

In the Matter of the Interest Arbitration

Between

City of Richland, Washington

And the

International Association of Firefighters, Local 1052
(two Firefighting Bargaining Units: Rank-and-File, and
Battalion Chiefs)

Public Employment Relations Commission Case
Numbers 134699-I-21 and 134691-M-21

Issues: Paid Family Medical Leave (PFML)
Supplementation

Arbitration Panel

Neutral Impartial Arbitrator

Philip Tamoush (philiptamoush@verizon.net)

Partisan Arbitrators

Heather Kintzley (Management Appointee)

(hkintzley@ci.richland.wa.us)

Curtis Walsh (Union Appointee)

(cmewalsh@owt.com)

Hearing Held (virtual)

August 25, 2022

Record Closed

December 13, 2022

Award Issued

December 29, 2022

Appearances

Alex J. Skalbania (Union)

(askalbania@aol.com)

Dan Swedlow (Management)

(dswedlow@seyfarth.com)

ISSUE

Whether PFML Supplementation should be included in the PFML Policy (from Memorandum of Understanding of July 1/July 22, 2022 between the parties as clarified jointly at the virtual hearing) (Joint Exhibit 5).

MOST RELEVANT WRITTEN DOCUMENTS (Note: Numerous substantial exhibits were submitted and admitted by Counsel at the virtual hearing conducted by the Arbitration Panel, chaired by the undersigned. Only some of the most relevant documents are referenced below:

1. RCW 41.56.450 (Uniformed personnel-Interest arbitration panel-Powers and duties-Hearings-Findings and determination.) This Exhibit outlines the complete State-mandated requirements for the Interest Arbitration process. Only the concluding paragraph is included here, which was applied as written by the Neutral Chair:

‘The neutral chair shall consult with the other members of the arbitration panel, and, within thirty days following the conclusion of the hearing, the *neutral chair* (Tamoush emphasis added here) shall make written findings of fact and and determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on the commission, on each of the other members of the arbitration panel, and on each of the parties to the dispute. That determination shall be final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious.’

2. RCW 41.56.465: Evidentiary Factors for consideration by the Panel.

2. Joint Exhibits 3 and 4: The required 14-day pre-hearing proposals of the parties.

Management: August 11, 2022; Union: August 11, 2022.

3. Written Briefs of Management (November 14, 2022) and Union (November 14, 2022) by Counsel.

4. Comments of Partisan Arbitrators to Opposing Counsels’ Briefs (December, 2022).

5. Transcript of Virtual Hearing Proceedings of August 25, 2022.

BACKGROUND AND SUMMARY OF FINDING OF FACTS AND CONCLUSIONS

This matter involves the question of an impasse between the Management of the City of Richland, Washington and the International Association of Firefighters, Local 1052, regarding the issue of PFML Supplementation. The parties have been negotiating over the specific issue, described above. After Impasse, they went to Mediation without success and then to Interest Arbitration, a unique procedure available only to Uniformed Personnel, according to State Law.

In 2019, the State Legislature amended the already-in-effect PFML program to permit employers and employees to negotiate supplemental benefits to allow for greater access to paid leave benefits which employees had already earned (See especially Union Exhibit 3, Union Brief pages 14-15 and following and Management Brief pages 7-8 for some explanation). As argued by the Union, without Supplementation employees on PFML leave could not receive their full pay. With the Supplementation, employees could receive more income by utilizing some of their already-earned paid benefits, at no additional cost to the City.

While the undersigned Impartial Neutral Chair of the Panel reviewed all the standards required to be reviewed under State law, the most appropriate, other than his own view of equity and reasonableness, are comparisons with what other agencies have done. Comparisons with what other employees in similar circumstances have accomplished has always been a pre-eminent standard (See the 1954 book, Arbitration of Wages by Irving Bernstein, for an excellent exposition of this). Here, even though this is a relatively new item to be discussed and negotiated, of the 9 comparative agencies traditionally relied upon by the parties (see Management Exhibit 5 and Union post-hearing brief pages 28-29), the undersigned agrees that 3 agencies have not yet engaged in bargaining over Supplementation, 2 agencies have negotiated about the issue, without agreement, and 3 or 4 have successfully negotiated some form of Supplementation. Statewide, according to its own summary of 98 fire agencies, 28, or almost one-third already provide for Supplementation.

The City has not raised an issue of 'ability to pay' or any similar argument, except for the 'administrative burden' that might be involved should the parties participate in Supplementation. The undersigned Panel's Impartial Neutral Chair does not agree that any 'administrative burden' should preclude implementation of the benefit, which would be initiated by employees themselves and not automatically put into effect. The comparisons used by the parties and the statewide survey do indicate a substantial movement towards Supplementation. Accordingly, that is the conclusion reached by the Chair and will be so ordered.

DECISION, DETERMINATION, OPINION AND AWARD

(Neutral Impartial Arbitrator's Note: This Decision and Award is that of the Panel's Neutral Impartial Chair, taking into consideration, procedurally, the last paragraph of RCW 41.56.450, which clearly enunciates that it is the 'neutral chair's sole authority and responsibility, after consultation with the other members of the arbitration panel, to make

'written finding of facts and a written determination...'. That determination shall be served on the commission (PERC), the other members of the arbitration panel, and the parties in dispute. That determination is final and binding on both parties subject to limited review. I have consulted with the other members of the Panel, who have submitted written comments. Rather than belabor the discussion above with repetition of the Counsels' briefs, I hereby do incorporate both their Briefs and the Panel members' written comments. I adopt the Union's position, for the most part, as expressed in its Brief, as my own as interpreted above. Readers of this Opinion and Award should avail themselves of the 316 page transcript of the hearing proceedings, of Counsel's briefs, the Partisan Arbitrators' written comments, along with this instant document for a comprehensive understanding).

Following is the Neutral Chair's written determination of the issue in dispute, which is final and binding on the parties:

1. Yes, on the Issue Statement above, PFML Supplementation shall be included in the PFML Policy for the two Bargaining Units represented by IAFF 1052.
2. The parties are ordered to meet forthwith and negotiate a final collective bargaining agreement for the wording of the PFML Policy, including providing for PFLM Supplementation. Absent agreement by January 31, the Union's 14-Day proposal (Joint Exhibit 4) shall be implemented as the PFLM Policy, including Supplementation.
3. The aforementioned enumerations are final and binding upon both parties, Management and the Union, in the City of Richland, Washington.
4. The parties are ordered to pay the fees and expenses (Invoice sent along with this instant document) of the Neutral Chair, shared equally, as required in RCW 41.56.450.

Respectfully Submitted,

/s/ Philip Tamoush

Neutral Chair