THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION

BEFORE SANDRA SMITH GANGLE, ARBITRATOR

In the Matter of the Interest Arbitration between	
CITY OF POULSBO,	**PERC Case No. 16226-I-02-377**
Public Employer,	
and	**OPINION AND AWARD**
TEAMSTERS, LOCAL 589	
Bargaining Representative.	

Hearing Conducted:	July 2, 2002, Poulsbo, Washington
Representing the Employer:	Michael and Bette Meglemre PUGET SOUND PUBLIC EMPLOYERS P.O. Box 4160 Spanaway, WA 98387
Representing the Union:	Michael R. McCarthy, Attorney at Law DAVIES, ROBERTS & REID 101 Elliott Ave. West, Suite 550 Seattle, WA 98119
Arbitrator:	Sandra Smith Gangle, J.D. SANDRA SMITH GANGLE, P.C. Arbitration and Mediation P.O. Box 904 Salem, OR 97308-0904
Date of Decision:	September 18, 2002

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I. BACKGROUND

This matter comes before the arbitrator pursuant to the Washington Public Employees' Collective Bargaining Act, RCW Chapter 41.56 ("the Act"). The public policy of the State of Washington prohibits a bargaining unit of uniformed public safety personnel from engaging in a strike to settle a labor dispute with a public employer. RCW 41.56.430. When the process of collective bargaining between the parties reaches impasse, the Act provides that the disputed issues, as certified by the Executive Director of the Public Employment Relations Commission ("PERC"), will be resolved through interest arbitration. RCW 41.56.450.

Teamsters Local No. 589 ("the Union") is the exclusive bargaining representative of the Police Officers employed by the City of Poulsbo, Washington ("the City" or "the Employer"). The parties began bargaining for a successor contract to their January 1, 1998 – December 31, 2000 collective bargaining agreement in October of 2000. They reached impasse and requested mediation. Then, when they were unable to resolve the impasse with the help of a State mediator, the following issues were certified for interest arbitration by Order of Marvin L. Schurke, Executive Director of PERC, on February 11, 2002: (1) Wages for 2001, 2002 and 2003; (2) Detective Pay; (3) Call-Back; and (4) Reserve Officer Working Language.

The parties mutually selected Sandra Smith Gangle, J.D., of Salem, Oregon, through PERC appointment procedures and pursuant to RCW 41.56.450 and WAC 391-55-210, as the neutral arbitrator who would conduct a hearing and render a decision in the matter. The parties waived the appointment of partisan arbitrators, electing to proceed with Arbitrator Gangle as sole interest arbitrator.

A hearing was conducted on July 2, 2002, in a conference room of the Poulsbo City Hall in Poulsbo, Washington. The parties were thoroughly and competently represented by their respective representatives throughout the hearing. The City was represented by Michael and Bette Meglemre, of the labor relations firm of Puget Sound Public Employers, Spanaway, Washington. The Union was represented by Michael R. McCarthy, Attorney at Law, of the Seattle law firm of Davies, Roberts & Reid.

The parties were each afforded a full and fair opportunity to present testimony and documentary evidence in support of their respective positions. A record was produced, consisting of three volumes of Union documentary exhibits (Economic Exhibits A through GG, Negotiations Exhibits 1-15, and collective bargaining agreements from 29 Washington cities)[1] and two volumes of City documents (City Exhibits 1 through 23 and labor contracts from the City's ten proposed comparables).[2] The parties also offered as joint exhibits copies of the last four collective bargaining agreements between the City of Poulsbo and Teamsters Local 589.

All witnesses who appeared at the hearing, including the parties' representatives, were sworn by the arbitrator and were subject to cross-examination by the opposing party. The City's witnesses were Michael Meglemre, Labor Relations Negotiator; Donna Bjorkman, City Finance Director; Jeff Doran, Police Chief; and Deanna Kingery, Human Resources Analyst. The Union's witnesses were Michael McCarthy, Attorney; Earl D. Bush, Secretary-Treasurer, Local 589; Dan La France, Police Officer; and Roger Brubaker, Police Officer.

[1] Union Exhibits are referenced herein as U-Econ-# and U-Neg-#.
[2] City Exhibits are referenced herein as C-#.

The arbitrator tape-recorded the testimony of all witnesses as an adjunct to her personal notes. It was agreed that the arbitrator's tapes were not an official record of the hearing. They are the arbitrator's private property and are not subject to subpoena by any party. The City assigned a clerical employee to tape-record the hearing and those tapes will be preserved by the parties as the official taped record of the hearing.

Written briefs of final argument were submitted by both parties on August 23, 2001, pursuant to their mutual agreement. Upon receipt of the parties' briefs, the arbitrator officially closed the hearing and took the matter under advisement.

The arbitrator has considered all of the testimony and evidence that the parties offered at the hearing. She has weighed all the evidence, in the context of the legislative purpose set forth in RCW 41.56.430 and the relevant factors established in RCW 41.56.465. She has carefully considered the argument of both parties in reaching her findings and conclusions.

II. RELEVANT STATUTORY PROVISIONS

RCW 41.56.030. Definitions. As used in this chapter:

(1) "Public Employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body * * * * *

(2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution * * * or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship * * * or (d) who is a court commissioner or a court magistrate * * * or (e) who is a personal assistant to a * * * judge * * * or (f) excluded from a bargaining unit under RCW 41.56.201(2)(a). * * * *

(3) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

* * * * *

(7) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more * * * * *.

RCW 41.56.430. Uniformed personnel—Legislative declaration.

The intent and purpose of chapter 131, Laws of 1973 is to recognize that there exists a public policy of the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

RCW 41.56.450. Uniformed personnel—Interest arbitration panel—Powers and duties—Hearings—Findings and determination.

* * * * * The issues for determination by the arbitration panel shall be limited to the issues certified by the executive director. * * * * * [T]he fees and expenses of the neutral [arbitrator] shall be shared equally between the parties. * * * * * [W]ithin thirty days following conclusion of the hearing, the neutral [arbitrator] shall make findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on the Commission, * * * * * and on each of the parties to the dispute. That determination shall be final and binding on both parties, subject to review by the superior court upon the application of either party solely on the question of whether the decision of the [arbitrator] was arbitrary or capricious.

RCW 41.56.465. Uniformed personnel--Interest arbitration panel—Determinations—Factors to be considered.

(1) In making its determination, the [arbitrator] shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, [she] shall take into consideration the following factors:

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

(b) Stipulations of the parties;

(c)(i) For employees listed in RCW 41.56.030(7)(a) through (d), comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings

with the wages, hours, and conditions of employment of like personnel of 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 circumstances under (a) through (d) of this subsection during the pendency of the proceedings; and

(f) Such other factors, not confined to the factors under (a) through (e) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. For those employees listed in RCW 41.56.030(7)(a) who are employed by the governing body of a city or town with a population of less than fifteen thousand, * * * consideration must also be given to regional differences in the cost of living.

III. STATEMENT OF THE FACTS

The following facts are undisputed by the parties:

The City of Poulsbo is located in Kitsap County, Washington, on the western shores of Puget Sound. The City is governed by a City Council and Mayor. Its management is organized in several departments, one of which is the Police Department. The Police Chief, who is appointed as Director of the Department, is responsible for day-to-day operations. At the time of the hearing herein, there were twelve officers and three sergeants in the police bargaining unit.

The City has constitutional and statutory authority to employ the police officers and sergeants who provide law enforcement officer services to the City. The officers are represented by Teamsters Local 589 and the unit has enjoyed a stable and cordial bargaining relationship with the City for many years, at least as far back as the 1980's. This is the parties' first interest arbitration.

In bargaining for their past two labor contracts, in 1994 and 1998 respectively, the parties relied on a list of eight cities that the City had used in conducting its own police

wage surveys as the list of jurisdictions that would be considered comparable to Poulsbo. Those cities were the following: Chehalis, Ferndale, Port Orchard, Monroe, Burlington, Arlington, Fife and Gig Harbor.

When the parties began negotiating for a successor to their 1998-2000 agreement, in October of 2000, the City's chief negotiator, Michael Meglemre, proposed that they collaborate in gathering and looking at a number of labor contracts of police bargaining units in small western Washington cities. Mr. Meglemre proposed ten cities whose population estimates at the time were close to the population estimate for Poulsbo, according to a list prepared by the State of Washington Office of Financial Management (OFM) that showed such estimates as of June 30, 2000. Specifically, Meglemre proposed considering the five cities that were listed immediately above Poulsbo and the five cities immediately below Poulsbo, excepting Steilacoom, which did not have a separate police bargaining unit. Exhibit C-1; U-Neg-9. Those cities, and the population estimates that were available at the time, according to OFM, were as follows:

Shelton	7,865	
Port Orchard	7,270	
Normandy Park	7,035	
Chehalis	7,020	
Gig Harbor	6,575	
Poulsbo	6,500	
Lake Stevens	6,450	
Brier	6,365	
Fircrest	5,955	
Milton	5,765	
Burlington	5,705.	See Exhibit C-24, U-Neg-9.

The Union did not expressly agree that the ten cities Mr.Meglemre identified would be the "comparables" that the parties would use throughout the bargaining for their

new contract.[3] The Union did not object, however, to gathering the most recent collective bargaining agreements from those ten cities and using the agreements for discussion purposes during their bargaining sessions. Also, there is no evidence that the Union bargainers suggested adding the police labor contracts of Arlington, Monroe, Ferndale or Fife, or any other cities, to the mix of agreements that would be studied.

The parties had four negotiating sessions, for a total of approximately sixteen hours of bargaining. During those negotiations, they reached tentative agreements (TA's) on approximately four issues, including a Union Security clause. See Exhibit U-Neg-2, C-23. Meanwhile, as the labor contracts were gathered from other cities, Mr. Meglemre prepared documents that summarized the provisions of those agreements, on each of the issues in dispute. See Exhibit C-5; U-Neg-11 (*except* cover page, which was added at the mediation stage). He shared those documents with his Union counterpart, Doug Bush, as he prepared them. There is no evidence Mr. Bush raised any objection to the summaries.

Upon reaching impasse after four meetings, the parties proceeded to mediation on February 9, 2001. Paul Schwendiman was the assigned mediator. At the first mediation session, the City relied on the same ten cities it had proposed during bargaining as the jurisdictions that should be considered "comparables" to Poulsbo. Mr. Meglemre submitted the documents he had prepared during bargaining to the mediator, with a cover page attached that referred to them as "Joint Labor-Management Position Papers". See Exhibit C-5; U-Neg-11. The Union objected strenuously to the City's proposed list of cities and denied that the position papers were "joint" documents. The Union relied on the following list of ten "comparable" cities, which it considered more appropriate, based

[3]No written memorandum was signed by the parties evidencing that they had "TA'd" the list of proposed comparables, though such writings were produced with respect to other agreements that the parties reached

on factors of population and revenue: Burlington, Milton, Fircrest, Steilacoom, Gig Harbor, Chehalis, Normandy Park, Port Orchard, Shelton and Mill Creek. Exhibit C-6; U-Neg-15.

After that meeting, the parties exchanged correspondence regarding their "historic pattern" of bargaining. See Exhibits U-Neg-3,4,5; C-7,8. Then, at the next mediation session, the Union withdrew its list of proposed cities and recommended the use of the list of eight cities the parties had used in 1994 and 1998. See Exhibit U-Neg-12.

Mediation was unsuccessful and the case moved to the interest arbitration stage. Then, in June of 2001, the official United States Census figures for 2000 were published. Those figures showed the actual population statistics for each of the cities that the City and the Union had relied upon during the mediation stage. Gig Harbor, which had been larger than Poulsbo, according to the 2001 OFM report, was now shown to be a bit smaller. Some other cities were larger, or smaller, than OFM had estimated, but they remained in the same relative positions *vis-a-vis* Poulsbo. The Census figures, with the OFM estimates included in parentheses alongside, are as follows for both the City's and the Union's proposed comparables:

City's list	*Census (OFM)*	*Union's list*	*Census (OFM)*
Shelton	8,442 (7,865)	Monroe	13,795 (N/A)
Port Orchard	7,693 (7,270)	Arlington	11,927 (N/A)
Normandy Park	6,392 (7,035)	Ferndale	8,758 (7,925)
Chehalis	7,057 (7,020)	Port Orchard	7,693 (7,270)
Gig Harbor	6,465 (6,575)	Chehalis	7,057 (7,020)
Poulsbo	6,813 (6,500)	Poulsbo	6,813 (6,500)
Lake Stevens	6,361 (6,450)	Burlington	6,757 (5,705)
Brier	6,383 (6,365)	Gig Harbor	6,465 (6,575)
Fircrest	5,868 (5,955)	Fife	4,784 (5,100)
Milton	5,795 (5,765)		
Burlington	6,757 (5,705).		

See Exhibit U-Econ-A, D; C-15

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during bargaining. See, e.g., Exhibit C-23, p. 4,6,7.

The City is financially healthy. It acknowledges that it is able to pay whatever increases in wages and economic benefits the arbitrator may award in this proceeding.

As of 1998, Kitsap County, which includes Poulsbo, has been included in the U.S. Department of Labor's Published description of the Seattle-Tacoma-Bremerton Metropolitan Area, for purposes of determining that area's Consumer Price Index (CPI).

Poulsbo's Administrative and Public Works (APW) Employees, like its Police Officers, are represented in bargaining by Teamsters Local 589. The parties' APW collective bargaining agreement, effective between January 1, 2001 and December 31, 2003, provided for the following wage increases:

> ***2001***: 3.42%;
>
> ***2002***: 90% of the June 2000 to June 2001 CPI-U, Seattle Index (but no less than 2% and no greater than 6% without adjustment;
>
> ***2003***: 90% of the June 2001 to June 2002 CPI-U, Seattle Index (but no less than 2% and no greater than 6% without adjustment.
>
> See Exhibit C-19.

IV. RELEVANT CRITERIA FOR AWARD

RCW 41.56.465 (1) prescribes the factors that an arbitrator must rely upon in making an award in a public sector interest arbitration case in Washington. The factors that are relevant to this proceeding are as follows:

> ***RCW 41.56.465 (1)*** * * *
> (1) In making its determination, the [arbitrator] shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, [she] shall take into consideration the following factors:
>
> (a) The constitutional and statutory authority of the employer;
>
> (b) Stipulations of the parties;
>
> (c)(i) * * * * * [C]omparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of

employment of like personnel of like employers of similar size on the west coast of the United States;

* * * * *

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

(e) Changes in any of the circumstances under (a) through (d) of this subsection during the pendency of the proceedings; and

(f) Such other factors, not confined to the factors under (a) through (e) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. For those employees * * * who are employed by the governing body of a city or town with a population of less than fifteen thousand, * * * consideration must also be given to regional differences in the cost of living.

The Act does not give guidance as to the relative weight that the arbitrator should give to the enumerated factors, (a) – (f). The legislature has allowed the arbitrator to exercise discretion in weighing the factors and the evidence supporting them in each individual case, keeping in mind that the arbitrator's role is simply to provide an alternative mechanism to a work stoppage, so that the police officers can provide "uninterrupted and dedicated service" to the people of Washington, while they negotiate to completion the terms and conditions of their collective bargaining agreement.

It is incumbent on the arbitrator to use principled reasoning in drawing her conclusions. Since interest arbitration is an extension of the collective bargaining process, the arbitrator must strive to obtain, as nearly as possible, the package of provisions that the parties would have agreed upon if they had been free to continue bargaining in good faith, as parties do in the private sector and in public-sector agencies where they have a right to strike. The Award should not be a compromise, or a splitting of the difference between the parties' positions, because such an award could unfairly benefit a party that advanced an extreme position without justification.

In the instant case, there is no dispute as to the legal authority of the Employer. Also, the parties have stipulated that four cities should be treated as comparable

jurisdictions to Poulsbo: Port Orchard, Chehalis, Burlington and Gig Harbor. They further stipulated that the City would not make an inability-to-pay argument and that the arbitrator's award should be fully retroactive to January 1, 2001. They also authorized the arbitrator to memorialize certain contractual provisions that the parties tentatively agreed upon during bargaining. The arbitrator will honor all of those stipulations.

The factors that the arbitrator must weigh and decide, therefore, are items (c) through (f) of RCW 41.56.465(1). Of those items, the most fundamental is comparability. Once the comparable cities are identified, the arbitrator will have a framework for analyzing the evidence and resolving the disputed issues.

V. DETERMINING THE COMPARABLE JURISDICTIONS

The threshhold factor is comparability. The Act requires that the arbitrator draw "a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size". The statute does not dictate, however, how the arbitrator should select those *"like employers of similar size"*.

The parties have stipulated that four cities meet the statutory definition. Those are Burlington, Chehalis, Gig Harbor and Port Orchard. Each of the parties takes the position that the other party *agreed* at some point in time to accept a particular list of supplemental comparable cities and that the arbitrator should honor that list as a stipulation regarding the additional cities. The City contends the parties agreed, during bargaining in the fall of 2000, that Brier, Fircrest, Lake Stevens, Milton, Normandy Park and Shelton had been accepted as additional comparables. The Union denies such agreement. Instead, it argued during the hearing that Arlington, Ferndale, Fife and

Monroe, which had been used as comparables in 1994 and 1998, remained appropriate as agreed-upon comparables. In its brief of final argument, however, the Union has dropped its reliance on those four cities and has asked the arbitrator to limit her comparability study to the four cities that the parties expressly stipulated to at the hearing.

For a number of reasons, the arbitrator has determined that the parties would most likely have bargained a group of comparable cities that included a greater number than the four stipulated comparables. Therefore, she finds she would be doing the parties a disservice if she were to limit comparability to those four, as the Union now requests.

First, the parties had a history of using *eight* cities for bargaining purposes during the past two bargaining cycles. This shows they preferred using a considerably larger number than four. Secondly, the evidence shows that, when the parties met in October of 2000 to begin bargaining for the new agreement, they agreed to gather and consider the collective bargaining agreements of the *ten* cities that the City now proposes as comparables. While the arbitrator is not convinced that the Union agreed to accept those ten cities as comparables throughout bargaining, the evidence is persuasive that the parties *agreed to the reasonableness of the process* whereby they would study the wages, hours and employment conditions of *ten* cities in Western Washington that appeared to be close in population size to the City of Poulsbo – five smaller and five larger – by reviewing the collective bargaining agreements of police units in those cities. Also, the Union proposed ten cities as comparables at the first mediation session and then eight cities thereafter.

Third, it is axiomatic that the more data parties can evaluate and compare, the more clearly the similarities and differences can be defined among the designated comparables

on the issues in dispute. If four comparables are used, it can be difficult to perceive any distinct trends among them. The split can easily be two to two, with no discernible rationale for the division.

Finally, the arbitrator finds that having a longer list of cities available as comparables will provide the parties a better opportunity to resume the cordial labor relations they enjoyed in the past when they begin their next round of bargaining. If the arbitrator were to rely on only the four stipulated cities, the parties would most likely begin their bargaining next year by debating the issue of comparable cities once again. The same contention that led to this interest arbitration might well generate another.

Now, having decided that the list of comparable cities should include more than the four stipulated cities, the arbitrator must decide whether to choose the City's proposed list of six additional cities, the four supplemental cities that the parties used in 1994 and 1998, which the Union proposed at the hearing, or a list that the arbitrator would craft independently, based on criteria that the arbitrator would deem appropriate. For the following reasons, the arbitrator has decided that the City's list is the most appropriate, at least for the current bargaining cycle.

First, the arbitrator is persuaded by the evidence that the parties collaboratively collected and reviewed the collective bargaining agreements of the City's proposed list of comparables. Mr. Doug Bush, the Union's chief bargainer, acknowledged at the hearing that he did not object to gathering the police agreements of those cities that were listed "five up and five down" in population from the City of Poulsbo, according to OFM statistics, and to considering how those cities and their unions had treated the fifteen or twenty issues that the parties were negotiating. There is no evidence that the Union

suggested the parties consider the collective bargaining agreements for Ferndale, Monroe, Arlington or Fife on the disputed issues, until the parties met with a State mediator, after impasse was declared. Meanwhile, Mr. Meglemre had been typing out comparative charts on each of the parties' disputed issues, summarizing how the City's list of ten cities were treating each issue, and he had been sharing those charts with the Union's bargainers by fax transmission, believing that those cities were being mutually treated as "comparables".[4] Also, Mr. Meglemre and his bargaining team had been reaching tentative agreements with the Union on some disputed issues, at least partially in reliance on the information that was gleaned from the agreements under review. For example, Mr. Meglemre testified that the City tentatively agreed to accept the Union's proposal for a union security clause, based on its determination that all of the collective bargaining agreements that the parties were reviewing contained such a clause.[5]

In other words, the Union's silence with respect to proposing its own list of comparables during bargaining was perceived by Mr. Meglemre and the City's bargaining team as an acceptance by the Union of the City's proposed list of "five up and five down" cities. That perception is evidenced by the fact that Mr. Meglemre referenced his typed summaries of the various contract provisions as "Joint Labor Management Position Papers". Under the circumstances, Mr. Meglemre's belief that the documents were "jointly" acceptable was not unreasonable.

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[4] When the parties went into mediation, Mr. Meglemre assembled all of the charts into a document which he entitled "Joint Labor Management Position Papers". Exhibit C-5, U-Neg-11. At that point the Union objected to his use of the phrase "Joint Labor Management". The Union did not deny, however, that the charts themselves had been prepared collaboratively by the parties during the bargaining process.

[5] Mr. Bush testified that the union security clause was agreed upon at the parties' second bargaining session, but they did not have all the agreements in hand until the third session. The arbitrator found both Mr. Meglemre and Mr. Bush to be credible witnesses. Therefore, it is reasonable to conclude that the City agreed to the Union Security clause, at the second bargaining session, based on its review of the agreements that had been collected as of that date, which may not have been all ten.

The arbitrator would be remiss in her duty, however, if she did not ensure that the list of ten cities proposed by the City met the *objective* criteria that arbitrators routinely apply in Washington interest arbitration cases, in addition to the more-or-less *subjective* decision-making process that the parties had used during bargaining. For instance, the evidence shows that the parties considered only the population of each of the cities, and their position *vis-à-vis* Poulsbo, "five up, five down", except Steilacoom. They did not compare the economic status of the cities.

The arbitrator has reviewed the evidence offered by the parties at the hearing to confirm that the ten cities on the City's proposed list meet the standard that is routinely applied in Washington interest arbitration cases and that the list is more appropriate for current bargaining purposes than the list of cities the parties relied on in the past. The arbitrator is convinced that both of those facts are confirmed.

Specifically, all ten of the cities on the City's list fall within the customary arbitral parameters of 50% to 200% the size of Poulsbo,[6] in both population and assessed valuation,[7] as determined by the most current data from the Washington State auditor. See Exhibit U-Econ-A, C-15,16. One of the cities that the parties relied on in the past, however – Monroe – now exceeds 200% of Poulsbo's population. See Exhibit C-15; U-Econ-A. Therefore, it is clearly beyond the upper limit of comparability and must be

[6] In its brief the City argues that a range of 50% to 150% is more appropriate than 50%-200%, but does not cite any arbitral authority for that standard. Indeed, the City's chart on page 14 of its brief confirms that at least three arbitrators have exceeded the upper limit of a 50% to 150% range (Arb. Axon in *Pullman v. PPOG* (86%), Arb. Beck in *Moses Lake v. IAFF* (60%), and Arb. Gaunt in *Pullman v. Police Guild* (98%)).

[7] The Union argued at the hearing that assessed valuation is not an appropriate criterion for determining comparability. Interest arbitrators routinely rely on the triple criteria of population, proximity and assessed valuation figures, however. The Union contends that the overall revenues available to a city provide a better indicator of the city's wealth and ability to finance the wages and economic benefits of a collective bargaining agreement than assessed valuation alone. In a case like this one, overall revenue figures would not be particularly helpful to the arbitrator, because the City has acknowledged that it can and will pay whatever wages and benefits are awarded. Therefore, the Union's argument on whether overall revenue is

rejected. Also, the city of Arlington, whose population in 2000 was close to 12,000, has more than doubled since 1995. Id. At 175% of Poulsbo's 2000 population, Arlington is now much closer to the upper limit of comparability than it used to be. If Arlington were treated as a comparable, and no city was included whose population was near the lower limit – that is, 50-60% of Poulsbo's – the mix of comparables would tend to be unbalanced and that could be unfair to one of the parties. Yet Fife, the smallest of the cities that the parties relied on in the past, currently has 70% of the population size of Poulsbo. Id. Curiously, it is now wealthier than Arlington in assessed valuation. See Exhibit C-16, U-Econ-A. And Ferndale, the only other city on the 1994/1998 list, is now at 128% of Poulsbo's population, while its assessed valuation is lower than Poulsbo's. Id. Therefore, the arbitrator finds that the cities the parties used in their past bargaining no longer provide an appropriate balance to be considered comparables to Poulsbo.

For the reasons stated, the arbitrator has concluded that the following six cities shall supplement the parties' four stipulated cities as comparables: *Brier, Fircrest, Lake Stevens, Milton, Normandy Park and Shelton.* In their future bargaining, the parties should monitor the changes in population and in patterns of wealth among the ten cities. It could be that one or more of them will become too large or too small or too rich or too poor to be treated as a comparable to Poulsbo over a continuous period of time. However, it should be relatively easy for the parties to make appropriate additions, subtractions or substitutions of cities during their bargaining cycles, upon reviewing the most recent demographic and economic data that is available. As Arbitrator Levak stated, in *City of Pasco and IAFF Local 1433,*

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a better indicator of comparability than assessed valuation may be more appropriate to discuss in another interest arbitration.

"Historical comparators will not be continued where the party asserting a change is able to demonstrate through evidence that a change in comparators is appropriate. For example, such may be the case where populations and assessed valuations have changed significantly in recent years."

VI. THE ISSUES

The issues in dispute and the parties' last best offers on each of them at the hearing are summarized as follows:

A.	**Wage Increase:**	**Union**	**City**
	1/01/2001	**100% CPI of 3.8%**	**90% CPI = 3.42%**
	1/01/2001	**100% CPI of 3.9%**	**90% CPI = 3.6%**
	1/01/2003	**100% CPI-W (June-June Seattle-Tacoma-Bremerton)**	**90% CPI-W (June-June Seattle-Tacoma-Bremerton)**

B.	**Callback:**	**Union**	**City**
		Language changes TA'd 3-hour Min. callback premium	**Language changes TA'd Retain 2-hour callback**

C.	**Detective Premium**	**Union**	**City**
		New 5% premium	**No new premium**

D.	**Reserve Officers**	**Union**	**City**
		New language: Reserve Officers may supplement, not Supplant regular officers, Except where vacancy is Offered to regular officers First, but not taken	**No new provision**

Each of the issues will be discussed and resolved on the following pages:

VII. WAGES

Proposals:	Union	City
1/01/2001	100% CPI-W of 3.8%	90% CPI-U = 3.42%[8]
1/01/2001	100% CPI-W of 3.9%	90% CPI-U = 3.6%
1/01/2003	100% CPI-W (June-June Seattle-Tacoma-Bremerton)	90% CPI-U (June-June Seattle-Tacoma-Bremerton)

Findings of Fact: The Union demonstrated, through testimony and evidence, that the parties have agreed to annual wage increases equivalent to at least 100% of the Seattle Consumer Price Index (CPI) since at least 1989.[9] The Union believes that, because of that history, the arbitrator should grant 100% of the CPI in each of the three years of the current contract.

City Witness Donna Bjorkman, who has been the Finance Director for twelve years and was a member of the City's bargaining team, testified at the hearing that she and her staff did an intensive salary study in 1999 and determined that an appropriate wage increase for City employees; including the police bargaining unit, for 2001, 2002 and 2003 would be 90% of the annual Seattle-Tacoma-Bremerton CPI Index, rather than 100% as it had been in the past. She said the City had determined that the CPI figure includes a cost factor for medical expenses and that factor is substantial. The police bargaining unit receives a substantial medical insurance benefit as part of their contractual compensation package, however. A 10% reduction in the CPI would be more than offset by the contractual benefit. She said the police only pay about $10 per month, out of a total premium cost of $600 per month, for their medical insurance coverage.

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[8] Neither party explained in its brief whether the choice between CPI-W or CPI-U was significant. No evidence was offered on this point either. The arbitrator notes, however, that the parties used the CPI-U Index in the APW contract. See Exhibit C-19.

[9] In 1995, the wage increase was split into two segments, the net result of which actually exceeded the CPI increase for that year.

Ms. Bjorkman pointed out that the City did not single out the police officers for different treatment from other City employees. An offer of 90% of the CPI was made to the Administrative and Public Works (APW) bargaining unit for each of the three years of their collective bargaining agreement, beginning January 1, 2001. That offer was accepted by their union representative, Teamsters Local 589.

Union Witness Bush testified that the APW accepted the 10% reduction, in part, because they learned that a 5% incentive was available to employees for certification in their particular specialty. Ms. Bjorkman countered on rebuttal that the same certification incentive is available to police employees, yet she was unaware that any of them had applied for that benefit.

The record shows that the wage increase for APW employees for 2001 was 3.42%, which reflects a floor of 90% of the CPI-U, as proposed by the City in this matter. In the second and third years, however, the minimum wage increase is stated as 90% of the CPI-U Seattle Index, with a minimum of 2% and a maximum of 6%. And. in each of those years, if the maximum CPI increase exceeded 6%, the APW raise would be increased by one-half the excess between 6% and 9%, up to a maximum of 7 ½ %. See Exhibit C-19.

The evidence shows further that the 2001 adjusted wage rates, monthly and hourly, for the four cities that the parties stipulated were comparable to Poulsbo and the six additional cities that the arbitrator has determined to be comparable, range from a high of $4,241 per month, or $28.14 per hour (including holiday and vacation pay), for a 10-year Gig Harbor police officer, to a low of $3,631 per month, or $23.89 per hour, for a 10-year

officer working in Brier.[10] See Exhibit C-17. The average figure for the officers in the ten comparables with ten years of service experience is $4,012 per month, or $26.32 per hour. A ten-year officer in Poulsbo, with a raise in 2001 of 90% of the Seattle CPI (3.42%), as proposed by the City, would earn $4,109.58 per month, or $27.09 per hour, which would be slightly above those average comparable figures. See Exhibit C-17.

The Union offered in evidence a document showing that the police units in the ten comparable cities received raises in 2001 between 2.99% and 5.99%. Exhibit U-Econ-AA. The Union presented the monthly earnings figures for officers at the top step in each of the cities, the average of which was $3,954.50. The Union showed that Poulsbo's top step wage, after five years, was $3,895.78.

The Union's figures are not as helpful as the City's, however. It appears that the top step is reached at different stages in each of the eleven cities, and varies between 2 ½ years and ten years. Also, increases for longevity, vacation and holiday pay were not factored into the Union's figures, while they were included in the City's comparison chart.[11] Therefore, the arbitrator finds the City's wage comparison exhibit to be a better "apples-to-apples" comparison of the actual wages that are paid to experienced officers in Poulsbo and its comparators.

The arbitrator takes official notice of the list of items that the U.S. Bureau of Labor (BOL) includes in what it terms the "cost of living", when it publishes the CPI Index for a particular area. The list includes: Food/beverages, Housing, Apparel, Transportation, *Medical care (including services, equipment and medecine),* Recreation,

[10] The City, in its brief, demonstrated that the average length of service of Poulsbo officers is 11.17 years. Therefore, a comparison of wages paid to officers in all the comparable jurisdictions who have at least ten years of service makes sense.

Education/Communication, Other goods/services and Energy. See BOL Website at *http://www.bls.gov*. The single largest increase for the period between July 2001 to July 2002, according to the website information, was in the *Medical Care* component.

CONCLUSION: The City's offer of 90% of the increase in the Seattle CPI-U Index in each of the three years of the contract makes sense at this time and should be awarded. While it is true that the parties have historically agreed upon 100% of the annual CPI increase as a wage increase, it is appropriate at this time that the parties recognize the impact that medical care costs have on the CPI computation and the role that the contractual medical insurance benefit plays in reducing the cost of living for bargaining-unit members. Where, as here, the bargaining unit members receive a substantial medical insurance benefit, the increase in medical expenses that is felt by them is substantially less than it is by other Seattle-area wage earners.

Also, the arbitrator is persuaded that, with a 90% CPI-U wage increase each year, an experienced police officer's monthly and hourly wage will keep pace with the average wage rate that is being paid to similarly-experienced officers in the comparable communities. There is little risk that Poulsbo will experience difficulty in retaining its well-tenured police force, as a consequence of the 10% reduction from its past pattern of annual CPI increases, because their wages match or exceed those of most comparables.

The arbitrator further finds that the police wage rate increases will match the increases that were agreed upon by Poulsbo's APW bargaining unit. For this reason, the arbitrator will require a minimum raise of 2% for the third year of the contract, in order to

[11] According to Mr. Meglemre's unrebutted testimony, the longevity premium in Poulsbo is unique, in that it is based on an officer's base wage plus the past year's sum total of paid overtime.

match the minimum increase that is established in the APW labor agreement for 2003.[12] Therefore, internal equity will be maintained in City employment and such equity should enhance the morale among City employees.

VIII. CALLBACK

Proposals:	**Union**	**City**
	Language changes TA'd **3-hour Min. callback premium**	**Language changes TA'd** **Retain 2-hour callback**

Findings of Fact: During their bargaining in the fall of 2000, the parties reached agreement on a number of changes in the language of Article 20 of their collective bargaining agreement, relating to Callback and Court Pay. They deleted the previous language in subsections 20.1, 20.2 and 20.2.1 and agreed to new language in Subsections 20.1, 20.2, 20.4, 20.5, and 20.6, then renumbered the final paragraph of the section as 20.6.1. See Exhibit C-23, pages 13, 14. They also agreed to new language in Subsection 20.3, but disagreed on the word "two" in line three, as follows:

> 20.3 Personnel who are called back to work between their regularly scheduled duty days or on their regularly scheduled weekend will be paid at the overtime rate of time-and-one-half with a guaranteed minimum of [*two*] hours. Effective January 1, 2002, the guaranteed minimum shall be three hours. If the callback extends beyond three hours, the employee will be paid the actual hours worked at the overtime rate of time-and-one-half.
>
> See Exhibit C-23, page 13 (Underlining shows new language; italics show disputed word).

When the parties reviewed the labor contracts of the ten jurisdictions that have now been found to be comparable to Poulsbo, during bargaining in the fall of 2000, the City's

[12] According to the City's wage proposal, which the arbitrator is awarding, the actual CPI increase for 2003 will be based on the period between June of 2001 and June of 2002, and that increase has not been clearly

representative produced a chart showing that the average minimum callback at that time, expressed in straight-time hours, was 3.65. See Exhibit C-21. The chart showed that four of the cities (Normandy Park, Port Orchard, Milton and Burlington) paid a minimum of 4.5 hours each, or three hours at time-and-one-half rate. Four other cities (Gig Harbor, Lake Stevens, Fircrest and Brier) matched Poulsbo's minimum callback at three straight-time hours. Shelton allowed only 2.5 hours, while Chehalis allowed four hours. Id.

The Union offered evidence in Exhibit U-Econ-EE showing a different spread among the comparables, which the Union argues is more correct than the City's chart. The Union's exhibit shows that Gig Harbor, in addition to the four cities identified in the City's exhibit, pays 4.5 hours straight time as minimum callback pay. The arbitrator agrees that the Gig Harbor 2001-2003 agreement, in the record, shows that call-outs outside the employee's normal workday and more than three hours outside of the officer's normal shift hours are compensated at time-and-one-half for a minimum of three hours. See Gig Harbor contract at p. 3.

Conclusion: The arbitrator finds that the trend among the comparables is to grant 4.5 straight hours as minimum callback pay. The Poulsbo contract should follow that trend. Therefore, in addition to granting the provisions of Article 20 that the parties T.A.'d in the fall of 2000, in accordance with the parties' stipulation, the arbitrator will the following language in Subsection 20.3:

> 20.3 Personnel who are called back to work between their regularly scheduled duty days or on their regularly scheduled weekend will be paid at the overtime rate of time-and-one-half with a guaranteed minimum of three hours. If the callback extends beyond three hours, the employee will be paid the actual hours worked at the overtime rate of time-and-one-half.

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established by the evidence.

IX. DETECTIVE PREMIUM

Proposals:	**Union**	**City**
	New 5% premium	**No new premium**

Findings of Fact: At the hearing, very little evidence was offered on the issue of a 5% premium for police officers who are assigned to perform detective work. Chief Doran testified that, in his opinion, assignment of an officer to detective duties is, in and of itself, a benefit over regular patrol duties. The hours are better, in that detectives work 9:00 to 5:00 and have weekends and holidays off. The work that detectives perform is more interesting and is not any more dangerous than that of regular patrol officers. Also, officers are eligible to get a civilian clothing allowance when they work as detectives. Finally, when they return to a patrol assignment, the change is not considered a demotion. That evidence was not rebutted by any of the police officers who testified at the hearing.

The collective bargaining agreements of the ten comparators show that five of them offer some type of detective premium. See Exhibit C-20; U-Econ-CC. Two of those premiums are nominal only, however, Burlington at $50 and Milton at $100 per month. Only Shelton and Chehalis offer the 5% premium that the Union requests in this arbitration.

In its brief that Union acknowledges that the evidence does not support a 5% premium. The Union asks the arbitrator to "split the baby" and award something less than 5%. The arbitrator does not find, however, that the evidence justifies any additional financial premium for an officer who provides detective service in Poulsbo.

Conclusion: The Union's request for a detective premium is unwarranted and, therefore, shall be denied.

X. RESERVE OFFICERS

Proposals:	**Union**	**City**
	New language: Reserve Officers may supplement, not Supplant regular officers, Except where vacancy is Offered to regular officers First, but not taken	**No new provision**

Findings of Fact: The Poulsbo Police Department has had a volunteer reserve officer program in place for some time. Police Chief Doran testified that the volunteers receive 240 hours of training at the Police Academy, or about half the training that a paid officer receives. Union Witness Doug Bush testified that it was his understanding, until recently, that the reserve officers only assisted regular officers on "ride-alongs" and that they were never assigned to work regular shifts. When it came to his attention that they were being assigned to work full shifts on occasion, to substitute for officers who were absent due to illness or training or various leave requests, his Union objected to the practice, on that basis that such assignments should be offered first to regular officers. Only where no regular officer is willing to accept the assignment should a reserve officer be allowed to fill it, in the Union's view.

The Chief testified that he and his sergeants have determined that the minimum staffing requirement, for safety purposes in Poulsbo, is two officers per shift. He said that sometimes three officers are scheduled for a particular shift, but they are not really needed to accomplish the work that needs to be done. Therefore, if one of the officers calls in sick or is otherwise absent for the day, the remaining two can do the work that is required. The Chief contends there is no reason to pay overtime to call in an off-duty

officer to substitute for the absentee in such a situation. It is only in such cases, said the Chief, that he would assign a reserve officer to work with the two regular officers remaining on duty.

The Union argues that, where a third officer has been scheduled for a shift, there must be a need for the third officer. Therefore, it should be a regular fully-trained officer, not a volunteer reserve officer, who is sought first to substitute for the absentee. Otherwise, the Department is "supplanting", rather than "supplementing" a regular officer with a volunteer and that would constitute an assault on the labor-management relationship of the parties, in the Union's view.

The evidence that the parties gathered during their bargaining in 2000 showed that, among the ten comparable jurisdictions, the police labor contracts in Port Orchard, Chehalis and Burlington contained the essential contract language that the Union seeks to incorporate here. Other contracts, however, did not restrict the assignment of reserve officers. See Exhibit C-22. The Union pointed out in its brief, however, that the most recent Gig Harbor contract now contains a restrictive provision, prohibiting management from supplanting scheduled officers with reserve officers, unless the work is first offered to at least two regular officers. See, Exhibit U-Econ-GG and the Gig Harbor 2001-2003 agreement at page 3.

Conclusions: The arbitrator is persuaded that the trend among the comparable jurisdictions is to prevent less-qualified volunteer officers from "supplanting" regular fully-trained professional officers on regular shift-assignment work. The arbitrator finds that the trend makes sense and the Union's proposal should be adopted in Poulsbo.

Where managers have determined that a certain number of officers is appropriate for a particular shift, by assigning that number of officers in advance, and then one of those officers is absent, the work should be first offered to other trained officers, before a volunteer is allowed to serve as a substitute. If, as the Chief testified, the minimum staffing level, at two officers per shift, were all that was needed on every shift throughout the work week of the police department, it is unclear to the arbitrator why the Chief would ever assign three officers to any shift in the first place. It seems more reasonable to conclude from the evidence that the Chief assigns three officers to some shifts because more officers are needed at those times than at other times. It could be because criminal conduct is more likely to occur during those periods of time or the Department has identified some other need for having trained public safety officers on duty. Once the Chief has made such a determination, and then one of the assigned officers is absent, it is only reasonable to expect that the Department would assign a regular, fully-trained, officer to fill the vacancy. A volunteer officer with only half the training of a regular officer might put his or her colleagues at some risk. Therefore, a volunteer should only be assigned if no regular officer were interested in accepting the appointment.

AWARD

For the reasons stated in the foregoing Opinion, the arbitrator awards as follows:

(1) All provisions that were tentatively agreed-upon (TA'd) previously by the parties, including but not limited to the changes in Article 20, Callback and Court Pay, are awarded;

(2) Wage Increases for the three years of the contract term shall be:
Effective January 1, 2001, 3.42%,
Effective January 1, 2002, 3.6%,
Effective January 1, 2003, 90% of the June 2001-June 2002 CPI-U Index for Seattle-Tacoma-Bremerton, but not less than 2%;

(3) Article 20.3 shall be amended to read:

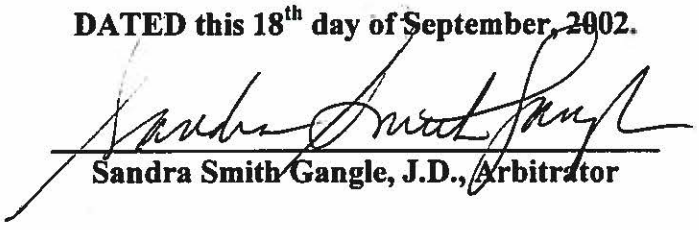
20.3 Personnel who are called back to work between their regularly scheduled duty days or on their regularly scheduled weekend will be paid at the overtime rate of time-and-one-half with a guaranteed minimum of three hours. If the callback extends beyond three hours, the employee will be paid the actual hours worked at the overtime rate of time-and-one-half;

(4) The Union's request for premium pay of 5% for Detective assignments is hereby DENIED;

(5) The Union's proposed contract language guaranteeing that volunteer reserve officers will only supplement, but will not supplant regular officers who are members of the bargaining unit is hereby ALLOWED;

(6) The parties shall be mutually responsible for paying the fees and costs of the arbitrator in this matter.

DATED this 18th day of September, 2002.



Sandra Smith Gangle, J.D., Arbitrator