IN THE MATTER OF

SOUTH SNOHOMISH COUNTY FIRE
& RESCUE REGIONAL FIRE AUTHORITY

AND

IAFF LOCAL 1828

Date Issued: June 8, 2020

INTEREST ARBITRATION OPINION and AWARD

OF

ALAN R. KREBS, Neutral Chair
CHARLES N. EBERHARDT, Employer Appointed Arbitrator
DENNIS J. LAWSON, Union Appointed Arbitrator

Appearances:

SOUTH SNOHOMISH COUNTY FIRE & RESCUE REGIONAL FIRE AUTHORITY	Lawrence B. Hannah
IAFF LOCAL 1828	W. Mitchell Cogdill

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OPINION AND AWARD OF THE NEUTRAL CHAIR

PROCEDURAL MATTERS

In accordance with RCW 41.56.450, an interest arbitration hearing involving certain uniformed personnel of the Employer, South Snohomish County Fire & Rescue Regional Fire Authority (the RFA) was held on November 7 and 11-14, 2019 in Everett, Washington. The parties selected Alan R. Krebs to serve as the Neutral Chair of a three-person Arbitration Panel. Otto G. Klein III served as the Employer-appointed Arbitrator on November 7. Charles N. Eberhardt replaced Mr. Klein as the Employer appointed Arbitrator after the first day of hearing. Dennis J. Lawson served as the Union-appointed Arbitrator. The Employer was represented by Lawrence B. Hannah of Perkins Coie LLP. International Association of Fire Fighters Local 1828 (the Union) was represented by W. Mitchell Cogdill of the law firm Cogdill Nichols Rein Wartelle Andrews. At the hearing, witnesses testified under oath and the parties presented documentary evidence. A court reporter was present, and, subsequent to the hearing, a copy of the transcript was provided to the Panel. Post hearing briefs, each about 120 pages, and with additional attachments, were submitted. In view of the number of issues presented, the parties agreed to waive the 30-day time limit for issuance of the Panel's decision.

APPLICABLE STATUTORY PROVISIONS

When certain public employers and their uniformed personnel are unable to reach agreement on new contract terms by means of negotiations and mediation, RCW 41.56.450 calls for interest arbitration to resolve their dispute. The parties agree that RCW 41.56.450 is applicable to the firefighter bargaining unit involved here.

RCW 41.56.465 sets forth certain criteria which must be considered in deciding the controversy:

> (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. . . .
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> * * *
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> (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.

The statute does not provide guidance as to how much weight should be given to any of these standards or guidelines, but rather leaves that determination to the reasonable discretion of the Panel. RCW 41.56.465 requires the Panel to be mindful of the legislative purpose set forth in 41.56.430, which provides:

> 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.

Arbitrators are generally mindful that interest arbitration is an extension of the bargaining process. They recognize those contract provisions upon which the parties could agree and decide the remaining issues in a manner which would approximate the result the parties would likely have reached in good faith negotiations considering the statutory criteria. A party proposing new contract language generally has the burden of proving that there should be a change in the status quo, though in the matter at hand, as will be seen, this is complicated by the previous existence of two bargaining units, each with their own practices and benefits.

ISSUES

The Executive Director of the State of Washington Public Employment Relations Commission (PERC) certified that following mediation, the parties were at impasse on 21 Articles in negotiations for their 2018-20 Collective Bargaining Agreement, and therefore, they should proceed to interest arbitration on those issues. Prior to the hearing, the parties resolved three of those issues: Articles 9, 27, and 29. The issue of Article 28, Wages and, as a result, the related Appendix B, were removed from this Interest Arbitration as a result of an Unfair Labor Practice Complaint filed by the Union. During the course of the hearing the parties resolved Article 14. The Union also agreed to accept the Employer's proposal on Appendix C. The following articles remain at issue:

Article 10	Prevailing Rights
Article 18	Reduction in Forces
Article 24	Shift Exchange
Article 25	Hours
Article 30	Educational Incentives
Article 31	Deferred Compensation
Article 32	Longevity Pay
Article 37	Holidays
Article 38	Sick Leave
Article 39	Vacations
Article 43	VEBA Contributions
Article 44	Retiree Medical/MERP
Article XXX	Medical Premium Reimbursement

BACKGROUND

The Employer is situated in Snohomish County, bordered by King County to the south and Puget Sound to the west, and between the cities of Everett and Seattle. The Employer provides services for fire suppression and prevention and emergency medical response and transport to parts of unincorporated Snohomish County and to the cities of Lynnwood, Edmonds, Mountlake Terrace, and Brier. The bargaining unit at issue covers all uniformed personnel up to and including the rank of Battalion Chief.

The Employer is a recently formed entity and the Collective Bargaining Agreement at issue would be its first one. It was created in August 2017 by a vote of citizens who were until then being served by the Fire Departments of the city of Lynnwood and Snohomish County Fire Protection District 1. Lynnwood had a Collective Bargaining Agreement with IAFF Local 1984 covering about 56 employees. Snohomish County Fire Protection District 1 had a Collective Bargaining Agreement with IAFF Local 1828 covering about 200 employees. Both Agreements had an expiration date of December 31, 2017. Following the establishment of the RFA, the two Local Unions merged and the combined entity became IAFF Local 1828. The matter at issue

involves the parties' impasse following negotiations for the first RFA Collective Bargaining Agreement.

RCW 52.26.100(6)(a) provides for certain conditions for employees who are transferred into a regional fire protection service authority, such as the Employer. It provides, in pertinent part:

> … Upon transfer, unless an agreement for different terms of transfer is reached between the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions, an employee is entitled to the employee rights, benefits, and privileges to which he or she would have been entitled as an employee of a participating fire protection jurisdiction, including rights to:
>
> (i) Compensation at least equal to the level at the time of transfer;
>
> (ii) Retirement, vacation, sick leave, and any other accrued benefit;
>
> (iii) Promotion and service time accrual; and
>
> (iv) The length or terms of probationary periods, including no requirement for an additional probationary period if one had been completed before the transfer date.
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> * * *
>
> (c) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified as provided by law.

Thus, upon formation of the RFA, the Employer was required to continue to provide to its employees the rights and benefits they had been receiving under their respective Collective Bargaining Agreements, until different terms were agreed to with the collective bargaining representatives, either upon transfer to the RFA or after contract expiration. In February 2018, the Employer and IAFF Locals 1828 and 1984 entered into a "Bridge Agreement" in order "to facilitate operational integration" and "to serve as a bridge to the first RFA labor contract." The Bridge Agreement set forth certain terms and conditions of employment that would be a "contractual commitment" to both bargaining units until the "stated end of [the] Bridge Agreement as a contractual commitment [on June 30, 2018], with the 'status quo' under labor

law applicable thereafter until the first contract is entered or as otherwise agreed." The Bridge Agreement provided that the District 1 and Lynnwood Agreements would "remain in effect for former Fire District 1 and Lynnwood personnel, respectively, except as may otherwise be agreed or as provided in [the] Bridge Agreement." It further provided that it was "not [to] be deemed the first 'RFA contract,'" and it was to be "without prejudice to the positions of the respective parties in negotiating the first contract." In the Bridge Agreement, it was agreed that the Local 1984 employees would "move to the current L[ocal] 1828 4-Platoon Shift Schedule 1-1-1-5 (One day on, One day off, One day on, Five days off, repeating, with every 32nd day a Debit Day)," with an 8:00 a.m. start time. The Bridge Agreement also included provisions related to promotions, reductions in rank or job classification, usage of Captain/Paramedics, minimum staffing, holidays, and shift exchanges. The Bridge Agreement contained the following provision regarding negotiations for the first RFA Collective Bargaining Agreement:

> 12. The parties will in good faith earnestly strive to reach the first RFA contract by June 30, 2018. It is the intent of both parties that all wage items for the first contract will be retroactive to January 1, 2018 and other negotiable/bargainable items may be subject to retroactivity by mutual agreement by both parties.

In view of the parties' recorded understanding that the Bridge Agreement would not prejudice their positions when negotiating their first Collective Bargaining Agreement, their temporary agreement on certain terms will be given no weight here. The terms and conditions contained in the expired Collective Bargaining Agreements of Locals 1828 and 1984 are significant as reflecting the relevant status quo.

COMPARABLE EMPLOYERS

RCW 41.56.465(3) requires the Panel to "consider a comparison of the wages, hours, and conditions of employment . . . [with those] of like personnel of public fire departments of similar

size ..." The parties were unable to agree on a list of appropriate comparators. They did agree upon six comparable Fire Departments: cities of Bellevue and Everett, Eastside Fire & Rescue, Puget Sound RFA, Renton RFA, and Snohomish County Fire District 7. As additional comparators, the Employer proposes the use of city of Tacoma, Central Pierce Fire & Rescue (Pierce County Fire Protection District 6), and South King Fire & Rescue. The Union proposes the use of the cities of Redmond and Shoreline.

The Employer asserts that the jurisdictions that it first proposed to the Union encompassed all fire departments within the Puget Sound area of Washington with a population and assessed valuation bands of 50 percent up and 50 percent down when compared to the RFA, Additionally, it added Bellevue despite its high assessed valuation because of its "prominence" and the fact that it is a comparable proposed by the Union. The Employer asserts that it later added Everett and Snohomish District 7 as comparables, despite their falling outside a 50/150% band, as an accommodation to the Union after the Union proposed them as comparables. The Employer contends that Redmond and Shoreline should be excluded as comparables because both are relatively tiny compared to the Employer. It argues that even though Redmond and Shoreline have been utilized as comparables in the past by District 1 and/or Lynnwood, nothing in the statutory language can legitimize reaching back in time in order to qualify them as comparables. The Employer maintains that the Union offered no coherent explanation for rejecting Tacoma, Central Pierce, and South King Fire & Rescue as comparables, as all three are of similar size to the RFA and are part of the Seattle/Puget Sound labor market.

The Union chose its list of comparators from fire departments situated within the "confluence of the I-5 and I-405" highways, as reflecting "the immediate labor market." Within

that area, it also considered a range of 50% down and 50% up in both population and assessed valuation, while also considering history, number of employees, and certain other factors. The Union points out that both Redmond and Shoreline were utilized in the past as comparators for collective bargaining by both District 1 and Lynnwood. Further, it asserts that District 1 and Lynnwood have worked and trained with the Shoreline Fire Department. The Union argues that Tacoma, South King Fire & Rescue, and Central Pierce should be excluded as comparables because they are distant from the I-5 and I-405 confluence, and they have not worked or trained with the District 1 or Lynnwood employees.

As the parties recognize, most arbitrators have long selected "fire departments of similar size" to utilize as comparators on the basis of similar population and assessed valuation of the served area, with additional consideration of geographic proximity and whether they share the same or similar labor market. As recognized by both parties, the band of 50% up and down in population and assessed valuation is most frequently applied by arbitrators in determining appropriate similarly sized jurisdictions for purposes of statutory comparability. That standard is adopted here.

We have utilized the figures provided by the Employer for the population and assessed valuation of the Employer and the comparables. Cabot Dow, a labor relations consultant who served on the Employer's bargaining team, has been involved in the past with many interest arbitration proceedings. Mr. Dow testified that he obtained the population and assessed valuation figures from the 2019 edition of the Washington State Fire Commissioners Directory. He testified that this information is derived from the State Office of Financial Management, the State Department of Revenue, and from the Fire Departments, and he has found this information

to be reliable over the years. Listed below are the population and assessed valuation for the Employer and the suggested comparable jurisdictions:

South Snohomish County Fire & Rescue RFA

Population	Assessed Valuation
261,942	$25,601,277,597
50% = 130,971	50% = $12,800,638,798
150% = 392,913	150% = $38,401,916,395

Mutually Agreed Comparables

Fire Department	Population	Assessed Valuation
Bellevue	162,885	$56,347,943,123
Everett	111,200	$16,741,280,387
Eastside F & R	139,373	$38,086,864,531
Puget Sound RFA	225,472	$21,921,366,332
Renton RFA	133,359	$18,095,155,981
Snohom. Cty. F. Dist. 7	119,530	$15,843,797,945

Additional Employer Proposed Comparables

Tacoma	227,911	$26,529,656,708
Central Pierce	220,642	$24,654,120,088
S. King F&R	155,845	$18,391,353,485

Additional Union Proposed Comparables

Redmond	87,760	$20,728,368,765
Shoreline	57,070	$10,133,836,997

Everett and Snohomish Fire District No. 7 each service populations that are less than 50% of the population served by the Employer. Bellevue's assessed valuation is more than twice that of the Employer. All three will be used as comparables since the parties have stipulated to their inclusion and they are not greatly out of line with the size of the Employer. Tacoma, Central Pierce, and South King Fire & Rescue are also deemed to be comparable since they each fall within the agreed upon population and assessed valuation bands and each are situated within the Puget Sound, Seattle-Tacoma-Everett metropolitan area. Moreover, Tacoma has historically been utilized as a comparable by a predecessor of the RFA and the Union, namely Snohomish

County Fire Protection District 1 and IAFF Local 1828. Central Pierce adjoins the city of Tacoma and South King County Fire & Rescue borders both Tacoma and Seattle. The city of Redmond is included as a comparable. While it has a population that is less than half that of the Employer, its assessed valuation is close to that of the Employer and it has historically been utilized as a comparable during bargaining by both of the predecessors of the Employer. Moreover, Redmond adjoins Bellevue, a City both parties used as a comparator despite it being out of the 50%-150% range in one of the two standards they have relied upon. Like Redmond, Bellevue was used by the parties in the past as a comparator. Similarly, Snohomish County Fire District 7 was agreed to by the parties, even though it services a population that is less than 50 percent of that serviced by the RFA, apparently because it had been utilized in the past as a comparable. The city of Shoreline is excluded as a comparable, though, like Redmond, it has been used in the past as a comparable. Shoreline's population is just 22% of the population served by the new RFA. Its assessed valuation is less than 40% of the assessed valuation figure for the RFA. RCW 41.56.465 provides for comparisons to be made with "public fire departments of similar size." Shoreline's serviced population and assessed valuation are just too small to be considered to be of similar size to the newly formed RFA.

Accordingly, the following ten fire departments are considered here to be comparable jurisdictions:

City of Bellevue
City of Everett
City of Redmond
City of Tacoma
Central Pierce Fire & Rescue (Pierce County Fire Protection District 6)
Eastside Fire & Rescue (King County Fire Protection District 10)
Puget Sound Regional Fire Authority
Renton Regional Fire Authority
South King Fire & Rescue
Snohomish County Fire District 7

COST OF LIVING

The governing statute requires consideration of "the cost of living." In the matter at hand neither party based its arguments on this criterion. Change in the cost of living is generally considered a very significant factor in interest arbitration for the determination of appropriate wage or total compensation increases. However, in the matter at hand, such determinations are excluded from consideration here as a result of the PERC order that effectively postpones them for later resolution by the parties or through another interest arbitration proceeding. Therefore, the criterion of cost of living is not a significant factor for the issues before this Panel.

OTHER CONSIDERATIONS

In addition to the specific criteria set forth in RCW 41.56.465(a)-(d), Subsection (e) of that statute requires consideration of "[s]uch other factors, not confined to the factors under (a) through (d) . . ., that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. A factor frequently raised in contract negotiations and also considered by interest arbitrators is the ability to pay wage and benefit increases. Clark County (Axon, 1996); King County (Lankford, 2009). There is no contention here that the Employer is unable to afford reasonable compensation or benefit increases.

ARTICLE 10 – PREVAILING RIGHTS

The Employer proposes the following new Prevailing Rights article:

> All rights and privileges for employees, at the present time in the form of salaries, overtime, insurance, other monetary payments by the RFA, hours, and shifts shall remain in full force, unchanged and unaffected in any manner by this Agreement except as expressly provided elsewhere in this Agreement or changes by mutual consent.

The Union's proposal is:

> All rights and privileges for employees of the RFA, whether they derived from employers in Lynnwood or Fire District 1; in the form of salaries, overtime, insurance, monetary payments by the RFA, hours, shifts, and all other conditions of work that constitute mandatory subjects of bargaining pursuant to applicable law, shall remain in full force, unchanged and unaffected in any manner by this Agreement except as expressly provided elsewhere in this Agreement or changes by mutual consent.

The Prevailing Rights article in the expired District 1 Agreement provided:

> 10.1 Prevailing rights shall be those practices or privileges that have been established through a continually recurring practice known by both the Employer and the Union.

The expired Lynnwood Agreement provided:

> 5.1 The Employer agrees Maintenance of Standards rights shall be those practices or privileges that have been established through a continually recurring practice known and approved by both the Employer and employee and not a short-term variance from requirements.

Batt. Chief Turner testified that since the formation of the RFA, management would ask former Lynnwood employees such as himself, how certain things were done in the past in Lynnwood and then would follow the past Lynnwood practice. As an example, he testified that management, after asking for advice, followed the Lynnwood practice for vacation picks. Batt. Chief Turner testified that the RFA management has been "really good" about maintaining the Lynnwood practices.

The Employer contends that since it would be impossible to honor two separate, binding sets of past practices that had existed in District 1 and Lynnwood, its initial proposal that there be no prevailing rights article would be the most sensible. It reasons that the new Agreement will unify the two workforces under one set of provisions and practices on wages, hours and working conditions, and if a dispute arises, the Union could call for negotiations or file a grievance.

Alternatively, the Employer contends that its final proposal, which is based on language in the Everett/IAFF Local 46 Agreement with modifications, should be adopted. It suggests that this proposal has the advantages of being confined prospectively to the core elements of pay, hours, shifts, and insurance, and contemplates future changes by mutual agreement. The Employer argues that the Union's proposal would perpetuate two sets of past practices, some of which are inconsistent with one another, with no guidance on which would govern. It further argues that the vague wording of that proposal would lead to future disputes.

The Union contends that its proposal assures that whatever prevailing rights previously existed with the two employee groups would not disappear because of the formation of the RFA, and that this reflects what the RFA has been doing since its formation. It argues that the Employer's proposal is counter to the intent of the RFA legislation that protects the rights that each local union had prior to the formation of the RFA. The Union asserts that the Everett language is inapplicable to the unique circumstances here of bringing two jurisdictions together, each with a long history. The Union maintains that the Employer's proposal is a punitive attempt to take away those rights and practices enjoyed by both legacy District 1 and Lynnwood employees.

The Panel finds that the following language is appropriate for inclusion in the Agreement:

> All rights and privileges for employees that constitute mandatory subjects of bargaining pursuant to applicable law and have been established through a continually recurring practice known and approved by both the Employer and the Union shall remain in full force.

This language is substantially similar to that contained in the expired District 1 and Lynnwood Collective Bargaining Agreements. There is no indication that it caused any difficulties for those Employers. Moreover, there is no indication that there has been any dispute regarding practices

and privileges during the period that the RFA has existed. While the Employer derived its proffered language from an edited version of a provision contained in the contract of one of the comparable jurisdictions, neither party has suggested that generally, there is any commonality among the prevailing practices provisions of the comparables. The Union's position that the practices of both the District 1 and Lynnwood Departments be maintained indefinitely is just not feasible. Each of these Departments had different contract language and practices. With the merger of the two Departments into an RFA and the merger of the bargaining units, it was possible to temporarily maintain separate terms and conditions of employment for the employees of the legacy Departments, except as modified by the Bridge Agreement, until a new Collective Bargaining Agreement for the merged bargaining unit was established. That is what was required by the governing statute. However, the RFA statute referenced by the Union cannot be interpreted to mean that the practices of each of the merged departments, even if different, must somehow continue after an RFA's initial collective bargaining agreement has been established with the newly merged bargaining unit. To the extent that prevailing practices under the legacy Departments can reasonably provide an understanding as to how the new Agreement is to be applied to all employees, they may have significance.

ARTICLE 18 – REDUCTION IN FORCES

The parties are in agreement with regard to Article 18 except for the first sentence of Section 18.1. The Union proposes the following language:

> In case of personnel reduction, lay-off shall be done by reverse order of seniority. ...

The Employer proposes:

> In case of personnel reduction, lay-off shall be done by reverse order of seniority, with the exception that the Employer shall

be allowed to retain, out of seniority order, sufficient Firefighter/Paramedics to meet operational needs. ...

The expired District 1 and Lynnwood Agreements each had language that was essentially similar to the Union proposal, without special consideration for Firefighter/Paramedics.

According to Interim Fire Chief Douglas Dahl, the RFA has a minimum staffing of 60 Firefighters on duty during the day and 54 at night, which includes a minimum of 17 Firefighter/ Paramedics during the day and 16 at night. All Firefighters are required to be at least EMT certified. Each engine and ladder truck is staffed with one Captain, one Firefighter/Paramedic and one Firefighter/EMT. Chief Dahl testified that every medic unit is staffed by at least one Paramedic. Aid units are staffed by either two employees with EMT certification or by one EMT and one Paramedic. Paramedics receive a pay premium of 15 percent. Chief Dahl testified that the RFA employs about 104 Paramedics. He testified that its minimum staffing requirement is for 68 Paramedics to be assigned to the four platoons, and that requires that there be about 100 Paramedics to be employed. Chief Dahl testified that the RFA's operational needs are set by its Board of Fire Commissioners. Batt. Chief Turner testified that he contacted each of the comparable Departments, and found that none of them placed Paramedics on each rig. He further testified that to his knowledge, there had never been a reduction in force in either the District 1 or Lynnwood Departments, not even during the great recession of 2008.

Among the comparable jurisdictions, four do not employ Paramedics, five lack any special layoff protection for Paramedics, and one, Bellevue does have a provision in its labor contract that provides special protection for Paramedics in the event of a layoff situation. That provision was added to the Bellevue Agreement as a result of a 1982 interest arbitration opinion by Arbitrator Howard Block. Arbitrator Block, in his opinion, explained that "[t]he City has advanced persuasive reasons for retaining Paramedics in the event of a lay-off." He noted that

"[t]heir special skills and training are vital to provide emergency medical services ..." Arbitrator Block did not further detail the evidence submitted in this regard.

The Union's proposal shall be awarded. It is consistent with the language of the expired District 1 and Lynnwood Agreements, and with the prevailing practice among the comparables. The only exception among the comparables was Bellevue. That provision originated from an interest arbitration where the Arbitrator found that, based on the evidence presented, retention of the Paramedics was "vital." In the instant matter, there was no evidence presented regarding particular difficulties that this Employer or the public would encounter if Paramedics did not receive special protection in the unlikely event of a layoff of uniformed personnel. As Chief Dahl testified, the RFA has a "Paramedic-rich system." More than one third of the Employer's uniformed work force has Paramedic certification, and the remainder are EMTs. The Board of Fire Commissioners has established minimum manning requirements that has resulted in a large proportion of its employees having Paramedic certification, and such certification is obviously desirable based on the training that it signifies. However, we are not persuaded, based on the evidence presented, that such certification for this particular bargaining unit, with its personnel makeup, is so essential that it trumps the traditional standard of seniority long recognized by the RFA's predecessor employers and most of the comparables.

ARTICLE 24 – SHIFT EXCHANGE

The Union proposes the following for Article 24:

24.1 Employees shall have the right to exchange shifts or portions of shifts when the change does not interfere with the operation of the department and is approved by the Battalion Chief. Trading partners must be qualified to act for one another.

24.2 Employees shall be permitted to work a maximum of seventy-two (72) hours straight during a shift exchange followed by a minimum of twenty-four (24) hours off.

24.3 The Employer recognizes a signed agreement to stand in for another employee as assumption of full responsibility for the manning of that shift, with the exception of an excused absence per Article 38; 38.2.

24.4 Employees shall have the right to relieve an employee before the employee's starting time with proper notification to the Company Officer; provided, said early relief does not reduce minimum staffing qualifications. Such time shall not be considered as time exchanged as identified in Article 24; 24.1.

24.5 Exchanges are to be at no cost to the Employer and as a rule requests are to be submitted at least one (1) day in advance, provided that the Battalion Chief may waive the notice requirement.

The Union's proposal reflected above is identical to the shift exchange article in the expired District 1 Agreement. The shift exchange article in the expired Lynnwood Agreement reads:

22.1 Shift exchanges shall be allowed by the Employer under the following conditions:

22.1.1 Request is properly submitted in writing and approved by the Chief or his Designee prior to the exchange.

22.1.2 The exchange provides for proper balance of personnel on shift.

22.1.3 The exchange results in no additional costs to the Employer.

22.1.4 Fractional exchanges shall not be for less than four (4) hours, unless authorized by the Fire Chief or his designee.

22.1.5 Exchanges are approved by the Duty Chief or Battalion Chief.

22.1.6 Training needs are coordinated with the Duty Chief or Battalion Chief.

22.1.7 A Firefighter exchanging with a Captain shall assume the full duties and responsibilities of the Captain.

22.1.8 Shift exchanges shall be scheduled so no employee works more than forty-eight (48) shift hours straight.

22.1.9 Shift exchanges are permitted on Debit Days provided that exchanges meet the requirements of Article 22.

The Employer proposes the following language for Article 24:

24.1 Employees may be allowed to exchange shifts or portions of shifts when the change does not interfere with the operation of the department, does not cause the employee to miss training as defined in WAC 296.305 and Article 15.2 and is approved by the Battalion Chief, or higher in the case of Battalion Chief trades. Trading partners must be qualified to act for one another.

24.2 Employees shall be permitted to work a maximum of forty-eight (48) hours straight during a shift exchange followed by a minimum of twenty-four (24) hours off.

24.3 Exchanges are to be at no cost to the Employer and as a rule requests are to be submitted at least eight (8) days in advance, provided that the Battalion Chief may waive the notice requirement.

24.4 The Employer and Employee recognize an approved agreement to stand in for another employee as assumption of full responsibility for manning of that shift, with the exception of an excused unplanned absence.

24.4.1 In the event a trade is vacant due to an unplanned absence, it is the "trade/working" employee's responsibility to find a qualified replacement. After a good faith effort has been made to fill the trade and the vacancy is still present, the Battalion Chief may fill the spot with overtime.

24.4.2 If an employee becomes sick or disabled while in the performance of a shift trade obligation and leaves work, sick leave shall be charged to that individual as described in Article 38 – Sick Leave.

24.4.3 Employees working a shift trade and a bereavement event occurs, the employee working the shift trade would follow Article 35- Bereavement.

24.4.4 Employees who are scheduled "trade/working" and subsequently are on DMAT, MIL, and Wildland deployments or on other department sponsored assignments approved by the Fire Chief or his/her designee shall be replaced with overtime.

24.5 New Firefighter Probationary employees are not eligible to trade shifts outside of extenuating circumstances approved by the Fire Chief or his/her designee.

24.6 Newly promoted employees are limited to fifteen (15) trades during their twelve (12) month promotional probationary period. Upon extenuating circumstances, additional trades may be approved by the Fire Chief or his/her designee.

24.7 Employees shall have the right to relieve an employee before the employee's starting time with proper notification to the Company Officer; provided said early relief does not reduce minimum staffing qualifications. Such time shall not be considered as time exchanged as identified in Article 24; 24.1.

24.8 Trades will be a one (1) for one (1) transaction and employees are allowed to carry forward only three (3) over one (1) year. Any employee exceeding the allowable amount will not be allowed to enter into any additional trades until numbers are brought into compliance.

The Employer stresses that its proposal was developed by a Labor Management Committee (LMC) comprised of Employer and Union members during negotiations for the Agreement at issue here. The LMC had negotiated certain issues away from the main negotiations table, including shift exchanges, and then brought their recommendations to the main table for consideration. By mutual understanding, a recommendation from the LMC was to be considered a "tentative tentative agreement." The "Ground Rules for Bargaining" agreed to by the parties prior to negotiations provided the following guidance regarding bargaining at the LMC bargaining level:

* * *

2. The bargaining structure will have two components. One consists of the two full bargaining teams ("Main Table"), which will oversee and be ultimately responsible for the negotiations. Each side will have a chief spokesperson, and discussions and documents will be on the record unless identified as "off the record". The other component will consist of an enhanced form of Labor-Management Committee ("LMC") meetings, which will operate off the record as a rule.

3. LMC: The RFA and the Union will work on the following subjects in LMC meetings:
Trades and shift length (Articles 24, 25, Appendix C);

* * *

The LMC is encouraged to make proposals to the Main Table, which will be considered for inclusion into the Agreement.

4. … All discussion and documents in LMC are strictly off the record as a rule. "Off the record" means evidence cannot be used in mediation or subsequent legal proceedings unless expressly waived by both parties.

* * *

At the main table, the Union negotiators rejected the LMC's tentative tentative agreement on shift exchanges when it could not achieve an overall settlement on schedules and debit days. The Employer urges that the tentative tentative agreement should be adopted as reflecting what reasonable negotiators would agree to. The Employer maintains that it indicates a mutual understanding that the parties would be well served by spelling out the shift trade rules of the road. Chief Dahl, in his testimony, explained these proposed rules. Chief Dahl testified that Section 24.1 clarified that shift trades are subject to supervisory discretion and also protects the Employer's right to deny shift trades that interfere with required training. He testified that Section 24.3's requirements that exchanges be submitted at least eight days in advance and involve no cost to the Employer reflect the current practice. He testified that Section 24.4.1 clarifies some confusion as to who is responsible for finding another replacement when there is an absence following the exchange. He testified that Sections 24.4.2 and 24.4.3 reflect the current practice. He testified that Section 24.4.5 provides for special circumstances where a replacement employee would be replaced by an overtime assignment. Chief Dahl testified that Section 24.5 would generally deny eligibility for shift exchanges to probationary employees so that they can focus on their structured training. He testified that Section 24.6 would restrict newly promoted employees to 15 exchanges during a 12-month period so that they would have adequate contact with their supervisor for purposes of evaluation during their probation period. He testified that Section 24.7 is unchanged from the District 1 Agreement. He testified that Section 24.8 would prevent employees from carrying forward more than three exchanges to the following year so that they do not "get too out of whack" in the number of shifts worked in a year. On cross examination, Chief Dahl agreed that Battalion Chiefs have wide latitude in determining whether exchanges would interfere with the operation of the Department.

He testified that employees are generally able to reschedule missed training and that the Department has always been able to meet its mandatory training requirements.

The Union contends that the Employer has not met its burden of proving why the language that has been in the District 1 Agreement for many years should be changed. It points out that neither the legacy Lynnwood employees, nor the legacy District 1 employees, nor any of the comparables, except for Redmond, had any caps on shift exchanges, as the Employer has proposed. The Union argues that the Employer's proposed limitation on exchanges that would bar employees working more than 48 consecutive hours in a shift exchange situation is contrary to the Employer's routine practice of scheduling Employees to work 72 consecutive hours when needed, and, as Batt. Chief Turner testified, it would lead to more mandatory overtime. The Union contends that the Employer's reliance on a "tentative tentative agreement" by the LMC on a side table during collective bargaining is misplaced because it was never agreed to at the main bargaining table. Batt. Chief Turner testified that at the main table, the shift exchange article was tied by the Union negotiators to bargaining regarding shift schedules and debit days, and agreement could not be reached. The Union asserts that Chief Dahl's testimony shows that there were no problems in administering shift trades in the Department and that the Battalion Chiefs can and do make decisions regarding whether a shift trade interferes with the operations of the Department.

The Panel finds that the language in the expired District 1 Agreement regarding shift exchanges is appropriate for inclusion in the RFA Collective Bargaining Agreement. That language is in most respects similar to language in the expired Lynnwood Agreement. The Employer has not established that the practice under that language caused a significant problem or led to any grievances in either the predecessor Employers or the RFA. The new language

proposed by the Employer finds little support among the comparables. This is particularly the case with regard to the Employer's proposal to impose additional limitations on shift exchanges with regard to probationary periods and required training. The language found appropriate does require that shift exchanges not interfere with the operations of the Department and that there be Battalion Chief approval.

The Employer relies on the language of the "tentative tentative agreement," developed by the LMC. A "tentative tentative agreement" reached at the LMC is less significant than a tentative agreement reached at the main table. It serves, by the terms of the parties' Ground Rules for Bargaining, as a proposal to "be considered" at the Main Table. Thus, the Main Table negotiators are free to accept or reject an LMC "tentative tentative agreement, or tie it to an agreement on related issues, as the Union did. It should not prejudice the Union's position here.

ARTICLE 25 – HOURS

Most of the bargaining unit work a 24-hour shift. Currently, those working a 24-hout shift are scheduled for one day on, one day off, one day on, five days off (1-1-1-5) with the cycle then repeating with debit days in order to achieve an average workweek of 47.25 hours. That is the same schedule that had been worked by the District 1 employees under their expired Agreement. The Employer's proposal match's the language in the expired District 1 Agreement, with the major exception that it changes the 24-hour schedule to one day on, two days off, one day on, four days off (1-2-1-4), with debit days, which was the schedule in the Lynnwood Agreement. The Employer asserts in its brief that it is now too late to make the change for 2020, since shift schedules and vacation slots have already been established, but that its proposed new schedule should be adopted for future years.

The Employer proposes the following language for Article 25:

25.1 The Employer has the right to establish work schedules. The Employer has established that the work period for bargaining unit shift personnel as that of a 24 day period and bargaining unit day shift personnel that of a 14 day period.

25.2 Bargaining unit members, except those listed in 25.4 below, shall work an average of forty-seven and one quarter (47.25) hours per week (2465.5 hours per year). The shift cycle shall consist of twenty-four (24) hours on duty, forty-eight (48) hours off-duty, twenty-four (24) hours on-duty, ninety-six (96) hours off-duty; then the cycle shall start again. The balancing of the work cycle and work week shall be accomplished by assigning a debit day to all shift employees. The debit day shall not be changed unnecessarily and shall be scheduled one every 32 calendar days, repeating. Shift personnel shall receive overtime compensation for all hours worked in excess of the maximum hour standard of 182 under the 7(k) exemption or as provided under Article 29 of this contract.

25.3 In the event an employee is assigned to a station other than his/her permanent assignment, said employee shall report to his/her permanently assigned station and proceed to any re-assigned station while on duty unless notified prior to the end of the previous shift. Such temporary "floater" assignments shall be assigned to the least senior member of the crew unless a more senior member requests the assignment.

25.4 Those employees assigned to the 40 hour week shall work either five (5) eight (8) hour days, Monday through Friday, or four (4) ten (10) hour days, Monday through Friday scheduled between the hours of 0600 and 1800 with the exception of a maximum of one (1) day per week with flexible hours to allow for training periods. Any other forty (40) hour workweek schedule may be implemented that is mutually agreed upon by the Employer and the Union. Day shift personnel shall receive overtime compensation for all hours worked in excess of the maximum hours standard of 106 under the 7(k) exemption or as provided under Article 29 of this contract. Those employees assigned to the alternative shift schedule of Appendix C shall work as provided therein.

25.4.1 Members assigned to the twenty-four (24) hour shift shall report for duty not later than 0800 hrs. unless mutually agreed upon by the Employer and the Union. Two (2) hours shall be set aside daily for physical training. Members assigned to a forty (40) hour position shall report for work not earlier than 0600 and not

later than 0800 and shall have one (1) hour set aside daily for physical training.

25.5 New members assigned to training shall work one of the following 40 hour per week schedules at the direction of the training division.

25.5.1 Monday through Friday, eight (8) hours per day, with a 30 minute break, or one (1) hour unpaid lunch break.

25.5.2 Monday through Thursday or Tuesday through Friday, ten (10) hours per day, with a 30 minute break, or one (1) hour unpaid lunch break.

The Employer argues that the problem with the current 1-1-1-5 schedule is that employees who volunteer for overtime on day two of their schedule would then be working 72 consecutive hours. Chief Dahl testified that a 1-2-1-4 schedule would greatly reduce the number of times that an employee would work 72 consecutive hours. Chief Dahl testified that the RFA's Commissioners have expressed their opinion that working 72 consecutive hours can be dangerous. In addition, the Interlocal Agreement that the RFA has with the city of Edmonds to provide fire and EMS services to that City provides:

> The City prefers that the following shift arrangement apply to personnel assigned to stations within the City: no Firefighter shall start a 24-hour shift at any of the City Fire Stations if that Firefighter has just completed a 48-hour shift at a City Fire Station or any other fire station in the District without having taken a rest day between shifts. The District commits that it will undertake in good faith, pursuant to Chapter 41.56 RCW, to negotiate successfully for those arrangements to be implemented.

The Employer maintains that it is well known that fatigue caused by prolonged periods of work and sleep deprivation can impair performance. The Employer submitted in evidence a 2015 study of EMS agencies that found that "[e]xtended shift duration is associated with occupational injury and illness among EMS shift workers." Weaver, *et. al.,* "An observational study of shift length, crew familiarity, and occupational injury and illness in emergency medical service

workers," Occup. Environ. Med. (2015), pp. 1-7. The authors of that study cautioned that they had no information on the workload of the crews surveyed or their opportunity to rest on shift. A second study submitted into evidence by the Employer appears to be a printout of a slide presentation prepared by Daniel Patterson, PhD in 2016, that found that fatigue among EMS workers increases the odds of injury or medical error. Neither of the studies submitted by the Employer references fire agencies. Chief Dahl testified that he himself has not seen any studies that found that sleep deprivation was a safety hazard for firefighters. He testified that he does not recall that any such studies were mentioned during collective bargaining.

According to a chart placed in evidence by the Employer, the most recent Collective Bargaining Agreements of the comparable fire agencies, as well as District 1 and Lynnwood, provide for the following maximum number of consecutive hours that may be worked:

Fire Agency	Hours Allowed
Everett	24
Bellevue	48
S. King Fire & Rescue	48
Tacoma	48
Puget Sound RFA	48
Central Pierce	72
Eastside Fire & Rescue	72
Snohomish 7	72
Renton RFA	72
Redmond	?
District 1	72
Lynnwood	48

A review of the Redmond Agreement reveals no specific limitation on the number of consecutive hours that may be worked in that Fire Authority. Several of the comparables that provide for a maximum of 48 consecutive hours worked, allow for that number to be exceeded in "extreme" or "special" circumstances. Puget Sound RFA prohibits "mandatory" overtime if it would cause the employee to work 72 consecutive hours.

The Union proposes the following language for Article 25:

25.1 The Employer has the right to establish work schedules.

25.1.1 Operations personnel are Union employees whose primary duties are emergency response. Operations personnel, aka "Shift personnel", will be assigned to the 24-Hour Shift schedule detailed in this article. Operations personnel will not be assigned to day shift or the 40-Hour a week schedule other than as specified in article's 26 and 27.

25.1.2 The Employer has established that the work period for bargaining unit 24-Hour Shift personnel as that of a 24-day period. The 24-hour shift schedule is defined below in 25.2.

25.1.3 The Employer has established that the work period for bargaining unit 40-hour a week (non-24-hour shift) personnel as that of a 14-day period. The 40-hour a week schedules are defined in 25.4 below.

25.2 Bargaining unit members, except those listed in 25.1.2 above and 25.4 below, shall work an average of forty-seven and one quarter (47.25) hours per week (2465.5 hours per year). The shift cycle shall consist of twenty-four (24) hours on-duty, twenty-four (24) hours off-duty, twenty-four (24) hours on-duty, one hundred twenty (120) hours off duty; then the cycle shall start again. The balancing of the work cycle and work week shall be accomplished by assigning a debit day to all shift employees. The debit day shall not be changed unnecessarily and shall be scheduled one every 32 calendar days, repeating. Shift personnel shall receive overtime compensation for all hours worked in excess of the maximum hour standard of 182 under the 7(k) exemptions or as provided under Article 29 of this contract.

25.3 In the event an employee is assigned to a station other than his/her permanent assignment, said employee shall report to his/her permanently assigned station and proceed to any re-assigned station while on duty unless notified prior to the end of the previous shift. Such temporary "floater" assignments shall be assigned to the least senior member of the crew unless a more senior member requests the assignment.

In the event an employee is moved from their assigned station (the station to which an employee was directed to report to prior to end of last work shift) to another station after the employee has reported to work, they shall be eligible for overtime compensation as defined below:

25.3.1 Employee must be at originating station and begin the move in time to report to the new station by 08:00 to be eligible for compensation as outlined in 14.8.4. If not, they shall wait until 08:00 and then transit to the newly assigned station.

25.3.2 In the event the employee is not at the newly assigned station at 08:00, the employee to be relieved shall wait for him/her to arrive before being relieved. He/she will be compensated at their overtime rate of pay.

25.3.3 In no event shall two employees be compensated for the same station reassignment. Overtime shifts and shift trades are not eligible for this compensation.

25.4 Employees assigned to the 40-hour week may choose to work any of the following 40-hour week schedules:

- Five (5) eight (8) hour days, Monday through Friday or;
- Four (4) ten (10) hour days, Monday through Thursday or Tuesday through Friday scheduled between the hours of 0600 and 1800 with the exception of a maximum of one (1) day per week with flexible hours to allow for training periods or;
- 9/80-day schedule,
  * 9/80 Schedule is defined as:
  * The first week, the employee shall work four (4) nine (9) hour days (Monday thru Thursday) and eight (8) hours on Friday.
  * The second week the employee shall work four (4) nine (9) hour days (Monday thru Thursday) with Friday off.
  * This schedule shall be repeating (5 work days the first week, 4 work days the second week).
  * The mid-point of the eight-hour shift divides the two workweeks so that each week consists of 40 hours.

25.5 Day shift (40 hours a week) personnel shall receive overtime compensation for all hours worked in excess of the maximum hours standard of 106 under the 7(k) exemption or as provided under Article 29 of this contract.

25.6 Other start and end times for non-shift employees may be worked subject to mutual agreement between the Employer and the employee. A non-shift employee may occasionally request in writing to flex his/her schedule within the same FLSA workweek, which must be approved by the Employer. The Employer may occasionally flex the work schedule of the employee when there exists a business necessity. A five (5) day notice is required unless waived by the employee.

25.7 Members assigned to the twenty-four (24) hour shift shall report for duty not later than 0800 hrs. unless mutually agreed upon by the Employer and the Union. Two (2) hours shall be set aside daily for physical training. Members assigned to a forty (40) hour position shall report for work not earlier than 0600 and not later than 0800 and shall have one (1) hour set aside daily for physical training.

25.8 New members assigned to training shall work one of the following 40-hours per week schedules at the direction of the training division:

* Monday through Friday, eight (8) hours per day, with a 30-minute break, or one (1) hour paid lunch break.
* Monday through Thursday or Tuesday through Friday, ten (10) hours per day, with a 30-minute break, or one (1) hour paid lunch break.
* 9/80 Schedule, 30-minute break, or one (1) hour paid lunch break.

The Union contends that the 1-1-1-5 schedule that is currently in effect should be maintained. It points out that this schedule had been in effect in District 1 for many years. Batt. Chief Turner testified that when the RFA was formed, Lynnwood firefighters were working a 1-2-1-4 schedule. He testified that after the Employer asked the Union which schedule they preferred, the Union held a vote of the RFA firefighters and a majority voted for the 1-1-1-5 schedule. That was the schedule that was included in the Bridge Agreement. The Union points out that the Bridge Agreement was signed more than a year after the Interlocal Agreement with the city of Edmonds. Batt. Chief Turner testified that during collective bargaining, the Employer's negotiators never gave a reason for its proposed change in schedules other than it was a big issue for the Commissioners. He testified that when he worked at Lynnwood before the RFA was formed, employees there did work 72-hour shifts in order to meet staffing needs. Batt. Chief Turner testified that changing shift schedules would have an adverse effect on employees who had already made vacation plans and life choices based on the existing schedule. The Union asserts that a change in schedule during 2020 would affect employees who have

secondary jobs, are going to school, or who have child care responsibilities. The Union points out that the Agreement at issue here expires in 2020, and that as soon as this Decision is issued, the parties will be in negotiations for the 2021 Agreement where the issue of work schedule can more realistically be bargained.

The Panel awards a continuation of the language in the expired District 1 Agreement regarding hours. This matches the Employer's proposal except that it includes the 1-1-1-5 schedule that the Union advocates and that is in the expired District 1 Agreement. The Union's proposals for other new language in Article 25 are not adopted. Its proposals in that regard have no basis in the expired District 1and Lynnwood Agreements. The Union offered no justification for its proposed new language, other than for maintaining the 1-1-1-5 schedule.

Both parties recognize that implementation of a different work schedule in 2020 would be problematic in view of commitments already made based on the existing schedule. The Employer's suggestion that the Panel delay the effective date of a schedule change until after 2020 is not feasible. The 2021 contract year is not at issue here and the Panel has no jurisdiction in that regard. Arbitrator Michael Beck reached a similar conclusion in City of Lynnwood, PERC N0s. 24694-I-12-0588, *et. al.* (2013). Confronted with a similar schedule issue, Arbitrator Beck found that imposing a different schedule in the middle of the final year of a contract year "would be extremely difficult" and that the authority of the Arbitration Panel did not extend beyond that year. A change in the work schedule for 2021 is an appropriate subject for the collective bargaining that will ensue following the issuance of this Award.

In any event, the evidence presented to this Panel is insufficient to establish that the current 1-1-1-5 schedule is inherently riskier than the 1-2-1-4 schedule proposed by the Employer. It is not clear that the studies submitted by the Employer involved firefighters.

Moreover, it was not evident that the safety record in Lynnwood that had a 1-2-1-4 schedule for many years was different than that of District 1 that had the 1-1-1-5 schedule. It was also not evident that the 1-1-1-5 schedule caused operational difficulties either for District 1 or the RFA. As for the comparables, there appears to be a split among them regarding whether they would permit employees to work 72 consecutive hours. In sum, there is insufficient basis to award a change in the current work schedule.

ARTICLE 30 – EDUCATIONAL INCENTIVES

The Employer proposes the following language regarding educational incentives:

30.1 Employees shall be paid 0.00035 of the Sr. Firefighter base salary rate for each credit earned toward an accredited Associates degree in fire command/administration, EMS, or related field.

30.2 To be eligible for educational incentive pay, an employee must have an Associate Degree Transcript Review showing the requirements needed to complete a fire science, fire command/administration, EMS, or related degree. The sum of the credit hours needed will be subtracted from the ninety (90) credits required and the remainder will be used to compute incentive pay. The employee will be eligible for educational incentive pay in accordance with the following condition:

1) A minimum of forty-five (45) credits have been completed toward a fire science, fire command/administration, EMS, or related Associate degree.

2) Credits recognized, or underway and creditable, as of the execution date of this Agreement will continue to be recognized for pay. No additional credits will be recognized.

30.3 Educational incentive pay shall not be paid for more than ninety (90) credits.

30.4 The Employer shall pay tuition and necessary books for all courses leading to an Associate's, Bachelor's, or Master's degree in fire command/administration, EMS, EMS Management, Fire Protection, Fire Technology, Public Administration, Public Safety Administration, Homeland Security, Nursing, Paramedicine, EMS Management,

Business Management or Administration, Emergency Management or Disaster Preparedness or related fields. Courses must be preapproved through the Fire Chief and/or/ his/her designee prior to registration. Reimbursement shall occur upon successful completion of the approved course(s). (Exception: prepayment for tuition may occur for Learning Partnership Institutions contracted with the RFA.) The employee shall submit proof of successful completion of the approved course(s) and all necessary receipts. A 2.0 grade point or greater shall be considered as successful completion of the course.

30.5 After achievement of an Associate's or Bachelor's degree in Fire Science, Fire Command/Administration, EMS, EMS Management, Fire Protection, Fire Technology, Public Administration, Public Safety Administration, Homeland Security, Nursing, Paramedicine, EMS Management, Business Management or Administration, Emergency Management or Disaster Preparedness, or related field, the educational incentive shall be increased to a total of three point five percent (3.5%) or four point five percent (4.5%) respectively, of Sr. Firefighter base salary.

30.6 An employee who earned a Bachelor's degree from an approved accredited university in a field of study not listed in this Article, prior to date of hire, who have achieved an Associate's degree in a fire service field shall receive incentive pay at the Bachelor's degree rate. No Bachelor's degree in an unapproved field of study completed after the employee's date of hire is eligible for this provision.

The Employer's proposal follows the template of the expired District 1 Agreement, except that Sections 30.2(2) and 30.6 are new, Section 30.4 adds Bachelor's and Master's degrees as pursuits for which the Employer would reimburse employees for books and tuition, Section 30.5 provides for a new 4.5 percent premium for a Bachelor's degree, and Sections 30.4 and 30.5 provide for additional courses of study that would qualify for premium pay and books and tuition reimbursement.

Both the Employer and the Union propose a 3.5 percent educational premium for having an AA/AS degree and a 4.5 percent premium for having a BA/BS degree, limited to certain courses of study. The parties are in agreement that their most significant disagreement regarding this article is whether the educational incentive premium should apply to "the Senior Firefighter

base salary" as provided for in the expired District 1 Agreement and as the Employer proposes, or to "the employee's base salary" as it was in the Lynnwood Agreement and as the Union proposes.

The practice of the comparable jurisdictions is reflected below:

Fire Agency	AA/AS % Premium	BA/BS % Premium
Bellevue	3.5% of base pay	4.0% of base pay
Everett	1.5% of Sr. FF pay	3.0% of Sr. FF pay
Redmond	? % of Sr. FF pay	? % of Sr. FF pay
Tacoma	0	0
Central Pierce	0	0
Eastside Fire & Rescue	1.75% of Sr. FF pay	2% of Sr. FF pay
Puget Sound RFA	0	0
Renton RFA	4% of Sr. FF pay	6% of Sr. FF pay
Snohomish 7	2% of Sr. FF pay	2% of Sr. FF pay
S. King Fire & Rescue	0	0
Average of all	1.42%	1.88%
Ave. of 5 w/Ed. Prem.	2.55%	3.4%

The Redmond Agreement was not provided and no evidence was offered regarding the educational premium percentage offered by that fire agency. However, the Union represented that Redmond provides an educational premium based on "pay at the Top Step Firefighter rate." Only Bellevue and Renton RFA offer an educational incentive for college credits without achieving a degree.

The Employer contends that its proposal for educational incentives pay based on the Senior Firefighter pay is supported by the fact that it represents the status quo for the legacy District 1 employees, which amounts to 80 percent of the bargaining unit, and also by the practice of the comparables. The Employer argues that its proposal "is already rich compared to the comparables." It notes that it would provide a new 4.5 percent premium for s BA/BS degree for the legacy District 1 employees, who, under the District 1 Agreement, received a 3.5 percent

premium only for the AA/AS degree. It further notes that its proposal increases the AA/AS premium for legacy Lynnwood employees from 3.0 percent to 3.5 percent. Additionally, it would newly provide reimbursement for tuition and books for pursuit of a Master's degree, and for legacy District 1 employees, it would add such reimbursement for pursuit of a BA/BS degree. The Employer's proposal would continue to provide the .00035% premium for credits toward an AA/AS degree that were already recognized, but would not recognize additional credits in the future. It observes that only two of the comparables recognize college credits below the AA/AS degree.

The Union contends that educational incentive pay should be based on the employee's rate of pay, and not on the Senior Firefighter rate. Batt. Chief Turner testified that since at least 2000, the Lynnwood Firefighters had received educational incentive based on their base rate of pay. The expired Lynnwood Agreement provided for a 3 percent premium for an AA/AS degree and a 4.5 percent premium for a BA/BS degree, with both "computed as a percent of the employee's base wage or firefighter step D salary, whichever is greater." Batt. Chief Turner testified that the RFA employs about nine former Lynnwood Firefighters who have an AA degree and about 17 who have a Bachelor's degree. It points out that under the Employer's proposal, former Lynnwood employees at the rank of Paramedic or higher would receive a pay cut. The Union asserts that since Paramedics are not permitted to drop their Paramedic certification and become a Firefighter, it would be unfair to provide educational incentive pay base on the pay rate of a Senior Firefighter, a position that they never occupied and is lower than their current status. It asserts that the Employer's position would not provide the same incentive to promote. The Union points out that when the RFA Planning Committee estimated the funding for the RFA, it did so based on the salary then paid to the employees, including the existing

educational premium paid to Lynnwood employees. The Union maintains that the practice of the comparable Departments is mixed with regard to whether educational incentive is paid based on the Top Step Firefighter rate or the employee's rate. Finally, the Union urges that Article 30 should recognize three degrees in addition to those proposed by the Employer: Fire Officer, Executive Fire Officer, and Fire Inspection. In this regard, Article 20 of the expired Lynnwood Agreement provided for educational incentive pay for obtaining a degree from a college or university that the Employer has determined meets its accreditation criteria in listed approved fields of study. Among the field of studies listed were "Fire Officer Degree, … Executive Officer Degree, [and] Fire Inspection." The Union's proposal includes one that is similar to the Employer's proposed Section 30.2 regarding a limited payment of an educational premium for credits completed prior to achieving a degree. It offered no evidence or argument in opposition to the Employer's proposed Section 30.6 that relates to recognition of Bachelor's degrees in unapproved courses of study.

The Employer's proposed Article 30 is awarded, effective July 1, 2020, with the addition that Fire Officer, Executive Fire Officer, and Fire Inspection will be added to the list of eligible fields of study included in Sections 30.4 and 30.5. The awarded language will, when viewed as a whole, provide an enhanced educational incentive for most of the bargaining unit. It provides improvement in tuition and books reimbursements, and it will provide a Bachelor's degree premium that will be new for the former District 1 employees, and, for the former Lynnwood employees, will be at a higher percentage than they had received under the Lynnwood Agreement. It is recognized that former Lynnwood employees at the rank of Paramedic or higher may suffer a reduction in the amount of their education premium because the awarded language calls for the premium to be based on the Senior Firefighter base rate rather than the

employee's rate. However, accepting the Union's position would result in a costly pay increase for the 78 percent of the bargaining unit who were legacy District 1 employees. Such a result would be counter to the statutory criteria of comparability, inasmuch as only one of the ten selected comparable Fire Agencies applies the education premium to the employee's wage. The predominant practice, where an educational incentive is provided, is for the education premium to apply to the wages for a Senior Firefighter. Moreover, the educational incentive that has been awarded is higher than the average benefit provided by the comparables.

The Union maintains that the Employer "knew that it would be on the hook to pay at the rates suggested by the Union when the RFA was formed," based on the governing statute for RFA formation and studies prepared by the RFA Planning Committee. Greg Markley is employed by Puget Sound RFA and has been Secretary-Treasurer of the Washington State Council of Firefighters since 2003. Mr. Markley testified that he has knowledge of the contracts of local firefighter unions in the state. He testified that he has never seen a first contract of an RFA where employees lost any benefits that they had when they had worked for one of the merged Departments, though he agreed on cross examination that he could not think of any other situation where a large Fire District had merged with a relatively small City Department to form an RFA. The Union also relied on the testimony of Batt. Chief Scott DiBenedetto who was on the Staff Work Group for the RFA Planning Committee, to maintain that the assumption of the Planning Committee in costing the proposed RFA was that the RFA would take the best of both contracts to make sure that the RFA would be affordable. In fact, evidence was presented that the RFA did consider the current salary and benefit costs for District 1 and the Lynnwood Department in developing a budget for the proposed RFA. There was no evidence that the Planning Committee could, or did, make any commitments that all employees in the RFA would

receive the same benefits that they received before, or better, under a new collective bargaining agreement for the RFA.

RCW 52.26.100(6)(a) does require that employees who are transferred into an RFA are entitled to the rights and benefits that they had prior to the establishment of the RFA. However, terms and conditions of employment for firefighters are, by statute, subject to change through the collective bargaining process. If that process does not result in a negotiated agreement as a result of collective bargaining and mediation, then the interest arbitration process may be invoked. That process is governed by statutory criteria. When two bargaining units merge, there is no statutory requirement that the initial collective bargaining agreement must provide for every employee only the status quo they had under their prior employer, or better. Considering the terms of the expired District 1 Agreement that had applied to most of the bargaining unit and the practice of the comparable jurisdictions, the Employer's proposal, with the modifications regarding the eligible degree programs, is justified by the applicable statutory criteria.

ARTICLE 31 - DEFERRED COMPENSATION

A 457 Deferred Compensation Plan is a tax advantaged retirement plan allowed by the IRS for government employees. Both the employer and the employee can contribute to the plan. The law sets a limit on the total amount that can be contributed cumulatively by both the employer and the employee to a 457 Plan during a year. For 2018, that amount was $18,500, and for those over 50 years old it was $24,500. For 2019, the maximum allowable contribution was $19,000, increased to $19,500 in 2020, and was $25,000 for those over 50.

Article 31 of the expired District 1 Agreement provided for a monthly Employer 457 Deferred Compensation Plan contribution of 5 percent of the employee's regular base pay plus incremental pays, but not including overtime pay, and an additional supplemental end of

year 5 percent contribution "on the basis of overtime earnings." Three specified 457 Deferred Compensation Plans were offered as options for District 1 employees.

Section 16.1 of the expired Lynnwood Agreement provided for an Employer contribution of 6.2 percent "of an employee's base salary to the existing deferred compensation plan provided the employee matches at least 67% of the Employer's contribution; ..." Batt. Chief Scott DiBenedetto testified that District 1's deferred compensation contribution was considered as income for purposes of computing the employee's pension, but Lynnwood's deferred compensation contribution was not.

The February 2018 Bridge Agreement, that was to be "without prejudice to the positions of the ... parties in negotiating for a first contract," provided:

> The Employer agrees to modify current contributions to an RFA available 457 Deferred Compensation Plan at the rate of 5.75% of the employee's regular monthly salary, defined as base pay, plus incremental pays including educational incentive, longevity pay, specialty pays, and sick incentive and plus [sic] overtime. This contribution adjustment will be effective upon ratification of this Agreement by both sides.

Batt. Chief DiBenedetto testified that under the Bridge Agreement, the Employer's 5.75 percent contribution was considered as income for purposes of the employee's pension calculation.

In May 2018, during bargaining for their first Collective Bargaining Agreement, the parties reached the following tentative agreement:

> 31.1. The Employer agrees to contribute to a 457 Deferred Compensation Plan of the employee's choosing at the rate of 5.75% of the employee's regular monthly salary, defined as base pay plus incremental pays including educational incentive, longevity pay, specialty pays and sick incentive plus overtime. The change from 5.0% or 6.2% and inclusion of overtime is effective in February 2018.
>
> 31.2 The Washington State Deferred Compensation Plan, VOYA, Kemper, and the IAFF Nationwide Frontline Plan, are deferred compensation options. The Union and Employer agree to explore alternative plans.

During 2018, many of the RFA's employees elected to make their own individual income deferrals to their 457 Plan that was in addition to the monthly 5.75 percent Employer contribution. As a result of the Bridge Agreement, with the 5.75 percent Employer contribution newly applying to all overtime, and a number of employees earning large amounts of overtime pay and also individually deferring income to the Plan, many unexpectedly reached the maximum annual contribution months prior to the end of the year. When the maximum contribution amount was reached for a particular employee, the Employer stopped its own contributions to that employee's 457 Plan for the remainder of the year.

On November 18, 2018, Firefighter Brad Cheek submitted a grievance protesting that the Employer had violated the Bridge Agreement when, beginning with his October 31, 2018 paycheck, it had quit contributing to his 457 Plan because he had deferred contributions exceeding $24,500. Other similar grievances followed. On December 26, 2018, then Fire Chief Bruce Stedman settled the grievances on the following basis:

> … in January 2019 <u>all</u> members who had a reduced (RFA) amount applied to their 2018 deferred Compensation Account will receive a one time, lump sum "make-up" contribution to their preferred deferred plan. I truly believe this was an "unintended consequence" as it related to the language in the Bridge Agreement (inclusion of overtime) and strongly encourage your members to manage their accounts as each year progresses.

In a later email to all employees, Chief Stedman wrote that the grievance settlement had been a "one-off situation" because of the new Bridge Agreement, before which the employees did not have reason to monitor contributions in order to stay within the 457 Plan limits. He advised the employees that the RFA was obligated to follow the Plan limits for 2019, and therefore "RFA contributions will cease when the 457 Plan limit is reached, factoring in both RFA contributions and employee-elected deferrals." He further stated in that email that the Employer and the Union

have different opinions on what should happen after the 457 Plan maximum contribution limits are reached, and that the matter would be resolved by interest arbitration.

On January 14, 2019, the Employer submitted to the Union a revision to the tentative agreement regarding deferred compensation. It retained the same language, except for adding the following proviso to the first sentence:

> … provided that the Employer contributions will cease when total contributions, inclusive of employee contributions, reach the 457 Plan and IRS limits.

On January 22, 2019, the Union responded that its "proposal is that regardless of the amount contributed by the individual employee, the RFA would pay up to 5.75% toward the Plan and/or as additional wages (depending on the amount of the employee's contribution to the Plan) so as not to run afoul of the IRS or the Plan documents." On January 24, 2019, the Union notified PERC that it agreed with the Employer that Article 31 should be added to the certified list for interest arbitration and that the Union's proposal would be forthcoming. On August 5, 2019, the Union provided the following proposal to the Employer:

> 31.1 The Employer agrees to a 457 Deferred Compensation Plan of the employee's choosing at the rate of 5.75% of the employee's regular monthly salary, defined as Base Pay plus all incremental pays including Educational Incentive, Longevity Pay, Specialty Pays, Sick Incentive and Overtime Pay.
>
> 31.2 It is understood that the intent of the 5.75% matching Deferred Compensation Plan offered by the RFA is to maximize the employee/employer contributions. It is not the intent of the Deferred Compensation Plan offered by the RFA to have the employer (RFA) make contributions past the maximum allowable limit as defined by the Internal Revenue Service (IRS). For 2019, the maximum allowable limit is $19,000.00.
>
> However, it is the intent to maximize the 5.75% RFA contribution into the employee's 457 Deferred Compensation Plan.

Example: The employee may not make any or cease to make contributions to his/hers 457 Deferred Compensation Plan prior to the last pay period of the year and prior to reaching the maximum allowable contribution defined by the IRS, but the RFA shall continue making contributions at the rate of 5.75% of all compensation only up to the IRS maximum.

31.3 Due to the variance in annual income impacted by various factors such as "overtime", there is the possibility that the employee will reach or exceed the maximum allowable deferred amount as defined by the IRS prior to the last pay period of the year. In order to maximize the contributions by the employee/employer and not exceed the maximum allowable threshold, the RFA and Union agree to the following:

31.3.1 The RFA shall offer an additional IRS approved Deferred Investment Plan to all Local 1828 Employees, such as a separate 401k Plan. This plan will be used for the purpose of unintentional "employee overages" previously paid into the 457 Plan. All contributions of the employee that exceed the IRS 457 Plan threshold, shall be paid into this additional plan. This additional plan will also follow all IRS applicable laws, rules, and maximum allowable monies and is not subject to the additional RFA matching 5.75%.

31.4 The Union and the Employer agree to explore alternative retirement plans. The retirement plans will be implemented at a time mutually agreed upon between the Union and the Employer.

31.5 The Employer agrees to offer IAFF Nationwide Frontline Plan as one of the Deferred Compensation Plan options.

31.6 The Washington State Deferred Compensation Plan, as well as the IAFF Nationwide Frontline Plan, will become Deferred Compensation Plan options. Other options may also be added if they are at no additional cost to the Employer and are approved by the Employer.

The Employer contends that the Panel should award the tentative agreement reached during negotiations, with its clarifying proposal to conform Article 31 with the longstanding meaning of District 1's Article 31 and the legal framework of the Internal Revenue Code. The Employer reasons that the tentative agreement and the Bridge Agreement expressly make RFA contributions subject to the "457 Deferred Compensation Plan," which itself must embrace

the legal contribution limits. The Employer argues that "when a limit is reached, the RFA has no further obligations under Article 31 as enriched by the Bridge Agreement." The Employer asserts that the problem of an excess contribution can be avoided by employees' careful monitoring of their individual contributions.

The Employer urges rejection of the Union's proposal because it is disconnected from the tentative agreement, it proposes negotiation for a second IRS-approved 401k plan that may eventually result in a second interest arbitration, and it provides no explanation or paperwork on what a second plan would look like. The Employer further argues that the Union's proposal draws no support from the comparable fire agencies, inasmuch as none of them offer participation in a second deferred compensation plan, let alone a 401k plan. The Employer asserts that "[i]n the next round of bargaining, the Union can endeavor to negotiate a second, concrete plan."

The comparable Fire Agencies provided the following deferred compensation benefits:

Bellevue – No deferred compensation provision was found in the contract. It did provide for employee participation in the City's Employees' Retirement Plan, without that benefit being subject to the grievance procedure.

Everett – Employer contribution of 2.5% of First Class Firefighter base pay to a City sponsored 457 Plan.

Redmond – Employer contribution of 6.2% (The 6.2% is not further described).

Tacoma – Employer matching biweekly contribution of up to $192 to a plan offered by the City.

Central Pierce Fire & Rescue – Employees have the option to participate in one of three specified 457 Plans. No Employer contribution specified.

Eastside Fire & Rescue – Employer contribution of 3.5% of First Class Firefighter base pay to the Employer's deferred compensation program.

Puget Sound RFA - Employer contribution of 3% of First Class Firefighter base pay to one of two specified 457 Plans.

Renton RFA – Employer contribution of 5.5% into a 457 Plan. (The 5.5% is not further described).

Snohomish 7 - Employer monthly matching contribution of up to 2% of employee's base salary "for employees participating in the deferred compensation program."

S. King Fire & Rescue - Employer contribution of 4% of First Class Firefighter base pay to one of three specified plans.

The Union contends that the Employer should be required to contribute the full 5.75 percent of the employee's earnings, regardless of the amount of earnings or the employee's own deferrals. It asserts that the Employer should be required to follow the intent of the tentative agreement reached during negotiations by paying contributions in excess of the 457 Plan maximum into another plan. It points out that the IRS allows an employee to have a separate qualified plan, such as a 403(b) plan, and contributions to the 457 Plan would not be aggregated with contributions to the separate plan by the IRS, as each would have separate deferred compensation contribution maximums. The Union maintains that the Employer recognized that it was violating the terms of the Bridge Agreement and the tentative agreement, when it settled a grievance in favor of the Union. The Union argues that its proposal for the establishment of a second deferred compensation plan separate from the 457 Plan was apparently agreeable to the Employer in the tentative agreement inasmuch as Section 31.2 provided that the Employer and

the Union agreed to explore alternative plans. In this regard, the Union further relies on an email dated October 24, 2018 from RFA Human Resource Analyst JoDean Sharp responding to MSO Kristopher Georgen, who had raised with her the problem of employees losing the Employer contribution if they go over the Plan maximum limits. Ms. Sharp responded that the Employer was "working on an idea of a 401(a) plan right now as an option." The Union suggests as an alternative option to establishing a second deferred compensation plan, the Employer could be required to pay the full 5.75 percent, but that any excess beyond the 457 Plan maximum would be paid directly to the employee in a lump sum at the end of the year or at the beginning of the next year.

The Panel awards the language of the Employer's proposal with the following addition:

> The Employer shall provide to each employee on at least a quarterly basis the cumulative total of deferred income into the employee's 457 Plan.

The awarded language provides employees with a deferred compensation benefit that is an improvement over the deferred compensation language in the expired District 1 and Lynnwood Agreements. It provides former District 1 employees with an increase in the Employer's contribution from 5.0 percent to 5.75 percent and it improves how overtime is treated. For former Lynnwood employees, it increases the amount of the Employer's contribution even though it decreases the percentage contribution, by newly factoring in incremental pays and overtime earnings, and it also newly includes the deferral contribution as credited pension earnings. The language added by the Panel to the Employer's proposal should serve to avoid voluntary employee deferrals that would exceed the maximum allowed under a 457 Plan. The deferred compensation benefit awarded is the most favorable to the employees in relation to the comparable fire agencies, with only one of them offering as much as a

5.75 percent employer contribution, and the rest offering a lesser employer contribution, generally much less, or none at all. Moreover, none of the comparables provide for an employer to contribute to two deferred compensation plans for the same employee, as the Union is proposing.

The Panel does not agree with the Union's contention that its proposal is consistent with the intent of the parties when they reached a tentative agreement. The tentative agreement was for a monthly 5.75 percent contribution by the Employer to a 457 Plan. The understanding should have been that such contributions by the Employer would be consistent with the IRS and 457 Plan requirements. Those requirements set a maximum contribution limit. It should not have been expected that the Employer would contribute to the 457 Plan in excess of the required maximum contribution limit. The tentative agreement cannot be interpreted to provide for a deferred compensation plan that is not a 457 Plan as the Union now proposes, nor can it be interpreted as providing additional taxable wages for Employer contributions in excess of the 457 Plan maximum. The tentative agreement can be interpreted as incorporating the IRS requirements for a 457 Plan. That is consistent with the Employer's proposal.

The Union's proposal to establish a second deferred compensation plan that is not a 457 Plan is not sustainable since it has never been raised during collective bargaining and it provides no specificity. In its brief, the Union indicates that the second plan would have to be negotiated by the Employer and the Union. If such an additional plan were required as part of this Award, and if the parties were subsequently unable to reach agreement on what that plan would be, as they have agreed upon specific 457 Plans in their tentative agreement and in the expired District 1 and Lynnwood Agreements, they would be back in interest arbitration. The Collective Bargaining Agreement at issue here expires at the end of this year. The parties will be back in

negotiations for their next Agreement very soon after the issuance of this Award. That is the appropriate venue for the parties to negotiate whether or not to provide deferred compensation plans besides a 457 Plan. The Union points to the language in the tentative agreement that the parties "agree to explore alternate plans." Read in context of the rest of that tentative agreement, it means that they would explore 457 Plan options in addition to the four options agreed upon in Article 31.2. It does not require an agreement for such a later proposed option, nor does it reasonably suggest that the proposed option would be a 457 Plan, as is specified in Article 31.1.

We are not persuaded that the grievance settlement reached in November 2018 supports the Union's proposal. That grievance involved a claimed violation of the Bridge Agreement. As previously observed, the Bridge Agreement provided that it was to be "without prejudice to the positions of the … parties in negotiating for a first contract." Moreover, Chief Stedman, in resolving that grievance, specified that he was doing so on a one-time basis because employees were unaware that the enhanced deferred compensation benefit in the Bridge Agreement combined with employee-elected deferrals would put some of them over the annual contribution limit for the 457 Plan in 2018. The settlement was that the Employer, on a one-time basis, contributed the disputed amount to the employee's 457 Plan for 2019. Chief Stedman made it clear that the Employer's contribution would not exceed the Plan limit in 2019, and that the employees would have to monitor their own elected deferrals to avoid exceeding the Plan maximum contribution. The grievance settlement does not establish that the Employer recognized any obligation going forward that it was required to continue making contributions to an employee's 457 Plan after the Plan maximum contribution had been reached.

ARTICLE 32 – LONGEVITY PAY

The Employer proposes the following language:

32.1 Longevity shall be administered using the following formula, and is to be added to the employee's monthly salary.

After 5 years of service	2%	of Senior Firefighter
After 10 years of service	4%	of Senior Firefighter
After 15 years of service	6%	of Senior Firefighter
After 20 years of service	8%	of Senior Firefighter
After 25 years of service	10%	of Senior Firefighter
After 30 years of service	12%	of Senior Firefighter
*After 35 years of service	14%	of Senior Firefighter

*Only employees currently receiving the 14% longevity pay will be eligible for the 35 year step.

The Employer's proposal matches the language in the expired District 1 Agreement.

The Union proposes:

32.1 Longevity pay shall be computed as a percent of the employee's base wage or Senior Firefighter, whichever is greater.

After 5 years of service:	2%
After 10 years of service:	4%
After 15 years of service:	6%
After 20 years of service:	8%
After 25 years of service:	10%
After 30 years of service:	12%

The Union's proposal is essentially the same as the language in the expired Lynnwood Agreement except that it adds the 12 percent premium after 30 years of service.

The comparable fire agencies generally provide somewhat similar percentage longevity increases for years of service, but they differ as to whether the percentage longevity increases apply to the Senior Firefighter rate, as the Employer proposes, or to the employee's base wage, similar to the Union's proposal. They provide as follows:

Fire Agency	Calculated on
Bellevue	Employee's base wage
Everett	First Class FF base wage
Redmond	Employee's salary
Tacoma	Employee's base wage
Central Pierce	First Class FF base wage
Central Pierce Batt. Chiefs & Asst. Chiefs	Batt. Chief wage
Eastside Fire & Rescue	First Class FF base wage
Puget Sound RFA	Employee's base salary
Renton RFA	Top Step FF salary
Snohomish 7	FF 3 salary
S. King Fire & Rescue	First Class FF wage

The Employer contends that its proposal is supported by the fact that it represents the status quo for the 80 percent of the bargaining unit who had worked under the District 1 Agreement. The Employer stated in its brief that it learned during the hearing that there was one legacy Lynnwood 35-year employee who was not receiving the 14 percent longevity premium. The Employer represented that as an "accommodation" should its proposal be awarded, it would provide the 14 percent to any 35-year employee who is not receiving this premium, effective on the date of the Award. The Employer maintains that the cost of the base wage approach proposed by the Union would be high, generating an increase in overall pay of 1.67 percent for Captain and 2.96 percent for Battalion Chief. The Employer notes that the Union has made no argument based on comparables, the majority of which base longevity pay on the Senior Firefighter rate. The Employer maintains that there is no truth to the Union claim of a commitment by the RFA Planning Committee to provide employees with the "best of both" the District 1 and Lynnwood Agreements.

The Union contends that longevity pay should be based on the Lynnwood Agreement that provided longevity pay based on the employee's actual rate of pay, a method that had been provided to Lynnwood employees in multiple contracts and that was continued for those employees with the Bridge Agreement. The Union observes that the Employer's proposal

reduces overall compensation to be paid to legacy Lynnwood employees. The Union maintains that the Employer has not argued that it cannot afford the Union's proposal, and it cannot argue the relationship of the expense to the total cost of compensation because wages is not at issue here. As it argued with regard to educational pay, the Union asserts that the merging of bargaining units to form an RFA was never intended to result in anyone losing benefits. The Union avers that no employee bargaining representative would agree to support a vote of the people concerning the establishment of an RFA if they knew that employee benefits would be lost as a result, and without Union support, it is unlikely that RFAs would ever be approved.

The Employer's proposal regarding longevity pay is awarded, effective July 1, 2020, with the exception that the language after the asterisk will be changed to:

> * Employees reaching 35 years of service after July 1, 2020 will not be eligible for the 35-year step.

This language is generally consistent with the Employer's "accommodation" made in its brief to provide the 35-year step to eligible legacy Lynnwood employees who had not been receiving this benefit, as grandfathered employees, as had the District 1 employees. The grandfathering of this provision is reasonable, inasmuch as grandfathering was previously agreed to in the District 1 Agreement, the Union has not sought a 35-year step, and such a step is not supported by reference to the comparables.

The language awarded represents the status quo for about 78 percent of the bargaining unit and is consistent with a slim majority of the comparable fire agencies. It also adds a new 30-year longevity premium for legacy Lynnwood employees, and additionally adds a 35-year benefit for one former 35-year Lynnwood employee. It is recognized that this will also change the status quo for legacy Lynnwood employees above the rank of Senior Firefighter by significantly reducing the longevity benefit they had been receiving since their premium would

no longer be based on their position's higher base pay. However, it also must be recognized that adopting the Union's position would result in a change in the status quo for the much larger number of higher ranked RFA employees who were legacy District 1 employees by providing them with a substantial increase in their longevity benefit. Such a substantial increase in the benefit is not supported by reference to the comparables, and indeed, the Union has not argued otherwise. As discussed in a prior section of this Opinion, there is insufficient basis to support the Union's contention that, in effect, employees of a relatively small Department who are integrated with a much larger Department to form an RFA may not have any of their former benefits reduced in a first Collective Bargaining Agreement with the new RFA. The Panel recognizes that the employees of a relatively small fire agency may resist merger with a much larger fire agency that provides certain benefits to its employees that are less favorable than that received by the smaller agency, if merger would risk a diminishment of those benefits. However, it should be expected that the collective bargaining dynamics would change with the merger and that terms and conditions of employment for one grouping of employees or another may eventually also change as a result, and not always for the better.

ARTICLE 37 - HOLIDAYS

The expired District 1 Agreement provided for 40-hour employees to receive 10 paid designated holidays and one floating holiday. Mr. Dow testified that RFA 40-hour employees work schedules of four 10-hour days, so that this benefit totals 110 hours of recognized holidays per year. For the employee's working a 24-hour duty shift, the District 1 Agreement provided for 132 hours of paid leave annually in lieu of holidays to be placed in the employee's vacation bank, with an employee option of choosing additional wages in lieu of the additional vacation time.

The expired Lynnwood Agreement provided for 40-hour employees to receive 11 paid holidays and one floating holiday, amounting to a total of 96 hours of paid holidays. Unlike District 1, Lynnwood recognized the day before Christmas as a paid holiday. For employees working a 24-hour duty shift, Lynnwood provided 5.08 hours of base pay per bi-weekly pay period in lieu of holidays, without the option of taking additional vacation time instead. That amounts to about 132 hours of additional pay annually. In addition, these Lynnwood employees received one floating holiday to be scheduled in the same manner as vacation days. Thus, the 24-hour Lynnwood employees received a holiday benefit totaling 156 hours.

The Employer proposes the adoption of the language of the expired District 1 Agreement, currently in effect as a result of the Bridge Agreement, with one addition. The Employer would include, as would the Union, a provision from the Lynnwood Agreement that governs how holidays would be treated if they fall on a weekend or if the date of a holiday is changed. The Union proposes that the Employer recognize the day before Christmas as a holiday for 40-hour employees, in addition to the ten now recognized. For employees working a 24-hour duty shift, the Union proposes 132 hours of paid leave in 2018 and 144 hours of paid leave in 2019.

The comparable fire agencies provide the following holiday benefits:

Fire Agency	40-Hour Shifts	24-Hour Shifts
Bellevue	96 hours	120 hours
Everett	96 hours	144 hours
Redmond	96 hours	132 hours
Tacoma	96 hours	144 hours
Central Pierce	112 hours	216 hours
Eastside Fire & Rescue	117 hours (ave.)	(combined w/ vac. as PTO)
Puget Sound RFA	96 hours	84 hours
Renton RFA	99 hours (ave.)	120 hours
Snohomish 7	120 hours	120 hours
S. King Fire & Rescue	110 hours	144 hours

Average	103.8 hours	136 hours
Median	97.5 hours	132 hours
District 1	110 hours	132 hours
Lynnwood	96 hours	156 hours
Employer proposal	110 hours	132 hours
Union proposal	120 hours	144 hours

The Employer contends that its proposal should be adopted because it represents the status quo, but with the addition of one section from the Lynnwood Agreement that was also proposed by the Union. The Employer points out that its proposal is consistent with both the District 1 Agreement that had applied to most of the bargaining unit, and with the Bridge Agreement. It argues that the Union's proposed increases in holiday benefits would be costly to the Employer and has no support in the comparables.

The Union contends that it is seeking the addition of a holiday for the day before Christmas for the 40-hour employees inasmuch as that was recognized for the Lynnwood employees for many years. With regard to the employees working a 24-hour shift, the Union asserts that its proposal would still result in legacy Lynnwood employees losing 12 hours from the holiday benefit they had at Lynnwood.

The Panel adopts the Employer proposal on holidays, to be effective on July 1, 2020. It reflects the status quo for most of the bargaining unit and it is not out of line with the holiday benefits provided by the comparable fire agencies. Legacy Lynnwood 40-hour employees will receive an increase over the annual holiday hours they had received while working for the Lynnwood Department. It is recognized that the legacy Lynnwood 24-hour employees will have their number of paid annual holiday hours reduced. That is offset, partially, by their receiving additional benefits at 30 and 35 years of service, and by newly having the choice of receiving pay or additional time off in lieu of holidays.

ARTICLE 38 – SICK LEAVE

Both parties used the sick leave language in the expired District 1 Agreement as a template for their respective proposals. Each of their proposals made significant modifications to the District 1 language. The District 1 Agreement provided:

38.1 Twenty-four (24) hour shift LEOFF II employees shall accrue twenty (20) hours per month of sick leave. Forty (40) hour employees shall accrue twelve (12) hours per month of sick leave. Sick leave accrual shall be a maximum of two thousand four hundred and seventy (2470) hours.

38.1.1 New employees shall receive upon hire one (1) year sick leave accruals (the equivalent of 240 hours of sick leave) and shall not accrue additional sick leave hours until the end of the thirteenth (13th) full calendar month of employment. Such sick leave may be used during the first year of employment.

38.2 In order to be eligible for sick leave pay, an employee must meet the following conditions:

38.2.1 Report to the Battalion Chief/Chief Officer In Charge (or designee) the reason for the absence prior to the beginning of the scheduled work shift.

38.2.2 Keep the Battalion Chief/Chief Officer In Charge (or designee) informed as to the employee's condition at least prior to the first day of every shift cycle.

38.3 Recurring sick leave is defined as three (3) or more successive shifts or three or more sick leave events during a calendar year. In such cases, the following may be required prior to the employee returning to duty.

38.3.1 The Fire Chief (or designee) may request the employee to submit a medical certificate signed by a physician stating the nature of the condition, duration of the period that the employee shall be incapacitated, and the date the employee can return to work.

38.3.2 The Employer has the option of specifying a physician to perform a medical examination to be paid by the Employer.

38.4 For LEOFF II employees, service-incurred illness or injuries shall be covered by Worker's Compensation. Earned sick leave benefits may

be used along with the 6 month disability supplement and Workers' Compensation insurance in an amount which when added to the Worker's Compensation benefits is sufficient to equal the employee's total salary.

38.5 Sick leave: Employees covered by LEOFF II shall be subject to applicable LEOFF II sick leave and disability sections of RCW 51.32.090 and Chapter 41.04 RCW. Employees covered by LEOFF I shall be subject to applicable LEOFF I disability leave sections of RCW 41.26.

38.6 Employees who exhaust all of their accrued sick leave may receive leave without pay for any additional time off not to exceed one calendar year. Such time may be extended on a case-by-case basis as approved by the Fire Chief or designee.

38.6.1 Employees separated due to disability related reasons will be placed on a disability/rehire list for a period of two (2) years. During the two (2) years employees if cleared by their physician shall have the opportunity to take the LEOFF Medical Fit For Duty Exam and if passed shall be qualified for hire.

38.6.2 Employees qualified for hire shall be considered for hire prior to hiring from other hiring lists.

38.7 Sick leave may be used for any medically related incident including regularly scheduled visits to doctors and dentists and to care for a dependent or spouse of the employee, in accordance with applicable RCW's.

38.8 Upon severance an employee shall receive a one time buy back of one-quarter (25%) of their sick leave hours at a straight pay up to a maximum of 1440 (360) hours, based on Sr. Firefighter wage, not later than seven (7) calendar days after the employee's final day of employment. After 20 years of continuous employment with Fire District 1 and any merged, consolidated or contracted agency, buy back shall be at 35% of their sick leave hours at straight pay up to a maximum of 1440 (504) hours, based on Sr. Firefighter wage.

38.9 Sick leave incentive program: To be eligible to participate in the sick leave incentive program employees must reach and maintain a minimum accrual balance of 720 hours.

38.9.1 Employees shall be eligible to receive an incentive of either PTO or the equivalent straight pay in lieu of PTO in accordance with the table below. The PTO shall be added to the employees' vacation bank the year immediately following earning of such time. The

employee shall be able to then schedule the time off. The PTO shall count against the employees' end of the year vacation maximum and carryover requirements. The employee electing to receive straight pay in lieu of equivalent hours of PTO shall submit the request to payroll by February of the year immediately following. The hours converted to pay or PTO shall be removed from the sick leave accrual bank. The sick leave incentive program additional PTO shall not apply to cost-to-comp.

24 Hour Employee			//	Day Shift Employee		
Sick Leave Usage	/	Hours Prorated To Hours Used	//	Sick Leave/ Usage	/	Hours Prorated Hours Used
0	/	48	//	0	/	20
24	/	36	//	12	/	15
48	/	24	//	24	/	10
72	/	12	//	36	/	5

Payroll will calculate any fractions of sick leave usage to incentive hours to determine actual amount of hours earned.

The Employer proposes to change the language of Section 38.1 of the District 1 Agreement by reducing the sick leave accrual rates for both 24-hour shift employees and 40-hour employees. It would reduce the monthly accrual rate from 20 hours to 16 hours for 24-hour employees, and from 12 hours to 10 hours for 40-hour employees. The Employer would modify Section 38.1.1 by reducing the initial sick leave bank for new hires from 240 hours to 192 hours. The Union proposes to retain the District 1 accrual rates of 20 hours for 24-hour shift employees and 12 hours for 40-hour employees. Both parties agree that there should no longer be a cap on total sick leave accrual because of a recently enacted statute.

The comparable fire agencies provide the following accrual rates for their employees:

Monthly Sick Leave Accrual Rates

Fire Agency	24-Hour Shifts	40-Hour Shifts
Bellevue	12 hours	8 hours
Everett	12 hours	6 hours
Redmond	24 hours	8 hours
Tacoma	11 hours*	8 hours
Central Pierce	24 hours	17 hours

Eastside Fire & Rescue	14 hours	8 hours
Puget Sound RFA	18 hours	12 hours
Renton RFA	12 hours	12 hours
Snohomish 7	14 hours	12 hours
S. King Fire & Rescue	17 hours	14 hours

*Tacoma provides 8 hours per month but then increases available hours by discounting usage by 33.3%.

Average	15.8 hours	10.5 hours
Median	14 hours	10 hours
District 1	20 hours	12 hours
Lynnwood	18 hours	8 hours
Employer proposal	16 hours	10 hours
Union proposal	20 hours	12 hours

The Employer contends that its proposed adjustment of the accrual rates would modestly control accrual rates that have historically far exceeded the need for time off and, with the elimination of a cap, would cause accrual banks to grow even larger. In this regard, it presented evidence that many employees have sick leave banks exceeding 2,000 hours. The Employer maintains that its proposal is justified by the comparables as well as fairness and the high costs to the RFA.

The Union contends that its proposal would move all employees to the former District 1 accrual rates. Pointing out that District 1 monthly accrual rates were already reduced from 24 hours to 20 hours two contracts ago, the Union argues that a further reduction is unwarranted.

The Panel's award is for 24-hour shift employees to accrue 18 hours per month and for 40-hour employees to accrue 10 hours, effective July 1, 2020. Accordingly, the initial sick leave bank of 240 hours that was set forth in the District 1 Agreement will be reduced to 216 hours. The 18-hours accrual rate would match the rate that Lynnwood employees have had. The reduction from the 20-hour accrual rate for District 1 employees is justified by the fact that that

rate is significantly higher than average accrual rate of the comparable fire agencies, and would remain higher even at the 18-hour rate. The 10-hour accrual rate awarded for the 40-hour employees, also a reduction for the legacy District 1 employees, reflects the average of both the comparables and the two legacy fire departments making up the RFA.

The Employer proposes the following new subsection to be added to the District 1 accrual provision that establishes a sick leave bank for new employees:

> If a new employee uses more sick leave than they would have accrued and there is a separation of employment, the Employer shall deduct from the employee's final wages the value of the amount of sick leave used in excess of the amount that would have been accrued.

The Employer argues that absent a recapture, it would be paying for services not rendered. Sandra Hollenbeck, the Employer's Human Resources Director, testified that this provision would memorialize what has been the current practice.

The Union, in its brief, does not contest the inclusion of this provision, and it observes that it does reflect the current practice. The Panel awards the inclusion of the quoted subsection proposed by the Employer.

The Employer proposes the addition of the following new section to Article 38:

> All accrued and unused sick leave will carry over at the end of the calendar year for use in the following calendar year unless the total sick leave balance at the end of the year exceeds two thousand, four hundred and seventy (2,470) hours. If the total sick leave balance exceeds two thousand, four hundred and seventy (2,470) hours, the carryover amount will be the sick leave hours that were accrued and unused up to a maximum of forty (40) hours. All current employees who are already at or over that threshold at the time this Arbitration is ratified will not be subject to the reduction in carryover hours.

The Employer observes that the cap of 2,470 hours of accrued leave that was in the District 1 Agreement had to be removed in order to comply with a recently enacted statute,

RCW 49.46.210(j), but that the statute also provides "that an employer is not required to allow an employee to carry over paid sick leave in excess of forty hours." The Employer asserts that its proposal is to have a modest limitation of sick leave carryovers of 40 hours to apply only when an employee's sick leave balance reaches 2,470 hours, but that employees who already have a 2,470-hour bank would be grandfathered and would have unlimited carryovers. The Employer argues that its objectives are to comply with the law and to install a lawful and modest restraint on annual carryovers that would slow the build-up of huge sick leave banks.

The Union opposes any cap on sick leave carryovers, pointing out that there is no similar language in any comparable Fire Department contract. It asserts that there is a need for a large sick leave bank because of firefighters' special health risks of injury and illness. In this regard, Batt. Chief Turner testified that because of the nature of the work, he has suffered many orthopedic injuries. He further testified that he has had eight friends in the fire service pass away from cancer, including two very close friends, that others are currently diagnosed with terminal cancer, and that there is a question whether the high cancer rate among firefighters is job related.

The Award of the Panel does not include any cap on sick leave accrual or carryover. It is recognized that firefighters have special health related concerns. The past Lynnwood Agreements never had any cap on sick leave accruals or carryover. While the recently enacted statute permits an employer to limit sick leave carryover to 40 hours, it does not require it. In fact, RCW 49.46.210(e) provides:

> (e) Employers are not prevented from providing more generous paid sick leave policies or permitting use of paid sick leave for additional purposes.

The Employer has not established that there is a need for a cap on sick leave carryover or that its proposal is supported by reference to the comparables.

The Union proposes that the following new subsection be added to Section 38.1:

> All Employees of the City of Lynnwood and any merged, consolidated contracted agency with the RFA, that have Sick Leave Banks in excess of 2470, shall have those hours honored and remain in full.

While the Employer, in its brief, indicated that it has no objection to the inclusion of this provision, this new language is not awarded by the Panel. There is no purpose for such a provision in view of the Panel's determination not to include any reference to a 2470-hour sick leave cap and its denial of the Employer's proposal to limit accrual carryovers based on such a cap.

The Employer proposes that Section 38.2.1 and 38.2.2 be modified to reflect the following conditions for sick leave eligibility:

> Report to the Battalion Chief/Chief Officer in charge (or designee) as soon as possible and at least one (1) hour prior to the beginning of the scheduled work shift the need for sick leave use.
>
> Keep the Battalion Chief/Chief Officer in charge (or designee) informed of the need for continued sick leave as soon as possible and at least one (1) hour prior to the first day of every shift cycle.

The Union proposes to retain the language that was in Section 38.2 of the District 1 Agreement, except that it would add the phrase "by 07:00 hours" to the end of Section 38.2.1.

Ms. Hollenbeck testified that the purpose of the Employer's proposal is to assist with staffing by requiring an employee to provide at least one hour's notice of an employee's absence, when possible, so that there is time to find a replacement.

The Union asserts that its proposal would allow staffing adjustments to be made before the 8:00 a.m. start of a shift.

There appears to be no significant difference between the parties' proposals regarding Section 38.2. Both would provide that an employee should provide one hour's notice of use of

the sick leave. The wording of the Employer's proposal will be awarded, with the modification that the phrase, ", if possible," after the references to one hour's notice.

The Employer proposes that Section 38.3 of the District 1 Agreement be modified to read:

> For sick leave absences exceeding three (3) successive shifts, the Employer may require verification that the sick leave is for an authorized purpose.
>
> 1. The Fire Chief (or designee) may request the employee to submit verification from a health care provider confirming the need for use of paid sick leave within fourteen (14) calendar days following the first day of the need for leave. The Employer may not require that the information provided explain the nature of the condition or create an unreasonable burden on the employee to produce.

The Union proposes that the language of Section 38.3 of the District 1 Agreement be retained as is.

The Employer argues that its proposal to modify the language of Section 38.3 was needed to align with a new state law regarding an employer's verification requirements for absences.

The Union argues that the proposal is invasive and overreaching, but without further explanation.

RCW 49.46.210(g) provides:

> (g) For absences exceeding three days, an employer may require verification that an employee's use of paid sick leave is for an authorized purpose. If an employee requires verification, verification must be provided to the employer within a reasonable time period during or after the leave. An employer's requirements for verification may not result in an unreasonable burden or expense on the employee and may not exceed privacy or verification requirements otherwise established by law.

The Panel awards the modifications to Section 38.3 that were proposed by the Employer. The change in language was needed in order to comply with the new statute that places limitations on an employer's verification requirements for sick leave. It benefits employees by

limiting the Employer to requesting verification of absences to those exceeding three days, as provided in the statute, rather than the three or more that was in the District 1 Agreement. It also places a new explicit contractual restriction on the Employer's ability to require the disclosure of the nature of the condition underlying the sick leave request. In doing so, it complies with the provision in RCW 49.46.210(g) that the verification is of "an authorized purpose" for the use of sick leave.

The Employer proposes that the language of Section 38.6 of the District 1 Agreement be replaced by the following two sections:

> [1] Regardless of the status of sick pay, employees who incur an illness or injury on the job may be terminated if all of the following conditions apply: (a) the employee has achieved MMI (Maximum Medical Improvement) under L&I, (b) the employee is unable to return to the job of injury, and (c) there are no other leave or accommodation options available such as under FMLA (Family Medical Leave Act) or ADA (Americans with Disabilities Act).
>
> [2] Employees who incur an illness or injury not related to work shall be terminated after twenty-four (24) months of continuous absence unless (a) still on sick leave (b) there are leave or accommodation options available such as under FMLA (Family Medical Leave Act) or ADA (Americans with Disabilities Act), or (c) a medical provider is able to provide a written document indicating the employee will be able to return to the job of illness or injury within the next three (3) months. If (c) above occurs and the employee is still unable to return to the job of injury at the end of three (3) months, his or her employment will be terminated.
>
> 1. Employees separated due to disability-related reasons will be placed on a disability/rehire list for a period of two (2) years. During the two (2) years employees cleared by an appropriate medical provider shall have the opportunity to take the LEOFF Medical Fit for Duty Exam and if passed shall be qualified for rehire.
>
> 2. Employees qualified for rehire shall be considered for rehire prior to hiring from other hiring lists.

The Union proposes to retain, without change, the language of Section 38.6 in the District 1 Agreement.

The Employer contends that its proposal sets reasonable rules to govern the separation of long-gone employees and would assist it to free up budgeted positions to enable the hiring of a replacement. Ms. Hollenbeck testified that the Employer's proposed language would allow it to terminate employees in the extreme circumstances of their being out for extended injuries or illnesses, without there being a viable accommodation, and they are unable to return to the job. Ms. Hollenbeck acknowledged during cross examination that she is unaware of any employee who, in the past, could have been terminated under this proposal. She further acknowledged that provisions such as the Employer's proposal has "very limited" support in the labor agreements of the comparable fire agencies. However, she further testified that in speaking with representatives of each of the comparables, she found that they generally followed a practice similar to the Employer's proposal.

The Award of the Panel is that the language of Section 38.6 of the District 1 Agreement shall be retained, except that it shall be clarified to refer to a "medical provider", instead of a "physician", and it shall refer to "rehire", rather than "hire", where appropriate, as reasonably proposed by the Employer. The language of Section 38.6 represents the status quo for most of the bargaining unit. There has been no showing that the District 1 language has caused any difficulties, that it is inadequate to deal with future extended absences, or that it is at variance with the comparables' labor agreements.

The Employer proposes that the language of Section 38.7 of the District 1 Agreement be replaced with the following language:

> Consistent with RCW 49.46.210, employees may use sick leave
> (a) to care for their health needs or the health needs of eligible family

members, (b) when the employee's workplace or their child's school or place of care has been closed by a public official for any health-related reason, and (c) for absences that qualify for leave under the State's Domestic Violence Leave Act. Specific authorized usage and covered family members shall be as outlined in the State law.

1. Employees are encouraged to make medical appointments during times they are not scheduled to work. If such appointments during scheduled work time are unavoidable, employees shall provide as much advance notice as possible to the Battalion Chief or designee and only miss work for the actual appointment and reasonable travel time.

2. The above is subject to revision for legal compliance purposes as the impact of the new Paid Family Leave law becomes clear.

The Union proposes that the language of Section 38.7 of the District 1 Agreement be adopted as is.

The Employer maintains that the primary purpose of the first paragraph of its proposal is to conform with the various usages of sick leave specified in the new law. It asserts that the first subsection of its proposal is intended to merely encourage, and not require, employees to make medical appointments at non-work times, to provide as much advance notice as possible of appointments, and to only miss work for the time required by the appointment. It maintains that this "encouragement" fairly states good practices by employees so as to facilitate scheduling and operations.

RCW 49.46.210(b) provides:

> (b) An employee is authorized to use paid sick leave for the following reasons:
> (i) An absence resulting from an employee's mental or physical illness, injury, or health condition; to accommodate the employee's need for medical diagnosis, care, or treatment of a mental or physical illness, injury, or health condition; or an employee's need for preventative medical care;
> (ii) To allow the employee to provide care for a family member with a mental or physical illness, injury, or health condition; care of a family member who needs medical diagnosis, care, or treatment of a mental or

> physical illness, injury or health condition; or care for a family member who needs preventative medical care; and
> (iii) When the employee's place of business has been closed by order of a public official for any health-related reason, or when an employee's child's school or place of care has been closed for such a reason.
> (c) An employee is authorized to use paid sick leave for absences that qualify for leave under the domestic violence leave act, chapter 49.76 RCW.

The Panel awards the Employer's proposed replacement language for Section 38.7 of the District 1 Agreement, except that the word "shall" in the first numbered paragraph is replaced with "should." The first paragraph of its proposal broadens the allowable use of sick leave that was set forth in the District 1 Agreement by closely following the new statutory mandate. Subsection 1, as the Employer states, encourages employees to do the right thing by scheduling medical appointments during off duty time, if feasible, by limiting the absence to the time needed for the appointment, and by providing advance notice to the Employer. These are reasonable and fair expectations of an employee. The second subparagraph just recognizes the Employer's obligation to comply with the new Paid Family Leave law. The Union has not offered any argument in support of the language of Section 38.7 of the District 1 Agreement, or in opposition to the Employer's proposal to modify it.

The Employer proposes some minor modifications to the language of Section 38.8 of the District 1 Agreement that provides for a buy back of unused sick leave after an employee's final day of employment. It would still include the District 1 provision for a buy back for employees with less than 20 years of service of 25 percent of unused sick leave hours "up to a maximum of 1440 (360) hours, based on Sr. Firefighter wage," and after 20 years of service a buy back of 35 percent of unused sick leave hours "up to a maximum of 1440 (504) hours, based on Sr. Firefighter wage." Its editing changes include changing the word "severance" in the first sentence to "separation of employment," including the modifier "accrued/unused" before the

references to sick leave, and repeating that the requirement that the payment would be made "not later than seven (7) calendar days after the employee's final day of employment," would apply to employees after 20 years of service, just as was provided earlier in the Section for other employees with less than 20 years of service.

The Union proposes to change the language of Section 38.8 of the District 1 Agreement to read:

> Upon severance an employee shall receive a one time buy back of twenty-five percent (25%) of their sick leave hours up to a maximum of 1235 (617.5) hours, based on their regular rate of pay, not later than seven (7) calendar days after the employee's final day of employment. After 20 years of continuous employment with the RFA (inclusive of Service with Fire District 1, City of Lynnwood, and any merged, consolidated or contracted agency) buy back shall be at 50% of their sick leave hours up to a maximum of 1235 (617.5) hours at their regular rate of pay.

The comparable fire agencies provide the following sick leave cash out benefits:

Sick Leave Cash Outs

Fire Agency	Rate	%	Max. Hrs.	Application
Bellevue	Ee's current	10%	1440 (144)	For all employees
Bellevue	Ee's current	100%	1440 (1440)	Death while employed
Everett	Ee's base	50%	1176 (588)	At retirement only
Redmond	Ee's	25%	1348 (337)	At retirement or death
Tacoma	Ee's	25%	No max.	At retirement or death
Tacoma	Ee's	10%	1929 (193)	All others at separation
Eastside Fire & Rescue	Ee's current	20%	1440 (288)	At separation
Puget Sound RFA	Ee's base	25%.	1440 (360)	At retirement only
Renton RFA	None (Grandfathered benefit for ee's hired before 1994)			
Snohomish 7	Ee's	100%	No max.	At separation
S. King F&R	Ee's current	50%	1500 (750)	At retirem't-6 mos. notice
S. King F&R	Ee's current	25%	1500 (375)	Without 6 mos. notice

The sick leave cash out benefits provided by District 1 and Lynnwood, as well as the parties' proposals, are set out below:

		Before 20 Years	After 20 Years
District 1 Lynnwood	Sr. FF Ee's base	25% up to 1440 (360) // 20% to 720 (144) //	35% up to 1440 (504) 50% to 720(360) (@retirement/death)
Emp. proposal	Sr. FF	25% up to 1440 (360) //	35% up to 1440 (504)
Union proposal	Ee's reg.	25% up to 1235 (617.5) //	50% up to 1235 (617.5)

The Employer maintains that its proposal leaves the District 1 language intact, except for minor editing changes. According to tables presented in evidence by the Employer and not disputed by the Union, its proposal would provide a substantial benefit increase for most legacy Lynnwood employees. The average cash out benefit for the former Lynnwood employees would increase by 18.1 percent, with individual increases ranging from 16.7 percent to 40 percent, with only Battalion Chiefs suffering a reduction that would amount to 1.4 percent. The Employer maintains that the Union's proposed cash out benefit is not supported by the comparable fire agencies and would greatly increase its unfunded liability for sick leave cash outs.

The Union points out that the evidence presented shows that its proposal on sick leave cash outs would have resulted in a net annual cost increase to the Employer of approximately $36,000. It argues that this is a small price to pay for maintaining a healthy work force.

The Panel awards the Employer's proposal on sick leave cash outs. It is essentially the status quo for most of the bargaining unit and it represents a substantial benefit increase for most of the legacy Lynnwood employees. The Union has not argued at hearing or in its brief that its proposal is supported by reference to the comparable fire agencies, or that the Employer's proposal lags behind those agencies. It is noted that while a majority of the comparables base their sick leave cash out benefit on the employee's wages, rather than the Sr. Firefighter rate, the percentages and maximum number of sick leave hours that may be cashed out among the

comparables vary, and half do not provide for cash out prior to death or retirement as does the awarded language.

The Union proposes to retain the language of Section 38.9 of the District 1 Agreement dealing with the Sick Leave Incentive Program. The Employer proposes that there be no such program.

Eight of the ten comparable fire agencies offer some form of annual incentive pay for employees who have made minimal use of sick time. The expired Lynnwood Agreement did not have a sick leave incentive provision.

The Employer contends that the Sick Leave Incentive Program in the District 1 Agreement should not be included in the new RFA Agreement. The Employer maintains that the providing of financial incentives to not use sick leave became contrary to the public policy of the state of Washington as a result of the new sick leave statute. In this regard, the Employer submitted in evidence an opinion letter from a representative of the Washington State Department of Labor & Industries that stated that its interpretation of the law prohibits "an incentives based policy that counts the lawful use of paid sick leave as a disqualifying factor." The Employer asserts that the Union appeared to have recognized this during bargaining since the parties agreed to not include in the RFA Agreement, sick leave incentive language that had been in the District 1 Agreement both in the Overtime Pay and Retiree Medical Articles.

The Panel's Award includes the sick leave incentive language from the District 1 Agreement. That language represents the status quo for most of the bargaining unit. Moreover, it is consistent with the fact that most of the Collective Bargaining Agreements of the comparable fire agencies provide for a sick leave use incentive. The Panel offers no opinion on whether a sick leave incentive program would violate State policy or law. The opinion letter

from a state agency employee submitted in evidence by the Employer did not deal specifically with the District 1 contract language and is not clear about its application. There is no evidence that District 1, the Employer, or any other fire agency has been directed by the state to eliminate or change their sick leave incentive program.

Article 39 – Vacations

Both parties used the vacations language of the District 1 Agreement as a template. They agree upon retaining the language of Section 39.1. They also essentially agree on 39.2, with a minor difference on the last sentence. The Employer's proposal reads:

> Employees who are granted a leave of absence with pay shall continue to accrue vacation leave at their regular prescribed rate during such absence.

The Union would add the phrase "for any purpose" after "leave of absence."

The parties also agree upon retaining the language of Sections 39.3 and 39.4 of the District 1 Agreement.

Regarding Section 39.5, the Union proposes that the following language of the District 1 Agreement be retained:

> 39.5 The Union President or designee shall provide the Department with an annual vacation schedule for 24-hour shift personnel.
>
> 39.5.1 All vacation requests submitted after January 1st or the first FLSA cycle in January shall be on a first-come first-served basis.

The Union proposes to add the following to Section 39.5:

> 39.5.2 There shall be allowed a total of ten (10) Shift personnel (Firefighters, Paramedics, MSOs and Battalion Chiefs) off on vacation or any combination thereof for every day of the year. Each "shift day" (0900 – 0800) shall have 240 hours of vacation leave available.

The Union proposes to retain the following two sections from the District 1 Agreement that it would renumber as Sections 39.7 and 39.8:

> 39.6 For forty (40) hour per week employees, vacations shall be scheduled by mutual consent of the employee and his/her supervisor.
>
> 39.7 Vacation requests must be written and approved prior to taking such vacation.

It also proposes the following related new sections:

> 39.6 Additional employees shall be allowed to take vacation leave beyond the minimum ten (10) off (240 hours per day) at any time as defined in Section 39.5.2, but are subject to the following provisions at the time of the request.
>
> 1. At the time of scheduling, leave must not drop the minimum number of on-duty staff below the minimum set by the Employer, and;
>
> 2. At the time of scheduling, leave must not adversely affect the Employer so that there still exists a sufficient number of Acting Officers, qualified Vehicle Operators and Firefighter/Paramedics, Acting MSOs, Acting BCs on duty so as not to require overtime
>
> * * *
>
> 39.9 Vacation requests shall be submitted to the Fire Chief or his/her designee at least twenty-four (24) hours in advance of the scheduled shift or workday for 24-hour/12-hour shift employees and shall not result in Mandatory Overtime.
>
> 39.10 Vacations for 24-hour Shift Personnel shall be taken in one of three ways as specified below:
> 1) The first twelve (12) hours of the shift =08:00 to 20:00 hours
> 2) The second twelve (12) hours of the shift =20:00 to 08:00 hours
> 3) The entire twenty-four (24) hour shift =08:00 to 08:00 hours
> *No Partial vacation less than twelve (12) hours shall be allowed without approval of the Fire Chief or his/her designee.

The Employer agrees with the Union to retain the language of Sections 39.6 and 39.7 from the District 1 Agreement. It proposes the following new language for Section 39.5:

39.5 The Union President or designee shall timely prepare an annual vacation schedule for 24 hour shift personnel and provide the schedule to the Fire Chief or designee for review as necessary and approval.

39.5.1 All vacation requests after January 1st or the first FLSA cycle in January shall be on a first-come first-served basis. Submission shall be to the Battalion Chief for approval at least twenty-four (24) hours in advance. Requests can be made in one of three ways as specified below:

1. The first twelve (12) hours of the shift: 0800 to 2000 hours.
2. The second twelve (12) hours of the shift: 2000 to 0800 hours.
3. The entire twenty-four (24) hour shift: 0800 to 0800 hours.

*No partial vacation less than twelve (12) hours shall be allowed without approval of the Fire Chief of [sic] his/her designee.

39.5.2 Such requests shall not result in mandatory overtime.

The expired Lynnwood Agreement provided:

8.4 An annual vacation schedule for shift personnel shall be prepared by the Shift Officers and forwarded to the Operations Chief for approval not later than November 30th of each year for the following year. The Operations Chief shall approve a final schedule within 30 calendar days. Approved schedules shall be posted in a conspicuous place. Vacations shall be granted based on seniority of an employee. Seniority shall only prevail for those personnel meeting the deadline requirements of this paragraph.

8.4.1 For vacations scheduled by November 30 of the year prior as defined in 8.4, the employer agrees to allow any two (2) suppression employees off on vacation/floating holiday at any time.

8.4.2 For vacations scheduled after November 30 of the year prior as defined in 8.4, the employer agrees to allow any two (2) suppression employees off on vacation/floating holiday at any time provided there remains two (2) Firefighter/Paramedics on duty.

8.5 Additional employees shall be allowed to take vacation leave beyond the minimum two off at any time as defined in 8.4, but are subject to the following provisions at the time of the request.

8.5.1 Leave must not drop the minimum number of on-duty staff below the minimum as set by the Employer, and;

8.5.2 Leave must not adversely affect the Employer so that there still exists a sufficient number of acting officers, qualified vehicle operators, and Firefighter/Paramedics on duty so as not to require overtime.

Neither party provided support for its proposals on vacation scheduling procedures by reference to the comparable fire agencies. As will be discussed, the comparables have been referenced regarding the number of vacation days that are accrued.

The Employer argues that its proposal regarding the number of available vacation slots available for employee selection would retain the practice followed by District 1 and continued by the RFA. Chief Dahl testified that this practice was developed in 2004 by the District 1 Finance Director in consultation with the then Union Local President. Batt. Chief Turner testified that the practice has been for the Administration and the Union President to get together each fall to determine the number of daily available vacation slots for the upcoming year, that the Union President is then responsible for overseeing the employees' vacation picks based on seniority, after which the results are submitted to the Chief for approval. Chief Dahl testified that the number of available vacation slots that may be selected for a given day was determined annually by a predetermined computation method that factored in the number of employees and their vacation accrual rates. He testified that under this formula the number of available slots may vary from year to year depending on the number of retirements and the number of employees who chose to take holiday pay rather than added vacation time. Chief Dahl testified that the RFA provided nine daily vacation slots in 2018 and ten in 2019. He observed that retired employees that had higher accrual rates than the new hires can potentially result in a lower number of available vacation slots under the formula being used. He also noted that in actuality, the number of vacation slots has only increased over the years.

Chief Dahl testified that the Union wants to have a set baseline for vacation slots, instead of getting together with the Employer each year to determine, based on the existing formula, the number of vacation slots. Chief Dahl testified that the Union's proposal for a fixed number of ten vacation slots might not be practical for 2021, when there may be a need for 11 daily vacation slots rather than the 10 proposed by the Union.

Chief Dahl testified that the Union's proposal for ad hoc vacation slots that would be in addition to its 10 proposed slots would be very costly for the Employer. He testified that allowing employees, months in advance, to request vacation slots for any day on which the Employer has scheduled more employees than required by its established minimum manning needs would require the payment of considerable overtime. This is because, on average, six employees are out on sick leave on any given day and some or all of them would need to be replaced with employees working overtime if employees had a right to select vacation days on any day that the Employer scheduled a few more employees than required by its minimum manning standards.

The Union argues that staffing should not be based on the employees' accrued vacation leave as under the formula that has been used, but instead on the total number of employees needed on duty to meet the needs. The Union maintains that the Employer's proposal makes it possible for employees to not be able to take earned vacation since they would lose their vacation leave if they exceed their maximum allowable carryover hours of 576. The Union asserts that its proposal of having a minimum of ten 24-hour shift employees off per day for vacation just represents the status quo.

The Union avers that in addition to the ten vacation slots, employees should be allowed to take accrued vacation leave when, at the time of the request, staffing levels are above the

minimum staffing levels set by the Employer. The Union asserts that this would assure that disabilities, retirements, and sick leaves would not cause a cancellation of the employee's vacation, and it would help reduce the accrued vacation overages that currently happen. Batt. Chief Turner testified that under the current system, some employees who are close to their maximum accrual find that there are no available vacation slots and risk losing leave days. He testified that last year there were employees who had to carry over earned vacation because they could not use it.

The Panel awards the retention of the District 1 language with the following differences. Section 39.2 is amended to include the following sentence that both parties have agreed, essentially, should be added:

> Employees who are granted a leave of absence with pay shall continue to accrue vacation leave at their regular rate prescribed rate during such absence.

Section 39.5 and 39.5.1 of the District 1 Agreement shall be replaced with the Employer's proposed Section 39.5, 39.5.1, and 39.5.2. That language reflects the current practice and also generally incorporates the Union's proposed Sections 39.5, 39.9 and 39.10. The Union's proposal for 39.5.2 is also awarded with a change to reflect that the Employer must establish of a <u>minimum</u> of ten daily vacation slots:

> There shall be allowed a minimum of ten (10) Shift personnel (Firefighters, Paramedics, MSOs and Battalion Chiefs) allowed off on vacation or any combination thereof for every day of the year. Each "shift day" (0900 – 0800) shall have a minimum of 240 hours of vacation leave available.

This change will allow the Employer to increase the number of vacation slots as it indicated that it might need to do based on the formula it has used, while alleviating the Union's concern that the current number of vacation slots may be reduced even while new employees are being hired.

Setting a specific number of vacation slots in the Agreement that must be offered is consistent with the expired Lynnwood Agreement.

The Union's proposal for a new Section 39.6 is not adopted. It would give the employees the right to schedule additional vacation days, beyond those selected during the annual vacation selection, on any day that the Employer has scheduled more employees than are required by its minimum manning requirements, and do so months in advance. In view of the testimony that an average of six employees are out on sick leave at a given time, the Employer has to plan on scheduling more employees than the minimum manning number inasmuch as the number that is scheduled is affected by predictable sick leave and disability usage. The Union's proposal would require that the employees on sick leave be regularly replaced by employees on overtime in order to accommodate employees seeking to schedule additional vacation time beyond the available ten slots. It would require the Employer to incur a predictable significant additional expense, and it would be contrary to the practice of both District 1 and Lynnwood. There is no evidence of support for such a new benefit among the comparable fire agencies. It is may be that under the current system, junior employees may not be able to schedule their vacation time on their preferred dates. However, the evidence presented by the Union was insufficient to establish that employees are just not able to take their accrued vacation days. There were no specific examples cited of employees forfeiting accrued vacation because no days were left available at the end of the annual vacation pick.

The parties disagree substantially on the annual number of days of vacation leave accrual for both 24-hour shift employees and 40-hour employees, and also on whether there should a maximum number of vacation hours that may be accumulated by an employee.

The District 1 Agreement provided:

39.8 Vacation/holiday hours shall be granted in accordance with the following schedule:

Completed Month of Service	Hours of Vacation		Maximum Accumulated Hours Allowed	Holiday Hours
	Month	Year		
0-48	8	96	192	127/132*
49-120	12	144	288	127/132
121-180	16	192	384	127/132
181-240	20	240	480	127/132
241-288	24	288	576	127/132
289-360	28	336	672	127/132
361+	32	384	768	127/132

*Effective January 1, 2017

The Lynnwood Agreement provided:

8.1 Vacations are computed for shift personnel and non-shift personnel as follows:

After	Shift	Non-Shift
1 Year	5 shifts	96 hours/12 days
5 Years	8 shifts	128 hours/16 days
10 Years	10 shifts	168 hours/21 days
15 Years	11 shifts	192 hours/24 days
20 Years	12 shifts	208 hours/26 days
25 Years	12 shifts	216 hours/27 days

The Employer proposes to retain the language of the District 1 Agreement for 12-hour and 24-hour shift employees, except that it proposes to delete the reference to holiday hours. It proposes to have the following new schedule for the 40-hour employees:

Employer Proposal

For Day Personnel (40 hrs/Week)

Completed Month Of Service	Hours Of Vacation		Maximum Accumulated Hours Allowed
	Month	Year	
0-60	8	96	192
61-120	10	128	256
121-180	14	168	336
181-240	16	192	384
241-300	17	208	416
301+	18	216	432

The Union proposes the following vacation accrual schedule that would apply to all Employees, encompassing both 24-hour and 40-hour employees: .

Union Proposal

Completed Years of Service	Hours of Vacation per Year	Holiday Hours per Year
1	120	144
5	192	144
10	240	144
15	264	144
20	288	144
25	336	144
30+	384	144

*Effective January 1, 2019

The comparable fire agencies provide the following vacation accruals:

Annual Vacation Leave Accrual Rates at **1** Year of Service

Fire Agency	24-Hour Shift	40-Hour	Max. Accrual - (24-Hr)	(40-Hr)
Bellevue	96 hours	120 hours	120 hours	96 hours
Everett	168 hours	168 hours	168 hours	168 hours
Redmond	96 hours	80 hours	96 hours	?
Tacoma	144 hours	96 hours	144 hours	96 hours
Central Pierce	120 hours	80 hours	120 hours	80 hours
Eastside F&R	96 hours	48 hours	96 hours	48 hours
Puget Sound RFA	228 hours	104 hours	228 hours	104 hours
Renton RFA	72 hours	72 hours	Payout on separation limited to current yr.	
Snohomish 7	48 hours	48 hours	No limit	
S. King F&R	96 hours	80 hours	96 hours	80 hours
Average	116 hours	90 hours	133 hours	96 hours
Median.	96 hours	80 hours		

Annual Vacation Leave Accrual Rates After **5** Years of Service

Fire Agency	24-Hour Shift	40-Hour	Max. Accrual - (24-Hr)	(40-Hr)
Bellevue	168 hours	144 hours	304 hours	304 hours
Everett	168 hours	168 hours	384 hours	384 hours
Redmond	144 hours	120 hours	438 hours	?
Tacoma	180 hours	120 hours	360 hours	240 hours
Central Pierce	216 hours	160 hours	432 hours	320 hours
Eastside F&R	276 hours	168 hours	300 hours	300 hours
Puget Sound RFA	276 hours	136 hours	792 hours	457 hours
Renton RFA	216 hours	216 hours	Payout on separation limited to current yr.	
Snohomish 7	168 hours	168 hours	No limit	
S. King F&R	156 hours	120 hours	312 hours	240 hours
Average	212 hours	152 hours	415 hours	321 hours
Median	176 hours	152 hours		

Annual Vacation Leave Accrual Rates After **10** Years of Service

Fire Agency	24-Hour Shift	40-Hour	Max. Accrual - (24-Hr)	(40-Hr)
Bellevue	216 hours	192 hours	304 hours	304 hours
Everett	180 hours	180 hours	384 hours	384 hours
Redmond	216 hours	152 hours	438 hours	?
Tacoma	204 hours	136 hours	408 hours	272 hours
Central Pierce	264 hours	180 hours	528 hours	360 hours
Eastside F&R	324 hours	216 hours	348 hours	420 hours
Puget Sound RFA	324 hours	152 hours	792 hours	457 hours
Renton RFA	264 hours	264 hours	Payout on separation limited to current yr.	
Snohomish 7	192 hours	192 hours	No limit	
S. King F&R	216 hours	160 hours	432 hours	320 hours
Average	240 hours	182 hours	454 hours	360 hours
Median.	216 hours	180 hours		

Annual Vacation Leave Accrual Rates After **15** Years of Service

Fire Agency	24-Hour Shift	40-Hour	Max. Accrual - (24-Hr)	(40-Hr)
Bellevue	240 hours	216 hours	304 hours	304 hours
Everett	192 hours	192 hours	384 hours	384 hours
Redmond	240 hours	168 hours	438 hours	?
Tacoma	240 hours	160 hours	480 hours	320 hours
Central Pierce	312 hours	200 hours	624 hours	400 hours
Eastside F&R	372 hours	216 hours	396 hours	420 hours
Puget Sound RFA	348 hours	152 hours	792 hours	457 hours
Renton RFA	312 hours	312 hours	Payout on separation limited to current yr.	
Snohomish 7	216 hours	216 hours	No limit	
S. King F&R	276 hours	200 hours	552 hours	400 hours
Average	275 hours	203 hours	496 hours	384 hours
Median	258 hours	200 hours		

Annual Vacation Leave Accrual Rates After **20** Years of Service

Fire Agency	24-Hour Shift	40-Hour	Max. Accrual - (24-Hr)	(40-Hr)
Bellevue	264 hours	240 hours	304 hours	304 hours
Everett	192 hours	192 hours	384 hours	384 hours
Redmond	288 hours	288 hours	438 hours	?
Tacoma	264 hours	176 hours	528 hours	352 hours
Central Pierce	336 hours	265 hours	672 hours	530 hours
Eastside F&R	396 hours	216 hours	420 hours	420 hours
Puget Sound RFA	372 hours	184 hours	792 hours	457 hours
Renton RFA	336 hours	336 hours	Payout on separation limited to current yr.	
Snohomish 7	264 hours	264 hours	No limit	
S. King F&R	276 hours	200 hours	552 hours	400 hours
Average	299 hours	236 hours	511 hour	407 hours
Median	270 hours	208 hours		

The Employer contends that the references to holidays in the vacation article that were in the District 1 Agreement should not be included in the new Agreement. It asserts that holidays are controlled by Article 37 and there is no constructive purpose served by listing holiday hours again in Article 39. The Employer contends that there should be a separate vacation table for 40-hour employees. It asserts that this would conform with the facts that the 24-hour and 40-hour employees have separate accrual rates for sick leave, and that Lynnwood and most of the comparable fire agencies have separate vacation accrual rates for the two groups. The Employer maintains that the Lynnwood accrual rate for 40-hour employees, which it has proposed be adopted, is ample and competitive. The Employer urges the adoption of its proposed "2X" maximum carryover of vacation leave. It notes that this 2X formula is used in three of the comparable fire agencies and would result in a considerably higher number of carryover vacation hours than the average allowed by the comparables. The Employer argues that the Union's position that there be no maximum carryover is inconsistent with the comparable fire agencies.

The Union contends that its proposal is reasonable and avoids massive takeaways for the former District 1 employees. The Union asserts that its proposal takes the better of the two vacation schedules available to District 1 and Lynnwood employees so that no Lynnwood

employee takes a loss and the District 1 employees would benefit. The Union avers that the Employer's proposal does the opposite by providing the combined group the lesser of what Lynnwood and District 1 historically received, up to year 25. The Union argues that what the average vacation hours may be for the comparables cannot be an excuse to ignore long history and existing rights.

The Panel agrees with the Employer that there be no reference to holidays in Article 39. Holidays are treated extensively in Article 37. There is no reason to repeat the accrued holiday hours set forth in Article 37 again in Article 39.

The Panel adopts the Employer's proposed "2X" formula for the maximum accumulation of vacation days. Most of the comparable fire agencies, as well as District 1, have provisions in their contracts that set a maximum number of vacation days that could be banked. The 2X formula proposed by the Employer results in maximum accruals above the average of the comparables.

RCW 41.56.465(3) provides that "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 ...." The rate of accrual of vacation days is a condition of employment that is readily comparable and therefore the practice of the comparable fire agencies must be considered by the Panel. Its importance here is magnified by the fact that consideration of wages has been removed from the Panel's purview and therefore vacation accrual cannot be considered as part of a total compensation comparison. Most of the comparable fire agencies have separate vacation accrual tables for 24-hour shift and 40-hour employees, as did the expired Lynnwood

Agreement. The Panel finds that this practice is reasonable and appropriate for the bargaining unit here.

The Panel awards the vacation accrual rates that follow, effective July 1, 2020. They are based largely on a comparison with the median vacation accrual rates of the comparable fire agencies. The awarded vacation accrual rates would rank the Employer's vacation accrual benefit near the middle of the comparables. The Panel awards the following:

39.8 Effective July 1, 2020, vacation hours for 24-hour shift employees shall be granted in accordance with the following schedule:

Completed Month of Service	Hours of Vacation		Maximum Accumulated Hours Allowed
	Month	Year	
0-48	8	96	192
49-120	15	176	352
121-180	18	216	432
181-240	20	240	480
241-288	24	288	576
289-360	28	336	672
361+	32	384	768

Effective July 1, 2020, vacation hours for 40-hour employees shall be granted in accordance with the following schedule:

Completed Month of Service	Hours of Vacation		Maximum Accumulated Hours Allowed
	Month	Year	
0-48	8	96	192
49-120	12	144	288
121-180	15	180	360
181-240	17	204	408
241-288	19	228	456
289-360	20	240	480
361+	22	264	528

The awarded accrual rates will be an improvement for former 24-hour shift District 1 employees beginning after 5 years, and again after 10 and 15 years. It will be a decrease in accrual rates for

former 24-hour shift Lynnwood employees for their first 20 years of employment, but an increase at years 25 and 30. For former 40-hour District 1 employees, their accrual rates will decrease from former levels at all 5-year incremental levels after their 10th year of employment. Former 40-hour Lynnwood employees will have increased accrual rates at all incremental levels after five years of employment. In sum, the awarded vacation accrual rates will increase the accrual rates formerly received by some employees and decrease them for others, while placing the vacation accrual benefit at about the median of the comparable fire agencies.

ARTICLE 43 - VEBA CONTRIBUTIONS

The parties have agreed upon the inclusion of a VEBA (Voluntary Employees' Beneficiary Association) benefit. The VEBA is a tax-exempt irrevocable trust arrangement funded by employer contributions that is used by the employee to pay for eligible health expenses such as copays, prescription drugs, and certain insurance premiums. Balances can be invested into designated investment options, rolled over to the next year, and eventually used during retirement years. The parties have agreed upon an annual Employer contribution of $2,000 for employee and $4,000 for employee with spouse/dependent. The Union proposes that the contribution be made as a lump sum on January 1st each year or upon hire. The Union's proposal has a provision for a prorated recapture of contributions if the employee separates from the Employer before the end of the year. The Employer proposes that the contribution be "made as earned, at $166.66 or $333.33 per month, respectively."

The expired District 1 Agreement provided:

> 43.4 The yearly HRA will be funded at $2,000 for employee and $4,000 for employee with spouse, dependent for LEOFF II employees. For LOEFF I employees, $2,000 for one covered dependent and $4,000 for two or more dependents. The yearly HRA account and the retiree medical HRA account will remain a fully funded account

with no unfunded liability. Both the HRA reserve funds and individual accounts will be fully funded by no later than the 1st day of May of each year of this contract.

43.4.1 .... If an employee separates prior to the end of the year, that years HRA's annual allotment shall be pro-rated to their date of separation. Employees separating with a negative HRA balance shall have the amount deducted from their final pay.

The expired Lynnwood Agreement provided:

12.4 Each employee participating in the NWFFT Plan will have a VEBA account established in his or her name. The VEBA account will be accessible after separation from employment in accordance IRS rules. Survivorship rights will be to the employee's legal spouse and/or tax dependent(s) upon death in accordance with IRS rules.

The Employer will contribute the following amounts to enrolled employees' VEBA accounts for each full calendar year of enrollment in the form of a lump sum on or about January 1. These amounts include $78 per year for VEBA administration.

Employee with no enrolled dependent(s)	$3,278
Employee with enrolled dependent(s)	$5,278

The Employer's contributions will be determined based on the employee's status as of January 1. If an employee with no enrolled dependents on January 1 enrolls a dependent during the year, the Employer will make an additional prorated lump sum contribution in the amount of $266.67 per month. Employee have [sic] an obligation to notify the Employer of medical dependent changes.

If an employee leaves employment mid-year, he/she will have their sick leave and/or vacation cash out reduced by a prorated portion of the employee's VEBA contribution that year.

Employees hired mid-year will receive a prorated VEBA contribution in the form of a lump sum at the time of hire.

* * *

In accordance with the parties' Bridge Agreement, the HRA and VEBA provisions of the District 1 and Lynnwood Agreements remained in effect for former District 1 and Lynnwood employees, respectively, pending the new Agreement. They eventually agreed during bargaining that the Lynnwood VEBA plan would be adopted for all employees and they agreed upon the

Employer's annual VEBA contribution for each employee of $2,000 or $4,000, depending on whether there were dependents. However, they were at impasse regarding whether the Employer's VEBA contribution would be made as a lump sum at the beginning of the year or if it would be prorated such that there would be no lump sum contribution, but rather the annual Employer contribution would be divided into monthly contributions to be made as earned. As a condition of postponing the original starting date for this arbitration, the parties agreed that starting in January 2020, the Employer would make monthly VEBA contributions with the understanding that whether the annual VEBA contribution would be made in a lump sum at the beginning of the year or whether it would be made in monthly installments as earned, would be decided in the Interest Arbitration.

The comparable fire agencies provide:

Fire Agency	HRA-VEBA Payment Annually or Monthly
Bellevue	No HRA or VEBA benefit
Everett	Monthly HRA contribution
Redmond	No Employer funded HRA or VEBA
Tacoma	Employer funds VEBA only after retirement
Central Pierce	Prepaid annual VEBA contribution
Eastside Fire & Rescue	Prepaid annual VEBA contribution
Puget Sound RFA	Prepaid annual VEBA contribution
Renton RFA	Monthly VEBA contribution
Snohomish 7	Monthly VEBA contribution
S. King Fire & Rescue	Prepaid annual VEBA contribution
District 1	Prepaid annual HRA contribution
Lynnwood	Prepaid annual VEBA contribution

The Employer contends that its advance payment of VEBA contributions for services not yet rendered would violate the Washington Constitution and state statute. In this regard, it cites Article VIII, Section 7 of the Washington Constitution that provides:

> No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any

> individual, association, company or corporation, except for the necessary support of the poor and infirm, ...

It further relies on RCW 42.24.080 that provides for the auditing of all claims against a governmental entity for materials, labor or services rendered so as to certify:

> that the materials have been furnished, the services rendered, the labor performed as described, or that any advance payment is due and payable pursuant to a contract or is available as an option for full or partial fulfillment of a contractual obligation, and that the claim is a just, due and unpaid obligation against the municipal corporation or political subdivision. No claim shall be paid without such authentication and certification.

The Employer argues that the reference to "a contractual obligation" in the statute is meant to refer to commercial contracts, and not to third party beneficiaries of a contract such as the employees here. The Employer further argues that the specific provisions barring prepayment for services and labor should control over the more general reference to "a contractual obligation."

The Employer cites an interest arbitration decision, *City of Everett and IAFF Local 46*, PERC Case No. 25228-I-12-612 (Latsch, 2013), where the Arbitrator decided in favor of the employer that the existing practice of prepayment of holiday pay for the firefighter bargaining unit at issue should end. The Arbitrator relied on the fact that after an audit of the employer at issue there, the State Auditor's Office had "determined that the holiday pre-payment was inappropriate because the system in place was based on the concept of future earnings rather than on amounts actually earned by bargaining unit employees." The Arbitrator found that removing the holiday prepayment from the contract would "help the parties avoid litigation that could very well take place if changes to the existing holiday pay language do not take place." In light of this, he stated that "[i]f the Employer does not take affirmative steps to correct the situation, its

stewardship of its budget could well be questioned, and public perception of the Employer as a good manager could be irreparably harmed."

The Employer maintains that the "[t]he teaching of the comparables is monthly VEBA funding." It argues that this would be legally compliant, easily administered and sensible. In any event, the Employer urges rejection of the Union's proposal to treat new hires with a full year's front loading of VEBA funding. It asserts that a new mid-year hire obviously earns only a portion of the annual funding amount.

The Union argues that the Employer has advanced no compelling reason for discontinuing prefunding of VEBA contributions for the employees, a benefit that has been provided in District 1, Lynnwood and the comparable RFAs. The Union maintains that an advance VEBA payment is not a gift of public funds in violation of the Washington Constitution or state statute because it is a fringe benefit paid to firefighters who perform an essential government function. It avers that RCW 42.24.080 allows an advance payment for services due under a contract. The Union points out that here, unlike the situation in the *Everett* interest arbitration cited by the Employer, there is no indication that District 1, Lynnwood or the RFA was ever audited by any state agency. Nor was the Employer ever told that it could not prefund a VEBA account. Moreover, the Union has proposed a claw-back provision that would allow the Employer to deal with an employee who separates prior to the end of the year by prorating their VEBA annual allotment to the date of separation. The Union questions the Employer's position on VEBA prefunding when it has already agreed to prepay or prefund vacation, holidays, and sick leave accruals. The Union asserts that prefunding of the VEBA accounts is important for its low seniority members with families so that they could afford expensive medical treatment that is not covered by medical insurance. The Union asserts that this benefit outweighs any detriment

to the Employer, since it would still have to fund the same annual amount under either party's proposal.

The Panel awards the following language for Section 43.4:

> 43.4 The Employer will maintain the current Lynnwood Northwest Firefighter Trust VEBA (BPAS) Plan and will implement it for all employees for the 2020 plan year. Non-Lynnwood personnel will have their 2019 HRA ending balance rolled over into their VEBA Plan accounts, effective January 1, 2020.
>
> 43.4.1 The yearly VEBA will be funded at $2,000 for employee and $4,000 for employee with spouse/dependent, for LEOFF II employees. For LEOFF I employees, VEBA will be funded at $2,000 for one covered dependent and $4,000 for two or more dependents. The Employer will contribute these amounts to enrolled employees' VEBA accounts for each full calendar year of enrollment in the form of a lump sum no later than the end of the first pay period of the year. For 2020, the Employer will contribute the pro-rated amount for the remainder of the year on or about July 1.
>
> Employees hired mid-year will receive a prorated VEBA contribution in the form of a lump sum at the time of hire. If an employee leaves employment mid-year, he/she will have their sick leave and/or vacation cash out reduced by a prorated portion of the employee's VEBA contribution that year.
>
> 43.4.2 Employees' access to funds in their VEBA account, and survivorship rights, will be in accordance with the terms of the VEBA Plan and IRS rules.

The awarded language utilizes portions of each party's proposal. The lump sum, rather than monthly, VEBA contribution is generally consistent with the language in both the District 1 and Lynnwood Agreements. It is also consistent with the contract language in four of the seven comparable fire agencies that provide for Employer contributions to employees' HRA or VEBA accounts. The Panel is not persuaded that the awarded language is necessarily barred as a government gift of funds by the Washington Constitution or by statute. Application of the law to the prefunding of a VEBA benefit is not entirely clear. There is no evidence that such

prefunding of this health insurance related benefit has caused any audit or other difficulties for District 1, Lynnwood, or the RFA. Employer prefunding of HRA or VEBA accounts has been the practice in both District 1 and Lynnwood, as well as other fire agencies, for a number of years without any indication of a legal problem arising as a result. The *Everett* interest arbitration decision relied upon by the Employer is distinguishable because it did not involve a VEBA contribution, but did involve a situation where a State audit determined that the Employer's prefunding of holiday pay was inappropriate. The Employer here was under no such direct threat of litigation. Moreover, in the *Everett* matter, there is no indication that the Employer could recoup any of its expenditure if an employee separated midyear, as would be the case here. The Panel is just not persuaded that the prefunding of a VEBA account by a governmental entity that is part of an overall agreement on health benefits that may involve substantial employee copays is an employee benefit that should be removed as an illegal gift, particularly as here, where the Employer could recoup a prorated share of the expenditure if the employee separates during the year.

The Award provides for mid-year hires to receive upon hire a prorated share of the annual VEBA contribution based on the portion of the year left to be worked. That is consistent with the terms of the VEBA benefit provided in the District 1 and Lynnwood Agreements. The Union agrees that an employee who separates mid-year should have to pay back a prorated amount based on the portion of the year not worked. That is presumably because the benefit was not earned for the portion of the year not worked. The same reasoning applies to the VEBA benefit that should be expected for mid-year hires.

ARTICLE 44 - RETIREE MEDICAL/MERP

MERP (Medical Expense Reimbursement Plan) is a Washington State Council of Fire Fighters Employee benefit trust plan. It has some similarities to a VEBA in that contributions to MERP are in pretax dollars to be used for medical expenses, but the MERP account is restricted to usage after retirement. The parties agree that there should be a MERP benefit in the Agreement, though they have differences in the details, including the funding.

Both the District 1 and the Lynnwood Agreements included provisions for a MERP benefit paid by the Employer, with the District 1 payment conditioned on sick leave usage. District 1's Agreement provided:

> 44.1 The District shall make monthly contributions on a pre-tax basis from the employees' base salary of each employee to the Washington State Council of Fire Fighters Employee Benefit Trust. This Trust shall remain separate and apart from the District's retiree health insurance funding unless changed by mutual agreement of the parties to the Agreement. The contribution rate to the WSCFF Trust shall be deducted from the employee's paycheck on a pretax basis at a rate of $75/month. These contributions shall be included as salary for purpose of calculating retirement benefits. The $75/month contribution shall not count toward the cost-to-comp.
>
> 44.2 If an employee uses 72 hours or less of sick leave in one calendar year (40 hrs of sick leave use for employees outlined in Article 25.4) the Employer will pay the employees' contribution to the WSCFF Trust the following calendar year. Duty related lost time will not count, nor will time off that qualifies or [*sic*] FMLA status.
>
> 44.3 Employees may be able to use vacation or holiday time instead of sick leave if they have a doctor's note for the day they were sick or injured.

Mr. Dow testified that two-thirds of District 1 employees qualified for Employer payment of the $75 per month MERP contribution pursuant to Section 44.2.

The Lynnwood Agreement included the following MERP provision:

> 3.3 (A). The Employer shall make monthly contributions for each employee to the Washington State Council of Fire Fighters Employee Benefit

> Trust, known as the Medical Expense Reimbursement Trust (MERP). This trust shall remain separate and apart from any Employer retiree health insurance funding program unless changed by mutual agreement of the parties to the agreement. The Employer contribution rate for each year of the MERP Trust shall be at the rate of $75.00/month.
> (B). All employees are required to participate in MERP. ...

Both parties' proposals use the template of Section 44.1 of the District 1 Agreement, with modifications, while eliminating Sections 44.2 and 44.3. The Employer's proposal is to adopt Section 44.1, essentially without changes, as the entirety of Article 44. The Union proposes to modify Section 44.1 to read:

> 44.1 The Employer and each LEOFF Employee shall make monthly contributions in the amount of $75 dollars for a total of $150 dollars on a pre-tax basis from the employee's base salary to the Washington State Council of Firefighters Benefit Trust. This trust shall remain separate and apart from the RFA's retiree health insurance funding program unless changed by mutual agreement of the parties to the Agreement. The combined contribution to the WSCFF Trust shall be deducted from the employee's paycheck on a pretax basis at a rate of $150/month. These contributions shall be included as salary for purpose of calculating retirement benefits. The $150/month contribution shall not count toward the cost-to-comp.

The comparable fire agencies provide the following MERP benefits:

Fire Agency	Monthly MERP Contribution
Bellevue	Employee contribution only
Everett	$39.60/month Employer contribution
Redmond	Employee contribution only
Tacoma	Employee contribution only
Central Pierce	Employee contribution only
Eastside Fire & Rescue	$250/month Employer contribution
Puget Sound RFA	$75/month Employer contribution
Renton RFA	$75/month Employer contribution
Snohomish 7	Employee contribution only
S. King Fire & Rescue	Employee contribution only
District 1	$75/month Employer contribution for 2/3 of FFs
Lynnwood	$75/month Employer contribution

While acknowledging that "the status quo at the RFA generally favors the Union," the Employer argues that the comparables do not support RFA payments to MERP of $75 per month. The Employer asserts that the total cost of this benefit is high, amounting to $234,000 per year. The Employer maintains that the Union's proposal to have both an Employer and an employee contribution to MERP and to not count either toward the "cost to comp" is illogical. The Employer urges that if the Union's proposal were awarded, the last sentence in Section 44.1 should state: "The employee's contributions shall not count toward the cost-to-comp."

The Union contends that its proposal for the Employer to pay $75 to MERP and for employees to also pay $75 would ensure the continuation of Employer MERP contributions. Batt. Chief DiBenedetto testified that both legacy groups have received an Employer MERP contribution for the past 20 years. Batt. Chief DiBenedetto testified that the retirement age of firefighters is generally between 53 and 58 and the MERP account is needed to cover medical expenses until eligibility for Medicare. He testified that firefighting is an inherently dangerous business, with firefighters subjected to various toxins and more prone to a variety of health issues. The Union points out that RCW 51.32.185 recognizes a statutory "prima facie presumption" that infectious diseases, respiratory disease and cancer are occupational diseases for firefighters. The Union maintains that the comparables do not support the Employer's proposed take away of this benefit, as four of them do provide for the Employer to contribute to MERP accounts. The Union argues that the cost of its proposal should not be considered because it involves continuation of an existing benefit and because a total cost of compensation analysis is off the table in this proceeding since wages are as yet undetermined and have been removed as an issue.

The Panel awards the following for Article 44:

> 44.1 Effective July 1, 2020, the Employer and each LEOFF Employee shall make monthly contributions in the amount of $75 dollars for a total of $150 dollars on a pretax basis from the employee's base salary to the Washington State Council of Firefighters Benefit Trust. This Trust shall remain separate and apart from the RFA's retiree health insurance funding program unless changed by mutual agreement of the parties to the Agreement. The employee's contribution to the WSCFF Trust shall be deducted from the employee's paycheck at a rate of $75/month. These contributions by the Employer and the employee shall be included as salary for purpose of calculating retirement benefits. The employee's contributions shall not count toward the cost-to-comp.

As the Employer recognizes, its $75 per month contribution to each employee's MERP account essentially maintains the status quo. While the additional $75 monthly pretax MERP contribution deducted from each employee's pay is a new provision, it is a Union proposal that does not come at a cost for the Employer, but rather just redirects that amount from wages to the employee's MERP account. This is reasonable in view of the fact that firefighters generally retire before they are eligible for Medicare and they have certain recognized increased health risks as a result of their work. Employer contributions into employees' MERP accounts is not a benefit that is out of line with the comparable fire agencies, as four out of ten provide this benefit, as had District 1 and Lynnwood. While the Employer correctly points out that a $75 per month MERP contribution for each employee is costly, there is no evidence that the Employer cannot afford to continue providing this benefit. The Panel agrees with the Employer's suggestion that it should reject the Union proposal that the entire $150 deposited monthly into the employee's MERP account shall not count toward the cost-to-comp inasmuch as the Employer's $75 share of this deposit is a benefit cost to the Employer. This is recognized in the expired District 1 Agreement.

ARTICLE XXX – RETIREE MEDICAL PREMIUM REIMBURSEMENT

The Union proposes a new benefit for retirees of additional payments by the Employer into the former employee's VEBA account in order to fund medical premiums for 12 years or until the retiree is eligible for Medicare, whichever comes first. Its proposal reads:

> This Article is to establish a Retiree Medical Premium Reimbursement benefit for South Snohomish County Fire and Rescue Regional Fire Authority LEOFF 2 employees.
>
> XX.1[sic] It has been proven by other regional fire agencies it is in their best interest of both employer and its employees to establish a retiree medical benefit for LEOFF 2 employees.
>
> XX.2 The RFA and IAFF Local 1828 recognize that the cost of health insurance discourages employees from taking retirement prior to age 65.
>
> XX.3 It has been proven by other regional fire agencies that early retirement generates a net salary savings from regular salaries, longevity, educational incentives and vacation.
>
> XX.4 It has been proven by other regional fire agencies that replacing employees at retirement age with new employees provides a cost savings that can be shared with retirees by establishing a retiree medical benefit given the following;
>
> XX.4.1 Employees must be at least 53 years old on the date of their retirement, and their age, plus years of service at the RFA must equal 78 or more.
>
> XX.4.2 The retiree medical benefit program will end after 12 years or upon the employee's eligibility for Medicare, whichever comes first.
>
> XX.4.3 With the exception of employees retiring in 2018, employees wishing to retire must notify the RFA by October 1st of the previous year.
>
> XX.4.4 The medical rate used will be based upon the retirement benefit rate in effect when the employee retires using 2018 as the base rate plus any increases in the annual inflator. The base rate may be adjusted by mutual agreement between the RFA and the Union every 2 years so long as the medical benefit will continue to

generate a net savings for the RFA and continue to be sustainable from a retirement reserve account established by the RFA.

XX.4.5 The annual medical benefit rate shall be based on the 2018 Northwest Firefighters Trust for a single employee retirement rate.

XX.4.6 The formula for calculating the rate shall be the monthly rate for a single employee multiplied by 12 plus $2,000 into the employee's VEBA.

XX.4.7 Increases in the annual medical benefit rate shall be based upon the formula specified in XX.4.6; however, the annual rate of increase shall not exceed the annual rate of increase in RFA salaries.

XX.4.8 Each year, the calculated gross savings for each retiree in that year shall be transferred from the current expense fund into a retirement reserve account until the estimated total cost of the retirement medical benefit has been funded. The retirement medical costs each year shall be paid from the retirement reserve fund.

XX.5 The RFA's contribution shall be made to the retiree's VEBA account on a monthly basis. In the event the retiree passes away prior to utilizing all of his/hers benefit, the benefit will cease at the end of the month following death. In no event shall the RFA's contribution extend beyond the employee's eligibility for Medicare coverage, or age 65, whichever is earlier. Any employee that is enrolled in this program shall be guaranteed that the benefit as stated in this article, regardless of whether or not this benefit has been modified or if the structure of the RFA has changed. [*sic*] If the Medicare age is modified, individuals on plan will receive the benefit until the 65 years of age.

XX.6 The RFA agrees to manage the cost to manage and fund the associated costs of this benefit. The RFA shall retain the sole discretion to delegate administration of the VEBA to a designated third-party administrator or plan service provider of the RFA's choosing. In the event that the RFA determines that this benefit is no longer in the best interest of the RFA, then the RFA shall confer with the Union prior to terminating the benefit. Any retired member receiving benefits pursuant to this benefit at the time of benefit termination shall continue to receive payments until the age of 65 or until his/her death, whichever is earlier. In the event that the RFA joins, merges, consolidates, etc with another fire agency, or is acquired by another agency, the employees who retired under this program shall

> continue to receive benefits or be paid their entire benefit in a lump sum payment.

The Employer has rejected this Union proposal and has offered no proposal for a new VEBA contribution to fund medical insurance for retirees that would be in addition to the VEBA and MERP provisions in Articles 43 and 44.

The Union contends that its proposal for Article XXX is consistent with its VEBA and MERP proposals by providing funds that assist in payment of post-retirement medical expenses of individuals who retire short of their ability to receive Medicare. The Union reiterates that the Legislature has recognized that firefighters are engaged in a high-risk profession that subjects them to respiratory disease, heart disease, cancer, and communicable diseases. Further, it points out, firefighters often retire with knee, hip, shoulder, or other degenerative conditions that may later require surgery. Batt. Chief DiBenedetto testified that the average age for retirement among the employees is about 57. He testified that some employees have stayed on the job longer because of their need for medical coverage. The Union asserts that the Employer could save money by replacing older firefighters with lower compensated new hires who would have less absences than older firefighters, absences which have to be covered with costly overtime. The Union maintains that "[s]ome Departments have recognized this and have taken a proactive approach to solve this situation by creating a post retirement type medical coverage." In its initial proposal on this issue that it submitted on May 30, 2018, the Union estimated that the annual cost to the Employer for 2018 for providing funding to cover the cost of medical premiums for one retiree under its proposal would have been $9,726.08. The Union submitted in evidence charts that showed the substantial difference in cost to the Employer of paying a new hire instead of a 25-year employee who would receive higher wages, higher deferred compensation, and higher vacation accruals. It maintains that the savings for the Employer

would more than cover the cost of providing funding to cover the cost of the retiree medical premiums. The Union asserts that the Employer just responded to the Union's proposal by indicating that it was not interested, without offering any counterproposal.

The Employer contends that the Union has failed to make a plausible case for Article XXX. First, it argues that the proposal should be rejected because it was not processed in bargaining. The Employer's Counsel represented that he was at the negotiations table, and after receiving the Union's proposal on May 30, 2018, he responded on June 13 by providing a list of factual issues and concerns. Employer's Counsel represented that the Union never responded to the document or made a request to negotiate further about its proposal. The Employer maintains that the Union's proposal would create a 12-year commitment, or longer, to retirees under the program, and that would violate RCW 41.56.070, which limits an RFA collective bargaining agreement to "a term of existence of up to six years." The Employer further maintains that there is a presumed lack of authority in a sitting Board of Commissioners to bind later Boards to a 12-year commitment. The Employer argues that the cost savings that the Union has claimed would occur is a mirage. It points out that the Union has provided no proof to support its position that other regional fire authorities have had a net salary savings by offering paid health insurance for retirees. The Employer observes that the Union's comparison of the cost of a new hire versus a senior employee is misleading because it does not account for the fact that retirements result in employees being promoted to backfill the vacancies caused by the retirement. It also does not account for the cost of recruiting and training a new hire, or the possibility that new hires can quit or wash out. The Employer asserts that the Union's proposal does not account for the loss of experience and expertise when a senior employee departs. The Employer suggests that any savings to the Employer arising from earlier retirements is

speculative and miniscule compared with the cost of the Union's proposal. The Employer notes that the testimony establishes that employees already are not waiting to retire at age 65, but rather are retiring in their 50s. The Employer asserts that the Union's own projections of the Employer's payout to retirees under its proposal show that it would result in staggering costs. The Employer maintains that if the Union's proposal were adopted, there would be no satisfactory exit for the Employer since the Union would have a legal right to mediation and interest arbitration concerning the fate of the program. The Employer argues that the VEBA and MERP accounts already provide ample assets, in addition to a pension, for retiree healthcare costs. The Employer provided evidence that the District 1 HRA program that has been in existence since 2006, has resulted in individual accounts currently totaling $4,295,635 and the Lynnwood VEBA program that began with the 2016-17 Agreement, has already resulted in individual accounts totaling $659,637. Additionally, the Employer points out that retirees receive large vacation and sick leave payouts upon retirement. The Employer observes that retirees currently have access to the RFA medical plans at rates that are barely above what the RFA pays for active employees. Finally, the Employer asserts that the comparables do not support the Union's proposal.

Six of the comparable fire agencies do not provide a medical premium reimbursement benefit for retirees. There are provisions for such a benefit in two of the comparables' Collective Bargaining Agreements. The Puget Sound Regional Fire Authority Agreement provides for a monthly $900 Employer contribution into a retiree's VEBA account "to reimburse the cost of qualified medical expenses including health insurance premiums." Tacoma's Collective Bargaining Agreement provides for an Employer payment of $500 per month into "approved retirees' VEBA accounts" until the employee reaches Medicare eligibility or the age of 65,

whichever is earlier. However, this benefit for Tacoma firefighter retirees is paid for by the Union "foregoing 1% of the bargaining units' salary" every year that the benefit is in effect. Snohomish Fire District 7 offers a retiree medical benefit, not in their Collective Bargaining Agreement, but in a Resolution by the Board of Fire Commissioners. In that resolution, the Board stated that its purpose was to encourage early retirement and to share the resulting cost savings with retirees by establishing a retiree medical benefit. The Resolution also provided that the Board may unilaterally rescind this benefit at any time "based upon economic circumstances as determined by the Board of Commissioners." Similarly, in 2013 the Board of Fire Commissioners for Central Pierce Fire & Rescue passed a resolution that established a "Retiree Medical Benefit" that would provide a monthly payment $530.77 into a retiree's VEBA account, with an annual inflator of 7.5%. It also provided for the medical benefit level to drop by 10% each year an employee continues to work after their 59th birthday.

The Panel awards no additional Employer contribution, post-retirement, into Employees' VEBA accounts. As we have previously indicated, the Panel recognizes that firefighting is a hazardous profession and that firefighters have some increased associated health risks that may affect them after retirement. This has been taken into account in the Panel's awarded language for Articles 43 and 44. The Panel is not convinced by the Union's argument that its proposal would result in overall cost savings for the Employer. Much of the suggested cost savings to the Employer appear to be exaggerated or speculative. According to the testimony, on average, bargaining unit members retire at age 57. It may be that a new benefit of Employer contributions into a retiree's VEBA account adds support to some employees' decisions to retire earlier than otherwise, though there was no direct evidence in this regard. How many would be affected is not clear, nor is it clear whether such a new benefit would reduce the average retirement age by a

few months or a few years, if at all. Moreover, the Union's comparison of only the cost of a new hire with the cost of a senior employee is problematic. There is a cost for recruiting and training a new hire, and as the Employer points out, not all new hires remain on the job. Some new hires may be lateral transfers that come at a higher cost. Retirements often result in a series of promotions that affect Employer costs. Moreover, there is an obvious difference generally between the productivity, qualifications, and experience of a new employee when compared with an employee who has worked many years for the Employer. That is a primary reason why experienced employees receive higher compensation, and the loss to the Employer of that expertise upon a retirement is a loss of value.

The Union's proposal is not supported by a majority of the comparable fire agencies. One of the Departments that does provide for contributions to a retiree's VEBA account has this benefit paid for by a specified reduction in pay to active employees. Another Department provides such a retiree benefit by a Board Resolution, a benefit that is specifically made subject to rescission by the Board. Adding a new costly financial benefit such as Employer post-retirement contributions to employees' VEBA accounts, without strong support from a comparison with comparable fire agencies, and without consideration of the total cost of compensation as must be the case here where wages have been removed as an issue, is not justified by the statutory criteria.

Seattle, Washington
Dated: June 8, 2020

Alan R. Krebs, Neutral Chair

I concur
Charles N. Eberhardt, Employer Appointed Arbitrator

I concur in part and dissent in part
Dennis J. Lawson, Union Appointed Arbitrator