BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CITY OF LONGVIEW (POLICE DEPARTMENT)

and

LONGVIEW POLICE GUILD

PERC Case 2241-I-09-0530

Appearances:

Jamie B. Goldberg, Attorney at Law, appeared on behalf of the Guild.

Summit Law Group, Attorneys at Law, by **Bruce L. Schroeder**, appeared on behalf of the Employer.

INTERIST ARBITRATION AWARD

City of Longview, herein "Employer" and Longview Police Guild, herein "Guild," selected the undersigned to act as interest arbitrator pursuant to RCW Sec. 41.56.450 in the dispute described below for their calendar 2009-2011 collective bargaining agreement. The parties each filed their final offers on March 11, 2010. I held a hearing in Longview, Washington, on March 25, 2010. The parties waived a three person arbitration panel and agreed to have me proceed as the sole arbitrator. The parties each filed post-hearing briefs, the last of which was received June 7, 2010.[1] The parties agreed to extend the 30 day deadline for decision until August 9, 2010.

ISSUES

The parties' offers frame the issues in dispute. I summarize them as follows:

[1] The parties waived the tri-partite arbitration panel and agreed to proceed with me as the sole arbitrator. The parties agreed that the matter was properly before me. References to the transcript herein are marked "tr. p."

Article

Issue/Article

Title		Union	Employer	Current
1. Article 2.12 Police Reserve Program:				
		The Union Accepted the Employer's Proposal		
2. Article 5.04 Discipline				
		No change remove honest mistake	Eliminate written warning step	
3. Article 6 Wages				
6.01 - Wages	2009 1/1/09	1%	0%	
	2010 1/1/10	2%	0%	
	2011 1/1/11	3%	Variable COLA 2% min 5% max But only if sales tax revenue is up by 2% more.	
6.01 Retroactivity Language				
4. Article 6 Education Premium				
6.02 Education Premium for AA Degree	Associate	1% of base salary	No change	None
	Bachelors	4% of base salary	#%	
5. Article 6 Longevity				
6.06 Longevity	14 years	3% of base salary	No change	
	15-18	4% of base salary		
	19-24	5% of base salary		
6. Article 6, SWAT Team Premium				
6.07 SWAT Team Salary		2% in addition to base salary	No change	None
7. Article 6, Motorcycle Premium				
6.08 Motorcycle Officers		2% in addition to base salary	No change	None
8. New Section 6.09, K-9 Officer Premium				
6.09 K-9 Officers Salary		2% in addition to base salary	No change	None
9. Article 8, Hours of Work, Donning and Doffing –withdrawn				
10. Article 8, Hours of Work, Double Time for Involuntary Overtime				
8.04 Involuntary overtime		double time	no change	time and a half
11. Article 8, Hours of Work, Call Back for Court Time				
8.06 Court/ subpoenaed appearances		Min. 3 hours at double time	no change	3 at time & half

Title		Union	Employer	Current
12. Article 8, Hours of Work, 4th of July Staffing Memorandum of Understanding (MOU)				
July 4th Staffing		Change MOU to volunteers Double time for 4th	Keep MOU and move into body of contract No change	MOU
13. Article 11.02 Annual Leave				
Section 11.01-.02 Annual Leave		No change	Split into vacation bank and holiday leave no 7/4 leave	
14. Annual Leave				
Section 11.02		No change	Companion issue to 13	
15. Article 11 – Holiday Leave				
Section 11.03 Holiday Leave		No change	No holiday leave of 7/4 Companion issue to 13	7/4 by request
16. Article 14 Insurance, Dental				
14.01 Dental insurance		Offer dental coverage Washington Assoc. of Cities Plan	No change	No dental
17. Article 14, Insurance Dental				
14.01 Offer Willamette dental option retroactive		Accept Prospective Only	No orthodontia	
18. Article 16, Duration				
16.02 Duration	Calendar 2009 through 2011- agreed			
19. Substance Abuse –withdrawn				
20. NEW - New Article Legal Fees				
NEW Pay criminal legal fees if Exonerated		No change	Not paid by city	

The parties agreed to a three year term, calendar 2009-2011. The Union accepted the Employer's proposal on issue 1, reserve officer, Section 2.02 and the Employer withdrew its proposal as to substance abuse. The Guild withdrew issue 9, donning and doffing prior to this proceeding. All other issues remained in dispute at the time of hearing.

BACKGROUND AND ECONOMIC CIRCUMSTANCES OF LONGVIEW

The City of Longview is in Cowlitz County in southwestern Washington, along the Columbia River. It is north of Portland and south of the Puget Sound area. The parties dispute whether Longview and Cowlitz were more severely affected by the national downturn than the rest of the state, particularly the Puget Sound area. I conclude that it was more severely affected. Prior to the recent national economic crisis, the

Longview area was in rust-belt like decline. City Manager Gregory testified that in the 1970's the foundation of the area economy was timber and timber-related business. Over the next years a nuclear power plant was built in the area. This resulted in many technical jobs in the area. The area also enjoyed two aluminum plants. In 1979, a paper plant was built in the area. The Mount St. Helens' eruption and subsequent international competition signaled a major on-going decline in the economic health of the local area. By 2003, the area lost two aluminum plants, the Trojan Nuclear Plant, the Weyerhaeuser sawmill and other manufacturing jobs. The average earnings per job in this area as of 1975 were about 125% of the national average, while the rest of Washington was about 110%. The average earnings per job stayed about the same for Washington as a whole, while the Longview area has declined to about 85% of that average. In 1975, Longview's per capita income was 105% of the national average as was the rest of Washington. By 2007, before the downturn, it had declined to 73% whereas Washington remained at 105%. This area lost high paying jobs.

Longview had persistently high unemployment before the national downturn, ranking at least 2% above the national average. However, starting with the national downturn in 2008, unemployment spiked here to about 14%, then 4% above the state's average and has remained 2-3% higher. Unemployment as of February, 2010 here was about 15%. Now, the major employment groups in this area in order of their importance are; manufacturing, government, health care, retail and service. Two major industrial employers remain in Longview; Weyerhaeuser and Longview Fibre. Because of the declines and losses of business, government employment has grown in importance and is a stabilizing factor in this area. The Washington Regional Economic Analysis Project shows this area growing far more slowly than the rest of Washington. One major result is that the national housing crisis together with the previous state of decline in the area has caused home prices here, already low, to decline faster than the rest of the state west of the Cascades. Home foreclosures and vacancies here are staggering.

The national downturn caught the Employer by surprise. The City of Longview receives its tax revenue in essentially equal proportions from property taxes, sales taxes and Business and Occupation Tax (essentially a tax on the gross receipts businesses).[2] In late 2008, the Employer prepared its biennial budget and did not realize how extensively that the downturn would affect its finances. As a result, it budgeted for general fund revenue for $30.6 million for 2009, but its actual 2009 revenue was $28.8 million. This resulted in an unexpected $1.8 million shortfall in revenue. The situation continued in 2010 requiring savings both years. The budget shortfall resulted from unexpectedly low revenue caused from a decline in sales taxes and a drop in interest earnings. There was also a significant decline in the assessed value of real estate which resulted in a decline in property tax collections.

In response to the shortfall in revenue, the City Council approved a temporary increase in the B&O tax rate for calendar 2009 and 2010. In early, 2009, it sought wage and benefit concessions from its represented employees as described below. It also took the steps described below with respect to its non-represented employees. It deferred maintenance, reduced expenditures on fuel, supplies and motor vehicles. It froze new positions and did not fill many vacant positions. It achieved salary savings in the amount $1,284,570 and non-salary savings of about $1 million for a total of about $2.3 million.

[2] Herein referred to as the "B&O" tax.

There are approximately 50 sworn officers in the bargaining unit. The unit includes about five sergeants. There are no lieutenants, but there are three captains and the Chief. The captains and Chief are excluded from the bargaining unit. The Employer has non-represented managers, technical personnel and administrative personnel. This group comprises over 100 employees. It also has a number of bargaining units. Its largest is the Employee Bargaining Association which represents about 103 employees. There is a Command Staff bargaining unit of about 3 or 4 Battalion Chiefs represented by International Association of Fire Fighters Local 3375. The approximately 40 rank and file fire fighters are represented by IAFF, Local 838. The American Federation of State, County and Municipal Employees represents about 10 non-sworn police employees. The City also has a transit district which is funded by a separate sales tax district. Those employees are represented by the Amalgamated Transit Union.

The seniority of this bargaining unit is:

Years of Service	**Number of Employees**	**Percent of Unit**
20+	6	12%
10-20	21	42%
5-10	7	14%
Less than 5	16	32%
Total	**50**	

DISCUSSION

STANDARDS

This matter was heard under RCW 41.56.430 et seq. RCW 41.56.430 sets for the public policy of Washington in the resolution of disputes involving uniformed personnel:

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

RCW 41.56.465 provides the standards by which interest arbitrators are to evaluate the evidence in an arbitration proceeding as follows:

> (1) In making its determination, the 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 decision, the panel shall consider:
>
> (a) The constitutional and statutory authority of the employer;
>
> (b) Stipulations of the parties;
>
> (c) The average consumer prices for goods and services, commonly known as the cost of living;

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

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

(2) For employees listed in RCW 41.56.030(7) (a) through (d), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.

(3) For employees listed in RCW 41.56.030(7) (e) through (h), the panel shall also consider 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 public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered.

. . .

(6) Subsections (2) and (3) of this section may not be construed to authorize the panel to require the employer to pay, directly or indirectly, the increased employee contributions resulting from chapter 502, Laws of 1993 or chapter 517, Laws of 1993 as required under chapter 41.26 RCW.

Some of the other factors regularly considered in interest arbitration and considered here are:

1. The practices of the parties including their prior collective bargaining agreements, and
2. The public interest.

A party proposing to make a change to an existing agreement (at least with respect to non-economic issues) must establish that circumstances have changed such that there is a need to change current provisions of the agreement and that its proposal is both necessary and reasonable to meet that need.[3] As an alternative, a party may show that it has offered a reasonable *quid pro quo* in exchange for a change in the agreement and that the exchange is reasonable.

ISSUE 3: WAGE ADJUSTMENTS AND SELECTION OF COMPARATORS

A. Positions of the Parties[4]

[3] Longview Police Guild and City of Longview (Lankford, 2008)

[4] This section includes not only the argument as to comparators, but also the overall arguments relating to the economic packages. The positions as to other issues are recited as necessary in the discussion related to that issue.

EMPLOYER:

The City of Longview has been hard hit by the ongoing economic recession. The community has been battered by waves of business closures and layoffs, unemployment rates have soared, housing prices have declined, foreclosures have increased and poverty rates have risen. The Employer itself is not immune from the financial crisis. The Employer has been forced to make drastic cuts in its general fund. The Employer has also sought and received financial concessions from every employee group funded by the general fund other than the police. The others have taken wage freezes and unpaid furloughs. Instead, the Guild said it would "take its chances in interest arbitration." The Guild's proposals are completely divorced from the economic realities. The Employer asks the arbitrator to reject the Guild's attempt to get what it could not achieve by voluntary bargaining.

The Employer's proposed comparators are appropriate. They are Des Moines, Bremerton, Pasco, Wenatchee, Mt. Vernon, and Port Angeles. These comparators were properly selected based upon prior awards, changed circumstances from the prior awards and the criteria for properly selecting comparators, RCW 41.56.465. The cities selected by the Employer are almost all of the comparators used by Arbitrator Lankford for these parties which were: the cities of Bremerton, Des Moines, Lacey, Puyallup, and Mt. Vernon. The Employer removed Puyallup and Lacey as not currently of similar assessed value per person. It then added cities which not only meet the size requirement, but are outside the urban central Puget Sound area. The Employer selected those with a population 50% more or 50% less than that of Longview. This methodology has been adopted by arbitrators in other cases. The Employer then used assessed valuation to determine "like" cities. In order to apply the statutory mandate to consider "like employers," the Employer then considered its demographics given that it, itself, sits outside the core of the urban central Puget Sound metropolitan area, in a non-dense rural and timberlands area. Unfortunately, there are very few employers within western Washington that fall within the 50% up or down category outside the Puget Sound area. Two cities fit this category, Mount Vernon and Port Angeles. The Employer took cities from eastern Washington which met these criteria. They are Pasco and Wenatchee. In order to provide an appropriate number of comparators, the Employer also agreed to include Bremerton and Des Moines from the central Puget Sound area because they satisfied two tests, population and assessed valuation.

By contrast the Guild proposes only four cities, two agreed upon, and two cradled in the central Puget Sound with significantly higher assessed valuation per person. They are Lacey and Puyallup. The Guild also rejects the four additional comparators offered by the Employer. It offers no reasons to exclude Pasco and Wenatchee. Excluding them solely because they are on the other side of the Cascade Mountains is without merit. It is undisputed that all four of these are "like employers of similar size" to Longview with respect to population, assessed valuation, and separation from metropolitan areas. In fact, eastern jurisdictions are often compared to western jurisdictions. For example, Pasco and Wenatchee each have been compared to Longview in other interest arbitration decisions and symmetry and logic suggest the reverse should be true. The eastern Washington cities of Pasco and Wenatchee are considerably closer to Longview in terms of assessed valuation per capita than the western Washington cities of Lacey and Puyallup. The Employer's comparators leave its average among its comparators while those of the Guild leave it 27.4% below average in terms of assessed valuation. The Guild also suggests that Pasco and Wenatchee should be excluded because they are not in the same labor market. However, the labor market for police officers is the entire state.

The notion of the Cascades as the appropriate dividing line for labor markets was disproven in a Washington State Department of Employment Security study. The conclusion of this study was that the appropriate dividing line is not the west versus the east, but rather the rural versus the urban. A rural county is defined as a "county with a population density of fewer than one hundred persons per square mile. Cowlitz with 87.47 people per square mile fits this definition. Benton County (Pasco) and Chelan County (Wenatchee) both fit this definition. This is in stark contrast to the more urban areas proposed by the Guild.

The Guild may argue that their proposed comparators are closer. They are also part of a large metropolitan area. This makes them unrealistic. An independent reason to include Mt Vernon and Port Angeles is to insure that there are an adequate number of comparators.

The Guild's proposal to include more wealthy metropolitan western Washington cities should be rejected. By focusing on large metropolitan areas in western Washington, the Guild completely ignores the statutory mandate to consider "like employers." Lacey and Puyallup have assessed valuations per person more than 63% greater than Longview's. This is compounded by the view that each is a suburb of a much larger city. On the Guild's list Longview would rate last on assessed valuation. These comparisons relate to the each city's ability to raise funds. The two main sources of revenue are property tax and sales tax. The Guild's proposed additions to the list of comparators produces a one-sided list the only purpose of which is to justify hefty wage and benefit increases. Longview and Cowlitz County had the highest percentage of wage loss in the entire state. This suggests that the wealthier areas advocated by the Guild are much better off.

Longview never enjoyed the kind of prosperity that cities in the central Puget Sound region experienced. Unemployment is high, foreclosures and vacant buildings are everywhere. City revenue has dropped significantly, and all other city employee groups that are funded by the general fund have had furloughs and/or wage freezes as the Employer has struggled to reduce expenditures. The Guild's proposals are divorced from economic realities. At one time, Longview had a substantial industrial and technical base. During the 1970's and early 1980's area wages were 110% to 125% of the national average. However, since the 1980's Longview has lost many of its large employers. By 2007, while Washington was at 105% of the national average, Longview average wages were only 87% of the national average.

The national economic crisis has had a profound effect on Longview's already declining economic situation. By March, 2009, Cowlitz' unemployment surged to 15.4%, the highest level in 25 years and considerably higher than the rest of the state. In the last 2.5 years, Cowlitz County has seen a 25% decline in housing prices. By 2010, over 30% of the sales of homes in Cowlitz County were foreclosed homes. The median price of homes fell to about 70% of home prices in those counties to which the Guild now wishes to compare.

The recent economic crisis has compounded the economic difficulties of the Employer. The budget for 2009 was prepared before the crisis unfolded. It assumed $30.6 million in general fund revenue. The actual revenue was only $28.79 million or $1.8 million less than budgeted. The Employer temporarily increased its third source of revenue, the B&O, tax on businesses for 2009 which is set to expire in at the end of 2010. It is unreasonable to expect the Employer to continue that tax because it was temporary and because it would be a burden to businesses in their attempts at recovery.

The $1.8 million budget shortfall required the Employer to take drastic steps. As City Manager Bob Gregory testified, within the first two months of 2009, the Employer sought concessions from all of its employees funded under the general fund. All of them other than this unit volunteered to take either furloughs or wage freezes. The Employer also did not fill vacant positions. Overall, the Employer was able to save $2.7 million less than what had been budgeted for 2009. The Employer has been compelled to seek similar budget reductions for 2010. Working with all other groups except the Guild, the Employer was able to save $1.3 million from what was budgeted through salary freezes, furloughs, suspension of merit step increases, early retirements, not filling vacancies and reduction in pension contributions. It saved another $1 million through spending reductions with regard to supplies, services, travel and fuel, as well as through energy conservation and maintenance deferral. While other groups have agreed to wage concessions to aid the Employer in reducing expenditures, the Guild's proposal would increase the Employer's expenditures by $139,223 in 2009 and $218,775 in 2010.

Adoption of the Guild's economic proposals without any concessions would leave the Employer with an unattractive ending balance and possibly with an untenable ending balance. The Guild's proposals would leave the Employer with a fund balance essentially at the minimum for 2009 and in the negative for 2010.

As to issue 3, the wage proposal, the Employer's wage proposal is reasonable and fair in the light of the Employer's financial crisis. It is reasonable to expect that this unit would be affected by the economic crisis just as the other employees of the Employer were. The Employer proposes no general wage increase for 2009 or 2010. The Employer is proposing for 2011 that wages would be increased by a percentage equal to 85% of the Portland Oregon Consumer Price Index (CPI-W) for the period July 1, 2009 to July 1, 2010, with a 2% minimum and a 5% maximum. However, this adjustment would only be awarded if the Employer's sales tax revenue during the same period increased by 2.0% compared to the same period between July 1, 2008, and June 30, 2009,

Although the Employer believes that comparability is secondary, the Employer's 2009 wage proposal is supported by comparability under the circumstances. Its proposal would only reduce the top step police officer from 2008, from 4.1% over average only to only .1% below the average in 2009. By 2010, the Employer's proposal would put that rate just 2% below the average of the comparators.

The cost of living also supports the Employer's proposals. This is true whether measured by the current rates of inflation, a historical comparison between the CPI and wage increases, or relative cost of living differences between the comparators and Longview. The national average for the CPI-U for all cities for 2009 was 0%. Using the implicit price deflator, it was a negative .587%. Unit members wage and benefit increases have exceeded inflation in every year since 1999. The Employer's proposal is fair in the light of the relative cost of living difference with the comparators. Internal comparisons as previously noted heavily favor the Employer's position.[5]

The local labor market data does not support the Union's position. The top step police officer at the two local comparator police agencies, City of Kelso and Cowlitz County, are less than those of police officers here. Using the Employer's offer for 2009 and 2010, officers in

[5] The ATU public transit unit is funded by a public transit district. It does not receive general purpose revenue from the Employer, tr. p. 140.

Longview still would make more than local comparator law enforcement officers. Outside law enforcement, the Employer's wage proposal is largely consistent with what other public employers are doing. Both the Longview school district and Lower Columbia College had 0% increases in 2009 and 2010, both. The City of Kelso and Cowlitz County gave employees wage increases in the range of 2% to 4.5% for 2009, but most local employers had 0% increases for 2010. Cowlitz County laid off 35 staff and closed offices to the public on Friday. The City of Kelso is seeking wage freezes for 2010 and has reduced staffing through attrition. Cowlitz County wages have consistently trailed behind the state and national average. The high unemployment rate also militates against a wage increase. Finally, the Employer's police officers turnover rate does not justify a wage increase.

The Employer's proposal to deny any retroactive pay increase for those employees who were terminated for cause or who failed to successfully complete probation is a reasonable way to limit expenditures in difficult economic times. It is expensive to try and locate these people. It would save needed funds.

UNION:

RCW 41.45.430 exists to treat protective employees no worse than other public employees. Yet, this is what the Employer intends to do. While Employer officials raised the base wages of most city employees by 3% in 2009 and again in 2010, the Employer is proposing no raises for the Guild in either year. The Guild understands that economic conditions in Longview, as is the case state-wide and nationally, are not particularly robust. The Guild package of proposals is consistent with the reality. The Guild's proposals over three years total 6% which is exactly what the Employer has done the other city employees. The Employer is exaggerating its financial difficulties.

In the 2008 arbitration between the parties Arbitrator Lankford used Bremerton, Des Moines, Lacey, Mount Vernon, and Puyallup. The Guild used the same except Mt. Vernon. Arbitrator Lankford had questioned Mt. Vernon because it was over 184 miles from Longview. He accepted it because the parties had used it as a comparator. Arbitrator Lankford had rejected Employer-proposed comparators of Pasco, Richland, and Port Angeles as being "too distant." He also had noted that Port Angeles was remote from any urban area. Arbitrator Nelson in a 2001 award with different parties had articulated the reason why the Cascades should be used as a dividing line: the relevant labor market for employees on either side is that same side. Another rationale used by the Employer before Arbitrator Lankford was that Pasco had used Longview as a comparator. Arbitrator Lankford rejected "reflexivity" as a "substantially less significant consideration." The Guild notes that Pasco has not had a contract since 2007, and the Employer has used 2007 figures as if they were current to lower its "averages."

The Employer added 3% in both 2009 and 2010 to most of its employees. Even if these raises were partially nullified by furlough days, these employees received more time off. When the furlough days are implemented, the base increases will remain. For the Guild, the Employer offers the Employer offers a conditional raise of only 2-5%. The Guild wage proposal totals 6% over three years could be awarded by the arbitrator under the arbitration statute anytime in those three years. This is only fair when one looks at the comparator jurisdictions. Bremerton and Des Moines which were both selected by the parties as comparators each gave larger increases. The Guild's comparators did so as well. Even the Employer's comparators offered more of an increase than the Employer is offering here. The wage rates here compare very unfavorably to similarly sized, geographically proximate comparators. The Guild comparison study illustrates a

very large gap between Longview police officers and police officers from similarly sized, geographically proximate cities. Even with a 6% raise, Guild police officers will not draw even to the average.

The Employer's method of averaging is incorrect and misleading. The Guild also notes that Pasco has not had a settlement for years beyond 2007. The Employer uses those numbers to artificially lower the averages.

The Employer focus on the economy over the past decades is beside the point. Further, much of the Employer's efforts focused on the economic conditions in Cowlitz County as compared to other counties, instead of the conditions of City of Longview compared to other cities. There are often differences between counties and the cities within them. The Employer has repeatedly used threats of service reductions both in the past and now.

There is no fair rationale for the City proposal to deny retroactive pay to employees who are terminated or do not successfully complete probation. Prior to those events causing the job separation, the employees came to work. According to the City, there is difficulty finding these employees, and "if you've been terminated for cause or weren't successful on probation, that meant that there were reasons that you left the City, not voluntarily." This rationale does not justify denying departed employees the pay they earned while they were employed.

In summary, the Employer obviously felt that internal parity was important. The Employer's position is brought into question by its 6% addition to base wages for most City employees than it offers employees in this bargaining unit. The Guild seeks what is indicated by the legislative intent expressed in Washington's collective bargaining law for uniformed employees, not to be treated worse than other City employees and comparator jurisdictions.

B. Discussion

1. Comparators

The parties have arbitrated two prior agreements. Arbitrator Nelson arbitrated their 2000-2002 agreement.[6] In that case, the parties agreed upon Bremerton, Lacey, and Olympia. The Employer proposed Mount Vernon, Pasco, Port Angeles, Richland, and Wenatchee. The Guild proposed Auburn, Des Moines, Edmonds, Lynnwood, Puyallup, Redmond and Renton. Arbitrator Nelson selected Bremerton, Lacey, Olympia, Auburn, Edmonds, Lynnwood, Puyallup, Des Moines and Mount Vernon. Arbitrator Lankford arbitrated the parties' 2006-2008 agreement.[7] The parties agreed on Puyallup, Bremerton, Lacey, Des Moines, and Mount Vernon. The Employer proposed Pasco, Richland, Wenatchee, and Port Angeles. The Guild proposed Renton, Redmond, Auburn, Olympia and Edmonds, and Lynnwood. Arbitrator Lankford selected Puyallup, Bremerton, Lynnwood, Lacey, Des Moines, and Mount Vernon.

The parties agree in this proceeding that Bremerton and Des Moines are proper comparators. The Guild proposes to add Lacey and Puyallup. The Employer proposes to add Mt. Vernon, Pasco, Port Angeles, and Wenatchee. In summary, the Guild emphasizes the wealthier Puget Sound area, while the Employer would emphasize its declining industrial

[6] Longview Police Guild and City of Longview, PERC No. 15438-I-00-350 (Nelson, 10/01)

[7] Longview Police Guild and City of Longview, (Lankford, 2/2008)

economic base and its location in rural Cowlitz County by including rural eastern Washington comparators.

The dispute really is about the strength of the analogy to the selected comparators. As noted above, both the selection of comparators and their application is not an exact science. The comparison process cannot be applied in a rote manner, but must take into account the differences among the comparators. As noted by many Washington arbitrators including, but not limited to, Arbitrator Nelson, with these parties, the goal is to attempt to resolve an interest dispute in a manner the parties would have done had they done so voluntarily.

Washington arbitrators consider the following criteria in selecting comparators (in order of importance): the agreement of the parties or their past practice, population, proximity, property tax per capita, and sales tax per capita.[8] I have included Kelso both for statistical reasons and because both parties rely on it as a sample of the local characteristics of the Longview area. The following is a chart of the relevant criteria with respect to the comparators:

*	Community	Population	Distance from Longview	Assessed Evaluation	AV Per Capita	Sales Tax	AV Per Capita
B	Bremerton	36,620	122	3,084,741,017	84,237	6,161,323	168
B	Des Moines	29,270	113	3,239,532,997	110,678	1,662,212	57
U	Lacey	39,250	71	4,892,602,232	124,652	8,277,647	211
C	Mt. Vernon	30,800	186	2,837,921,239	92,140	5,096,227	165
C	Pasco	54,490	246	2,863,125,470	52,544	7,252,969	133
C	Port Angeles	19,260	184	1,994,259,574	103,544	2,716,400	141
U	Puyallup	38,690	100	4,755,926,244	122,924	13,710,004	354
C	Wenatchee	30,960	254	1,980,222,931	63,961	6,737,948	218
	Longview	36,010	0	2,902,511,391	80,603	5,964,047	166
a	Kelso	11,840	1	727,939,344	61,481	1,316,848	111

* Party offering comparator, u=Guild, c=Employer, b=both, a=arbitrator

The Employer now seeks to exclude Lacey and Puyallup because they are in the Puget Sound urban area and are wealthier. One of the goals of using comparisons is to look at the labor market for police officers. Longview is located close to Portland and to the Puget Sound area. It must deal with the competitive pressures from both areas not only in employment, but in every aspect of its economy. Lacey and Puyallup are arguably both within commuting distance from Longview. Each is an easy move from Longview. In this matter, the relatively close location outweighs the difference in the cost of living or the stronger finances of the local municipality. I agree with the essence of Arbitrator Nelson's analysis that the identity of comparators is a

[8] See both the Nelson and Lankford awards.

significant factor in bargaining. It, therefore, makes sense to keep a stable list of comparators for a set of parties in order to facilitate efficient bargaining for future agreements. I conclude that Lacey and Puyallup should remain as appropriate comparators.

The Guild seeks to now exclude Mount Vernon from the list of comparators as too distant. Mount Vernon has a different economy than Longview and is too far to be a competitor for employees. It is very close in assessed value per capita and sales tax per capita to Bremerton. However, this comparator is far more appealing than those comparators east of the Cascades because it must deal with the influence of the Puget Sound area in much the same way Longview must. Again, I also conclude retaining Mount Vernon will enhance stability in the bargaining process for future agreements. I, therefore, retain Mount Vernon.

I turn now to Pasco and Wenatchee. Arbitrators to a varying degree have recognized the "Cascade curtain" as referred to by Arbitrator Wilkinson.[9] Arbitrator Wilkinson stated that she ". . . has previously endorsed crossing the "Cascade curtain" . . . in order to find a sufficient number of comparators, so long as the majority of comparable jurisdictions are on the same side of the state as the subject jurisdiction." Because of the foregoing findings, I conclude that there are a sufficient number of available comparators that it is not necessary to cross the "Cascade curtain." The Employer's argument that the economy of Longview is relatively unique in Washington is well taken. The better approach is to recognize that in applying the comparison process than in slanting the list of comparators.

Port Angeles proposed by the Employer is barely half of the population of Longview. It was excluded by Arbitrator Lankford as "being too remote from any metropolitan area." Indeed, it would make more sense to add sister city Kelso to this list than Port Angeles because while it is substantially smaller, it has identical local economic issues. As is necessary to this matter, I have considered Kelso separately when discussing the local area. Accordingly, the comparators are: Bremerton, Des Moines, Lacey, Mt. Vernon and Puyallup.

2. Wages

The Employer argues that wage rates for police officers for the Employer are generally high. It argues that the cost of living and per capita income in this area are lower than the rest of the state and much lower than those in the Puget Sound area. It also argues that its financial emergency and lower revenues make it difficult for it to meet the economic demands of the Guild. Finally, it argues that all other employees have participated in assisting the Employer in its financial crisis and it is only fair that this unit be required by the arbitrator to do the same.

As noted above, the Longview area has been in economic decline for a long time. The cost of living, particularly housing, is lower in this area than the Puget Sound. Although, I do note that the decline in housing values may have caused economic hardship to unit employees who bought their homes before the downturn. While per capita income is down because there are far fewer high paying jobs, it is not necessarily true that there has been a decline in wage rates for the remaining high paying skilled, technical or professional jobs remaining. It is more likely that wage growth for those jobs may have been slower for those jobs than in the Puget Sound area.

[9]City of Port Angeles and Teamsters Local 589, AAA no. 75 300 00215 98 (Wilkinson, 11/99), p. 13.

The turnover evidence of police officers offers some insight as to the effects of competition for likely police officers for Longview. In the three years and a few months starting with calendar 2007, the Employer has lost six officers, more than ten percent of the unit. Two had less than a year's seniority and left because they did not want to pursue a career in law enforcement. Two left for other positions within the City. Two left to accept other police officer positions. The turnover appears higher than in prior years, but it is still not very high. It does not appear that any officers have left for Puget Sound police departments, but some have left for better opportunities in other states. The foregoing suggests that the Employer has had little difficulty in retaining employees. The evidence of two recruits leaving in short order because they did not want to be in law enforcement suggests, but is by no means conclusive, that the Employer is having difficulty finding highly motivated recruits.

The only expert evidence in the record, the "PERF" consulting report rendered in January, 2009, also indicates that the Employer has had difficulty recruiting new employees. It recommended increasing the department's staffing to 59. It also outlines a series of efforts the Employer could make to develop recruits in the growing Hispanic population and among local residents currently serving in the military. I conclude that the Employer is having difficulty getting potential recruits to come to Longview. The report also recommends that the Employer should develop and maintain [emphasis mine] a ". . . comparable compensation and benefit package, professional development and advanced training opportunities. . . ." With that last recommendation in mind, I evaluate the evidence offered.

a. External Comparisons

The purpose of wage rate comparisons under the statutory comparison factor is to gather evidence as to what is the "going rate" for police officers. The purpose of a base wage rate comparison is to evaluate how officers compared at the beginning of the agreement. The following are the comparisons extracted by the arbitrator from the source data for the comparators selected herein. Because there is some ambiguity in the source data, there may be minor errors in the data presented, but it does not affect the result herein.

Jan 1, 2009 Monthly Wage Comparisons				**10 Years**			**Base & Longv**	
		Base Rate	**AA**	**BA**	**Longv %**	**Longv Amt**	**& AA**	**& BA**
Bremerton		$5,851.62	$117.03	$234.06	0.0125%	$73.15	$6,041.80	$6,158.83
Des Moines		$5,103.00	$127.58	$204.12		-	$5,230.58	$5,307.12
Mt. Vernon		$5,762.00	$115.24	$230.48	0.0200%	$115.24	$5,992.48	$6,107.72
Lacey		$5,885.88	$117.72	$235.44	0.0000%	-	$6,003.60	$6,121.32
Puyallup		$6,043.96	$120.88	$241.76	0.0300%	$181.32	$6,346.16	$6,467.04
			-					
Average		**$5,729.29**	**$119.69**	**$229.17**		**$73.94**	**$5,922.92**	**$6,032.40**
Longview	2008 (end)	$5,621.20	$0.00	$224.85		$112.42	$5,733.62	$5,958.47
		-1.9%		**-1.9%**		**34.2%**	**-3.3%**	**-1.24%**

Jan 1, 2009 Monthly Wage Comparisons				15 Years				Base & Longv
		Base Rate	AA	BA	Longv %	Longv Amt	& AA	& BA
Bremerton		$5,851.62	$117.03	$234.06	0.0250%	$146.29	$6,114.94	$6,231.98
Des Moines		$5,103.00	$127.58	$204.12		-	$5,230.58	$5,307.12
Mt. Vernon		$5,906.00	$118.12	$236.24	0.0300%	$177.18	$6,201.30	$6,319.42
Lacey		$5,885.88	$117.72	$235.44	0.0200%	$117.72	$6,121.32	$6,239.03
Puyallup		$6,043.96	$120.88	$241.76	0.0400%	$241.76	$6,406.60	$6,527.48
Average		**$5,758.09**	**$120.26**	**$230.32**		**$136.59**	**$6,014.95**	**$6,125.00**
							-	-
Longview	2008 (end)	$5,621.20	0.00	$224.85		$112.42	$5,733.62	$5,958.47
		-2.4%		**-2.4%**		**-21.5%**	**-4.9%**	**-2.8%**

Jan 1, 2009 Monthly Wage Comparisons				20 Years				Base & Longv
		Base Rate	AA	BA	Longv %	Longv Amt	& AA	& BA
Bremerton		$5,851.62	$117.03	$234.06	0.0775%	$453.50	$6,422.15	$6,539.19
Des Moines		$5,103.00	$127.58	$204.12		-	$5,230.58	$5,307.12
Mt. Vernon		$5,906.00	$118.12	$236.24	0.0400%	$236.24	$6,260.36	$6,378.48
Lacey		$5,885.88	$117.72	$235.44	0.0300%	$176.58	$6,180.17	$6,297.89
Puyallup		$6,043.96	$120.88	$241.76	0.0500%	$302.20	$6,467.04	$6,587.92
Average		**$5,758.09**	**$120.26**	**$230.32**		**$233.70**	**$6,112.06**	**$6,222.12**
Longview	2008 (end)	$5,621.20	0.00	$224.85		$224.85	$5,846.05	$6,070.90
		-2.4%		**-2.4%**		**-3.9%**	**-4.6%**	**-2.5%**

Jan 1, 2009 Monthly Wage Comparisons				Max				Base & Longv
		Base Rate	AA	BA	Longv %	Longv Amt	& AA	& BA
Bremerton		$5,851.62	$117.03	$234.06	0.1050%	$614.42	$6,583.07	$6,700.10

Des Moines		$5,103.00	$127.58	$204.12		-	$5,230.58	$5,307.12
Mt. Vernon		$5,906.00	$118.12	$236.24	0.0400%	$236.24	$6,260.36	$6,378.48
Lacey		$5,885.88	$117.72	$235.44	0.0600%	$353.15	$6,356.75	$6,474.47
Puyallup		$6,043.96	$120.88	$241.76		-	$6,164.84	$6,285.72
Average		**$5,758.09**	**$120.26**	**$230.32**		**$240.76**	**$6,119.12**	**$6,229.18**
Longview	2008 (end)	$5,621.20	0.00	$224.85				

The following were the wage increases granted by the comparators

Comparator	**2009**	**2010**	
Bremerton	5%	2%	
Des Moines	2%	2%	(minimum in each year, 5% maximum each)
Lacey	4.41%	2.5%	
Puyallup	4.5%	2%	(minimum, 5% maximum)
Mt. Vernon	unknown	2.5%	

The sole issue raised by the parties herein is the extent to which there should be cost of living general increases. The Guild is not seeking a wage rate inequity adjustment. The increases granted by the comparators strongly support the Guild's position. The failure to grant like increases will result in this unit losing ground to the comparison group.

b. Area Employers

The Employer relied upon the lower rates paid to sworn law enforcement personnel in Kelso and Cowlitz County as strong support for its position that its officers are well paid. A closer review suggests otherwise. Kelso police officers are paid a maximum of $5,210 and Cowlitz County deputies are paid a maximum of $5,221 for the less senior officers in its two-tier system, increasing to $5,482 in 2010. By direct comparison, they are paid less. However, direct comparison is not appropriate in the light of the way Washington has established its labor relations and arbitration system. Arbitrators here generally view county law enforcement differently than city law enforcement and smaller employers like Kelso generally compare to smaller, lower paying employers. Smaller employers are treated differently in the arbitration statute's rules governing comparisons. There is no evidence that law enforcement officers from either jurisdiction have sought employment in Longview.

In 2008, the top patrolman in Kelso was paid $4,807 per month and that was increased by 8.3% to $5,210. There was no increase for 2010 and no settlement for 2011. It increased its non-union positions by 2% for 2009, but made no change for 2010. The Cowlitz County Sheriff top deputy rate for 2008 was $4,996 per week and that was increased by 4.5% to $5,221 per month for 2009, and by 4.5% to $5,482 per month for 2010. It appears that Cowlitz County has a cost of living escalator for 2011. I note for reference that it increased its general employees by 5% for 2009 and 0% for 2010. It did this at the same time it laid off 35 employees and closed

Fridays. The Longview School District and Lower Columbia College did not have wage increases in 2009 or 2010.

The wage increases which were granted to police officers in the two local comparators appear to have been granted prior to the economic downturn. Therefore, they reflect those employers' assessments of the value of law enforcement personnel in the Longview area economic market before the downturn. The increases granted were substantial and far exceeded cost of living increases granted at that time. I conclude that it is likely that both employers were then seeking to raise the wage level of their law enforcement personnel. I conclude that the above comparators' wage levels are entitled to more weight than the comparison to the local comparators wage rates. I also conclude that wage increases for those local units tend to support the Guild's position, but that the Employer's own financial circumstances tend to outweigh relying upon those comparisons to establish wage adjustments for this unit.

c. Cost of Living

The following were the relevant changes in the cost of living indices:

	Portland	**Seattle**	**U.S.**
End of 2008	3.3%	4.2%	3.8%
End of 2009	.1%	.6%	-.4%
2/2010	n.a.	.6%	-2.1%

Wage adjustments ordinarily are made to account for changes in the cost of living which occurred during the previous year. Thus, the wage adjustment which would be made for January 1, 2009, would reflect the change in the cost of living from the end of 2007 to the end of 2008. The most accurate cost of living data for Longview in order of availability is from Portland, Seattle and then the U.S. national average. By direct comparison the foregoing would support a 3.3% or greater increase January 1, 2009, a .6% increase for January 1, 2010, and based upon an extrapolation from the foregoing a .6% increase in 2011. The cost of living indices are not the only factor parties take into account in determining wage increases. The history of these parties demonstrates that they also do not rely solely upon indices to determine their wage adjustments. I note that reviewing the history of the parties and the past positions of the parties in prior arbitration, unit employees usually fare better than the cost-of-living index, particularly when the indices are low. When they are low, the parties have historically set a 2% minimum. In that regard, the foregoing would support the Union's position.

d. Difficulty in Paying and Internal Actions

The Employer is not denying that it has the "ability to pay" for the Guild's offer. For example, it has the legal authority to take the unpopular action of extending the temporary increase in the B&O tax for another year. It has the ability to reduce services and staff over its entire work force. It can increase response times in the police department and reduce staff here to the minimum necessary to meet its requirements. It could reduce its cost commitment to the 4th of July celebration.

The Employer is correctly asserting that it has difficulty in meeting Guild's demands. In this regard, it was caught by surprise in its budgeting cycle because the national downturn occurred just after it adopted its budget. The downturn resulted in an unprecedented downturn in its revenue. The resulting shortfall was unprecedented and a major portion of its overall general revenue fund. The Employer was forced to deal with the situation on short notice. I conclude it

took a wide range of appropriate actions to reduce its costs before it sought concessions from its employees.

The essence of the Guild's case is that the Employer should have laid off employees and reduced services rather than take actions which it did. The better view of this specific set of circumstances is that the Employer and its other unions met and voluntarily dealt with the circumstances. Many of those organizations had existing labor agreements and did not need to agree to the concessions the Employer proposed to them. Under the circumstances of this case, those agreements are compelling evidence of what parties similarly situated would have done had they been faced with those circumstances. I conclude the Employer is correct in its assertion that the Guild should share in those efforts.

Curiously, both the Guild and the Employer argue that this unit should be treated in a fashion similar to how the other labor organizations were treated. Of course, they disagree as to what that treatment should be. Comparison to the treatment of other employees of the same employer is an "other factor" commonly considered in interest arbitration and accepted in statutory arbitration in Washington.[10] Prior to it realizing that it would have budget problems, the Employer had given its unrepresented professional, technical and management employees 3% raises effective each year for 2009 and 2010. It had already settled most of its collective bargaining agreements for 2009 and 2010. The fire rank and file unit and this unit remained unsettled. When it discovered that it would not be able to meet its planned budget, it contacted all of its union's labor leaders in February, 2009, to ask for some concessions to balance its budget. The Employer and EBA agreed that it could retain its contract provisions for 3% increases, but that they would serve 72 hours unpaid furlough days per year for each year. The Employer and its represented small IAFF fire command staff unit agreed to retain their increases of 3 to 3.5% in each year of 2009 and 2010, but serve similar furloughs. The IAFF rank and file Fire Department unit did not have a collective bargaining agreement with the Employer for 2009 at that time they agreed to a no-increase agreement for 2009, and a 100% of CPI for January 1, 2010. The unsworn police unit represented by AFSCME did have an existing contract with a 2.5% to 3% increase effective for both 2009 and 2010. They took weekend furloughs with a minimum of 72 hours and some volunteering for more.[11] The ATU unit is not funded through the general fund and it is unclear if it is controlled by the Employer. It did receive wage increases of 3.5% effective in January, 2009 and 2.25% effective January 1 of 2010. The Employer granted a 3% increase for all unrepresented employees effective January 1, 2009. This increased their wage rate, but they were required to serve 72 hours of furlough in 2009. Thus, while their wage rate was 3% higher their annual income remained essentially the same as in 2008. There is a dispute on the record as to what occurred for 2010. Management level employees received no general increase for 2010 and did not get merit or other step increases which can be as much as 5%.[12] The Guild contends, but the record is not clear, as to whether other unrepresented non-management employees received a 3% increase for 2010. They served 72 hours of furlough in 2010, but upper management employees did not.

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[10] Bremerton Police Officers Guild and City of Bremerton, PERC case no. 12924-I-97-279 (Axon, 1998); Service Employees International Union, Local 120 and City of Burlington, PERC Case No. 14894-I-99-328 (Axon, 2000).

[11] It is unclear whether there were minimums associated with that cost-of-living-agreement. The IAFF rank and file unit received an unusually generous longevity program in lieu of a general increase for 2009 and 2010, (tr. p. 265-6). It is not possible herein to determine the general increase for senior fire fighters. See tr. pp 89-97, 102-04 for the testimony concerning the February, 2009 discussions. I note that Personnel Manager Berg declined a 3% increase, accepted a 1% increase which he donated to charity and participated in the furlough program. Other management officials may have made similar gestures. Many retained their increases as did other unrepresented employees.

[12] Tr. p. 59

Furloughs were never practical for this bargaining unit. Its staffing level is near minimum levels. It operates on a twenty-four hour, seven-day basis. Furloughs would simply result in additional overtime. What was practical and what similarly situated negotiators would have agreed to was delaying the effective date of similar increases for this unit to the following year. Thus, an increase equivalent to the most of the represented employees would have resulted in no increase for 2009, and a 3% increase effective January 1, 2010, with a 3% increase effective January 1, 2010. Employees would also be entitled to a cost of living increase for inflation occurring in the year 2010, on January 1, 2011, but there has been no significant inflation in 2010. Accordingly, I order that this unit receive no increase for January 1, 2009, because the effective date of the increase for that year is appropriately delayed to January 1, 2010. I order a general increase of 3% effective January 1, 2010. I order a general increase of 3% effective January 1, 2011.

The Employer provided the only costing of the Guild's proposals, Employer exhibit C23. The foregoing order has no cost impact in 2009 beyond existing salaries other than health care cost or other benefit increases. The increase ordered for 2010 has approximately a $115,000 additional cost to the Employer for 2010. I have extrapolated from the testimony of Finance Director Sacha's testimony beginning at page 157 of the transcript and Employer exhibit C23. The ordered benefits will not significantly affect the Employer's ending fund balance and the Employer has the ability to meet them. The total package increase here for 2010 and 2011 are a fair share in the cost savings efforts. Based on the testimony of Finance Sacha, the impact on the finances of the Employer is appropriate.

e. Retroactivity

The parties have historically provided retroactivity payments to all who were employed at the relevant periods. The Employer proposes to add the following language to the wage schedule:

> Retroactive pay will not be applied to employees terminated for cause or prior to the successful completion of their probationary period.[13]

The Employer argues that this is necessary to reduce the costs of trying to locate these people and because payment to them does not produce any useful benefit for the parties. The Union opposes this because these employees have earned their pay.

I award the Employer's position on this issue. The costs associated with locating the former employees who do not pass probation do not warrant the small amounts involved. Employees successfully terminated for cause should be viewed as having forfeited this benefit.

ISSUE 2: DISCIPLINE

The Employer proposes to make three changes to the current Article – Discipline and Discharge. The first is to change the standards stated in the article governing discipline. The second is to add the word "formal" to the following sentence in Section A: "A coaching and counseling shall not be considered *formal* disciplinary action." It proposes to eliminate Section B providing for a written warning step and renumber subsequent sections.

[13] I have inserted the word "their."

The operative language of Section 5.04 before Section A reads as follows:

> It is agreed that there is a difference between willful misconduct and an honest mistake. Willful misconduct is an intentional act on the part of the employee, knowing full well that the act is unacceptable. The response to willful misconduct will be punitive discipline. An honest mistake is a situation where an employee makes an unintentional error; however, an employee making an honest mistake may be subject to disciplinary action if the same or similar mistake continues.

The Employer proposes to replace the above language in its entirety with the following:

> An employee shall be held responsible for breaching the standards and may be subject to the following corrective or disciplinary actions:

It is undisputed that the disciplinary provision of this agreement has remained substantively unchanged for as long as anyone can remember.

The Employer's reason for making the above changes is that it believes that this provision is cumbersome. The Chief testified on behalf of the Employer as to the difficulty he has in interpreting this and his belief that the Guild uses these provisions to help officers escape responsibility for their actions. It appears that there have been disagreements between the Chief and the Guild over what disciplinary action is appropriate in various circumstances. The Employer has pointed to no change in circumstances, however. The fact that the Guild is disagreeing with the Employer now is not likely to have ever been different in the past. It will find another ground to disagree with the Chief in the future even if the changes were made.

The Employer's reason for changing the counseling step appears to make that the oral warning step. The Employer's proposal to change the language of Section B is without merit. The purpose of this provision is to recognize that the Employer has non-disciplinary options to deal with situations which are minor, require training or are fundamentally not disciplinary situations.

The Employer has raised one concern that is meritorious. Section 5.04 is ambiguous as to whether the Employer may discipline an employee for professional negligence. It is not in the public's interest, the employees' interest as a whole, or the Employer's interest to have any provision which leaves in doubt the Employer's right to discipline an officer for negligence. Accordingly, I order the following be added to Section 5.04, Section A: "The foregoing does not prohibit the City from disciplining an employee for negligence." The provision shall otherwise remain the same.

ISSUE 4: SUPPLEMENTAL PAY FOR AA DEGREE

One need only look to the arguments presented by the parties, to understand the issues surrounding the AA degree. The Employer has made two arguments. First, it argues that the AA degree is a basic requirement for employment at Longview and, therefore, an additional supplement does not make sense. The Employer also argues that the parties engaged in *quid pro quo* bargaining and folded the small fixed dollar AA premium into the base in their 1993-5 agreement, and, therefore, it should not be considered. The Employer has elsewhere argued that the economics of the Longview area are different and, therefore, the arbitrator should treat employees differently here than as in the comparator cities. At the same time, the Employer

heavily relies upon comparison of top patrolman wage rates to top patrolman wage rates of employers who do who pay a wage supplement to those employees who attain an associate's degree. The comparison is made to wage rates without the supplemental AA pay. One of the core values of the statutory standards is to compare "apples to apples." In this regard, the appropriate comparison between top patrol officer here and to the comparators is to their top patrol officer rate to the top patrol officer rate plus an AA supplement. Because the AA rate is folded into the top patrol officer rate here, I agree with the Employer to the extent that creating a separate AA supplement is not appropriate.

This proposal amounts to a two percent increase for every officer except those receiving the BA degree pay supplement. The financial circumstances of the Employer are such that the better allocation of this total economic package is in the general wage increase.

ISSUE 5: LONGEVITY

Currently, there are two longevity steps, 2% at 10 years and 4% at 19 years. The Guild proposes to increase this to 3% at 10 years, 4% at 15 years, 5% at 19 years, and 6% at 25 years. The Employer opposes any change.

The Guild argues that even if the arbitrator were to award it's 6% total lift increase over 3 years, it would not be equivalent to the 6% total lift increase (wage rate at the end of the contract) given to most city employees. Additionally, the base increase will still not keep Longview even with the comparators. The PERF report recommended including additional incentives to make wages competitive. The current longevity program is behind internal and external comparables. The IAFF firefighters bargaining unit has a five-step program. It has 3% at 10 years and increases by 1% each five years of service until 7% at 30 years of service. Bremerton and Lacey have better plans. Puyallup has some features better than Longview's. Des Moines does not have longevity but does have a "master police officer" classification.

The Employer argues that the proposal is inconsistent with the serious economic circumstances that it is in. It notes that the current ATU plan is significantly less than the current police plan. Three other units have no longevity at all. The Employer agreed to adjust the IAFF firefighter unit in lieu of a cost-of-living adjustment in 2009. It argues that the Employer's comparators do not support the Guild's position.

The PERF report indicates that hiring motivated recruits is a significant problem here. Recent turnover reports indicate that recent recruits have left because they did not want to be in law enforcement. The better allocation of the limited resources here is to the best general increase possible. I award no change in the current longevity program.

ISSUES 6, 7, 8: OTHER PAY SUPPLEMENTS

The Guild has proposed issues 6, 7, AND 8, which are 2% in addition to base pay for respectively, SWAT team membership, motorcycle officer and K-9 Officer. Addressing the K-9 first, the Guild argued that the K-9 generalist officer should be compensated for the additional services surrounding training and care of the K-9 officer and the fact that there is significant risk to K-9 officers because they are called into the most difficult situations.

The Employer argued that K-9 generalist officer is already rewarded for his or her duties: he or she receives 30 minutes per shift off to groom and care for the dog. This is sufficient

compensation. This is usually used by banking the time off in their compensatory time bank. The Employer argues that none of the comparators have a percentage based compensation for their K-9 officers. Four of the Employer's comparators offer no K-9 benefits. Two do offer benefits which are effectively less than the Employer offers. The Employer notes that the Guild is attempting to keep what it has and add a new benefit. Under the Employer's financial circumstances, the Employer believes this is not the time to add a new benefit.

The Employer has argued that its financial condition precludes considering individual pay adjustment on their merits. When the Employer was aware of its financial circumstances, it took the position that for its non-represented employees it would suspend "merit adjustments," but indicated that it reserved the right to consider circumstances individually. I conclude that the Employer's financial circumstances do not preclude the careful and cost-conscious consideration of individual pay adjustment issues.

Currently, the ordinary K-9 officer receives a half-hour off his or her shift daily and one-half hour per day compensatory time in compensation on his or her days off for his or her services.[14] He or she also receives overtime pay as appropriate when called in on his or her time off to perform work. The Guild does not propose to change that. I conclude that the payment is roughly equivalent to the time spent caring for the dog. There is no evidence that the Employer has ever had difficulty recruiting K-9 officers (the person).[15]

The Union has shown no change in circumstances since the parties' last agreement. There is scant comparability for compensation beyond the equivalent which the officer receives now. While the situations in which K-9 is used may involve more risk, it is likely that there are also significant advantages over other officers. The evidence is insufficient to support a change in the current compensation for the ordinary K-9 officer.

The situation is somewhat similar with respect to the motorcycle officer. There is no evidence that the Employer has ever had difficulty recruiting motorcycle officers. There is no evidence of comparability for supplemental pay for this type of position except for Mt. Vernon.

The situation with respect to the SWAT team is somewhat different. The evidence is not clear the extent to which SWAT members must maintain fitness standards and/or skills beyond those which ordinary officers must maintain. The evidence indicates that the SWAT team is shared with the Cowlitz County and City of Kelso. They do not pay supplemental pay. It appears that the primary motivations for officers to join the SWAT team are the prestige of the position and the potential for advancement. At this point, the evidence indicates that it is premature to establish additional compensation. The arbitrator awards no change on this issue.

ISSUES 10 AND 11: DOUBLE TIME FOR FORCED CALL-IN AND FOR COURT CALL BACK

A. Double Time in General

As to issue 10, the Guild proposes to require the Employer to pay double time when employees, usually junior employees, are forced to work overtime because there are no

[14] The drug K-9 unit is not affected by this proposal.
[15] The compensation of the dog is not in issue.

volunteers to take the overtime. The Employer pays Longview firefighters and battalion chiefs double time for forced overtime.

The Employer argues that the Guild is being unrealistic about the financial times and there is no comparability for this proposal anywhere.

It appears that as the Employer becomes more short-staffed, junior officers are required to work overtime more frequently. This is a legitimate issue which should be addressed by the parties. Even a few seconds thought suggests that the solution proposed by the Guild is not workable. Junior employees would have the incentive to decline voluntary overtime at time and one-half in hopes of being required to work overtime at double time. There is no comparability for this proposal. Fire operations are substantially different than police operations and it is not likely that the fire provision is comparable to what this unit is proposing in practice. I conclude no change is warranted in the agreement on this issue.

B. Court Time

As to issue 11, under the current agreement, officers are guaranteed 3 hours of pay at time-and-one-half if they are required to appear in court in response to a subpoena. The Guild proposes to increase that to double time. The Employer opposes this as wasteful and unnecessary. It also notes that none of its comparators pays anything beyond time and one-half. The Guild offered testimony[16] that they believed that the parties had agreed to this provision in their last agreement. The evidence is insufficient to establish that the Employer did agree to this. There is no evidence of comparability on this issue. It is not in the public interest to establish a greater level of compensation for court-time than is appropriate. The arbitrator orders no change as to this issue.

ISSUES 12 AND 15: FOURTH OF JULY

The parties made competing proposals about the Fourth of July period and I consider those together. They are issues 12 and 15. The facts are not seriously disputed. There is a large Fourth of July celebration in Longview over that weekend. It has grown over the years and because another area publicly-funded event has been cancelled it is likely to be even larger. Upwards of 30,000 people are expected to flood into Longview for the Fourth of July this year. Even with the use of reserve police officers, this event taxes the resources of the Longview police department. The parties have successfully dealt with this issue over the years and have memorialized their agreement in various memoranda of understanding. The Employer proposes to incorporate the current Memorandum of Understanding (herein "MOU") into the new agreement so that it need not be renewed from year to year. It also proposes that employees not be allowed to use discretionary leave if they are regularly scheduled to work on the Fourth. The Guild does not oppose the idea of incorporation of the MOU into the agreement, but has proposed revising it and opposed the additional new language. It countered with its own proposed revisions to require the Employer to post the Fourth of July voluntary overtime opportunity for employees by May 1 of each year and the list of officers required in inverse order of seniority to work overtime on that date by May 31. This is current practice. The Employer does not seriously object to this change. The Guild also proposes that officers who volunteer or who are mandated to work overtime on the Fourth of July be paid double time instead of the

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current time and one-half. The Employer strongly opposes that solution primarily on a cost basis.

The Guild's testimony focused largely upon the fact that off time is important to all officers and that the imposition of loss of this holiday particularly to junior officers who are repeatedly required to work overtime. The Employer focused on the fact that working on holidays is a fundamental part of police work, its unique needs, lack of comparability for the Guild's proposal, the difficult precedent which this would create and the cost involved.

The Employer's position that working holidays is part of police work is correct, but goes too far. Its language concerning the use of discretionary leaves is in keeping with the unique local need it has. However, as the parties made their presentations on this matter, it was apparent they were talking past each other. In their presentations they each alluded to potential solutions which the arbitrator in his mediator role in other settings recognizes provided the basis for a number of potentially unique solutions and possibly a good evening's mediation. The parties have demonstrated a willingness to work together on this issue, an ability to recognize some of those solutions and continued to do so during the presentations on this issue. The fundamental point underlying the Guild's position is that current milieu of solutions is causing stress particularly to junior members is worthy of consideration. There are unique local situations which this arbitrator believes he should stay out of. This is one. Accordingly, I order the following essentially mutually agreed change. First, I order that the MOU, now Attachment E of the past contract be incorporated into the agreement. Second, I order that Section 2 be revised to read in its entirety:

> The overtime will be posted by May 1 of each year. If by 5p.m. on May 30, there remains unfilled overtime slots necessary to cover the 4th of July event at the Lake, then officers on their days off will be mandated to work overtime in reverse order of seniority. The list of officers so mandated to work will be posted no later than May 31st.

ISSUES 13 AND 14: ANNUAL LEAVE

Arbitrator Lankford in the award between the parties for their immediately preceding agreement, starting at page 18, addressed the Employer's concern that accumulation of time off was creating an excessive accumulating fiscal liability which under new GASB rules and its policy of actually reserving funds for future liabilities would create an undue leave-time accumulation strain on its budgets. Under the agreement as amended by Arbitrator Lankford, employees had a combined vacation and holiday benefit. Under that agreement they could accumulate unused vacation and holiday. Arbitrator Lankford awarded the language now appearing in Article 11.02 which required employees to use or cash out 40 hours of holiday leave and use the remaining 56 hours of holiday leave, in the year in which it was earned. The Employer contends that under the language which was created, the holiday and vacation hours are still recorded together and, therefore, it has been difficult to account for whether employees have complied with that new requirement. It proposes to make the following change (italics):

> *Employees shall receive 96 hours of accrued holiday leave annually to be maintained in a separate holiday leave bank. This bank of holiday leave will be posted on January 1 of each year and must be used subject to the provisions listed below.* Employees shall accrue four (4) hours of holiday leave each pay period for a total of 96 annual hours. Such holiday leave shall be included in the

employee's annual vacation leave balance in accordance with Section 11.05, paragraph (A). Effective January 1, 2008, *the use of holiday time will be governed by the same criteria as vacation time and considered as hours worked for calculation of overtime.* Employees may cash out forty (40) hours of holiday leave at the end of November to be paid on the November 16-30 pay period. Employees must use the additional fifty-six (56) hours of holiday leave by the end of the calendar year in which the holidays are earned. Cash-out of holidays shall be at the employee's straight hourly rate of pay. *Employees who do not work the entire 12 months of the year in which holidays are granted will have holiday hours deducted in a pro rata manner from the holiday balance or if holiday hours have been exhausted other forms of leave will be deducted or a reduction taken from wages earned.*

The evidence indicates that the proposal improves the opportunity for employees to use holiday time. Under current practice holiday time is credited as earned. Under the new procedure, it may be used from the beginning of the year, subject to pay back. The testimony also indicates that the changes are necessary in order that the Employer may adequately account for the administration of this benefit and to be able to provide pay stub information to employees so that they can account for their use of the time. The Employer's proposal on this issue is, therefore, adopted.

ISSUES 16 AND 17: DENTAL/ORTHADONTIA COVERAGE

The current agreement requires that the Employer provide dental coverage through Washington Dental Plan. The Washington plan does not provide any orthodontia coverage. The Guild proposed to require the Employer to offer an additional dental plan to employees and to offer orthodontia coverage, both commencing January 1, 2009.

The Employer understood this to require it to get orthodontia coverage from Washington or another carrier. It noted that no carrier would make this type of insurance coverage retroactive. If it were to get coverage from Washington or another carrier, it understand that it would be required to provide coverage to all employees of the Employer in this unit which would be an additional cost.

The Guild indicated that the intent of its proposal was not to be retroactive. Further, the Employer currently offers a second dental plan to its other employees. This plan is herein called the Willamette Dental Plan, "Willamette" for short. That is the only plan they intended to include. There are currently employees with young families who need the coverage.

Employer witnesses acknowledged that they do offer Willamette to other employees, but that Willamette is in the form of an HMO. It has its major facilities in a neighboring county, but one office in this county. Few employees have selected it in the other units. It is unclear if offering this plan creates any practical difficulty to the Employer. The Employer conceded in its brief that it would be willing to offer the Willamette plan prospectively, but not retrospectively. I agree that it should not be retrospective.

I, therefore, order the adoption of the additional sentence to Article 14.01 A.3; "Commencing one full calendar month after the signing of this agreement, the City shall offer the Willamette dental plan including its orthodontia coverage as a second option for unit employees as is currently offered to other City employees."

ISSUE 20: LEGAL FEES

The Employer currently has a policy of indemnifying employees for legal fees and judgments arising from the faithful performance of their duties as police officers. The Guild is satisfied with the Employer's current handling of civil matters. There is no contract language memorializing that fact. The Employer does not reimburse police officers if they are charged criminally for any of their legal fees under any circumstances. It maintains that position.

The Union has proposed the adoption of an extensive provision which requires that the Employer indemnify employees for civil judgments and legal fees as well as criminal legal fees. It exempts the Employer if the employee pleads guilty or is convicted. It also exempts the Employer if disciplinary charges are sustained. The limit proposed is $5,000 for an inquest investigation and $10,000 for a "charging instrument." It agrees that it is rare for officers to be charged with a crime. The decision is to be made by the Employer. The Employer's liability is limited.

The Employer opposes the Guild's proposal on the basis that no other jurisdiction has language obligating that employer to pay legal fees, except Des Moines. It is not covered by insurance for criminal charges. Officers are rarely charged criminally. If a prosecutor makes a determination to charge an officer, there is no basis for paying legal fees.

Sergeant Jones testified for the Guild to the facts underlying this proposal. It is undisputed that having officers who are ever be charged criminally is a rare event and apparently until recently has not occurred here. A female officer was charged with a criminal offense during the term of the agreement. She was prosecuted and successfully defended herself. Sergeant Jones belief was that the employee had been entirely innocent.

This does constitute a change in circumstances. It appears to be the first time that this issue has arisen in which the Guild did not question why the Employer should not reimburse criminal legal fees. The Guild has shown little comparability for its proposal. The absence of comparability may be because the issue has not occurred in smaller departments, the parties may be satisfied with other employers' unilateral policies, or other jurisdictions have a similar policy to that of this Employer. Under the circumstances the wholesale adoption of the broad policy proposed by the Guild is not warranted.

The Guild's proposal not only requires that the Employer pay criminal legal fees, it transfers to a labor arbitrator issues concerning whether they should be paid at all and how much should be paid. The evidence of the Employer's functioning in civil situations is that it has been acceptable to the parties and retains to the Employer, its insurers and to the courts, if necessary, the issues which the Guild proposes to transfer to a labor arbitrator.

The public interest is a factor commonly considered in public sector interest proceedings. The public interest is a factor heavily supporting part of the Guild's proposal; that entirely innocent officers who in good faith perform their duties in accordance with the Employer's policies and procedures be protected by their employer. That part is that the Employer will make a judgment on a case by case basis upon the facts as to whether it would reimburse criminal legal fees. Once an honest decision is made, review of that decision, if any, should be left to the Washington judicial system.

Accordingly, I order the adoption of the following language in place of that proposed by the Guild to be included in a new article of the agreement.

> The City currently indemnifies and defends employees against civil claims and judgments arising out of the performance of their official duties. The City agrees to reimburse an employee for necessary, reasonable, usual and customary legal fees charged by an attorney for representing him or her in criminal proceedings arising from circumstances which occurred from the good faith performance of his or her duties in substantial compliance with the City's policies and procedures. The determinations to be made under the preceding paragraph shall be in the sole discretion of the Employer and shall not be subject to the grievance and arbitration procedure. Nothing in this paragraph shall limit the right of the individual employee to pursue his or her individual rights, if any, involving the subject matter of this paragraph in the courts. The maximum the Employer shall be required to contribute to legal fees shall be $10,000.

I note the purpose of the first sentence is to make it clear that should the Employer make a significant change in its policies in handling civil issues, it may be required to bargain the decision or the impact thereof as may be determined by the Commission. The criminal provisions require the Employer to make a case-by-case determination based on the circumstances surrounding the criminal charge as to whether it will pay criminal legal fees and the amount it will contribute. It sets a maximum of $10,000.

AWARD

I award as follows:

Issue 2: Add the following sentence Section 5.04A and make no other change:
"The foregoing does not prohibit the City from disciplining an employee for negligence."

Issue 3: Increase wages across-the-board by 3% effective January 1, 2010, and again January 1, 2011.

Add the following language to the wage schedule:

Retroactive pay will not be applied to employees terminated for cause or prior to the successful completion of their probationary period

Issues 4, 5, 6, 7, 8, 10, and 11: no change from past agreement

Issues 12 and 15: incorporate Attachment E into the body of the agreement and revise Section 2 read in its entirety:

> The overtime will be posted by May 1 of each year. If by 5p.m. on May 30, there remains unfilled overtime slots necessary to cover the 4th of July event at the Lake, then officers on their days off will be mandated to work overtime in reverse order of seniority. The list of officers so mandated to work will be posted no later than May 31st.

Issues 13 and 14: include Employer proposal in new agreement and revise Section 2 thereof to read in its entirety:

> The overtime will be posted by May 1 of each year. If by 5p.m. on May 30, there remains unfilled overtime slots necessary to cover the 4th of July event at the Lake, then officers on their days off will be mandated to work overtime in reverse order of seniority. The list of officers so mandated to work will be posted no later than May 31st.

Issues 16 and 17: Add the following sentence to Article 14.01 A.3; "Commencing one full calendar month after the signing of this agreement, the City shall offer the Willamette dental plan including its orthodontia coverage as a second option for unit employees as is currently offered to other City employees."

Issue 20: Adopt the following new article:

> The City currently indemnifies and defends employees against civil claims and judgments arising out of the performance of their official duties. The City agrees to reimburse an employee for necessary, reasonable, usual and customary legal fees charged by an attorney for representing him or her in criminal proceedings arising from circumstances which occurred from the good faith performance of his or her duties in substantial compliance with the City's policies and procedures. The determinations to be made under the preceding paragraph shall be in the sole discretion of the Employer and shall not be subject to the grievance and arbitration procedure. Nothing in this paragraph shall limit the right of the individual employee to pursue his or her individual rights, if any, involving the subject matter of this paragraph in the courts. The maximum the Employer shall be required to contribute to legal fees shall be $10,000.
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> Dated this 7th day of August, 2010

Stanley H. Michelstetter, Arbitrator