

IN THE MATTER OF THE )  
INTEREST ARBITRATION BETWEEN )  
CITY OF LYNNWOOD )  
and )  
INTERNATIONAL ASSOCIATION OF )  
FIREFIGHTERS, LOCAL 1984 )  
\_\_\_\_\_ )

**OPINION AND AWARD**

**Interest Arbitration**

**PERC Nos. 24694-I-12-0588  
24458-M-11-7389**

**Date: June 17, 2013**

**INTEREST ARBITRATION OPINION AND AWARD  
OF  
MICHAEL H. BECK**

**FOR THE ARBITRATION PANEL**

**Michael H. Beck  
Greg Macke  
Dennis Lawson**

**Neutral Chairman  
Employer Board Member  
Union Board Member**

**Appearances:**

**City of Lynnwood:**

**Otto G. Klein, III: Summit Law Group PLLC**

**International Association of  
Firefighters, Local 1984:**

**W. Mitchell Cogdill: Cogdill Nichols Rein  
Wartelle Andrews Vail**

**INTEREST ARBITRATION OPINION AND AWARD OF MICHAEL H. BECK  
FOR THE ARBITRATION PANEL**

**CITY OF LYNNWOOD**

**and**

**INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 1984**

<b>OPINION OF THE NEUTRAL CHAIR OF THE INTEREST ARBITRATION PANEL .....</b>	<b>1.</b>
<b>PROCEDURAL MATTERS .....</b>	<b>1.</b>
<b>CERTIFIED ISSUES .....</b>	<b>2.</b>
<b>STATUTORY CRITERIA .....</b>	<b>3.</b>
<b>THE ISSUES IN DISPUTE .....</b>	<b>4.</b>
<b><u>A. Term of the Agreement</u> .....</b>	<b>4.</b>
<b><u>B. Work Week</u> .....</b>	<b>4.</b>
<b><u>C. Wages</u> .....</b>	<b>7.</b>
<b><u>1. The Positions of the Parties</u> .....</b>	<b>7.</b>
<b><u>2. Comparable Jurisdictions</u> .....</b>	<b>7.</b>
<b><u>3. The CPI</u> .....</b>	<b>14.</b>
<b><u>4. Is an Increase in Wages for 2012 Appropriate and if so, What is the     Appropriate Amount?</u> .....</b>	<b>14.</b>
<b><u>D. The City's Financial Difficulties</u> .....</b>	<b>17.</b>
<b><u>E. Vacation/Sick Leave Cash Out</u> .....</b>	<b>20.</b>

<b>AWARD OF THE NEUTRAL CHAIR OF THE INTEREST ARBITRATION PANEL .....</b>	<b>23.</b>
<b>APPENDIX A .....</b>	<b>25.</b>
<b>APPENDIX B .....</b>	<b>26.</b>

**IN THE MATTER OF THE )  
INTEREST ARBITRATION BETWEEN )  
CITY OF LYNNWOOD )  
and )  
INTERNATIONAL ASSOCIATION OF )  
FIREFIGHTERS, LOCAL 1984 )  
\_\_\_\_\_ )**

**OPINION AND AWARD**

**Interest Arbitration**

**PERC Nos. 24694-I-12-0588  
24458-M-11-7389**

**Date: June 17, 2013**

**OPINION OF THE NEUTRAL CHAIR OF THE  
INTEREST ARBITRATION PANEL**

**PROCEDURAL MATTERS**

The Interest Arbitration Panel was selected to conduct an Interest Arbitration pursuant to RCW 41.56.450. The Neutral Chair is Michael H. Beck. The Interest Arbitrator selected by the Employer, City of Lynnwood, also referred to as the City, is Greg Macke, Assistant Fire Chief Support Services. The Interest Arbitrator selected by the Union, International Association of Firefighters, Local 1984, is Dennis Lawson, Vice President, 4<sup>th</sup> District Representative.

A hearing in this matter was held on February 13 and 14, 2013 at Lynnwood, Washington. The Employer was represented by Otto G. Klein, III of the Summit Law

Group PLLC. The Union was represented by W. Mitchell Cogdill of the law firm Cogdill Nichols Rein Wartelle Andrews Vail.

At the hearing the testimony of witnesses was taken under oath. The parties waived the requirement set forth in RCW 41.56.450 that “[a] recording of the proceedings shall be taken.”

The parties agreed upon the submission of simultaneous post-hearing briefs which were received by the Neutral Chair by e-mail on May 14, 2013, which concluded the hearing. Pursuant to RCW 41.56.450 my decision should have issued no later than 30 days thereafter, namely by June 13, 2013. The parties agreed to my request for an extension of time to issue the decision until June 17, 2013.

### **CERTIFIED ISSUES**

By letter dated March 26, 2012 Michael P. Sellars, Executive Director of the Public Employment Relations Commission (PERC) certified the following five issues for Interest Arbitration:

- Article 8            Vacation (cash out)
- Article 9            Sick Leave (cash out)
- Article 12           Health Care
- Article 13           Work Week
- Article 15           Wages

(Union Exhibit No. 5.)

The issue of Health Care was removed by the parties from consideration by the Interest Arbitration Panel (also Arbitration Panel or Panel) prior to the hearing in this matter.

## STATUTORY CRITERIA

RCW 41.56.430 provides as follows:

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 in relevant part as follows:

Uniformed personnel – Interest arbitration panel – Determinations – Factors to be considered.

(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. . . .

\* \* \*

(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.

Pursuant to RCW 41.56.450, I consulted with the other members of the Arbitration Panel and this consultation took place on June 3, 2013.

## **THE ISSUES IN DISPUTE**

### **A. Term of the Agreement**

The parties have agreed that the term of the Collective Bargaining Agreement before the Arbitration Panel shall be from January 1, 2012 through December 31, 2012.

### **B. Work Week**

The record does not indicate when the parties first executed a collective bargaining agreement. However, it is clear that the parties have had a long collective bargaining relationship. Over those many years, the Lynnwood firefighters worked a three platoon system. In the three platoon system firefighters are assigned to one of three platoons, meaning the work schedule was determined based on having three platoons.

During bargaining for the 2011 agreement, the Union proposed moving from a three platoon to a four platoon system. From the Union's standpoint the benefit was that firefighters would have more time off between each work cycle than under the three platoon system. From the Employer's standpoint, the four platoon system would result in a significant reduction of overtime costs. The parties agreed to implement, on a trial basis from May 1, 2011 to December 31, 2011, a four platoon system. The parties agreed that the purpose of what they described as the "four platoon schedule trial package" was as follows:

This package is intended to provide the parties' an opportunity to explore the feasibility of changing the operational shift schedule from

its current three-platoon to a four-platoon schedule. (Union Exhibit No. 4, pg. 3 of 38.)

The change to the four platoon schedule did require changes to the vacations scheduled to be taken by firefighters after May 1, 2011. However, the parties were able to reach agreement regarding the manner in which these vacation changes would be addressed.

During the bargaining for the 2012 Agreement, the parties did discuss continuing to employ a four platoon schedule into 2012. The parties disagreed on the manner in which a four platoon schedule should be employed in 2012. On December 30, 2011 the Employer informed the Union that it was going to continue deploying the same four platoon schedule into 2012 by extending the trial period until May 1, 2012. From the Employer's view this would provide the Employer with a full year under the trial period and thus allow the Employer sufficient time to evaluate the four platoon schedule. The Union objected and filed an unfair labor practice charge with PERC on January 23, 2012. The City determined not to litigate the matter and effective March 13, 2012 the firefighters were returned to the three platoon schedule which had been in effect prior to May 1, 2011.

The main difference between the parties regarding the four platoon schedule is whether that schedule should include 13 debit days as was the case during the trial period or whether, as the Union proposes, the four platoon schedule should contain only 12 debit days. Recognizing that this issue might not be decided until mid-year in 2013, the Union also proposed as an alternate the continuation of the three platoon system.

Both parties recognize that the imposition of a four platoon schedule for the contract year 2012, whether it contained 12 or 13 debit days, would be extremely difficult



to implement. In this regard, I note that the City, in its brief, requests that the four platoon schedule employed during the trial period be reinstated for the remainder of 2013 “so that both parties can achieve a better understanding of the potential benefits, impacts, and costs.” (Employer brief, pg. 29.) However, the Union points out that if the City’s proposal is implemented, the Interest Arbitration Panel would have to stay involved as the Panel would have to write the work schedule and determine how that schedule is to be corrected given that the vacation picks have already been made and vacations have already been taken with respect to 2013. Additionally the Union points out that employees have incurred expenses based on vacation days picked but not yet used. Further, the Union points out that the only practical solution here is to maintain the status quo with respect to the three platoon schedule and thus:

. . . allow the parties to negotiate for the 2013 Contract Year and successive years a schedule that can actually be planned and implemented prospectively, commencing in 2014 onward. (Footnote omitted. Union brief, pg. 29.)

Furthermore, the Arbitration Panel has no authority to continue to operate after the issuance of this Interest Arbitration decision and, therefore, would not be available to assist the parties with problems that arose as a result of going to a new schedule. Additionally, as the Union points out, merely telling the parties to negotiate the effects of a change to a four platoon schedule would not provide a solution since it is clear that the parties have been unable to negotiate an agreed upon four platoon schedule.

Finally, the Arbitration Panel simply has no authority to negotiate the terms and conditions for 2013, as the parties have agreed that what is before the Arbitration Panel

are several issues in connection with the agreed upon term of the 2012 Agreement, namely from January 1, 2012 through December 31, 2012.

Based on all of the foregoing, the three platoon system which has been in effect since March of 2012 will not be changed as a result of this Interest Arbitration.

## **C. Wages**

### **1. The Positions of the Parties**

The Union is seeking a 3% increase retroactive to January 1, 2012. The Employer wants no increase for 2012.

### **2. Comparable Jurisdictions**

The City's method of selecting comparables was to first look at Lynnwood's population of 35,900 and select comparables in a range between 50% below Lynnwood's population and 50% above Lynnwood's population. Thus, the City looked at the cities along the I-5 corridor which had a population between 17,950 and 53,850. The City's Human Resources Director Paula Itaoka testified that she did not include jurisdictions that were furthest to the north and furthest to the south from Lynnwood although she did not name these jurisdictions during her testimony.

Additionally, Ms. Itaoka testified that she also looked at the assessed valuation of jurisdictions along the I-5 corridor and required that the assessed valuation be within a range of 50% above and 50% below that of Lynnwood. The assessed value of Lynnwood

is \$4,207,000,000.<sup>1</sup> The range of 50% below to 50% above Lynnwood's assessed value ranges from \$2,104,000,000 to \$6,311,000,000.

Using the parameters described above, the Employer found 11 jurisdictions comparable to Lynnwood. These jurisdictions are: Bothell, Lake Stevens (Snohomish FD 8), Longview, Maple Valley (King FD 43), Mount Vernon, Mukilteo, Northshore (King FD 16), Olympia, Sea Tac, Snohomish (Snohomish FD 4), and Tukwila.

The Union has selected eight comparable jurisdictions, namely Snohomish County Fire District No. 1, Redmond, Kirkland, Mercer Island, Bothell, Renton, Shoreline, and Tukwila.<sup>2</sup> The Union used several bases in determining its comparable jurisdiction.

In its brief, the Union points out that an important factor in its determination of appropriate comparables was a labor market analysis. This analysis, the Union points out, takes into account the proximity of the jurisdictions to which the jurisdiction in question is being compared and whether the jurisdictions are in "a similar economic environment, such as in a rural area or part of a large metropolitan area." (Union brief at pgs. 13-14 citing Arbitrator Krebs' decision in City of Richmond, PERC No. 17577-I-03-0406 (2004).) In this regard, the Union pointed out that each of the comparators it selected is "within the I-5/405 boundary area and the King/Snohomish County labor market." (Union brief, pg. 15.)

I agree with the Union that a labor market analysis has often been used by interest arbitrators with respect to the criteria contained in RCW 41.56.465(1)(e) which provides

---

<sup>1</sup> All assessed valuation figures set forth in this Opinion are rounded off to the nearest one million dollars.

<sup>2</sup> Two of those jurisdictions, namely Bothell and Tukwila, were also selected by the Employer as comparable jurisdictions.

that an interest arbitrator shall consider “[s]uch other factors . . . that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment.” I also agree with the Union that the King/Snohomish County labor market has long been recognized as a specific labor market. The Union stated that in order to identify a sufficient number of comparables in the King/Snohomish County labor market, it was necessary to use a population range of 50% below Lynnwood up to 200% above Lynnwood.

The Union, at Union Exhibit 6B, lists the population of Snohomish County Fire District No. 1 (Fire District No. 1) as 230,000. Thus, the population of Fire District No. 1 is more than six times that of Lynnwood. As such, it does not meet the Union’s parameters. Fire District No. 1 is composed of the cities of Edmonds, Mountlake Terrace, Brier and Woodway, as well as unincorporated areas in South Snohomish County. It is true, as the Union contends, that the service area of Fire District No. 1 surrounds Lynnwood. However, the vast difference in population served between Fire District No. 1 and Lynnwood makes it clear that Fire District No. 1 cannot be considered a comparable jurisdiction.

The Union also states in its brief that it has proposed “mostly historical comparators.” (Union brief, pg. 14.) With respect to Kirkland, selected as one of the comparators by the Union, it does qualify as being part of the King/Snohomish County Labor Market. However, Captain DiBenedetto, who has been an active Union member, including having served as Secretary, Treasurer, Vice President and President of the Union, testified that Kirkland was a new comparator, not previously used by the Union. He further testified that Kirkland was used by the Union in preparation for bargaining for

the 2012 contract, but that the Union did not present a list of comparables to the Employer during bargaining. Based on all the foregoing, I find that Kirkland is not an appropriate comparator to Lynnwood.

This leaves six comparators sought by the Union that I find to be appropriate comparators, namely Redmond, Mercer Island, Bothell, Renton, Shoreline<sup>3</sup> and Tukwila. Two of those six comparators were also proposed by the Employer, namely Bothell and Tukwila.

Fifty percent below Lynnwood's population of 35,900 is 17,950 and a population of 200% above Lynnwood would be a population of 107,700. All of the six comparables are within that range. However, four of the six: Mercer Island, Bothell, Shoreline, and Tukwila are within the 50% below and 50% above Lynnwood, the criteria selected by the Employer. Additionally, Lynnwood's population is right in the middle of the six comparators plus Lynnwood. In this regard, Redmond, Renton, and Shoreline have larger populations while Mercer Island, Bothell and Tukwila have smaller populations.

With respect to the Employer's 11 selected comparators, three, as the Union points out, are clearly outside the King/Snohomish County labor market; namely Longview, Mount Vernon, and Olympia and, therefore, I agree with the Union that they should not be considered as comparable. Lake Stevens (Snohomish Fire District No. 8), Maple Valley (King Fire District No. 43) and Snohomish (Snohomish Fire District No. 4) are rural areas located well east of the six urban jurisdictions located along the Interstate 5/Interstate 405 corridor, which I have found to be appropriate comparators, namely: Redmond, Mercer Island, Bothell, Renton, Shoreline and Tukwila. While Mukilteo can arguably be included as a comparator, I note that the Employer provided a Mukilteo wage

---

<sup>3</sup> The Shoreline Fire Department operates as a fire district serving the City of Shoreline.

for 2010 while it provided a 2012 wage for its other comparators. Thus, I have determined not to include Mukilteo as a comparator with respect to the 2012 contract year.

After eliminating the seven Employer selected comparators described above, four remain. With respect to Bothell and Tukwila, they both were included as comparators by the Union and, thus, are jointly selected comparators. This leaves Sea Tac and Northshore (King Fire District No. 16). Sea Tac is located in King County very close to the southern meeting point of Interstate 5 and Interstate 405 and is adjacent to Tukwila, a joint Union and Employer selected comparator. Additionally, the population of Sea Tac, which is 27,210, is within a range of 0 to 50% lower than that of Lynnwood.

Northshore (King County Fire District No. 16) is composed of the cities of Kenmore and Lake Forest Park. Both of these cities are located at the northern end of Lake Washington and are within the I-5/I-405 corridor. Additionally, the population of Northshore (King County Fire District No. 16) is very close to that of Lynnwood.<sup>4</sup>

The comparable jurisdictions are: Redmond, Mercer Island, Bothell, Renton, Shoreline, Tukwila, Northshore (King FD 43) and Sea Tac. All eight meet the tests described in RCW 41.56.465 at (1)(e) and (3). That is, when one considers factors “that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment” and when one also compares 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

---

<sup>4</sup> The population of Northshore (King County Fire District No. 16) is listed on Employer Exhibit No. 11 as 35,209. The population of each of the other seven comparators I have selected were taken from a publication produced by the Municipal Research Center of Washington (MRSC). (Employer Exhibit No. 7.) The MRCS document, Employer Exhibit No. 7, does not provide population figures for fire districts.

similar size . . . within the state of Washington,” the eight comparators which I have selected meet the tests provided in those two statutory subsections.<sup>5</sup> I note that the average population of the eight comparators is 42,591, which is within a range of 50% below and 50% above that of Lynnwood.

With respect to assessed valuation, Lynnwood’s is less than that of any of the eight comparators I have selected. Furthermore, only three of the comparators are within the 0-50% range above Lynnwood.<sup>6</sup> Historically the rationale behind considering assessed valuation when choosing fire department comparators was that the main job of firefighters was to put out fires, thereby protecting property. Thus, it was reasonably argued that fire departments serving jurisdictions with similar assessed valuations were “public fire departments of similar size.” (RCW 41.56.465 (3).)

Over the years the nature of fire department responses has drastically changed. As the Union points out, the Lynnwood Fire Department’s 2010 Annual Report states that “70% of all alarms are Emergency Medical.” (Union Exhibit No. 11, pg. 9.) The Lynnwood Fire Department’s 2011 Annual Report lists incident responses by various categories and for the category “EMS,” there were 4,447 responses which were 69% of the total number of responses. With respect to the category “Fire,” there were 79 responses which was only 1% of the total number of responses. (Union Exhibit No. 3, pg. 5.)<sup>7</sup>

The record contains a document entitled, “Lynnwood Fire Department 2009 Level of Service and Standards of Coverage” which is dated October 26, 2010. At page two of

---

<sup>5</sup> The population of each comparator is set forth in Appendix A.

<sup>6</sup> The assessed valuation of each of the eight comparators I selected is also set forth in Appendix A.

<sup>7</sup> The Annual Fire Department Report for 2012 had not been completed at the time of the hearing.

that document under the heading, “**Executive Summary on Emergency Response**” the following appears:

**The Lynnwood Fire Department services a unique community where the populations fluctuates by time of day due to the City’s commercial and retail appeal. During the busiest hours of the day the population has been reported to swell to 80,000 or more. This results in emergency activity levels commonly seen in cities with more than twice the residential population of Lynnwood. Typically, fire service responses occur at a rate of 1000 incidents for each 10,000 in population. Using this simple statistical formula, Lynnwood’s expected call volume would be around 3600 incidents. However, in actuality the Department averages around 6400 incidents annually. Comparison data from 2008 shows the number of incidents per 1000 population in Lynnwood to be equal to or greater than a number of larger Washington cities. . . .**  
(Union Exhibit No. 10, pg. 2.)

Further down on page 2, under the heading, “**Community Risk & Response Activity**” it is reported that:

. . . The City is recognized as a commercial-retail business center, with an estimated influx daytime population approaching 80,000

Two high volume interstate freeways, supporting both commercial trucking and Seattle commuters bisect the city. These highways are of critical importance to the economic infrastructure of both Seattle and the State of Washington. The City is also home to one of Washington’s largest shopping malls [Alderwood Mall], creating significant public safety challenges. (Union Exhibit No. 10, pg. 2.)

Additionally, in the same document at page 4, the Lynnwood Fire Department reports that it has a higher total of instances per 1,000/Population than Redmond, Bothell, Edmonds, Bellevue and Yakima.

Furthermore, in a document entitled “**Lynnwood Fire Department 2009 Strategic Plan,**” prepared by the Fire Department, it is reported that Lynnwood has a greater number of incidents per Capita - 1,000 persons than Renton, Edmonds, Yakima, Kirkland and Seattle. (Union Exhibit No. 9, pg. 5.) Additionally, the Union placed in



evidence a chart showing that Lynnwood has a greater number of “average calls per year per bargaining unit member” with respect to the eight jurisdictions it has selected as comparators to Lynnwood. (Union Exhibit No. 7.A.)<sup>8</sup>

Based on the foregoing, I do not find that the fact that Lynnwood is the lowest in assessed valuation, when compared to the comparators, to be significant.

### **3. The CPI**

Both the testimony of Ms. Itaoka and several exhibits indicate that the parties, in considering the CPI during bargaining, have used the Seattle-Tacoma-Bremerton CPI-W focusing on the difference between June of one year and June of the following year i.e., the year prior to the beginning date of the contract being negotiated. The CPI-W between June 2010 and June 2011, the year the parties were bargaining with respect to the 2012 Agreement, was 3.7%.

### **4. Is an Increase in Wages for 2012 Appropriate and if so, What is the Appropriate Amount?**

In comparing Lynnwood to the comparators, both parties use a variant of the total compensation approach. For example, the Union included as a component “healthcare costs.” (Union brief, pg. 37.) However, the Employer did not do so, pointing to “the inherent difficulty in getting a fair ‘apples-to-apples’ comparison.” (Employer brief, pg. 15, fn. 12.) I agree with the Employer that there are many differences in healthcare coverage including deductibles, co-pays and tiered or blended systems regarding family

---

<sup>8</sup> The figures for six of those jurisdictions and Lynnwood are set forth in Appendix A. The record does not contain this information for Sea Tac or Northshore (King Fire District 16).

coverage or employee only coverage. Additionally, as noted above, healthcare was an issue separately certified issue by PERC.

I also note that items such as deferred compensation, MERP, life and disability insurance are matters subject to being separately certified and do not directly affect hourly wage. The items which do affect the hourly wage are longevity, hours worked, and vacation hours and, in some cases, holidays. I have not included holidays because the provisions for firefighters regarding holidays vary in the comparators between holidays off and pay in lieu of holiday hours off. Some jurisdictions provide overtime pay for employees who are scheduled to work on a holiday and still other jurisdictions provide a combination of holiday pay and time off on holidays. The latter is the case with Lynnwood, which provides that employees receive 5.08 hours of base pay per biweekly pay period in lieu of holidays and, in addition, full-time shift employees are granted the right to use a floating holiday, thereby reducing their annual hours worked.

I have used the 10 year firefighter for purposes of comparison as the average years of service of a Lynnwood firefighter is 10 years. As the chart at Appendix B shows, Lynnwood had a lower hourly wage in 2012 than any of the comparators and was 9.2% behind the average of the comparators. If the Union's request for a 3% wage increase is granted, Lynnwood would move to seventh, with two comparators, Tukwila and Sea Tac having a lower hourly wage. Additionally, Lynnwood would be only 6% behind the average of the comparators.

Lynnwood firefighters did not receive a wage increase in 2011 while the police officers received a base wage increase of 4.5%. Going back to 2006, the police received a cumulative base wage increase of 24% while the firefighters received a cumulative base

wage increase of only 17.6%. The Seattle-Tacoma-Bremerton CPI-W between June 2006 and June 2012 had a cumulative increase of 19.7%, which is 2.1% above what the firefighters received and 4.3% below what the police officers received during the seven year period 2006 through 2012.

It is true that employees represented by the Teamsters and the non-represented employees for the City of Lynnwood have not had a wage increase since 2009 and AFSCME represented employees have not had a wage increase since 2011. Additionally, none of these employee groups received an increase in 2012.

While I agree with the Employer that internal equity is a factor that may be considered by an interest arbitrator, it is also clear that RCW 41.56.465 provides special interest arbitration provisions for uniformed personnel. Therefore, it is necessary to consider what the Employer has provided to police officers with respect to wage increases. I have indicated above that during the seven year period between 2006 and 2012 the police received wage increases that amounted to 6.4% more than that received by firefighters (24% - 17.6%). Furthermore, as the Union points out, in the three years immediately prior to 2012 (2009-2011), the police received wage increases that amounted to 8% more than that received by firefighters (14.5% - 6.5%). It is true that in 2006-2008 the firefighters received a cumulative base wage increase of 11.1% while the police only received a cumulative base wage increase of 9.5%. However, that difference is only 1.6%.

In view of all the foregoing, a 3% wage increase for 2012 is appropriate. However, before such an increase can be granted, I must consider the City's contention

that the Union's wage proposal should not be granted because of the City's "financial difficulties." (Employer brief, pg. 20.)

#### **D. The City's Financial Difficulties**

I agree with Employer that interest arbitration is viewed as an extension of the bargaining process and, therefore, the Interest Arbitration Panel must consider an Employer's economic circumstances at the time the collective bargaining agreement is being negotiated. The Agreement in question here, namely the 2012 Agreement, was being negotiated during 2011. However, when as here, the Panel is considering a contract whose term has passed, the Employer's current economic situation cannot be said to be irrelevant as any decision to increase pay for a prior period will have to be paid from current funds.

The City does not contend that it has an inability to pay the Union's 3% wage increase proposal, rather it points to its "financial difficulties." In support of its position, the City points to the Mayor's 2013-2014 Preliminary Budget Message, dated September 14, 2012 (Budget Message). In particular, the City notes in that document, the Mayor states that sales tax receipts from 2008 to 2009 dropped over \$2,400,000 or 14%. Additionally, the Mayor points out that four years later, the City still had not recovered to 2008 levels. The Mayor states that 2008 was selected as the benchmark year because that was "when the Great Recession actually started." (Union Exhibit 7.I, the first, pg. 2.) The Mayor then points out that since 2009 there has been sales tax growth of 3.35% in 2010 over 2009 and 4.4% in 2011 over 2010, thus more than half of the loss had been regained.

Additionally, I note, as the Union points out, that the Mayor states in his Budget Message that the total general fund revenue forecast, since the estimate made only about seven weeks earlier on July 23, 2012 had increased by \$246,123.

The City points out that in mid 2010 it had 373 regular employees. However, due to its financial situation, it laid off 35 employees, which amounted to 9.4% of its regular workforce and that it defunded 15 vacancies, which is 4% of the regular workforce. There was only one layoff in the fire department and that was to an administrative assistant who was a civilian employee not subject to the interest arbitration provisions. The foregoing clearly indicates the importance of the firefighters to the City of Lynnwood.

In either July or August of 2011 the Employer imposed a 5.5% budget reduction with respect to the 2011-2012 biennium. In his 2013-2014 Preliminary Budget Message, the Mayor reported that department directors had made substantial efforts at budget reductions beyond the 5.5% and that it appeared to the Mayor that such additional one-time savings by December 31, 2012 were now estimated to be about \$3.8 million dollars. The Mayor immediately thereafter stated the following:

These one-time monies will be able to fund the transfer to the Revenue Stabilization Fund #198 of \$2 million with the effect of releasing new “on-going” monies for current use by departments. (Union Exhibit No. 7.I, pg. 7.)

Despite the Mayor’s statement quoted above, on the very next page of his budget message he states the following:

Please note that because these savings are “one-time” in nature, our city financial policies are explicit that they are not available for wage increases. “On-going” expenditures like wages and benefits which

cause budget “bow waves” must be paid for by “on-going,” **not** “one-time” revenues. (Union Exhibit No. 7.I, pg. 8.)

Yes, the \$3.8 million dollars constituted a one-time budget savings, but, as stated above, the Mayor made clear that \$2 million of that \$3.8 million were transferred to the Revenue Stabilization Fund “with the effect of releasing new ‘on-going’ monies for current use by departments.” (Union Exhibit No. 7.I at pg. 7.) Thus, despite this funds transfer, and the Mayor’s statement concerning it on page 7 of his Budget Message, the Mayor on the very next page, states that he will not make available for wage increase the \$2 million dollars which had been transferred to the Revenue Stabilization Fund as “on-going monies.” Here the Mayor made a clear choice not to use this \$2 million dollars of “on-going” monies for wage increases.

The 2011-2012 biennium budget for the Lynnwood Fire Department shows \$15, 213,369 budgeted for labor costs. That figure divided in half, results in the approximate labor costs for one year, namely 2012, of \$7,606,684.50. HR Director Paula Itaoka testified that a 1% wage increase costs approximately \$55,000. (See also Employer Exhibit No. 14.) Therefore, a 3% increase would come to approximately \$165,000 which is a very small percentage of the Fire Department’s labor budget for 2012, only about 2.2%.

Finally, in this regard, I note Ms. Itaoka’s testimony that the unit represented by the police guild has 62 officers, which is 11 more than the firefighter unit. I also note that during the period when the Employer states it was experiencing its most severe financial difficulties, that is as noted above, between 2009 and 2011, police officers received a cumulative increase of 14.5% while the firefighters received only a cumulative increase of 6.5%. Additionally, as of December 31, 2011 top step police officers received a

monthly salary of \$6,672, rounded off to the nearest dollar, while a top step firefighter, on December 31, 2011 received a monthly salary of \$6,138. Thus, a top step Lynnwood police officer was making 8.7% more in monthly salary than a top step Lynnwood firefighter just prior to the start of the 2012 contract year.

Based on all of the foregoing, I find that the City was financially able to provide the firefighters with a 3% base wage increase. Here the fact that Union is seeking only a 3% wage increase, despite the fact that the Lynnwood firefighters are 9.2% behind the comparators and 8.7% behind the Lynnwood police officers, indicates a recognition by the Union of the City's financial situation. Based on the statutory criteria and for the reasons described above, it is my decision that a 3% base wage increase retroactive to January 1, 2012 is appropriate.

#### **E. Vacation/Sick Leave Cash Out**

PERC separately certified the issue of vacation cash out and sick leave cash out. However, since both of these issues involve the same considerations, I have determined to handle this matter as one issue.

The Employer proposed the following changes to Article 8, Section 8 of the 2011 Agreement:

#### **ARTICLE 8 – VACATION LEAVE**

\* \* \*

8.8 An employee who has successfully completed the probationary period and quits, retires, dies or is terminated will receive ~~straight time payment~~ payment at the employee's ~~then~~ current base hourly rate for any accrued vacation for completed years of continuous service, which has not been used. . . . (Union Exhibit No. 5 at Exhibit 1, 1<sup>st</sup> and 2<sup>nd</sup> pg.)

With respect to Article 9, "Sick Leave/Light Duty" the Employer proposed the following changes for the 2012 contract:

For employees hired on or after October 1, 1977, and not a member of LEOFF 1, upon termination of employment a maximum of seven hundred twenty (720) hours of unused accumulated sick leave may be converted to pay on the following basis:

- 9.3.1 Termination - Voluntary or Involuntary:  
5 hours accrued, unused sick leave = 1 hour pay at ~~straight time~~ current base hourly rate.
- 9.3.2 Termination by Lay-off:  
4 hours accrued, unused sick leave = 1 hour pay at ~~straight time~~ current base hourly rate.
- 9.3.3 Retirement or Death:  
2 hours accrued, unused sick leave = 1 hour pay at ~~straight time~~ current base hourly rate.  
(Union Exhibit No 5, Exhibit 1, 3<sup>rd</sup> pg.)

Appendix B of the 2011 Agreement provides as follows:

**APPENDIX B – COMPUTATIONS APPENDIX**

**Overtime Calculation**

For Shift Personnel: (Bi-weekly: Base Wage + Education + Longevity + Special Ops pay + Program Specialist pay / 96 hours) x 1.5 = OT hourly rate  
(Union Exhibit No. 4, pg. 38 of 38.)

Interim Chief Tod Gates testified that he bargained the 2007-09 Agreement and it was in that agreement that the language in Appendix B quoted above was for the first time included in the parties' collective bargaining agreements. Additionally, it was his uncontroverted testimony that during those negotiations there was no discussion of sick leave cash out or vacation cash out.

On May 15, 2009 the Union filed a grievance regarding the Employer's failure to pay vacation and sick leave cash out to two firefighters pursuant to the overtime



calculation set forth in Appendix B. Instead, the Employer computed the vacation and sick leave cash outs pursuant to the Appendix A Salary Schedule, which did not include any premiums or augments.

The Employer denied the grievance, pointing out that Appendix B was “specifically limited to the calculation of overtime and does not define the pay included in the calculation of vacation or sick leave payments upon termination.” (Employer Exhibit No. 25, 3<sup>rd</sup> pg.) The grievance was scheduled for hearing before an arbitrator on March 11 and 12, 2010. However, the parties reached a settlement agreement on March 5, 2010. The City agreed to pay to the two firefighters involved additional monies based on including premium pays as set forth in Appendix B on a non-precedential basis. The Settlement Agreement also provided:

3. Negotiation of Appendix B and Related Contract Articles.  
The parties acknowledge and agree that negotiations on the successor CBA are scheduled to open in June 2010. Either party may open for negotiation Appendix B and any Article relating to the calculation of payment for paid time off upon termination of employment, including but not limited to Articles 8.8 and 9.3. The parties agree that, upon such reopening, they shall negotiate such issue in good faith.  
(Employer Exhibit No. 26, pg. 1.)

No negotiations were held regarding Article 8.8 and 9.3 with respect to the 2011 Agreement. The record does not contain any information as to how or why this may have occurred. Ms. Itaoka and Mr. Gates both testified that it has been past practice of the Employer to pay the vacation and sick leave cash outs based on a firefighter’s wage without including premium pay and the only exception was with respect to the two firefighters who were the subject of the May 10, 2010 grievance. Furthermore, I note Employer Exhibit No. 25, the second page of which sets forth five additional firefighters who terminated their employment since Appendix B was negotiated into the 2007-09

Agreement and none of those five employees received their vacation and/or sick leave cash outs based on the Appendix B overtime calculation but, instead, their cash outs were based on their base wage.<sup>9</sup>

It is true, as the Union points out, that the parties with respect to police officers, negotiated a cash out provision in their 2012 contract, which did include “augments” received by an employee upon termination. However, both Ms. Itaoka and Mark Brinkman, the President of the Police Guild, testified that the cash out provisions negotiated with respect to the 2012 Agreement were related to a change regarding police officers’ shifts a few years earlier. The firefighters are not in a similar situation.

Based on all of the foregoing, the language changes proposed by the Employer shall be granted.

**AWARD OF THE NEUTRAL CHAIR OF THE  
INTEREST ARBITRATION PANEL**

It is the Award of the Neutral Chair that:

- I. With respect to the issue of work week, the three platoon schedule in effect during the last eight months of 2011 shall be the schedule for 2012.

---

<sup>9</sup> The five firefighters terminated their employment between May 5, 2007 and April 30, 2009.

II. With respect to the issue of wages, the City of Lynnwood (the Employer) shall provide the firefighters with a 3% base wage increase retroactive to January 1, 2012.

III. With respect to vacation cash out and sick leave cash out, the Employer's proposal is hereby granted.

Dated: June 17, 2013

Seattle, Washington

S/MICHAEL H. BECK  
Michael H. Beck, Neutral Chair

**APPENDIX A**

<b>Jurisdiction</b>	<b>Population*</b>	<b>Assessed Value Rounded to the Nearest \$1,000,000</b>	<b>Average Calls Per B.U. Member</b>
<b>Redmond</b>	<b>55,360</b>	<b>12,643</b>	<b>93</b>
<b>Mercer Island</b>	<b>22,690</b>	<b>8,110</b>	<b>75</b>
<b>Bothell</b>	<b>34,000</b>	<b>5,888</b>	<b>92</b>
<b>Renton</b>	<b>93,910</b>	<b>10,753</b>	<b>104</b>
<b>Shoreline (FD)</b>	<b>53,270</b>	<b>6,369</b>	<b>98</b>
<b>Tukwila</b>	<b>19,080</b>	<b>4,661</b>	<b>74</b>
<b>Sea Tac</b>	<b>27,210</b>	<b>4,501</b>	<b>---**</b>
<b>Northshore (King FD 16)</b>	<b>35,209</b>	<b>4,994</b>	<b>---**</b>
<b>Lynnwood</b>	<b>35,900 (4<sup>th</sup> of 9)</b>	<b>4,207 (9<sup>th</sup> of 9)</b>	<b>134 (1<sup>st</sup> of 7)</b>
<b>Average Population without Lynnwood</b>	<b>42,591</b>		

\* Lynnwood: 35,900  
 50% below: 17,950  
 50% above: 53,850  
 100% above: 71,800  
 150% above: 89,750  
 200% above: 107,700

\*\* Figure not in the record.

**APPENDIX B**

**10 YEAR FIREFIGHTER**

<b>Jurisdiction</b>	<b>Annual Salary</b>	<b>Annual Longevity</b>	<b>Annual Salary Plus Longevity</b>	<b>Annual Scheduled Hours less Vacation Hours</b>	<b>Hourly Wage 2012</b>
<b>Redmond</b>	<b>\$83,424</b>	<b>\$3,336</b>	<b>\$86,760</b>	<b>2,322</b>	<b>\$37.36</b>
<b>Mercer Island</b>	<b>\$87,996</b>	<b>\$3,516</b>	<b>\$91,512</b>	<b>2,298</b>	<b>\$39.82</b>
<b>Bothell</b>	<b>\$86,292</b>	<b>\$3,456</b>	<b>\$89,748</b>	<b>2,348</b>	<b>\$38.22</b>
<b>Renton</b>	<b>\$78,504</b>	<b>\$3,000</b>	<b>\$81,504</b>	<b>2,166</b>	<b>\$37.63</b>
<b>Shoreline (FD)</b>	<b>\$81,012</b>	<b>\$3,240</b>	<b>\$84,252</b>	<b>2,232</b>	<b>\$37.75</b>
<b>Tukwila</b>	<b>\$78,504</b>	<b>\$2,748</b>	<b>\$81,252</b>	<b>2,344</b>	<b>\$34.66</b>
<b>Sea Tac</b>	<b>\$78,504</b>	<b>\$2,352</b>	<b>\$80,856</b>	<b>2,336</b>	<b>\$34.61</b>
<b>Northshore King FD 16</b>	<b>\$80,112</b>	<b>\$3,204</b>	<b>\$83,316</b>	<b>2,280</b>	<b>\$36.54</b>
<b>Lynnwood</b>	<b>\$73,656 (9<sup>th</sup> of 9)</b>	<b>\$2,952 (7<sup>th</sup> of 9)</b>	<b>\$76,608 (9<sup>th</sup> of 9)</b>	<b>2,256 (3<sup>rd</sup> Lowest # of Hours)</b>	<b>\$33.96* (9<sup>th</sup> of 9)</b>
<b>Lynnwood w/ 3% Wage Increase and the 4% Longevity as provided in the 2011 CBA</b>	<b>\$75,866 (With 3% Raise)</b>	<b>\$3,035 (4% of \$75,866)</b>	<b>\$78,901</b>	<b>2,256</b>	<b>\$34.97** (7<sup>th</sup> of 9)</b>
<b>Average Wage of 8 Comparators For 2012</b>					<b>\$37.07</b>

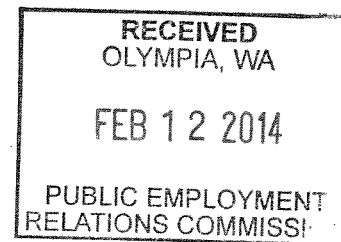
\* 9.2% Behind the Average

\*\* 6% Behind the Average

**Duffield, Robbie (PERC)**

---

**From:** Gedrose, David (PERC)  
**Sent:** Wednesday, February 12, 2014 8:27 AM  
**To:** PERC, info - filing (PERC); Duffield, Robbie (PERC)  
**Cc:** Martin, Emily (PERC); Sellars, Mike (PERC)  
**Subject:** FW: City of Lynnwood Interest Arbitration  
**Attachments:** Lynnwood Interest Arbitration.pdf



Please file this in Case 24694-I and post it on the website. I will close the case. Thanks.

---

**From:** Sue Egbert [mailto:sue@cnrlaw.com]  
**Sent:** Wednesday, February 12, 2014 8:13 AM  
**To:** Gedrose, David (PERC)  
**Subject:** City of Lynnwood Interest Arbitration

Dear Mr. Gedrose:

Otto Klein was kind enough to forward me your email to him of February 11, 2014. I am enclosing a copy of the decision from Arbitrator Beck. If you have any questions, please contact me.

Yours truly,

Mitch Cogdill  
Cogdill Nichols Rein Wartelle Andrews Vail  
3232 Rockefeller Avenue  
Everett, WA 98201  
425-259-6111 Phone - 425-259-6435 Fax  
[sue@cnrlaw.com](mailto:sue@cnrlaw.com)

**CONFIDENTIAL NOTE:** This email message contains information belonging to the Law Offices of Cogdill Nichols Rein Wartelle Andrews, which may be privileged, confidential and/or protected from disclosure. The information contained in this email is intended only for the use of the individual or entity named above. If you think you have received this message in error, please contact the sender. If you are not the intended recipient, any dissemination, distribution or copying is strictly prohibited.