International Association of Fire Fighters, Local 315
And
City of Hoquiam
Interest Arbitration
Arbitrator: Paul D. Jackson
Date Issued: 03/19/1980

Arbitrator: Jackson; Paul D.
Case #: 02468-I-79-00065
Employer: City of Hoquiam
Union: IAFF; Local 315
Date Issued: 03/19/1980

IN ARBITRATION BEFORE PAUL D. JACKSON

In re:	**)**	
THE CITY OF HOQUIAM, WASHINGTON	**)**	
and	**)**	**DECISION AND AWARD**
INTERNATIONAL ASSOCIATION OF	**)**	
FIREFIGHTERS, Local 315	**)**	

Date of Hearing: February 14, 1980
Place of Hearing: Hoquiam, Washington

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BACKGROUND

The City of Hoquiam is located in Grays Harbor County, Washington,

approximately 115 miles from the state's only metropolis, Seattle; 65 miles from the State Capitol of Olympia; and immediately adjacent to the City of Aberdeen with which it shares the Pacific port in Grays Harbor. Hoquiam has a population of approximately 10,400 and ranks 37th in that regard within the State. It is 23rd in per capita assessed valuation, and is dependent principally upon the wood products industry. Aberdeen, ranks 23rd in population having, in 1979, approximately 19,000 residents. It is a maritime and industrial city and also a residential and retail shopping center.

For 12 years Hoquiam has had a collective bargaining relationship with Local 315 of the International Association of Firefighters, the Union representing Fire Department employees of the City. Their most recent agreement was for two years and terminated on December 31, 1979. The City and the Union commenced negotiations for a new agreement in July, 1979, in accordance with Washington State Labor law. The parties held seven meetings up to September 24, 1979, when, arriving at an impasse, the Union requested mediation of the Public Employment Relations Commission. At the conclusion of mediation six Contract issues remained unresolved. Arbitration is required by law in such case (RCW 41.56) and the undersigned was selected to be the Arbitrator.

ISSUES TO BE RESOLVED

1. Salary
2. Longevity pay (Union's proposal)
3. Departmental changes (City's proposal)
4. Grievance procedure (City's proposal)
5. Seniority (City's proposal)
6. Duration and zipper clause (City's proposal)

<u>Issue No. 1 - Salary</u>

The Union demands, for the first six months of the year 1980, an across-the-board increase of 11.3% which is the percentage increase in the U.S. Department of Labor's Consumers Price Index for the Seattle Area-Urban Wage Earners and Clerical Workers, from July '78 to July 1979; for the second six months, the Union proposes an increase equal to whatever the percentage increase is in the CPI from July 1979 to July 1980.

Additionally, the Union demands a 1.5% across-the-board increase as a "catch-up" payment towards the equalization of the salaries of Hoquiam firefighters with those in other Washington cities which the Union believes are comparable, and most particularly with its neighbor, Aberdeen.

The Union also proposes a 2% premium immediately for all employees having an EMT I (Emergency Medical Technician) Certificate. (24 out of 25 firefighters in the unit have such certificate.)

For the second year of the contract, beginning January 1, 1981, the Union demands that across-the-board increases be given based upon the total percentage increase in the Consumers Price Index from July 1980 to November 1980, plus an additional 2.5% across-the-board "catch-up" increase.

In July of 1981, the Union proposes that there be another across-the-board increase based upon the percentage increase in the Consumer's Price Index from November 1980 to July 1981.

The total specifically ascertainable demand of the Union for the first half of 1980 therefore is for across-the-board increases of 14.8%. The proposed increase for the second half of 1980 is not known at this time but based on recent experience it could be an additional eight or nine percent. Likewise, the total increases demanded for 1981 are unascertainable but could run to over 17 percent based upon the past year's CPI experience.

The City's counter proposal for a two year contract is: For the first year, an 8% across-the-board increase plus a 1% premium payment to holders of an EMT Certificate. For 1981, the City proposes a 6% across-the-board increase, PLUS the percentage by which the Consumers Price index from the period July 1979 to July 1980 exceeds 9%. Thus, if the percentage increase was 13%, the salary rise would be 10%.

Contentions

The Union's principal argument on behalf of its demands are founded on the contention, first, that its members' economic position is substantially below than that of firefighters in comparable communities within the State of Washington, thereby justifying the "catch-up" increases of 4% to put them on a par with such communities, and, second, that a fair and equitable wage policy requires that the real income of the employees be maintained in the face of the unprecedented inflation and that this can only be achieved by raising salaries point by point with the increases in the Consumers Price Index since that index is an accurate reflection of the decline in the value of the dollar.

Additional justifications include the need for a special consideration for these employees because of the greater risk of death or injury on the job; the increase in service and productivity each year as demonstrated by certain tables showing the total "runs" of equipment from 1977 to 1979; the greater work pressures by the taking over of private ambulance service, from which time "runs", and responsibilities have greatly increased.

The Union contends that the increase of Hoquiam's assessed property values per firefighter, from 1979 to 1980, was approximately $700,000 making the demands of the Union entirely feasible financially, inasmuch as for each percentage Point salary increase the cost to the City is below $6,000.

The Union also argues that there is a substantial differential between the hourly wages of skilled and non-skilled labor in private industry, and of other City employees of Hoquiam compared to the hourly wages of its members, showing for example, a senior firefighter to have an hourly wage of only $5.62 (based on a 56 hour week) as compared to a non-skilled worker whose average hourly wage (based on a 40 hour week) in 1979 was $7.95 or as compared to a Hoquiam longshoreman whose wage was $10.07 per hour; or as compared to the wages of a skilled laborer whose average wage was $11.83.

The Union asks the Arbitrator to note the difference between the

hourly wage of the firefighter compared to other Hoquiam City employees (who work 40 hours a week) whose average wage is $7.51 an hour.

The City denies that there is any justification for "catch-up" salary increases. There is wide disagreement between the City and the Union as to what are comparable cities which state law enjoins arbitrators to consider in reaching their award, but in any event it contends that its salary levels are competitive with other cities and the internal organization of the Hoquiam Fire Department and its special job classifications make its salary opportunities for senior firemen levels fair, reasonable and equitable.

The City states that, as a result of past increases, the salaries of its firefighters have outpaced the rise in the Consumer Price Index during the same period and it rejects the Union's argument for "the indexing of salaries" with the Consumers Price Index, pointing out that such an approach toward achieving fair salaries is not justified because the Index is purely hypothetical, is not applicable to the situation of any particular firefighter and national economic policy rejects as unwarranted and economically unsound indexing with the CPI as showed by the national voluntary guidelines and wage settlements generally throughout the country and within the State, which have a range substantially below the actual rises in the CPI.

The City states that the inherent risks attached to the job of firefighter have been recognized and compensated for by the special benefits of the firefighters' Collective Bargaining Agreement and their special health, welfare and pension benefits. With regard to comparisons based on hourly wages, the City rejects this also as an invalid argument, noting that the Union arrives at a purported 56 hour work week by totally ignoring the special characteristics of a firefighter's job which traditionally requires a 24 hour shift and variations thereof whereunder firefighters are obliged to remain at the station-house on duty around the clock, which includes sleeping and attending to their own needs much of that time unless a fire emergency arises, and are engaged in routine regular work within a time frame of only eight hours, during the day. Thus, according to the City, the alleged 56 hour week referred to by the Union and made its benchmark for measuring other jobs is totally unrealistic and misleading.

A major argument of the City, is that its counter proposal is the maximum it can offer under anticipated revenues for 1980. The City is presently taxing at its authorized limits under state law. Estimated expenditures, according to the City budget, are already calculated to exceed anticipated revenues due to personnel related costs which have continued to exceed projections as a result of recent contract negotiations.

This "inability to pay" argument was supported with the introduction of the City's 1980 budget based upon a projected 7.5% across-the board salary increase for firefighters.

The "inability to pay" argument is rejected by the Union, principally on the grounds that actual experience over the past several years has shown that the City, each year has continued to have ever larger end of year surpluses appropriated as a revenue for current year expenses, from 6.2% in

1978 to 14.1% in the current year. The current surplus is almost $300,000.00. This was possible because revenue exceeded expenses because of the conservative estimate of revenues. For the year 1979 receipts exceeded estimates by over $200,000.00. At the end of 1979 there was an unencumbered, unspent balance of $84,229 for all departments. Both long and short debt of the city was substantially reduced in 1979.

Discussion, Findings and Award

The arbitrator, by State law, is required in contract arbitrations, to take into consideration certain facts in arriving at an award affecting a municipality and its uniformed employees (RCW 41.56.460).

None of the factors required by law to be considered including a comparison of "comparable" cities, are mandated to be controlling or pre-eminent in the arbitrator's ultimate conclusions. The weight he gives to various factors is a subjective determination, of which, certainly of primary importance is the validitity of the economic data and arguments presented and their relative pertinency to the case at hand.

Of immediate interest in applying the statutory mandate is the circumstance that the parties themselves have not been able to agree upon "comparable cities"; note is made also of the fact that no city outside of the State of Washington was compared although the statute would go beyond the State for comparison purposes. These comments are motivated by the importance placed by the parties on this item of consideration and by the Union's demand for 4% across-the-board "catch-up" increases. The Union particularly urged upon the Arbitrator the need for comparison with the City of Aberdeen.

The law speaks of "cities and counties respectively of similar size" but does not define "size". Arbitrators have frequently defined it in terms of population which is one reasonable approach, although population size may be less relevant than other kinds of sizes. Thus "size" may mean the area covered by cities within their fire control jurisdiction; or the size of the tax base, including total property valuations and sales, excise and other tax sources, which in turn make pertinent other factors such as the nature and character of the cities themselves, including whether they are inland or maritime, industrial, agricultural, commercial or primarily residential. These considerations may greatly affect the support given a city's fire department, its productivity, the services required of it and the city's ability to pay. To determine whether the employees in this instance are at a salary disadvantage compared with those of comparable cities this Arbitrator, has selected his own list of "comparable cities", and not only with regard to population size but also considering the overall characteristics of the cities selected and their financial resources. Aberdeen is included, not because it is comparable but because the Union urges that Hoquiam's salaries should equal Aberdeen's.

CITY	POPULATION	PER CAPITAL ASSESSED VALUE	LAND AREA & SQ MI.	POPULATION PER SQ. MI.
Aberdeen	19,075	14,515	10.0	1908
Anacortes	8,870	20,000	7.4	1199
Hoquiam	10,400	15,219	3.8	2737
Kelso	10,925	9,446	6.0	1821
Mt. Vernon	12,600	16,131	6.6	1909
Shelton	7,020	15,608	3.9	1800

(Employer's Exhibit 11-1980 Citizens Guide to Local Government-Washington State-Research Council, 10/15/79)

Of the above cities, all of them, (except Aberdeen) are within six places above or below Hoquiam in population size on the complete list of Washington cities. Several cities closer in population size have been omitted because of substantial differences in the nature and character of the city, topographically and demographically.

1977 CITY REVENUES (Amounts in thousands)

CITY	GENERAL PROPERTY TAX	TOTAL
Aberdeen	658.2	4,636.2
Anacortes	627.7	2,124.4
Hoquiam	503.2	2,358.2
Kelso	295.7	2,153.7
Mt. Vernon	548.2	2,412.3
Shelton	298.9	1,175.6

CITY	1979 BUDGET EXP. FOR FIRE CONTROL	1979 MO. SALARY FOR FIREFIGHTER	POLICE OFFICER
Aberdeen	$1,028,948	$1,536	$1,419
Anacortes	468,147	1,351	1,314
Hoquiam	486,909	1,366	1,325
Kelso	412,505	Unav.	Unav.
Mt. Vernon	Unav.	1,292	1,259
Shelton	212,731	1,160	1,150

In reviewing the above tables above, note should be made of Shelton's position which shows a tax base of approximately one-half of the other cities, and of its substantially lower salary scale. Also noteworthy are the revenues of Aberdeen compared to the other cities. The 100% difference is attributable in part to the fact that it is a commercial center as well as an industrial city and its sales tax revenues greatly exceed the other cities. The budget of Aberdeen's Fire Department is more than twice that of the other cities; the population is almost that much greater.

With regard to the four other cities to which comparison has been made, another factor has been urged by Hoquiam in support of its position that its firefighters are reasonably and fairly compensated, that is, the circumstance

that Hoquiam has a special firefighter classification of "Driver" the salary for which in 1979 was $1,434 per month. Twelve of a total of 18 journeymen are Drivers and this position is available after three years in the Department by passing a test, and positions are assigned by seniority. None of the other cities above (excluding Aberdeen) has this classification. Therefore, two-thirds of the firefighters of Hoquiam can progress to a salary considerably above the base firefighters salary of the comparable cities.

Examination of all of the evidence submitted by the parties, and careful consideration of their contentions leads to the writer to conclude that the salaries of Hoquiam firefighters are not grossly disporportionate to those of comparable cities.

Aberdeen is not deemed a "comparable" city. It is next door to Hoquiam and it shares jointly in firefighting control by virtue of written agreement. A top journeymen firefighter's monthly salary for Aberdeen in 1979 was $1,536 (Employer's Exhibit No. 14). The journeyman salary in Hoquiam was $1,366. However, proximity of cities does not, ipso facto, justify equalization of their employees' salaries with neighboring cities. For example, of eight cities adjoining Seattle, all of them had firefighters salaries ranging from $45 to $89 a month below that of Seattle and in one case, a much smaller city had a salary $72 per month higher than Seattle. (Employer's Exhibit No. 13-1979 Survey of Washington State Council of Firefighters). There are a multitude of valid reasons why salary rates may justifiably differ among communities within reasonable limits.

Comparison of firefighters salaries with those of other workers in municipal or private industry, on an hourly rate basis is not instructive. The special shift practices and duties in fire control departments, the provisions pertaining to the vacations and offday benefits, plus security of employment and other distinctions too well known to require elaboration make this conclusion inevitable. That firefighter jobs are considered competitive with other kinds of jobs in private industry is demonstrated statewide by the small turnover of jobs and the large number of applicants for them. In Hoquiam for example, 16 firefighters out of 24 have 10 to 30 years seniority; 7 have 3 to 9 years in the Department. There are practically no voluntary resignations or quits in this industry. In terms of annual salaries these employees compare favorably with other city workers.

Absence of a finding of substantial inequality in wage scales, with comparable cities of Hoquiam's size or with other skilled jobs and trades removes consideration of the "catch-up" increases of 4% proposed by the Union.

We must next consider the Union's proposal for across-the-board salary increases of 11.3% for the first half of 1980. With regard to the argument of the Union that cost of living increases should equal the increases in the CPI to maintain the standard of living and equality with other workers and unions, it is noted that many, if not most collective bargaining agreements do not provide automatic adherence to increases in the CPI. What relationship salary scales and changes have to the CPI depends upon the particular circumstances in each case such as the trend of negotiations within

the industry elsewhere vis-a-vis the CPI; the increases negotiated by the employer with other unions; the approach taken to the CPI in prior contracts; the time lag between the index and the effective date of the increases and national wage policy. It is noteworthy that this policy has set voluntary limits in industry well below the increases in the CPI. Hoquiam is known to have settled its 1980 agreements with certain other unions and employees for a 9.5% across-the-board increase over 1979 salary rates. According to testimony, within the past six months, 15 cities on the west side of the Cascades from Seattle and Tacoma to Shelton and Kelso have settled with their firefighters for increases ranging from 8% to 12.9%. These settlements, however, are meaningless in the absence of detailed knowledge of the negotiations and of the terms of the contract, the full rationale for the percentages used and particularly the exact monthly indices used to calculate the percentage rise in the CPI.

The City has offered, for the year 1980, an 8% across-the-board increase; it has additionally proposed a new premium payment of 1% to holders of EMT Certificates. Such certificate is held by 99% of the firefighters. Procurement of such certificate requires some study and training but no more onerous in time than the training generally incumbent upon an apprentice firefighter. The City thus views its total offer as actually being a proposal of 9% across-the-board.

In proposing the new premium of 1% for the certificate, the City testified that 8% was a fair general salary increase, and it preferred to give any additional compensation for special effort or skills.

The writer observes that there has been no showing by the City that a monetary incentive was necessary to encourage firefighters to obtain an EMT Certificate in the past, particularly now when ambulance driving has been taken over by the Department and it is a desirable duty which requires such a certificate.

Since, according to testimony, Hoquiam has already granted other employees a 9.5% increase across-the-board, no acceptable reason has been offered which would gainsay an increase to its firefighters of at least as much unless the City's "inability to pay" argument is valid. According to the City's testimony, each 1% increase in Fire Department's salaries increases the budget by $6,000. Left over from last year was a surplus of almost $300,000; testimony shows that the City has had a surplus left over each year for some years, and the surplus increases each year.

The Union salary demand for 1980 was predicated upon the Seattle Consumer Price Index percentage increase between July 1978 and July 1979 of exactly 11.3%. The Union's demand was made in the context of RCW 41.56.440, the law requiring uniformed personnel and public employers to commence negotiations at least five months prior to submission of the budget to the City Council. Thus, at the time of the commencement of these negotiations, the July 1979 index was the latest available. Since then, this nation has suffered an inflationary trend the likes of which have not been known before. The CPI in November 1979, the last pertinent index prior to Jan 1, 1980 when the

new Agreement commences, shows a remarkable increase over the index of July 1978 of 16.2%. The time lag between the start of negotiations as required by law and the effective date of the Agreement has never before resulted in such a large cost of living deficit and the writer feels that consideration must be given to this unusual circumstance.

The writer has arrived at a different formula than that advanced by either side; it is based upon what the City has proposed as an appropriate equation between the rise in the Consumers Price Index and cost of living, and a reasonable across-the-board increase.

The City has stated that an appropriate salary increase for 1981, the second year of the contract, would be 6% plus the percentage by which the CPI exceeds 9%. This offer, by the way, was in addition to the 1% already offered for the premium. Accepting the City's formula, but applying it to 1980 because the writer does not see why the rationale is not equally applicable for that year, and using the 16.2% increase in the CPI between July 1978 and November 1979, the last index prior to the commencement of the new Agreement in order to lessen the lag in pay adjustments, the increase is calculated as follows:

6. % (Basic minimum increase across-the-board)
+7.2% (the excess increase in the CPI over 9%)
Total 13.2%

Accordingly, for the entire year effective January 1, 1980 the writer finds that the salary increase shall be 13.2% rounded to the nearest dollar. No salary reopener for midyear 1980 is awarded.

It will be noted that the awarded increase is almost identical in its formula approach as the City's increases to other employees in 1980. The 9.5% increase by the City is 84% of the increase in the CPI, July 1978-July 1979. The increase granted here is 81.5% of the July 1978-November 1979 CPI rise. The differential is deemed warranted. First, because the rationale adheres strictly to a formula approved by the City, and second, because the Fire Department gets the full benefit of the CPI raise 12 months before other city employees.

The contract between the parties shall be for two years terminating December 31, 1981. The contract shall be reopened for salary negotiations only for the year 1981, all other terms remaining the same. No effort is made here to determine a fair increase for 1981 because recent events have shown the impossibility of predicting that far ahead, what economic conditions will be when the parties conclude their 1981 negotiations.

There will still be a lag in keeping up with the inflating index at the start of the 1981 contract but it will be minimal as compared to the existing lag which the writer believes is unnecessary and unfair under present economic conditions.

Issue No. 2 - Longevity Increases

Contentions

The Union has proposed longevity increases of $25 per month for

every five years of service up to a maximum of $100 after 20 years of continuous service. This demand constitutes a reinstatement of longevity pay into the collective bargaining agreement notwithstanding the fact that in 1975 this benefit was negotiated out of the contract and only the then-employed fire-fighters continued to receive the "same amount of longevity pay" they were then receiving "for as long as they remained continually employed in the Fire Department." 18 out of 25 unit employees were thus "grandfathered in" to longevity pay at that time. At the present time 14 out of 25 are receiving such longevity pay. The Union contends this condition is inequitable and devisive within the Department, and that longevity offers the only kind of salary progression in the Department and rewards loyalty.

The City contends that length of employment has little relationship to improvement of skills or performance and there is no justification for returning to a rejected formula. Moreover, the City asserts that the higher paying classification of "Driver" which is open to all journeymen offers an incentive for promotion and salary increase. The evidence shows that about 50% of the State's fire departments have longevity pay. Most of these do not have the driver classification.

Discussion, Findings and Award

The writer concurs with the argument that both parties, in their joint wisdom, eliminated longevity pay in the give and take of collective bargaining in 1975. One party should not now resurrect this premium. At the least, a longer period of time is needed to evaluate the effects of the recent change. Moreover, justification for longevity pay is weakened where there are opportunities for increasing earnings and promotion as here. As for the argument based on inequity and devisiveness within the department because of those previously "grandfathered" with longevity pay, when the Union agreed to terminate this premium, it was aware of the fact that junior employees would be at a salary disadvantage compared with the senior employees, and this fact cannot now be raised as a new argument to reinstate the eliminated benefit.

As for the contention that longevity pay rewards loyalty and ensures minimal turnover of employees, experience has shown that fair basic salaries and good working conditions better motivate these objectives.

Issue No. 3 - Departmental Changes

The City proposes to delete Article XIV of the present contract providing:

> **"Before any permanent changes are made in basic policy, they will be submitted to the Union prior to the change and discussed with the Union representative, if he notifies management in writing of his desire to do so."**

Contentions

The City asserts that the Article recently has been given an

undesirable and unexpected impact upon management's exercise of its traditional, lawful, discretionary powers and responsibilities to make day to day departmental executive decisions and that this Article as now interpreted permits unwarranted grievances, by the Union, allowing arbitrators to "undermine" management's ability to protect the effectiveness, efficiency and quality of fire control service. The recent decision of the Public Employment Relations Commission, number 745EECV (Case No. 1017-U-77-134), the City urges, raises this concern. In that case, the Union charged the City with unfair labor practices for failure to comply with Article XIV by not first negotiating with it when the City abolished a vacant captain's position, covered it with a lieutenant's rating and assigned work to that position which previously had been performed by the captain. The examiner for the State held that there was "no specific provision of the contract giving it (the City) the right to reallocate job duties among classifications" -- and that the so-called management rights clause in the agreement was not specific enough to justify its unilateral action. (Emphasis added)

The Union states that while Article XIV is only a "meet and confer" clause that does not affect its legal right to demand negotiations on all changes of "working conditions" by the employer, and in the case in question before PERC the action of the City affected "Wages and working conditions" and was a legally mandatory subject for bargaining. The Union had sought arbitration of the grievance which would have raised the issue of jurisdiction and the nature of the change and the City's authority in that regard, under the "management rights" provisions but the City rejected this.

Discussion, Findings and Award

Without addressing the issue raised in the PERC case cited above, which attempted to interpret and apply Article XIV in the context of the labor laws of the State of Washington applicable to public employees, it is obvious that the vague phrase "basic policy" is at the root of the dispute.

The City's concern is that by outside state agency, judicial or arbitral intervention, the powers which it had reserved to itself to manage its daily affairs generally set forth in Article XXI of the Agreement pertaining to "management rights" will be eventually totally eroded and that in the future operation of the Department may devolve upon a bilateral commission or third persons.

To avoid the possibility of such contretemps, the writer is of the opinion that Article XIV should be clarified and made more definite and certain if possible, and therefore an additional sentence shall be added to it as follows:

> **"By 'basic policy' is meant any departmental rule, regulation or management practice pertaining to matters not specifically covered by this written agreement or reasonably and unavoidably derived therefrom. Discussion with the Union representative does not require agreement with the Union before a change in 'basic policy' may be implemented. Should a dispute arise pertaining to the application**

and interpretation of this Article, or the effectuation of any such change by management, the matter shall be taken up immediately through the grievance procedures of this Agreement, to arbitration if necessary, within the shortest allowable time, and the Arbitrator's decision shall be final."

Issue No. 4 Grievance Procedure

The first paragraph of Article XIX of the present Agreement covering grievances provides:

"Grievances or disputes which may arise, including the interpretation of this agreement, shall be settled in the following manner:"---

Discussion, Findings and Award

The City proposes that the word "including" be changed to "involving". The intent of the City is understood by the Union. The present language permits all disputes of any kind, whatsoever their origin or basis, regardless of their relationship, if any, to the collective bargaining agreement, to proceed to grievance and ultimately to arbitration. It is possible under the present language for the Union to dispute with the City or the supervisors of the Fire Department, proposals or actions which clearly are not matters addressed by the collective bargaining agreement or within its purvue, nor, for that matter, statutorily mandated for bargaining.

In short, the paragraph as presently written makes every action or decision by management however lawful and proper, subject to the delays, expense and hazards of arbitration, whenever the Union chooses to dispute them.

Admittedly such extreme situations may not occur, but the danger is present under the existing language.

The source of a labor arbitrator's authority, except where otherwise specifically expanded by the arbitration clause of the contract, is limited to the collective bargaining agreement of the parties. This proposition is usually expressed as "authority to interpret and apply the agreement of the parties." The City, by its proposal, desires to assure this objective in the interests of stability and efficiency in its operation of the department. The Union, of course, desires to keep all existing options open, thereby strengthening its bargaining leverage. It further argues that in the absence of a "prevailing rights" clause in the agreement it needs the present language of this article to prevent the employer from diminishing established benefits and perquisites which may not be specifically mentioned in the contract but are recognized through customary practice.

The writer agrees with the proposal of the City as a reasonable step in making the agreement the basic reference in disputes, grievances and arbitration, and believes that the concerns of the Union can be met by appropriate language. His decision is in accord with the great majority of labor agreements. The first paragraph of Article XIX shall be amended to read as follows:

"Grievances or disputes which may arise involving the interpretation

or application of this agreement, (including established custom or practice of benefit to the employees, and initiated by the Department) shall be settled in the following manner --"

Issue No. 5 - Seniority

The expiring agreement contains the following seniority provisions:

"The City recognizes the principle of seniority and time in the Department shall be given utmost consideration in layoffs, call-backs and promotions.

In the case of personnel reduction the employee with the least seniority shall be laid off first and called back last. NO new employees shall be hired until all laid off employees have been given the opportunity to return.

When a driver position is open only those employees who have passed the competitive examination for Driver will be eligible to bid for the position. Such position shall be filled on the basis of seniority subject to a one year probationary period to establish competency."

The City proposes new language as follows:

"The City recognizes the principal of qualified seniority and time in the Department shall be given utmost consideration in lay-offs and recall. Promotions shall be governed by Civil Service rules and regulations.

In the case of personnel reduction the employee with the least seniority shall be laid-off first and called back last. No new employees shall be hired until all laid-off employees have been given the opportunity to return.

When a driver position is opened, examination for driver will be subject to the promotional procedures of the Civil Service Commission. Such position shall be filled accordingly and the assignment of qualified employees shall be made by the Fire Chief, subject to a one-year probationary period."

Contentions

The City's position on this proposed change is best expressed in its Exhibit 25, a position paper, stating:

"The Fire Chief must have the right to assign employees to the 'driver' position in the bargaining unit by ability as opposed to by seniority. The current labor agreement provides that seniority will be given the utmost consideration in lay-offs, call backs and promotions. However, nothing in the agreement provides that the City will give seniority the utmost consideration in assigning employees to specific jobs within the bargaining unit. Seniority clauses of the kind being defended by the Union are generally void in any other firefighter labor agreements in cities of similar size as far as the City knows. The employer is agreeable to lay-offs and recall provisions subject to the employee being physically qualified to do the job upon recall. Promotions are normally a Civil Service matter and should be excluded

from the contract. Examinations for driver category and their promotional procedures should be Civil Service matters and assignments of driver category to specific equipment will be made by the Fire Chief who is responsible for the administration of personnel matters and the assignment of personnel within the Fire Department.

The City risks extensive liability in running heavy and sophisticated pieces of fire equipment and feels that it must determine who is assigned to such equipment and best qualified for the assignment to 'driver' duties and responsibilities.

While the following language represents a compromise on the part of the City, the specific language being proposed by the City is as follows:---"

In further elaboration of its position with regard to the third paragraph of the existing clause the City testified that competitive examination only is not sufficient and that it must have the same authority granted management under Civil Service procedures which are presently applicable to all other fire fighting jobs. It would substitute the new Civil Service rules and regulations recently adopted by the City for the present contractual ones set forth in the agreement governing selection and promotion, particularly to the driver positions. Under the agreement the City must promote the senior person who has passed the examination. Under the new Civil Service procedures the Department would be able to select any one of the top three individuals without regard to seniority.

The Union states that its principal concern is with respect to selection and promotions of drivers and that this classification has never been under Civil Service regulations or procedures and that there is no reason to place it there at the present time. Further, it states, Hoquiam only recently passed the new Civil Service ordinance which management seeks to implement by its changes, and there are no guidelines or experience at present in applying the so-called "rule of three". Possibilities of discrimination or chicanery under the City's proposal would exist thus vitiating the principles of seniority for which the Union has fought. Under existing regulations there is no provision requiring written justification for passing over the senior man. Therefore, the Union proposes, in substitution of the City's third paragraph the following provision:

"When a Relief Driver position is open, an examination shall be given for the purpose of establishing a promotional list for that position. The individual with the highest score to be promoted to that position, subject to a probationary period, under supervision, to establish competency.

When a Driver position is open, Drivers, and Relief Drivers shall be allowed to bid on that position. The individual with the greatest seniority shall be promoted to that position."

Discussion, Findings and Award

The Arbitrator concurs in the use of the Civil Service procedures which are applicable in initial selection for other positions in the Fire

Department of the City of Hoquiam and believes that these procedures should be equally applicable to all promotions including that of Driver which is a higher paying journeyman position occupied by two-thirds of all of the firefighters. This should also be the process in the initial selection of Relief Drivers. Thereafter, promotion to a regular Driver's position should be by bid and seniority since the competence of Relief Drivers from whom the selection is made should have already been determined by the experience of the Department with the work of the Relief Driver. In the case of questions of possible physical or other disability of a Relief Driver to fill a regular position, the Union should have an avenue to pursue should it dispute the action of the Department.

Accordingly, Article XXX, Seniority, shall be revised as follows:

> **"The City recognizes the principle of seniority and time in the Department shall be given utmost consideration in layoffs, call-backs and promotions.**
>
> **In the case of personnel reduction the employee with the lease seniority shall be laid off first and called back last. NO new employees shall be hired until all laid off employees have been given the opportunity to return.**
>
> **When a 'Relief' Driver position is opened, examination for 'Relief' Driver will be subject to promotional procedures of the Civil Service Commission. Such position shall be filled accordingly and the assignment of qualified employees shall be made by the Fire Chief, subject to a one-year probationary period. Should the senior employee of the top three who have passed the competitive examinations not be selected for promotion, the Chief shall set forth his reasons in writing for his actual selection and deliver a copy to the Union representative. Disagreement by the Union, with the Chief's action shall be subject to grievance and arbitration.**
>
> **When a Driver position is open, Drivers, and Relief Drivers shall be allowed to bid on that position. The individual with the greatest seniority shall ordinarily be promoted to that position. If this is not done, the procedures for grievance and arbitration shall be considered immediately invoked, unless waived in writing by the Union."**

<u>Issue No. 6 - Entire Agreement (zipper) Clause</u>

The City has proposed the inclusion of a new provision in Article XXXII - Duration, as follows:

> **"Section 2. (New)**
>
> **This agreement expresses the entire agreement between the parties. The parties acknowledge that during the negotiations which resulted in this agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this agreement. Therefore, the City and the Union, for the life of this agreement, each**

voluntarily and unqualifiably waives the right, and each agrees that the other shall not be able to bargain collectively with respect to any subject or matter not specifically referred to or covered in this agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the parties at the time that they negotiated or signed this agreement."

Contentions

The City's contention is that the proposed provision is necessary to ensure that it will not be subject to continuing demands by the Union during the life of the agreement, on matters which were not resolved or taken up in the negotiations proceeding agreement or with respect to alleged "verbal promises" or " implied contracts".

In view of the existing Article XIV - Departmental Changes (discussed above) and PERC's interpretation of the contract, the City believes it requires the protection of the proposed clause to place it on an equal plane with the Union in collective bargaining. It feels it is now at a disadvantage

The Union contends that no zipper clause is necessary and that in any event the one proposed by the City far exceeds by its restrictions, the few such clauses which do exist in the industry. It contends that in its 12 year relationship with the City of Hoquiam very few situations have arisen which would have necessitated the application of such a zipper clause to protect the City.

Discussion, Findings and Award

In the decision herein, the writer has made changes including those to Article XIV, in an effort to give stability to the collective bargaining relationship during the life of the contract and to clarify the extent of the obligation to bargain during the contract term. No zipper clause, however written, can prevent the Union from demanding negotiations in mid-contract if it perceives that the employer is diminishing the benefits and prerogatives of its members during the term of the contract. It will proceed through grievance procedures if it believes that the contract itself, written or implied, is being violated or it will proceed through state agencies or in the courts if the City refuses to bargain on what it perceives to be a mandatory subject of bargaining, which has not been an actual subject for bargaining in the negotiations. The value of such clause, if challenged, is in doubt also. See Unit Drop Forge, 171 NLRB #73, 68 LRRM 1129 (1968).

For these reasons, and because of the writer's misgivings concerning the stabilizing value of the proposed change, the inability thoroughly to analyze the effect of such change, absent more information, and with the observation that to date the parties have had very few pertinent situations in 12 years, the City's proposal is not adopted.

With regard to the duration of the agreement Section 1 of Article II shall be revised to read as follows:

"This agreement shall be in effect from January 1, 1980 until

December 31, 1981; however, the salary scale for all employees, for the second year of the agreement which commences January 1, 1981 shall be open for negotiations at the appropriate time. Either party wishing to amend or modify this agreement or open it or commence negotiations on wages for the year 1981 must notify the other party in writing no sooner than six months or later than five months prior to the filing of the preliminary budget for that year. Within 10 days of receipt of such notification by either party a conference shall be held between the City and the negotiation committee for the purpose of amendment or modification."

SUMMARY OF AWARDS

1. **SALARY**
   A 13.2% across-the-board general salary increase effective January 1, 1980. Wage reopener for the year 1981.

2. **LONGEVITY PAY**
   Maintenance of the present provisions with no change.

3. **DEPARTMENTAL CHANGES**
   A clarifying addendum of Article XIV defining "basic policy" and restricting disputes in application and interpretation to arbitration.

4. **GRIEVANCE PROCEDURE**
   Amendment to Article XIX.

5. **SENIORITY**
   Amendment to Article XXX.

6. **ENTIRE AGREEMENT (Zipper Clause) and DURATION OF AGREEMENT**
   No addition of a "zipper clause".

   A two year agreement with reopening on salaries only for the year 1981.

Dated: 3-19-80 **PAUL D. JACKSON, Arbitrator**