IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN	**INTEREST ARBITRATION OPINION AND AWARD**
CITY OF LONGVIEW, WASHINGTON	
and	**PERC NO. 18123-I-04-0426**
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 828	**Date Issued: January 11, 2005**

OPINION AND AWARD OF THE NEUTRAL CHAIRMAN

Neutral Chairman
Michael H. Beck

Arbitrator—City of Longview
Nelson A. Graham, P.E.

Aribtrator—International Association of Firefighters, Local 828
Ricky J. Walsh, Vice President District 7

Appearances
City of Longview
Bruce L. Schroeder
International Association of Firefighters, Local 828
Alex J. Skalbania

CITY OF LONGVIEW

and

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 828

INTEREST ARBITRATION OPINION AND AWARD

TABLE OF CONTENTS

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OPINION OF THE NEUTRAL CHAIRMAN

I. PROCEDURAL MATTERS

The Neutral Chairman selected by the parties is Michael H. Beck. The Arbitrator appointed by the City of Longview is Nelson A. Graham, P.E. The Arbitrator appointed by the International Association of Firefighters, Local 828 is Ricky J. Walsh, Vice President, District 7. The Employer, City of Longview, was represented by Bruce L. Shroeder of the Summit Law Group, PLLC. The Union, International Association of Firefighters, Local 828 was represented by Alex J. Skalbania of the law firm of Emmal Skalbania & Vinnedge.

A hearing in this matter was held at Longview, Washington on June 8, 9 and 10, 2004. At the hearing the testimony of witnesses was taken under oath and the parties presented documentary evidence. The record was extensive, comprising a stack of

documents over 14 inches high. The parties provided for a court reporter and a transcript was made available to the Neutral Chairman for his use in making his determination of the issues in dispute.

The parties agreed upon the submission of post hearing briefs which were timely filed and received by the Neutral Chairman on September 14, 2004. At the request of the Neutral Chairman the parties waived the requirement contained in RCW 41.56.450 that the Neutral Chairman issue his written determination of the issues within 30 days following the conclusion of the hearing.

On December 6, 2004 the Neutral Chairman issued a Memorandum addressed Arbitration Panel Members Nelson A. Graham and Ricky J. Walsh setting forth tentative conclusions with respect to each of the issues in dispute. On January 6, 2005 the Neutral Chairman met with Panel Members Graham and Walsh in Longview, Washington. Both Panel Members Graham and Walsh raised certain concerns they had regarding some of the conclusions set forth in the Memorandum.

Based on the record in the case, and the concerns raised by the Panel Members at the January 6, 2005 meeting, the following represents my Opinion and Award with respect to the issues in dispute.

II. BACKGROUND AND NATURE OF DISPUTE

On January 12, 2004 Executive Director Marvin L. Schurke of the Public Employment Relations Commission certified six issues for interest arbitration pursuant to RCW 41.56.450. With respect to three of these issues; Salaries and Wages, Hours/Schedules, and Insurance Benefits the parties presented the Arbitration Panel with

several sub-issues. The other three issues before the Arbitration Panel are; Vacations, Training, and Trading Privileges, also referred to as Shift Trades.

The unit represented by the Union here at the time of the hearing consisted of two captains, seven lieutenants and twenty-seven firefighters.

In addition to the firefighter unit, there are employees in five other bargaining units as well as non-represented employees. Employees in two of the five units, namely the police and the fire battalion chiefs, are subject to the State of Washington Interest Arbitration Law.

The parties have agreed upon a three year Agreement effective January 1, 2003 through December 31, 2005.

III. COMPARATORS

In order to resolve issues in dispute between public fire departments and firefighters, RCW 41.56.465(c)(ii) requires the Interest Arbitration Panel to establish a list of public fire departments of similar size and employing like personnel on the west coast of the United States. The statute also provides that when an adequate number of comparable employers exist within the State of Washington, other west coast employers may not be considered. Here, both parties agree that an adequate number of comparable employers exist within the State of Washington.

The Union proposes the following comparators: Auburn, Bremerton, Edmonds, Lynnwood, Mt. Vernon, Olympia and Puyallup for a total of seven comparators.

The City proposes the following comparators: Bremerton, Lynnwood, Mt. Vernon, Mukilteo, Pasco, Port Angeles, Puyallup, Richland, Walla Walla, and Wenatchee for a total of ten comparators.

Four of the comparators are proposed by both parties, namely: Bremerton, Lynnwood, Mt. Vernon, and Puyallup. The parties also are in agreement that cities receiving fire suppression services from fire districts rather than supplying such fire suppression services themselves to their citizens should not be included as comparators.

The last time the City and the Firefighters went to Interest Arbitration was in 1986 with respect to the 1986—87 Collective Bargaining Agreement. Additionally, George Lehleitner who issued that Interest Arbitration Opinion and Award stated at page 10 that the City and the Firefighters had not gone to interest arbitration with respect to any collective bargaining agreement prior to the 1986—87 Agreement.

Neither party has contended that the comparators selected by Arbitrator Lehleitner should be used in this case. Instead, the Union wants the comparators to be used in this case to be based on an Interest Arbitration between the City and the Longview Police Guild issued on October 8, 2001 by Interest Arbitrator Luella E. Nelson with respect to those parties 2000-2002 Collective Bargaining Agreement, hereinafter the Nelson Award. Arbitrator Nelson established a list of nine comparators. The seven sought by the Union in this case, as well as two additional cities, Lacey and Des Moines. However, the Union did not include these two cities as the fire suppression work in these cities was performed by fire districts, leaving the Union with seven comparators.

In selecting its proposed comparators, the Employer decided to identify city fire departments of similar size by looking at the population and assessed valuation of cities

that fell within a band of 50% and 150% of Longview. Thus, to be included in this list a city had to have a population of at least 17,645 but no more than 52,935 since the Longview population in 2003 was 35,290. With respect to assessed valuation the use of the 50% plus and 50% minus standard resulted in an assessed valuation range of 999 million to 2,998 million as the assessed valuation of Longview in 2003 was 1,998 million. (All assessed valuation figures have been rounded off to the nearest million.)

Vickie Taylor, the Employer's Human Resources Director, testified that when a screen of cities is run for 50% plus and 50% minus the population and assessed valuation figure for Longview, ten cities are included. It is these ten cities which the Employer proposes as the comparators. Ms. Taylor's testimony is supported by several Employer exhibits set forth in Exhibits Nos. B.1-B.10. I agree with the Employer that the Union's reliance on the Nelson Award as the basis of its proposal regarding the comparators to be used in this case is not appropriate.

In her Arbitration Opinion and Award, Arbitrator Nelson reported that both parties agreed that the comparators should have a population within 50—150% of that of Longview. When this screen was run it was found that the 31 Washington cities were within this band. Arbitrator Nelson chose nine of those 31 cities stating that in doing so she was including:

> [T]he stipulated jurisdictions of Bremerton, Lacey and Olympia. It also gives weight to the parties' history of using certain comparators; Auburn, Edmonds, Lynnwood, and Puyallup will be included for this reason. . . . Des Moines and Mt. Vernon are both smaller cities which offset the larger jurisdictions that dominated the historic comparators. . . . (Nelson Award pg. 9.)

In the instant case, the Union determined to drop two comparators from the list established by Arbitrator Nelson because, unlike the situation involving police protection, the cities of Lacey and Des Moines did not provide their own fire suppression services. In dropping two of nine comparators, the Union has reduced the list of comparators established by Arbitrator Nelson by 22.2%. Additionally, one of those two cities, Des Moines, was included by Arbitrator Nelson since it was a smaller city "which offset the larger jurisdictions that dominated the historic comparators." (Nelson Award, pg. 9.)

With respect to the firefighter bargaining unit, no evidence was presented to indicate that the parties have traditionally used certain cities as comparators in past bargaining negotiations. In fact, of the 13 separate comparators proposed by either the Union or the Employer in this case, only one was included on the list of eight comparators selected by Arbitrator Lehleitner in his February 19, 1987 Award, namely Olympia. Olympia was selected by Arbitrator Lehleitner as it was proposed by both the Union and the City at that time.

The Union notes that Arbitrator Nelson excluded as comparators three jurisdictions in Eastern Washington proposed by the Employer, namely Pasco, Richland and Wenatchee and contends that even if the Arbitrator does not adopt the Union's proposed comparators, he should not include cities located in Eastern Washington as comparators. However, I note that the circumstances surrounding Arbitrator Nelson's decision to exclude these three jurisdictions was her determination to give "considerable weight to the comparators previously used in negotiations." (Page 7.) Furthermore, Arbitrator Nelson noted:

> Other than arguments of counsel, no explanation has been given for the sea change in comparators used by the city mid-

> bargaining. The Arbitrator has compared the jurisdictions deleted from the City's prior list with those substituted. The striking characteristic of the substitutions is that most of the jurisdictions the City would add are smaller, poorer and more geographically distinct from the City than those it would delete. (Nelson Award, pg. 7.)

In the instant case, as already described, there is no evidence establishing a practice by the parties of using particular comparators during prior negotiations. Furthermore, the circumstances described in the above quoted paragraph are not present in the instant case.

I do agree with Arbitrator Nelson that the location of a comparator within the state is a factor that may be taken into account by an interest arbitration panel. One can reasonably argue that geographic location is not an appropriate consideration regarding comparators since the language of RCW 41.56.465(c)(ii) provides only for a comparison "of like personnel in public fire departments of similar size," in this case within the State of Washington. However, geographic location certainly meets the test set forth in RCW 41.56.465(f) in connection with other factors, "normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment."

Interest Arbitrators have found it convenient to take into account the geographic location of the city or county in dispute by considering its location in connection with the determination of the appropriate comparators. Taking location or geographic proximity into account, I find, as did Arbitrator Nelson, that Port Angeles is not an appropriate comparator as it is located a significant distance from Longview in a relatively isolated portion of the state. Moreover, it has both the smallest population and lowest assessed valuation of the ten comparators. On the same basis, I would exclude Walla Walla, that is it is located a significant distance from Longview in the southeastern portion of the

state. Furthermore, with the elimination of Port Angeles, Walla Walla has the lowest assessed valuation of the remaining nine comparators.

Finally, I would add as a comparator Olympia, which of all the comparators proposed by the parties is the closest in location and has been used by the City of Longview, the Firefighters and the Police as a comparator. As mentioned above, Arbitrator Lehleitner reported that Olympia was an agreed upon comparator at the time of his Interest Arbitration Award, and Olympia was also agreed upon by the City and the Police Guild at the time of the Nelson Award. Olympia does meet the 50+ 50- criteria for population, as it is slightly above this standard with respect to its assessed valuation. Olympia's assessed valuation at 3,115 million, is only 3.9% above the 50% plus assessed valuation standard, which is 2,998 million.

The final list of comparators, listed in order of population is: Olympia, Richland, Bremerton, Pasco, Puyallup, Lynnwood, Wenatchee, Mt. Vernon and Mukilteo. These nine comparators include six in Western Washington and three in Eastern Washington. The comparators selected were not cherry picked by the parties or the Arbitration Panel. Instead, a system of 50+ and 50– with respect to population and assessed valuation was used to reduce the comparators to a usable number and then an adjustment was made to take into account geographic location. It is my hope that selecting comparators in this fashion will allow the parties to see these comparators as fairly selected and thus willing to use them over the course of the next several negotiations in order to bring stability to the bargaining process.

I wish to point out that Arbitrator Nelson, in reaching her set of comparables, did not rely on assessed valuation. With respect to firefighters as opposed to police, it is

clear that the majority of the work of firefighters is protecting property and, therefore, assessed valuation can reasonably be argued to be more relevant with respect to establishing comparators in cases involving firefighters than in cases involving police officers.

The Union contends that the assessed valuation of the City may be low since it does not reflect the fact that the City provides fire suppression services to certain businesses located outside the city limits. However, this practice is not unique to Longview and there is no agency, to my knowledge, which provides assessed valuation figures for cities in this State based on the service area for which a city fire department provides fire suppression service. Furthermore, no such information was provided in this matter with respect to any of the Union or Employer proposed comparators.

Finally, I wish to point out that if the Union proposed comparators were adopted the average comparator would have a population 6.7% above Longview and the average comparator would have an assessed valuation 36.6% higher than Longview. If the Employer comparators were adopted, Longview would have a population 13.5% above the average comparator and 9.6% above the average comparator with respect to assessed valuation. With respect to the comparators selected by your Arbitrator, the population of Longview is only 4.0% above the average. With respect to assessed valuation, however, the average of the comparators is 6.5% above Longview. Thus, the comparators selected closely resemble Longview.

IV. WAGES AND SALARIES

A. General Wage Increase

The Union's proposed wage increase is as follows:

1. Effective January 1, 2003: wages at each step of the base salary for the position of Firefighters and Fire Mechanic shall be increased by 8.8% above December 31, 2002 levels.
2. Effective January 1, 2004: wages at each step of the base salary for the position of Firefighter and Fire Mechanic shall be increased above their December 31, 2003 levels by a percent equal to 100% of the Portland, Oregon Consumer Price Index (CPI-W) for the period July 1, 2002 to July 1, 2003 provided the percentage adjustment will be no less than 2.5% and no more than 5%.
3. Effective January 1, 2005: wages at each step of the base salary for the position of Firefighter and Fire Mechanic shall be increased above their December 31, 2004 levels by a percent equal to a 100% of the Portland, Oregon Consumer Price Index (CPI-W) for the period July 1, 2003 to July 2004 provided the percentage adjustment will be no less than 2.5% and no more than 5.0%.

The Employer's general wage increase proposal is as follows:

1. A 2% wage increase for the position of Firefighter and Fire Mechanic above the December 31, 2002 rate. This increase shall be retroactive to January 1, 2003 for all bargaining unit members employed at the time the 2003-2005 Collective Bargaining Agreement is settled.

2. Effective January 1, 2004: wages for the position of Firefighter and Fire Mechanic shall be increased above their December 31, 2003 levels by a percent equal to 85% of the Portland, Oregon Consumer Price Index (CPI -W) for the period from July 1, 2002 to July 1, 2003.
3. Effective January 1, 2005: wages for the position of Firefighter and Fire Mechanic shall be increased above their December 31, 2004 level by a percent equal to 85% of the Portland, Oregon Consumer Price Index (CPI-W) for the period July 1, 2003 to July 2004.

The Employer proposal to modify the salary structure to adjust the step intervals to be set at 4% or 5% intervals was withdrawn by the Employer during the hearing.

The Employer contends that with respect to the comparators in considering a general wage increase, the base wage should be used. Further, the Employer contends that since one third of the 27 firefighters receive a 5% premium above the top step firefighter rate because they serve as driver/operators, the Longview figure to use in making comparisons should be an average of the top step firefighter and driver/operator wage rate. However, among the comparators that don't provide a driver/operator premium are those that do provide other premiums, for example, a premium for firefighters who also serve as paramedics. Such a premium is not available in Longview.

Traditionally, when base wage rates are compared for purposes of wage comparisons in connection with interest arbitrations, the comparisons are made without trying to take account of the wide variety of premium and specialty pays. Captain Randal Bradshaw has been involved on behalf of the Union in contract negotiations for the past 12 years and has also held the office of either Union President or Vice President over the

that period of time. It was his uncontroverted testimony that the parties in the past when comparing top step firefighter wages in various comparators as a basis of negotiations did not average the wage figures received in Longview by the top step firefighter and the driver/operator pay.

The Union contends that the most appropriate manner in which to compare firefighters is to use total hourly compensation, which would include the base wage as well as all other pays received by a top step firefighter divided by the number of hours actually worked. I have set forth below a chart showing for both 2002 and 2003 the base wage rate for a top step firefighter and have compared that to the same figure for Longview in 2002. The chart also provides total hourly compensation figures.

The figures used in this chart come from Revised Union Exhibits Nos. 50 and 51. In this regard, I note that the Union, at page 32 of its brief, states that the parties did agree to certain minor adjustments in the data contained in those revised exhibits. These adjustments actually favor the Employer.

The Employer, however, in its brief, beginning at page 19, contends that the Union used a "hodge-podge" approach to calculating annual work hours by assuming 52 weeks in a year from some comparables and 52.14 weeks in a year for others. The result, according to the Employer, is an "apple to oranges" comparison. The Employer then sets forth two charts comparing the hours listed on Union Exhibit Nos. 50 and 51[1] with what it calls, "HOURS CORRECTED FOR 51.14 WEEKS PER YEAR." With respect to the Union comparators, the result is an average annual figure of six more hours than is shown

[1] The figures used by the Employer were taken from Union Exhibit Nos. 50 and 51 and not Union Revised Exhibit Nos. 50 and 51. The only differences occur with respect to Pasco and Richland.

on Revised Union Exhibit No. 50.[2] With respect to the Employer comparators, a proper result cannot be obtained as the Employer did not include Richland in its chart at page 20 of its brief, nor has it provided any explanation for failing to do so.

I have carefully reviewed the transcript of the proceedings, and at no time during the proceedings did the Employer put on any evidence regarding the claim now made in its brief that the Union improperly computed annual hours. I have no choice but to rely on the Union's figures in this regard.

I agree with the Employer's criticism of the inclusion of specialty pay in computing total hourly compensation in Revised Union Exhibit Nos. 50 and 51 since the extent of employee participation in specialty pay in the various comparators that provide such pay is not clear from the record. Therefore, I have determined to exclude specialty pay from inclusion in the computation of total hourly compensation and have set forth in the chart below total hourly compensation with specialty pay excluded.

In the chart below I have given base wage figures for 2002 and 2003. The chart does not contain hourly compensation figures for 2002 as those were not presented by the parties and it would be difficult and quite time consuming to attempt to do so, even assuming that all necessary information is contained in the record.

[2] Union Revised Exhibit No. 50 and Union Exhibit No. 50, listing the Union comparators, contain identical figures with respect to annual hours.

Base Wage Rates for Comparators in 2002 and 2003
(Rounded to Nearest Dollar) and Hourly Compensation

Comparator Listed in order of 2003 Base Wage Rate	2002 Base Wage Rate	2003 Base Wage Rate	2003 Hourly Compensation
Puyallup	$4,856	$4,978	$30.09
Bremerton	$4,711	$4,906	$27.63
Lynnwood	$4,737	$4,867	$30.27
Olympia	$4,644*	$4,830*	$27.22**
Mukilteo	$4,503	$4,670	$26.22
Pasco	$4,279	$4,453	$24.19
Richland	$4,253	$4,403	$27.17
Mt. Vernon	$4,140	$4,316	$25.19
Wenatchee	$4,163	$4,288	$24.18
Average	$4,476	$4,635	$26.91
Longview 2002	$4,551	$4,551	$25.31
Difference:	Longview 2002: 1.7% Above Average	Average 2003: 1.8% Above Longview 2002	Average 2003: 6.3% Above Longview 2002

Average Base Wage Rate Increase of 9 Comparators 2003 Over 2002: 3.6%

* Olympia Wage Rate less mandatory deferred compensation contribution of 1.5% in 2002 and 2.5% in 2003.

** Olympia Hourly Compensation includes $123.84 deferred compensation contribution.

The chart shows that the average increase in the base wage of the comparators in 2003 over 2002 was 3.6% The chart also shows that in 2002 Longview's base wage rate of $4,551 ranked Longview 1.7% above the average of $4,476.

With respect to hourly compensation,[3] the average comparator in 2003 is 6.3% above the same figure for Longview in 2002. A significant part of this difference relates to total hours worked.[4] In this regard, the average total hours worked in the comparators for 2003 is 2264. The total hours worked by firefighters in 2002 at Longview was 2305, meaning that Longview firefighters worked 41 hours more total hours than the average of the comparators on an annual basis. This places Longview firefighters 4th out of 10 comparators, including Longview, in total hours worked, and 1.8% above the average.

All of the foregoing demonstrates that based on a comparison of the comparators to Longview, Longview firefighters are entitled to a raise in excess of the 2% proposed by the Employer. The question that remains is, how much in excess of 2% is appropriate?

The Union contends that the Arbitration Panel should base an increase on the average hourly compensation received by the comparators, which is 6.3%. However, the Union based its wage proposal on the 2003 average hourly compensation of the Union's proposed comparators over Longview in 2002 which was 12.72%. The Union sought an 8.8% increase, stating that its base wage proposal was designed to allow Longview firefighters to make "significant progress" (Union brief, pg. 15) towards receiving hourly compensation close to the average of the comparators. The Union also states that it has made additional proposals to improve Longview firefighters hourly compensation in order to give the Arbitration Panel "some flexibility" (Union brief, pg. 15) toward the

[3] In computing hourly compensation, the Union used a 13 year Firefighter. The Employer has not contended that the use of a 13 year Firefighter in this regard is improper and I have relied on the Union's figures.

[4] Total hours includes annual hours less vacation and holidays

Union's overall goal of significant progress in hourly compensation that is close to the average of total hourly compensation of the comparators.

My experience as an Interest Arbitrator, which goes back approximately 25 years, teaches that most arbitrators are unlikely to award an amount that would fully close a gap in hourly compensation over the course of one contract, particularly in a non-inflationary environment as has been the case over the past few years. However, significant progress in closing that gap is warranted. Therefore, I conclude that a raise that would close the gap by 75% would be appropriate. Such a raise comes to 4.7%, which would provide a base rate of $4,765. A raise in the base wage rate $4,765 would place Longview 5th of the 10 comparators, including Longview, the same position it held in 2002, but Longview will be 2.8% above the average of the nine comparators in 2003 as opposed to being only 1.7% above the average of the nine comparators in 2002.

In comparison, the 2% raise proposed by the Employer in base wage rate would leave Longview firefighters with a base wage rate of $4,642, dropping Longview to 6th out of the 10 comparators including Longview, and less than 0.2% above the average of the comparators. Thus, a 2% general wage increase would leave Longview firefighters in a considerably worse position than they were in 2002 vis-à-vis the comparators. Additionally, I find that the evidence does not support the Employer's proposal that the wage increase be retroactive only for those bargaining unit members employed at the time the 2003-05 Agreement is settled by an arbitrator ruling.

With respect to the second two years of the Agreement, I note that at least for the past two contracts the parties when using the CPI as a basis of establishing wage increases have used 85% of the Portland CPI-W with a minimum of 2.5% and a

maximum of 5%. The CPI for the relevant periods with respect to establishing the wage increase for 2004 and 2005 is less than 2.5%. In determining to order a 2.5% increase for the second two years of the Agreement, I note the increases in the comparators in 2004 as compared to 2003. Union Exhibit No. 52 lists these increases for six of the nine comparators, which had settled at the time of the hearing. The average of these six comparator increases in 2004 over 2003 is 2.7%.[5] The foregoing supports a 2.5% increase in 2004 and 2005 in order to allow Longview firefighters to continue to keep the benefit of the gain in wages vis-à-vis the comparators as a result of a 4.79% increase granted for 2003.

The general wage increase I conclude should be 4.7% for 2003, 2.5% for 2004, and 2.5% for 2005.

B. Deferred Compensation

Presently the Employer will match an employee's contribution to the City's Deferred Compensation Plan up to maximum of 3.5% of the monthly base salary of a top step Firefighter.

The Union proposes that the Employer contribute 6.2% based on each employee's base salary to the existing deferred compensation plan and eliminate the requirement that the Employer contribution be based on a match of what the employee contributes. A review of the comparators indicates that seven of the nine comparators provide for deferred compensation. The average of the nine comparators, including the two who do not provide any deferred compensation, and including a 2.5% figure for Olympia of

[5] With respect to Richland, I used 3% since there was a 2% increase January 1, 2005 and another 2% increase July 1, 2005. Only three comparators had settled for 2005 and thus the average increase of 3% was not particularly meaningful, but provides some support for a 2.5% increase in 2005.

$123.84, comes to $134.98, leaving Longview 18% above the average with respect to deferred compensation.

Based on the foregoing, I conclude that the Union's proposal should be rejected.

C. Education/Tuition Reimbursement

Presently the Agreement requires at Section 6.5.3 that employees obtain an Associate Degree within four years of completion of their probationary period. Currently, it is the City's practice to reimburse employees for their costs in connection with obtaining that degree. The City proposes for employees hired after July 2003 to put language in the Agreement which would end this practice and, instead, require that the cost of tuition, books, and other costs previously reimbursed by the City be borne by the employee. The Union proposes no change in the current language and practice.

The City points out that its proposal is in line with the practice in all other bargaining units in the City, which is that if an employee is hired without a degree in a situation where an employee must earn a degree within a certain period of time, the City is not required to reimburse the employee for his or her costs in connection with getting that degree. However, it is not clear from the record, with the exception of the police, that the City does hire individuals prior to the individual having completed a degree and then requires that the employee meet this requirement in some number of years thereafter. The Employer also argues that now is the appropriate time to place into effect its proposal since no employee presently working in the firefighter unit would be affected.

I find myself in agreement with the Union that whether or not the City determines to hire an individual prior to the individual actually having received an Associate Degree

is a matter fully in the control of the Employer. Thus, clearly the Employer could simply eliminate any costs of tuition reimbursement by not hiring individuals who do not have an Associate Degree at the time of hire. Furthermore, as the Employer recognizes, there has been very little turnover in the bargaining unit and there is no indication in the record that the Employer would have difficulty securing firefighters if it required that an individual have an Associate Degree before being hired as a firefighter.

Based on the foregoing, I conclude the Employer's proposal should be rejected.

D. Emergency Overtime

Pursuant to Section 6.3.2 of the Agreement, emergency overtime is paid at the rate of 2.544 times the employee's regular hourly rate of pay. The Employer proposes that this amount be reduced to double time which would amount to 2.0 times the employee's regular hourly rate of pay. The Union proposes no change to Section 6.3.2.

As the Employer points out, only one of the comparators provides a premium for emergency overtime. Thus, eight of the nine comparators pay only time and one half for emergency overtime. The only exception is Puyallup which pays double time for the first hour and time and one half thereafter.

The Union, on the other hand, contends that this provision has been a part of the parties' Collective Bargaining Agreements dating back to 1974 and should not be changed. There is no evidence in the record to indicate what the situation was in 1974 with respect to the comparators. In any event, it is appropriate after 30 years to review a contractual provision to see if it is appropriate in the present environment.

As I have already indicated, the evidence clearly demonstrates that a provision calling for 2.544 time an employee's regular wage rate for emergency overtime is simply uncalled for based on the present day comparators. Therefore, I conclude that the Employer's proposal is appropriate. The Employer does not provide any effective date for the implementation of its proposal. I conclude that it should be implemented effective with the date of this Award, as it is not realistic to require employees to pay back monies earned during the period prior to an order implementing the Employer's proposal. Further, even if the wage increase ordered by this Award would cover any reduction in overtime pay, it is not appropriate to require employees to lose money previously earned.

Based on the foregoing, I conclude the City's proposal should be adopted, effective the date of this Award.

V. HOURS/SCHEDULES

A. Flex Time

Presently the Agreement provides at Section 7.1.1 that employees are entitled, in addition to the Kelly days referenced in Section 7.1, 72 hours per calendar of flexible time which amounts to three 24-hour shifts. The Employer proposes that effective January 1, 2005 each employee shall be granted 48 hours of flex time per calendar year, amounting to a reduction of one 24-hour shift or one third of the flex time presently available to employees. In exchange for reducing the flex time, the City proposes to provide each employee with a $525 annual contribution to an individual Voluntary Employee Benefit Account (VEBA). Additionally, the Employer proposes that all requests for flex time that result in the need for overtime will be denied.

The Union opposes the Employer's proposal and, instead, proposes that flex time be expanded from 72 hours to 132 hours per calendar year. This proposal would come close to doubling the flex time available to bargaining unit members. Furthermore, the Union opposes the overtime restriction on the use of flex time proposed by the Employer.

The bargaining history surrounding the creation of the flex time provision supports the Union's opposition to the Employer proposal. It is not disputed that after the execution of the 1997-99 Agreement, a number of problems arose causing the parties to negotiate a mid-term contract amendment. This 1997-99 Amended Labor Agreement was executed on February 2, 1999. Among the reasons the parties determined to conclude a mid-term amendment were: (1) the change from two fire units to three fire units, (2) the expanded number of firefighters on shift from 11 to 12, and (3) the raise in minimum manning from eight per shift to nine per shift. Furthermore, by requiring an additional person on each shift something needed to be done about the 11 day cycle that was in effect at the time. Additionally, the City was concerned about the large amount of compensatory time on the books and the fact that there was no contract provision limiting compensatory time accrual. While these scheduling issues were not the only issues that caused the parties to negotiate a mid-term contract amendment, they clearly were significant in view of the operational changes the Employer was making at the fire department.

As Captain Bradshaw testified, without contradiction, one aspect of resolving the scheduling problems was to eliminate the employees' ability to accrue compensatory time and to allow the Employer to cash out accrued compensatory time. In return the Union received flex time and the right to use it in the manner spelled out in the Amended

1997-99 Labor Agreement, which language was carried forward to the 2000-02 Agreement. Thus, here we have a situation where major negotiations involving scheduling were held in 1998 and signed off in February of 1999, which was only a few years before the commencement of the Agreement before the Arbitration Panel.

The Employer's proposal could not be implemented retroactively and, in fact, the Employer does not seek to have its proposal effective until January 1, 2005. Since the parties will begin negotiating a new agreement effective January 1, 2006 during the 2005 year, I shall not order a change in the flex time provision. At this point, any changes would be better left to bargaining by the parties for possible implementation effective January 1, 2006.

With respect to the Union's proposal to increase flex time, I reach the same conclusion. As the Union points out in its brief, it was proposed, at least in part, to provide the panel with some flexibility as to the manner in which the panel should take steps to increase the total hourly compensation of bargaining unit members. For reasons already discussed, it seems most appropriate to address this matter through a significant increase in hourly compensation, which I have recommended.

Therefore, no change in flex time is appropriate.

B. Overtime/Shift Changes

The Union proposes a definition of overtime in Article 6 which would prohibit the City from moving bargaining unit members from one shift to another shift without the payment of overtime. Furthermore, the Union proposes new language in Article 7 which

would require the Employer, on or about November 1 of each year, to assign personnel to one of three shifts for the following year.

In its brief the Union states that this proposal is necessary in order to prevent the Employer from unduly disrupting the scheduled time off of bargaining unit members. Further, the Union points out that if the City knows it will incur overtime if it moves a bargaining unit member from one shift to another shift on short notice, the City would be encouraged to order disruptions in schedules only when absolutely necessary.

The Employer opposes this proposal.

Captain Bradshaw made clear that no matter what the reason for the proposed shift change, it could not be made by the Employer without incurring overtime. Thus, if the Employer had to make a shift change because of an employee absence, even for situations involving training, disability leave or military leave, overtime would be required.

Battalion Chief Philip Jurmu testified that he tries to give two weeks to a month's notice regarding a shift change and his research revealed that the shortest notice had been six days. He further testified that he does not mandate shift changes but seeks volunteers. He also testified that if he is unable to get a volunteer, he does end up paying overtime in order to cover a shift that is short an employee. Jurmu admitted, however, that he did have the authority to require an employee to change shifts rather than filling a shift that is short by an employee on overtime.

Although the Union took the position that its proposal was primarily directed at what it called "short notice" changes, there is nothing in its proposal that would exempt situations where an employee was given an extensive amount of notice. Thus, Captain

Bradshaw admitted that even if an employee received 90 days notice of a shift change, overtime would apply.

Based on the foregoing, I conclude that the Union's proposal should be rejected.

C. Productive or Structured Hours

Presently, routine work such as drills, inspections, training, etc. are performed during "work time," which is defined as beginning at 8:00 a.m. and ending no later than 5:00 p.m. Monday through Friday, with the hours between 5:00 p.m. and 7:30 a.m. being considered standby time for the purposes of emergency response. Employees receive 60 minutes for lunch Monday through Friday. Work time on Saturday is from 8:00 a.m. until noon and work time on Sundays and holidays is from 8:00 a.m. to 9:00 a.m. All other hours on Saturdays, Sundays, and holidays are considered as standby time. Additionally, employees are allowed to take up to one hour of physical exercise during work time Monday through Friday.

The City proposes to expand what it refers to in its brief as "productive hours," and what the Agreement refers to as "work time," to 8:00 a.m. to 5:00 p.m. seven days a week and from 8:00 a.m. until noon on holidays. Further, the City would eliminate the requirement that the employees be given up to an hour for physical exercise during work time.

It is true that six of the nine comparators do not distinguish between work time and standby time. On the other hand, if the Employer proposal were adopted it would provide for a larger amount of work time than is presently the case in the three

comparators that do distinguish between work and standby time. (Employer Exhibit Nos. 2.2.3. and 2.2.4)

The Employer has not demonstrated that it is presently unable to accomplish routine work during work time. Furthermore, the Agreement does contain a provision allowing the Employer to perform routine work on standby time provided standby time is reimbursed to the employee within 30 days from the date it was worked, unless otherwise agreed to by the affected employee.

In view of the foregoing, I conclude that the Employer proposal should be rejected.

VI. VACATIONS

Presently Section 9.4 of the Agreement allows employees to cash in accrued and unused vacation for payment on an hour for hour basis at the employee's current base hourly rate of pay. However, employees are limited to a maximum of 48 hours. The Union seeks to raise this limit to 120 hours.

The Employer opposes any change with respect to the vacation buy-back provision. In support of its position, the Union states that its proposal will provide an incentive for bargaining unit members to cash in their vacation hours rather than using those vacation hours, thereby assisting the City to maintain minimum staffing levels more frequently without the need to call an employee back on overtime. Additionally, the Union points out that its proposed change will provide employees with more flexibility as to the manner in which they can use their vacation leave benefits.

The Employer, in opposing this proposal, states that it does not wish to increase what it contends amounts to an unfunded liability, currently up to 120 hours, that is 72 hours of flex time and 48 vacation hours.

Additionally, the Employer points out that during the three year period 2001-2003, bargaining unit employees averaged vacation buy-backs of 18.61 hours annually, which is substantially less than the 48 hours already allowed employees. (City Exhibit No. 3.4.)

The primary purpose of a vacation provision is to provide employees with time off from work. Employees with up to five years of service presently receive five shifts or 120 hours of vacation. Thus, if the Union's proposal were adopted these employees would be in a position to cash in their entire vacation leave benefit, leaving them without any vacation.

Finally, a review of the comparators reveals that eight of the nine do not provide for vacation buy-backs and the ninth, Bremerton, has a more restrictive buy-back program.

In view of all of the foregoing, I conclude that the Union proposal should be rejected.

VII. INSURANCE BENEFITS

A. Cost Sharing

Presently, the Agreement provides that the City will pay 90% of the total premium based on the highest cost composite rate, provided the City's contribution does

not increase by more than 10% per annum. If, however, the costs increase by more than 10% per annum the City and the employees will bare equally the added costs.

The Union proposes to return to the system in effect during 1997-99 Agreement under which the Employer bore 90% of the premiums even if there was an increase of more than 10% year over year. In support of this proposal, the Union points out that 2004 was the first year that the application of the current formula for determining and allocating insurance premium payments has resulted in neither of the insurance options being available cost free to employees, while during 2001 through 2003 application of the formula resulted in at least one option being available that did not include any premium cost to employees.

The Employer seeks to maintain the current system of funding insurance premiums. Furthermore, it was Ms. Taylor's uncontroverted testimony that during the bargaining in connection with the prior Agreement in which the present system was put in place, the City explained that it was likely in the future that premiums would rise to the point that both plans would eventually cost the employees money. Furthermore, I agree with the Employer that with respect to the purchase of health of insurance, internal comparisons are important because of the difficulty, as testified to by Ms. Taylor, of trying to buy individual plans for each employee group. In this regard, Ms. Taylor testified that as of 2005 all employee groups will have in place a provision requiring a 50/50 sharing of premium increases over 10%.

In view of all of the foregoing, the Union's proposal is rejected.

B. VEBA Account

The Union seeks a provision requiring the Employer to place $500 into an individual VEBA account for each employee. The Employer opposes this proposal.

As the Union points out, Captain Bradshaw testified that after the prior contract was executed, the Employer, as was its right, unilaterally changed one of its insurance providers switching from Regence Blue Shield Group Health Care Plan to AWC Regence Plan. By making this switch, the City saved approximately $200 per month per employee. Further, the insurance policy provided by the new carrier, AWC Regence, did not provide the same level of benefits, particularly with respect to what was referred to at the hearing as wellness benefits. The parties, in November of 2000, executed a Memorandum of Understanding (MOU) which provided for a $300 VEBA benefit for each active bargaining unit employee for the years 2001 and 2002. The MOU specifically states that the VEBA benefit was provided in recognition that the AWC Regence plan had an annual cap on routine preventive coverage whereas the Regence Blue Shield plan did not.

The Employer has not made VEBA contributions for the years 2003 or 2004. In this regard, the Employer points to the fact that the MOU specifically provided that it expired on December 31, 2002. The Employer also points to the testimony of Ms. Taylor that since the expiration of the MOU, the AWC Regence Plan has increased its wellness benefit so that it is equal to the benefit in place prior to the change in insurance carrier.

Based on all of the foregoing, I conclude that the Union proposal should be rejected.

C. Life Insurance

The Union has not provided sufficient justification for its proposal to increase the life insurance benefit from $10,000 to $50,000. Therefore, I conclude this proposal should be rejected.

D. Benefits Committee and Flexible Spending Accounts

The Union proposes to eliminate language regarding these two matters which are contained at Sections 10.6 and 10.7 of the Agreement. Ms. Taylor testified that the parties did not discuss these Union proposals during negotiations. Since the benefits committee is a City wide employee labor management committee, I have concluded that it should not be eliminated from the Agreement. Furthermore, participation in the benefits committee by the Union does not in any way obligate it to agree to any particular proposal. In this regard, Section 10.6 establishing the benefits committee makes clear that the committee cannot bind either the City or any participating union to any decision or course of action.

With respect to Section 10.7, Flexible Spending Accounts, the City indicates in its brief at page 59 that it no longer opposes deletion of this language and, therefore, this language shall not be included in the new Agreement.

I conclude that the Section 10.6, Benefit Committee will be included in the 2003-05 Agreement and Section 10.7, Flexible Spending Accounts will not be included

VIII. TRAINING

Presently, Section 12.3 provides that if a training program is to run for three or more consecutive calendar days, the Fire Chief may assign employees to an eight hour work per day schedule pursuant to certain conditions which include:

a) The employee shall receive a minimum of two consecutive days off preceding and following the scheduled training.

b) All travel and training time in excess of eight hours per day shall be paid at the overtime rate.

c) Assignment of an eight hour work schedule shall not affect an employee's wages, Kelly days, accrual of sick leave and vacation leave, or other benefits.

d) Each employee shall be notified a minimum of five calendar days prior to assignment to an eight hour per day work schedule.

The Union seeks to eliminate all of the above to prevent the altering of schedules for training purposes.

The Employer proposes to include the entire provision regarding three or more consecutive calendar days of training with one change. That change is to subparagraph a) and it would provide that the employee would receive a minimum of one day off both proceeding and following the scheduled training instead of a minimum of two consecutive days off.

The provision allowing the Fire Chief to assign employees to an 8 hour work per day schedule where training is to run for three consecutive days or more is, as I understand it, unique among the comparators. However, any change regarding training could not be accommodated until the last year of the contract. With bargaining for a new

contract to begin during 2005, I conclude that it is not appropriate to change Article 12, Training, in either the manner proposed by the Employer or the Union.

IX. TRADING PRIVILEGE OR SHIFT TRADES

The Employer proposes a major change with respect to Article 16, Trading Privileges, specifically these change include:

1. An annual cap on the number of shift trades where no such cap presently exists.
2. A requirement that approval for a shift trade must be obtained at least five calendar days in advance of the first shift involved in the trade as opposed to the current practice where there is no specific advance notice requirement.
3. Trades of more than three consecutive shifts will require, in addition to approval by the Fire Chief as is presently the case, a requirement of approval by the City Manager.
4. A new requirement which would prohibit partial shift trades of less than four consecutive hours.
5. A new requirement requiring that trades must be "work for work," meaning, for example, that an employee who is unable to complete work because he is ill will not be entitled to sick leave.
6. A new requirement that if a substituting employee fails to appear, the employee who had requested the trade, if at work, has a continuing obligation to perform the duty and if the requesting employee is not at work, he or she will be contacted to report to work as originally scheduled.

7. Broad language requiring that shift trades not impair "department efficiency/operations in any way."

The Union proposes changes to Article 16 which the Union states are intended only for the purpose of clarifying the parties' past practice of allowing bargaining unit members to use earned leave time, such as sick leave, with respect to a shift trade in the same fashion as would be the case on the employee's regularly scheduled shift.

The City also has proposed a language change with respect to Section 7.5 of the Agreement which the City believes will clarify its present practice regarding the treatment of vacation, sick leave and other forms of earned time off as hours worked when calculating an employee's overtime entitlement. As I understand it, the Union opposes this change.

The issue here is one of significant concern to both parties. They bargained about this matter extensively during negotiations for the prior Agreement. Furthermore, the parties agreed, at least in concept, during those negotiations that, as in the past, a trade should not result in additional cost to the City. Furthermore, it was agreed during those negotiations that the Employer represented by Deputy Chief Lafave and the Union represented by Captain Bradshaw would develop a standard operating procedure with respect to shift trades. Deputy Chief Lafave has since left the City and the parties have not jointly developed such a procedure.

The Arbitration Panel recognizes that developing a trading privilege procedure is a complicated matter involving significant concerns both to fire department management and firefighters. Also the requirements of the FLSA must be taken into consideration

with respect to any proposed change in language regarding Article 16 and Section 7.5 of the Agreement.

Before the Arbitration Panel attempts to separately take into consideration the views of both parties and draft a new Trading Privilege article, it is appropriate for the parties to attempt one more time to reach agreement with respect to a standard operating procedure for shift trades. Therefore, the following procedure will be implemented:

1. The parties shall have 90 days from the date of this Opinion and Award to engage in bargaining in an attempt to reach agreement with respect to shift trades, including consideration of the various proposed changes to the language of Article 16 and Section 7.5 of the 2000-02 Agreement.
2. If the Neutral Chairman has not been notified within 90 days of the date of this Award (that is no later than April 11, 2005) that the parties have reached an agreement with respect to the matters described in Paragraph 1. above, the Neutral Chairman will contact counsel and convene a special hearing regarding this matter. At the hearing each party will not be limited to the proposals presently before the Arbitration Panel. Each party will have no more than two hours to make its presentation which may include additional evidence and additional argument.
3. The hearing will be conducted before the Arbitration Panel and at the conclusion of the presentation of evidence and argument, the Panel will meet to consider both the evidence and argument already in the record as well as any new evidence and argument each party provides at the hearing. The Arbitration Panel will consider the evidence immediately after the close of the hearing. The Arbitration Panel

will endeavor to provide a final arbitration Award by the end of the day on which the hearing is held.

4. The Arbitration Panel reserves jurisdiction for the sole purpose of putting into place the procedure described above.

X. ABILITY TO PAY

The Employer placed in evidence documentation regarding what it describes as its "difficult economic situation." Certainly the financial condition of the Employer may be considered under RCW 41.56.465(f) regarding other factors normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment.

The City priced the Union's proposal, if fully granted, as costing approximately $1.6 million in new wage and benefit expense through 2005. The city also presented evidence indicating that its proposal would cost approximately $433,000. I have not specifically performed a cost analysis of the proposals I have recommended, but roughly speaking, the cost would come to about one half of what the Union is seeking.

I have considered the Employer's "difficult economic situation" and my Award is within the Employer's ability to pay.

AWARD OF THE NEUTRAL CHAIRMAN

The Award of the Neutral Chairman is as follows:

I. WAGES AND SALARIES

A. **General Wage Increase**

1. Effective January 1, 2003 a 4.7% wage increase at each step of the base salary for the position of firefighters and fire mechanic.

2. Effective January 1, 2004 a 2.5% wage increase at each step of the base salary for the position of firefighter and fire mechanic.

3. Effective January 1, 2005 a 2.5% wage increase at each step of the base salary for the position of firefighter and fire mechanic.

B. **Deferred Compensation**

No change in current contract language.

C. **Education/Tuition Reimbursement**

No change in current contract language.

D. **Emergency Overtime**

The City's proposal shall be adopted effective the date of this Award.

II. HOURS/SCHEDULES

A. **Flex Time**

No change in current contract language.

B. **Overtime/Shift Changes**

No change in current contract language.

C. **Productive or Structured Hours**

No change in current contract language.

III. VACATIONS

No change in current contract language.

IV. INSURANCE BENEFITS

A. Cost Sharing

No change in current contract language.

B. VEBA Account

The MOU executed November 9, 2000 establishing the $300 VEBA Account has expired. No additional VEBA benefit is appropriate.

C. Life Insurance

No change in current contract language.

D. Benefits Committee and Flexible Spending Accounts

Section 10.6 Benefits Committee will be included in the 2003-05 Agreement and Section 10.7 Flexible Spending Accounts will not be included in the 2003-05 Agreement.

V. TRAINING

No change in current contract language.

VI. TRADING PRIVILEGE OR SHIFT TRADES

The Employer and the Union shall follow the procedure outlined in Section IX, Trading Privilege or Shift Trades. The Arbitration Panel shall reserve jurisdiction for the purpose of implementing the procedure set forth in Section IX, Trading Privilege or Shift Trades.

Dated: January 11, 2005

Seattle, Washington

Michael H. Beck, Neutral Chairman

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January 12, 2005

Majel C. Boudia
Executive Assistant
Public Employment Relations Commission
P.O. Box 40919
Olympia, WA 98504-0919

Re: City of Longview and
International Association of Firefighters, Local 828
PERC Case No. 18123-I-04-0426

Dear Majel:

Enclosed is a copy of my Interest Arbitration Opinion and Award in the above referenced matter.

Yours very truly,

Michael H. Beck

MHB:cac
Enclosure