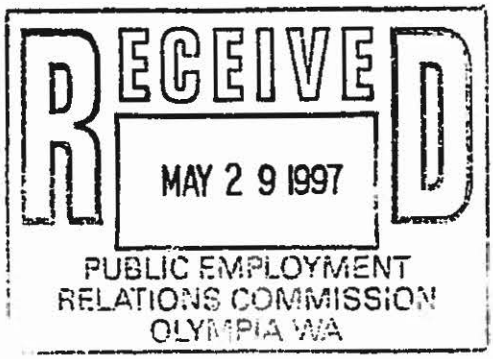
IN THE MATTER OF INTEREST ARBITRATION BETWEEN THE EVERETT POLICE OFFICERS ASSOCIATION, Association, and THE CITY OF EVERETT, WASHINGTON, City.	PERC CASE 12476-I-96-272 ARBITRATOR'S OPINION AND AWARD 1996-98 AGREEMENT



HEARING SITE:	Holiday Inn Everett, Washington
HEARING DATES:	January 13-17, 1997
POST-HEARING BRIEFS DUE:	Postmarked March 20, 1997
RECORD CLOSED ON RECEIPT OF BRIEFS:	March 25, 1997
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I. INTRODUCTION

This case is an interest arbitration conducted pursuant to the Public Employees Collective Bargaining Act. The parties to this dispute are Everett Police Officers Association ("Association") and City of Everett, Washington ("City"). The Association and the City are parties to Collective Bargaining Agreements dating back to the early 1970s. The most recent contract covered the period from January 1, 1992, through December 31, 1995. Jt. Ex. 8.

On June 20, 1995, the parties commenced negotiations for a successor contract. There were eight bilateral sessions followed by four mediation sessions. The last mediation session was held on April 1, 1996. Since mediation ended, the captains and lieutenants have been deleted from the EPOA bargaining unit. This occurred during the fall of 1996.

The bargaining between the parties produced agreement on several issues. However, the parties were unsuccessful in resolving all of the issues that divided them in contract negotiations. Six fundamental issues were presented by the parties for interest arbitration. The six issues submitted for interest arbitration also included numerous subissues or subparts.

The last time the parties went to interest arbitration was in 1981. The 1981 award by arbitrator John Abernathy was entered into the record of the instant case. Jt. Ex. 9. The 1981 interest arbitration was the only time the parties found it necessary to resort to an interest arbitrator to resolve the

contract dispute. At the time of the 1981 interest arbitration the City's population was approximately 56,000.

The City of Everett is located in Snohomish County, Washington. The City is located on the I-5 corridor just to the north of Seattle. The City serves a resident population of approximately 81,810. The City has around 991 full-time equivalent employees. Most of the employees are members of one of six bargaining units within the City.

The City of Everett is a first class municipal corporation under the laws of the state of Washington. The City is governed by a mayor-council form of government, with an elected mayor and seven elected council members. The mayor is the chief executive and administrative officer of the City. Edward Hansen has served as mayor since January of 1994. City Ex. 1. The chief administrative assistant in the City is James Langus.

The Everett Police Department is led by Chief James Scharf. The Association represents approximately 146 commissioned officers. Since 1994 nineteen police officers have been added to the police force. For this contract, the Association represents the commissioned officers and sergeants.

The hearing in this case took five days for the parties to present a substantial amount of testimony accompanied by extensive and comprehensive documentary evidence. The parties were unable to agree on the appropriate jurisdictions with which to compare the City of Everett for the purpose of establishing wages and working conditions for the members of this bargaining unit. A

substantial amount of hearing time was devoted to receiving evidence on the issue of comparability. At the commencement of the hearing it became obvious that the parties had a major difference of legal opinion on what comparability meant under RCW 41.56.030(7)(a). The Arbitrator directed the parties to address the comparability issue as a threshold question in the post-hearing briefs. The Arbitrator will resolve that issue at the outset of this Award.

The hearing was recorded by a court reporter and a transcript was made available to the parties and the Arbitrator for the purpose of preparing the post-hearing briefs and the Award. Testimony of witnesses was taken under oath. At the hearing the parties were given the full opportunity to present written evidence, oral testimony and argument. The parties provided the Arbitrator with substantial written documentation in support of their respective positions. Comprehensive and lengthy post-hearing briefs were submitted to the Arbitrator along with interest arbitration awards previously issued by arbitrators in the state of Washington. Because of the voluminous record in this case, the parties waived the thirty-day period an arbitrator would normally have to publish an award under the statute.

The six issues remaining unsettled and submitted to this Arbitrator for an Award are as follows:

1.	Duration	Article 32
2.	Wages	Article 12 (Salary Schedule) Article 13 (Longevity and College Incentive)
3.	Specialty Pay	Article 14
	Part I	General
	Part II	Master Police Officers ("MPOs")
4.	Sick Leave	Article 24
5.	Insurance Benefits	Article 26
6.	Take-Home Vehicles	New Article

The approach of this Arbitrator in writing the Award will be to summarize the major and most persuasive evidence and argument presented by the parties on each of the above stated issues. After the introduction of the issue and positions of the parties, I will then state the basic findings and rationale which caused the Arbitrator to make the award on the individual issue. A considerable amount of the evidence and argument related to more than one of the issues and will not be duplicated in its entirety during the discussion of the separate issues.

This Arbitrator carefully reviewed and evaluated all of the evidence and argument submitted pursuant to the criteria established by RCW 41.56.465. Since the record in this case is so comprehensive it would be impractical for the Arbitrator in the discussion and Award to restate and refer to each and every piece of evidence and testimony presented. However, when formulating

this Award the Arbitrator did give careful consideration to all of the evidence and argument placed into the record by the parties.

The statutory factors to be considered by the Arbitrator may be summarized as follows:

> (a) the constitutional and statutory authority of the employer;
>
> (b) the stipulations of the parties;
>
> (c) (i)...comparison of 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;
>
> (d) the average consumer prices for goods and services, commonly known as the cost of living;
>
> (e) changes in any of the foregoing circumstances during the pendency of the proceedings; and
>
> (f) such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

II. COMPARABILITY

A. Background

At the commencement of the arbitration hearing it became clear the parties had totally opposite opinions as to the meaning of comparability under the statute. Each party developed its own system for selecting comparable jurisdictions. The methodology used by the City and Association to develop their separate lists of comparators had little in common.

The Association utilized a multi-factor approach which yielded 13 cities it believed Everett should be compared with for the purpose of fixing wages and benefits for the 1996-98 Collective Bargaining Agreement. The City countered with an approach based solely on population. The City's methodology produced 10 cities with which to compare Everett for the purpose of establishing wages and benefits for the 1996-98 contract. Two cities were common to both lists.

The division between the parties was illustrated by the fact that out of 23 cities, only one Washington city, Kent, appeared on both lists of comparators. Gresham, Oregon was included on both lists. Given the importance of the statutory factor of comparability and the markedly different approaches of the parties toward this topic, the Arbitrator directed the parties to address the comparability factor as a threshold issue in the post-hearing briefs. The following is the statement of the positions of the parties and your Arbitrator's resolution of the issue.

B. The Association

The Association proposed the following cities as its list of comparables:

Concord, California
Corona, California
Escondido, California
Fullerton, California
Gresham, Oregon
Hayword, California
Kent, Washington
Ontario, California
Pasadena, California
Redding, California
San Leandro, California
Santa Barbara, California
Ventura, California

The Association argues its method for selecting comparables is superior to the method advocated by the City. According to the Association, a multi-factor approach produces a more reasonable set of comparables than a single-factor approach. Arbitrators have recognized that no one single factor can truly capture the nature of a jurisdiction.

The Association begins by claiming the City has grievously misinterpreted the statute in arguing that population alone is a measure of comparability. Even if the parties were to accept the notion that "size" is the sole determinate of comparability, the City's argument is nonetheless flawed. The statute does not say that size equates nighttime population and only nighttime population. The statute leaves the term size undefined. If the Legislature intended that size meant solely population, it would have so indicated.

The Association next argues that the City's definition of size is misplaced. Size a concept of measurement. Nothing in the term size implies a restriction on the object of measurement. For example, the geographic expanse of a city is also a measure of its size. The number of officers employed certainly would appear to be one measure of an employer's size. The jurisdiction's tax base has also been seen as a measure of size of an employer.

The Association also asserted the City's approach produced an aberrant list of comparables. Lynnwood and Walla Walla are of similar size but it strains the imagination to see them as comparables. The same is true of Tukwila and Moses Lake where the situation is that Tukwila has a tax base several times that of Moses Lake and a police force over twice as large which protects that tax base. In addition, the City acknowledges such aberrations occur by artificially capping the number of jurisdictions to be drawn from California. The Association submits that its process of adding additional screens through the use of multiple factors produces a more accurate rendering of comparable jurisdictions than does the City's undimensional approach which necessitates the application of arbitrary screens.

Even if the Arbitrator were to adopt the City's unusual argument that size means only nighttime population and that likeness refers only to department unit type, the statute still grants an arbitrator the ability to place additional considerations in the process of selecting comparators. The statute contains a "catch-all" provision allowing the exercise of such discretion by

an arbitrator. The Arbitrator should reject the City's approach to comparability and adopt the multi-factor approach utilized by the Association in formulating his Award. The selection of the factors relied upon by the Association are reasonable and have a rational basis in fact.

The Association's jurisdictions were selected using a range of .57 to 1.75 of Everett's demographic data on the following factors:

Total population
Assessed valuation
Assessed valuation per capita
Assessed valuation per officer
Retail sales
Retail sales per capita
Total retail trade
Median household income
Median per capita income
Number of commissioned officers
Numbers of officers per thousand
Part one crime index
Part one crime index per officer

The Association asserts that while population is a good indicator of the complexity of the City, population has its limitations. The tax base should be given heavy consideration in selecting comparables because it is the fundamental source of the employer's ability to pay. The same is true of retail sales because in Washington State retail sales are an important source of revenue. Per capita also measures the tax base of a jurisdiction.

It is also the position of the Association the number of officers is a good measure of comparability. Further, the number of crimes and crimes per officer are reasonable measures of

workload within jurisdictions. The volume of crimes per officer is simply the best available common measure we have of workload.

The variance range for selecting comparables relied upon by the Association is better than the range used by the City. What the Arbitrator should seek in selecting comparables is balance on the given criteria. The Association's approach of minus 50%, plus 100% screen is more likely to produce such a balance. The Association concludes its mathematical approach is blind to the end result and is a more defensible strategy for advocates in interest arbitration.

The statute indicates the comparables should be drawn from "the west coast of the United States." Contrary to the City's position, the Association asserts that no special weight should be given to Oregon jurisdictions. The City seeks to use 100% of the jurisdictions in its stated range from the state of Oregon, yet the City only selected two out of seventy such jurisdictions in California. There is simply no statutory basis for providing undue weight to Oregon as the City proposes. The City failed to produce any evidence that Everett shows a labor market in common with western Oregon. The Arbitrator should hold the City's methodology is an "obvious result-oriented ploy meant to give undue weight to lower-paying Oregon jurisdictions."

Arbitrators have consistently held that close geographic proximity between jurisdictions warrants special consideration in selecting comparables. Some arbitrators have said that close geographic proximity can offset dissimilarities in size. The King

County and Snohomish County area has been found by arbitrators to make up a common labor market. Pierce County has been acknowledged as secondarily related to the Snohomish County and King County labor market. A review of police wages indicates that proximity to a metropolitan areas strongly influences wages. Everett's common designation with Seattle as part of the Seattle-Everett-Bellevue PMSA is significant because the census data is strongly indicative of the labor market. The labor market for the Everett Police Department is heavily influenced by its location in the Seattle-Everett-Bellevue PMSA.

Although the Association placed primary reliance on its multi-factor analysis, the Association offered a second set of comparables made up of those four labor market jurisdictions closest to Everett in demographic characteristics. The Association proposed for its secondary set of comparators the cities of Tacoma, Bellevue, Renton and Kent.

Turning to the City's inclusion of Federal Way as a comparator, the Association argues that nonunion employers should be rejected in selecting comparables. First, employees who are not unionized do not have their wages, hours and working conditions determined under a statutory procedure. Second, compensation would not be comparable between such jurisdictions because higher wages would typically be offset to some extent by union dues. Third, there is no basis in nonunionized jurisdictions to compare respective rights of management or labor in determining working conditions.

In sum, the Arbitrator should find that the comparables proposed by the Association are more reasonable than the comparables proposed by the City. The City's sole reliance on population has produced a distorted result because it artificially capped the number of potential comparables from California at two and both of those jurisdictions are from the Los Angeles area. When analyzed closely, the City's two California comparables proved not to be very comparable at all. The Arbitrator should adopt the Association's balanced list in which Everett by and large falls near the middle on the most important factors of comparability.

C. The City

The selection process utilized by the City to arrive at its comparators yielded ten west coast cities as follows:

State	Population
Washington:	
Bellevue	103,700
Federal Way	75,240
Vancouver	67,450
Yakima	62,670
Kent	60,380
Bellingham	59,840
Oregon:	
Gresham	77,240
Beaverton	61,720
California:	
Westminster	82,500
Whittier	82,500
Alaska: None	
* * *	
Everett	81,810

In identifying the above listed comparables, the City undertook to be true to the statutory mandate. According to the City, the Legislature opted for a simple, objective criterion for the selection of comparables: cities of similar size on the west coast. The City embraced and applied the four statutory requirements for comparable cities to be: (a) "likeness" to the City as an employer, *i.e.*, cities; (b) "likeness" to police officers, *i.e.*, police officers; (c) size similar to the City, *i.e.*, population in the range of the City; and (d) geographical location, *i.e.*, west coast states (Washington, Oregon, California, and Alaska).

The City argues that the statute requires the comparison to be among "like employers." In the view of the City, like employers necessarily means cities. The sole meaning of "like employers" is the form of government. The City submits that the "like employers" requirement cannot be expanded to include city characteristics other than "similar size." The "like employees" necessarily means police officers.

The City next argues that the statutory standard is clear and unambiguous. The statute specifies "similar size" which as a matter of common sense means the population of the city. The plain meaning of the term size, coupled with the legislative scheme of classifying cities according to population, provides compelling support for the proposition that the term similar size means population. Arbitrators have routinely held that similar size equates to population. The definition of west coast cities has

been interpreted to mean cities within the states of Alaska, Washington, Oregon and California. Hence, the language requires comparisons of cities of comparable size in the states of Washington, Oregon, California and Alaska.

Applying the above stated principles, City began by adopting a population range of 25,000 less than and 25,000 greater than Everett's population of 81,810. The 25,000 figure constitutes a 30.55% variation on the size of the city.

The City next identified cities on the west coast falling within the population range of 56,810 to 106,810. This process yielded six cities in Washington, two cities in Oregon, 70 cities in California and no Alaska cities. In order to reduce the number of California cities and to balance the overall sample, the two California cities offering the closest population up and down in comparison to Everett were selected. The two California cities arrived at under this process were Westminster and Whittier.

The City maintains that this set of comparators is well balanced and comports with the statutory mandate, and with common sense and objectivity. Each is a west coast city and the average population of 73,324 is within 12% of Everett's population of 81,810. In the view of the City, there is also a remarkable balance in west coast location in distribution from north to south.

Regarding the Association's approach to comparables, the City asserted it makes a "dysfunctional mockery of both (a) the governing statue and (b) the concept of principled and predictable bargaining and interest arbitration." The Arbitrator should reject

the Association's result oriented process as not meeting the requirements of the statute. This means the Association's would-be comparables may not be considered through the back door of the "other factors" criterion. The comparability test of size preempts consideration of extra-statutory comparables.

A review of the Association's primary comparables reveals the Association abandoned Washington and Oregon in favor of California. Eleven of the thirteen cities on the list are located in California and only one is in Washington and only one is in Oregon. The City argues that this flight from the Pacific Northwest is no doubt occasioned by the Association's determination that its wage demands are not supported by Washington and Oregon cities. The Arbitrator should reject the "flight from the Pacific Northwest" tactic.

Even the Association recognized the vulnerability of its primary sample, by offering a secondary set of comparables ostensibly based on the local labor market. Only four cities were offered and we were not told how they could be styled as comparable to Everett. The city of Tacoma is twice as large as Everett.

Bargaining history reflects that the Association changed its list of comparators with frequency right up until arbitration. On the other hand, the City consistently stood by its proposed comparators with the exception of Federal Way which did not have a police department at the time. Adoption of the Association's forum shopping fundamentally defeats the statutory purpose of comparables as a benchmark for contract settlement in bilateral negotiations.

While the statute may not be perfect, it must be honored by the parties and the Arbitrator.

Based on all of the above stated reasons, the Arbitrator should reject the Association's proposed comparators and adopt the list submitted by the City as the benchmark for establishing wages and working conditions for Everett police officers.

D. Discussion and Findings

The failure of the parties to reach any agreement regarding cities with which Everett should be compared is contrary to the legislative purpose of providing "an effective and adequate alternative means of settling disputes." RCW 41.56.430. The problem of selecting appropriate comparators is further complicated by the total absence of cities traditionally used by the parties to measure wages and benefits for Everett police officers. The statute requires interest arbitrators to give due consideration to comparability. Both parties to this dispute recognize the fact that comparability is a predominate force for the resolution of this dispute.

Even though the parties have a long history of Collective Bargaining Agreements, in one sense the Arbitrator is starting from the beginning in this interest arbitration due to the total lack of agreement as to the appropriate comparators. RCW 41.56.465(1) counsels interest arbitrators to use the statutory factors as "guidelines to aid in reaching a decision" in making an award on a contract dispute. The City's staunch adherence to population as the exclusive determiner of like employers ignores the fact that

other elements may give insight into the meaning of a "like employer." Further, the City's narrow reading of the statutory reference to "like employers" runs counter to the stated legislative purpose of utilizing the statutory factors as "guidelines to aid" in reaching a decision. The statute instructs interest arbitrators to be mindful of the statutory purpose and factors, not to be shackled by them in the development of an award.

Moreover, the "other factors" provision specifically acknowledges there are additional elements which may be taken into consideration in the "determination of wages, hours and conditions of employment." In the 1981 interest arbitration the City used population and assessed property valuation as a selection criteria. Jt. Ex. 9, p. 8. Further, arbitral authority has long recognized that geographic proximity may play an important role in determining "like employers." The Arbitrator does concur with the City that when determining comparability the greatest consideration should be given to size of the population.

The Association's multi-factor analysis is a methodology that is often helpful in coming to a decision on comparability. However, the Association's study which produced a list of thirteen cities composed of eleven California cities, one Oregon and one Washington city is totally out of touch with the statutory factors. The simple fact is that Everett, Washington is not a California city. In the judgment of this Arbitrator, it would be totally unrealistic to make an award based primarily on the wages and benefits paid in eleven California cities. The inclusion of only

one Washington city out of the thirteen chosen comparators would in effect compel this Arbitrator to treat Everett, Washington as a California city for the purpose of establishing wages and benefits.

The evidence before this Arbitrator provides no justification for an approach that holds only one Washington city--Kent--would be an appropriate comparator to establish wages for Everett, Washington police officers. To adopt the Association's comparators with eleven California cities also would require the Arbitrator to disregard differences in the California system of government, taxation, revenue sources, assessment, retirement systems, etc., from that of Everett, Washington. Therefore, the Arbitrator rejects the Association's proposed list of comparators as a distortion of the statutory requirements for deciding this interest arbitration.

The Association's reference to interest arbitrations involving Seattle, using a substantial number of California cities for purpose of comparison, is misplaced. Seattle stands by itself in terms of "population" or "multi-factors" identified by the Association, when compared with other Washington cities. Where there is an adequate number of comparable Washington cities with which to compare Everett, there is no need to load a list of comparators with eleven California cities.

While the Arbitrator faulted the City's exclusive reliance on population for developing its list of comparators, I am persuaded that the City's jurisdictions provide a reasonable and appropriate list of cities to serve as the comparators in this

1996-98 interest arbitration. One of the goals of this Arbitrator when deciding interest arbitration cases is to leave the parties with a list of jurisdictions that will serve as a solid base for future negotiations. In seeking to accomplish that goal, your Arbitrator has not been reluctant--in other interest arbitration cases--to fine tune and modify the proposed lists of comparators offered by the union and employer. The record of this case provides little basis for either fashioning a blended list or adopting the Association's proposed alternative comparators.

Based on all of the stated reasons, the Arbitrator adopts the City's proposed list of comparators ("West Coast 10" or "WC 10") as the "guideline to aid" in reaching a decision.

ISSUE 1 - DURATION

A. Background

Article 32 of the prior Agreement provided for a three-year contract effective January 1, 1993, through December 31, 1995. The Association is proposing the successor contract cover the two-year period from January 1, 1996, through December 31, 1997. The City offered a three-year contract to remain in effect through December 31, 1998.

B. The Association

The Association argued that a two-year Agreement was appropriate due to the number of items that have arisen which need negotiations before the expiration of a three-year contract. Tr. 71-73. According to the Association, there is a large equity gap that needs to be closed which cannot be done under the terms of a three-year contract. The Association submits it should have the opportunity to bargain the new issues under a shorter term contract.

The Association recognized that this Arbitrator has generally awarded three-year contracts when the bargaining has been prolonged. If the Arbitrator were to award a three-year Agreement, Association would want to have another wage increase based on the CPI plus 2%. The duration clause imposed by the Arbitrator should consider the equity catch-up needed and trends in police contracts over a three-year period.

C. The City

The City takes the position that a three-year Agreement is appropriate. The City notes that the parties have already invested substantial time and money in the attempt to negotiate a successor Agreement. If only a two-year contract is entered, about 75% of the term of the contract will have elapsed when the contract is finally awarded. The impact of the two-year contract would place the parties immediately back in full scale negotiations.

Moreover, the three-year contract will preserve what the City termed as "numerous favorable provisions in an already liberal contract for Everett police officers." RCW 41.56.070 effectively emphasizes three-year contracts as an optimum duration. The comparables also support a three-year contract. Thus, the Arbitrator should reject the Union's position and award a three-year contract.

The City also cited this Arbitrator's analysis in Clark County Deputy Sheriffs Guild and Clark County, PERC No. 11845-I-95-252.

> The Arbitrator can think of no valid reason for awarding a contract which would compel the parties to immediately begin negotiations for a successor to the Guild's proposed 1995-96 Agreement. If the Arbitrator were to adopt a two-year Agreement, approximately 75% of the contract's duration would fall prior to the signing of the Agreement. As the County correctly pointed out, the "shelf-life" would be approximately seven months. The idea of compelling these parties to turn right around and begin bargaining for a successor Agreement is totally without merit.

D. Discussion and Findings

The Arbitrator holds that the City's proposal for a contract extending through the last day of December 1998 should be adopted. There is little to say for awarding a contract which would be approximately 75% elapsed at the time it is concluded. The parties to this Agreement need a reprieve from the time consuming and expensive aspects of the collective bargaining process. The adoption of a three-year Agreement will allow for a return to stable labor relations.

At the conclusion of the arbitration hearing, the Arbitrator advised the parties that it would be prudent to frame their arguments in the post-hearing briefs in the terms of a three-year Agreement. The Arbitrator has reviewed the record in this case and can find no legitimate reason for awarding a two-year contract. The Arbitrator's analysis in the Clark County case cited above is equally applicable to the instant case. Therefore, the Arbitrator will enter an award adopting the City's proposal.

AWARD

The Arbitrator awards that Article 32.1.1 should be amended to read as follows:

ARTICLE 32 - DURATION

32.1 General.

32.1.1 This Agreement shall be effective as of the 1st day of January, 1996, and shall remain in full force and effect through the last day of December, 1998. Any one (1) Article may be opened if mutually agreed to by both parties. If Agreement is not reached within thirty (30) days, the said Article or Articles will remain in force as written. It is further provided that by mutual agreement this contract may be modified or clarified at any time.

ISSUE 2 - SALARY SCHEDULE/LONGEVITY AND COLLEGE INCENTIVE

A. Background

Issue 2 involves two sections of the Collective Bargaining Agreement relating to compensation. The parties presented the evidence on these two sections as part of their total proposal on compensation. The wage scale for members of this bargaining unit is found in Article 12. The subjects of longevity and college incentive premiums are addressed in Article 13. The Arbitrator will decide the two issues separately for purposes of continuity in the Award. However, the two sections are closely related to the compensation members of this bargaining unit receive and will be discussed together when resolving this issue.

The 1993-95 salary schedule provides for two job classifications. The two classifications are police officer and sergeant. Under the 1993-95 contract new hires advanced to the top step over 24 months. The police officer classification has three steps and one step at the sergeant level.

The salary schedule effective January 1, 1995, provides for a monthly wage as follows:

Classification Title	Range No.	Third Class	Second Class	First Class
		MONTHLY RATE		
Police Officer	03-021	2987	3272	3917
Sergeant	03-012			4896

Salary progression intervals are twelve (12) months between steps.

The City of Everett does not participate in the social security system. Section 12.5.1 provides for a Section 457 Deferred Compensation Program in lieu of FICA contributions. The City agrees to match contributions made by Association members to the Section 457 plan up to a maximum of $75 per month. The Association is proposing to change the maximum contribution required from the City to 7.65% of salary, rather than the $75 maximum.

The City has proposed to change the salary schedule progression for officers hired after the date of this Award. Police officers hired after the date of the interest arbitration Award, would be placed on a separate salary schedule consisting of four steps taking 48 months to reach the maximum salary. New hires in the sergeant position would advance to the top step over 24 months rather than the single step currently provided for the sergeant classification. The Association would continue the structure of the 1993-95 salary schedule in the successor Agreement.

The parties recognize the value of longevity pay and college incentive pay as part of the overall compensation program. Article 13 allows the officers the option of receiving either longevity or college incentive but not both incentives. The Association is proposing to continue the incentive programs in their current form. The City has made an offer which would change the incentive program to a fixed dollar amount for officers hired after the date of this interest arbitration Award.

In a preliminary ruling on the comparability issue, the Arbitrator determined that the City's WC 10 provided the appropriate list of comparators with which to measure wages and benefits for Everett police officers. The Arbitrator will not repeat the discussion in this section of the Award. Further, the Arbitrator will not burden this record with an extensive discussion of the results of the Association's comparison study. The Arbitrator will give the greater weight to the data and studies produced by the City.

B. <u>The Association</u>

The Association proposed a two-year contract which would provide for a wage increase effective January 1, 1996, of 100% of the Seattle CPI-W July 1995 plus 2%. For the second year of its proposed two-year contract, the Association proposed effective January 1997 an additional increase of 100% of the CPI plus 2%. The Association also suggested that if the Arbitrator were to award a three-year contract a wage adjustment of 100% of the CPI-W plus 2% would be in order for 1998.

The Association argues its wage proposal should be adopted because it presented a fair set of comparators. The principle followed by most interest arbitrators is that the target jurisdiction wages ought to be brought up to approach the average absent special circumstances. The Association submitted the comparability data it offered supports the salary proposal.

The Association next argued that comparisons should be made using "normalized hours and retirement pick-up." The concept

of normalization was presented by the Association because Everett officers work in excess of the normal 2,080 hour annual schedule for police officers. The scheduling utilized in Everett results in officers working a 2,192 hour schedule per year. Thus, the Association submits the compensation study should be normalized to give recognition to the fact that Everett officers work longer hours and do not receive time and one-half pay for hours worked over the traditional 2,080 hour annual schedule.

Moreover, the normalization of hours has another aspect that is necessary for making an "apples to apples" comparison. The inclusion of a retirement pickup should be provided for in making wage comparisons where there are out-of-state jurisdictions which have negotiated pension pickup in lieu of wage increases. The City's argument that pension pickup should not be included because it is illegal in the state of Washington should be rejected because pickups have been negotiated in lieu of wage increases.

The Association next argues that total compensation should also be considered by taking into account wages, retirement pickup, state retirement contributions and other measurable elements of direct pay such as education, longevity and certification premiums.

Applying the above concepts to the Association's comparables, the Association submits the wage discrepancy is "overwhelming." The Association's normalized wage study shows that the discrepancy between the City of Everett and the Association's primary comparables is nearly 18%. Assn. Ex. 62. Further, the

discrepancy between Everett wages and the City's set of comparables normalized and adjusted is 5%. Assn. Ex. 64. The salary discrepancy in the local labor market is in excess of 7%. Assn. Ex. 63. When the 1997 wage increases for the other jurisdictions are taken into account, the discrepancies between Everett, and the other cities grows even greater.

The use of a total compensation analysis reveals an even wider gap in the compensation provided to Everett officers and that paid in the comparison jurisdictions. According to the Association, the total compensation gap between Everett and the Association's comparables is nearly 20%. Assn. Ex. 82. Even if the Association's methodology is applied to the City's comparables, the total compensation gap averages in excess of 5%. Assn. Ex. 92.

The Arbitrator should reject the City's attempt to arrive at a "weighted average" through the use of specialty assignments. The Association is not aware of a Washington State arbitration decision which has adopted a "weighted average" method of comparing wages. Because there is a significant number of officers who receive no such additional compensation, it is unfair and prejudicial for the City to produce a study which incorporates specialty assignment pay into the overall level of compensation.

The Association also attacks the City's wage report as containing other calculation flaws. For example, they report wage increases in California jurisdictions which are effective in July 1996 in their 1997 wage charts and yet failed to include a 2% increase for Federal Way officers for 1997. The bottom line is

that the wages received by Everett officers are far behind any reasonable set of comparables offered by either side at this arbitration.

The Association also argues that factors traditionally relied upon by arbitrators other than comparability support the Association's wage proposal. The Association's arguments on the other factors traditionally relied upon are summarized as follows:

> 1. A review of police wages in King, Snohomish and Pierce Counties indicates that Everett officers lag far behind other similarly sized and situated jurisdictions. Assn. Ex. 53. In the Association's proposed secondary comparators of Renton, Kent, Bellevue and Tacoma, police wages are nearly $300 per month higher than Everetts. The City offered no good explanation of why such a gap should continue to exist.
>
> 2. Everett's overall position in the state police wage ranking relative to the City's size and tax base supports the Association's wage proposal. The City of Everett has the fifth largest daytime/nighttime population, the fifth highest number of officers, the fifth largest assessed valuation and the seventh largest amount of retail sales. However, the Everett police rank twenty-second in wages. Assn. Ex. 217. This evidence shows the City has simply failed to keep pace with the growth and wages in the industry which has been designed to compensate officers for their increasing professionalization.
>
> 3. Internal equity supports the Association's wage proposal. The City has proposed freezing wages for this bargaining unit for 1996 but has offered no wage freezes for other City bargaining units. Further, the City has offered a reduced wage increase to the members of this bargaining unit for 1997 when compared to that provided for other bargaining units. The second internal equity factor concerns police-fire parity which should be discarded by this Arbitrator. The effect of parity

between police wages and firefighter wages is to artificially suppress police wages.

4. The historic wage relationship supports the Association's proposal. A comparison of Everett wages to the instate comparables shows a relative decline in wage standings in excess of 10% since 1979. In that time Everett slipped from being the second highest paid in the local labor market, to being number twelve out of thirteen cities. Adoption of the Association's wage proposal would be a first step toward a reversal of this recent inequity.

5. An analysis of the average area settlements for police officers indicates they are running in excess of 3%. Assn. Exhs. 212, 213. Clearly, the settlement trends support the Association's proposal.

6. The cost of living index should be viewed as a floor for the settlement of labor agreements absent special circumstances. Where the bargaining unit is in a catch-up situation, the CPI Index is much less relevant to the determination of a wage settlement. The Arbitrator should reject the City's argument that the CPI Index overstates the degree of inflation. What is most relevant in this dispute is that Everett officers have been falling behind the comparables for many years and now stand far behind.

7. The current economic conditions in the state, regional and local economies support the Association proposal. All of the economic indices indicate the regional and local area will continue to enjoy prosperity into the foreseeable future.

8. The City has more than ample resources to pay the Association's wage proposal. While the City cites a $2 million cost difference between the cost of implementing the Association proposal and the City's proposal, this is unrealistic because it is calculated from "the City's low-ball offer." The financial evidence reveals the Association proposal will not cost much more than what the City has already budgeted.

9. The officer workload in Everett has been increasing at a steady pace. In addition, officers are being placed at Level 2, whereby routine calls are not even being handled because of the need to handle priority calls. The Association submits that failure to correct the significant wage slippage will have an adverse impact on employee morale and productivity.

10. The continued relative erosion of Everett's wage position will diminish the number of qualified applicants seeking employment with the City. The City's data on applicant and employee turnover is flawed because there are no points of comparison to other jurisdictions. Finally, the City's data does not take into account the qualifications of those seeking employment with the City of Everett.

In sum, the Association's wage proposal should be awarded as consistent with the statutory criteria--as applied to the record evidence.

The Association proposed to amend Section 12.5 to increase the amount of match to the Section 457 Deferred Compensation Program to a maximum of 7.65%. In the view of the Association, the current $75 maximum is wholly inadequate as a substitute for the benefits provided under the social security system. Social security offers many extensive protections, not simply in retirement, but for individuals and their families such as death and disability benefits. The City's argument the current $75 per month maximum was intended as a complete and final substitution for social security is wrong. There is not a scintilla of evidence the Association ever agreed to forego future proposals in this area.

The data from the comparables indicates an increasing number of jurisdictions are adding deferred compensation benefits, especially for employee groups who are not covered by social security. The comparability data clearly supports the Association's proposal. Even the City has acknowledged this trend by agreeing to increase the deferred compensation for firefighters in 1997 to $90 per month and $100 per month for 1998 and 1999.

The Association submits the deferred compensation is in the mutual interests of the parties. It is a more rational way to package compensation because of the payroll tax savings it offers the City and is a means to improve the status of LEOFF II officers who will have to work longer to get less than LEOFF I officers at retirement.

The Association's offer to move to a percentage basis is compelling because the benefit it is substituting for is itself percentage based. Not a single one of the jurisdictions in the state which offer the deferred compensation extends it on a dollar basis. The $75 had already eroded significantly since it was originally added to the prior Agreement and is in need of improvement through the means of a set percentage.

Regarding the City's proposal to modify the wage grid, the Arbitrator should reject this proposal to create a two-tier wage structure and extend the number of steps in the wage grid. Because this involves a major change to the structure of the salary schedule, the City carries a heavy burden of proof on an issue of this type. The adoption of the City's proposal will only widen the

huge wage discrepancy that exists between Everett and the comparable jurisdictions. Even if there is merit to a change in the wage grid, the Association submits the logical solution is to add an additional step with further compensation for all officers rather than elongate the scale while keeping the current pay levels. The same arguments also apply to the City's proposal to amend Article 13, Longevity and College Incentive to extend the progression and convert to fixed dollar amounts.

For all of the above stated reasons, the Arbitrator should award the Association's proposals and reject the City's regressive and punitive proposals in the area of salary and incentives.

C. <u>The City</u>

The City proposed a three-year contract with a salary freeze for 1996. Pursuant to its 1996 offer, the 1995 wage schedule would carryover into 1996 with no change in the structure of the salary schedule.

The City proposed the 1997 salary schedule for police officers and sergeants would be adjusted by a 2.5% increase on the 1996 salary schedule. In addition, the City would modify the existing salary schedule to make a distinction between current employees and new hires. For those employees hired before the date of the interest arbitration Award, the structure of the salary schedule would remain unchanged. For those employees hired on or after the date of the interest arbitration Award, the salary progression intervals for police officers would occur over 48

months, as opposed to 24 months for current officers. New hires in the sergeant classification would advance to top step over 24 months, as opposed to immediate advancement for current police officers.

The City proposed that the 1998 salary schedule for police officers and sergeants would be determined by increasing the respective 1997 salary schedules by 80% of the percentage change in the Consumer Price Index (CPI-U) for the Seattle-Tacoma area for the first half of the 1996 semi-annual average to the first half of the 1997 semi-annual average.

The City would continue the current language found in Section 12.5.1 providing for a maximum of $75 per month contribution to the Section 457 Deferred Compensation Program. The City rejects the Association's demand to change the current "in lieu of FICA contributions" arrangement to a percentage amount.

The City asserts the evidence shows that Everett police officers and sergeants would be compensated at very competitive levels under the City's offer. The City's arguments are summarized as follows:

> 1. City calculated that over the term of the 1996-98 contract, members of this unit would receive wage increases ranging from 5% to a maximum of 37.6%, inclusive of step advancements. The City's assumption is based on calculations with no salary schedule increase for 1996, a 2.5% increase in the salary schedule for 1997 and a projected 2.4% increase for 1998.
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> 2. The members of this bargaining unit have fared quite well since the 1981 interest arbitration. The average annual wage increase

has been 12%. In 1990 the average wage, including education and longevity pay, was $1,730 per month. By January 1, 1995, the average was $4,642 or an overall increase of 180%. Base wages for police officers during this same period have increased 115.8% and for sergeants the increase has been 145.2%.

3. The comparison of the City's pay with salary schedules in the City's WC 10 comparables amply supports the City's wage offer. City Exhs. 7-G through L.

4. The City's proposal is supported by the CPI over time in that members of this bargaining unit will continue to remain far ahead of price changes recorded by the CPI.

5. The Everett Police Department is an excellent place to work as measured by superior staffing levels, moderate workloads, low turnover and high applicant availability.

6. The favorable conditions enjoyed by the members of this unit have been promoted by the fact 19 new police officers have been added since 1994. Public safety staffing for police has been a top priority of Mayor Hansen and the City Council.

7. While the top base pay for police officers is $3,917 and the rate for a sergeant is $4,896, the actual average 1996 "weighted" monthly wage is $4,186 for 128 top step employees. When specialty pay is added for 34 police officers, the "weighted" average increases to $4,228 per month. The City submits that before longevity pay and education incentive pay are added, the "weighted" monthly average salary is $4,186 for the 128 top step employees in the bargaining unit. This represents a significant opportunity to advance in pay.

8. The base salary schedule for police officers and sergeants is only part of the wages received by members of this bargaining unit. The liberal college incentive and longevity program benefitted 89% of the employees in the bargaining unit in 1997. The average monthly longevity incentive paid by the City to all EPOA unit members who

qualified amounted to a total of $2,441 in 1996, or 5.2% of salary. The average monthly education incentive paid by the City in 1996 for all EPOA unit members is $2,676, or 5.7%. City Ex. 7, p. 9. None of the comparables has an education or longevity pay schedule as rich as Everett, which ranges to 13% for longevity and 11% for education. The specialty assignment premium pay of 4% is paid to 54 members of this bargaining unit on top of the incentive programs.

9. The City calculated that with longevity the City's offer is 3.6% above the average at four years of service to 11.2% above the average at 28 years of service. On average, Everett police officers are paid 6.2% above the comparator jurisdictions. Sergeants fair even better as they are paid 8.9% above the average for police sergeants.

The same calculations made for 1997 demonstrate that with the City's offer police officers will be paid 3.9% above the average at four years of service to 11.4% above the average at 28 years of service. On average, Everett is 6.5% above the average for police officers as of January 1, 1997. Everett police sergeants would enjoy a pay rate of 9% above the average for police sergeants as of January 1, 1997.

10. The City notes the current step progression of 24 months is extremely rapid when compared to the other jurisdictions. The adoption of the City's proposal to elongate the salary progression by two years and apply it to officers hired after the arbitration Award would bring Everett into line with the comparable cities. Pursuant to the City's proposal to change the salary grid, Everett police officers hired after the date of the Award would enjoy a salary schedule that begins 3.6% above the average of the comparable cities and grows after 48 months to 6.8% above the average. When July 1, 1997, wage increases are added, Everett would still remain at least 2.5% above the average at the entry step, and 5.7% above the average after 48 months.

11. The CPI factor supports the City's offer in two main ways. The Seattle CPI-U has increased by 95.1% since 1980. During that same period, sergeant's wages have increased 145.2% and police officer's wages increased by 115.8%. Both classifications of employees have received wage increases well in excess of the increases recorded in the CPI-U over the same period. For the sergeants and police officers actually employed as of the 1981 interest arbitration, the average annual wage increase received during this 15 year period has been 12%. The average increase in the Seattle CPI-U has only been 6.3% per year.

12. The wage package for sergeants and police officers compares even more favorably to the comparable cities when the deferred compensation contributions are taken into consideration. The deferred compensation program yields an additional $75 per month, or $900 per year for each EPOA unit member participating in the program. The most common practice among the comparables is zero deferred compensation contribution. The Association's demand to increase the maximum allowable amount to 7.65% would be extremely expensive. The Arbitrator should reject the Association's demand to increase the contribution in lieu of social security to an amount which is unjustified by any evidence in the record.

13. The salary demands of the Association would cost the City an additional $2,420,308, which translates into a wage increase of $13,988, on the average for each of the 146 members of the Association bargaining unit. When the cost of the deferred compensation program is added to the total cost of the wage increase of the Association's proposal it brings the amount up to $3,454,139 in excess of the City's offer over the three-year contract. The Association's proposal is simply too expensive for the City to fund.

The City's attack on the Association case was framed in the post-hearing brief as follows:

> In an attempt to bolster its ambitious economic demands, the EPOA shamelessly shops for comparables (as treated above), utilizes palpably faulty compensation models (as treated below), and advances misleading and erroneous data (as treated below). Moreover, the EPOA centers its wage demand on Everett's hours of work, which the EPOA then tries to market with the unprecedented concept of "normalization."
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> Brief, p. 41.

The City submits the Association's concept of "normalization" does not even begin to withstand scrutiny.

The use of normalization is unprecedented in any sort of wage determination context. Further, the hours of work are not an issue in this case, as the issue was resolved by the parties before arbitration. During the bargaining process the Association did not propose to alter the existing 3/12 schedule and the 42-hour workweek. The members want the current schedule. Thus, the Association cannot properly act as if hours of work are in dispute in order to bootstrap an unjustified upward adjustment in wages.

The Association's normalization tactic also suffers a fatal failure of proof because it depicts only scheduled hours. The evidence is unrefuted that during 1996 Everett patrol officers were not at work an average of 252.69 hours out of the basic 2190- or 2184-hour schedule. This takes into consideration sick leave, vacation, disability, funeral leave, holidays etc., when the officers are not scheduled to work.

In sum, there is no basis for concluding that Everett's officers work more hours, and there thus can be no basis for

discounting Everett's wages on the unfounded--and unproven--premise of more hours worked by Everett officers.

The City next argues that the Arbitrator should take no direction from the Association's "compensation" methodology and the associated linchpin "normalization." The City objects to these broad sorts of wage and hour analyses because the entire economic package is not before the Arbitrator. Further, the Association incorrectly includes such items as Social Security, Medicare, MEBT, State Retirement and Total Retirement in many of their exhibits which renders their compensation analysis totally useless.

The Association's compensation model purports to factor in back door comparisons of scheduled hours of work through the normalization analysis. The Arbitrator should reject the Association's flawed attempt to discount Everett's top step of $3,917 per month to $3,728 per month as the basis for wage comparisons with other cities.

It is also the position of the City that the Association's calculations are based on erroneous data and suspect computations which renders the majority of the Association's data totally unreliable. While an occasional error is to be expected, the pervasive errors in the Association's data is unacceptable. Thus, the Arbitrator should not rely on the Association's distorted analysis which understates Everett wages and infects a number of other Association exhibits in one way or the other.

The City maintains that the Association's case is shot through with irrelevant and/or unfounded buzz words such as

"trends," "industry standards" and "parity." According to the City, the Association repeatedly used these words without producing evidence to prove the points in the context of which they were utilized. The Arbitrator should reject any claim made by the Association which is based on assertions that are not supported by factual evidence.

Article 13 - Longevity and College Incentive

The City proposed as part of its position on compensation to change the longevity and college incentive schedules for new employees hired after the date of the arbitration Award. The existing schedules with its system of percentage driven incentives would continue to apply to all current employees. Pursuant to the City proposal, it would add 24 months to each of the longevity pay brackets consistent with its proposal to change the base salary progression from 24 to 48 months, and to convert the existing percentages to fixed dollar amounts. The college incentive pay system would also be converted to a fixed dollar amount.

The City maintains that the existing longevity pay and education incentive pay are overly rich and excessive when measured against the comparables. The modification proposed by the City will bring it more in line with the comparable jurisdictions.

Moreover, the City sees an advantage of converting to dollar value for premium pay in that it decouples them from the monthly base pay, and thereby obligates the parties to rationally examine and discuss changing the incentives during negotiations, rather than having automatic increases pass through to the

incentives. The 2% longevity premium for a top step police officer in 1996 is a lush $940 per year. Thus, the Arbitrator should award the City's proposal on longevity and college incentive for new police officers hired on or after the date of the interest arbitration Award.

D. Discussion and Findings

The Arbitrator has awarded a three-year Agreement covering the period from January 1, 1996, through December 31, 1998. The Arbitrator finds the City's proposal to establish a separate wage grid for new employees hired after the date of this Award should not be adopted. Further, the City's proposal to create a similar two-tiered system for the longevity and college incentive programs found in Article 13 should not become a part of the Collective Bargaining Agreement on the publication of this Award.

The Association's proposal to amend Section 12.4 to convert the maximum contribution to the deferred compensation program from $75 per month to a maximum of 7.65% is rejected. The Arbitrator will award that effective January 1, 1998, the maximum amount payable to the deferred compensation program shall be increased to $90 per month.

The Arbitrator finds that after review of the evidence and argument, as applied to the statutory criteria that a 3% increase effective January 1, 1996, on the existing salary schedule is justified for 1996. Further, an additional increase of 3.25% effective January 1, 1997, is warranted. The Arbitrator finds for

the third year of the contract that a CPI driven formula is the appropriate way in which to adjust wages for 1998. The Arbitrator will award the City's proposal with the modification that the increase shall be by 90% of the change in the Consumer Price Index rather than the 80% proposed by the City.

The adjustments ordered by the Arbitrator will set the top pay for a first class police officer effective January 1, 1996, at $4,035 per month and $4,166 per month effective January 1, 1997. The sergeant's pay would be set at $5,042 per month effective January 1, 1996, and $5,205 per month as of January 1, 1997. The reasoning of the Arbitrator--as guided by the statutory criteria--is set forth in the discussion which follows.

Constitutional and Statutory Authority of the Employer

Regarding the factor of constitutional and statutory authority of the City, no issues were raised with respect to this factor which would place the Award in conflict with Washington law.

Stipulations of the Parties

The parties reached agreement on a number of contract provisions in dispute which were not the subject of this interest arbitration. Beyond the resolution of contract disputes through the negotiation process, there were no significant stipulations of the parties relevant to this interest arbitration.

Comparability

In a preliminary ruling, the Arbitrator accepted the City's list of ten cities (WC 10) as the appropriate comparators in

deciding the wages for Everett police officers for the 1996-98 Collective Bargaining Agreement. While the City's list of comparators is not perfect, the Association's list of thirteen cities, only one of which was located in Washington is totally unacceptable. As your Arbitrator previously noted, Everett is not a California city, and should not be treated as such where there are a sufficient number of Washington cities with which to compare Everett.

The next topic to be addressed is the Association's concept of "normalization." The Arbitrator holds the idea of "normalization" or discounting of Everett police officer salaries for the purpose of making wage comparisons was not shown to be a valid method by which to evaluate wages paid to police officers. The use of a "normalization" method is unprecedented in the context of a wage determination before an interest arbitrator in the state of Washington.

Moreover, discounting of the salaries earned by Everett police officers was premised on the purported idea that Everett police officers work more hours per year than their counterparts in other cities. Even if that assumption is true, the hours of work for Everett officers is not an issue because the parties resolved that subject in bargaining. Therefore, the Arbitrator will give no weight to the Association's wage studies that utilized the "normalization" concept.

When measured against the WC 10, the City's salary studies established Everett ranks fifth among the comparators at

the base wage for a top step police officer. City Exhs. 7-G and H. The members of this unit also enjoy attractive longevity and college incentive programs which benefitted 124 of the 146 employees in the bargaining unit. Where incentives are earned by a substantial majority of the bargaining unit members, they are properly a factor to be considered when formulating an award on wages. In addition, premium pay provides further opportunity for members to increase their earnings in the specialty assignments.

Another salary advantage for members of this bargaining unit is the fact they move rapidly to the top step of the salary schedule. The 24 month period required to reach the top step is far shorter than demanded of officers in the WC 10.

City Exhibit 7-H shows the top step wages for a police officer as of January 1, 1996, in the WC 10 to be:

Bellevue	$4,013
Bellingham (95)	$3,630
Kent	$4,015
Federal Way	$4,164
Vancouver	$3,832
Yakima	$3,740
*Beaverton	$3,647
*Gresham	$3,643
Westminster	$4,122
Whittier	$4,161
Average	$3,897
Everett (1995 Salary)	$3,917
Everett (1996 Salary with 3%)	$4,035

*The Arbitrator modified the Beaverton and Gresham salaries to reflect the July 1, 1996, increases.

The Association also conducted a top step wage analysis of the WC 10. Assn. Ex. 61. The Association calculated the average wage to be $3,883. The primary difference between the two top step wage comparisons was the Association's study showed the top step for Gresham at $3,643 and Beaverton at $3,647. Oregon salaries are typically adjusted on July 1 rather than January 1 of the calendar year. The Association also did not use the merit step of the nonunion officers at Federal Way in its calculations.

The Arbitrator believes the July 1, 1996, adjustments for the two Oregon cities should be included in the computation of the base wage study. With the 1996 adjustments for Beaverton and Gresham, the average salary paid at the top step for the WC 10 in 1996 was $3,897. Everett's 1995 top step wage of $3,917 is right at the average of the WC 10. Stated another way, Everett ranks sixth in the overall standing of the WC 10 for wages paid to a top step police officer before any wage adjustment is added for 1996.

The 1996 settlement for Bellingham was not available at the time the record was closed, so the $3,630 per month figure for Bellingham is a 1995 wage. This of course pulls the 1996 average down. The absence of the PERS pickup for Oregon cities also reduces the average salary figure. While the lack of current data, and different points of comparison are weaknesses inherent in any salary study, the salary data produced by the City provides a reliable source of information on which to base this award.

The 3% awarded for 1996 will increase the top step wage for a police officer to $4,035 per month, or $138 above the average

monthly wage in the WC 10. The $4,035 per month salary for 1996 will be almost identical with Bellevue at $4,013 and Kent at $4,015 per month. Maintaining Everett police officer salaries at parity with those two neighboring cities is in the best interest of Everett and EPOA. For 1996 Everett police officers would be ranked fourth in top step wage of the WC 10.

The City argued strenuously that longevity should be properly factored into the wage equation. The Arbitrator was not convinced that the City's attempt to use the longevity and college incentives as a method to justify a wage freeze for 1996 was particularly compelling. A review of City Exhibit 7-R reveals Everett police officers rank number three or four with longevity pay added, from the base year until 24 years of service, where the Everett officer moves up to the number two spot in the WC 10. The Arbitrator holds with longevity pay included, Everett is competitively ranked in salaries paid among the WC 10. The Arbitrator further finds there is no basis to conclude that Everett police officer's compensation with longevity incentives is excessive or out of line with the WC 10.

The salary trends for 1996 would appear to follow through for 1997. However, at the time the record was closed in this matter not all of the 1997 settlements were available for the WC 10. The Kent police officer's contract implemented a 3.5% increase effective January 1, 1997. The evidence of 1997 settlements showed Bellevue with a 90% of CPI-W formula, with a minimum of 3% and a maximum of 6%. Yakima officers will receive a total increase in

1997 of 4.5%. Gresham officers will see a similar 100% CPI formula, guaranteeing a minimum of 2.5% and a maximum of 5% salary increase. In Whittier the raise will be 3.5% for 1997. Assn. Ex. 216. The 2.5% offered by the City would not maintain the competitive position in the rankings of the WC 10 or be consistent with the settlement trends in those cities.

The 3.25% awarded by the Arbitrator will maintain the competitive position for Everett police officers in the WC 10. With the 3.25% added to the base effective January 1, 1997, the top step officer will be paid $4,166 per month in 1997 without incentives or premium pay. The top salary paid in Kent for 1997 will be $4,155. In Bellevue the maximum salary for 1997 is set at $4,133. The top step salaries paid in these three key cities will be within $33 of each other for 1997.

The City proposal to establish the 1998 increase on a formula based on 80% of the CPI creates an excessive discount from the CPI formula. With the Arbitrator's modification of the City's proposed formula providing for a third year increase of 90% of the CPI, the respective interests and needs of both parties are recognized.

Turning to the sergeants, the evidence established this is a well-paid group of employees. While the Arbitrator rejected the City's proposal to establish a separate progression schedule for new hires, which included sergeants, this is an appropriate subject for future negotiations. There is some merit to placing new sergeants on a 24 month progression schedule.

In reaching a conclusion on the wage issue, the Arbitrator was mindful of the additional pay members of this unit earn under the incentive plans. The Arbitrator rejected the City's proposal to drastically change the incentive plan for new employees. The continuation of the generous incentive plans will provide additional dollars for the members of this unit. On the other hand, premium pay for MPOs will be rolled back to the 1994 level. The Arbitrator also took into account in framing the award on salaries that members of this unit will continue to enjoy fully paid medical, dental and vision insurance programs for the duration of the 1996-98 contract.

Cost of Living

Turning to the factor of cost of living, the evidence overwhelmingly supports a wage settlement closer to the City's position than the amount sought by the Association. In addition, the cost of living factor provides absolutely no support for the Association proposed increases of CPI-W plus 2% for each of the three years of the contract. The City's offer to freeze wages for 1996 runs counter to the cost of living factor. When the cost of living factor is combined with the fact that wage freezes were not the norm in the WC 10, the proposal for no increase in 1996 is unacceptable.

The City's evidence revealed that the CPI-U has recorded changes in recent years ranging from 2.9% to 3.3%. City Ex. 7-Attachments HH through LL. The award of this Arbitrator on wages over the term of this Collective Bargaining Agreement is consistent

with those increases reflected in the CPI. The Association's proposals for a full CPI plus 2% for each of the three years of the contract are totally without merit. There is no requirement in the statute, nor is it an accepted labor-management principle that employees are entitled to increases equal to the amounts recorded in the CPI. The Arbitrator has accepted the City's proposal with modification that a full CPI increase for 1998 should not be awarded. When the amounts awarded by the Arbitrator to the salary schedule are combined with the other economic benefits provided to the members of this bargaining unit, they will be well protected from any loss of purchasing power due to inflation.

Changes in Circumstances During the Pendency of the Proceedings

The only relevant change in circumstance is the wage increases received by officers in the comparable cities during the course of the bargaining of this contract. Since the bargaining for this contract has extended over a substantial period of time, the parties and the Arbitrator had the benefit of being able to review wage increases agreed to in the WC 10. The settlement trend in the City's list of comparators for 1996 ranged from a low of 3.2% in Bellevue to a high of 4% in Yakima on base wages. A similar pattern of wage settlement agreements for 1997 exists which shows base wage increases for Bellevue at 3%, Kent 3.5% and Yakima at 4.5%. Assn. Ex. 212. In addition, Gresham police officers will benefit from the 4% increase generated by the CPI. Assn. Ex. 16. Westminster police officers will benefit from a minimum increase of 1% to a maximum of 3%. City Ex. 5. The Whittier adjustment for

1997 will be 2.5% plus a 1% labor market adjustment. City Ex. 5. The Beaverton police contract calls for an increase effective July 1, 1996, based on a full CPI-W formula, with a minimum of 3% and a maximum of 4.5%. City Ex. 5. The settlement trends on the base for the WC 10 provide persuasive evidence that the Association's wage proposal is totally without merit. On the other hand, the City's proposal for a wage freeze in 1996 does not comport with any of its comparator jurisdictions. Further, the City's 2.5% offer for 1997 is slightly below market in the City's list of comparators. The Arbitrator's award of 3% for 1996 and 3.25% for 1997 is consistent with the settlement trends in the WC 10.

Other Traditional Factors

A host of potential guidelines are suggested by the catchall of "other factors . . . normally or traditionally taken into consideration in the determination of wage, hours and conditions of employment." RCW 41.56.465(1)(f). As this case was driven by the comparability factor, neither party made a strong argument there were "other factors" at play in this dispute which would override the enumerated statutory criteria.

The issue of internal comparability is of some significance to the resolution of this dispute. The Association proposal to increase wages by 100% of the Seattle CPI-W plus 2% in each of the three years of the 1996-98 contract was not supported by compelling evidence to justify an increase of this magnitude. The City offered no evidence that it froze wages for any other

group of City employees. The award of the Arbitrator is consistent with the City's treatment of other employees.

The evidence offered by the Association was compelling that the economic health of the local economy is strong. The data also is convincing that economic and population growth in the City will continue in the foreseeable future. There is nothing in the record before this Arbitrator which compels a conclusion that Everett is a economically depressed City that will be unable to generate sufficient revenues to support modest wage increases for its police officers. All of the record evidence points to continued economic prosperity in Everett.

Pension Fund

Section 12.4 was first introduced into the relationship by the 1993-95 contract. The provision for a Section 457 Deferred Compensation Program was done in lieu of FICA contributions. The $75 has remained constant since the program was first adopted in 1993. While the Arbitrator concurs with the City that the Association's proposal is excessive and should not be awarded, the Arbitrator was persuaded that some adjustment should be made effective January 1, 1998. The Arbitrator will continue using the fixed dollar format currently provided for but I will increase the maximum amount to $90 monthly.

Change in the Structure of the Salary Schedule

The parties have maintained one salary schedule for the City's police officers throughout the existence of the collective

bargaining relationship. The Arbitrator holds that the City failed to present sufficient evidence to justify the establishment of two separate salary schedules for the members of this bargaining unit. The potential for future conflicts between members is an inherent defect in the creation of a two-tier wage structure. Lastly, a review of the collective bargaining agreements for the City's comparator jurisdictions reveals that two-tier wage schedules are not the norm. Therefore, the Arbitrator will award that the existing structure of the salary schedule remain unchanged for the duration of this Collective Bargaining Agreement.

Article 13 - Longevity and College Incentive

For the same reasons stated above, Article 13 should continue unchanged in the 1996-98 Collective Bargaining Agreement.

AWARD

The Arbitrator awards as follows:

1. The City's proposal to establish a new wage schedule for employees hired after the date of this Award is rejected.

2. The City's proposal to modify Article 13 to create a new longevity and college incentive program for officers hired after the date of this Award is rejected. Article 13 shall continue unchanged for the duration of the 1996-98 Collective Bargaining Agreement.

3. Article 12 - Salary Schedule shall be modified to state:

ARTICLE 12 - SALARY SCHEDULE

12.1 1996 Salary Schedule.

12.1.1 Effective January 1, 1996, the monthly salary schedule for the Association shall be increased by three percent (3%). The following shall be the schedule of monthly salaries for calendar year 1996:

Classification Title	Range No.	Third Class	Second Class	First Class
		MONTHLY RATE		
Police Officer	03-021	3077	3370	4035
Sergeant	03-012			5043

Salary progression intervals are twelve (12) months between steps.

12.2 1997 Salary Schedule.

12.2.1 Effective January 1, 1997, the 1996 monthly salary schedule for the Association shall be increased by three and one-quarter percent (3.25%). The following shall be the schedule of monthly salaries for the calendar year 1997:

Classification Title	Range No.	Third Class	Second Class	First Class
		MONTHLY RATE		
Police Officer	03-021	3177	3479	4166
Sergeant	03-012			5207

Salary progression intervals are twelve (12) months between steps.

12.3 1998 Salary Formula.

12.3.1 Effective January 1, 1998, the respective 1997 salary schedules shall be increased by ninety percent (90%) of the percentage change in the Consumer Price Index (CPI-U)(1982-1984=100) for the Seattle-Tacoma area for the first half of the 1996 semi-annual average to the first half of 1997 semi-annual average.

12.4 Pension Fund.

In lieu of FICA contributions, the City will match contributions made by Association members into a City-sponsored Section 457 Deferred Compensation Program, up to a maximum of seventy-five dollars ($75.00) monthly to be paid as a matching maximum of up to thirty-four dollars sixty-two cents ($34.62) bi-weekly.

Effective January 1, 1998, the maximum contribution shall be increased to ninety dollars ($90.00) monthly.

ISSUE 3 - SPECIALTY PAY

A. Background

The specialty pay issue involves two major areas of dispute. The first area concerns general issues over pay and program administration. Article 14 addresses the issue of specialty assignments and pay for performing work in those specialty categories. Examples of specialty assignments for which additional compensation is provided are Bomb Technicians, Tactical Team Members, Motorcycle Patrol Officers, Investigations, etc. Article 14.2.1 provides that officers assigned to the specialty categories are to be paid 4% above the first class officers base monthly wage. The City seeks to convert the 4% premium into a fixed dollar amount.

In order to qualify for additional compensation in a specialty assignment, the officer must be trained in the specialty and is required to maintain skill levels as determined by the Chief of Police. The assignment to and removal from specialty assignments is at the "sole discretion of the Chief of Police." The Association proposed to modify Article 14 to limit the discretion of the chief to remove employees from specialty positions.

The second area of dispute in this issue is over a Master Police Officer ("MPO") program established for the first time in the 1993-95 contract. Master Police Officers are paid 15% above the first class officer base monthly rate. The City agreed to staff assignments to the MPO program on a one-to-one basis with the

number of sergeants within the police department. The primary purpose of MPOs is to act as training officers and as first line supervisors in the absence of a sergeant.

Both the City and the Association have proposed changes, additions and modifications to Article 14. The Arbitrator will decide the specialty pay topic and MPO issues separately.

B. The City

Specialty Pay (General)

The City proposed to add to Section 14.1.1 a sentence which would discontinue specialty pay for a member not performing full specialty duties due to any absence other than on-the-job injury, vacation or compensatory time off. The City would continue Section 14.1.2, and Section 14.1.3 and place the current Letter of Understanding regarding canine handler compensation in the body of the contract to reflect the current practice. The major change proposed by the City was to convert the current rate of pay of 4% for specialty assignments to a flat dollar amount. If the City's proposal was adopted, specialty assignments would be paid a premium of $150 per month.

The City asserts the proposed canine language is consistent with the May 12, 1993, Letter of Understanding and clarifies present practice. The Association voiced no objection to placing the City's proposed language in the contract. The Arbitrator should award the City's proposed canine language as a matter of clarifying present practice.

Turning to the City's proposal to convert the 4% specialty pay to the dollar value of $150 per month, the City asserts that it would remain among the elite in the number of premium pay categories provided in the comparators. The average number of premium pay assignments is six. The City of Everett provides premium pay for nine specialty assignments. The same is true if the amount of additional specialty pay is compared with the other cities.

Moreover, the City argued that the advantage of the dollar value for these premium pays is that it allows the parties to discuss the value of the various forms of specialty pay on a periodic basis. The City submits that premium pay should be decoupled from monthly base pay, rather than having an automatic adjustment each time the monthly salary schedule is increased.

The City objects to the Association's proposal to strip proficiency requirements contained in Section 14.1.2 from the contract. According to the City, the public would suffer if there were no requirements that officers maintain skill levels in order to receive specialty pay. Further, the elimination of the three-month probationary period for detectives would impair the ability of the City to evaluate the performance of officers in the investigations specialty assignment.

The City also objects to the Association's proposal to delete the requirement that specialty assignments are held at the sole discretion of the Chief of Police. The City sees no benefit of having the only basis for reassignment to be that of

disciplinary cause. In addition, the City questions how specialty assignments would be made in the first place if the language was deleted from the contract. The deletion of this language would leave the parties in a situation of uncertainty regarding the assignment and removal from specialty duties.

In sum, the Arbitrator should reject the Association's attempt to delete valuable language from the contract. The Arbitrator should award the City's proposed changes and continue Section 14.1.2 and Section 14.1.3 unchanged.

Master Police Officers

The City proposed to delete all of the language found in Article 14.3 regarding Master Police Officers. The City proposed that new language be added to the contract to read as follows:

> 14.2.2 Master Police Officer specialty assignment shall be paid seven percent (7%) above the first class officers Base Monthly Salary.

The City's proposal would also delete the current compensation schedule of 15% as the rate of pay for a MPO assignment.

The City has two primary objections to the current language. First, the City objects to the staffing requirements which requires the MPO program to be on a one-to-one basis with the number of sergeants within the police department. The City considers it senseless and irresponsible to continue the overstaffing that results from the contractual staffing mandate.

The City submits that an appropriate MPO staffing level can be governed by sound management determination.

The second objection of the City is to the preexisting contract scale of the 5-10-15% premium for MPOs. In the view of the City, the 15% premium or $588 per month is indefensible. The City argues that the $7,056 annual premium for a MPO is excessive and unreasonable. None of the comparable jurisdictions provide a level of compensation that is even close to what the Everett MPO program generates to officers in additional income. In fact, the only other comparable city with a MPO program is Bellingham with two MPOs.

The City next argues that the bargaining history over the MPO program reveals that it was not a good idea from the beginning. Experience has proven that the MPO program has not been effective in improving the efficiency of delivery of law enforcement services. There is no logic to having 22 MPOs just because the City has 22 sergeants. The City concludes that the uniqueness of Everett's staffing ratio and the folly of Everett's exorbitant rate of pay for the MPO assignments demonstrates that the contractual requirements of this program should be deleted from the successor Agreement.

C. <u>The Association</u>

<u>Specialty Pay (General)</u>

The Association proposed to delete Section 14.1.2 and Section 14.1.3 from the Collective Bargaining Agreement. In the view of the Association, its proposal is offered to clarify that

discipline--including disciplinary transfers--are subject to the just cause and grievance procedure sections of the contract. The ability to arbitrate discipline on the just cause standard is one of the most fundamental rights in a labor agreement. Arbitrators have almost uniformly held that arbitration of discipline extends to the right to arbitrate transfers which are disciplinary in nature. The City offered absolutely no evidence in defense of this poorly drafted language. The Association's goal is simple and straightforward: it wishes to have the right to grieve disciplinary transfers.

Regarding the City's argument, the Association asserts the City simply misunderstands what the Association seeks. The Association does not seek to interfere with the Chief's right to make the initial assignment or to transfer officers between assignments for legitimate operational reasons. The contract should not contain a specific exemption from the just cause standard when officers are removed from special assignments for disciplinary reasons.

The Arbitrator should reject the City's proposal to convert the premium pay from a percentage basis to a flat dollar basis. The Association found no arbitration awards where an arbitrator ever converted specialty premiums back in the manner the City proposes. The City's own expert, Cabot Dow, said that he had never seen that happen in his many years of negotiation. The percentage method serves the parties well and it preserves the value of the premium. By using a percentage amount, it eliminates

the need to renegotiate these premium items on a case by case basis. Hence, the Arbitrator should continue the current language establishing the pay for specialty assignments as 4% above the first class officers base monthly wage.

Master Police Officers

The Association maintains the City failed to carry its burden of proof that the previously negotiated MPO program should be slashed or that the premiums should be significantly reduced. Although the Association does not contest the theory of the police administrators who testified they had problems with the program, the City failed to demonstrate it first undertook reasonable steps to try to fix the problems under the current language. Where the evidence reveals that alternatives are available to remedy problems with contract language, arbitrators have rejected proposals to totally eliminate the language from the contract.

The Association avers that the real reason that the City wants to diminish the program is that some officers chose to exercise their legal rights to acquire civil service status for themselves and filed a lawsuit against the City. There were no discussions about cutting back the MPO program until after the lawsuit was filed. Since the filing of the lawsuit, the City has persisted in a negative reaction to the MPO plan and has not attempted to work with the Association in improving the plan for the benefit of the City and the members.

The Association next argues that it made significant concessions in order to acquire the MPO position. According to the

Association, it should not be forced to give up a bargained for benefit when a new administration comes into office and changes its mind about the value of the program. One of the primary purposes of interest arbitration is to protect police officers from policy vacillations caused by changes in elected leaders.

Moreover, the current program offers many benefits to the City that would be lost or at least diminished with the City's proposal. MPOs are looked upon as leaders within their squad and are able to perform more effectively as a result. Time served as MPOs has helped those individuals to further develop their supervisory skills. The result is that these individuals are more likely to be promoted to sergeant because of the MPO experience. When the MPOs are promoted they are able to acquire efficiencies as sergeants much more quickly than existed without the MPO background. Further, increases in Everett Police Department workload also supports the continuation of the MPOs. The evidence established MPOs are called upon with increasing frequency to be in charge of a scene. As the demand for law enforcement services grows, the usefulness of the program increases significantly.

The Arbitrator should also reject the City's proposal to eliminate the requirements for the ratio of MPOs to sergeants. It was the City who agreed to a certain ratio in lieu of defined specifications for MPOs. The City's proposal is flawed because it offers no new specifications that would reasonably ensure officers there would be realistic MPO opportunities. Nor has the City made a clear case for the need to actually reduce the number of MPOs.

For all of the above stated reasons, the Arbitrator should reject the City's proposals to modify Article 14 and award the Association's proposals on this issue.

D. Discussion and Findings

Specialty Pay (General)

The Arbitrator finds the City's proposal to add language to Section 14.1.1 requiring full performance of specialty duties by the employee in order to receive the premium pay to be reasonable. If an officer cannot perform the full range of duties of a specialty position, there is no justification for continuing the specialty premium pay. The City's proposal preserves the premium where the absence from work is for "an on-the-job injury, vacation or compensatory time off."

The Arbitrator holds the Association's proposal to delete Section 14.1.2 and Section 14.1.3 as a means to attain just cause protection in cases of removal from a specialty assignment should not be adopted. Section 14.1.2 requires an officer must be trained and maintain skill levels in order to retain the specialty pay. In the judgment of this Arbitrator, if an officer is going to receive specialty pay, the officer should possess the current skills necessary to perform the specialty assignment. It would not be in the public interest to have a "Bomb Technician" who was untrained in the job, and without the current skills to safely perform the work.

The Association proposed to delete Section 14.1.3 from the contract. This provision vests sole discretion in the Chief of

Police to decide who will receive a specialty assignment and when an officer may be terminated from the assignment. By striking the language from the contract, the Association would attain far more than the ability to grieve disciplinary transfers. Without Section 14.1.3, the contract becomes unclear as to how an officer would be selected or removed from a specialty assignment. The nature of the work in specialty assignments is too important to be left to chance.

The Arbitrator concurs with the City on this issue, with one exception. The one exception being the ability to grieve disciplinary removal from a specialty assignment. The City is correct that it should retain the exclusive prerogative to make changes in specialty assignments for operational reasons. In its post-hearing brief, the Association stated it was not seeking the ability to grieve reassignments made for operational reasons.

The Arbitrator finds that where an officer is removed from a specialty assignment for disciplinary reasons there should be the ability to grieve the "disassociation" from the specialty assignment. Absent from this record are any compelling reasons why removal from a specialty assignment for disciplinary reasons should be carved out as an exception to the Association's right to grieve an alleged violation of the contract. The Arbitrator will award language to modify Section 14.1.3 to allow the ability to grieve removal from a specialty assignment for "disciplinary reasons."

The language added by the Arbitrator is not intended to restrict the prerogative of the Chief of Police to appoint officers

to specialty assignments or to make changes for operational reasons. The single exception created by the new language is to allow for a grievance when the City seeks to impose discipline on an officer in the form of a removal from a specialty position. If the Association believes the removal from a specialty assignment was pretextual, that can be sorted out in the grievance procedure.

The Arbitrator finds the City's proposal to amend Section 14.2.1 to convert specialty pay from a percentage to a fixed dollar amount is without merit. The percentage method has served the parties well. Both parties recognize the worth and benefit to the citizens of Everett, of specialty assignments as a part of police services. The dispute here is over how the officers should be compensated.

The percentage method of compensation preserves the value of the specialty premium over the term of the contract. While there might be some merit to the City's position the premium pay is high, the conversion to a fixed dollar system is not the way to address the subject. Renegotiations of fixed dollar premiums on a case by case basis creates unnecessary conflict. Adjustments in the rate of compensation through changes in the percentage amount would be an appropriate subject for future negotiations.

The Arbitrator holds the City's proposal to add canine maintenance language to Article 14 should be adopted. Canine handlers represent a unique specialty assignment. The compensation for canine maintenance should be expressly spelled out in the contract. The City's proposed language is consistent with a prior

Letter of Understanding and clarifies current practice. No major objection was raised by the Association to the City's proposed canine language. Therefore, the Arbitrator will enter an award to add the canine maintenance language to Section 14.2.1.

Master Police Officers

The Arbitrator finds the City's evidence established the MPO program is in need of substantial repair. However, the Arbitrator was not persuaded to adopt the City's proposed changes. In essence, the City's modified language would pave the way to terminate the MPO program. Also, MPOs who remained in the program would have their compensation reduced by 50%.

The Arbitrator will modify the current language. The language awarded will grant the City greater flexibility and still allow the program to function. With approximately one and one-half years remaining on the 1996-98 Collective Bargaining Agreement, the adjustments will allow the parties the opportunity to make operational improvements in the MPO program. If the problems with the MPO program cannot be fixed, then the parties are free to negotiate an end to the program in the next round of bargaining.

The City's evidence established the one-to-one staffing ratio of MPOs to sergeants was without any business justification. The Association failed to contradict the City's evidence there was insufficient work for 22 MPOs. The Arbitrator will enter an award reducing the staffing ratio to one MPO for every two sergeants. By reducing the number of MPOs by one-half, the City will be able to place officers in assignments where they will be most useful.

Section 14.2.2 established a pay schedule for MPOs based on a percentage rate of a first class officers base pay. The MPO premium was set at 5% in 1993, 10% in 1994 and 15% in 1995. The 15% premium for MPOs is totally without support in the comparator jurisdictions. The Arbitrator will order the MPO premium rolled back to the 1994 level of 10%, effective October 1, 1997.

AWARD

The Arbitrator awards with respect to Article 14 as follows:

1. Section 14.1.1 shall be amended by adding language to state:

Any member not performing full performance specialty duties due to any absence other than an on-the-job injury, vacation or compensatory time off shall not receive the additional pay.

2. Section 14.1.2 shall continue unchanged in the 1996-98 Collective Bargaining Agreement.

3. Section 14.1.3 shall be amended to read:

Assignments and disassociation for operational reasons, to the special additional duties as enumerated in this Article, shall rest in the sole discretion of the Chief of Police. Disassociation from specialty assignments for disciplinary reasons shall be subject to the grievance procedure.

4. Section 14.1.4 and Section 14.1.5 shall continue unchanged in the 1996-98 Collective Bargaining Agreement.

5. The City's proposal to add canine maintenance language to Section 14.2.1 is awarded. The language shall read as follows:

14.2.1 Specialty assignments to be paid 4% above the first class officers Base Monthly Wage, include:

Bomb Technicians
Tactical Team Members
Dive Team Members
*Canine Handlers

Hostage Negotiators
Tactical Team Coordinators
Investigations
Motorcycle Patrol Officers

*Canine maintenance compensation will be the equivalent to one-half (1/2) hour per day, work days and days off inclusive. The Association and City agree that regular assigned shifts will be shortened by one (1) hour, i.e., the current twelve (12) hour shift will be changed to an eleven (11) hour shift. The one (1) hour is for one-half (1/2) hour maintenance on that work day and one-half (1/2) hour for routine maintenance days off. Therefore, canine officer(s) shall be granted three and one-half (3 1/2) hours per week for the time it is necessary for the officer to spend to care, groom feed, maintain, transport, etc. the dog during off-duty hours. Any such non-regular duty work in excess of the above shall require advance approval from the Police Chief or his designee.

6. Section 14.2.2 shall be revised to read:

Effective October 1, 1997, the Master Police Officer specialty assignment shall be paid at the rate of 10% above the first class officer base monthly rate.

7. Section 14.3, Master Police Officer provision shall continue unchanged with one exception. The second sentence of Section 14.3.1 shall be amended to provide as follows:

The City agrees to staff assignments in the MPO program on a one-to-two basis with the number of Sergeants within the Police Department.

ISSUE 4 - SICK LEAVE

A. Background

The subject of sick leave is addressed in Article 24 of the current contract. LEOFF I employees receive disability benefits provided by Chapter 41.26 RCW in lieu of the benefits provided in Section 24.2 and Section 24.3 of the contract. LEOFF II employees accrue 156 hours of sick leave up to a maximum of 1040 hours.

Section 24.3.1 defines sick leave use as follows:

> A. personal illness or physical incapacity resulting from a cause beyond the member's control;
>
> B. forced quarantine of the member;
>
> C. medical, dental, or ocular appointments with advanced supervisory approval.

The City would continue current contract language. The Association proposed to expand the definition of sick leave use and to provide for a sick leave accrual incentive.

B. The Association

The Association proposed to add a new definition for when sick leave could be used which read:

> D. Illness of spouse or minor dependent children.

The Association would also add language which stated:

24.4 Sick Leave Accrual Incentive.

24.4.1 Employees shall be allowed upon separation or retirement to receive in cash an amount equal to fifty percent (50%) of the value of their then existing sick leave accrual balances.

The Association framed the sick leave cashout as a proposal to add an economic benefit for the members. According to the Association, the comparability data is a predominant factor in assessing this issue. The Association submits the comparability data overwhelmingly supports its sick leave accrual incentive proposal. The Association asserts that all of the local labor market comparables have some kind of cashout or incentive benefits. Even among the City's comparables, all but Gresham has some type of cashout benefit.

The Association next argues that the lack of severance benefits on retirement for Everett police officers exacerbates the already existing poor retirement benefits for the members of the Association. The City's contentions regarding the expense of this proposal are misplaced because the money to pay for this benefit will not have to be allocated in a given year. The members of this bargaining unit will be retiring over the next 15 to 20 years.

It is also the position of the Association the City exaggerates the generousness of existing sick leave benefits. While it is true that the annual accrual rate of 156 hours per year exceeds that of other jurisdictions, the City's sick leave cap

ultimately controls the amount of time that can be accrued. The cap is in line with other jurisdictions even before consideration is given to the fact Everett officers work more hours per year.

Turning to the issue of the definition of sick leave use, the Association proposes to extend this leave to other family members. The Association reasons that the City's reliance on the family leave act is misplaced because the act does not require that time come out of the sick leave bank. The comparables demonstrate that sick leave use for other family members is an established benefit. The Arbitrator should reject the City's harsh and regressive stand and award the Association's proposal as it is clearly in line with the comparable jurisdictions.

C. <u>The City</u>

The City proposes no change to existing language. In the City's view, the sick leave article is very generous as it currently exists. The accrual rate of 156 hours per year for LEOFF II employees is extremely liberal when compared with the other cities. LEOFF I employees are fully compensated for any and all absences. The 156 hours of sick leave that are accrued is 50% greater than the mean of 104 hours per year among comparable cities.

The 50% cashout demand is not supported by the comparable cities. Of the City's comparables only Bellevue has a similar program, but Bellevue only allows for a 10% cashout on retirement. Vancouver has no cashout for police officers hired on or after January 1, 1981. Westminster and Whittier cashout does not exist

below 240 and 500 hours respectively. Yakima is the only jurisdiction with a cashout at separation of 25%, and at retirement or death of 50%, which is similar to that proposed by the Association.

No other City employees receive a cashout for sick leave accruals on separation or retirement. The cashout would substantially impact the City's budget because it will generate an extremely high cost. A 50% cashout of Association unit sick leave accrual as of December 21, 1996, would translate into the stunning sum of $1,218,103 in 1996 dollars.

Turning to the Association's proposal to expand the definition of sick leave usage, the City takes the position that this issue is adequately addressed under the Federal Family and Medical Leave Act of 1993 and City policy. Under the current program an employee has the ability to take time off for serious health conditions of a spouse and may choose to be in paid status by using either vacation or compensatory time off. The City also has a progressive shared leave program. The City already allows usage of sick leave for child illness pursuant to Child Care Leave under RCW 40.12.270. The Association's language would appear to be unlimited in nature. The policy embraced by the statute provides sick leave may be used in cases of "a health condition that requires treatment or supervision" for a dependent child under the age of 18, and sets reasonable limits for sick leave use.

In sum, the comparable cities do not support either the expansion of sick leave usage to spousal illnesses or sick leave usage for child care purposes.

D. Discussion and Findings

The starting point for the review of this issue is the recognition the Arbitrator has identified the City's list of west coast cities as the benchmark by which to review the terms and conditions of employment that should be put in place for the members of this bargaining unit. Under the current contract Everett police officers accrue 156 hours of sick leave per year, up to a maximum of 1040. City Ex. 11. The majority of the comparator jurisdictions provide for an accrual rate of 96 hours per year with Kent and Vancouver at 120 hours per year. The average is 104 hours per year.

The City also compares favorably on the maximum number of hours per year that can be accrued at 1040. Three of the comparators have no limit and only two jurisdictions provide for an accrual rate in excess of 1040 hours as allowed for members of this bargaining unit. A review of the City's comparables on the topic of cashout at severance or retirement reveals that in some form this benefit is enjoyed by officers in the majority of the comparables. Yakima appears to have a program in line with what the Association is seeking in this case. However, the majority of the west coast cities provide for a lesser cashout benefit on severance or retirement.

The Arbitrator is convinced that there is merit to a program which provides an incentive for employees to avoid using their sick leave. The sick leave accrual incentive should only be payable at the death or retirement of the employee. The Arbitrator views this as a long-term program which should not be available when an employee leaves City employment prior to retirement or death. The City's comparables provide evidence that some form of cashout is a benefit enjoyed by police officers employed in the comparable west coast cities.

The Arbitrator concurs with the City that the program proposed by the Association would yield an excessive and unreasonable amount of extra money at retirement or severance. The Arbitrator will modify the Association's language to provide for a program similar to that offered in Yakima. The language awarded by the Arbitrator will limit the cashout to the situation of retirement or death of the employee. The cashout will be limited to 50% of the employee's value of the existing sick leave accrual balance up to a maximum of 520 hours. By limiting eligibility for participation in the program and placing a cap on the number of hours an employee may cashout, the financial impact on the City will be substantially reduced.

The Arbitrator finds that the Association's proposal to expand the definition of sick leave to provide for use for the illness of a spouse or minor dependent children should not be adopted. The issue is already addressed per the FMLA and state law. Adoption of the Association's proposal would expand the

parameters for the use of sick leave beyond that which an employee is entitled to by current law. The employee under the present situation has the option to be in paid status by using either vacation or compensatory time off to allow for paid time to care for an ill spouse or child. The Association's proposal to provide for the use of sick leave for the illness of minor dependent children is undefined. The Arbitrator finds this aspect of the proposal objectionable on the ground of vagueness. The Arbitrator will award that Section 24.3.1 will remain unchanged in the successor Agreement.

AWARD

The Arbitrator awards as follows:

1. The Association's proposal on sick leave use is rejected and the current language shall continue unchanged in the 1996-98 Agreement.

2. The Arbitrator awards that new language be added to the contract which states as follows:

24.4 Sick Leave Accrual Incentive

24.4.1 Employees shall be allowed upon retirement or death to receive in cash an amount equal to fifty percent (50%) of the value of their then existing sick leave accrual balances up to a maximum of 520 hours.

ISSUE 5 - INSURANCE BENEFITS

A. Background

Insurance benefits for members of this bargaining unit are the subject of Article 26. Presently, the members of the EPOA enjoy a benefit package which provides for medical insurance, dental insurance and vision insurance. The City pays the entire cost of the coverage for the three benefits for LEOFF II officers and their legal dependents. LEOFF I officers pay the difference between the NCAS plan and the cost of the HMOs. The City established a self-insured medical insurance program in 1994 known as the NCAS plan.

The City has agreed in Section 26.6.1 to sponsor a disability insurance program through the Standard Insurance Company for all LEOFF II members. The responsibility for payment of the premiums for this coverage rests with the LEOFF II officers who are required to participate. In addition, Section 26.6.2 requires all officers to purchase a $10,000 life insurance policy through the Standard Insurance Company. The officers, not the City, are obligated to pay the premiums for disability and life insurance.

The dispute in this issue revolves around three main City proposals. First, the City would require LEOFF II officers who wish to participate in the HMO plan to pay the difference in premium between the NCAS plan and the HMO plans. Second, the City also proposed the employees would pay 10% of the dependent cost for medical, vision and dental coverage. Third, the City proposes that a Letter of Understanding for the Positive Incentive Plan ("PIP")

be awarded as part of the City's proposal. The Association would continue existing contract language.

B. The City

The City frames this issue as one of whether the insurance benefit program should be modified in such a manner as to have employee co-pays to control costs and to restrain insurance cost escalation. The City proposed to do this by amending Section 26.3.1 to read:

> The City agrees to provide one hundred percent (100%) of the premium cost toward the purchase of the City's self-insured medical insurance program for employees and ninety percent (90%) of such premium cost for their legal dependents. LEOFF II employees shall have the option of participating in either the Group Health, HealthPlus or the basic/major medical program. However, if the employee chooses a carrier other than the City's self-insured medical insurance program, the employee shall pay the premium difference.
>
> Emphasis added.

While the City would agree to continue to pay 100% of the premium cost towards the purchase of dental insurance and vision insurance for employees, the City would alter Section 26.4.1 and Section 26.5.1 to pay 90% of the dependent coverage for the two insurance benefits. The same 90% figure would also apply to dependent medical coverage.

The City asserts that its proposals in this issue are part of the comprehensive effort to stabilize the escalation of premium levels. The goal of the City has been to contain health insurance costs while maintaining a competitive level of benefits.

The City's efforts over the past two years have been successful in maintaining lower costs in the NCAS plan to which the City is endeavoring to encourage participation by this proposal. Since all forecasts indicate that medical costs will continue to spiral upward, it is reasonable that this cost containment measure be adopted.

The City would achieve this cost containment by agreeing to pay 100% for the cost of its self-insured NCAS program for employees and 90% of the premium cost for their legal dependents. However, if the employee elected to participate in Group Health, HealthPlus or the basic/major medical program the employee would pay the premium difference between the City's self-insurance medical program and the alternative programs. The term used by the City to describe this was to require officers to "buy-up" to the HMOs. The City points out that six of the ten comparable cities offer higher cost options for medical insurance to their police officers but those officers who select such options pay the difference between the cost of the basic plan and the cost of the better plan.

LEOFF I police officers have for several years paid the difference between the City's self-insured--NCAS plan--and the HMOs. The LEOFF I Police Pension Disability Board placed all LEOFF I officers under the NCAS plan. As a result, a LEOFF I employee who desires HMO coverage for himself/herself and or dependents must pay the buy-up. Other City labor contracts require the insurance buy-up for their members.

Regarding the issue of dependent co-pays, City's evidence shows that six of the WC 10 have a dependent co-pay. Although other City groups do not presently have a specific dependent co-pay, the ATU Local #883 started a 50% co-pay for any yearly premium increase effective January 1, 1997. It is the goal of the City to achieve dependent co-pays in upcoming negotiations with other employee groups. There is a co-pay for LEOFF I employees in both police and fire where the employee chooses HMO coverage.

In 1995 the City initiated a health benefits committee consisting of representatives of all employee groups. Through the efforts of the committee an employee incentive program was developed that would assist in cost containment. The PIP applied only to employees under the NCAS plan. Pursuant to the PIP program, savings in premium costs were returned to employees. The PIP payout for 1995 to members of the EPOA totaled $17,746.92 or an average of $267 per officer. The initial trial period for the PIP was established for three years, 1995 to 1997. The City desires to memorialize the PIP program parameters within the terms of this labor Agreement.

The City responded to the Association's evidence with three major claims. First, City asserts the Association really did not respond to the City's proposals but instead relied on topics not relevant to the issue of insurance. Second, the Association's claim that it was allowed insufficient information to evaluate the City's proposals is misplaced. Third, the testimony of the

Association expert witness served to point out the Association's misleading use of data.

Based on all of the foregoing arguments, the Arbitrator should award the City's proposal to modify Article 26.

C. The Association

The Association alleges that the City has proposed dramatic changes in the health insurance area. According to the Association, the City must carry its burden of proof to show these changes are justified in light of recent significant concessions the Association made in the insurance benefit area. After reviewing the evidence, the Arbitrator should concur with the Association's position and reject the City's proposals.

The Association argues that offering a HMO to employees is not voluntary for the City but is required by Washington law. The Association interprets the statute to prevent the City from charging more for the HMO than they would for a primary health plan except--perhaps--where there is an actual difference in cost. If the City could simply charge the employees whatever they wished for using a HMO, the statutory mandate of the HMO option would be rendered useless. The Association submits the intent of the statute is that the employer would not pay less for a HMO option, if that option cost is less than a basic plan.

The City's proposal to reduce its contributions to insurance programs cannot be viewed in a vacuum. The Association recently made significant concessions to the status quo regarding insurance issues. Therefore, Association concessions constitute an

equitable factor which should be given predominant weight when evaluating the City's proposal to reduce its contributions for insurance premiums. This Association in combination with the other City unions gave the City over a million dollars in concessions which resulted in substantial cost savings for the City in premium dollars. The City has failed to carry its burden that additional change in the form of reduced contributions to the insurance program is justified.

The Association next argues that the City failed to provide timely and adequate information which would have enabled it to effectively evaluate the City's proposal. Even the data which was provided was often inaccurate. The City's failure to comply with the Association's reasonable bargaining information request puts their proposal in a rather untenable situation. Since the City has not provided either the Association or the Arbitrator with sufficient information or any reasonable calculations of what the buy-up might be, the Arbitrator should reject this proposal.

The driving force behind the City's proposal is the Association's unilateral agreement to allow the City to create a self-insurance plan which appears to cost substantially less than the prior plan. With the adoption of the self-insurance plan the City is provided the opportunity to manipulate the rate structure and allow it to create an appearance that the HMOs might be more expensive than the self-insurance plan. The City is using the interest arbitration process as a "bludgeon" to attempt to force

the Association into something to which it would not ever voluntarily agree.

It is also the position of the Association that comparability supports neither the buy-up proposal or the dependent contribution proposal. The Association believes that the medical premium cost number is $378. A review of the comparables reveals that not only on total dollar expenditures but also on the extent of the coverage the City fairs poorly. Most of the comparables do not now require an employee contribution for dependent insurance. Further, the City's proposal is undercut by the fact that most of the comparables have paid life and disability insurance protection. Members of this bargaining unit have to pay their own cost for life and disability protection with no contribution from the City.

Turning to the City's offer to include the PIP Letter of Understanding into the Collective Bargaining Agreement, the City views this as a carrot to make the dependent contribution palatable. While the Association has no objection of the continuance of the current PIP benefit, it just does not what to give up anything for such a benefit as uncertain in nature and duration as the City proposes. The PIP expires at the end of 1997 which would pave the way for the City to wipe out what might otherwise be PIP rebates.

The Arbitrator should find that the City is manipulating the rates for the self-insurance program in order to widen the gap between the HMO rates. By manipulating the data, the City has improperly paved the way to demand contributions from employees who

elect to participate in the HMO program. The City's objections are not hidden. The City is seeking to force people into the NCAS plan by requiring employee contributions for those who elect to participate in the HMOs. The Arbitrator should conclude the City has failed to carry its burden of proof to justify changes of the magnitude contained in the City's offer.

D. Discussion and Findings

The Arbitrator finds the City has not demonstrated sufficient justification for adopting the proposed three major changes to Article 26 for the 1996-98 contract. Cost containment under the City's proposals is to require employee contributions to the existing insurance programs. LEOFF II members of the bargaining unit currently pay the total premium cost for life and disability insurance. The City offered no persuasive reasons why the members of this bargaining unit should become the leader in employee contributions to the insurance programs from among the City's union groups. None of the other City groups have a specific dependent co-pay.

A review of the insurance plans provided in the WC 10 yields mixed support for the City's proposals. Six of the ten comparables offer higher cost options which require the officer to buy-up to more expensive plans. The same number holds true for requiring dependent co-pay in six out of the WC 10.

The Arbitrator also gave some credence to the Association's arguments regarding lack of information about the financial details of the City's offer and the other insurance

programs. Further, the NCAS program is relatively new, having been adopted in 1994. All City employee unions cooperated in developing the PIP and NCAS plans. EPOA made concessions during this process of moving toward the self-insured plan.

Moreover, the PIP plan will expire at the end of 1997. At this point the future of the PIP is unclear. By the end of the 1996-98 Collective Bargaining Agreement the status of the PIP will be decided.

Present in Article 26, Insurance Benefits, is a comprehensive level of benefits available to Association members and their families. There are no issues before the Arbitrator concerning the level of insurance benefits. The focus of this dispute is over who will pay for the costs of the insurance benefits. In the judgment of this Arbitrator, there are too many uncertainties surrounding the funding of the insurance programs and calculation of the buy-up amount to justify adoption of the City's proposals at the present time. Given the mixed support for the City's offer both from the external and internal comparators, the Arbitrator will reject the City's proposal and award current language.

The Arbitrator's conclusions on this issue should not be taken as a finding the City's proposals are without merit. The trend is clearly moving in the direction of employee contributions to the insurance programs. The City's goal to encourage member participation in the NCAS plan is valid and should be pursued in future negotiations. With this contract expiring in approximately

18 months, the parties will have the opportunity to examine the insurance issue again. At that time the parties will have substantially more experience and information about costs and benefits of the NCAS, PIP and HMOs.

The days of 100% City payment for insurance benefits are coming to an end. This award on the insurance issue should be taken by Association members as a warning that on the expiration of the 1996-98 contract, the time will be ripe to expect employee contribution to the insurance programs.

AWARD

The Arbitrator holds the City's proposal to modify Article 26 should not be adopted. The Arbitrator awards that current contract language shall continue unchanged in the 1996-98 Agreement.

ISSUE 6 - VEHICLES

A. Background

The 1993-95 Collective Bargaining Agreement contains no language regarding the topic of City-owned vehicles. At issue is the subject of take-home vehicles being made available to police officers. Both sides have made proposals to include a new Article 32 to address the topic of City vehicles. The Association has offered a comprehensive proposal requiring the City to provide take-home vehicles to all permanent sworn officers. The City countered with its own proposal which would vest total discretion with City management regarding the assignment of take-home vehicles.

The current practice in Everett is that certain police officers and sergeants are assigned vehicles which the officers may take home. The evidence reflects that 52 police vehicles are in the take-home program. There are 19 marked and 33 unmarked vehicles assigned to Association members. The 12 patrol sergeants share vehicles on the basis of two sergeants per vehicle. With the exception of two officers with public school assignments, the 87 other sworn officers are not assigned their own vehicle. The other 87 officers are for the most part assigned to patrol, and share patrol vehicles on a two per vehicle basis.

The vast majority of Association members reside outside the city limits of Everett. The evidence shows that 31% of the 146 Association members reside within the city limits of Everett. The

evidence reflects that many of the officers live in areas considerably distant from Everett.

B. The Association

The Association proposed that the current take-home program would be expanded to provide take-home vehicles to all permanent sworn officers. However, participation in the home-car program would be voluntary on the part of the officers. The text of the Association's proposal details a comprehensive set of rules regarding the personal use of the vehicles and for the care and maintenance of the vehicles by the officers. The Association's proposal also detailed the obligation of the officers to respond to calls while off duty. Pursuant to the Association proposal, officers residing more than 25 miles from the Department shall pay all commuting miles in excess of 50 miles at the current Internal Revenue Service mileage rate. The Association submits its proposal is reasonable and supported by economic analysis and operational objectives.

The Association's arguments are summarized as follows:

> 1. The Association believes its proposal will offer a large boost in employee morale for a relatively low cost. The City has not objected to the take-home car program in the past based on program costs. The evidence offered by the Association demonstrated that officer morale has improved with a take-home car program. Removal of the take-home car program would have a negative impact on morale.
>
> 2. The proposal is supported by legitimate operational reasons. By virtue of the take-home car program detectives are often able to

report directly to the site for interviewing or evidence gathering, without having to go back to the main station. The civil response team carries equipment in cars which allows them to report directly to the scene of an accident. Testimony at the arbitration hearing revealed that a number of officers with take-home cars carry their equipment in the vehicles as well. The bottom line is that the take-home car program allows for significant savings of time when reporting to a scene which requires a police presence.

3. The assigned cars allow call responders to report immediately to a call as they enter or leave the City.

4. The evidence showed that officers with take-home cars frequently assist other agencies on the way to and from home when it is necessary. The Association asserts this is helpful in maintaining good relationships with other police agencies.

5. Association Exhibit 242 proves that many jurisdictions around the nation have adopted a take-home vehicle program. The continuation of such programs on a national scale reveals the beneficial nature of the take-home cars.

6. The Association maintains that adoption of its proposal will help the City resolve a lawsuit alleging that off-the-clock transportation of vehicles is unlawful under the Federal Labor Standards Act. The officers who are engaged in time spent retrieving, servicing and maintaining their police vehicles are entitled to compensation under the Fair Labor Standards Act. The damages the City faces under such a suit are significant and the adoption of the Association proposed vehicle language will help to alleviate the problems facing the City with regard to the lawsuit.

Turning to the City's proposal, the Association argues it is neither reasonable or lawful. According to the Association, the City proposes that a "waiver" be imposed on the Association

regarding a mandatory subject of bargaining. The Association reasons the City is seeking an order from the Arbitrator waiving bargaining rights on the subject of take-home vehicles. The Association submits waivers by definition are something which cannot be imposed through interest arbitration.

In sum, the weight of authority and evidence supports the Association's proposal rather than the City's position. The Arbitrator should reject the City's proposal as unreasonable and unlawful and award the Association's proposed language on vehicles.

C. The City

The City takes the position that the Association's proposal for mandatory take-home vehicles would establish an extraordinary fringe benefit for each and every first class police officer and sergeant. The adoption of the Association's proposal would require the City to purchase approximately 40 vehicles and increase the number of take-home vehicles by approximately 69 as of today, and 72 as of the end of January 1997.

The City next argues that it is concerned about both cost and the appearance of City-owned vehicles traveling far outside of Everett. The point is particularly appropriate when the vast majority of the members of the Association live outside of the city limits of Everett.

The position of the City was summarized in the post-hearing brief as follows:

> a. The EPOA's demands on this subject starkly illustrate the unrealistic approach the EPOA

has brought to this interest arbitration case. The EPOA's demand for one vehicle per officer is ludicrous and must be rejected out of hand. The issue that remains, then, is the right and ability of the City to reasonably control--on a public service basis--the operational use of City-owned vehicles.

b. It is operationally unnecessary for most police officers to have a take-home vehicle.

c. The EPOA's proposal would require a huge initial outlay and would materially increase the annual cost of the take-home vehicles. This includes $1,000,000 to purchase and equip 40 new patrol cars plus large additional operating costs for the 69 (soon 72) more vehicles used for commuting. Pertinent in this regard is that only 44 EPOA members live in Everett while 102 members do not.

d. The contracts and practices of the comparable cities emphatically support the City's position and *not* the position of the EPOA.

e. Minimizing take-home vehicles is consistent with practices in other City departments since 1994.

f. Fiscal responsibility and the public perception militate against take-home vehicles.

g. The City is aware of no rational basis for a requirement that each "permanent officer" have his/her own individually-assigned vehicles.

h. The wording of the EPOA proposal presents a variety of problems of ambiguity, inconsistency, and non-administrability. The proposal thus falls on its own ponderous weight.

Brief, p. 86.

The City believes that the assignment of take-home vehicles should be based upon the nature of the Department's operational needs and hence is discretionary. Although many

vehicles are currently taken home, the Department considers that the number is too high and that approximately 15 take-home vehicles are essential to meet the operational demands of the Department. The City calculated that a reduction of 37 vehicles would represent an annual cost savings of $76,360 per year. Therefore, the City responded to the Association's proposal with its own language which would vest discretion in City management to determine which officers would receive take-home vehicles.

Turning to the Association's legal arguments, the City offered two basic responses. First, the poorly worded Association proposal will do nothing to mitigate the pending FLSA lawsuit brought by Everett police officers concerning vehicle usage. Second, the Association's argument that it would be somehow illegal for an interest arbitrator to award any proposal that contains management discretion is "preposterous."

Based on the totality of the record, the Arbitrator should reject the Association's proposal and award the City's offer on the subject of vehicles.

D. Discussion and Findings

The evidence before this Arbitrator compels the conclusion that take-home vehicles serve a sound and worthy purpose which results in mutual benefits to both the citizens and to the members of this bargaining unit. The evidence equally proved that not all members of the Association require the assignment of a take-home vehicle to effectively and safely accomplish the duties of their positions. In addition, there is no doubt that officers

with take-home vehicles derive a material benefit from being able to utilize City vehicles to commute to and from work and thereby avoid the personal expense of commuting. The crux of this dispute involves whether the take-home vehicle program should be subject to the terms of the Collective Bargaining Agreement.

The Arbitrator holds that the Association's proposal to add vehicle language to the contract should not be adopted. The language proposed by the Association would be without precedent among the contracts submitted by either party. In the judgment of this Arbitrator, the complex and comprehensive vehicle language proposed by the Association is overly broad and unduly complex. Several of the provisions would be unworkable and unenforceable. For example, how would the City enforce the requirements that the vehicles should be locked at all times when unattended and that each officer should wax the vehicle at least one time every six months?

Moreover, the financial implications of the Association proposal which would contractually guarantee a take-home vehicle for each and every first class officer and sergeant make the proposal totally unacceptable. The Association failed to rebut the City's cost analysis which showed an immediate cost of $1,000,000 to purchase 40 more patrol vehicles. Further, the City estimated that the cost of 80 marked vehicles being driven to and from work would result in an additional expense of $233,600 per year. Nothing in the evidence offered by the Association came close to

demonstrating that a financial expenditure in the amount required by the Association's proposal would be operationally justified.

While there is some merit to including a provision regarding take-home cars in the Collective Bargaining Agreement, the Association's four-page proposal falls under its own weight. Due to the expensive and complex nature of the Association's proposal, this Arbitrator is not persuaded that he should engage in the modification of the proposal to bring it within the realm of acceptability and reasonableness.

The Arbitrator was not persuaded by the Association's argument that adoption of its proposal would alleviate any of the issues arising out of the FLSA lawsuit now pending against the City. Decisions concerning the lawsuit, and its ramifications will have to be made in a forum other than interest arbitration.

The City recognizes that there are valid reasons for maintaining a take-home car program. The Arbitrator has concluded there are benefits both to the City and to the officers in a take-home car program. Given the recognition of the mutual benefits of the take-home vehicle program, the Arbitrator is unwilling to alter the status quo by awarding the language sought by the City to vest total discretion in the assignment of take-home cars to City management.

AWARD

The Arbitrator awards that the 1996-98 contract should not include a provision on the subject of vehicles. The proposals of both the City and the Association are rejected and the contract should remain silent on this subject.

Respectively submitted,

Gary L. Axon
Arbitrator
Dated: May 27, 1997