

**City of Yakima  
And  
Yakima Police Patrolmen's Assn.  
Interest Arbitration  
Arbitrator: John H. Abernathy  
Date Issued: 02/28/1980**

**Arbitrator: Abernathy; John H.  
Case #: 02439-I-79-00063  
Employer: City of Yakima  
Union: Yakima Police Patrolmen's Assn  
Date Issued: 02/28/1980**

<b>IN THE MATTER OF THE</b>	)	<b>DECISION AND AWARD</b>
<b>INTEREST ARBITRATION</b>	)	
	)	<b>OF ARBITRATION PANEL</b>
	)	
<b>BETWEEN</b>	)	
	)	<b>ON THE ISSUES OF</b>
<b>YAKIMA POLICE PATROLMEN'S ASSN.</b>	)	
	)	<b>1. wages</b>
	)	<b>2. shift differential</b>
<b>"THE POLICE ASSOCIATION"</b>	)	<b>3. sick leave accrual</b>
	)	<b>4. effective date of award</b>
<b>AND</b>	)	
<b>CITY OF YAK IMA</b>	)	<b>IN THE</b>
	)	
	)	<b>City of Yakima Police Arbitration</b>
<b>"THE CITY"</b>	)	<b>Case No. 2439-I-9-63</b>

**HEARING SITE: Holiday Inn  
Yakima, Washington**

**HEARING DATES: January 28 and 29, 1980**

**ARBITRATION PANEL:**

**Impartial Arbitrator  
and  
Chairman  
John H. Abernathy**

**Panel Member  
Appointed by  
the Association  
George D. Eastman**

**Panel Member  
Appointed by  
the City  
Anthony F. Menke, Esq**

**APPEARING FOR THE ASSOCIATION**

**Mr. John H. Rayback, Attorney at Law  
Mr. Michael Amos, Chairman  
Mr. Victor M. Kusske, Patrolman  
Mr. Michael A. Welton, Patrolman**

**APPEARING FOR THE CITY:**

**Mr. L. J. Wittenberg, Assistant City Manager  
Mr. H. J. LaRue, Chief of Police  
Mr. R. H. Weaver, Personnel Officer  
Mr. R. J. Capen, Police Captain  
Mr. A. C. Zerbach, Finance Director**

**EXHIBITS**

**Joint Exhibit #1      1977-79 Agreement**

**City Exhibit #1      Complaint - ULP and Appeal (package)**

**BACKGROUND**

**During 1979 the Yakima Police Patrolmen's Association and the City of Yakima engaged in extensive negotiations for a successor to the 1977-79 collective bargaining agreement (Joint Exhibit #1).**

**While the parties were able to resolve many of the issuing in dispute during negotiations, they were unable to resolve others; consequently, mediation was requested. Further items were resolved in mediation; however, on November 9, 1979, at the recommendation of the mediator, Executive Director Marvin L. Schurke of the Public Employment Relations Commission certified that the remain-**

ing issues were to be submitted to interest arbitration as provided in RCW 41.56.450. Schurke also informed the parties to proceed with the appointment of partisan arbitrators and with the selection of a neutral chairman as provided in WAC 391-21-720, et seq. The City named Mr. Anthony F. Menke of the Yakima law firm of Eloffson, Vincent, Hurst and Crossland as their Partisan Arbitrator; and the Police Association appointed Mr. George D. Eastman of Eastman Enterprises in Yakima as their Partisan Arbitrator. The Partisan Arbitrators then chose John H. Abernathy, Arbitrator of Portland, Oregon, to serve as Neutral Arbitrator and Chairman. Upon his appointment as Chairman and Neutral Arbitrator, Mr. Abernathy wrote the partisan arbitrators and the parties accepting appointment in January 1980 and naming January 28 and 29, 1980 as the hearing dates. In later correspondence to the partisan arbitrators and the parties, Panel Chairman Abernathy asked the parties to submit lists of issues. The parties subsequently complied and their lists of issues were in agreement with respect to the following issues:

1. wages
2. shift differential
3. sick leave accrual
4. effective date of the award

There was, however, a dispute over the issue of shift scheduling. The City moved that arbitration on this issue be withheld until the Unfair Labor Practice charge in this matter was decided. The Arbitration Panel informed the parties they would consider the City's motion as a threshold issue at the arbitration hearing. Subsequently, at the arbitration hearing on January 28, 1980, the Arbitration panel first heard arguments and testimony from the parties on this issue, and on January 29th entered a written decision on this issue which stated in relevant part.

"... This Arbitration Panel will not hear and will not make an award on the shift scheduling issue at this time. If, however, the Public Employment Relations Commission determines this is a mandatory issue of bargaining, or if the Public Employment Relations Commission specifically orders this Arbitration Panel to hear this issue, this Arbitration Panel reserves the right to reconvene this hearing within a reasonable period of time after either such decision for the purpose of receiving evidence and argument on the issue."

Copies of that written decision were then hand delivered to the counsels for the parties on January 29, 1980 and mailed to Mr. Marvin Schurke, Executive Director of PERC on the same date. At that point the hearing continued on the other issues in dispute throughout the remainder of January 28th and into January 29th.

In compliance with Chapter 184, Public Employees Collective Bargaining-Impasse Procedures for Uniformed Personnel, Section 2, the Arbitration Panel, once constituted, promptly established a date, time and place for the hearing. The hearing was held. Each party had the opportunity to present evidence and make arguments, and to file post-hearing briefs. No member of the arbitration panel presented a case for party at the proceedings. The Impartial Chairman made a tape recording of the proceedings and has consulted with other members of the arbitration panel.

The parties requested, and the Arbitration Panel granted, permission for the granting of post-hearing briefs. On timely receipt of the City's brief on February 15th and the Association's brief on February 11th, the Arbitration Panel closed the hearing effective February 15, 1980.

On February 18, 1980, the Arbitration Panel met at the offices of Arbitrator John H. Abernathy in Portland, Oregon, for the purpose of reviewing the evidence and testimony provided in this case. The report that follows contains written findings of facts and decisions on the issues and disputes based on the evidence presented.

In making its decisions, the Arbitration Panel was mindful of "the legislative purpose enumerated in RCW 41.56.430" and additionally was mindful of the guidelines provided in Section 3, Chapter 184, as follows:

- A. The constitutional and statutory authority of the Employer;
- B. Stipulations of the parties;
- C. Comparisons 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.

The parties did not argue the constitutional and statutory authority of the Employer. The parties only stipulated to their issues in dispute and to the positions of the parties on this issue. The parties then only argued comparison of wages, comparability, the cost of living, and changes in the cost of living which occurred during the pendency of the proceedings.

In the report that follows, the issue will be identified, the positions of the parties on each issue will be outlined, followed by the Arbitration Panel's evaluation of the evidence and arguments in support of these Positions, and finally, the award on each issue.

#### ISSUES AND POSITIONS OF THE PARTIES

##### Issue #1 - Wages

The existing salary schedule, including the number of officers and the cost of that salary schedule is reproduced below.

#### SALARY SCHEDULE AS OF DECEMBER 31, 1979

		Monthly Wage	No. of Total Officers	Total Cost
Patrolman, Step	1	1109	2	2,218
	2	1198	5	5,990
	3	1265	-	-
	4	1322	2	2,644
	5	1505	51	76,755
Sergeant	4	1584	2	3,168
	5	1662	13	21,606
				112,381 (per month)

The Association presented a salary proposal which would result in salary improvements as follows:

#### YPPA SALARY PROPOSAL

		Monthly Wage	(Months)	Cost	
Patrolman, Step	1	1316	3	3,948.	
	2	1422	55	78,210	
	3	1501	26	39,026	
	4	1569	19	29,811	
	5	1786	605	1,080,530	
				1,231,525	(annual cost for patrolmen)
Sergeant	4	1956	-	-	
	5	2052	180	369,360	(annual cost for sergeants)

This Association proposal includes the basic salary increase, plus any step increases that members of the bargaining unit are eligible for during the year. It does not include the five vacancies which have occurred during the year. The Association estimated the cost of this proposal without the five vacant positions for 1980 to be \$1,600,885 which is \$184,223 over the compensation paid for these same positions in 1979. The Association argues that this represents roughly a 13% increase. In support of their position, the Association pointed to the increase in the cost of living of approximately 11.1% that had occurred at the beginning of these negotiations, and that the cost of living had increased to approximately 18.5% from the last's year's contract during negotiations, and during, the pending of this hearing, to the date of the hearing. The Association pointed out that Washington law directs arbitrators to take into account the Consumer Price Index (CPI) as well as changes therein during the pendency of negotiations. The Association argued that the Arbitration Panel should award the Association's wage proposal for that reason alone.

In terms of comparability, the Association presented materials comparing the salaries in some 15 Washington cities. These cities and their populations are as follows:

	1979 Populations
Renton	29,300
Tacoma	157,000
Seattle	490,000
Everett	54,000
Edmonds	27,350
Bellevue	75,000
Longview	32,000
Vancouver	46,500

Olympia	26,490
Spokane	168,000
Bellingham	40,000
Bremerton	36,000
Richland	32,350
Yakima	52,900
Kennewick	26,564

The Association found the average salary for the top step police officer in these cities for 1979 to be \$1593 per month, and police officer salaries ranged between \$1780 and \$1786 per month for 1980. The 1979 top step police officers in Yakima received \$1505, or some \$88 per month less than the 1979 average. When a similar comparison is made for the top step sergeant Position, the average in these cities was found to be \$1825 for 1979 and between \$2045 and \$2054 for 1980, where the City of Yakima paid top step sergeants \$1662 in 1979. The Association argued that this comparison further justified the wage increase sought by the Association.

The Association also contended that the City has the ability to pay such salaries which was demonstrated by the 9.5% to 29.4% increases granted to management personnel within the City.

The City, on the other hand, maintained its last offer of an 8.5% increase in the base salary schedule. The City argued that when viewed from a total compensation perspective, and considering not only cost of living but comparability of cities of similar size, and the serious financial limitations of the City, this is an equitable wage offer. The City's proposed increase would result in a 1980 salary schedule as follows:

#### PROPOSED 1980 CITY SALARY SCHEDULE

	Wage	Officers	Total Cost
Patrolman, Step 1	1203	2	2,496
2	1300	5	6,500
3	1373	0	0
4	1434	2	2,868
5	1633	51	83,283
Sergeant 4	1719	2	3,438
5	1803	13	23,439
			\$121,934

The City argued that from a total compensation standpoint, when the 8.5% wage increase is added to the improvements in longevity, retirement, shift differential, medical, dental and

life insurance benefits, the total package will cost in the neighborhood of 10.5%. Many of these other cost items have been agreed to previously in negotiations. In considering comparability, the City argued that the appropriate comparison in terms of population were 11 Washington cities falling in the category of one-half as large to twice as large as Yakima. The City presented, in its comparison, the following:

**COMPARABLE CITIES IN WASHINGTON  
ONE-HALF AS LARGE TO TWICE AS LARGE  
AS THE CITY OF YAKIMA**

Selection Criteria -- Must fall in at least two categories  
including population - one-half as  
large to twice as large

- A. Population -- 26,350 to 105,400
- B. Square Miles - 6.5 to 25.8
- C. Assessed Valuation -- \$353,072,585 to \$1,412,290,338
- D. Number of Sworn Officers 43 to 174

	City	Population	Square Miles**	Assessed Value***	Sworn Officers****
1.	Bellevue	77,515	25.0	\$643,552,713	96
2.	Bellingham	44,400	22.3	692,053,981	70
3.	Bremerton	36,850	17.9	424,320,776	61
4.	Edmonds	28,750	20.0	379,388,259	28
5.	Everett	54,600	29.8	1,459,640,951	95
6.	Kennewick	29,810	15.7	468,528,171	44
7.	Longview	31,100	12.3	457,920,794	49
8.	Olympia	26,900	14.4	491,133,802	44
9.	Renton	30,700	15.4	932,264,141	56
10.	Richland	33,550	28.2	599,855,886	43
11.	Vancouver	47,400	15.2	872,479,620	69
	Average	40,143	19.7	674,649,180	59.5
	Yakima (Base ref)	52,700	12.9	706,145,169	87

\*Source: State Officer of Financial Management; Population Enrollment and Economic Studies Division. (1979 Estimate)

\*\*Source: Table 1, 1980 Citizen's Guide To Local Government,



Washington State 'Research Council. (10/15/79)

\*\*\*Source: State Department of Revenue, State Auditor  
"1978 Property Tax Collections and Levies Due  
in 1979." (7/79)

\*\*\*\*Source: "Washington State 1979 Law Enforcement Survey",  
Office of the Attorney General

The 1979 salary for top police officers in these cities  
is shown in the table below.

**1979 COMPENSATION RELATIONSHIPS  
IN COMPARABLE WASHINGTON CITIES  
FOR TOP POLICE OFFICER**

City	Annual Base Pay	Base + Base + O/P Ben.	All Ben.
1. Bellevue	\$18,408	\$21,802	\$23,855
2. Bellingham	16,416	19,802	21,697
3. Bremerton	No Data	-	-
4. Edmonds	18,672	22,529	24,540
5. Everett	18,816	22,672	25,205
6. Kennewick	16,092	19,165	21,022
7. Longview	18,012	21,496	23,713
8. Olympia	\$17,412	\$21,057	\$23,267
9. Renton	20,268	24,943	27,827
10. Richland	17,052	19,946	22,569
11. Vancouver	18,360	22,023	22,517
Average	17,951	21,544	23,621
Yakima	17,868	21,605	23,667

A comparison shows that the City of Yakima is close to the average in annual base pay and is over the average in base pay plus all benefits for the top police officer positions. So, the City argued, comparability does not justify the wage increase beyond that proposed by the City.

The City argued that the cities of Seattle, Spokane, and Tacoma are not comparable cities because they are substantially larger than Yakima, containing 497,000, 190,888, and 158,000 population respectively, compared with the approximate 53,000 population of Yakima. Seattle, Spokane and Tacoma do not meet the "similar Size city" required by the law; therefore these cities Should not be considered in any comparability argument.

**The City also objected to the radical change from the 11.1% across-the-board increase previously requested by the Association to the new proposal for 18.67% increase for police officers and a 23.47% increase for sergeants. \***

**\*Note: The difference in these cost percentages from those of the Association is due to inclusion of the five vacant positions and different costing methods.**

**The City argued that this is an attempt by the Association to widen the gap in the dispute so that the Association can benefit from any split-the-difference approach that might be used in the final arbitration award.**

**The City argued that their proposal was in line with other settlements reached within the City of Yakima. The City argued the Arbitration Panel should award the City's proposal of 8.5% for these reasons.**

## **Analysis**

**The Arbitration Panel finds itself having to consider the CPI and changes in the CPI during the pendency of the hearing as well as comparability. With respect to the CPI, the law simply requires that the Arbitration Panel consider such changes. There is no requirement that the Arbitration Panel award a wage increase equal in percentage amount to the percentage change in the cost of living index. Rather, the cost of living is to be considered as one of several factors in arriving at determination of wages by the Arbitration Panel.**

**The Arbitration Panel agreed that the CPI changed from the beginning to the end of negotiations; however, some cut-off point must be established for the process of negotiation, mediation and interest arbitration. Had the parties settled during negotiations, e.g., September, they would have used an earlier CPI figure and would have been faced with the problem of dealing with the CPI increase from September to January at the next negotiations. Consequently, the Arbitration Panel considered earlier CPI figures to be relevant.**

**The question of how the change in the CPI should be applied was also raised in the hearing. The Association argued that it should be compared to direct wages only. On the other hand, the City argued that changes in the CPI could be compared to total compensation. The Arbitration Panel noted that the CPI as constructed, includes changes in medical costs and that medical costs have been one of the fastest growing components of the CPI. But medical costs are largely met for members of this**

**bargaining unit by the previously agreed to medical and dental benefit plans. Consequently, the Arbitration Panel unanimously concluded that changes in the CPI should be compared against direct wages only, but changes in the CPI should be compared to changes in total compensation to avoid double-counting some items.**

**With respect to the comparability, the Arbitration Panel notes that it is specifically directed to consider wages of uniformed personnel in cities and counties of similar size on the west coast of the United States. Both parties restricted themselves to cities within the State of Washington and so shall the panel. Of the two comparisons, the Arbitration Panel finds that the City's comparison using cities of one-half as large to twice as large more within the stated guidelines of the law than the Association's proposal, which included cities of up to nine times as large as the City of Yakima. Therefore, the comparison proposed by the Association was rejected by the Arbitration Panel as not being within the meaning of the statute.**

**The question then became one of whether the Arbitration Panel should consider the direct wage increase only, or should consider parts of the economic package that had been arrived at earlier in negotiations in the total economic package concept. In its deliberation, the Arbitration Panel concluded that the other cost items with the exception of shift differential, had already been resolved by the parties and should be considered by the parties and the panel in a total package approach.**

**After weighing all the evidence and testimony presented by the parties in this case, the Arbitration Panel unanimously concluded that the monthly base salary for top step police officers and sergeants should be increased by 9.8% and that this increase should be reflected throughout the salary schedule.**

## **Issue #2 - Shift Differential**

**The previous contract between the parties contained a shift differential clause which provided that any shift beginning from 8:01 p.m. to midnight would receive a 1% shift differential, and any shift beginning between 12:01 to 5:59 a.m. would receive a 2% shift differential. The percentages were applied to the present top step officer and sergeant respectively to get the appropriate dollar amounts. The Association is asking that this differential be changed from a percentage amount to 25c per hour for the 8:01 p.m. to midnight shift, and 50c per hour for the 12:01 to 5:59 a.m. shift. There are roughly 12 people on the "A" Squad to start at 3:30 a.m. Currently there are no**

employees who start work between 8:01 p.m. and midnight. The Association contends that this cents per hour approach is more in tune with the number of hours that the police officer works, and would partially compensate him for the problems with family life and children in school incurred by working these odd hour shifts.

The City contended that although shift differential pay is found in the present contract, it is an unusual form of compensation. Police officers are expected to work around-the-clock schedules. Such schedules are normal parts of the job and the basic salary of police officers reflects the demands of shift work. To avoid continuous disruption, police officers are regularly changed from one shift to the other. In addition, the 1979 agreement between the parties contained an article which stated:

"No employee shall be required to work more than six consecutive months on any squad, nor shall be required to work more than six months of any year on any one squad."

The City contended that this provision will be carried forth in 1980. Consequently, a change in shift differential pay should be continued in the 1980 contract.

### Analysis

The Arbitration Panel noted that the parties had previously agreed in principle to the concept of shift differential, and had built this in the contract. Neither party had argued for its discontinuance. The City's position is to retain the present approach, while the Association wishes to change from a percentage to a cents per hour approach. After considering all of the facts, evidence, and arguments provided by the parties on this issue, the Arbitration Panel unanimously determined that the present shift differential should be changed from 1% and 2% to 15c per hour and 30c per hour for the second and third shifts respectively.

### Issue #3 - Sick Leave Accrual

Presently officers under LEOFF II are given 12 days of sick leave when they join the department. For the first year of their employment, therefore, they do not accumulate any more sick leave. During their second year of employment, and thereafter, they accumulate sick leave at the rate of one day per month.

The Association proposed the four or five individuals who are under the LEOFF II program be given 15 days of sick leave upon their employment rather than the current 12, and accrue at the rate of 1 1/2 days per month for each year thereafter. The Association pointed to an LEOFF II officer who had started to work, was injured in training, was off for 15 days, and lost pay because he did not have enough sick leave to cover the injury. The Association noted that many injuries are apt to be disabling for more than 12 days and those injuries are just as likely to occur in the first year of employment as later.

The City is proposing no change in the sick leave accrual. The City argued that the Association only pointed to one apparent problem in this area. That problem was corrected. Whether there will be future problems of that same type is entirely speculative. The City also argued that as the moving party, the Association has to show by strong evidence the reasonableness and soundness of the proposed change. This the City argued, the Association failed to do, and, therefore, the Arbitration Panel should deny the Association's request.

#### **Analysis**

The Arbitration Panel basically agreed with the City's position and denied the Association's request for change for the reasons argued by the City and for three other reasons. One, it is a change from current practices that was not supported by strong evidence establishing its reasonableness and soundness. Second, the Association could only point to one problem in this area, and the City contended that this problem had been resolved. Finally, if the Association's proposal were granted, it would apply to only four or five employees in the total bargaining unit. The Arbitration Panel unanimously agreed that it was poor labor relations practice to write a contract provision for exceptional situations rather than the general rule. For those reasons the Association's proposal was denied.

#### **Issue #4 - Effective Date of the Award**

The Association requested that the award of the Arbitration Panel be made retroactive to January 1, 1980. The City on the other hand, has asked the Arbitration Panel make any award effective on the date that it was issued.

The Association argued that it is not the Association's fault that this arbitration did not occur prior to the close of calendar year 1979. Statutory schemes set forth in RCW 41.56 clearly indicate an intent by the legislature that these matters



AND  
CITY OF YAKIMA

"THE CITY"

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IN THE

City of Yakima Police Arbitration  
Case No. 2439-179-63

After careful consideration of all oral and written arguments and evidence and for the reasons set forth above, the unanimous award of the Arbitration Panel on each of the issues is as follows:

1. **Wages - Increase the monthly base salary for top step Police Officers and Sergeants by 9.8% and reflect this increase throughout the salary schedule.**
2. **Shift Differential - Change the present shift differential from 1% and 2% to 15c per hour and 30c per hour for the second and third shifts respectively.**
3. **Sick Leave Accrual - The Association's proposal is denied.**
4. **Effective Date of the Award - The items awarded above should be effective as of January 1, 1980.**
5. **The Arbitration Panel retains jurisdiction for 30 days to resolve questions with respect to the implementation of this award.**

Respectfully submitted on this the 28th day of- February 1980  
by

\_\_\_\_\_  
**John H. Abernathy**  
Impartial Arbitrator  
and Chairman

\_\_\_\_\_  
**George D. Eastman**  
Panel Member  
Appointed by  
the Association

\_\_\_\_\_  
**Anthony F. Menke**  
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