

IN THE MATTER OF THE INTEREST)
ARBITRATION)
BETWEEN)
THE CITY OF MILTON, WASHINGTON)
(City))
AND)
INTERNATIONAL ASSOCIATION OF)
MACHINISTS AND AEROSPACE WORKERS,)
LODGE NO. 160)
(Union.))

INTEREST
ARBITRATOR'S
OPINION
AND
AWARD
ON THE FOLLOWING
SUBMITTED ISSUES:
1. Wages for Police Officers
and Sergeants
2. Retroactivity of any
Wage Increase
3. Educational Incentives
4. Overtime work/7(K)
Exception.

HEARING SITE: 9315 15th Place South - Seattle, Washington

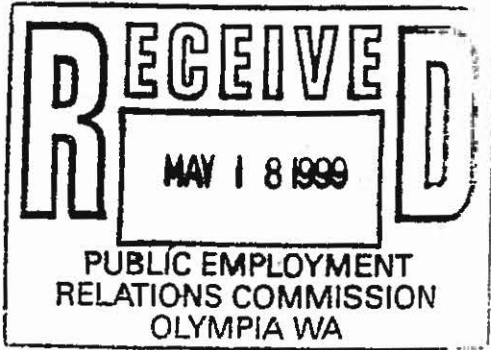
HEARING DATE: May 13 and 14, 1998

ARBITRATOR: John H. Abernathy
207 Enders Alley
Ashland, OR 97520

APPEARING FOR THE CITY:
Bruce E. Heller, Attorney at Law
Reed McClure Law Firm, Seattle

APPEARING FOR THE UNION:
Don Hersey, Business Representative

BRIEFS RECEIVED:
June 25, 1998



INTRODUCTION

Pursuant to RCW 41.56.450, the Executive Director of the Public Employment Relations Commission for the State of Washington declared that in the police bargaining negotiations between The City of Milton ("City") and International Association of Machinists and Aerospace Workers, Lodge 160 ("Union") there remained four unresolved issues (wages, retroactivity, education incentives and overtime work/7(k) exception). The Executive Director then directed those four issues be submitted to interest arbitration. The parties selected John H. Abernathy to serve as the interest arbitrator.

Arbitrator Abernathy conducted an Interest Arbitration hearing in this matter on May 14, 1998 in Seattle, Washington. Business Representative Don Hursey represented the Union and Mr. Bruce Heller, Attorney at Law, represented the City. It was agreed at the conclusion of the hearing that each party would submit a post-hearing brief postmarked no later than June 15, 1998, with a copy to the other party. This date was extended to June 22, 1998, by mutual agreement of the parties. The Interest Arbitrator declared this hearing closed upon the timely receipt of those briefs on June 25, 1998.

CITY/UNION CHARACTERISTICS

Milton, Washington is a city of 5,525 population in an area of 2.2 square miles, with a total assessed valuation of \$241,258,951. The City is located on the King-Pierce County line, about 25 miles south of Seattle and five miles North of Tacoma. The City is operated under the Mayor-Council form of government, and has an overall employment compliment of 39 full time and 11 part time employees.

The Milton Police Department employs 11 full time employees. IAM Local #160 is a labor organization representing two bargaining units within the department: 1) two non-commissioned support services personnel who are part of a non-uniformed personnel unit; and 2) nine commissioned employees in the Police Department - seven police officers, one detective and one sergeant. Only these nine commissioned employees are

subject to interest arbitration, and it is that bargaining unit which is at impasse. The average length of service of employees in the police commissioned unit as of the date of the hearing was nine years, excluding the one probationary police officer.

SUMMARY OF CURRENT NEGOTIATIONS

A labor agreement between the parties covering this unit of employees was set to expire December 31, 1996. Negotiations toward a successor contract began in April 1996 with District Lodge 160 Business Representative Don Hursey bargaining for the Union and then-Mayor Leonard Sanderson bargaining for the City. Historically, although the parties had not been eligible for interest arbitration prior to July 1, 1997, they had according to the union, employed methodology of comparing cities with one-half to twice the population and total assessed valuation of the City of Milton. The City denies there was an agreement to do so. To further narrow their differences, Don Hursey claimed that he and then-Mayor Sanderson agreed to limit their comparables to a four county area in Western Washington of Snohomish, King, Pierce, and Kitsap.

Shortly after the Union presented a set of contract proposals in July 1996, the City advised the Union that then-Mayor Sanderson would not be conducting the negotiations on behalf of the City. Thereafter, negotiations were suspended while the City selected a new negotiator and a new negotiating team; a process which was not completed until December 1996. The City's new negotiator, Attorney Bruce Heller, met with Don Hursey in December of 1996. Productive bargaining began in earnest at the turn of the year after the then pending labor agreement had expired.

Once negotiations between Hursey and Heller were underway, the City began proposing comparators beyond the four county area agreed to by Don Hursey and then-Mayor Sanderson - including cities in Eastern Washington. This altered approach was employed by the City for the remainder of the negotiations, including mediation, and remained so until the interest arbitration hearing. At the interest arbitration hearing, the City no longer offered Eastern Washington Jurisdictions as comparators.

In addition, after Heller became the City's chief spokesman, the City began to utilize a methodology of 33% plus or minus in population and total assessed valuation to select comparable cities.

When the parties were unable to reach agreement through their own efforts on all issues, mediation was requested from PERC and a mediator was assigned. After mediation and at the recommendation of PERC Mediator Katrina I. Boedecker, four issues were directed to interest arbitration by PERC Executive Director Marvin Schurke by letter dated September 12, 1997. This interest arbitration resulted.

STATUTORY GUIDELINES

Interest arbitration in Washington State is governed by Title 41 RCW: Public Employment, Civil Service and Pensions. Relevant portions of Title 41 for this interest arbitration are:

RCW 41.56.030 Definitions - which defines public employees as:

“ . . . any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body.”

and specifics where interest arbitration for law enforcement officers may be used as:

“(a)(i) Until July 1, 1997, law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of seven thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of thirty-five thousand or more; (ii) beginning on July 1, 1997, law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more; ...”¹

RCW 41.56.465 requires interest arbitrators to consider the following factors in making their determination:

¹ This means that the City of Milton (pop. 5525) was not subject to interest arbitration in its law enforcement bargaining unit prior to July 1, 1997, but was after that date.

“ . . . the legislative purposed 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) through (d), 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. For those employees listed in RCW 41.56.030(7)(a) who are employed by the governing body of a city or town with a population of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living.

(2) Subsection (1)(c) of this section may not construed to authorize the panel to require the employer to pay, directly or indirectly, the increased employee contributions resulting from chapter 502, Laws of 1993 or chapter 517, Laws of 1993 as required under chapter 41.26 RCW. (1995 c 273 paragraph 2; 1993 c 398 paragraph 3.)”

APPLICABLE STATUTORY FACTORS IN THIS CASE

Not all of the statutory factors in RCW 41.56.465 were in dispute in this case. For example the parties agree that the City has the constitutional and statutory authority to enter into negotiations with the Union and since July 1, 1997, has the authority to submit unresolved issues to interest arbitration for a binding decision. Therefore, statutory factor (a) is not in dispute.

Nor is factor (b). The parties stipulated: 1) to waive the tripartite panel called for in RCW 41.56.450; 2) that only the four issues certified for interest arbitration remain in dispute; and 3) that the agreed upon general wage increases for 1997, 1998, and 1999

would be 3%, 3%, and 4% respectively. This stipulation as to the negotiated wage increases for the three contract years largely renders factor (d) cost of living, of lesser importance than under circumstances where the general wage increase is an issue in interest arbitration.

The remaining factors - (c) comparability, (e) changes in circumstances, and (f) other factors - are the most relevant factors for this dispute. Factors (e) and (f) were not relied upon to any great degree by either party except for the controversy over what was the relevant year for comparative data. The most hotly debated of these three factors was comparability. Each party had a different methodology for arriving at comparable jurisdiction and each party was critical of the other's methodology and list of comparables.

The section below summarizes the comparability dispute: first, by presenting Methodology (the Union's and the City's); Supporting Arguments (Union and City); and Criticisms (of the other's methodology). Then I shall analyze the comparability evidence, and make findings. These findings will later be applied to the four issues in dispute.

In addition to these statutory factors I have found it useful in my experience in factfindings and interest arbitrations over the past 28 years to place the burden of proof/persuasion on the party seeking a change. To prevail, the party seeking change must be able to prove that a problem exists and that the proposed change will correct this problem. I shall use this assignment of burden in this case.

PRELIMINARY ISSUE

COMPARABLE JURISDICTIONS

Statement of the Issue: What jurisdictions should be adopted by the Arbitrator for comparison to the City of Milton?

Union's Methodology Used in the Selection of Comparables

The Union utilized: (1) population; (2) assessed valuation; and (3) jurisdictions within close proximity to Milton to select comparable jurisdictions. The Union searched for all jurisdictions within one-half to twice the population of Milton (-50% to +200%),

the same range in assessed valuation and local geographical proximity to Milton, i.e. cities within Snohomish, King, Pierce and Kitsap Counties. The following table provides the Union's first list of 17 possible comparable jurisdictions.

<u>Rank</u>	<u>Jurisdiction</u>	<u>County</u>	<u>1995 Assessed Valuation</u>	<u>1995 Population</u>
1	Enumclaw	King	\$453,253,013	10,170
2	Bonney Lake	Pierce	\$380,528,732	9,085
3	Sumner	Pierce	\$363,969,796	7,700
4	Snohomish	Snohomish	\$357,876,663	7,495
5	Port Orchard	Kitsap	\$257,629,361	6,240
6	Stellacoom	Pierce	\$424,849,253	6,120
7	Monroe	Snohomish	\$345,276,752	6,095
8	Brier	Snohomish	\$309,127,765	6,030
9	Poulsbo	Kitsap	\$311,817,476	5,765
10	Fircrest	Pierce	\$263,650,746	5,375
11	Arlington	Snohomish	\$336,665,539	5,350
12	Milton	Pierce	\$241,258,951	5,270
13	Lake Stevens	Snohomish	\$228,943,105	4,955
14	Fife	Pierce	\$464,886,415	4,250
15	Gig Harbor	Pierce	\$327,234,425	3,890
16	Buckley	Pierce	\$129,322,203	3,870
17	Duvall	King	\$180,383,137	3,490
18	Clyde Hill	King	\$473,081,072	3,000
			\$324,986,356	5,786

The Union narrowed this list to 12 jurisdictions by selecting the 6 entries immediately greater and the 6 entries immediately smaller than Milton. That resulted in the following list of 12 possible comparable cities

<u>Rank</u>	<u>Jurisdiction</u>	<u>County</u>	<u>1995 Assessed Valuation</u>	<u>1995 Population</u>
1	Stellacoom	Pierce	\$424,849,253	6,120
2	Monroe	Snohomish	\$345,276,752	6,095
3	Brier	Snohomish	\$309,127,765	6,030
4	Poulsbo	Kitsap	\$311,817,476	5,765
5	Fircrest	Pierce	\$263,650,746	5,375
6	Arlington	Snohomish	\$336,665,539	5,350
7	Milton	Pierce	\$241,258,951	5,270
8	Lake Stevens	Snohomish	\$228,943,105	4,955
9	Fife	Pierce	\$464,886,415	4,250

10	Gig Harbor	Pierce	\$327,234,425	3,890
11	Buckley	Pierce	\$129,322,203	3,870
12	Duvall	King	\$180,383,137	3,490
13	Clyde Hill	King	\$473,081,072	3,000
			\$335,498,707	4,881

The Union further refined this list by deleting Stellacoom (because police officers there also serve as firefighters) and substituted Port Orchard (because it met the other Union selection criteria). This resulted in the following final Union's List of Comparables:

<u>Rank</u>	<u>Jurisdiction</u>	<u>County</u>	<u>1995 Assessed Valuation</u>	<u>1995 Population</u>
	Arlington	Snohomish	\$336,665,539	5,350
	Brier	Snohomish	\$309,127,765	6,030
	Buckley	Pierce	\$129,322,203	3,870
	Clyde Hill	King	\$473,081,072	3,000
			\$335,498,707	4,881
	Fife	Pierce	\$464,886,415	4,250
	Firecrest	Pierce	\$263,650,746	5,375
	Gig Harbor	Pierce	\$327,234,425	3,890
	Lake Stevens	Snohomish	\$228,943,105	4,955
	Monroe	Snohomish	\$345,276,752	6,095
	Poulsbo	Kitsap	\$311,817,476	5,765
	Port Orchard	Kitsap	\$257,629,361	6,240

The Union contends that its list of comparable jurisdictions is appropriate as it is drawn from a methodology accepted in the industry and historically utilized by the parties and, appropriately, utilizes data available to the parties at the time of their negotiations. The Union urges the Arbitrator to adopt its lists of comparables.

The City's Methodology Used in the Selection of Comparables

The City focused on the customary measurements of a city's size (population) and source of taxable wealth (assessed valuation) to arrive at its initial list of comparable cities. The City then used a 33% range, i.e., cities and towns with populations between 33% less than and 33% greater than that of the City of Milton which provides a population range of between 3,683 to 7,348. The City arrived at this + or - 33% factor by researching police and fire interest arbitration awards since 1990 where arbitrators have applied the "similar size" criterion. The table below summarizes that research:

<u>Date of Arb Award</u>	<u>Interest Arbitrator Name</u>	<u>Parties to the Arbitration</u>	<u>Min. Population of Comps</u>	<u>Max. Population of Comps</u>
5/27/97	Axon	Everett v. EPOA	-31%	+31%*
7/30/97	Axon	Sno Co v. Teamsters No. 763	-50%	+50%
6/20/96	Abernathy	Camas v. IAFF	-50%	+50%*
2/06/92	Axon	Pullman v. PPOG	-10%	+86%
6/17/91	Beck	Bellingham v. IAFF	-28%	+90%
2/12/90	Krebs	Pasco v. PPOG	-30%	+30%
10/04/90	Levak	Pasco v. IAFF	-50%	+50%*
6/17/91	Beck	Moses Lake v. IAFF	-38%	+60%
4/02/96	Latsch	Bellingham v. Teamsters No. 231	-50%	+50%
9/17/97	Lumbley	Centralia v. IAFF	-9%	+46%*
7/01/97	Beck	Vancouver v. VPOG	-50%	+50%*

*In each of these cases, the Union wanted to utilized twice as much cut-off point (or greater), and it was expressly rejected by the Arbitrator.

Through this process the City identified a rather large group of 35 Washington cities and towns, including Milton. Other population ranges in the record where the parties could not agree include: +/-20% in City of Lynnwood v. Teamsters Local No. 763 (Abernathy, 1980), +/-33% in Ciwkutz County v. Teamsters Local No. 763 (Beck, 1987), -27% to +47% in City of Seattle v. Seattle Police Management Association (Beck, 1983), -45% to 40% in Snohomish County v. Teamsters Local No. 763 (Krebs, 1986). Also, Krebs in Seattle v. Seattle Police Management Association (Krebs, 1984) concluded that Seattle, a city 80% larger than Sacramento is not similar in size. He also concluded that "... to include such cities as San Diego that have a population of 75% or more than that of

Seattle would, in the opinion of your Chairman, not be in accord with the statutory mandate to compare cities of similar size.” (pp.11-12). When large ranges have been used, such as the -50% to 200% proposed by the union in this proceeding, it has been when the parties had agreed to consider such a range. This was the case in City of Bellingham v IAFF Local No. 106 (Beck, 1991) at pp.6-7 and (Beck, 1994) at p.6. However, when the comparables were finally selected, Arbitrator Beck selected the closest five up and five down in population and the resulting range was much narrower. In that case, Bellingham’s population was listed as 47,290. The largest population selected by Arbitrator Beck was Clark at 80,000 (+69%) and the smallest population selected was Kennewick at 36,880 (-22%). See p.22 (Beck, 1991). Finally a +/-30% population band was agreed upon in King 16 v IAFF Local No. 2459 (Beck, 1988).

Contrary to the Union’s contention at the hearing that the +200% and the -50% band was commonly used, the City could find no arbitration awards to support the Union’s approach. The City argued that its proposed range of +/-33% is more consistent with prior arbitration awards than the +200% and -50% proposed by the Union.

Applying the +/- 33% range the City found the following cities comparable in population to Milton:

Cities and Towns
With Resident Populations
+/- 33% of Town of Milton

<u>Town</u>	<u>Population</u>
Ferndale	7,235
Normandy Park	7,122
Chehalis	7,035
Port Orchard	6,965
Bartleground	6,948
West Richland	6,930
College Place	6,980
Clarkston	6,870
Steilacoom	6,185
Brier	6,180

Poulsbo	6,175
Arlington	6,010
Ephrata	5,945
Fircrest	5,895
Selah	5,730
Pacific	5,640
Milton	5,525
Burlington	5,445
Othello	5,395
Union Gap	5,325
Lake Stevens	5,290
East Wenatchee	5,245
Prosser	4,840
Colville	4,690
Fife	4,545
Omak	4,495
Sequim	4,375
Airway Heights	4,139
Gig Harbor	4,130
Quincy	4,030
Buckley	3,920
Wapato	3,880
Duvall	3,813
Montesano	3,810
Medical Lake	3,790

Source: Official 1997 Population of Washington Cities.

To reduce this list to more manageable proportions the City then applied assessed valuation, again using the +33% to -33% range, resulting in an assessed value range of \$175,285,798 to \$349,695,167. Milton's 1997 assessed valuation for 1998 taxes was \$228,955,105 in Pierce County and, \$33,973,592 in King County, for a total assessed valuation of \$262,928,697.

This process resulted in the elimination of 15 jurisdictions resulting in the following 20 cities and towns. During the arbitration, the City explained that it had inadvertently included several comparables that fell outside the +/-33% band in assessed valuation. They were Pacific with an assessed valuation of \$174,848,233 (-33.5%); Buckley with an assessed valuation of \$143,364,481 (-45.5%) and Poulsbo with an assessed valuation of \$362,488,539 (+37.9%). As Pacific, Buckley, and Poulsbo fall

outside the +/- 33% band they should be removed from the list. The following list of cities resulted.

Washington State Cities and Towns
With Resident Populations and Assessed Valuations
~/- 33% of Town of Milton

<u>Jurisdiction</u>	<u>Population</u>	<u>Assd Valuation</u>
Chehalis	7035	\$336,655,619
Brier	6180	\$332,388,303
East Wenatchee	5245	\$311,599,785
Port Orchard	6965	\$296,559,770
Sequim	4375	\$281,314,679
Fircrest	5895	\$276,133,034
Battleground	6948	\$271,837,895
Milton	5525	\$262,928,697
Selah	5730	\$253,096,028
Lake Stevens	5290	\$250,403,048
Union Gap	5325	\$244,737,028
Othello	5395	\$244,030,063
West Richland	6930	\$231,611,746
Colville	4690	\$226,055,376
Prosser	4840	\$224,305,425
Duvall	3813	\$209,403,955
Clarkston	6870	\$191,416,799
Ephrata	5945	\$182,558,934
Quincy	4030	\$180,250,960
College Place	6980	\$178,966,585

In light of the new requirement of RCW 41.56.030(7)(a), consideration to regional differences in the cost of living, REW 41.465(1)(f), the City used geographical proximity to Milton as a further screening criteria. Consequently, the City next looked more closely at the neighboring counties with cities and towns of similar size in the Puget Sound Area (King, Kitsap, Pierce, Snohomish, and Thurston Counties).² According to the U.S. Department of Commerce, Bureau of the Census, these counties comprise the Consolidated Metropolitan Statistical Area (CMSA), as defined by the Federal Office of

² Thurston County was not used by the Union but the other four Counties were.

Management, and Budget on June 30, 1993. Cities outside those counties were eliminated. This process resulted in the elimination of 11 more of the City's possible jurisdictions, which provided the following 8 cities and towns, all of which have their own police departments and employ police officers, to utilize as comparables.

The City of Milton's
Comparable Cities and Towns
With Resident Populations and Assessed Valuations
+/- 33% of Town of Milton and
Located in Puget Sound Labor Market

<u>Jurisdiction</u>	<u>Population</u>	<u>Assd Valuation</u>	<u>Location</u>
Port Orchard	6,965	\$296,559,770	Kitsap
Brier	6,180	\$332,388,303	Snohomish
*Poulsbo	6,175	\$362,488,539	Kitsap
Fircrest	5,895	\$276,133,034	Pierce
*Pacific	5,640	\$174,848,233	Pierce/King
Milton	5,525	\$262,928,697	Pierce/King
Lake Stevens	5,290	\$250,403,048	Snohomish
*Buckley	3,920	\$143,364,481	Pierce
Duvall	3,813	\$209,403,955	King
Average:	5,485	\$255,698,670	
Variance	+ 0.7%	+ 2.8%	

* The City explained in the arbitration hearing why these cities should be eliminated from the City's final list of comparables but the City failed to do so

The City argues that the above eight cities provide a well balanced set of comparators that is consistent with statutory, judicial and arbitral direction, common sense and objectivity. All cities and towns are within +/- 33% in population and assessed valuation and all are located in the five county area denominated by the Bureau of Labor Statistics as the Puget Sound Labor Market. The City argues that the comparables proposed by The City of Milton should be adopted by the Arbitrator.

UNION'S CRITICISMS OF CITY'S METHODOLOGY

The City's approach is flawed and should not be adopted. Absent a compelling need for change, the historical practice honored by the parties should be continued. See e.g. City of Bellevue v IAFF Local No. 1604; PERC Case 6811-I-87-162 (Gaunt 1988) (I.87-88). Apart from the fact it draws comparable jurisdictions more favorable to its position, the City of Milton has established no basis for abandoning the historical practice of using a 50% to 200% methodology.

More fundamentally, the flaw in the City's approach can be seen from simply applying the methodology they suggest. According to the City of Milton, adopting a 33% plus or minus methodology results in a total assessed valuation range of \$175,285,798 to \$349,695,167. Therefore, the jurisdictions of Poulsbo, Buckley and Pacific, offered by the City as comparable, are disqualified, as they fall outside the City's proposed assessed valuation range. Were this not enough reason to disqualify the City of Pacific from consideration, there are at least two more reasons for its disqualification. First, the City of Pacific did not even have a police force as of 1996 making the comparison of that city, during the relevant time period of negotiations between the parties, inappropriate. Second, the disproportionately low salary range of police officers employed by the City of Pacific warrants its exclusion from consideration on that basis alone. See City of Walla Walla and Walla Walla Police Guild, PERC Case 6213-I-86-139 (Levak 1986) (I.33). Elimination of these jurisdictions leaves only five (5) jurisdictions as comparable, all of which, incidentally, are included on the Union's list of comparators.

The error in the City's approach likewise stems from the data it uses. Rather than using data available to the parties at the time of negotiations, the City uses data which would be pertinent if negotiations were being undertaken currently. Examination of the City's data reveals that the population and total assessed valuation numbers being used are those which were not available until, at the absolute earliest, July 1997. While RCW 41.56.465(1)(e) calls for consideration of "changes in circumstances . . . during the

pendency of the proceedings,” at least one arbitrator operating under this statutory language found the utilization of data not available at the time of negotiations between the parties inappropriate. In the City of Kent and IAFF 1747, (1980), Arbitrator Sutermeister adopted an approach which seeks to avoid the delay inherent in encouraging the parties to withhold settlement in hopes that more favorable data will become available if one just waits long enough. About this, Arbitrator Sutermeister said:

The panel further believes that CPI figures introduced for 1980 should not be considered. If negotiations had been concluded on time, before the end of 1979, the parties would have used cost of living figures available in 1979. The panel believes it should encourage the parties to settle the wage issue themselves in future years, and that using 1980 cost of living figures for an arbitration award would only encourage one or the other part (sic) to delay future settlements until figures more favorable to their side become available. (emphasis added).³

In this regard, Arbitrator Sutermeister’s approach is consistent with statutory purposes. RCW 41.56.465 directs the interest arbitrator to “be mindful of the legislative purpose enumerated in RCW 41.56.430” and then to use the other factors listed in RCW 41.56.465 as a guideline. The statement of legislative purpose of the Act has not changed since its adoption in 1973. The intent and purpose language of RCW 41.56.430 says:

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. (emphasis added)

³ As of the time of Arbitrator Sutermeister’s decision, the relevant statutory language was found in RCW 41.56.460 which preceded RCW 41.56.465 prior to the 1995 amendments to the statute.

Quite clearly, a system by which the parties would be encouraged to withhold settlement with hopes that next year's data will produce a more favorable data is inconsistent with the statutory purpose of prompt dispute resolution, the Union argues.

In contrast to the flaws in the approach recommended by the City, the comparators offered by the Union are drawn from a methodology that has been historically utilized by the parties, accepted in the industry, and properly based upon data available to the parties at the time of their negotiations. Accordingly, the Arbitrator should select the list of comparators suggested by the Union. When those comparators are examined, the Union's proposals on the issues at impasse will be judged to be appropriate, the Union concludes.

CITY'S CRITICISM OF UNION'S METHODOLOGY

During the hearing, the Union claimed that its methodology was commonly accepted by cities and unions. The Union offered no evidence to support this claim. As noted above in the comparison of Interest Arbitrator's awards, this contention is rebutted by prior arbitration awards.

The Union also claimed that its methodology had been adopted by both the City and Union in previous negotiations. There is no support of this assertion in the record. In fact, record evidence is to the contrary. The Union called Mr. Michael Meglemre, labor consultant and negotiator for the City under the prior Mayor's term. He testified that he utilized the "twice as big and half as big" bands as a starting point only. He then narrowed his starting point list of cities from there by selecting those cities closest in population and assessed valuation to Milton's. Prior Mayor, Leonard Sanderson, testified that while he had discussed the +200%/-50% band with the Union, he had never agreed to it. More importantly, he did not have the authority to bind the City on this matter since the City Council sets the parameters for negotiations. Moreover, union Exhibit 5, the Union's comparability document, states on the cover page: "For illustrative purposes only. This report does not imply, nor should the reader assume a stipulation of comparability by the author, the negotiating committee, or by the Employer."

The selection process by the Union should be rejected because it is grossly results oriented. It is skewed towards larger cities and ignores cities that are closer in population and assessed valuation to Milton. For example, the Union includes Monroe in its list of comparables with a population of 8,670 (3,145 greater than Milton) but excludes Satinwood with a population of 3,050 (only 2,475 less than Milton). Both are cities located in Snohomish County.

It is not reasonable for the Union to claim that the City of Milton is comparable to such jurisdictions as Clyde Hill with an assessed valuation of \$475 Million (80.7% greater than Milton) or Fife with an assessed valuation of \$527 Million (100.4% greater than Milton). At the same time, the Union seeks to exclude the City of Pacific with a population within 2% of Milton and an assessed valuation within 34% of Milton.

The City argued that even if the arbitrator were to utilize a larger population band, e.g., +/-50%, the results would not support the demands of the Union. Below is a list of all cities within a +/-50% population/assessed valuation with King, Snohomish, Pierce, Thurston and Kitsap Counties, and the salaries for their top step police officer and top step sergeant for 1997.

City	1997 Top Step Police Officer	1997 Top Step Sergeant
Arlington	\$3,469	\$3,859*
Brier	\$3,094	\$3,445
Buckley	\$3,054	\$3,190
Duvall	\$3,355	\$3,441
Fircrest	\$3,385	\$3,762
Gig Harbor	\$3,590	\$4,281
Lake Stevens	\$3,154	\$3,624
Pacific	\$2,871	\$3,137
Port Orchard	\$3,541	\$4,002
Poulsbo	\$3,557	\$4,011
Shelton	\$3,262*	\$3,621*
Satinwood	<u>\$3,369</u>	<u>\$3,740</u>

AVERAGE:	\$3,308	\$3,676
MILTON	\$3,294	\$3,813
Variance	-4%	+3.6%

A similar comparison for 1998 is contained in the following chart.

<u>City</u>	1998 <u>Top Step Police Officer</u>	1998 <u>Top Step Sergeant</u>
Arlington	\$3,594	\$3,998*
Brier	\$3,193	\$3,555
Buckley	\$3,143	\$3,330
Duvall ('97)	\$3,489	\$3,579
Firecrest	\$3,603	\$4,005
Gig Harbor	\$3,805	\$4,439
Lake Stevens	\$3,233	\$3,719
Pacific ('97)	\$2,871	\$3,137
Port Orchard ('97)	\$3,541	\$4,002
Poulsbo	\$3,692	\$4,160
Shelton	\$3,360*	\$3,730*
Satinwood	<u>\$3,504</u>	<u>\$3,920</u>
AVERAGE:	\$3,419	\$3,798
MILTON	\$3,393	\$3,927
Variance	-8%	+3.3%

* These figures are based on the AWC wage survey, which was utilized by the Union for all of its comparisons. While collective bargaining agreements are clearly a more accurate source of information, when wage schedules are based on future CPI developments, utilizing AWC survey is easier and more practical.

As the chart above shows, even using a +/-50% band, Milton's 1997/1998 wage offer would be less than 1% below the average for police officers, but more than 3% above the average for the sergeants. These figures clearly do not justify the 5% increase sought by the Union, the City argued..

ANALYSIS

The City of Milton's methodology and the Union's methodology agree in several respects. First, the City and the Union agree that population and total assessed valuation are the "first-select" criteria by which to determine comparables. Second, the City and the

Union agree that the comparable jurisdictions would be drawn from counties in the Western Washington area. The Union would use King, Pierce, Snohomish and Kitsap Counties; the City would use those four but add a fifth, Thurston County. Third, they agree that in order to determine whether a parity adjustment is warranted, maximum wage for police officer and sergeants is relevant consideration. Fourth, the parties agree that the total list of possible cities should be reduced by adopting a population and assessed valuation range above and below Milton and by excluding cities outside this range. They disagree on what this range should be. The Union proposed a -50% to +200% range and the City proposed a +/- 33% range, but indicates that a +/- 50% range could be used as well.

The comparable cities arrived at by the Union and the City (in both approaches) are listed below.

<u>Union</u>	<u>City +/- 33%</u>	<u>City +/- 50%</u>
Arlington		Arlington
Brier	Brier	Brier
Buckley	Buckley	Buckley
Clyde Hill	Clyde Hill	
	Duvall	Duvall
Fife		
Firecrest	Firecrest	Firecrest
Gig Harbor		Gig Harbor
Lake Stevens	Lake Stevens	Lake Stevens
		Pacific
Poulsbo	Poulsbo	Poulsbo
Port Orchard	Port Orchard	Port Orchard
		Shelton*
10	8	11

* Sheldon is not in the 4 or 5 county area used by the parties.

While there are some differences, there are also several common cities. In comparing the Union's list with the City's +/- 33% list, one finds that the cities of Brier, Buckley, Firecrest, Lake Stevens, Poulsbo, and Port Orchard on both lists. Only Fife, Gig

Harbor, Clyde Hill, Pacific, and Duvall are not on both lists. When the Union's list is compared with the City's +/- 50% list, the common cities are Arlington, Brier, Buckley, Firecrest, Gig Harbor, Lake Stevens, Poulsbo, and Port Orchard. The City's +/- list does not contain Fife, and Clyde Hill, but does contain two cities not on the Union's list - Pacific and Sheldon (but Sheldon is not in the 4 or 5 counties of Western Washington used by the parties).

Thus one can see that the choice of the range is the disputed selection factor, and that factor largely determines the comparative cities. In my opinion the Union has not made a compelling case for the +200% part of its range. The evidence of historical use is disputed. The City is correct in its argument that twice as big comparisons push the data upward and is therefore result oriented. None of the upward ranges in any of the prior interest awards provided by the City was a +200% upward range. The largest is a +90%, but +75% and +80% have been rejected by interest arbitrators. Of the 15 interest arbitration decisions provided by the City and not disputed by the Union, five use the +/-50% range and the average is about -42% to +55%. Therefore I reject the Union's +200% upward figure.

I also reject the City's +/- 33% figure. The City's own documentary evidence shows that figure was used only once in the 15 interest arbitrations. (There is a +/-30% and a +/-31% however.)

I shall utilize a +/- 50% range because I find that prior interest arbitrators have used it about a third of the time, and because the Union agrees on a -50% lower range and because the City uses +/-50% in its comparisons. I find the Union's reasons for excluding Poulsbo and Pacific compelling and will exclude those cities from my final list of comparables. I will also exclude Sheldon from my final list because it is not in the 4 or 5 county area used by the parties. It is in Marion County.

I also reject the cities of Clyde Hill and Fife for the reasons argued by the City

I also find the City's averaging methodology to be incorrect. The City added the population and assessed value of the City of Milton to get population and assessed valuation averages. The City then compared Milton to those averages that included Milton. The City of Milton should have been excluded from the calculation of averages to have a meaningful comparison of the City to the average.

The remaining eight cities are the cities that I shall use as comparables:

<u>Area</u>	<u>County</u>	<u>1995 Population</u>	<u>1995 Assessed Value</u>
Arlington	Snokomish	5,350	\$336-\$337 M
Brier	Snokomish	6,030	\$309 M
Buckley	Pierce	3,870	\$129 M
Duvall	King	3,870	\$209 M
Firecrist	Pierce	5,375	\$263M
Gig Harbor	Pierce	3,890	\$327M
Lake Stevens	Snokomish	4,955	\$229 M
Port Orchard	Kilsap	6,240	\$258 M
AVERAGE		4,940	\$257 M

These eight comparables will be used to judge the proposals of the four issues remaining in dispute.

I agree with the Union and Arbitrator Sutermeister that the appropriate data to be used is the data that was available at the time of negotiations. I shall use the Union's data for these comparables.

ISSUE : NO. 1 - RANGE INCREASE/MARKET ADJUSTMENT

Issue: Whether or not police officers and sergeants should receive a "market adjustment" in the form of reclassifying their positions to a 5% higher pay range in the City's classification pay plan?

Current Contract (1995 through 1996):

The 1995 - 1996 contract provided for assignment of police officers to pay Range 16 and sergeants to pay Range 19. the negotiated adjustments to Range 16 (Police Officers) and to Range 19 (Sergeants) of the base wage schedule was as follows:

<u>Year</u>	<u>Percentage Increase</u>
1995	3.0%
1996	3.0%

Union's Proposal - The Union proposed to add Range 17 for Police Officers and Range 20 for Sergeants which would result in a 5% increase for each rank.

		<u>STEP</u>				
	<u>Range</u>	<u>A</u>	<u>B</u>	<u>C</u>	<u>D</u>	<u>E</u>
P.O.	16	2,632	2,763	2,902	3,046	3,198
add	17	2,763	2,902	3,046	3,198	3,358
Sgts.	19	3,046	3,198	3,358	3,526	3,702
add	20	3,198	3,358	3,526	3,702	3,886

Union's Arguments:

The Union contends that the following comparability data for a 40 hour week supports its proposal.

UNION COMPARABLES
POLICE SERGEANT (1/1/97)

<u>City</u>	<u>Police Officer's</u> <u>Maximum Wage</u>	<u>Police Sergeant's</u> <u>Maximum Wage</u>
Arlington	3469	3866
Brier	3094	3445
Buckley	3051	3187
Clyde Hill	3343	- 0 -
Duvall	3355	3544
Fife	3686	4136
Fircrest	3491	3879
Gig Harbor	3590	4274
Lake Stevens	3139	3619
Monroe	3550	4441

Poulsbo	3574	4010
Port Orchard	3541	4002
<u>Average:</u>	<u>3406</u>	<u>3855</u>
Milton	3199	3702

Using the average salary range for the Cities comparable to Milton, under the contract rate schedule in evidence, the salary range for the City's Police Officers should be increased two ranges and the sergeant rate increased one range, the Union contends.

Examining the maximum wage rates of those jurisdictions as of January 1, 1997, as drawn from the collective bargaining agreements submitted by the parties and verification through the city administration of the jurisdictions listed, the following is revealed:

<u>City</u>	<u>Police Officer Maximum Wage</u>	<u>Police Sergeant Maximum Wage</u>
Arlington	\$3,469	\$3,866
Brier	\$3,094	\$3,445
Buckley	\$3,051	\$3,187
Clyde Hill	\$3,343	N/A
Duvall	\$3,355	\$3,544
Fife	\$3,686	\$4,136
Fircrest	\$3,491	\$3,879
Gig Harbor	\$3,590	\$4,274
Lake Stevens	\$3,139	\$3,619
Monroe	\$3,550	\$4,441
Poulsbo	\$3,574	\$4,010
Port Orchard	\$3,541	\$4,002
<u>AVERAGE</u>	<u>\$3,406</u>	<u>\$3,855</u>
Milton	\$3,198	\$3,702

The Union argues that when these figures are compared to the contract rate range for full time employees of the City of Milton, it shows that to achieve parity, the range for the City of Milton police officer classification should be set at range 18 which, under the schedule in evidence is a top wage of \$3,526, and the range for the City of Milton police sergeant classification should be set at range 20 which is a top wage of \$3,886. Hardly a

windfall as an examination of the wage structure of these comparable jurisdictions demonstrates, the Union argues.

According to the Union, a wage parity adjustment is warranted even if the City's comparability methodology is adopted. Eliminating those jurisdictions which the City's total assessed valuation range dictates must be excluded, namely Pacific, Poulsbo and Buckley, the average top step police officer salary, according to the City's 1997 figures is \$3,305.80 which would still dictate a parity adjustment to step 17. It is only if one includes those jurisdictions which the City's methodology says are disqualified can one arrive at the calculations the City offers.

The Union argues that the City's effort at slight-of-hand should be rejected. The Union's proposal of an additional range for police officers and police sergeants should be adopted, the Union argues.

City Proposal (1997 through 1999): - The City rejects the Union's demand to reclassify the bargaining unit positions to a higher salary range.

City's Arguments:

The 1995-1996 contract provided for assignment of police officers to pay range 16 and sergeants to pay range 19. Now the Union proposes a reclassification to pay range 17 for police officers and pay range 20 for sergeants, a 5% increase. The City proposed that the classifications of police officer and sergeant continue to be classified in range 16 and 19, respectively, in the City of Milton Contract Rate Schedule. The Union has the burden of proof to justify a special increase of 5% for police officers and sergeants and has failed to do so, the City argues, even by arguing for a greater population and assessed valuation cut-off band than proposed by the City. Additional City arguments include:

1.. The City has already agreed to the wage increases for 7/1/97 (3%), for 4/1/98 (3%) and 1/1/99 (4%) as follows:

2. The salary schedule proposed by the City is well within the range of salary schedules for police officers and sergeants in comparable cities. There is no justification for a reclassification of police officers and sergeants to a higher pay range.

3. The City of Milton's offer of 3.0% for 1997 is on par with the average wage increase of 3.0% for police officers in the comparable cities for 1997. A comparison of the top step police and sergeant wages in the comparable cities for 1997 shows that the average top step police officers wages in those cities was \$3251 compared to the \$3294 that will result from the City's 7/1/97 offer.

4. These salary increases are the same as salary increases negotiated with other labor unions representing City of Milton employees, including IAM Lodge #160 on behalf of the police department support staff. To grant this City bargaining unit a greater wage increase will cause other Unions in the City to feel they have not been treated fairly and will generate "catch-up" demands from them in their next negotiations. This internal equity argument should be given "considerable weight". See Arbitrator Axon's decision. Similarly the average for top step sergeants (\$3,577) is 6.6% higher than the Milton's 7/1/97 offer for sergeants.

5. The general wage increase for Milton Police Officers and Sergeants for 1998 is 3.0% which compares to the current 1998 wages (as of May 13, 1998) in the comparable cities as follows:

	1998 Top Step <u>Police Officer</u>	1998 Top Step <u>Sergeant</u>
<u>Average</u>	3346	3555
<u>Milton (7/1/97 offer)</u>	3393	3927
Variance	+1.4%	+6.5%

6. The Wage increases for City of Milton Police Officers and Sergeants is also quite generous, given the settlements already reached in four of the eight comparable cities:

<u>City</u>	<u>1999 Wage Increase</u>	<u>Estimate</u>
Brier	90% CPI-U	90% of 2.9% = 2.6%
Buckley	3.0% Fixed	3.0%
Fircrest	100% CPI-U	2.9%
Poulsbo	100% CPI-W	2.6%
Average		2.8%
Milton (Offer for 1999)		4.0%
Variance		+1.2%

*CPI estimates are based on the most recent available information reported for the second half of 1996 to the second half of 1997, i.e., 2.9% for the CPI-U and 2.6% for the CPI-W, Seattle-Tacoma-Bremerton Area.

The cities of Duvall, Lake Stevens, Pacific and Port Orchard have not yet settled for 1999.

7. In addition, Milton police officers and sergeants receive longevity pay increases. Three of the City's eight comparables (Brier, Buckley and Fircrest) receive no longevity pay at all. The monthly longevity pay schedule for police officers and sergeants is above average in comparison to comparable cities. No comparable cities receive both longevity and education pay.

<u>City</u>	<u>5 Years</u>	<u>10 Years</u>	<u>15 Years</u>	<u>20 Years</u>
Brier	None	None	None	None
Buckley	None	None	None	None
Duvall ('97)	None	\$ 50	\$100	\$150
Fircrest	None	None	None	None
Lk. Stevens	None	\$97	\$97	\$97
Pacific ('97)	\$35	\$100	\$180	\$180
Pt. Orchard ('97)	\$71	\$81	\$124	\$170
Poulsbo	\$37	\$74	\$111	\$148

Average	\$18	\$50	\$77	\$93
Milton (Offer 1/1/98)	\$34	\$68	\$102	\$102
Variance	+ \$16	+ \$18	+ \$24	+ \$9

8. The salary increases already agreed to by the parties are reasonable when compared to recent trends in the Consumer Price Indexes for the Seattle-Tacoma Area.⁴

9. The City has the ability to recruit and retain police officers with its present salaries. The average years of service in this bargaining unit is nine years.

ANALYSIS

The Union is the moving party for this issue. Therefore, I place the burden of proof/persuasion is placed on the Union. I have already determined the list of comparables I will use for this analysis and I have already determined I will use the data provided by the Union. Thus the Union must meet this burden of proof/persuasion with its own data.

The chart below compares the maximum salary for police officers and sergeants for 1997 according to the Union's data for a 40-hour week in the 8 cities I have chosen as comparable.

	Maximum Wage Police Officers 1997	Maximum Wage Police Sergeants 1997
Arlington	3,469	3,866
Brier	3,094	3,445
Buckley	\$3,051	\$3,187
Duvall	\$3,355	\$3,544
Fircrest	\$3,491	\$3,879
Gig Harbor	\$3,590	\$4,274
Lake Stevens	\$3,139	\$3,619
Port Orchard	\$3,541	\$4,002
Average:	\$3,341	\$3,727

⁴ Since the issues were certified for arbitration on September 12, 1997, the CPI actually declined.

Milton

\$3,199

\$3,702

Top step police officers in Milton are \$142.00 below the average of these eight comparable cities, but top step sergeants are only \$25.00 below the average for these eight comparable cities.

Based on this comparison alone, I do not find persuasive evidence of a need for a change in the structure of the salary schedule. Salary schedules generally have a ceiling and some employers will eventually bump up against that ceiling. Police officers in Milton who do so still have the option of seeking promotion to sergeant and obtaining a raise and a new ceiling if they do so.

Three other uncontested facts support my decision. First the parties have agreed to the amounts of the general wage increases for the next three years. Those increases will be applied to all steps in the salary schedule. So top step police officers and sergeants will not be without a salary increase over the next three years. They will not get a step increase however.

Second, it is undisputed that Milton police officers and sergeants receive longevity pay increases, while three of the eight comparable jurisdictions do not (Brier, Buckley, and Firecrest). In addition, Milton's longevity pay appears to be higher than the longevity pay of the remaining five cities.

Finally, there is evidence that the City has the ability to recruit and retain police officers and sergeants. The average years of service in the bargaining unit is not out of line with police bargaining units in comparable cities. If they were, police employees would move to higher paying jobs.

AWARD::

Reject Union's Proposal to Modify Structure of Salary Schedule.

ISSUE NO. 2 RETROACTIVITY

Issue: Whether the arbitration award on salaries should be retroactive prior to July 1, 1997, the date when the commissioned police officers and sergeants became eligible for interest arbitration?

The Washington State Legislature in the 1995 Regular Session amended RCW 41.56.030 to make law enforcement officers employed by the governing body of any city or town with a population of two thousand five hundred or more eligible for interest arbitration (for the first time) beginning July 1, 1997.

Union Proposal: The 1997 wage adjustment shall be effective retroactive to January 1, 1997 and the 1998 wage adjustment shall be effective retroactive to January 1, 1998.

City Proposal: The 1997 wage adjustment shall be effective retroactive to July 1, 1997 and the 1998 wage adjustment shall be effective retroactive to January 1, 1998.

Union's Argument:

1. The retroactivity proposal of the City for 1997 is consistent with the application of the interest arbitration statute for cities the size of Milton, i.e., effective July 1, 1997.
2. The City's delay in negotiations, including the failure, until the arbitration hearing, to utilize comparators from the four Counties agreed upon at the outset of negotiations, warrants a retroactive adjustment to January 1, 1997.
3. There is ample authority for this request. See: e.g., City of Longview and Longview Fire Fighters Local 828, PERC Case (Lehleitner 1987) (I.52,77); Wooster City Board of Education, 109 LA 502, 507 (Feldman 1997).
4. The Arbitrator should reject the City's argument that the Arbitrator could not make a retroactive adjustment to a time prior to July 1, 1997 as the parties' access to interest arbitration, by statute, did not begin until that date. The City offers no reference

to statutory language or legislative history or authority of any other type to support this argument.

City's Argument:

1. The retroactivity proposal of the City for 1997 is consistent with the application of the interest arbitration statute for cities the size of Milton, i.e., effective July 1, 1997.

2. The retroactivity proposal of the City for 1998 is consistent with the application of the interest arbitration statute for cities the size of Milton, i.e., effective July 1, 1998.

ANALYSIS

Both parties have proposed retroactivity. They disagree on the effective date for retroactivity in 1997.

Based on the arguments of the parties, I have concluded that under the interest arbitration statutes affecting smaller Washington cities, e.g. Milton, my authority to make binding interest arbitration awards began on July 1, 1997.

AWARD:

Retroactivity for 1997 - effective July 1, 1997

Retroactivity for 1998 - effective January 1, 1998

ISSUE NO. 3

FLSA 207(k) EXEMPTION FROM DAILY OVERTIME STANDARD

Issue:

Whether overtime is to be paid for all hours worked in excess of 160 hours per 28-day work cycle, as authorized by section 207(k) of the Fair Labor Standards Act (FLSA)?

Current Contract Language:

A.5 Overtime shall be paid only upon the approval of the department director for each hour worked beyond the normal working day at one-and-one-half time the

employee's regular straight-time hourly rate of pay. The Mayor or his designee may approve the employee's requests for compensatory time off in lieu of cash at the same rate of time and one half for each hour worked. All such approvals shall be in writing.

City's Proposed Contract Language:

A.5 Overtime shall be paid only for hours approved by the police chief or his designee. All hours worked in excess of 160 hours per 28 day work cycle shall constitute overtime, as authorized by section 207(k) of the Fair Labor Standards Act. All overtime shall be paid at one and one-half times the employee's regular straight hourly rate of pay.

Union's Proposed Contract Language:

A.5 No change proposed.

City's Argument:

Section 207(k) allows cities to pay law enforcement officers overtime based on the number of hours worked in a work cycle, rather than based on a forty hour work week. This exemption from the standard forty hour work week is based on the recognition that because of shift rotations, the hours of law enforcement officers (and firefighters) often fluctuate during a month. During one week officers may work 60 hours, and the next week only 20. As long as the overall hours during a particular work cycle do not exceed a predetermined number, section 7(k) does not require the payment of overtime. In short, the purpose of section 7(k) is to provide public employers with greater flexibility in scheduling the shifts of its law enforcement personnel.

A number of the City's comparable cities utilize the 7(k) exemption, including Brier, Buckley, Duvall, Fircrest, Lake Stevens, and Poulsbo⁵.

The City's 7(k) proposal is eminently reasonable. Under Article 14.4, the City is paying holiday overtime in the form of time and one-half the employee's regular straight time hourly rate of pay, in addition to the employee's holiday pay, for hours worked on all

⁵ Union Exhibit 4 is in error in that the record refutes the Union's "No" in the 7(k) exemption column for the cities of Poulsbo, Fircrest, and Duvall, which have adopted the 7(k) exemption

of the holidays - even though the time worked is part of the employee's regular work schedule. Under the Department of Labor Regulations, the City is exempted from paying overtime unless the employee works more than 171 hours in a 28 day period. This, in effect, increases the weekly overtime threshold to 43.25 hours. Here, the City is proposing a smaller number of hours than Dept. of Labor Regulations permit - 160 hour per 28 day work cycle, which will maintain the average overtime threshold at 40 hours.

The major purpose for the exemption is to allow the City scheduling flexibility.

Other arguments offered by the City are as follows: The Police Chief needs flexibility in the administration of his overtime budget when it comes to shift changes, training requirements, covering for holidays (Article 14.1), vacations (Article 15.1), illness and injuries (Article 16.3), family and medical leaves (Article 18.1), prolonged disabilities (Article 18.2), military leave (Article 18.3), jury duty (Article 18.4), bereavement leaves (Article 18.5), and other operational contingencies.

Union's Argument: Comparability data does not support this City proposed change. As the Union demonstrated, the vast majority of the Cities comparable to Milton have not adopted a section 7(k) overtime exemption. For this reason, the City's proposed contract amendment to adopt this exemption is unwarranted and should be denied.

The City bears the burden of establishing a need for change from the existing contract language. See City of Bellevue v. IAFF Local No. 1604, PERC Case 6811-I-87-1622 (Gaunt 1988) (I.87-88). The City has not met this burden.

The City's proposal draws upon the same comparators it uses with respect to its wage parity argument. Here again, the City's approach is flawed in three respects. First, the City proposes the wrong comparables. Second, even under the City's methodology, jurisdictions of Buckley, Pacific and Poulsbo are disqualified under the City's total assessed value range. Excluding those jurisdictions from consideration, and assuming for the sake of argument the information provided by the City is correct, a majority of the

remaining five jurisdictions proposed by the City (Duvall, Fircrest and Port Orchard) do not employ the section 7(k) exemption.

Finally, the information offered by the City on this point is not correct. In examination of the Brier and Lake Stevens collective bargaining agreements, it is revealed that the Chief of Police in those cities has the option of electing a 40 hour per week or 160 hours in 28 work days approach to overtime. The 40 hour option is in effect. Consequently, once the jurisdictions the City says must be disqualified under its methodology are removed, none of the jurisdictions the City lists as comparable utilize the section 7(k) exemption.

Using the comparables offered by the Union shows that the vast majority of the properly considered jurisdictions do not utilize the section 7(k) exemption. Accordingly, the City's proposed change in contract language concerning overtime compensation is without basis and should be rejected.

ANALYSIS

This City proposal calls for changes in the existing contract language. The City has the burden of proof/persuasion on this issue.

In my opinion the City has failed to meet this burden. First, according to the City the major purpose of this proposed change is to give the Police Chief flexibility (or more flexibility) in scheduling. However, there is no evidence that the Police Chief is having problems in scheduling. Nor is there any evidence that alleged scheduling problems are due entirely to the current language in the collective bargaining agreement. Lack of evidence as to the existence of and causes of a problem are grounds for denying this proposed change.

Second, I am also disturbed by remarks by the City that hint at another reason for this City proposal - to avoid paying both holiday overtime and that regular straight time pay to employees who are scheduled to work and who do work on holidays. If that is the real objective of the City, again they failed to submit evidence of a problem in this area.

Finally, the comparables I have selected do not justify the change.

AWARD:

Retain Current Contract Language.

ISSUE NO. 4

Education Incentive Pay

Issue: Whether or not police officers and sergeants should receive additional pay increases based on college credits, regardless of when obtained?

Current Contract Language: No premiums are paid for college credits.

Union's Proposal: The Union proposes that the police officers and sergeants receive a 2% increase in pay if they obtain an AA degree or 90 college credits and a 4% increase in pay if they obtain a BA degree.

Union's Argument: .

The Union has presented ample evidence that an education incentive is warranted. Of the twelve (12) comparables offered by the Union, seven provide an education incentive. (Union Ex. 4). Of the five that do not, three (Port Orchard, Poulsbo and Fife) offer significantly higher than average maximum wage to both their police officers and sergeants. (Union Exs. 2 and 3). In fact, the maximum wage rates in these jurisdictions exceed the wage rate for police officers and sergeants employed by the City of Milton after grant of the parity increase proposed by the Union (Union Exs. 2,3 and 6).

City's Proposal: The City rejects the Union's demands for education pay.

City's Arguments:

Presently, there are no education incentive pay increase for Milton police officers or sergeants, and none should be awarded. The Union has the burden of proof to justify its demand and has failed to do so.

Among the City's comparables, only the City of Buckley has included a pay increase for college credits. No other City of Milton employees receive increases in pay

based on the obtaining of degrees, including other employees in the Milton Police Department. Even among the Union's comparables, less than half of them have pay increases for education. Union Exhibit 4 is in error with regard to Fircrest and Brier, which do not provide education incentive pay for police officers

1. No other employee in the City of Milton receives any increase in pay if obtained an AA degree or BA degree, including other employees in the Milton Police Department.

2. No objective information is available to the City to support the Union's argues that police officers with more college education display superior performance over Police officers with less education.

3. The City already pays longevity pay for years of service, i.e. 1% after 5 years, after 10 years and 3% after 15 years. The City should not be required to pay both longevity and education incentive pay. The City of Buckley--which is the one comparable city in the Puget Sound area that gives police officers an increase in pay for college education - pays no longevity pay.

ANALYSIS

This is a Union proposal for a new contract benefit. The Union has the burden of proof/persuasion on this issue.

In my opinion the Union has failed to meet this burden. There is no evidence of a problem and no evidence that additional college credits are being required in the department for promotions. Should the Department require a certain number of college credits for hiring and/or promotion, then compensation for that requirement could be more easily justified.

AWARD:

Reject Union Proposal.

IN THE MATTER OF THE INTEREST)	INTEREST
ARBITRATION)	ARBITRATOR'S
)	
BETWEEN)	AWARD
)	
THE CITY OF MILTON, WASHINGTON)	
)	
(City))	
)	
AND)	
)	
INTERNATIONAL ASSOCIATION OF)	
MACHINISTS AND AEROSPACE WORKERS,)	
)	
(Union.))	
)	
)	

After careful consideration of all oral and written arguments and evidence and for the reasons set forth in the opinion that accompanies this award, it is awarded that:

Submitted Issue No. 1: Wages for Police Officers and Sergeants:

Award: Reject Union's Proposal to Modify Structure of Salary Schedule.

Submitted Issue No. 2: Retroactivity of Any Wage Increase:

Award: Retroactivity for 1997 - effective July 1, 1997
Retroactivity for 1998 - effective January 1, 1998


Submitted Issue No. 3: Overtime Work/7(K) Exception:

Award: Retain Current Contract Language

Submitted Issue No. 4: Educational Incentives:

Award: Reject Union Proposal

Respectfully submitted on this 24th day of July, 1998 by


John H. Abernathy
Arbitrator