THE MATTER OF THE INTEREST	)	ARBITRATOR'S
	)	
ARBITRATION BETWEEN	)	OPINION & INTEREST AWARD
	)	
CITY OF EVERETT	)	
	)	
"THE CITY" or "THE EMPLOYER"	)	
	)	
AND	)	
	)	
AMALGATED TRANSIT UNION 883	)	
	)	
"ATU 883" OR "THE UNION"	)	

HEARING:
March 31, April 2-3, 2014
Everett, Washington

HEARING CLOSED:
June 16, 2014

ARBITRATOR:
Timothy D.W. Williams
2700 Fourth Ave., Suite 305
Seattle, WA 98121

REPRESENTING THE EMPLOYER:
Bruce Schroeder, Attorney
Tom Hinson, Everett Transportation Services Director
Sharon DeHaan, Everett Labor Relations Human Resources
Brian Senyitkio, Everett Transit

REPRESENTING THE UNION:
Cliff Freed, Attorney
Jillian M. Cutler, Attorney
Steve Oss, President Local 883
Larry Westvang, Negotiation Team, Operator Everett Transit

APPEARING AS WITNESSES FOR THE EMPLOYER:
Tom Hinson, Transportation Services Director, Everett Transit
Sharon DeHaan, Labor Relations Human Resources
George Baxter, Transportation Services, Everett Transit
Monte Turner, Human Resources Analyst, Everett Transit
Marc, Bolland, Operations Program Manager, Everett Transit

APPEARING AS WITNESSES FOR THE UNION:

Steve Oss, President Local 883
Peter Donohue, Labor Economist PBI Associates
Andrea Johnson, Extra Board Driver, Everett Transit
Eric Dietz, Operator, Everett Transit
Erin Westvang, Paratransit Operator, Everett Transit
Dan Jacoby, University of Washington Professor

EXHIBITS

Union

1. List of Union's Comparables
2. Puget Sound Transit Vision
3. Everett Transit/Community Transit Paratransit Service Letter of Understanding
4. February 2014 Wage Bulletin
5. National Wage Rankings 1994-2014
6. Map with Union's Comparables
7. FTA Data Union Comparables
8. FTA Data Union comparables and E.T.'s Anticipated Comparables
9. ATU 883/Everett Transit Draft Article 15 – Wages
10. 2011-2013 City of Everett/Everett Police Officers Association Labor Agreement, pp 14.15
11. Everett/International Association of Firefighters Local 46 PERC No. 25228-I-12-612 Interest Arb Award pp 61, 62
12. 2011-2013 Everett/Everett Municipal Employees CBA p. 11
13. AVG CPI Increase 1992-2014
14. Peter Donohue Curriculum Vitae
15. U.S. Department of Labor Bureau of Labor & Statistics January 2014 Report on Labor Market Areas
16. Washington State Employment Security Department Snohomish County Profile
17. City of Everett 2012 General Fund Revenues Reports
18. Daniel Jacoby Curriculum Vitae
19. Comparison Charts 1&2: Month with No accrued Vacation/Month with Accrued Vacation
20. Union's Comparables Top-step Hourly Base Wage/Current Wages
21. Union's Comparables Top-Step Hourly Base Wage/Union's Proposed Wage Increase
22. Sample Vacation Pay for Split Run
23. 1979 Labor Agreement between City of Everett and ATU 883
24. Sick Leave Accrual Rates Comparison
25. Sick Leave Cash Out Incentive Comparison
26. Paratransit Operators
27. Paratransit Work Hour Guarantee Comparison

28. Paratransit Work on Regular Day off Comparison
29. Call-in Minimum Guarantee Comparison
30. Extraboard Run Sheets (effective 2/23/14)
31. Overtime Pay for Work on Regular Day Off Comparison
32. Funeral Leave Comparison
33. ACCRA Cost of Living Index, 3rd Quarter 2013
34. Cost of Living Index, 4/1/14
35. Top Step Comparable Union's Proposal
36. Top Step Comparable Current

Employer

A. General Background
   - A.1 State of Washington Revised Code of Washington (RCW)
   - A.2 Washington Administrative Code (WAC)
   - A.3 Current Collective Bargaining Agreement
   - A.4 PERC Letter certifying Issues
   - A.5 City's Proposal
   - A.6 Union Proposal
   - A.7 City/Agency Description
   - A.8 Organizational Chart
   - A.9 Employee Roster

B. Compensation Comparisons
   - B.1 City's Methodology

B.2 Population Served and Demographics Comparisons of Comparables

B.3 Comparison of Everett Transit, King County Metro and Community Transit Metrics

B.4 Snohomish County Local Area Profile

B.5 Benton County Local Area Profile (Ben Franklin Transit)

B.6 Chelan and Douglas Counties Local Area Profile (Link Transit)

B.7 Clark County Local Area Profile (C-TRAN)

B.8 Franklin county Local Area Profile (Ben Franklin Transit)

B.9 Kitsap County Local Area Profile (Kitsap Transit)

B.10 Skagit County Local Area Profile (Skagit Transit)

B.11 Thurston County Local Area Profile (Intercity Transit)

B.12 Whatcom County Local Area Profile (Whatcom Transit)

B.13 Yakima County Local Area Profile (Yakima Transit)

B.14 Minutes from 5-2-12 bargaining session

c. Financial Overview
   - C.1 City Financial Overview
   - C.2 Transit Development Plan 2013-2018
   - C.3 2012-2027 Projection
   - C.4 March 19, 2014 Mayor's Message
   - C.5 Costing of Overall Union Proposal
   - C.6 Costing of Overall City Proposal

C.7 Average Wage Calculation
C.8 Medical Premium Costs, 2005-2014
C.9 Miscellaneous Articles re Budget Struggles
C.10 2013 Budget Overview
C.11 2012 Mayor's Budget message
C.12 2013 Mayor's Budget message
C.13 General Fund Budget Update
C.14 PERS Rate History

BACKGROUND

The City of Everett (The City) and Amalgamated Transit Union 883 (Union) have a collective bargaining relationship. The 2009-2011 collective bargaining agreement (CBA) expired on December 31, 2011. They are in the process of completing the negotiations for a successor agreement that will be effective from January 1, 2012 through December 31, 2014. Negotiations have been unsuccessful at resolving all issues.

Under the State of Washington public sector collective bargaining statute, the instant bargaining unit has access to interest arbitration in order to resolve a continuing dispute over the terms of a collective bargaining agreement. The Parties can proceed to arbitration on issues certified by the Public Employment Relations Commission (PERC). By letter dated February 27, 2013, PERC certified thirty-one (31) issues for arbitration:

Article 5
Article 6; Section 5
Article 8, Sections 3;7
Article 9; Sections 1,11

Article 10: Section 4
Article 11: Section 1; 6; 12
Article 12
Article 13: Section 1
Article 14: Sections 1; 8; 9; 14; 16
Article 15: Sections 1; 3; 4; 5; 6; 12; 13; 14; 15; 16
Article 16: Section 1
Article 17: Section 3
Article 20
1987 LOU

In accordance with WAC 391-55-205, each Party had the right to name one partisan Arbitrator to serve as a member of an arbitration panel. Part one (1) of the cited code provides that "The use of partisan arbitrators shall be deemed waived if neither Party has notified the executive director of its appointee within fourteen days following the issuance of a certification of issues for interest arbitration, and the Parties' principal representatives shall then select the neutral chairperson". Both Parties waived the use of partisan arbitrators and Arbitrator Timothy Williams was selected as the neutral chairperson. For the purposes of this document, the terms "neutral chairperson" and "interest arbitrator" or "arbitrator" shall be interchangeable. A hearing was held on March 31, April 2-3, 2014 in Everett, Washington. At the hearing, both Parties had full opportunity to make opening statements, examine and cross-examine sworn witnesses, present documentary evidence, and make arguments in support of their positions.

At hearing the Parties informed the Arbitrator that only eight (8) of the thirty-one (31) issues were still in dispute and the hearing proceeded with both Parties presenting evidence in support of its position on each issue. The eight include:

ISSUE 1: **Article 8, Section 3 – Vacation Accrual in Lieu of Holiday Pay**

ISSUE 2: **Article 8, Section 7 – Overtime Hours in Lieu of Holiday Pay**

ISSUE 3 **Article 9, Section 11 – Vacation Pay**

ISSUE 4: **Article 11, Section 1 – Sick Leave Accrual**

ISSUE 5: **Article 11, Section 12 – Payout of Accrued Sick Leave**

ISSUE 6: **Article 12 – Funeral Leave**

ISSUE 7: **Article 15, Section 4 – 3-Hour Pay Guarantee for Operators**

ISSUE 8: **Article 15, Section 5 – Wages**

RCW41.56.450 requires that a recording of the proceedings shall be taken. For this requirement an official transcript of the proceedings was made and a copy provided to the Arbitrator. The Parties agreed to submit written closing arguments, by June 16, 2014, in the form of briefs. The briefs were timely received by the Arbitrator and he declared the hearing closed on June 16, 2014. The Arbitrator requested and was granted an extension of time for filing the final decision.

INTEREST ARBITRATION OVERVIEW

Interest arbitration is a process commonly used in the public sector for bargaining units that provide critical public services and whose work is deemed essential for public safety. Police, fire and prison guards usually fall into this category and interest arbitration is granted by statute in exchange for a prohibition against a work stoppage (strike). The State of Washington also extends interest arbitration to public transportation employees. RCW 41.56.492 provides in pertinent part that:

> In addition to the classes of employees listed in *RCW 41.56.030(7) the provisions of RCW 41.56.430 through 41.56.452, 41.56.470, 41.56.480, and 41.56.490 shall also be applicable to the employees of a public passenger transportation system of a metropolitan municipal corporation, county transportation authority, public transportation benefit area, or City public passenger transportation system, . . .

The statutes that provide for interest arbitration inevitably include a set of criteria that the arbitrator must use in fashioning his or her decision. The State of Washington follows this model and in RCW 41.56.492(2) sets forth the following criteria:

> In making its determination, the arbitration panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and as additional standards or guidelines to aid it in reaching a decisions [decision], shall take into consideration the following factors:
>
> (a) The constitutional and statutory authority of the Employer

(b) Stipulations of the Parties

(c) Compensation package comparisons, economic indices, fiscal constraints, and similar factors determine by the arbitration panel to be pertinent in the case; and

(d) 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.

The Arbitrator's opinion and awards are submitted, having given careful consideration to the above criteria, on an issue-by-issue basis. The Arbitrator's interest award is based on a careful analysis of the evidence and argument presented during the hearing, as well as the arguments found in the written briefs. On each of the eight issues, the Arbitrator will set forth the position of the Parties, a discussion of the Parties' arguments, the basis of the Arbitrator's award and the award.

As is true in most interest arbitration proceedings, the record in the instant case is voluminous with both Parties presenting extensive documentary and testimonial evidence. The Arbitrator has carefully reviewed this evidence in the context of the above stated statutory criteria. While he has given consideration to the whole record, the Arbitrator will not attempt to provide an exhaustive discussion of all points raised or respond to every piece of documentary evidence. Rather, his discussion will focus on those factors for each issue that ultimately were key in determining the award.

POSITIONS, ARGUMENTS, OPINION AND AWARD

The Parties' negotiations over the successor agreement resolved all matters with the exception of eight issues. The Parties have provided the Arbitrator with their separate positions on each of these issues along with evidence and arguments in support of their positions.

As noted above, there are a number of different statutorily mandated criteria that the Arbitrator is bound to use in fashioning the award. As is most often the case with interest arbitration, the Parties to the instant case made comparability a primary focus both with regard to wages and to some of the other issues. Each party presented a list of comparables and, as might be expected, the Union's list gave support to its wage proposals and the City's gave support to its wage package. The two different lists of comparables are set out below:

Union	City
Kitsap Transit	Kitsap Transit
Whatcom Transit	Whatcom Transit
Intercity Transit	Intercity Transit
King County Metro	Ben-Franklin Transit
Community Transit	C-Tran
Pierce Transit	Link Transit
	Skagit Transit
	Yakima Transit

Kitsap Transit, Whatcom Transit and Intercity Transit are common to both lists and thus included on the Arbitrator's list.

After careful review of the Parties evidence and arguments, the Arbitrator determined, for a number of reasons that are set out below, to include four additional jurisdictions in his list. The following group of seven jurisdictions is found to be an appropriate set of comparators for the instant bargaining unit:

Kitsap Transit
Whatcom Transit
Intercity Transit
C-Tran
Community Transit
Pierce Transit
Skagit Transit

The Cascade Mountains divided the State of Washington into two economic regions – east of the mountains and west of the mountains. The Arbitrator notes that this division is often significant in interest arbitration awards. Kitsap Transit, Whatcom Transit and Intercity Transit, common to both lists and included by the Arbitrator, are all from the west side.

The Union's comparables are all selected from communities west of the mountains. The Union's list does not include C-Tran or Skagit Transit. The Arbitrator notes that they are both west of the mountains and he determined that both should be included. C-Tran because it is of similar size and, like Everett Transit, it operates within the shadow of a major metropolitan area (Portland). Skagit Transit should be included because it falls within the general operational and economic parameters for

inclusion and because it is Everett Transit's immediate neighbor to the north.

The City's comparables include three from the east side of the mountains. The Arbitrator removed from his list these three jurisdictions as the differences in economic conditions between the two geographic areas make them less viable for the purpose of comparing wages and benefits. The Arbitrator notes that Link Transit and Yakima Transit are particularly poor comparators as the wages paid by these jurisdictions are not only at the bottom of the list but are substantially behind the wages of the other comparators to the point that they significantly skew[1] the average wage.

The City's list of comparable jurisdictions does not include King County Metro, Community Transit or Pierce Transit. The Arbitrator concurs with the City's argument that King County Metro's overwhelming size disparity and operational complexity makes it a very poor comparator to Everett Transit. Thus, He did not include it in his list.

The Arbitrator's list does include Community Transit and Pierce Transit. While there is a size difference between these two jurisdictions and Everett Transit, they share the same economic marketplace (Seattle metropolitan area) which means

[1] This is a fact that is accurately reflected on pages 43 and 44 of the City's brief.

that their employees purchase goods and services within an area that has a similar cost of living. Wages have value only in regard to what can be purchased and sharing the same marketplace, in this Arbitrator's view, is a reasonable basis upon which to validate a comparator.

The Arbitrator also finds that Pierce Transit and Community Transit are good comparators because historically[2] wages paid to the employees of Everett Transit have compared favorably to wages paid by Pierce Transit and Community Transit. This is not a true statement for those comparators offered by the City particularly the ones east of the mountains. The Arbitrator notes that in the City's analysis of its wage proposal, it concludes that "in the final year of the contract [2014] fixed route operators will have a wage rate 16.62% -- $3.82 per hour -- more than the average wage of the comparables" (C Br 43). Of course, this average figure is derived by excluding wages paid by any transit jurisdiction in the Seattle labor market – sometimes referred to as the Puget Sound region. When jurisdictions in the Seattle labor market are included and jurisdictions east of the mountain excluded this figure dramatically changes.

The bottom line, Everett Transit is part of the Puget Sound region and a list of comparables should adequately reflect that

[2] The Union persuasively makes a 20 year argument at page 16 of its brief.

fact. Including Pierce Transit and Community Transit accomplishes this goal even if both jurisdictions are larger than Everett Transit. The fact that they all exist within the Puget Sound Region is a more significant factor, in this Arbitrator's view, then their size.

The analysis now moves to the discussion and award on the specific issues. The Arbitrator again emphasizes that while each party provided extensive and persuasive argument on each issue, the Arbitrator did not attempt to respond to every point that was raised but rather focused the analysis on what turned out to be the deciding factor in fashioning the award.

ISSUE 1:
Article 8, Section 3 – Vacation Accrual in Lieu of Holiday Pay

Proposals:

The prior labor agreement contains a provision that permits employees to convert holiday pay into vacation accrual. That provision reads as follows:

> The employee may elect to receive eight (8) hours credit to hi/her vacation accrual in place of holiday pay, upon written request prior to each holiday. (C A.3)

The City proposes deleting this language while the Union argues to retain it. Under the City's proposal, employees would continue to receive holiday pay but without the right to substitute vacation time for the pay.

Discussion:

Bargaining unit employees either work a holiday at time and a half pay or have the holiday off. In either case the employee is entitled to 8 hours of holiday pay under the existing language found in Article 8, Section 2 of the CBA. Under Article 8, Section 3, whether or not the employee works the holiday, the employee can choose in lieu of the holiday pay to place 8 hours of vacation time in his or her vacation accrual.

The City seeks to remove this provision from the CBA. For the employee that does not work the holiday, this change bars the employee from choosing to accept less than regular pay for the week that includes the holiday while increasing the amount of available vacation time. For the employee that works the holiday, removing the right of substitution simply means that he or she is compensated for work on the holiday at 2.5 times his or her regular rate of pay (1.5 for the work plus 1 for holiday pay). It also means that the employee who works a holiday has fewer days off from work during the year; a holiday worked means more pay but less time off.

With due consideration to the Employer's financial arguments, the Arbitrator finds that the existing provision is fully justified particularly in the context of the employee who actually has to work on the holiday, i.e. Christmas, Thanksgiving, New Year's, 4th of July. Under the existing

language that employee has the right to have an alternate day off by placing an additional day in his or her vacation accrual. While having an alternate day off from Christmas, New Year's, etc. is not the same as having the day off with your family, it provides at least a small recognition of the fact that paid time off is an important benefit.

In short, the Arbitrator found nothing in the arguments sufficient to convince him that the benefit should be altered.

Award:

The Arbitrator directs the Parties to retain the language found in Article 8, Section 3 granting employee's the right to substitute vacation time for holiday pay.

ISSUE 2:
Article 8, Section 7 – Overtime Hours in Lieu of Holiday Pay

Proposals

The Parties agree that under the language from the expiring CBA, an employee who works a holiday is entitled to 2.5 times his or her regular rate of pay (overtime plus holiday pay). This translates into 8 hours of work but 20 hours of pay. Article 8, Section 7 permits an employee to substitute vacation accrual in lieu of overtime pay. The language reads:

> Any employee working on a holiday may elect to receive overtime hours credit to his/her vacation accrual in place of the time-and-one-half normally paid for work performed, upon written request prior to each holiday.

Under this provision an employee can choose, when he or she works a holiday, to receive no direct wages for the work. Instead of wages, the employee can bank 1.5 days of vacation accrual. And, by combining the right of substitution found in Section 3 with that of Section 7, when work is performed on a holiday an employee can bank 2.5 days in his or her vacation accrual account.

The City proposes deleting entirely the language found in Article 8, Section 7. The Union disagrees and argues to retain the language as found in the old agreement.

Discussion:

On the prior issue the Arbitrator agreed with the Union because he concluded that an employee who was required to work the holiday should have the right to substitute some other day off. While not all of the employees that would have been impacted by a deletion of Section 3 fell into this category, the fact that there were a substantial number was sufficient to tip the award in that direction. With Section 7, the provision in the expired contract gave employees that worked a holiday the right to have more days off from work then employees who do not work the holiday. Thus, the language from the old agreement creates an inequality and the rationale that the Arbitrator used with regard to the prior issue no longer applies.

As a result, the analysis turns to a different point. As noted on page 29 of its brief, the Union emphasizes the fact that interest arbitrators are usually reluctant to modify or rescind language that has been in the past collective bargaining agreement particularly if that language has remained unchanged for many years. This principle is generally true and adhered to by this Arbitrator unless the party seeking change can demonstrate a very strong case for making the change. This principle is often referenced in the vernacular as, "if it isn't broken, don't fix it."

The Employer sets forth a lengthy argument primarily focused on the fact that this provision generates a substantial number of vacation hours that are difficult and costly to schedule. It is also concerned with continuing a practice that creates future liability as opposed to what it believes to be the better practice of pay as you go.

In opposition, the Union emphasizes through its argument and the testimony of bargaining unit members that this provision is particularly valuable to more senior drivers who benefit from more time off. In other words, younger drivers may have greater need for the money while older drivers benefit more from vacation time.

Ultimately the Arbitrator found the Union's case the more persuasive. While he shares and respects the Employer's

concerns over the inherent problems associated with the creation of future liabilities, this benefit has been in place through numerous collective bargaining agreements. Obviously negotiated benefits of any sort usually involve some level of expenditures. How is it that the City could agree to this provision in the past but now want it rescinded? The Employer's economic arguments were insufficient, from this Arbitrator's perspective, to justify removal because they did not clearly establish a significant and unacceptable shift in the pattern of usage; a shift that worked a substantial hardship on the City.

Award:

The Arbitrator directs the Parties to retain the language found in Article 8, Section 7 granting employee's the right to substitute vacation time for holiday overtime pay.

ISSUE 3
Article 9, Section 11 – Vacation Pay

Proposals:

The expiring agreement that Article 9, Section 11 contains language on vacation pay as follows:

> Vacation pay shall be paid the same as run pay for regular operators. Extra Board drivers shall receive eight (8) hours pay per day of vacation. Other employees shall receive vacation pay according to their regular assigned shifts.

The Union emphatically argues to maintain this language while the Employer proposes to replace it with the following language:

> Employees whose regular work shifts consists of working five 8-hour days shall receive no more than 8 hours pay for each day of vacation. Employees whose regular shift(s) consists of working four 10-hour days shall receive no more than 10 hours pay for each day of vacation.

Discussion:

After careful review of the Parties arguments related to this issue, the Arbitrator finds the position of the Employer persuasive. At the heart of the disagreement between the Parties is the fact that certain fixed routes contain scheduled overtime meaning that the route cannot be completed within the time of a regular scheduled work day. These routes have scheduled overtime. Under the provision found in the expired agreement, the driver of these routes when on vacation continues to receive the scheduled overtime pay even though only 8 hours is deducted from his or her vacation accrual bank.

The Union's primary argument to retain this provision is that it has been a part of the labor contract for 30 years. The Employer focuses its argument on the problem of consistency. When a driver of a route that contains scheduled overtime receives holiday pay, it is 8 hours not including the scheduled overtime. When a driver of a route that contains scheduled overtime receives sick pay it is 8 hours not including the

scheduled overtime. However, for a day of vacation the driver receives the scheduled overtime as part of his compensation. The Employer contends and the Arbitrator agrees that consistency is warranted. The Arbitrator further finds that the consistency argument is sufficient to overcome the presumption that a benefit of longstanding should be retained.

The Arbitrator take special note of the fact that under Article 9, Section 7 from the expired agreement, a driver of a fixed route that had scheduled overtime, who took vacation during a week that included a holiday, would receive four days of vacation pay to include the scheduled overtime compensation and one day of holiday pay not including scheduled overtime compensation. This is, as the Employer contends in its brief, nonsensical. Eight hours of vacation time should equal eight hours of vacation pay.

Award:

With the understanding that this change in benefit is prospective, the Arbitrator directs the Parties to replace the existing language from the expired agreement found in Article 9, Section 11 with the following:

> Employees whose regular work shifts consists of working five 8-hour days shall receive no more than 8 hours pay for each day of vacation. Employees whose regular shift(s) consists of working four 10-hour days shall receive no more than 10 hours pay for each day of vacation.

ISSUE 4:
Article 11, Section 1 – Sick Leave Accrual

Proposals

Article 11, section one provides in pertinent part:

> Sick leave shall accrue to each employee, except B-Board Operators, at the rate of eight (8) hours of leave for each calendar month of the employee's active service. The total accumulation of sick leave shall not exceed 960 hours at full pay.

The City argues to retain this language as it is. The Union does not seek to change the 960 hours of total accumulation but wants to increase the monthly accrual from 8 hours to 12 hours.

Discussion:

The Union fails, in this Arbitrator's view, to provide a sufficiently persuasive case to modify the existing provision. External comparators do not support making this change. Internal comparators give some support but not enough to overcome the strong presumption that the existing benefit should be retained.

Award:

The Arbitrator directs the Parties to retain the existing provision providing eight hours of sick leave accrual for each calendar months of work.

ISSUE 5:
Article 11, Section 12 – Payout of Accrued Sick Leave

Proposals

Article 11, Section 12 from the expired agreement provides as follows:

> Employees who have successfully passed probation shall be allowed, upon voluntary separation, retirement or in situations of reduction in force from City employment, to receive a payment equal to ten (10) percent of the value of their then existing sick leave accrual balances.

The City argues to retain this provision as it is while the Union seeks to increase the 10% to 50%.

Discussion:

At page 42 of its brief the Union argues that:

> The cost of the Union's proposed increase is minimal. Indeed, the City argues that ATU 883 members "use a lot of sick leave" and many use their sick leave as soon as they accrue it, leaving little or no balance. The City can't have it both ways.

The Arbitrator agrees with the Union's analysis and logic on this issue. The City does make a strong argument on the prior issue that many bargaining unit members use their sick leave as fast as they accrue it. This is one of the reasons why the Arbitrator determined not to increase the accrual rate. Therefore, increasing the payout at separation from 10% to 50% is meaningless; meaningless at least for the zero accrual employees.

On the other hand, changing payout at separation from 10% to 50% may in fact be helpful to the Employer to the extent that it acts as an incentive to reduce the use of sick leave during an employee's term of employment. High sick leave usage is costly to any employer to the extent that it creates scheduling problems and potential overtime compensation.

Finally, as the Union notes in its arguments, both internal and external comparators provide support for this modification.

Award:

With the understanding that this change in benefit is prospective, the Arbitrator directs the Parties to modify the language from the expired agreement such that it reads as follows:

> Employees who have successfully passed probation shall be allowed, upon voluntary separation, retirement or in situations of reduction in force from City employment, to receive a payment equal to fifty (50) percent of the value of their then existing sick leave accrual balances.

ISSUE 6:
Article 12 – Funeral Leave

Proposals

Article 12 from the expired agreement provides for a funeral leave in the event of deaths "among members of any employee's immediate family,…" Article 12 defines immediate family as follows:

> Members of an employee's immediate family shall be defined as "spouse, domestic partner, mother, father, mother-in-law, father-in-law, parents of domestic partner, grandparents, grandchildren, brother, sister, son, daughter, stepchildren, children of domestic partner, stepparents."

The City argues to maintain this language as it is. The Union seeks to add to the definition of immediate family "grandparents-in-law, brothers-in-law, and sisters-in-law."

Discussion:

The death of a close family member is traumatic for any individual. The funeral leave provision found in Article 12 is obviously an important benefit as it ensures members of the bargaining unit time necessary to grieve and support. The Union seeks to expand the definition of family member by adding the grandparents and the siblings of a spouse. The Arbitrator notes that external and internal comparators generally support this change.

Additionally, it is the Arbitrator's belief that there is a strong cultural expectation around providing support for the spouse in the event of the death of a spouse's grandparents or siblings. While an employee might choose or not choose to attend a funeral, for example, of a spouse's cousin or great aunt, it is not a choice but an expectation if the death involves a sibling or grandparent. As such the Arbitrator will award the Union's request.

Award:

With the understanding that this change in benefit is prospective, the Arbitrator directs the Parties to replace the second paragraph in Article 12 from the prior agreement with the following:

> Members of an employee's immediate family shall be defined as "spouse, domestic partner, mother, father, mother-in-law, father-in-law, parents of domestic partner, grandparents, grandchildren, brother, sister, son, daughter, stepchildren, children of domestic partner, stepparents, grandparents-in-law, brothers-in-law and sisters-in-law."

ISSUE 7:
Article 15, Section 4 – 3-Hour Pay Guarantee for Operators

Proposals:

Article 15, Section 4 from the expired agreement provides that:

> No bus operator or paratransit operator called into work shall receive less than two (2) hours pay at straight time.

The City argues to retain this provision as is while the Union seeks to increase the minimum number of hours to three.

Discussion:

Article 15, Section 4 is a compromise between the needs for efficiency on the part of Everett Transit and the needs of employees to minimize the inconvenience and cost of having to make multiple trips to work on the same day. The Union believes

that the balance should be tilted more towards the employee by increasing the minimum hours of work that the City must compensate from 2 to 3. The City argues against this contending that it would significantly impact operational effectiveness.

The Arbitrator gave careful consideration to the arguments of each party on this issue and reviewed the testimony provided by the two Union witnesses. Obviously, the further out an employee lives the more difficult, costly and inconvenient it is to make multiple trips. But that is in part, as noted by the City in its brief, a choice made by employees. Clearly, a 3 hour minimum compensation guarantee would be helpful to employees who have a long drive to work. On the other hand, the Employer's evidence is convincing to this Arbitrator that the change to a 3 hour minimum would be both costly and difficult for Everett Transit.

Ultimately the Arbitrator concludes that the provision in the expired agreement is a better compromise between the needs of employees on the extra board and the operational needs of the City then is the increase to three hours requested by the Union.

Award:

The Arbitrator directs the Parties to retain the existing provision from the expired agreement found in Article 15, Section 4 that reads as follows:

No bus operator or paratransit operator called into work shall receive less than two (2) hours pay at straight time.

ISSUE 8:
Article 15, Section 5 – Wages

Proposals

The Parties are in agreement that the labor contract under negotiation will be for three years commencing January 1, 2012. The Parties agree that the wage adjustment negotiations involve three time periods including January 1, 2012, January 1, 2013 and January 1, 2014. The City proposes to provide no wage increase on January 1, 2012; a retroactive wage increase of 2% January 1, 2013; and a 1.4% retroactive wage increase effective January 1, 2014.

The Union is seeking "a 3.0 percent increase with some equity adjustments in 2012, a 2.6 percent increase for 2013, and a 1.4% increase in 2014 (U Br 19).

Discussion:

The Arbitrator begins his analysis of the Parties dispute over the wage increases to be applied during the term of the new collective bargaining agreement by emphasizing the general fact that wage increases are in almost every case justified by one or more of three factors.

1. Increases in the cost of living justify a wage increase for the purpose of maintaining the same level of purchasing power.

2. Comparable jurisdictions pay at a higher rate thus justifying a wage increase to keep pace with the comparators.

3. A wage increase is justified when the employer finds it difficult to attract qualified candidates for vacant positions.

The Arbitrator emphasizes that the above three factors apply whether the issue involves an across the board increase or whether the discussion focuses on addressing wage disparity concerns with specific positions.

The Parties general practice when raising wages has been to provide a percentage increase across the board. The Union seeks to change this procedure such that the percentage increase is calculated for the top step and the dollar amount of that increase becomes a constant to be applied to each wage step. The Union's rationale behind this approach is that less experienced employees are falling behind in actual dollar terms and some catch up is needed.

The Arbitrator notes that when a constant figure is applied to a wage schedule then the difference between each step remains the same in actual dollar terms but the relationship between the steps is altered. On the other hand, when all of the steps are increased by the same percentage than the relationship between the steps remains the same but the actual dollar difference increases. To illustrate this point the Arbitrator uses a simple four step wage progression:

Step 1 -- $20.00 p/h
Step 2 -- $22.00 p/h
Step 3 -- $24.00 p/h
Step 4 -- $26.00 p/h

With this simple wage progression, there is a $2.00 difference between each step and the top step is 30% greater than the bottom step. If the above wage progression is given a 5% pay increase, then the steps are as follows:

Step 1 -- $21.00 p/h
Step 2 -- $23.10 p/h
Step 3 -- $25.20 p/h
Step 4 -- $27.30 p/h

With the new wage schedule, step 4 is still 30% greater than step 1 but the actual dollar difference between each step has increased. Moreover, when this simple wage progression is increased year after year by an across the board percentage, the actual dollar differences between each step grows and grows but the top step is always 30% greater than the bottom step; the relationship between the steps remains a constant.

In the alternative, a fixed dollar amount can be added to each step as below:

Step 1 -- $21.00 p/h
Step 2 -- $23.00 p/h
Step 3 -- $25.00 p/h
Step 4 -- $27.00 p/h

In this example the actual dollar difference between each step remains a constant ($2.00) and the top step is always $6.00

greater than the bottom no matter how many wage increases occur. However, when each step increases by a fixed dollar amount the relationship between the top step and the bottom step changes. In the example, the simple wage progression received a $1.00 per step wage increase which left the difference between each step at $2.00. However, the top step is no longer 30% greater than the bottom step; it is only .286 greater. Also, in our example the first step received a $1.00 increase which amounted to a 5% wage adjustment while the top step received only a .038 increase.

One last point, assuming that wages increased every year by the constant factor of $1.00 then after 10 years the base wage would be $30.00 and the top step $36.00. In this case, the top step is still $6.00 larger than the bottom but the relationship between the two is now only 20%.

The ultimate conclusion is that when a constant dollar amount is added to a wage progression, the relationship between top and bottom shrinks. When a wage progression is increased by a percentage, the actual dollar difference between the steps expands while the relationship between top and bottom remains the same.

In the instant case, the prior practice of the Parties has been to increase the wage schedule by a percentage resulting each year in a schedule where the relationship between the steps

has remained constant but the actual dollar difference between the steps has grown substantially. The Union sees this as an inequity and wishes to address it by increasing the wage schedule with a fixed dollar amount (in 2012 it is a number created by taking 3% of the stop step and applying the dollar amount to each step). This, as explained above, will automatically mean that lower steps would receive a bigger percentage increase than the top steps.

The Union's rationale, as the Arbitrator understands it, is that employees at the bottom steps of the wage progression perform challenging and important work but receive substantially less compensation in actual dollar terms compared to employees at the top steps. The Arbitrator, however, does not find persuasive the argument that a position should receive greater compensation because the work is challenging.

As noted above, there are three basic reasons to increase wages. One of those has to do with cost of living and every step of the wage schedule has in the past received the same cost of living increases. Thus cost of living does not appear to be a valid reason to give some employees a greater pay increase than others.

Comparability both internally and externally could be a basis if the Union were able to show that employees in the lower wage steps at Everett Transit receive less compensation than

similarly situated employees. A review of the Union's arguments, however, does not show that the Union has taken this position nor can the Arbitrator find any evidence that would so establish.

The third possible reason to increase wages at the lower steps by a greater percentage than the higher steps would be the inability of Everett Transit to attract new employees. It could be that the higher steps are sufficient for the City to retain its experienced employees but that the lower steps are noncompetitive making it difficult for the City to attract new employees. That would be a basis to enhance the wage schedule at the lower steps. Once again, however, the Arbitrator does not find any persuasive evidence in support of the conclusion that wages at the lower steps are deficient to the point that the City is unable to attract and retain employees in those positions.

In summary, there might be good reasons to shrink the scope of the wage schedule by applying a fixed dollar amount such that lower positions receive a greater percentage increase over higher positions but the Arbitrator did not find in the Union's arguments or evidence a sufficient reason to do so. He will, therefore, proceed to determine the percentage increase that should be applied to the wage schedule for 2012, 2013 and 2014.

With regard to the percentage increases to be applied, the Arbitrator notes that the Parties are in agreement that a 1.4% increase should be granted retroactive to January 1, 2014. Thus the Arbitrator's award will recognize that fact.

The Arbitrator notes that the expired contract called for a wage increase effective January 1, 2010 and January 1, 2011 based on a formula involving the CPI-U. Based on the formula, the percentage increase applied both of those years was zero as there was not an increase in the CPI-U that resulted in a positive number. However, applying that same formula for January 1, 2012 the result would be a 3% increase. The Arbitrator notes that the City's Police Union and AFSCME have labor contracts that use the same CPI-U formula as ATU and they received a 3% increase effective January 1, 2012. Firefighters, by way of an interest arbitration decision also received that same increase.

After carefully reviewing all of the arguments with regard to wages, the Arbitrator arrives at the conclusion that the formula that provided no wage increases in 2010 and 2011 is still the formula to use in 2012 as a starting point to determine the appropriate wages for the instant bargaining unit – a 3 percent increase is justified.

However, cost of living is not the only consideration that the Arbitrator is required to utilize in determining the

appropriate wages in an interest arbitration decision. Ultimately, the Arbitrator determined that the appropriate percentage increase for wages effective January 1, 2012 is 2%. This determination is based on the following three point analysis.

First, while interest arbitrators generally recognize the importance of attempting to maintain some level of consistency between different bargaining units within the same jurisdiction, it is not a lockstep relationship as factors affecting each bargaining unit can be different. In the instant case Everett Transit has both similarities and differences from police, fire and AFSCME. For one thing, the funding for Everett Transit is different than it is for the services provided by the other bargaining units. Also, there will always be elements in a labor contract that reflect the uniqueness of a bargaining unit. In other words, the fact that the other bargaining units received a 3% wage increase effective January 1, 2012 is a strong argument to follow suit but there are other factors the Arbitrator must consider.

Second, the Union openly acknowledges that the wages historically paid to the members of this bargaining unit not only compare favorably with the much larger jurisdictions in the Puget Sound region but also compare favorably nationally. The Parties indicate that this is the first time they have gone to

interest arbitration meaning that this is the first time they have had to justify a list of comparables before an interest arbitrator. The Arbitrator, previously in this award, has set forth what he funded to be a list of seven comparables that are statutorily defendable. Drawing from documentary evidence provided by the City and the Union, the Arbitrator has created the following comparability chart related to top step, fixed route for 2012, 2013 and 2014. The wages shown for Everett Transit include the 2% increase for 2012. This data clearly shows that Everett Transit wages with the 2% increase are in the upper 3rd of the comparables.

	2012	2013	2014
Kitsap Transit	23.24	23.82	25.27
Whatcom Transit	24.74	25.42	25.99
Intercity Transit	24.19	24.80	25.10
C-Tran	24.27	X	X
Community Transit	27.18	X	X
Pierce Transit	27.00	X	X
Skagit Transit	23.53	23.88	X.XX
Average	24.28	24.48	25.45
Everett	26.91	27.61	28.00

X = no data

Third, after carefully reviewing all of the testimony and evidence regarding the City's financial condition, the Arbitrator does not share the Union’s rosy assessment of the City's finances. That the financial condition of the City looks good based on the CAFR does not stand up to a more comprehensive overview of all the facts that have led to the current financial

situation of the City and to reasonable projections for the future. As the Arbitrator understands it, what the CAFR does not show is the extent to which a public entity overcomes budgetary issues through deferred maintenance, deferred capital expenditures, reduction in programs and decisions to not fill vacant positions. The CAFR also does not show what parts of "belt tightening" can reasonably become permanent and what parts are creating future liabilities that must be met by the City at some time.

Ultimately the Arbitrator finds that comparability data and the City's overall financial condition warrant a 2% increase as opposed to the full 3%.

Finally, the only issue left is the increase for January 1, 2013. A review of the above comparability data indicates that many jurisdictions are still struggling to determine what that number might be. Thus using comparability data become suspect. As a result the Arbitrator concludes that the logical and reasonable decision is to use the same formula applied to other City employees which would grant a 2.6% increase.

Award:

The Arbitrator directs the Parties to set wages for this bargaining unit under the new collective bargaining agreement as follows:

A 2% across the board retroactive increase effective January 1, 2012.

A 2.6% across the board retroactive increase effective January 1, 2013.

A 1.4% across the board retroactive increase effective January 1, 2014.

The Arbitrator's award assumes that retroactive pay will be given only to members of the bargaining unit who are employed as of the date of this award.

AWARD SUMMARY

ISSUE 1:
Article 8, Section 3 – Vacation Accrual in Lieu of Holiday Pay

The Arbitrator directs the Parties to retain the language found in Article 8, Section 3 granting employee's the right to substitute vacation time for holiday pay.

ISSUE 2:
Article 8, Section 7 – Overtime Hours in Lieu of Holiday Pay

The Arbitrator directs the Parties to retain the language found in Article 8, Section 7 granting employee's the right to substitute vacation time for holiday overtime pay.

ISSUE 3
Article 9, Section 11 – Vacation Pay

With the understanding that this change in benefit is prospective, the Arbitrator directs the Parties to replace the existing language from the expired agreement found in Article 9, Section 11 with the following:

> Employees whose regular work shifts consists of working five 8-hour days shall receive no more than 8 hours pay for each day of vacation. Employees whose regular shift(s) consists of working four 10-hour days shall receive no more than 10 hours pay for each day of vacation.

ISSUE 4:
Article 11, Section 1 – Sick Leave Accrual

The Arbitrator directs the Parties to retain the existing provision providing eight hours of sick leave accrual for each calendar months of work.

ISSUE 5:
Article 11, Section 12 – Payout of Accrued Sick Leave

With the understanding that this change in benefit is prospective, the Arbitrator directs the Parties to modify the language from the expired agreement such that it reads as follows:

> Employees who have successfully passed probation shall be allowed, upon voluntary separation, retirement or in situations of reduction in force from City employment, to receive a payment equal to fifty (50) percent of the value of their then existing sick leave accrual balances.

ISSUE 6:
Article 12 – Funeral Leave

With the understanding that this change in benefit is prospective, the Arbitrator directs the Parties to replace the second paragraph in Article 12 from the prior agreement with the following:

> Members of an employee's immediate family shall be defined as "spouse, domestic partner, mother, father, mother-in-law, father-in-law, parents of domestic partner, grandparents, grandchildren, brother, sister, son, daughter, stepchildren, children of domestic partner, stepparents, grandparents-in-law, brothers-in-law and sisters-in-law."

ISSUE 7:
Article 15, Section 4 – 3-Hour Pay Guarantee for Operators

The Arbitrator directs the Parties to retain the existing provision from the expired agreement found in Article 15, Section 4 that reads as follows:

> No bus operator or paratransit operator called into work shall receive less than two (2) hours pay at straight time.

ISSUE 8:
Article 15, Section 5 – Wages

The Arbitrator directs the Parties to set wages for this bargaining unit under the new collective bargaining agreement as follows:

> A 2% across the board retroactive increase effective January 1, 2012.
>
> A 2.6% across the board retroactive increase effective January 1, 2013.
>
> A 1.4% across the board retroactive increase effective January 1, 2014.

The Arbitrator's award assumes that retroactive pay will be given only to members of the bargaining unit who are employed as of the date of this award.

This interest arbitration award is respectfully submitted on the 13th day of August, 2014 by,

Timothy D. W. Williams
Arbitrator