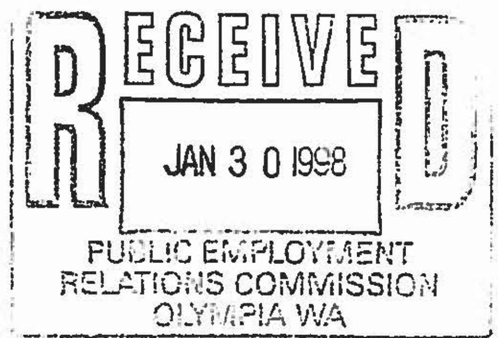


1295-I-97-278

IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

CITY OF VANCOUVER

and

VANCOUVER POLICE OFFICERS GUILD

INTEREST ARBITRATION OPINION AND AWARD

Date: December 20, 1997

# OPINION AND AWARD OF THE INTEREST ARBITRATOR

Interest Arbitrator
Michael H. Beck

Appearances
City: Jeffrey A. Hollingsworth
Orna A. Edgar

Guild: David A. Snyder

# INTEREST ARBITRATION OPINION AND AWARD

## CITY OF VANCOUVER

And

## VANCOUVER POLICE OFFICERS GUILD

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| IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN<br><br>CITY OF VANCOUVER<br><br>and<br><br>VANCOUVER POLICE OFFICERS GUILD | ) | INTEREST ARBITRATION OPINION AND AWARD<br><br>Date: December 20, 1997 |
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## OPINION OF THE INTEREST ARBITRATOR

## PROCEDURAL MATTERS

The Arbitrator, Michael H. Beck, was selected by the parties to conduct an Interest Arbitration pursuant to RCW 41.56.450. Panel members were not selected by the parties and the Interest Arbitration was heard by the undersigned as the sole Arbitrator.

A hearing in this matter was held on June 3, 4, 5, and July 17, 1997, at Vancouver, Washington. The Employer, City of Vancouver, was represented by Jeffrey A. Hollingsworth and Orna A. Edgar of the law firm of Perkins Coie. The Union, Vancouver Police Officers Guild, was represented by David A. Snyder, Attorney at Law. At the hearing the testimony of witnesses was taken under oath and the parties presented a substantial amount of documentary evidence. A court reporter was present at the

hearing and a verbatim transcript of the proceedings was made available to the Arbitrator for his use in reaching a determination in this case.

The parties agreed upon the submission of simultaneous posthearing briefs which were filed by each party and received by the Arbitrator on September 29, 1997. The parties agreed to waive the statutory requirement that Arbitrator issue his decision within 30 days following the conclusion of the hearing.

## ISSUES IN DISPUTE

During the course of the hearing the parties resolved several issues. There remains for the Arbitrator five issues to be resolved which are listed below:

1. Rates of Pay
2. Deferred Compensation
3. Education Incentive
4. Past Practice
5. Flexible Benefits

## STATUTORY CRITERIA

RCW 41.56.465 directs the Arbitrator, in making his decision, to be mindful of the legislative purpose enumerated in RCW 41.56.430 and to "take into consideration the following factors:"

> (a) The constitutional and statutory authority of the employer;
> (b) Stipulations of the parties;
> (c)(i) For [law enforcement officers] 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 [fire fighters] 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 may 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 circumstances under (a)through (d) of this subsection during the pendency of the proceedings; and

(f) Such other factors, not confined to the factors under (a) through (e) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. . . .

The legislative purpose your Arbitrator is directed to mindful of in making his determination is set for in RCW 41.56.430 as follows:

> 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. (Reviser's note omitted.)

## COMPARABLE EMPLOYERS

It is common in these proceedings for the Arbitrator to select an appropriate number of comparable employers. Here, the employees are employed as police officers by the City of Vancouver, Washington. As such, these employees are subject to RCW 41.56.465(1)(c)(i) with respect to the selection of comparable employers.

Under the statute a comparable employer is one who employs like personnel and is a like employer of similar size on the west coast of the United States. The parties are

in agreement that like personnel of like employers refers to cities employing police officers. They also agree that similar size is to be determined primarily by the population of the city employing the police officers. Finally, there is no dispute that the west coast of the United States refers to the states of Alaska, Washington, Oregon and California.

However, the parties are in dispute with respect to the comparators to be used in this case. Their disagreement stems primarily from the fact that the Union uses a smaller population spread in selecting the comparators than does the Employer, and from the fact that the Employer does not believe that it is appropriate, in the circumstances of this case, to consider cities located in California as comparable employers to the City of Vancouver.

In the spring of 1996, when the parties began negotiations for a new collective bargaining agreement to be effective January 1, 1997, the population of the City of Vancouver was approximately 68,000. However, at that time the parties were aware that there was a planned annexation by the city of several areas, referred to as Cascade Park, Mill Plain, and Evergreen. These areas, adjacent to the city on its east, were estimated to contain a population of approximately 57,000, and thus if the annexation was approved, then the new city population would be approximately 125,000.

The City believed that since the annexation was likely to be in place at the start of the term of the new contract it was appropriate to select comparators based on the combined population of approximately 125,000. The Union shared this view and based its selection of comparators on a figure of 125,000. The annexation was approved and was effective January 1, 1997. The inclusion of the population of the annexed areas with that of the City of Vancouver, moved the City from the seventh largest city to the fourth

largest city in the State of Washington. The parties are in agreement that the population of the City of Vancouver at the time of the hearing was 126,453.

The Union in selecting its comparators determined to select all cities on the west coast which came within a band of 10,000 below 125,000 and 10,000 above 125,000, thus a range of 115,00 to 135,000. By employing this relatively tight population range, the Union was able to limit the number of comparators to 12, which the Union views as a reasonable number of comparators. However, of the 12 comparators, ten are located in California, and two in Oregon with none located in Alaska or in Washington. The Union determined that since Vancouver was located in Washington it would be appropriate to add the three cities in Washington whose population was closest to that of Vancouver, Bellevue, Everett and Tacoma, so that "cities within Washington were a factor in assessing wages and benefits in Vancouver." (Guild Exhibit No. 37.) Thus, the Union now had 15 comparators.

In an attempt to meet the objections of the city to the Union selected comparators, the Union modified its list of comparators by removing two California cities, Lancaster and Santa Clarita, which the Employer had specifically objected to because these cities contracted with the Los Angeles County Sheriff's office for law enforcement services and, thus, as I understand it, did not maintain their own police departments. Furthermore, the Union agreed to add two additional cities located in Washington which were the next closest in population to Vancouver, namely Federal Way and Spokane.

The Employer specifically objected to the inclusion of Sunnyvale, California because that city has consolidated its police and fire protection services into a single department and, therefore, could not be considered a like employer under the statute. The

Union refused to remove Sunnyvale as a comparator taking the position that in Sunnyvale employees working as public safety officers were primarily responsible for law enforcement rather than fire fighting.

In alphabetical order, the Union's 15 proposed comparators are:

| | |
|---|---|
| Bellevue | Orange |
| Escondido | Salem |
| Eugene | Salinas |
| Everett | Santa Rose |
| Federal Way | Spokane |
| Fullerton | Sunnyvale |
| Haywood | Tacoma |
| Irvine | |

The Union's list contains five Washington comparators, two Oregon comparators and eight California comparators. Furthermore, the ten comparators from Oregon and California are within the narrow population band of 115,000 to 135,000 while the five Washington comparators, although not within the population band, are included by the Union in order to provide representation from the State of Washington among the comparators.

The Employer determined its comparable employers by considering a population band of 50% below the population of Vancouver to 150% above the population of Vancouver. The Employer, however, did not include as comparators any cities in California. In this regard, David Vial, the City's Assistant Director of Human Resources and Risk Services, testified that he used geography in determining the comparators to be selected within the population band he believed appropriate. Thus, Vial testified that he considered the comparators in Washington that met the population criteria since Vancouver is located in Washington. Vial also included the comparators located in Oregon that met the population criteria because of Vancouver's location directly across

the Columbia River from Portland, Oregon. In this regard, Vial testified that the citizens of Vancouver listen to radio stations located in Oregon and watch television programs received from television stations located in Oregon. Additionally, he testified that Oregon newspapers are readily available in Vancouver and are generally read by the citizens of Vancouver. Furthermore, he testified that Vancouver citizens cheer for the Portland NBA team, the Blazers, rather than the Seattle NBA team, the Sonics. Thus, he concluded that comparators located in Oregon were appropriate. No mention was made by the Employer during its case of comparators located in Alaska, but based on my review of Guild Exhibit No. 16, entitled "Alaska Population Overview: 1996 Estimates," it does not appear that any Alaska city was within 50% to 150% of the population of Vancouver.

The Employer's method of selecting comparators yielded five Washington comparators and four Oregon comparators, for a total of nine comparators which are listed below in alphabetical order:

| | |
|---|---|
| Bellevue | Gresham |
| Beaverton | Salem |
| Eugene | Spokane |
| Everett | Tacoma |
| Federal Way | |

After carefully considering the contentions of the parties on behalf of their selected comparators, I find that neither list presents an appropriate set of comparators.

First of all, I do not think it is appropriate in the instant case to eliminate all California comparators as contended for by the Employer. The Employer makes two basic arguments in support of its position. First, that if there are sufficient comparators in the immediate area of the employer in question, or in the same state, or in the region, then

the comparators should be so restricted. According to the Employer, this approach of obtaining comparators from what the Employer describes as "the least remote area possible," (Employer's post-hearing brief, p. 11) is consistent with the legislative intent of the statute as it requires the Arbitrator to focus on employees who are similarly situated to the employees employed by the Employer involved in the arbitration proceeding. Secondly, the Employer contends that inclusion of California cities are inappropriate given cost of living differentials between cities located in Washington and Oregon on the one hand, and California cities on the other. In support of its contention that such cost of living differentials exist, the Employer commissioned a study which was prepared in May of 1997 by the firm of Runzheimer International.

As the Union points out, RCW 41.56.465(1)(c)(i) does require the Arbitrator, when conducting an interest arbitration for law enforcement officers, "to take into consideration":

> [a] 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. (Emphasis added.)

While it is possible as the Employer suggests to first consider and then reject California as a source of comparable employers, there must be a significant reasons to do so in light of the statutory language. Thus, for example, if an arbitrator is looking at comparators for a small city located along the I-5 corridor between Seattle and Olympia, and the arbitrator finds that there are a sufficient number of comparators located along that I-5 corridor, the arbitrator might appropriately limit consideration of comparators to that area based on well recognized concepts of labor market. However, here we are not dealing

with a labor market, but merely with an Employer contention that the Arbitrator should limit consideration to the smallest possible area in which a sufficient number of comparators can be found, which in this case is a two state area. There is no evidence presented at the hearing to indicate that the states of Oregon and Washington constitute a labor market distinct from that contained in California.

Furthermore, I note that since the Interest Arbitration Statute was adopted by the legislature, the legislature has amended that statute to provide that with respect to fire fighters, but not with respect to law enforcement officers, the following:

> [W]hen an adequate number of comparable employers exist within the State of Washington, other west coast employers may not be considered. RCW 41.56.425(1)(c)(ii)

Thus, as the Union points out, while the legislature thought it appropriate to limit comparable employers to the State of Washington where an adequate number of such employers existed for fire fighters, it did not make the same determination with respect to law enforcement officers. This suggests to your Arbitrator that it would be contrary to the legislative intent to limit the selection of comparable employers to a state or regional area merely because there was an adequate number of such comparable employers in that state or regional area with respect to law enforcement officers. However, this is exactly what the Employer is seeking here. Namely, to have the Arbitrator limit the comparators to a two state region, Washington and Oregon, on the basis that there are a sufficient number of comparators in that two state region. The statute simply does not provide for such a result.

I turn now to the Employer's contention that California cities are inappropriate as comparators because of a cost of living differential between cities located in California

and cities located in Washington and Oregon. As I understand the Employer's argument, it is that an employer cannot be considered a "like employer" if it can be demonstrated that that employer has a higher cost of living than the employer subject to the Interest Arbitration. However, in my view, this reads too much into the phrase "like employers" contained in the statute. No mention is made in the statute that to be a "like employer," an employer must have a "cost of living" that is the same or close to that of the employer in question, even assuming such differentials can be accurately computed. In fact, the statute prescribes the method of choosing appropriate comparators, namely, employers employing like personnel, being of similar size and located on the west coast of the United States.

Furthermore, the Runzheimer method relied on by the Employer is designed for assisting clients whose executives are transferring from one part of the country to another. Runzheimer uses income studies starting at $100,000 up to $300,000 in $25,000 increments based on costs in a large city such as Denver, St. Lous or Atlanta. Here we are dealing with police officers who at top step earned less than $46,000 in base salary in 1996, worked in a much smaller city, and were not transferring to another city and thus did not have to secure housing. Finally, as described below, I have taken into account regional differences by selecting comparators from the three west coast states in which there are employers that meet the statutory criteria.

The Union does not contend that the Employer range of 50% to 150% of Vancouver's population is inherently unreasonable. However, the Union points out that if this population criteria is applied in the instant case, the result would yield approximately 70 California comparators. I agree with the Union that such a large

number of comparators would constitute an unwieldly number of comparators. However, I disagree with the Union that the way to avoid an unwieldly number of comparators is to employ the standard of 10,000 minus and 10,000 plus and then add Washington comparators even though they do not come within the standard used in selecting Oregon and California comparators. The 50% to 150% population standard is one that has been traditionally used in interest arbitrations. Therefore, it seems to me that this standard should be employed here as the Employer suggests, and, if the result is too large a number of California comparators, then those comparators closest to Vancouver in population can be selected and the others dropped from a list of appropriate comparators. The result will be that all of the comparators selected will meet the selection standard.

Five Washington comparators and three Oregon comparators meet the 50% to 150% standard, while one Oregon comparator, Beaverton, is borderline. In fact, based on the current population of Vancouver, Beaverton has a population of just under 50% of Vancouver (City Exhibit C-1.Z).

The Union objects to the inclusion of either Gresham or Beaverton as comparators since they don't meet the population range of plus or minus 10,000 and they are not located in the State of Washington as is Vancouver. However, as I have discussed above I have determined to use the standard of 50% to 150% and therefore have determined to include Gresham as a comparator. I have determined not to include Beaverton for several reasons. First, its population is presently below 50% of that of Vancouver. Secondly, your Arbitrator, in determining comparables is hopeful that the comparables selected will continue to serve as appropriate comparators for the parties after the conclusion of the agreement under arbitration here. In this regard, I note that there is evidence in the record

to indicate that Vancouver is considering additional annexations, which if they occur will increase Vancouver's population, thereby widening the population difference between Vancouver and Beaverton in the future.

The foregoing results in eight comparators from the two northwest states, five from Washington and three from Oregon. The Union initially determined that 12 comparators would be a reasonable number and I agree. Thus, the addition of four California comparators would provide for 12 comparators. More importantly, however, it would distribute the comparators relatively equally thoughout the three states in which there were comparators which met the 50% to 150% population selection standard.

Selecting the four California cities closest in population to Vancouver will vary depending upon whether the population figures listed in Guild Exhibit No. 14 or No. 32 are employed. Sunnyvale would be among the four closest in population to Vancouver if Exhibit No. 14 is used but would not be among the four closest cities if Exhibit No. 32 is used. In any event, I have determined not to include Sunnyvale as I agree with the Employer that Sunnyvale is not a like employer in view of the fact that Sunnyvale does not maintain a separate police department.

The next conflict involves Fullerton and Haywood. On Exhibit No. 32 Fullerton is listed as having a population of 300 more people than Haywood and thus 300 closer in population to Vancouver. However, in Exhibit No. 14, Haywood is listed as having a population of 100 more than Fullerton and thus being 100 closer to Vancouver. I have determined to select Fullerton over Haywood as the fourth closest city in population to Vancouver because, in doing so, the result is the selection of two comparators located in northern California and two located in southern California, namely Salinas and Santa

Rosa from northern California and Fullerton and Irvine from southern California.

The 12 comparators and their populations are listed below. I have used City Exhibit No. C-1.Z for the Washington and Oregon population figures as I believe these to be the latest figures with respect to these comparators. With respect to the California comparators, I have used Guild Exhibit No. 14 as it appears this exhibit contains the latest population figures available in the record for the four California cities I have selected.

**TABLE I**

**COMPARATORS LISTED BY POPULATION**

| | |
|---|---|
| **150% OF VANCOUVER** | **189,680** |
| | |
| SPOKANE | 187,700 |
| TACOMA | 185,000 |
| IRVINE | 127,200 |
| | |
| VANCOUVER | 126,453 |
| | |
| EUGENE | 126,325 |
| SANTA ROSA | 125,700 |
| SALINAS | 122,500 |
| FULLERTON | 122,100 |
| SALEM | 120,835 |
| BELLEVUE | 103,700 |
| EVERETT | 81,810 |
| GRESHAM | 79,350 |
| FEDERAL WAY | 75,240 |
| | |
| **50% OF VANCOUVER** | **63,227** |
| | |
| **VANCOUVER** | **126,453** |
| | |
| **AVERAGE WITHOUT VANCOUVER** | **121,455** |

A review of Table I above indicates that Vancouver is the fourth largest of 13 comparators, including Vancouver, and its population is approximately 4.1% higher than the average of the 12 comparators. Furthermore, the Vancouver figure of 126,453 is based on a population assessment for Vancouver made in May of 1997 while population figures for all of the other comparators were put together at earlier dates. Therefore, if Table I were based on figures for the 12 comparators as of May of 1997, it might well be that Vancouver would not be as high as fourth and that the 4.1% difference between Vancouver and the 12 comparator average might even be less. In this regard, I note that if one uses for Vancouver the estimated population of 125,000, which was used by the parties during negotiations, Vancouver moves from fourth to sixth and the percent Vancouver's population is above the average of the 12 comparators slips to 2.9%.

## RATES OF PAY

The parties are agreed upon a three year contract effective January 1, 1997. The City proposes an increase in base wages for 1997 equal to 80% of the percentage increase in U.S. Department of Labor's Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) for the Portland—Vancouver area measured from July 1995 to July 1996, with a minimum of 2% and a maximum of 6%. (While both parties refer in their past collective bargaining agreements and in their proposals to "July to July" in describing the CPI-W index they intend to employ, the actual index they are using is the semi-annual average index published in June and December for Portland—Vancouver. I point this out merely to avoid confusion and for the same reason will also refer to this index as "July to July.") Eighty percent of the CPI-W figure for this period according to

the Employer is 2.58% and thus the Employer proposes a 2.58% increase for 1997. (My calculation comes to 2.56%.) The Union proposes for 1997 a 4% raise plus a raise in the amount of 90% of the same Consumer Price Index, which comes to 2.88%. Thus, the Union proposes for 1997 a 6.88% increase in base wages over the rates of pay in effect on December 31, 1996.

The City proposes the same formula for 1998 and 1999. Thus, effective January 1, 1998 the employees would receive a raise of 80% of the Portland—Vancouver CPI-W based on the period July 1996 to July 1997 with a minimum of 2% and a maximum of 6%. This comes to 2.64%. Effective January 1, 1999, employees would receive a raise equal to 80% of the Portland—Vancouver CPI-W for the period July 1997 to July 1998 with a minimum of 2% and a maximum of 6%.

The Union proposes for 1998 a raise of 4% plus 90% of the Portland—Vancouver CPI-W based on the period July 1996 to July 1997 with the portion of the increase based on the CPI-W to be no less than 2% or more than 6%. This comes to a total increase of 6.97% (2.9% based on 90% of the CPI plus 4%). Finally, for 1999 the Union proposes an increase equal to 100% of the Portland—Vancouver CPI-W based on the period July 1997 to July 1998, again with a minimum of 2% and a maximum of 6%.

The first question that must be resolved is, what methodology should be used as a basis for making a comparison between the comparators? The parties presented a large volume of material which allows your Arbitrator to make wage comparisons based on monthly salary, a combination of monthly salary and other benefits, hourly wage, and an analysis of wages and various benefits received on an hourly basis. Additionally, information is supplied so that your Arbitrator can make these comparisons for law

enforcement officers at various levels of seniority, for example a five year, ten year, 15 year or 20 year law enforcement officer.

I have carefully considered all of the material submitted, including the various objections made by both the Employer and the Union to the inclusion, in some cases, and the exclusion, in others, of certain benefits when attempting to make a wage and benefit analysis. In view of the fact that the parties are not in agreement on the specific manner in which wage comparisons between Vancouver and the comparators should be made, I have determined to use a basis for comparison that I believe is appropriate in the situation here.

It is appropriate to base wage comparisons on a top step police officer since at this point, five years of service, an officer's wage has reached the journeyman level and generally a majority of the unit is at this level. In Vancouver, as of May 1, 1997, there were a total of 111 employees in the bargaining unit. Fifteen were corporals and 19 were sergeants, leaving 77 police officers. The average tenure of a police officer was 5.18 years. (City Exhibit C-1.U) Additionally, if one includes the corporals and sergeants in the average, the average rises to 8.84 years which is less than 10 years, and, generally speaking, benefits provided police officers in the various comparators do not change from the five year level until a police officer has served 10 or more years. Furthermore, corporals and sergeants receive a wage based on a specified differential over that paid to top step police officers.

I have decided to make the comparisons based on hourly wage as it is clearly relevant to a consideration of wages received to take into account how many hours an employee is asked to work to receive those wages. Additionally, I have included

longevity in the few instances where it is paid to a five year police officer as every officer with that level of experience will receive longevity as part of his or her wage without having to qualify in some special way such as securing a certain level of education in order to receive an education incentive or having to contribute to a deferred compensation plan in order to receive a matching contribution from the Employer. Furthermore, these two benefits are separately certified as issues to be determined by the Arbitrator. The fact that wage and benefit issues are separately certified further convinces me that it is appropriate not to attempt to base a determination of the issue of rates of pay on a comparison of overall compensation, that is, on attempt to come up with a number representing all wages and benefits paid in each comparator.

However, there is one additional element of compensation that I believe should be included in an hourly wage analysis when making a comparison of rates of pay and this is pension pick-up. In Oregon and California, cities do have the option of "picking-up" or paying the employees prescribed contribution to funding the employees retirement by negotiating with the collective bargaining representative such a pick-up. Thus, where an employer does pick-up an employee's share of the retirement contribution, this is, in effect, a direct payment to each employee because without the pick-up the employee would have to take that money out of his or her pocket each month and make the contribution. The fact that this pick-up option is not available in Washington does not require a contrary result as the key question is the direct wage benefit to the employee who does not have to make a retirement contribution he would otherwise have to make.

Section 14.7 of the parties 1995-96 Agreement makes clear that the 2.4% paid to each police officer is paid in lieu of overtime pay for working on a holiday. Therefore,

the Union is correct that this 2.4% should not be included in an hourly wage analysis since it is overtime pay for working on a holiday and, in many of the other comparators, overtime for working on a holiday is specifically provided for, such as payment of time and one half or double time for working on a holiday.

Approximately 70% of the bargaining unit have a shift schedule as opposed to working a 40 hour week and, therefore, I have used the patrol officer working a shift schedule in producing the wage analysis.

Five of the 12 comparators have contracts which instead of commencing on January 1 commence on or after July 1 and, therefore, increases are provided as of July 1 or thereafter in 1996. Thus when making comparisons for 1996, the last year of the prior agreement in Vancouver, it seems appropriate to compare wage rates as of June 30, 1996. Furthermore, in this regard, I note that the parties began negotiations in the spring of 1996 at which time the comparators were paying rates in effect prior to June 30, 1996.

I have set forth below Table II showing an hourly rate wage analysis, comparing Vancouver to the comparators. I have reviewed each of the collective bargaining agreements to insure that the figures I have used are correct as of June 30, 1996. As Table II shows, I have taken the monthly salary paid to the top step police officer, added longevity where it is provided after five years, added the pension pickup and then divided that total by the net hours worked. The net hours worked is the monthly scheduled hours less hours not worked by a police officer after five years due to holidays and vacation accrual. The sum of the top step salary, longevity if any, and pension pickup if any, is divided by the net hours worked to reach the hourly rate.

**TABLE II**

**COMPARATORS HOURLY RATE AS OF JUNE 30, 1996**

| NAME | MONTHLY SALARY | LONGEV-ITY | PENSION PICKUP | TOTAL | NET HOURS | HOURLY WAGE |
|---|---|---|---|---|---|---|
| IRVINE | $4,344 | | $ 391 | $4,735 | 155.33 | $30.48 |
| SALINAS | $4,057 | | $ 365 | $4,422 | 146.66 | $30.15 |
| SANTA ROSA | $4,213 | | $ 379 | $4,592 | 155.33 | $29.56 |
| FULLERTON | $4,220 | | $ 380 | $4,600 | 156. | $29.49 |
| FEDERAL WAY | $4,164 | | | $4,164 | 156. | $26.69 |
| BELLEVUE | $4,013 | | | $4,013 | 154.66 | $25.95 |
| TACOMA | $3,936 | 79 | | $4,015 | 155.33 | $25.85 |
| EVERETT | $4,035 | 81 | | $4,116 | 162.67 | $25.30 |
| GRESHAM | $3,554 | | $ 213 | $3767 | 153.67 | $24.51 |
| EUGENE | $3,370 | | $ 202 | $3,572 | 147.72 | $24.18 |
| SALEM | $3,487 | | $ 209 | $3,696 | 154.75 | $23.88 |
| SPOKANE | $3,596 | 73 | | $3,669 | 154. | $23.82 |
| | | | | | | |
| **AVERAGE** | | | | | | $26.66 |
| | | | | | | |
| **VANCOUVER** | $3,832 | | | | 150.34 | $25.49 |

**AVERAGE HOURLY WAGE IS 4.6% ABOVE THAT PAID IN VANCOUVER**

Pursuant to RCW 41.56.465(1)(e), it is appropriate to consider the salary increases provided by the comparators since June 30, 1996. Therefore, I have set forth below Table III showing the monthly salaries paid in the comparators as of June 30, 1996 compared to the monthly salaries negotiated and in effect June 30, 1997, as well as increases in effect on and after July 1, 1997.

## CHART III

## MONTHLY SALARIES

| | JUNE 30, 1996 | JUNE 30, 1997 | JUNE 30,1998 |
|---|---|---|---|
| IRVINE | $4,344 | $4,344 | [1] |
| FULLERTON | $4,220 | $4,304 | 2% (7/26/97) |
| SANTA ROSA | $4,213 | $4,649 | .6% |
| FEDERAL WAY | $4,164 | [2] | |
| SALINAS | $4,057 | $4,361 | 5% (1/1/98) |
| EVERETT | $4,035 | $4,166 | |
| BELLEVUE | $4,013 | $4,133 | |
| TACOMA | $3,936 | $4,054 | [3] |
| SALEM | $3,487 | $3,801 | |
| SPOKANE | $3,596 | $3,736 | |
| GRESHAM | $3,554 | $3,643 | [4] |
| EUGENE | $3,370 | $3,500 | |
| | | | |
| AVERAGE | $3,916 | $4,063 | |

**AVERAGE INCREASE: JUNE 30, 1997 OVER JUNE 30, 1996 EQUALS 3.8%**

1 Effective July 12, 1997: Increase equal to increase in CPI-W Los Angeles/ Anaheim/Riverside, April 96—April 97, minimum 2% and maximum 5%
2 Employer and Union figures differ and evidence in record is not sufficient to make a determination.
3 Effective January 1, 1998 increase equal to 90% of CPI-W Seattle area, first half of 1996—first half of 1997, minimum 3%, maximum 7%.
4 Effective July 1, 1998 increase equal to increase in Portland CPI-W January to January, minimum 2.5% and maximum 5%.

As of June 30, 1996 the average hourly rate in the comparators was 4.6% above that paid in Vancouver (Table II). Additionally, the percentage increase in top step base salary, based on the average of 11 of the 12 comparators, between June 30, 1996 and June 30, 1997 is 3.8%.

Pursuant to 41.56.465(1)(d), I now move on to consider the average consumer prices for goods and services as reflected in the U.S. government indicator of the cost of living, namely the Consumer Price Index.

The first collective bargaining agreement between the parties here was effective January 1, 1992. Thus, it is appropriate to compare the increase in the CPI-W for Portland—Vancouver over the last five years with the raises received by police officers during the same period. As pointed out above, the parties have traditionally relied on the Portland—Vancouver CPI-W. The CPI-W for Portland—Vancouver for 1991 reported as the 2nd half semi-annual average for 1991 was 132.1 and five years later the same index was 156.5. (City Exhibit C-7.G.) This was an increase of 18.5%. During the same five year period from 1991 to 1996 the top step police officers salary went from $3,004 to $3,832, for an increase of 27.6%. Thus, in percentage terms, the Union has secured increases for police officers of approximately 50% more than the rise in the cost of living since 1991.

It is also appropriate to compare increases provided fire fighters as fire fighters are subject to the same interest arbitration law as police officers and such a comparison is often taken into consideration in interest arbitrations. The fire fighters received $2,978 at the top step in 1991 and five years later in 1996 that amount had increased to $3,874 for an increase of 30.1%. Thus, fire fighters have increased their top step wage rate by an even larger percentage over the five years than did police officers. Furthermore, effective January 1, 1997 fire fighters will receive a raise of 7.38%, although there was testimony to indicate that this raise was at least in part due to fire fighters agreeing to an increase in their productive hours of work.

The difficulty in reaching a final determination in this case is the fact that the City of Vancouver, overnight in effect, commencing on January 1, 1997 almost doubled its population. Therefore, it does not seem reasonable to require Vancouver to fully reach the average of the comparators over the course of the first contract in effect after such a large annexation. Furthermore, despite the fact that Vancouver almost doubled its population, a comparison based on the higher population revealed that Vancouver was only 4.6% behind the average hourly pay and had a higher hourly pay rate than five of the 12 comparators. (See Table II at page 20.) Additionally police officers in Vancouver have over the past five years received raises significantly greater than the rise in the cost of living. On the other hand, Vancouver must begin to pay wages and benefits to its police officers in line with its new status as a significantly larger city.

Based on all of the foregoing, I shall award 3.8% increase in 1997, which is the average increase in the comparators from June 30, 1996 to June 30, 1997. For 1998, I shall award a 2.3% increase, representing one-half of the 4.6% Vancouver was behind the average as of June 30, 1996, plus 90% of the Portland—Vancouver CPI-W increase July 1996 to July 1997 which is 2.97%. The total increase for 1998 shall be 5.27%. As for 1999, I shall award 90% of the Portland—Vancouver CPI-W July 1997 to July 1998, with a minimum of two percent (2%) and a maximum of six percent (6%).

I have carefully considered the Employer's contention that the CPI formula should be reduced from 90% to 80%. In rejecting this Employer proposal, I note that the 90% is the traditional formula used by the parties. With respect to the "Boskin Report," (City Exhibit C-7.K) whatever its merits, it has not been adopted by the U.S. Department of Labor which produces the CPI.

## DEFERRED COMPENSATION

Commencing with the 1995-96 Agreement, the parties negotiated a deferred compensation plan. Effective January 1, 1996, the City will match an employee contribution up to a maximum of 1% of an employee's base salary.

The Union proposes to increase the amount of an employees contribution that the City will match to 2% of base salary effective January 1, 1997 and 3% of base salary effective January 1, 1998. The Employer proposes that there be no change. Only three of the 12 comparators provide deferred compensation. One of those comparators, Tacoma, will not provide this benefit for officers hired after January 1, 1998.

Additionally, I note that Vancouver fire fighters do not receive a deferred compensation benefit and no employee employed by the Employer receives a higher deferred compensation benefit than that presently received by police officers.

In view of all of the foregoing, I find that no increase in the deferred compensation benefit is warranted.

## EDUCATION INCENTIVE

Bargaining unit employees receive an educational incentive of $90 per month if they have earned an associate degree from an accredited college or university and $180 per month if they have earned a bachelors degree from an accredited college or university. The City proposes to eliminate the education incentive program. The Union seeks to increase educational incentives so that bargaining unit employees with an associate degree from an accredited college or university would receive a 3% premium

and bargaining unit employees with a bachelor's degree from an accredited college or university would receive a 6% premium.

The Union has placed in the record substantial material indicating the relationship between the increased education of law enforcement officers and the improved quality of law enforcement services performed. Additionally, as the Union points out, the states of Oregon and California have recognized the value of education in establishing their law enforcement certification standards. Thus, both states substitute education for experience with respect to a law enforcement officer qualifying for an intermediate or advanced certificate.

With respect to the 12 comparators, five presently provide an education incentive for an associate degree and a bachelor's degree. These five are Bellevue, Eugene, Everett, Fullerton, and Salem. Additionally, Salem provides for additional premiums based on earning both an intermediate and an advanced certification. Further, Tacoma is scheduled to add an education incentive effective January 1, 1998 for employees on the payroll on and before that date. Additionally, four comparators which do not provide education incentives per se do provide for the payment of a premium based on the law enforcement officer earning an intermediate or advanced certification. These four are Gresham, Irvine, Salinas and Santa Rosa. Thus 10 of the 12 comparators provide or will soon provide an education incentive or a premium based on earning an intermediate or advanced certification.

The Employer points to the fact that it maintains a tuition assistance program which police officers are eligible for on a first come, first served, basis. However, my review of the comparator collective bargaining agreements indicates that of the 10

comparators that provide or will provide an education incentive or a premium for certification, six also provide for a tuition reimbursement or assistance program. These six are Bellevue, Fullerton, Irvine, Salem, Salinas, and, as of January 1, 1997, Tacoma.

Based on all the foregoing, I find that the Employer's proposal to eliminate the education incentive is not appropriate and thus must be rejected.

I turn now to the Union's proposal to move from a fixed amount with respect to the education incentive to a percentage amount, which the Union proposes to set at 3% for an associate degree and 6% for a bachelors degree. Of the six comparators that have or will have an education incentive, five of those use a percentage rather than a fixed amount. With respect to the five comparators that provide for a certification premium (including Salem which provides both an education incentive and a certification premium), four provide that premium on a percentage basis and only one provides the premium based on a fixed amount. Thus, of the ten comparators that provide or will provide an education incentive or a certification premium, or both, eight do so on a percentage basis rather than on a fixed amount. Furthermore, as the Union points out, if a fixed amount remains in place year after year while salaries increase the relative value of the education incentive is reduced.

Based on all of the foregoing, I agree with the Union that a percentage amount should be substituted for a fixed amount with respect to education incentive. The Union, in support of its position that the associate degree should require a 3% premium, while the bachelors degree should require a 6% premium, presented the testimony of Scott Bieber who has been on the Union's bargaining team in 1992, 1994, and 1996. Bieber testified that the fixed amount of $90 and $180 was negotiated in 1991 based on the fact

that those amounts were approximately 3% and 6% of the top step salary in place in 1991 which was $3,004. However, as Bieber admitted, the Union failed during the 1994 negotiations to have the agreement include the percentage figures of 3% and 6% and thus although the wages increased, the education premium stayed the same at $90 and $180.

I note that of the ten comparators that provide or will provide either an education incentive or a certification premium, five provide for a percentage or a fixed amount that is no more that 2.5% for an associate degree or intermediate certification and no more than 5% for a bachelors degree or advanced certification. Of the five that provide for at least 3% and 6%, one of those, Everett, requires the officer to choose either the education incentive or longevity. Although in Everett the education incentive is 3.5% for an associate degree and 7% for a bachelors degree, an employee with 4 to 8 years of experience would have to forego his or her 2% longevity payment, thus in effect reducing the associate degree incentive to 1.5% and the bachelors degree incentive to 5%.

In view of all of the foregoing, I shall award 2.5% of the base salary for an associate degree and 5% of base salary for a bachelor's degree. The institution of the 2.5% and 5% education incentive payment will provide a significant raise for bargaining unit employees with respect to education incentive and continue from year to year to recognize the importance of education with respect to law enforcement.

## PAST PRACTICE

Presently Section 28.1 of the contract provides:

> The Employer and the Guild agree that past practices that are mandatory subjects of bargaining and are not specified by this agreement but known by both the Guild and the Employer shall remain unchanged.

The Employer proposes that this provision be replaced by the following language:

> Past practices which are mandatory subjects of bargaining, and are known to both parties of this Agreement, even though not identified in the Agreement, shall remain in effect unless changed in accordance with RCW 41.56.

The language in Section 28.1 was Employer proposed language which was included in the first agreement between the parties. No attempt was made to change the language during negotiations for the 1995-96 Agreement.

The Employer's proposal is prompted in significant part by the matter described below. On February 29, 1996 Jeffrey Hollingsworth and Otto Klein, III, as representatives of the City of Vancouver and Clark County respectively, wrote to the Union's representative, David Snyder, and Daryl Garrettson, the representative of the Clark County Sheriffs Guild seeking four way negotiations in order to resolve the layoff seniority dovetailing issue, which would arise as a result of the planned annexation. The letter suggested that negotiations commence in March of 1996 and that if the four parties could not resolve the issue that "all parties jointly seek the appropriate mandatory dispute resolution remedies." (Guild Exhibit No. 82.) Exactly what was meant by the phrase "mandatory dispute resolution remedies" is not clear from the record. It was the Union's understanding that the Employer was referring to mediation and interest arbitration pursuant to RCW Chapter 41.56.

In any event, by letter dated March 5, 1996 Mr. Snyder, on behalf of the Union, informed Mr. Hollingsworth that the Union would not participate in four way negotiations, taking the position that neither RCW 41.56 nor RCW 35.13 imposed a duty upon the Union to bargain with either Clark County or the Clark County Sheriffs Guild.

RCW 35.13.380(1) provides as follows with respect to the transfer of county sheriff employees to a city police department that annexes an area of the county served by those county sheriff employees:

> For purposes of layoffs by the city, . . . only the time of service accrued with the city . . . shall apply unless an agreement is reached between the collective bargaining representatives of the police department and sheriff's office employees and the police department and sheriff's office.

The Union took the position that this section of the statute did not require it to bargain with the other three entities regarding the question of whether or not the sheriff's employees transferred in to the Vancouver Police Department due to the annexation would have their seniority for layoff purpose dovetailed with employees already in the unit working as police officers. David Vial testified that the Employer was so concerned by this action of the Union that it considered filing an unfair labor charge alleging a refusal to bargain, but determined not to do so because the Union could argue that Section 28.1 allowed the Union to refuse to bargain over the annexation issues.

However, as I view Section 28.1, it has no relevance with respect to the Employer requiring the Union to participate in four way negotiations. In this regard, I note that Section 28.1 refers to past practices between the Union and the City of Vancouver and there was no indication in the record that there was a past practice known by both the Union and the City with respect to the handling of seniority for purposes of layoff of sheriff's office employees who transfer into the City of Vancouver. In fact, the record indicates that during 1995 there were discussions between the Union and the City pursuant to which the parties reached a tentative agreement, which was never placed into a memorandum of understanding, that sheriff's office employees who became employees

of the Vancouver Police Department would be treated as new employees for purposes of seniority for layoff.

Furthermore, the proposed Employer language would, as the Union points out, conflict with portions of Section 28.4 of the Agreement. Section 28.4 provides that both parties waive the right to oblige the other party "to bargain with respect to any subject or matter specifically discussed during negotiations or covered in this agreement unless mutually agreed otherwise." However, under the City's proposed language, past practices which had been discussed during negotiations but which were not identified in the Agreement could be changed in accordance with RCW 41.56. In fact, the Employer proposed language allows even past practices identified in the Agreement to be subject to change in accordance with RCW 41.56. Thus, under the language proposed by the Employer, the Employer would have the right to oblige the Union to negotiate over matters specifically discussed in negotiations or covered in the Agreement if those matters could be characterized as past practices pursuant to the new language of Section 28.1.

I also note that Vial admitted that that on several occasions in the past the Union has agreed to bargain during the term of the collective bargaining agreement on emerging issues, resulting in agreements between the parties that were reflected in several memorandums of understanding.

Finally, I cannot find that the Employer's position is supported by a review of contract language in the comparators. The language in each contract is different and there is no clear pattern to this language which can be said to provide support for the Employer's proposal here.

The Employer's proposed language is rejected.

## FLEXIBLE BENEFITS

Presently, two health plans are available to bargaining unit members. One is the Blue Cross Blue Shield Preferred Provider Plan. This plan provides for a $50 deductible per individual and a $150 deductible per family. Additionally, there is 100% coverage with respect to providers within the plan and 80% coverage with a $2,500 maximum out of pocket with respect to providers outside the plan.

The Employer proposes the following changes in the Blue Cross Blue Shied Preferred Provider Plan. The deductible would be doubled, so that it would be $100 per individual and $300 per family. Additionally, coverage with respect to providers within the plan would be reduced to 90% and coverage with respect to providers outside the plan would be reduced to 70%, with an overall $2,500 maximum out of pocket.

Presently, the second plan available to bargaining unit members is the Kaiser HMO Plan which provides for a $1.00 office visit co-pay charge. The Employer proposes to raise this co-pay charge to $5.00.

The Union proposes to maintain both plans unchanged.

The Employer is motivated to propose these changes based upon increases in premium costs. The premium for the Blue Cross Blue Shield Plan for 1997 is expected to increase 20.4% over 1996, although there is a possibility of some premium refund depending upon claims experience. With respect to the Kaiser HMO Plan, City Exhibit No. 8.A indicates a 2.3% premium increase in 1997, although it shows a 5.2% decrease in

1996. I also note that Guild Exhibit No. 85 states that the Kaiser premium actually decreased by 1% from the 1996 rates.

The Employer, in support of its position, did a survey of certain health care benefits provides by the nine comparators it had selected for use in these proceedings. Eight of those comparators, that is all except Beaverton, were included in the list of comparators I selected for use in this proceeding. According to City Exhibit No. 8.D, seven of the eight comparators had co-pays in at least one of the plans available, and all but two of those co-pays had at least a $5.00 minimum. Furthermore, six of the eight comparators had deductibles in one or more of the plans available and none of those deductibles were as low as $50 for an individual and $150 per family. In fact, most of the deductibles were at the $100 per individual and $300 per family level.

One of the difficulties in assessing the information provided is that City Exhibit No. 8.D lists 22 health plans in the eight comparators. Although there is some duplication, it is clear that comparisons are being made between a relatively large number of different health plans, which may well have different benefit provisions.

In any event, after carefully considering this matter, I have determined not to grant the Employer's proposal to change the health care benefit at this time. In this regard, I note that it was in 1992 that the Union agreed to move from the Blue Cross Blue Shield Indemnity Plan to the Blue Cross Blue Shield Preferred Provider Plan. In doing so, the Union secured the lower deductible of $50 per individual and $150 per family and gained 100% coverage for employees using preferred providers. The indemnity plan had a $100 deductible per individual and a $300 deductible per family and only provided 80% of coverage up to $2,500 of out of pocket expense with 100% thereafter. Thus, it seems

somewhat unfair to ask Union employees to give up a substantial amount of the benefit they secured by moving to the preferred provider plan just two prior contracts ago.

Furthermore, when the Union agreed in 1992 to move to the preferred provider plan, they were moving to a plan that the non-represented City employees were covered by at that time and dating back to 1988 or 1989. Here, none of the City's employees, union or non-union, are subject to the Blue Cross Blue Shield Preferred Provider Plan or Kaiser HMO Plan as proposed by the Employer. Vial testified that the City intended to look at plan design changes with the City's other bargaining units, as well as the non-represented employees, in an attempt to reduce premium rates. However, he also testified that he did not know what in particular the City was going to do with respect to this matter.

As Union counsel indicates in his brief, there is no evidence that the City has attempted to initiate a labor—management insurance committee in an effort to work co-operatively with its employees in determining what, if anything, should and could be done regarding health care costs and benefits. Furthermore, the City in 1996 has changed insurance consultants after 10 years with its prior insurance consultant. This fact provides additional support for a decision not to move ahead with health care changes on a piecemeal basis at this time. I also note that with the City now being the fourth largest city in the State of Washington, and with the likelihood that its workforce will increase, additional options such as self-funding of benefits may become viable.

Finally, as Guild Exhibit No. 87 demonstrates, the maximum employer paid premium for health and dental benefits is not significantly different for Vancouver in 1997 than it is for the average of the comparators. In this regard, I took the average of

the 11 cities listed on Guild Exhibit No. 87 which I have selected as comparators. The average is $462.73 which is approximately 1.1% more than $457.50, the maximum City paid premium for medical and dental benefits for 1997. Also, Vancouver is approximately in the middle of the comparators with five paying a higher maximum premium and six paying a lower maximum premium.

Guild Exhibit No. 87 does not include Gresham as Gresham was not one of the comparators proposed by the Union. I have reviewed City Exhibit No. 10 which has the City questionnaires for each of its comparators. I have not included Gresham because the information supplied in City Exhibit No. 10 appears to relate to 1996 and not 1997. In this regard, I note that the maximum medical premium listed on the questionnaire for Gresham for the police officer unit is $327.10 for plans designated as Blue Cross IV and V. This amount is very similar to the maximum medical premium paid in Vancouver in 1996 for the Blue Cross Blue Shield Preferred Provider Plan which was $329.70.

Based on all the foregoing, I have determined not to accept the Employer's proposal for a change in flexible benefits.

## AWARD OF THE INTEREST ARBITRATOR

Set forth below is the Award of your Interest Arbitrator with respect to each of the five issues discussed in the attached Opinion:

## I. Rates of Pay

A. Effective January 1, 1997, an increase in the base pay of 3.8% for police officers, police corporals and police sergeants. .

B. Effective January 1, 1998, an increase in base pay of 5.27% for police officers, police corporals and police sergeants.

C. Effective January 1, 1999, an increase in base pay for police officers, police corporals and police sergeants equal to 90% of the percentage increase in the U.S. Department of Labor Consumer Price Index (CPI-W) For Urban Wage Earners and Clerical Workers, Portland—Vancouver area for the period of July 1997 to July 1998, with a minimum of 2% and a maximum of 6%.

## II. Deferred Compensation

No change from the 1995-96 Agreement.

## III. Education Incentive

A. Effective January 1, 1997, a 2.5% premium for bargaining unit employees with an associate degree from an accredited college or university.

B. Effective January 1, 1997, a 5% premium for bargaining unit employees with a bachelor's degree from an accredited college or university.

C. This Award is not intended to change any requirements contained in Article 23, "Educational Incentives" of the parties' 1995-96 Agreement.

## IV. Past Practice

No change from the 1995-96 Agreement.

## V. Flexible Benefits

No change from the 1995-96 Agreement.

Dated: December 20, 1997

Seattle, Washington

Michael H. Beck, Interest Arbitrator