

**Teamsters Local 763 Representing Lynnwood Police Uniformed Personnel
And
City of Lynnwood
Interest Arbitration
Arbitrator: Robert A. Sutermeister
Date Issued: 07/26/1978**

**Arbitrator: Sutermeister; Robert A.
Case #: 01469-I-78-00050
Employer: City of Lynnwood
Union: Teamsters; Local 763
Date Issued: 07/26/1978**

**Interest Arbitration
City of Lynnwood**

and

**Teamsters Local 763 Representing
Lynnwood Police Uniformed Personnel**

Case Number	1469-1-78-50
Date of Hearing:	June 29, 1978
Place of Hearing:	Lynnwood, Washington
Date Post-Hearing Briefs Received:	July 17, 1978
Representing the City:	Mr. Cabot Dow Cabot Dow Associates Seattle Trust Building 10655 N. E. 4th Street Bellevue, Washington 98004
Representing the Union:	Mr. Jon L. Rabine Secretary-Treasurer Teamsters Local 763

553 John Street
Seattle, Washington 98109

Arbitration Panel:

Mr. Cabot Dow
Mr. Jon L. Rabine
Mr. R. A. Sutermeister, Chairman
University of Washington DJ-10
Seattle, Washington 98195

Under Auspices of:

Public Employment Relations Commission
603 Evergreen Plaza
Olympia, Washington 98504
Mr. Marvin Schurke, Executive Director

Background

The last contract between the parties covered the calendar years of 1976 and 1977. Following are the highlights of developments toward a new contract:

- 4/15/77 Union sent letter to city opening negotiations for new contract
- 9/6/77 Union took City proposal for new contract to the membership without recommendation. Membership rejected.
- 11/29/77 Mediation. Union Negotiating Committee agreed to recommend proposal (hereafter referred to as The Proposal) provided, in the event the proposal is rejected, the question of retroactivity will not be an additional issue.
- 12/5/77 Membership rejected The Proposal by unanimous vote.
- 3/5/78 Fact-finding hearing
- 4/5/78 Fact finder recommended parties accept The Proposal
- 5/12/78 Parties requested arbitration
- 6/29/78 Arbitration Hearing held
- 7/17/78 Post hearing brief from the City received by the arbitration panel.

Issues Previously Agreed Upon by the Parties

To be included in the new contract are the issues upon which the parties have agreed. They are outlined in the Stipulations of the Parties in Fact-Finding, and include:

- A. Renumbering sections and calling them "Articles" in accordance with Employer's August 29 proposal to the Union**
- B. Working out of class as agreed 7/26/77**
- C. Grievance procedure as agreed 7/27/77**
- D. Overtime as agreed**
- E. Holidays (10 designated holidays plus the Employee's Birthday in lieu of the statutory floating holiday)**
- F. Sick Leave**
- G. Maintenance of Standards**
- H. Entire Agreement with mutual re-opener clause added**
- I. Drop War Clause**
- J. Definitions**
- K. All the following articles will remain (with the exception of numerical order) the same as in the 1976-1977 labor agreement.**

Bargaining Unit
Payroll Deductions
Work Week
Off Duty Time
Lunch Breaks
Vacations
Emergency Leave
Uniform Allowance
Management's Rights
Police Officers' Bill of Rights
Discrimination
Savings Clause

Issues Raised in Arbitration

1. **Union Membership**
2. **Department Meetings and/or Training Sessions**
3. **Health and Welfare**
4. **Duration**
5. **Wages**
6. **Performance of Duty (No-Strike Clause)**

General Positions of the Parties in Arbitration

The City of Lynnwood argued strongly that the burden of proof rested on the Union to show why The Proposal reached on 11/29/77 and recommended by the Union Negotiating Committee to the membership, and why the Fact Finders recommendation to accept that Proposal, should now be altered by the Arbitration Panel.

The Union argued that the Union Negotiating Committee really did not accept The Proposal, but in deference to the mediator did agree to recommend it to the membership. Union witnesses testified they told the mediator it was a waste of time to take The Proposal to the membership but the mediator told them (1) the City doubts if you presented the city's position accurately and it will remove all doubt if you present this Proposal, (2) retroactivity is safeguarded if the membership rejects the Proposal, (3) you have nothing to lose; you will still have all your rights of fact finding and arbitration. Union witnesses further testified they were willing to follow the mediator's suggestion and take The Proposal to the membership in an effort to try to settle the contract before expiration of the 1976-1977 agreement, but that they told the mediator "We're not going to ratify, but to reaffirm the position of the membership, we will submit The Proposal." In retrospect, the Union spokesman stated he would not have recommended acceptance.

I have no reason whatsoever to question this testimony as representing the perception of the Union officials of their conversations with the mediator. The mediator was not present at the arbitration hearing, to testify whether or not this also represented his perception of what was said. The Company representatives were not present when these discussions took place between the mediator and the Union officials. Thus I have no way of confirming whether the perceptions of the Union and the mediator were the same.

In my opinion, the Union must have some very persuasive arguments why the arbitration panel should change provisions of The Proposal recommended

to the union membership by the union negotiating committee, and why the arbitration panel should alter the recommendations of the Fact-Finder.

Comparable Cities

At the fact-finding hearing the parties had stipulated that the cities to be used for comparative purposes were:

Auburn
Edmonds
Kent
Kirkland
Mercer Island
Mountlake Terrace
Redmond

but they added a note that "The parties did reserve the right to present evidence pertaining to Bellevue, Renton, Bothell, Puyallup, and Olympia since agreement could not be reached on these cities."

The Union pushed strongly for the inclusion of Bellevue and Renton in the list of comparable cities, and included data from those cities in many of its exhibits. In some union exhibits it also included data from other cities besides those included in the preceding paragraph. As one example, Union Exhibit 12 B included data from:

Bellingham
Bothell
Edmonds
Everett
Issaquah
Monroe
Olympia
Pullman
Redmond
Renton
Snohomish County

It will be noted that Edmonds and Redmond are on the stipulated list of comparable cities; that Renton, Bothell, and Olympia are included in the list of other cities for which the parties had reserved the right to present evidence. But Bellingham, Everett, Issaquah, Monroe, Pullman, and Snohomish County are not included in any of the cities mentioned in the first paragraph above. I would naturally expect the Union to list cities which make Lynnwood look as bad as possible by comparison. Similarly, if the City

introduced additional cities for the first time at arbitration, I would expect the City to include cities which would make Lynnwood look as good as possible by comparison. Thus I cannot attach much weight to exhibits which include cities that have not been agreed upon by the parties or even listed under "right to present evidence."

The Union has included Bellevue and Renton in all of its new exhibits. It has a right to present evidence on these cities under paragraph 1 above. How much weight should the arbitration panel attach to the data from Bellevue and Renton? I believe it would be inappropriate for the arbitration panel to impose on the parties a list of cities the panel feels are comparable, or to add cities to the list the parties have already agreed upon. Any changes in that list should be made by the parties themselves. Therefore the panel will not consider Bellevue and Renton as comparable cities and will not consider the data on those two cities introduced for the first time at the arbitration.

Basic Philosophical Differences Between the Parties

The City pointed out that (1) there had been numerous proposals and counter-proposals during negotiations and mediation, with concessions on both sides, resulting in The Proposal, (2) this represented a complete "package," (3) it is inappropriate at the arbitration stage to regress to earlier positions and start negotiating all over again.

The Union contends that the Negotiation Committee's recommendation to the membership to adopt The Proposal must be considered irrelevant, because not until negotiations reach the arbitration stage does the Union begin to collect appropriate data to support its position.

I find the City's position the more persuasive.

Philosophy of Chairman of Arbitration Panel

RCW 41-56.460 states that "In making its determination, the panel... shall take into consideration the following factors:

- a. The constitutional and statutory authority of the employer
- b. Stipulations of the parties
- c. Comparison of the wages, hours and conditions of employment

of the uniformed personnel of cities and counties involved in the proceedings with the wages, hours and conditions of employment of uniformed personnel of cities and counties respectively of similar size on the west coast of the United States.

- d. The average consumer prices for goods and services, commonly known as the cost of living.**
- e. Changes in any of the foregoing circumstances during the pendency of the proceedings.**
- f. Such other factors not confined to the foregoing which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.**
- g. Findings of fact made by the fact-finder pursuant to RCW 41.56.440.**

The Fact Finder stressed the importance of "motivation of both parties in future negotiations to put forth their best offers in an effort to reach agreement during negotiations." I agree with this philosophy and disagree with what appears to be the Union philosophy to carry negotiations on each year through the mediation, fact finding and arbitration stages in the hope of gaining greater concessions the longer the negotiations are prolonged. I believe it would be a disservice to both parties to encourage them to proceed to fact finding and arbitration each year instead of trying their best to work out an agreement by themselves.

On the other hand, RCW 41,56.460 does state the arbitration panel "shall take into consideration changes in any of the foregoing circumstances during the pendency of the proceedings." Thus either party has the right to introduce at the arbitration hearing new evidence which was not available for negotiations, mediation, or fact finding. If the new evidence indicates that the factors in RCW 41,56.460 have not been given proper consideration and that there is gross unfairness in The Proposal, the arbitrator should give the new evidence considerable weight. In the absence of any such indications, however, I believe the arbitrator should give the new evidence little weight. He must be alert to the danger of encouraging the parties not to settle contracts by themselves, but to stall as long as possible, hoping information from settlements in other cities will strengthen their cases and that they can gain greater benefits with each additional delay in settlement.

Issue of Union Membership

As early as May 16, 1977 the Union position was to give new employees the option to join the union within 31 days. By November 29 the parties had agreed to change the language to permit employees who choose not to join the union to pay fees to the United Good Neighbors instead of the scholarship fund, but to retain the 12 months probationary period in the 1976-1977 agreement. On December 22, 1977 the Union agreed to the change of language to UGN and made no mention of a 31 day period. At the arbitration hearing, the Union reverted to its position of May 16, 1977 and presented data from 13 areas including 10 areas or cities not agreed to as comparable. The Chairman of the arbitration panel finds unpersuasive the reasons advanced for changing the provision in The Proposal.

Issue of Department Meetings and/or Training Sessions

The previous agreement specified up to 18 hours per year for general meetings without pay. On May 16, 1977 the Union requested time and a half pay for training of any kind. The Proposal called for 2 firearm meetings totalling 3 hours, 1 general meeting of 1 1/2 hours, and 1 breathalyzer session of 3 hours each year without pay, and additional training time at straight time pay. At fact-finding the Union changed its position that 2 firearm sessions and 1 general department meeting each year be with pay and additional training time at straight time pay. At arbitration the Union increased its request to 1 1/2 pay for the additional training time. Provisions in the contracts of comparable cities range widely from no pay for 18 hours training per year (as in Lynnwood's previous agreement) through compensatory time off, straight time pay, and some 1 1/2 times regular pay. Provisions also vary widely on whether all training is covered or only certain types of training. All in all the panel finds that provisions in The Proposal are reasonably comparable with those of comparable cities and should be adopted in the new contract.

Issue of Health and Welfare

The previous contract called for maintaining the level of medical and dental benefits, with no increase in premiums to employees. On May 16, 1977 the Union proposed the city continue to pay 100% of medical and dental benefits, while the City countered on June 16, 1977 that the City was willing to pay a fixed dollar amount with no guarantee of what benefits that would provide. A compromise was reached in The Proposal which called for the City to pay 100% of the benefits in 1978, but after 1978 the employees bear any increases in costs. At Fact-Finding the Union reverted to its earlier

position and requested the city to pay 100% of any increases in 1978 and 1979 to retain the level of benefits.

At the arbitration hearing, the Union introduced Exhibit 5 showing Health and Welfare costs for 1977 and, where known, for 1978. Excluding Bellevue and Renton, the average cost was \$120 and Lynnwood was paying \$123. Costs for Lynnwood under The Proposal will be \$129. Although the City will not be paying 100% of the costs after 1978, the monthly contribution by the city of \$129 seems to be reasonably in line with what the average costs will be for the comparable cities. Therefore, the health and welfare provision in The Proposal should be adopted.

Terms of Agreement

The Proposal called for a two-year contract. At fact-finding, Appendix "A" attached to the Fact Finder's Report indicated the City wanted a 2-year contract and the Union preferred one-year but "two years is acceptable." At arbitration the Union regressed in its position and requested a one-year contract.

Of the comparable cities, two have a one-year contract, three have a two-year contract, and two have a three-year contract. Thus, a two-year contract is a reasonable average and should be adopted.

Wages

The Proposal called for a wage increase in 1978 of 8%; and in 1979 a further wage increase of 6%, (based on 1977 schedule) plus any increases in the Consumer's Price Index of over 8%; with a \$175 limit on education and longevity payments.

On December 22, 1977 the Union asked for a 9.75% increase for 1978, further increases in 1979 to match increases in the Consumers Price Index, and no change in education and longevity payments.

At arbitration the Union requested an increase for 1978 of 11.29% in base salary, defined as monthly wage rate plus the Educational Incentive plus the Longevity rates. Union Exhibit 8 listed 32 law enforcement agencies (seven of which are on the list of comparable cities) with their 1978 wage settlements at an average of 9.39%. The average for comparable cities is 8.75%. The City is increasing its health and welfare contributions in 1978 by over .7%, bringing the overall cost to the City of very close to the average for comparable cities. This is also supported by the City Exhibit E16 (in fact finding). Thus I believe the wage provisions for 1978 in

The Proposal are reasonable.

Union Exhibit 12 B lists 1979 wage settlements for eleven law enforcement agencies, two of which are on the list of comparable cities. Redmond provides for CPI plus 1% and Edmonds for CPI to a maximum of 6.5%.

The Union is rightly concerned over the large increases in CPI. The latest figures, published since the arbitration hearing, indicate an increase in CPI from May 1977 to May 1978 of approximately 9.4%. The Proposal provides for an increase of 6% for 1979 plus any additional amounts above an 8% increase in CPI. This would indicate the 6% plus 1.4% or approximately 7.4% guaranteed for 1979. One never knows what the future will bring, but it may be that Lynnwood police, under the provisions of The Proposal may be better off than the average increases for police in comparable cities. Thus, the provisions of The Proposal should be adopted.

Performance of Duty (No Strike)

The previous agreement had a no-strike clause. The Proposal added a sentence that violators would be subject to discipline or discharge.

At Fact Finding the Union requested that this clause remain unchanged from the previous agreement, while the City requested that the added sentence remain. The parties took the same positions on arbitration as they had in fact finding.

Since the City had made concessions in The Proposal from its July 26, 1977 proposal, and since tentative agreement was reached by the negotiating committees, the wording in the new contract should remain as it is in The Proposal.

Summary

The Proposal agreed upon by the negotiating committees on November 29, 1977 as a result of mediation, and upheld by the Fact Finder on April 5, 1978, has taken into consideration the factors outlined in RCW 41.56.460 and shall be adopted by the parties, retroactive to January 1, 1978.

Seattle, Washington
July 26, 1978

R. A. Sutermeister
Chairman, Arbitration Panel