	\$2983	\$3043	\$3102
Walla Walla	\$2935	\$2952	\$2960
Pullman	\$2864	\$2864	\$2864

* Average excludes Pasco and weights Kennewick at one half.

Given the problematic economic conditions in Pasco, as well as other considerations identified previously, such as the higher assessed valuations of the higher-ranking comparators and the significantly lower pay in neighboring Oregon jurisdictions, I conclude that a somewhat below-average ranking is appropriate. However, considering Pasco's crime rate and its current economic climate, this ranking should not be any lower. Because of Pasco's metropolitan location and also because of historical rankings,¹⁶ Pasco

¹⁵ I believe that compensation is most appropriately measured after factoring in all benefits enjoyed by either all of the bargaining unit or by those bargaining unit members whose status is similar to a substantial number of bargaining unit members in the subject jurisdiction. In this case, because the parties agree that the appropriate benchmark is top step, factoring in the five and ten-year longevity premiums paid by some comparable jurisdictions is, therefore, more appropriate than a simple consideration of base wage.

¹⁶ In 1989, the top step base wage for Walla Walla was 96.4% of Pasco's. According to the Association's evidence, this wage differential steadily narrowed over the intervening years until Walla Walla's base wage exceeded Pasco's. With an 11.1% increase for Pasco, the ratio will be nearly maintained, with the top step base wage for Walla Walla being 95.5% of Pasco's. Similarly, Pullman's 1988 wage was 91.4% of Pasco's. With Pasco's 11.1% increase, the ratio will be 93.3%.

appropriately ranks higher than Walla Walla and Pullman. When longevity pay is factored in, Pasco and Oak Harbor pay nearly the same.

D. Award

I conclude that the Association's 11.1% proposal is fair and reasonable, but, because it is a sizable amount, I will order it phased in over the first three quarters of the Collective Bargaining Agreement (which I specifically note is of as much detriment to the employees as it is an advantage to the City). Four percent will be effective as of January 1, 1993. An additional 4% will take effect on July 1, 1993. The remaining 3.1% will take effect on January 1, 1994. These amounts will not be compounded. This increase is in addition to the cost of living increase I am awarding for the second year of the contract. Effective January 1, 1994, bargaining unit members will receive a cost of living adjustment that is equal to the pertinent change in the CPI-W (West Coast-C Index) for the year ending October, 1993, with a floor of 3% and a ceiling of 6%.

II. ISSUE: EDUCATIONAL/LONGEVITY INCENTIVE (ARTICLE XVIII)

A. Proposals and Arguments:

1. Association's Proposal and Argument:

The Association proposes to increase the Article XVIII premium for degree attainment/longevity by adding a new level of premiums for officers with 16 or more years' longevity. An employee with 16 or more years and an AA (AS) degree would receive a 5%

per month wage premium. An employee with 16 or more years and a BA (or BS) degree would receive a 10% per month premium. The Association would eliminate the special categories for Sergeants and Corporals and for Evidence Technicians.

The Association contends that its proposal on professional development is supported by comparators. Pasco sergeants and corporals receive a lesser differential than that awarded in comparable jurisdictions, which consequently pushes the Pasco officers even further behind in the market. While redressing the education schedule will not overcome that inequity, it will at least remove one factor that pushes Pasco officers even further behind the market.

2. *Employer's Proposal and Argument:*

The Employer would retain the existing contract language. In support of the current language, the City argues that current contract language includes a Career Development Plan, which serves both as an incentive for officers to continue their education, and to provide a monetary award for those officers with two and four-year degrees. This current language should remain unchanged. In 1990, Arbitrator Krebs changed the fixed dollar amounts to percentage figures. Contrary to Krebs' expectations, the Association has continually sought an upward adjustment of the percentage figures. The Association presented no substantial evidence to show that a raise in the percentage figures is justified. The current percentages are in step with comparable jurisdictions. Eight of the thirteen comparators don't pay any sort of straight longevity, and only two jurisdictions pay both an education incentive and a straight longevity.

B. Discussion, Findings and Award:

I approach proposals to increase premium and incentive pay cautiously. I am concerned that such proposals would substitute the arbitrator's judgment for management's as to which skills or work management should place a premium. Second, the cost to the employer is not easily measured and can be easily overlooked in future negotiations, when the focus shifts back to base wages. As a consequence, I award such proposals only when they rest upon clear and strong comparator support.

Here, the Association's proposal lacks strong comparator support. In fact, viewed as an educational incentive premium, it goes beyond what is offered by all of its comparators. I realize that the proposal, which is based on a current contractual scheme, is a combination

longevity/educational premium, making comparison difficult. However, even with comparator educational and longevity premiums added together, the proposal goes beyond that which is offered by the City's comparators, (Oak Harbor is an exception; it pays a generous longevity premium and educational incentive). I note that Arbitrator Krebs rejected a similar proposal in the prior arbitration between these parties on the grounds it was not supported by an examination of comparators. I make the same finding. Accordingly, I will not award the Association proposal.

III. ISSUE: OVERTIME (ARTICLE VIII, SECTIONS 2 AND 3)

A. Proposals and Arguments:

1. *Association's Proposal and Argument:*

The Association proposes to amend Article VIII, Section 2 by:

- a) increasing the three hour call-back minimum to four hours (which is paid the overtime rate);
- b) providing that time worked as a shift extension will be paid at the overtime rate for the actual time worked;
- c) deleting all existing language pertaining to court time-induced overtime, with the effect that court time would be paid the call-back minimum or the shift extension overtime rate, whichever is applicable;
- d) deleting language requiring straight-time pay, minimum two hours, for in-service training outside of the scheduled shift, with the result that in-service training would be paid the overtime rate;
- e) providing that straight-time pay would be given for travel time to and from classes. (The expired contract simply states that overtime will not be paid for travel time); and
- f) adding language that employees could opt to receive their overtime pay in cash or in compensatory time (maximum accumulation of 160 hours), and that

compensatory time off will be scheduled at the convenience of the employee and the Employer.

To support its proposals, the Association contends:

1. Its proposal to increase callback time from a minimum of three hours to four hours is supported by comparability, fairness, and law. Callback produces a great degree of disruption in officers' lives. Therefore, interruption to the officers' days off cannot be measured just by the amount of time they actually spend working when called back. A single half-hour callback can disrupt an entire day off.
2. While it is true that most of the comparators do not have a four-hour callback minimum, the proposed increase is justified due to Pasco's enormous crime problem and due to the fact that Pasco officers are the lowest paid police force of all cities in Washington with a population of more than 15,000.
3. The Association's second proposal related to callback would simplify the existing contract language. The current language is complicated and wasteful. For example, if an officer is called back and spends less than one hour in court, the officer receives two hours of overtime pay. However, if the actual time spent in court is more than one hour, the officer receives three hours overtime pay. Therefore, officers believe that they must spend at least one hour in court each time they are called back in order to be properly compensated for the intrusion into their personal time. Another example is the fact that officers who spend over three hours in court are compensated for their actual time only so long as they are actually in the courtroom or the public safety building prior to giving testimony. This clause produces the ridiculous result of prohibiting an officer from going across the street to have lunch while a trial is in recess, because that time would not be compensable. No similar provisions are found in any of the comparable jurisdictions, and no rational justification exists for this type of restriction. The Association's proposal remedies all these problems with a single sentence, by drawing a distinction between callback time that is before or after a shift, and callback which is beyond a regular shift or on a day off.
4. The Association has proposed an amendment dealing with training time because many of the current provisions do not comply with the Fair Labor Standards Act. Current language states that in-service training that occurs outside of a regular shift shall be paid at an employee's regular rate of pay. This language should be stricken because it does not compensate officers for the exhaustion and risk involved. For instance, if an officer's shift runs from 11:00 p.m. until morning, and the officer is then required to attend in-service training all day until 5:00 p.m., and then must begin his shift again at 11:00 p.m. that same evening, the officer will be physically and mentally exhausted.
5. Paying officers at their regular rate for in-service training is also in violation of the Fair Labor Standards Act, which requires employees be paid time and one-half for all hours worked in excess of forty hours in any workweek. If in-service training constitutes hours worked, then that time must be added into the total hours worked in determining overtime compensation.

A) It is well-settled under the Fair Labor Standards Act that training time is compensable hours worked unless four criteria are met: 1) attendance occurs outside the employee's regular shift; 2) attendance is not required by the employer; 3) the employee does no productive work while attending training; and 4) the training is not directly related to the employee's job.

B) Because attendance at in-training is mandatory for Pasco officers and because the training is clearly related to the officers' present jobs, the employees should be paid overtime for time spent at in-service training if that training expands an employee's work week to more than forty hours.

C) The Association proposes compensating employees at their regular rate of pay for time spent traveling to training classes. The Association's proposal would solve the problem of varying interpretations by the City for when an employee will be compensated for travel time to in-service training. The Association's proposal is a compromise between the status quo and the maximum compensation arguably allowed by the Fair Labor Standards Act. A strong argument could be made that the Fair Labor Standards Act requires overtime compensation for travel time if the time spent traveling pushes the employee's work week past forty hours.

6. The Arbitrator should reject the City's proposal concerning compensatory time. The City is attempting to gain sole discretion over the use of compensatory time, and produced no evidence showing that the current compensatory time system needs adjusting. Compensatory time is permitted as a benefit to the City, by allowing the City to reduce the costs of overtime by trading time off instead of paying cash. In exchange, the Fair Labor Standards Act allows the employee to select, within certain limits, when to utilize the accrued time. The current standard strikes a fair balance between the needs of the City and the employee, and has worked well in the past for both parties.
7. The Arbitrator should adopt the Association's proposed increase of the accrual cap from 80 hours to 160 hours. The increased cap would allow the City to save more money on overtime and it would reduce the occasions when employees must take compensatory time off at inconvenient times to avoid going over the current cap. In addition, the Association's proposal protects the City, in that it considers staffing needs when determining when compensatory time off is appropriate.

2. *Employer's Proposal and Argument:*

The Employer proposes to retain most of the existing overtime language of Article XIII. However, the Employer proposes to add language to Section 3.a. stating that: "Travel time to and from classes shall not be claimed as compensable time unless required by the FLSA. To the extent reasonably practical, the employer will continue to attempt to adjust an employee's work shift to cover the time reasonably required for travel when the training is more than fifty (50) miles from the City of Pasco." The Employer also would add a new Section 4 that permits compensatory time in lieu of overtime pursuant to the City's Administrative Order No. 43, dated September 2, 1986.

In support of its proposal, and in opposition to the Association's, the City argues that:

1. In 1990, Arbitrator Krebs rejected the Association's proposal to raise two and three-hour callback minimums to four hours, finding that there was nothing inherently unfair about two and three-hour minimums. Out of fourteen comparators, only Richland provides a four-hour minimum at the overtime rate.
2. The Arbitrator should reject the Association's proposed elimination of the overtime exception for in-service training. This provision was negotiated due to a mutual desire of both the City and the Association to provide additional training to police officers and in order to insure officers' proficiency and job safety. The Association's proposal would impose a hardship on the City's training budget.
3. Section 3(a) - travel time overtime: The Arbitrator should reject the Association's proposal to require the City to pay employees for all time spent traveling to and from in-service training. Arbitrators are usually unwilling to grant compensation for travel time in the absence of a specific agreement between the parties to that effect. None of the comparators supplied by either party provide for compensated travel time. The City has made a special effort to adjust employees' schedules so that their travel time to out-of-town in-service training occurs during their regular work shift. The City is willing to add language to this provision to formally recognize this practice.
4. Compensatory time: Past contract language has permitted police department employees to accrue and utilize up to eighty hours of compensatory time. The City is willing to continue this practice and will reference Administrative Order No. 43 in the parties' agreement. In the alternative, the City is willing to place the pertinent language from Administrative Order No. 43 directly into the parties' agreement.
5. The Arbitrator should reject the Association's proposal to allow accrual of up to 160 hours of compensatory time and to give the employees complete control over whether they receive overtime rate pay or compensatory time accrual for overtime work. Employee leaves complicate scheduling and often necessitate calling back other officers at overtime rates of pay. The Association's proposal would allow the employees to manipulate scheduling to their own individual needs, rather than the department's needs, and would cause an increase in departmental overtime expenditures. The current accrual limit of eighty hours is similar to the comparators: seven of thirteen comparators require both employer and employee to agree on compensatory time election. The Association did not meet its burden of proof by merely introducing the testimony of one officer who desires additional compensatory time accrual. The Association is seeking additional accrual so that the employees may use compensatory time as an additional bank account, from which to obtain payment at a later date after pay increases have occurred. Only one officer has already accrued eighty hours of compensatory time, while twenty-one officers have below twenty hours of accrued time.

B. Discussion, Findings and Award:

1. Call back minimum (including court-induced overtime). Arbitrator Krebs, in the prior arbitration between these parties, rejected the Association's proposal to increase the two and three hour call-back minimum on the grounds that there was nothing inherently unfair about the contract as written and because the proposal was not supported by the City's comparators. I will deny this proposal for the same reasons. While the existing language may appear cumbersome, it was negotiated and agreed to willingly by the parties. There is no reason for the Arbitrator to undo this accord.

2. In-service training outside of the scheduled shift. The question here is a close one because Association's evidence indicates that the Association's proposal has some support (though not universal support) from its comparators. But, the current language was reached by a mutual agreement of the parties and I am not inclined to change it. To the extent that an existing practice or existing contract language violates employee rights under the Fair Labor Standards Act (FLSA), the FLSA prevails, and the employees may pursue their remedy with the appropriate state or federal agency.

3. Pay for travel time to training. As cited by the City, Arbitrator Krebs found:

There is insufficient basis for the Association's request that all travel time to and from in-service training should be considered as time worked. Such a request is contrary to language which has previously been negotiated by the parties. The Association's request is unsupported by reference to the comparable cities or by other evidence. No change in contract language shall be ordered in this regard.

The parties have previously agreed that travel time to and from training classes cannot be counted as overtime. Even in the absence of such language, Arbitrators have usually been unwilling to grant compensation for travel time in the absence of a specific agreement to that effect. (Citations omitted).

Again, the question is a close one because of comparator support. On the other hand, I agree with Arbitrator Krebs that provisions that the parties have specifically negotiated should not be easily undone. Although the Association argues that the existing Contract language is a violation of the FLSA, again, the Association can pursue its legal remedies if it is. Therefore, I will deny the Association's proposal.

The City proposes language that would memorialize the current practice of having an employee's work shift adjusted to cover the time reasonably required for travel when the training is more than 50 miles from Pasco. I find this to be a reasonable proposal, and I will award it.

The City also proposes language stating that: "Travel time to and from classes shall not be claimed as compensable time unless required by the FLSA." While this seems fair in intent, I would quibble with the word "claimed," which an employee could find inhibiting because it might be interpreted as putting the onus on the employee to know whether the travel time is FLSA compensable. Therefore, I will change the word "claimed" to "paid," so that the language reads: "Travel time to and from classes shall not be paid as compensable time unless required by the FLSA." With this modification, the City's language change on travel time is awarded.

4. Compensatory time. As the City points out, the Collective Bargaining Agreement does not spell out the rules on the accrual and use of compensatory time. The City has been following rules and procedures set out in an Administrative Order issued unilaterally by the City Manager a number of years ago. The City proposes to memorialize that practice in the Collective Bargaining Agreement. That policy basically leaves the accrual

and taking of compensatory time to the supervisor's discretion, which a maximum of 80 accrued hours. The Association's proposal would give employees the choice of whether to take paid overtime or compensatory time and would allow them to accrue up to 165 hours of compensatory time.

The City particularly opposes the lifting of the ceiling, because compensatory time creates a significant liability for the City. Often, when an officer takes compensatory time off, another officer needs to be scheduled and may work overtime. If that officer takes his overtime in compensatory time off, another officer may need to work overtime and so forth in an upward spiral. The City also is concerned that the compensatory time accrued will be cashed in later at a higher pay rate. It compares compensatory time to a credit card. It has no present cost to the City, but creates a significant liability that has to be paid off sometime.

I agree with the City that compensatory time off can ultimately be an expensive option for management. Its use should be managed carefully. I do not find support for the Association's proposal in the City's comparators. Nor has the Association made a showing of other necessity. Therefore, I will deny its proposal.

As to the City's proposal, while I believe that memorializing a current practice in the contract is a good idea, there are a few parts of the Administrative Order that I find inimical to the interests of employees. For example, it gives Department Heads the unrestricted discretion to lower the compensatory time accrual limit "for appropriate management purposes."

Although the parties are engaged in a fierce debate over compensatory time, in fact there have not been problems. One potential grievance was resolved early. Accordingly, I find no reason to change the status quo, which seems to be working well enough. I will not award either party's proposal.

IV. ISSUE: HEALTH INSURANCE (ARTICLE X)

A. Proposals and Arguments:

1. *Association's Proposal and Argument:*

The Association proposes to delete the \$302.50 cap on the Employer's contribution to the medical and dental insurance premium. In its place, the Association proposes language to require the Employer to pay 100% of the monthly premium. The Association also proposes improvements to the vision care (from a \$200 maximum to full employee and dependent coverage) and life insurance (from \$15,000 to \$25,000 coverage) packages.

The Association argues that the proposed changes are necessary because:

1. The City's method for setting its self-insurance rate is flawed. The information presented by the City revealed that its rate lumps the LEOFF II and LEOFF I officers together, despite the fact that statutory mandate guarantees LEOFF I officers a more extensive (and therefore a more expensive) health insurance plan. Further, the City also included LEOFF I retirees in its rate calculations.
2. The effect of the City's methodology is to require LEOFF II officers to subsidize the City's obligation toward LEOFF I retirees, because LEOFF II officers will never be eligible for LEOFF I benefits. Consequently, the City is imposing on LEOFF II officers the burden of sharing in a cost that the Legislature has mandated upon the City.
3. The Association met its burden in proving that the City's cap computation was improper in light of the City's self-insurance scheme. By using widely varied contributions and reserve standards, the City's rate is essentially whatever the City wants to say it is. The Association has no objection to the City's freedom to contrive such a rate, so long as the City pays for 100% of the cost of its fictional rate.
4. Neither internal equity nor comparability support the City's proposal of a cap. An overwhelming number of in-state comparables provide 100% health insurance coverage. The City provides its firefighters 100% coverage.

2. Employer's Proposal and Argument:

The Employer proposes to raise the medical and dental insurance cap to \$332.75, with 50-50 cost sharing between the Employer and each employee for amounts over \$332.75 and up to \$387.77 monthly. The Employer would pay 100% of any excess premiums above \$387.77 per month. The City would retain the right to maintain a \$100/\$300 deductible (\$25/\$75 deductible dental) and an 80%/20% co-pay. The City also proposes language permitting it to conform benefits to any state and federal legislative changes and allowing a reopener under certain conditions in the event of such changes.

Explaining its proposal, the City states:

1. By remaining the current language, the City would retain the right to maintain a self-insurance program or to select insurance carriers; maintain a medical deductible of \$100 per person and \$300 per family; maintain an 80/20% co-insurance applied to all medical and dental expenses; maintain a maximum \$25 dental deductible per person and \$75 per family; maintain LEOFF II Officers' eligibility for an annual maximum \$200 reimbursement for vision care; and maintain an employer-paid \$15,000 face value term life insurance plan.
2. As noted by Arbitrator Krebs, it is not unreasonable for employees to bear some risk in the event of rising health insurance costs. The Association has failed to present substantial evidence justifying its proposal for vision insurance improvements, elimination of the premium cap, an increase in life insurance benefits, and the prohibition of the City's self-insurance program or selection of insurance carriers.
3. The City's self-insurance program is modeled after a private insurance industry program. The City has maintained good industry practices and has contracted with a professional claims administrator and a local broker to help the City evaluate on an on-going basis its self-insurance program, including administration costs, in order to keep its premium rates down. The City's program has been successful, as illustrated by the lack of any rate increase over the past two and one-half years.
4. Because there are so many unknowns concerning the new state health care program, and because the parties will be initiating new negotiations later this year for a successor contract, the parties' current health care plan should be left alone at this time. The parties should deal with this matter when negotiating a successor agreement, when there will be more certainty as to the effect of the new state health care plan.

B. Discussion, Findings and Award:

My experience with other self-insured jurisdictions is that composite rates are based upon the entire risk pool, being the entire self-insured unit of government. Thus, all employees of a single employer are in the same risk pool and are assigned the same composite rate. In this case, the City has one composite rate for police officers, and one or more composite rates for

other employees. This strikes me as unusual. (However, the City presented evidence that it simply modeled its composite rate structure on that which was used by the private carrier from whom it formerly purchased insurance). On the other hand, what the Association seeks seems worse: It seeks two different composite rates for police employees alone: a LEOFF I rate and a LEOFF II rate. Despite the Association's expert's testimony, I am not convinced that this is an actuarially sound or accepted practice. The composite rate for police officers does not strike me as inherently unfair. It is a fairly low figure as such rates go, and the rate has not been increased for two-and-a-half years, which is a record many employers would envy.

I am troubled also by the remedy that the Association seeks. Instead of a remedy that would recalculate the composite rate, the Association seeks 100% coverage. Full coverage, however, is not the natural and logical consequence of an improper means of calculating the composite rate. While such a remedy would certainly get the City's attention, it would also put the City to a disadvantage that exceeds its transgression, if there is one. This is especially true given the fact that the rates have not exceeded the specified contractual cap, so that health insurance premiums continue to cost bargaining unit employees nothing.

As to the Association's proposals to improve vision insurance and life insurance, they were not supported by evidence and will not be awarded.

I find that the Employer's proposed increase to the insurance cap is reasonable and I will award it. The Employer's proposal permitting it to conform benefits to state and federal legislative changes and allowing a reopener in the event of such changes does not seem necessary. The Employer did not provide evidence of, nor have I seen, other labor agreements with such language, even though employers both state-wide and nation-wide

could be affected. Presumably, such legislation will make allowances as necessary for collective bargaining agreements.

V. ISSUE: SCOPE OF AGREEMENT (ARTICLE II, SECTIONS 2 AND 3)

A. Proposals and Arguments:

1. Association's Proposal and Argument:

Article II, Sections 2 and 3 of the expired Collective Bargaining Agreement contains a "zipper" or "entire agreement" clause that the Association seeks to amend as follows (the underlined language would be new; the stricken language deleted):

Section 2. The Agreement expressed herein in writing constitutes the entire agreement between the parties arrived at during negotiations ~~and no oral statement shall add to or supersede any of its provisions during contract years 1991 through 1992.~~ Provided, however, if the parties hereto have commenced negotiations for a new contract in accordance with statutory requirements and such negotiations are continuing at the termination date written above, the provisions of this Contract shall remain in full force and effect until the parties reach impasse in their negotiations or the effective date of a new contract, ~~whichever first occurs.~~ Nothing herein shall be construed to interfere with any person's ability to initiate a representation question or election with PERC.

Section 3. The parties acknowledge that each has had the unlimited right and opportunity to make proposals with respect to any matter being the proper subject for collective bargaining. The results of the exercise of that right are set forth in this Agreement. ~~Therefore, except as otherwise provided in this Agreement, each voluntarily and unqualifiedly agree to waive the right to oblige the other party to bargain with respect to any subject or matter not specifically referred to or covered by this Agreement.~~

In support of its proposal, the Association contends that it is necessitated by previous interpretation problems between the Association and the City.

2. Employer's Proposal and Argument:

The Employer proposes to retain the existing language of Sections 2 and 3. In support of the status quo, the Employer argues:

1. The Association's proposed deletion of language prohibiting oral statements from "adding to" or "superseding" provisions of the written agreement is contrary to law. RCW 41.56.030(4) requires parties to collective bargaining to "execute a written agreement." The Association's proposal would open the field to disputes over the content of the agreement. The Association has introduced no

substantial evidence supporting the need for the proposed change in contract language, and therefore has not met its burden of proof.

2. The language continuing the provision of the agreement through impasse should remain unchanged. By preserving the status quo during negotiations, even if negotiations continue beyond the agreement's termination, stable labor relations are promoted. The Association presented no substantial evidence to justify the removal of this language.
3. The existing language of Section 3 should be preserved because a zipper clause has continuously existed in the parties' collective bargaining agreements since at least 1984. Zipper clauses are found in comparable jurisdictions, including Richland, Delano, Kennewick, and Oak Harbor. The Association has not met its burden of proof concerning the need to change this contract provision.

B. Discussion, Findings and Award:

I have my doubts as to the efficacy of language such as that found in Article II, Sections 2 and

3. On the other hand, the parties agreed upon this language voluntarily and I am not inclined to change it absent a showing of need. (See also my criteria for evaluating proposed language changes set forth in the introductory section of this award). The Association has not made such a showing in this case. To the extent the City interprets its rights and obligations in a manner contrary to law, the Association may pursue its legal remedies. I note that Arbitrator Krebs rejected changes to this language in the prior interest arbitration between these parties.

I will do so also.

SUMMARY OF AWARD

I. WAGES

1993 wages for this bargaining unit will be increased by 11.1% as follows: Bargaining unit members will receive a four percent (4%) increase effective as of January 1, 1993. An additional four percent (4%) will take effect on July 1, 1993. The remaining three and one-tenths percent (3.1%) will take effect on January 1, 1994. These amounts will not be compounded. This increase is in addition to the cost of living increase I am awarding for the second year of the contract. Effective January 1, 1994, bargaining unit members will receive a cost of living adjustment that is equal to the pertinent change in the CPI-W (West Coast-C Index) for the year ending October, 1993, with a minimum increase of three percent (3%) and a maximum increase of six percent (6%).

I. Educational/Longevity Incentive (Article XVIII)

There will be no change to the contract. The Association's proposal is not awarded.

III. Overtime (Article VIII, Sections 2 and 3)

The Association's proposal is not awarded. The following (slightly modified) language proposed by the City will be added to the contract.

Travel time to and from classes shall not be paid as compensable time unless required by the FLSA.

To the extent reasonably practical, the employer will continue to attempt to adjust an employee's work shift to cover the time reasonably required for travel when the training is more than fifty (50) miles from the City of Pasco.

Otherwise, the language of the prior contract will remain unchanged.

IV. Issue: Health Insurance (Article X)

The Association's proposed changes to this article are not awarded

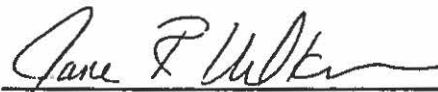
The Employer's proposal to raise the 1993-94 medical and dental insurance cap to \$332.75, with 50-50 cost sharing between the Employer and each employee for amounts between \$332.75 and \$387.77 monthly, and with the Employer paying 100% of any excess monthly premiums above \$387.77, is awarded.

The Article X language will otherwise remain unchanged.

V. Scope of Agreement (Article II)

The Association's proposed language changes are not awarded. This Article will remain as it was written in the parties' previous Collective Bargaining Agreement.

Dated: July 12, 1994



Jane R. Wilkinson
Neutral Arbitrator and
Chairperson

James W. Chase, Assistant Finance
Director, City of Pasco

Concurs on Issues: _____
and dissents on Issues: _____

Michael D. Aldridge, PPOA
Representative

Concurs on Issues: _____
and dissents on Issues: _____