BEFORE ARBITRATOR KENNETH J. LATSCH

In the Matter of the Interest Arbitration between:	)	
THE CITY OF BELLINGHAM	)	PERC Case No. 11718-I-95-250
and	)	
TEAMSTERS UNION, LOCAL 231	)	**INTEREST ARBITRATION OPINION AND AWARD**

Appearances:

Heller, Ehrman, White & McAuliffe, by Otto G. Klein, III, appeared for the City of Bellingham

Davies, Roberts and Reid, by Russell J. Reid, appeared for Teamsters Union, Local 231.

Procedural Background

The City of Bellingham (Employer) and Teamsters Union, Local 231 (Union) have a collective bargaining relationship involving a bargaining unit of non-supervisory, uniformed personnel of the Bellingham Police Department. The personnel are classified as either police officers or as police sergeants. The record indicates that the position of sergeant is a promotional position within the bargaining unit. At the time of this hearing, there were approximately 97 police officers and sergeants in the bargaining unit.

The parties entered into negotiations for a wage reopener for calendar year 1995, but were unable to reach agreement on a mutually satisfactory wage increase for bargaining unit personnel. By mutual request of the parties, Arbitrator Kenneth J. Latsch was selected to resolve the dispute concerning the 1995 wage reopener.

The parties waived the creation of an interest arbitration panel. A hearing was conducted before the Arbitrator on November 15, 1995, in Bellingham, Washington. The parties submitted post-hearing briefs.

Positions of the Parties

At the outset of interest arbitration proceedings, the parties' respective positions can be set forth as follows:

The Union:

> The Union argues that Whatcom County should not be used as a comparable jurisdiction in this interest arbitration case.
>
> The Union seeks a salary increase of 9% for all bargaining unit employees for calendar year 1995.

The Employer:

> The Employer contends that Whatcom County should be used as a comparable jurisdiction.
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> The Employer proposes a 3% salary increase for police officers and a 2% salary increase for police sergeants.

Relevant Statutory Provisions

The Washington State Legislature has declared that interest arbitration should be used to resolve impasses that may occur in collective bargaining negotiations involving public employers and uniformed personnel. RCW 41.56.430 states:

> **Uniformed personnel - Legislative directive.** 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 means of settling disputes.

The standards to be followed in interest arbitration proceedings are governed by the provisions of 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:
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> (a) The constitutional and statutory authority of the employer;
>
> (b) Stipulation of the parties;
>
> (c)(i) For employees listed in RCW 41.56.030(7)(a) and 41.56.495, comparisons 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.

As noted in the Employer's closing brief, interest arbitration must be viewed as a logical extension of the collective bargaining process, and cannot be used to advance unreasonable positions. In other words, interest arbitration cannot be viewed as a second opportunity to gain advantage or to advance unrealistic proposals. As Arbitrator Charles La Cugna stated:

> The arbiter must interpret an apply the legislative criteria in RCW 41.56.460. The arbitrator must not only interpret each guideline, but he must determine what weight he will give to each guideline in order to arrive at a "total package" because only the "total package" concept can measure the real effect of the arbitrator's decision. The task is not easy. He must attempt to fashion an acceptable and workable bargain, one that the parties would have struck by themselves as objective and disinterested neutrals. This point is crucial. Dispute settlement procedures that culminate in binding arbitration make it easy for each to bypass negotiations, mediation and fact-finding in the hope that an arbitrator might award to one party what it could not gain through the process of free and robust negotiations. The award must reflect the relative bargaining strength of the parties. The award cannot be a "compromise" much less "a splitting of the difference" because such an award would favor the party which advances extreme demands and takes an intransigent position. City of Kent (LaCugna, 1980).

Discussion and Analysis

Comparable Jurisdictions

The Employer and the Union both used the same methodology in selecting comparable jurisdictions. The parties limited their analysis to jurisdictions within Washington State. The parties first selected cities within 50% above and below Bellingham's population. The parties then refined the list of potential comparables by limiting their attention to cities within 50% above and below Bellingham's assessed valuation. This process led to the following list of mutually acceptable comparable jurisdictions:

- Auburn
- Olympia
- Kent
- Vancouver
- Kennewick
- Edmonds
- Renton
- Kirkland
- Lynnwood
- Yakima
- Redmond

The parties were not in complete agreement on the issue of comparability, however. The Employer desired to include Whatcom County as a comparable jurisdiction, but the Union argued that inclusion of Whatcom County was inappropriate for these proceedings. The City of Bellingham is located within Whatcom County, and as might be expected, there are a number of factors supporting each party's argument concerning the use of Whatcom County as a comparable jurisdiction. The County's status in these proceedings must be addressed before the underlying salary dispute can be analyzed.

The parties have presented compelling arguments for their respective positions. The Employer believes that Whatcom County must be included as a comparable jurisdiction

because it shares a common labor market with the City of Bellingham. The Employer notes that the Whatcom County Sheriff's Department and the City of Bellingham Police Department work together on a regular basis. The City of Bellingham provides "911" emergency dispatching for the entire county, while Whatcom County provides a county-wide criminal justice data base in which Bellingham Police Department records are kept. Whatcom County operates a correctional facility in which City prisoners are housed. The County provides specialized services such as marine patrol upon request from the City, and the record reflects that the City provides its canine team, SWAT team and hazardous materials team upon request from the County. In addition, the Employer presented credible evidence that the majority of job applicants for bargaining unit positions come from Whatcom County residents.

While acknowledging the close geographic proximity between the City of Bellingham and Whatcom County, the Union contends that the County is not an appropriate comparable jurisdiction. Noting that the parties have already stipulated to 11 comparable jurisdictions, the Union argues that the use of Whatcom County does not add anything meaningful to this proceeding. The Union further notes that the Employer stipulated to the other comparable jurisdictions, but argued that those located in King County should not be accorded the same weight as the non-King County jurisdictions.

The issue of comparing cities to counties has been a point of contention in many interest arbitration proceedings. In its closing brief, the Union presented the position of several arbitrators on the subject as stated by Arbitrator Jane Wilkinson in City of Pasco (1994):

> The City proposes Benton and Franklin Counties as comparators since they are in the local labor market. While I have carefully consideredthis 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" . . ..

It is interesting to note that the same issue arose in an interest arbitration case involving the Union and Whatcom County. In that case, the Union was actively seeking to have the

City of Bellingham used as a comparable jurisdiction. Arbitrator Carlton Snow ruled that the City shared significant similarities with the County Noting that the City and County shared a common labor market, Arbitrator Snow stated:

> Despite the fact that Bellingham is a "City", there are so many significant points of contact with the County that consideration must be given to the wage structure for law enforcement personnel in the City of Bellingham. Whatcom County (Snow, 1986).

The existence of a common labor market is very important to a full consideration of the wage proposals being advanced in this case. As noted by Arbitrator Janet Gaunt:

> Comparisons withing the local labor market are traditionally takne into consideration in collective bargaining. The reasons for this have been aptly decribe by UCLA Professor Irving Bernstein as follows:
>
> > [Local labor market] comparisons are preeminent in wage determination becasue all parties at interest derive benefit from them. To the worker, they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the union because they provide guidance to its officials on what must be insisted upon and a yardstick for measuring their bargaining skill. In the presence of internal factionalism or rival unionism, the power of comparisons is enhanced. The employer is drawn to them because they assure him that competitors will not gain a wage cost advantage and that he will be able ot recruit in the local labor market . . ..

The City of Bellingham and Whatcom County clearly share a common labor market. A large majority of applicants for work in the bargaing unit come from Whatcom County, and the record reflects that the city and the county share significant economic factors.

Apart from a common labor market, Whatcom County reasonably fits within the framework of comparability factors already agreed upon by the parties. As demonstrated in Employer Exhibit 9 (page 6), Whatcom County falls within the parameters of the criteria agreed upon by the parties to find comparable jurisdictions.

In addition, the use of Whatcom County as a comparable jurisdiction provides balance between the Snohomish-King County group of comparators and the rest of the comparable jurisdictions. The use of "metropolitan" comparators has been a conteniuous issue in interest arbitration proceedings, and the relative weight to be given to "metropolitan" jurisdictions has been debated on numerous occasions. It is important to select a list of comparators that truly reflects the nature of the specific jurisdiction where the interest arbitration proceeding arose.

Moreover, the situation presented here is different from the circumstances found by Arbitrator Wilkinson in City of Pasco, where there were two other cities in the same immediate geographic area from which comparisons could be made. There are no other cities nearby from which such comparisons can be made in this case.

Given the arguments presented here, it is appropriate to include Whatcom County as a comparable jurisdiction. There is no doubt that the City of Bellingham and Whatcom County share a common labor market, and that there is a significant degree of interchange and mutual cooperation between the two law enforcement agencies.
In addition, use of Whatcom County as a comparable jurisdiction is logical because it is the closest geographic comparator to the City of Bellingham, and more accurately reflects the economic realities of that particular area. While the other comparable jurisdictions will provide relevant information, none can provide such a close comparison to the economic climate found in the geographic area surrounding the City of Bellingham. As stated in RCW 41.56.460(f), the relationship between Whatcom County and the City of Bellingham presents factors:

> which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment

Having included Whatcom County as a comparable jurisdiction does not mean that the county will be the sole or primary comparator, however. Whatcom County will be added to the list of comparable jurisdictions already stipulated by the parties. While the county

has unique factors justifying its inclusion on the list of comparable jurisdictions, the entire list of comparators must be analyzed to determine the appropriate wage increase in this case.

The Wage Increase

It is important to note the immediate bargaining history which led to this interest arbitration proceeding. The parties entered into a three year collective bargaining agreement for calendar years 1993, 1994 and 1995. The parties agreed to a 4% wage increase for 1993, a 3% wage increase for 1994, and a wage reopener for 1995. It is in this context that the parties make their arguments concerning an appropriate wage increase for 1995.

In making its wage proposal of 9% for calendar year 1995, the Union asserts that the bargaining history must not play a significant factor in determining the appropriate wage increase. As the Union notes in its closing brief, the parties could not agree to 1995 salaries when bargaining took place in 1993, and the Union maintains that 1995 must "stand alone" for purposes of this proceeding. The Union further contends that the Employer's arguments concerning promotional opportunities must be rejected as misleading to the underlying salary dispute. The Union argues that other police contracts contain similar provisions, and that promotional opportunities should not be used to detract from the Union's wage proposal.

The Union further asserts that the City of Bellingham must "catch up" with the salaries paid in comparable jurisdictions. Even though the Union did not include Whatcom County as a comparable jurisdiction in advancing this argument, the Union's "catch up" analysis must be discussed as presented to understand the reasons behind the Union's wage increase.

According to the Union's position, the City of Bellingham has fallen dramatically as in relation to its comparable jurisdictions. In Union Exhibit 4, the Union showed the differences in the "top step" police officer salaries for 1994 as follows:

	Police Officer Top Step	"Catch Up" To Top Rate
Kirkland	$3838	---
Renton	$3760	2.1%
Redmond	$3698	3.8%
Kent	$3659	4.9%
Edmonds	$3593	6.8%
Vancouver	$3560	7.8%
Auburn	$3554	8.0%
Olympia	$3534	8.6%
Lynnwood	$3529	8.9%
Bellingham	$3524	8.9%
Yakima	$3491	9.9%
Kennewick	$3355	14.8%

Using the same formula for calendar year 1995, the Union presented the following information in Union Exhibit 12:

	Police Officer Top Step	"Catch Up" To Top Rate
Kirkland	$3959	---
Renton	$3892	1.7%
Kent	$3806	4.0%
Edmonds	$3706	6.8%
Redmond	$3698 (1994)	7.1%
Vancouver	$3685	7.4%
Auburn	$3666	8.0%
Lynnwood	$3653	8.4%
Yakima	$3597	10.1%
Olympia	$3587	10.4%
Bellingham	$3524 (1994)	12.3%
Kennewick	$3461	14.4%

The Employer advances a much different argument concerning the appropriate wage increase. The Employer maintains that the wage proposals must be analyzed with the 1993 and 1994 increases in mind. The Employer argues that the Union's position is well out of the range of the 1993 and 1994 increases, and the Employer asserts that the Union is attempting to use interest arbitration to gain a wage increase that would have never occurred in normal bargaining. The Employer further notes that the City of Bellingham has not suffered turnover problems with the wage structure currently in place, and that hiring has not been difficult.

The Employer asserts that many bargaining unit employees are eligible for specialty pay and there are many promotional opportunities that impact wages. The Employer contends that its wage proposal is also appropriate when considering "internal comparability factors" within the Bellingham Police Department. Finally, the Employer argues that its wage proposal is reasonable, and that it generally keeps pace with the cost of living (approximately 3% at the time of the hearing).

Following the Employer's analysis, the parties have voluntarily put the bargaining unit slightly below the average of the comparable jurisdictions, with Bellingham police officers somewhere between 1/2% to 4% behind the average wage increase. As further proof of this state of affairs, the Employer, in Employer Exhibit 43, notes that the following pattern has emerged from collective bargaining for the years 1990 through 1994:

Year	Bellingham Relationship to Average
1990	1.6% below the average
1991	1.3% below the average
1992	3.3% below the average
1993	1.5% below the average
1994	1.5% below the average

Clearly, the parties have differing interpretations of how the wage increase issue should be addressed. The Arbitrator must note that the Union's analysis contains a number of factors which have not been used in fashioning salary settlements in the past. The testimony of Kathryn Hanowell, Director of Human Resources, credibly establishes that the parties had not used such cost factors as Social Security payments made by the Employer, deferred compensation payments, accredidation pay, and physical fitness incentives. In fact, it appears that the parties had traditionally looked at base wages and longevity as the basis for negotiations. This is made clear by Employer Exhibit 66, a document prepared by the Union for bargaining in 1993 in which base wage and longevity factors were used to propose wage increases for bargaining unit members.

The Arbitrator does not see any reason to upset the historical progression of the parties' collective bargaining relationship. While the Union has a legitimate point concerning the need to balance bargaining history with the realities of the particular round of negotiations in question, it must be noted that this particular dispute arises in the context of a contract that is, except for wages, closed for 1995. It would be wholly inappropriate to discard the bargaining history in which the collective bargaining agreement was initially executed. A wage reopener is just what its name implies; it is a chance for the parties to reconsider wage rates after the passage of some time from the date of contract ratification. The wage rate is to be negotiated at the time designated in the wage reopener, and this will typically complete bargaining on the contract as a whole.

During the course of the hearing, and by way of closing briefs, the parties to this dispute have provided a great deal of information supporting their conflicting views on the appropriate wage increase for 1995. While the Arbitrator has examined all of the exhibits and arguments presented, this dispute must be decided in the context of the situation in which it was presented. There is no evidence that the parties had ever used the factors set forth by the Union in determining the wage increase to be appropriate. The process of interest arbitration must be viewed as a natural progression from the realm of good faith collective bargaining. It cannot be used as a means to gain advantage that could not have

been gained through the negotiations themselves. Accordingly, the Union's position that this wage increase must be used to help the bargaining unit "catch up" with comparable jurisdictions must be rejected here.

Deciding against the Union's position concerning the propriety of "catch up" factors dose not end the discussion of the appropriate wage increase. As noted in the Employer's closing brief, the record demonstrates that bargaining unit employees are given the opportunity to earn additional compensation by working in speciality areas such as detective, shift investigator, and traffic officer. While each of these promotional positions are not, in and of themselves conclusive evidence that the City of Bellingham is a unique jurisdiction, their existence must be counted as part of the factors in determining an appropriate wage increase.

Finally, examination of the consumer price index (CPI) at the time of this dispute shows that the national index, whether expressed as CPI-U or CPI-W, was running slightly less than 3%, and the Seattle area index was slightly above the 3% level. The Union did not submit argument concerning the relative merit of the consumer price index, given that it stressed its "catch up" theory. The consumer price information is important because it gives a general economic structure in which the different wage increase proposals can be analysed. The general range of consumer price indices indicates that a 3% increase would be appropriate in this case, and such a result would be logical within the context of the wage opener found in the collective bargaining agreement.

The last issue to be decided is whether the 3% increase should be granted to all bargaining unit employees or should sergeants receive a lower amount, as the Employer has argued. Given the nature of these proceedings, and remembering that the interest arbitration proceeding arises from the context of a wage reopener, it would be inappropriate to grant a different wage increase for sergeants than the other officers would receive.

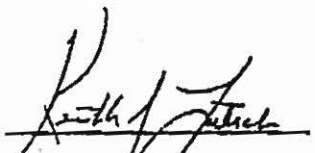
Throughout the presentation of its evidence and in its closing brief, the Employer strongly argued that interest arbitration should not be used as a forum to advance bargaining proposals that were unrealistic in terms of the undelying negotiations. In this case, given the limited number of issues that could be brought to hte bargaining table, it is most unlikely that the Union could have ever agreed to different wage increases for patrol officers and for sergeants when the issue of wages was the only thing available for discussion.

AWARD

For purposes of this interest arbitration award, Whatcom County is included as a comparable jurisdiction.

For calendar year 1995, the wages of all bargaining unit employees subject to this interest arbitration award shall be increased by 3% on the base wage amount.

Dated at Olympia, Washington, this 2nd day of April, 1996.



KENNETH J. LATSCH,
Arbitrator