Seattle Police Management Association
And
City of Seattle
Interest Arbitration
Arbitrator: Michael H. Beck
Date Issued: 09/11/1983

Arbitrator: Beck; Michael H.
Case #: 04369-I-82-00098
Employer: City of Seattle
Union: Seattle Police Management Association
Date Issued: 09/11/1983

IN THE MATTER OF
CITY OF SEATTLE
and
SEATTLE POLICE
MANAGEMENT ASSOCIATION

AAA No. 75 39 0014 83
PERC No. 4369-I-82-98
Date Issued: September 11, 1983

INTEREST ARBITRATION
OPINION AND AWARD
OF
MICHAEL H. BECK

Appearances:
CITY OF SEATTLE **Gordon J. Campbell**
SEATTLE POLICE MANAGEMENT ASSOCIATION **James H. Webster**

IN THE MATTER OF
CITY OF SEATTLE
and
SEATTLE POLICE
MANAGEMENT ASSOCIATION
INTEREST ARBITRATION OPINION OF THE ARBITRATOR

PROCEDURAL MATTERS

RCW 41.56.450 provides for arbitration of disputes when collective bargaining negotiations have resulted in impasse. The undersigned was selected by the parties to serve as the Neutral Chairman of the tripartite arbitration panel.

The Arbitrator selected by the Employer, City of Seattle, is William E. Hauskins, Labor Negotiator. The Arbitrator selected by the Union, Seattle Police Management Association, is Lt. P. C. Vande Putte.

A hearing was held before the Arbitration Panel on May 10, May 11, June 9 and June 10, 1983, at Seattle, Washington. The Employer was represented by Gordon Campbell, Assistant City Attorney. The Union was represented by James H. Webster of the law firm of Durning, Webster & Lonnquist.

At the hearing, the testimony of witnesses was taken under oath and the parties presented voluminous documentary evidence. The parties did not provide for a court reporter, and, therefore, the Chairman tape recorded the proceedings for the sole purpose of supplementing his personal notes.

In view of the substantial testimonial and documentary evidence presented, the Chairman requested that the parties provide posthearing briefs. The parties agreed to this suggestion and excellent posthearing briefs were filed by each party. Those briefs were received by the Arbitrator on July 22, 1983. At the request of the Arbitrator, the parties agreed to waive the statutory requirement that a decision issue within thirty days thereafter.

On September 2, 1983, the Chairman met with the other members of the Arbitration Panel. A wide-ranging discussion of the issues was held which was extremely helpful to your Chairman. In accordance with the statutory mandate, I set forth herein my findings of fact and determination of the issues, which I have labeled an Interest Arbitration Opinion and Award, as that is the manner in which arbitrators generally label these decisions.

ISSUES IN DISPUTE

At the time the Executive Director of the Public Employment Relations Commissions determined that this matter should be submitted to interest arbitration, he indicated in his letter of December 2, 1982, addressed to the parties, that seventeen issues remained unresolved between the parties. These issues are listed below:

- **Overtime Compensation**
- **Standby Compensation**
- **Work out of Class**
- **Clothing Allowance**
- **Retention of Benefits**
- **Holiday Premium Pay**
- **Medical Insurance**
- **Medical for Retirees**

Dental Benefits
Duration
Salary
Pay Steps
Retroactivity
C.O.L.A.
Longevity
Shift Differential
Grievance Procedure

Two of the seventeen issues were removed from consideration by the Arbitration Panel due to the stipulation of the parties. The parties stipulated that the duration of the agreement should be one year from September 1, 1982, through August 31, 1983. As a result of this agreement, not only is the question of duration resolved, but the C.O.L.A. issue is rendered moot by the fact that the C.O.L.A. allowances sought by the Union were for the second and third years of a proposed three year agreement. Thus we have fifteen issues which must be addressed by your Chairman.

SALARY RELATED ISSUES

The Proposals

There are three direct salary related issues. These are listed below:

1. **Salary**
2. **Pay Steps**
3. **Longevity**

The bargaining unit is composed of thirty-seven lieutenants, fourteen captains, and six majors in the City of Seattle Police Department.

The Union proposes a one step monthly salary schedule. The Employer proposes a three step salary schedule in the same configuration as is presently in the expired agreement. The Employer has two alternative proposals. I have set forth below a chart which shows the monthly salary at the final step for each of the three classifications effective on the last day of the prior agreement, the salary figures indicated by the two Employer proposals, the salary figures indicated by the Union proposal, and the percent increase indicated by Employer alternative no. 2 and the Union proposal above the 8/31/82 figures.

MONTHLY SALARIES TOP STEP

		Employer Proposals			Union Proposal	
	8/31/82	Alt. 1	Alt. 2	% Increase	(only step)	% Increase

Lt.	**3166**	**3269**	**3291**	**(3.95)**	**3490**	**(10.23)**
Capt.	**3640**	**3758**	**3765**	**(3.43)**	**4014**	**(10.27)**
Major	**4180**	**4316**	**4305**	**(2.99)**	**4615**	**(10.41)**

The Employer states in its brief that its alternative no. 1 reflects a 3.25% increase in each classification. Its alternative no. 2 is based on a flat increase of $1500 across the board.

The Union also proposes a longevity premium of 2% after five years of completed service, 4% after ten years of completed service, 6% after fifteen years of completed service, 8% after twenty years of completed service, and 10% after twenty-five years of completed service. The City proposes not to add any longevity premium to the contract.

Arbitrator Discussion

A review of the foregoing makes clear that the parties have vastly different positions as to the appropriate amount of wages to be paid to the members of the Seattle Police Management Association during the year September 1, 1982, through August 31, 1983. A major reason for this disparity is that the parties have not selected the same cities as comparables. Reliance on comparables is based upon the statutory direction to the Arbitration Panel contained in RCW 41.56.460, which provides that:

> **In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and as additional standards or guidelines to aid in reaching a decision, it shall take into consideration the following factors: ...**
>
> **(c) Comparison of 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.**

The legislative purpose enumerated in RCW 41.56.430, which RCW 41.56.460 directs the Arbitration Panel to be mindful of is set forth below:

> **The intent and purpose of this 1973 amendatory act is to recognize that there exists a**

public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

The Employer contends that there are eight cities on the west coast which "traditionally" have been used as the comparable cities in proceedings of this type. The Union would consider seven of the eight cities listed by the Employer as comparables, but would remove Tacoma since it does not meet the 200,000 threshold, which the Union believes appropriate. However, the Union would add an additional five cities, giving it a total of twelve comparable cities. In the next chart, I have set forth the cities that both the Employer and the Union contend are the comparable cities, their population, and the population differential between each and Seattle.

In setting forth the population figures I have examined both the Union's Exhibit (No. 4), and the Employer's Exhibit (No. 80). Where I have population figures for the same city from each exhibit, I have taken an average of those two population figures and rounded to the nearest 5,000. For the sake of consistency, I have also rounded to the nearest 5,000 the population figures for the other cities which appear only on one of the two exhibits.

CITIES SUGGESTED BY ONE OR BOTH PARTIES

City	Employer Selected	Union Selected	Population to nearest 5,000	Percent above Seattle pop.	Percent Seattle above pop.
Los Angeles		x	2,955,000	497	
San Diego	x	x	875,000	77	
San Francisco	x	x	675,000	36	
San Jose	x	x	630,000	27	
Seattle			495,000		
Portland	x	x	365,000	36	
Long Beach	x	x	360,000	38	
Oakland	x	x	340,000	46	
Sacramento	x	x	275,000	80	
Anaheim		x	220,000	125	

Fresno		**x**	**215,000**	**130**
Santa Ana		**x**	**205,000**	**141**
Anchorage		**x**	**170,000**	**191**
Tacoma	**x**		**160,000**	**209**

The Union developed, with the aid of Dr. David Knowles, Associate Professor of Economics, Albers School of Business, Seattle University, an economic theory that Dr. Knowles referred to as the "threshold test". This test was based upon a determination that once a city reached 200,000 population its police management officials would face similar problems and have comparable duties and responsibilities. As I understand the Union's reasoning, if your Chairman agreed with this conclusion, then he would also have to conclude that all cities of 200,000 or more would be comparable in the economic sense contemplated by RCW 41.56.460. Additionally, although Dr. Knowles would drop Tacoma from the comparables since it did not have a population of 200,000, he would add Anchorage because that city, being a port city and the largest city in the State of Alaska, would also have to be considered similar in an economic sense to Seattle.

The Employer, on the other hand, points out that with respect to the eight cities it has selected all, except Tacoma, are within the 250,000 to 1,000,000 population grouping. According to the Employer, this grouping is appropriate for Seattle because Seattle is right between two traditional population groupings used both by the International City Management Association and by municipal bond rating agencies such as Moody's. These two groupings are 250,000 to 499,999 and 500,000 to 1,000,000.

I start my determination of which cities to consider as the comparable cities by carefully examining the statutory language establishing comparables as a factor to be taken into consideration by the Arbitration Panel. The key language has been quoted earlier in this Opinion and it is, " cities of similar size on the west coast of the United States". The parties are not in dispute that the word size refers to population as opposed to area. Nor are the parties really in dispute regarding the phrase "west coast of the United States". Although the Employer would not include Anchorage, it does not argue that it is not a west coast city. Furthermore, both parties are willing to consider cities such as Sacramento and San Jose whose borders do not literally touch the coast line of the United States. The area of disagreement between the parties revolves around the term "similar".

With all due respect to Dr. Knowles, who clearly is well qualified as an economist, I do not believe the statutory language "similar size" is broad enough to encompass the threshold test he developed. This seems particularly true in the case of the city such as Los Angeles whose population is nearly 500% larger than that of Seattle. Nor does the statutory language contemplate including a city such as Anchorage, Alaska, merely because it is the largest city in one of the states on the west coast; particularly when excluding a city such as Tacoma, Washington, which is a city of similar size to Anchorage and has geographic proximity to Seattle. Seattle has approximately 200% more people than either Anchorage or Tacoma and, therefore, cannot be considered to be a city of similar size.

Santa Ana, Fresno, and Anaheim have populations of approximately 205,00 to 220,000. Seattle has 125% to 141% more people than these three cities. Again, I cannot find any of these three cities to be cities of similar size to Seattle.

Finally, it would appear appropriate to eliminate Sacramento and San Diego as possible comparables. Sacramento has only 275,000 people. Seattle is 80% larger. San Diego, with 875,000 people, is 77% larger than Seattle.

After carefully studying the population figures, it is my view that the five cities I have not eliminated constitute an appropriate group of cities for comparison with Seattle. In this regard, I note that Seattle is just about in the middle in population of the five comparables in that it is smaller than San Francisco and San Jose, but it is larger than Portland, Long Beach and Oakland.

Where to draw the line with respect to choosing comparable cities is a difficult question. Wherever it is drawn, the determination may appear somewhat arbitrary. In making my determination I selected only those cities which are relatively close in population, but have included enough cities so that the comparable group has a sufficient number of cities to provide an adequate sample for the purposes intended by the statute. To include cities like San Diego that have a population of 75% or more than that of Seattle would, in the opinion of your Chairman, not be in accord with the statutory mandate to compare cities of similar size. Likewise, to compare Seattle, with a population 80% greater than that of Sacramento, to Sacramento also would not constitute a comparison within the statutory direction to compare cities of similar size.

The cities I have selected have a population per-

centage difference vis-a-vis Seattle which falls in a narrow range between 27% and 46%. The statutory mandate is to select such cities so that each city selected can reasonably be said to be of similar size to the city in question. The statutory language does not provide or even contemplate the selection of cities of vastly different sizes. The fact that the overall average of such cities turns out to be similar to that of the city in question does not make the cities selected of "similar size".

I have carefully studied the evidence in support of the Employer's position that the eight cities it desires are the traditional cities used in such groupings. However, it is clear that such cities have never been used in connection with this bargaining unit, since this is the first interest arbitration this bargaining unit has undergone. In fact, the record is void of any indication that any police management unit in this state has gone to interest arbitration.

The Employer has submitted a small portion of each of three decisions in support of its position. The first was not an interest arbitration but a fact finding by Dr. Charles Lacugna. This 1974 decision involved the City of Seattle and its firefighters and police officers. That case involved a stipulation of the parties regarding comparable cities.

The second opinion is a 1977 interest arbitration by Philip Kienast involving the City of Seattle and the Seattle Police Officers Guild. In that case, the parties agreed that Portland and Long Beach were the comparable cities. The other six cities were included as a "secondary group", mainly because one side suggested three and the other side suggested three others.

The third decision is a 1983 decision by Kienast involving the City of Seattle and its firefighters. Again, only a short excerpt from that opinion was introduced and, therefore, it is difficult to tell exactly what Kienast held there. It does appear, however, from the excerpt that Kienast determined to give primary consideration to the eight cities the Employer contends are traditional, regarding the question of appropriate work week for the city firefighters, based on the negotiating history of the parties there.

I agree with the Employer that it would be helpful if the parties could rely on a constant set of comparable cities in conducting their negotiations. Perhaps the ones I here find comparable will serve that purpose. However, I cannot find that the Employer has established that the cities it selected are the traditional cities appropriate for selec-

tion on that basis alone.

A great deal of wage and salary information was presented by both parties. I was particularly impressed by the thorough manner in which the City's labor relations analyst, Lizanne Lyons, prepared the data she presented. I have relied heavily on this data, particularly in connection with a determination of the appropriate base monthly salary.

The Union specifically seeks a 15% differential between lieutenants and captains and again between captains and majors. The Employer alternate proposals would provide differentials of 14% to 15%. Additionally, the wages received by captains and majors as of August 31, 1982, also reflected an approximate 15% differential between each of these classifications and the next lowest pay grade. Therefore, I shall set the base monthly salary top step for a lieutenant and add 15% for the captain and 15% above the captain for the major.

As of January 1, 1983, the average base monthly salary at the top step for lieutenants in the five comparable cities I have selected was $3251 per month. Seattle lieutenants at a monthly salary of $3166 are presently receiving 2.7% less than the average. The average salary for top step lieutenants as of June 1, 1982, for the five comparable cities was $3030. Seattle, at $3166, was 4.5% above the average for the five comparable cities. For Seattle to maintain the same percentage above the average as of January 1, 1983, for the five comparables, the lieutenants would have to receive a base monthly salary of $3397, which would amount to a 7.3% increase over the present salary of $3166.

A chart showing the increases provided top step lieutenants between 1982 and 1983 in the five comparable cities is set forth below:

MONTHLY SALARY TOP STEP LIEUTENANT

City	6/1/82	1/1/83	Percent Increase
Long Beach	3188	3496	9.7
Seattle	3166	3397*	7.3*
San Jose	3045	3325	9.2
Oakland	3004	3199	6.5
San Francisco	2995	3176	6.0
Portland	2917	3061	5.0
Average	3030	3251	7.3

***Based on an average of five comparables.**

As one can see from examining the chart a raise of

7.3% would place Seattle lieutenants in approximately the same position they were at the conclusion of the expired collective bargaining agreement. Seattle would maintain its second place position among the five comparables, although it would no longer be the close second it was previously. Thus, a review of the comparables would indicate that a raise would be appropriate. In this regard, I note that no evidence was presented indicating that bargaining unit members were less productive during the period of the contract year in question here than they were during the prior year.

There are, however, other factors to be considered, as both the Employer and Union recognize.

In this regard, I note that RCW 41.56.460(d) directs the panel to consider:

The average consumer prices for goods and services commonly known as the cost of living.

The appropriate period to consider would be the period July 1981 through July 1982 as that is the last year immediately preceding the contract in question here for which there are consumer price index figures available for the Seattle area. Additionally, this is the period used by the Employer in computing raises for other city employees. The cost of living, as reflected by the Consumer Price Index for Urban Wage Earners and Clerical Workers Revised (CPI-W) for Seattle, increased by 5.4%.

The question then becomes what weight to give the CPI vis-a-vis the comparables in assessing the appropriate wage rate. Here, where the wages of the bargaining unit members compare favorably with those in the comparable cities, it would seem appropriate to give the consumer price index significant weight. Therefore, I have determined to set the appropriate salary figure based on a percent increase which is approximately equal distance between the 5.4% CPI-W and the 7.3% necessary to maintain the Seattle bargaining unit in the same position it was under the prior agreement vis-a-vis the west coast comparable cities. That figure is 6.5%. While 6.5% is below the average increase given by the five comparables, it represents the mean increase. That is, the third highest increase among the five cities was that provided by the City of Oakland and it was 6.5%.

I have carefully considered the other factors cited by the parties and do not find that they require a contrary result. I note that while the Employer raised concerns about the various competing demands upon the City, it did not contend that a raise of 6.5% was beyond its ability to pay.

The Employer also points to the fact that its police

officers received only a 5.6% increase, and police sergeants received only a 5.7% increase between September 1, 1981, and March 1, 1983. As I understand it, the Police Guild negotiated these increases without going to interest arbitration. The firefighters were then granted a similar wage increase to that of the police officers by Arbitrator Kienast. The question of parity between firefighters and police officers has long been a matter of contention between the two bargaining units and an award providing one with the same wages as the other appears appropriate. Here, I am dealing with quite a different unit, one made up of middle to upper middle management employees. Furthermore, the fact that the Seattle Police Guild negotiated the wage package it did may well reflect the comparables regarding police officers. Finally, a wage increase of 6.5% is less than 1% more than the 5.6% or 5.7% received by the police. Such a difference is not so significant as to require a change in what appears appropriate based upon the two factors specifically set forth in the statute, namely the comparables and the CPI.

I also recognize that other represented workers received a 4.3% increase due to the fact that their collective bargaining agreements provided for such an increase in the second year of a three year agreement. The City also gave its nonrepresented employees a 4.3% increase. It is true, as the Employer points out, that the statute does direct the Arbitration Panel to consider other factors which are normally and traditionally taken into account in the determination of wages, hours and conditions of employment. What an employer pays to other employees not subject to the statutory criteria may be considered such a factor. As to wage comparisons with non-uniformed employees, it must be remembered that the statute does not provide a special procedure for determining the wages of these employees. The legislative purpose set forth in RCW 41.56.430 refers to promoting the "dedicated and uninterrupted public service" of the class of employees involved here, calling these services "vital to the welfare and public safety of the state of Washington . The 4.3% increase provided employees by the City of Seattle is less than the 5% provided by Portland, the comparable city with the lowest percentage increase given to police management employees.

I note that the Union stresses the importance of providing a sufficient salary differential between lieutenants and the pay grade directly below them in the police department, that of sergeants. It is difficult to compare a sergeant's pay with a lieutenant's pay since some sergeants

receive premium pay for performing special assignments. Additionally, sergeants are able to earn overtime and standby pay and also receive longevity pay. However, I calculate the differential at approximately 16.8% on August 31, 1982. On that date the sergeant top step received $2576. According to Exhibit No. 21, the average sergeant received a 6% longevity premium. The premium was based on the top step of a police officer who on August 31, 1982, earned $2240. Six percent of $2240 is $134. When $134 is added to the $2576 received by a top step sergeant, the total is $2710. A top step lieutenant receiving $3166, therefore, received 16.8% more in base salary than did the average top step sergeant.

The 6.5% raise, amounting to $3372 for a lieutenant, would provide that lieutenant with a similar differential of 17.7%. This calculation is made by taking the present top step rate for police seargent which is $2722, adding the 6% differential of $142, which gives a total of $2864. When this figure is compared to $3372, the amount I shall award a lieutenant top step, the differential of 17.7% is pretty close to the prior year's differential, being less than 1% more than the prior year's 16.8% differential.

In view of all of the foregoing, I find that a 6.5% raise for the top step lieutenant is appropriate.

I have carefully examined the comparables regarding the Union's proposals for a one step salary schedule and for longevity premium. The evidence simply does not support instituting either of these proposals.

A review of the salary chart contained in the prior collective bargaining agreement indicates that there is an approximate 4% differential between pay steps. Therefore, I shall reduce the top step by 4% to calculate the second step, and then reduce the second step by 4% in order to reach the appropriate figure for the first step.

Arbitrator Award

Appendix A - Salaries shall read as follows: Section 1. The classifications and corresponding rates of pay covered by this Agreement are as follows. Said rates of pay are effective September 1, 1952, through August 31, 1983.

Police Lieutenant	**$3108**	**$3237**	**$3372**
Police Captain	**$3574**	**$3723**	**$3878**
Police Major	**$4282**	**$4460**	

SHIFT DIFFERENTIAL

The Proposals

The Union seeks a 3% shift differential for employees assigned to perform work after 5:00 p.m. or before 8:00 a.m. The Employer would continue the present system of not providing any shift differential.

Arbitrator Discussion and Award

A careful review of the available evidence does not support the institution of a shift differential.

OUT OF CLASS PAY

The Proposals

The Union proposes that the two consecutive work week requirement before an employee receives out of class pay should be reduced to four consecutive days. The Employer proposes no change from the expired agreement.

Arbitration Discussion and Award

A review of the available evidence does not establish that any change in this provision is appropriate.

CLOTHING ALLOWANCE

The Proposals

The Union proposes to raise the clothing allowance from $250 to $400. The Employer would raise it by $25, to $275.

Arbitrator Discussion

Exhibit No. 115 indicates that three of the five comparables do not provide any clothing allowance, but, instead, provide and maintain the uniforms for the bargaining unit members. The two cities among the five comparables that do give a clothing allowance are Oakland and San Jose, which provide $450 and $400, respectively. Furthermore, Lt. Germann testified, without contradiction, that $400 was reasonably necessary to maintain the uniform. However, a raise from $250 to $400 would be a raise of 60%. Such a raise, even though warranted by the evidence, is an extremely large raise to be awarded all in one year. Therefore, I shall award a raise of $75, or one-half the amount sought, so that the clothing allowance shall be $325.

Arbitrator Award

The second sentence of Section 12 of Article III of the expired collective bargaining agreement shall be changed to read as follows:

> **Effective September 1, 1982, each employee**

shall be paid $325.00 annually to cover the cost of replacement of said items.

HOLIDAY PREMIUM PAY

The Proposals

The Union proposes to increase the number of holidays worked for which a premium is paid from six to ten. The Employer would not, in the context of a one year agreement, provide premium pay for any additional holiday worked.

Arbitrator's Discussion and Award

The evidence indicates that a majority of the comparables do not provide premium pay for work on a holiday. Therefore, your Arbitrator does not believe that the award of premium pay for any additional holidays worked is appropriate at this time.

MEDICAL AND DENTAL INSURANCE

The Proposals

This topic includes three issues which are set forth below:

1. **Medical Insurance**
2. **Medical for Retirees**
3. **Dental Benefits**

The Employer has proposed to continue to pay 100% of the monthly premium for the medical care and dental care programs. The Employer has conditioned doing this on not providing any additional medical or dental benefit. The Union also proposes that the Employer continue to pay 100% of the medical and dental programs, but wants certain additional benefits provided.

The Union wants dependents of retirees to be permitted continued participation in the City's medical program upon the retirement of the employee upon whom they depend. The Union points to the fact that non-uniformed employees are provided with a plan where upon retirement a medical plan is made available to the retiree and his or her dependents. The Employer opposes any extension of benefits to dependents of retirees.

The Union also proposes to change the present orthodontic coverage so that it would also provide coverage to employees, rather than just to dependents under the age of nineteen as it does presently. Additionally, the Union seeks to increase the maximum benefit from 50% of the usual, customary and reasonable charges up to a maximum of $1,000, to 70% of those charges up to a maximum of $1,500. Finally, in

connection with the dental benefits issue, the Union seeks a contractual provision allowing retired bargaining unit employees and their dependents the right to retain dental coverage. Such coverage would be provided by the City paid dental insurance program, with the premium to be paid in full by the retiree but paid at the city-paid group rate.

Arbitrator Discussion

A review of the medical insurance benefits provided by the comparable cities clearly indicates that Seattle compares quite favorably with those cities. Therefore, I have determined that no additional medical or dental insurance benefits are appropriate. I also note, with respect to the Union proposal regarding medical insurance for retiree dependents, that due to increased costs the City is presently engaged in a process which may well lead to a major change in the manner in which its group retiree medical plan is funded. Thus, I agree with the City that to add an additional group to this plan at this time would not be appropriate. This is particularly true in the instant case since we are dealing with an expired collective bargaining agreement.

Finally, with respect to the Union's proposal that retired employees and their dependents participate in the City-paid dental insurance program, I note that the Employer presently does not have a dental program covering any of its retired employees.

Arbitrator Award

The Employer shall continue to provide 100% of the monthly premium for the medical and dental care programs presently in effect for bargaining unit members.

GRIEVANCE PROCEDURE AND RETENTION OF BENEFITS

The Proposals

The parties are in agreement that a grievance and arbitration procedure should be included in the Agreement. They have informed the Chairman that they have agreed upon the language of such procedure. However, the Employer has conditioned its consent to put the agreed upon grievance and arbitration procedure in the agreement on the Union dropping its demand for a retention of benefits clause. The Union sees these two issues as being separate, but does, in fact, seek both a grievance and arbitration clause as well as a retention of benefits clause.

Arbitrator Discussion

I agree with the Employer that a retention of benefits clause in a management bargaining unit is inappropriate. It must be remembered that here we are dealing with middle and upper middle management employees who, to a great extent, are able to implement practices or procedures or otherwise substantially effect their own working conditions. Therefore, many practices, privileges or benefits may accrue to the bargaining unit members here as a result of their own initiative without any intent to institute or otherwise affect such benefits, practices or privileges by the City. In such a situation, the Employer may often be unaware of some benefit or privilege which may be found by an arbitrator to be, in the words of the Union proposal, "generally prevailing". The City should be able to direct the work force except as limited by the Agreement. The grievance procedure will provide a means for resolving disputes regarding provisions of the agreement.

A review of the evidence regarding comparable cities supports the Employer's position that a retention of benefits clause is inappropriate.

Arbitrator Award

The agreed upon grievance and arbitration procedure shall be included in the collective bargaining agreement.

OVERTIME COMPENSATION AND STANDBY COMPENSATION

The Proposals

The Union has proposed detailed overtime compensation and standby compensation provisions. Basically, the Union proposes that all employees be compensated at time and one-half for hours worked in excess of eight hours per day. The Union also proposes a standby compensation provision which contains language indicating an intent by the parties to minimize standby assignments and provides compensation on the basis of fifty percent of the straight time rate of pay as compensation while on standby.

The Employer made two alternative proposals regarding overtime compensation. The first would change the overtime compensation language in the expired collective bargaining agreement so as to provide what the Employer contends would be a more liberal standard for the payment of overtime to lieutenants. The Employer's alternative proposal would provide lieutenants with time and one-half for work in excess of eighty-four hours in a biweekly pay period because of an emergency. The Employer alternatives would not provide any standby compensation for lieutenants.

With respect to captains and majors, the Employer would compensate them for overtime and standby by providing them with three days of executive leave upon completion of 104 or more hours of overtime and standby in the preceding calendar year. Hours which exceeded eighty hours in a pay period would count toward the 104 hour threshold. However standby hours would only count 10% toward the threshold. Thus, as I understand it, an employee would have to work ten hours of standby before being credited with one hour toward the 104 hour threshold.

Arbitrator Discussion

As I listened to the various Union witnesses who testified in support of the Union's proposals regarding standby and overtime, it became clear that the bargaining unit members sincerely believe that they were working relatively large amounts of overtime and standby, and in the case of the homicide and robbery lieutenants, extremely large amounts of standby.

The Employer witnesses on the other hand, took the position that bargaining unit members were not asked to perform an unusually high amount of overtime or standby. Furthermore, it was the view of those witnesses that many of the hours the employees considered as overtime could be said not to be overtime due to the flexibility these mid-management level employees had to work long hours one day to perform their work and then take time off the next to compensate for the long day. Additionally, the Employer pointed to the practice of "circling" furlough days, a practice whereby an employee who works on a scheduled day off is then able to take another day off.

With respect to standby, the Employer disagrees that the homicide or any other lieutenant had excessive standby assignments as lieutenants were not required under threat of discipline to respond to a call while off duty.

It is true, as the Employer points out, that well paid management employees performing police work can reasonably expect that, at times, their job may well require working more than eight hours a day or more than eighty hours in a pay period. This is particularly true in the case of high level management employees such as captains and majors, who will be earning annually more than $46,500 and $53,500, respectively, under the pay scale I have awarded here. On the other hand, there is justice to the employees contention that, at some point, the amount of assigned overtime and standby may be so large as to make it no longer reasonable to

expect employees to work such overtime without additional compensation either in money or in time off.

At a meeting on September 8 attended by Messrs. Campbell, Vande Putte and Webster, your Chairman had a wide-ranging discussion involving the various matters briefly discussed above. The parties reached an agreement with respect to standby regarding lieutenants. The parties agreed that lieutenants would not be required to standby. Additionally, the parties also clarified that standby did not refer to situations in which employees wore beepers, but, rather, only applied to a situation where an employee is required to remain ready to respond. Therefore, I shall award a standby provision regarding lieutenants in line with these agreements.

With respect to standby for captains and majors, the parties did agree as to what was currently required. Further, I was informed by Mr. Campbell that the Employer presently did not intend to change those requirements. Your Chairman believes these requirements are not unreasonable in view of the overall salary received by captains and majors. Thus, I have drafted a standby provision regarding captains and majors which does encompass the present standby requirement without providing any additional standby compensation. However, in the absence of the City's counsel being able to state that the City would not increase the present standby requirement, I have determined to provide for some compensation for standby worked by captains and majors above the present level being worked.

With respect to overtime, I have determined not to try to mix standby and overtime, but to treat overtime separately, particularly since it does appear that the standby requirements for three classes of employees basically is set, while the overtime requirement may vary substantially.

In view of all of the foregoing, it does appear that some type of overtime compensation which, on the one hand, does not treat these management employees as clock watchers, but which, on the other, does not require them to put in excessive overtime without compensation, is appropriate. Further, it does appear that lieutenants, in view of their lesser salary and responsibility, should not be treated the same as captains and majors with respect to overtime compensation. The provision I have drafted will reflect this difference.

The final question that must be determined is the question of retroactivity. We are dealing here with an agreement whose term has been stipulated to by the parties, which term has now expired. The Union would have the

standby and overtime provisions take effect retroactively, while the Employer argues that they should take effect on the last day of the Agreement, namely, August 31, 1983.

After carefully reviewing the arguments of the parties, I have determined that retroactivity is not appropriate. The parties have agreed that there shall be a provision in the agreement prohibiting standby for lieutenants. On the other hand, the Union seeks some compensation for the standby time that it believes its members have worked during the contract year. Since there is no provision in the prior agreement regarding payment for standby duty, I would have to set a rate in order to provide such compensation. However, to set a rate for past standby and yet put a provision in the agreement which prohibits standby is, to say the least, inconsistent.

It is true, as the Union points out, that it did place the Employer on notice that its proposals did include a standby and overtime compensation provision and that despite this standby and overtime was assigned. However, as the Employer points out, any standby or overtime that was assigned was assigned at a time when the Employer was not obligated to provide standby compensation and its overtime compensation obligation was limited.

The restrictions on standby which I will place in the agreement are really new benefits; that is, they are not merely an increase in benefits previously in the agreement, such as an increased clothing allowance or increased salary. Thus, with respect to these new benefits, no system was in place for keeping track of standby or overtime. In fact, as already discussed, the parties were in substantial disagreement regarding the amount of standby assigned the homicide and robbery lieutenants.

As I balance the equities here, I believe that the imposition of the standby and overtime benefits I have set forth in the agreement are warranted. These benefits will provide the employees in the future with fair treatment regarding standby and overtime. However, to attempt to go back and set a standby rate for compensating employees or to require the payment of overtime for work assigned at a time a rate was not in place would put an unfair burden on the Employer.

I have based the compensation provisions on a bi-weekly basis since this is the basis on which employees are paid and it is the basis generally used in the comparable cities.

Arbitrator Award

There shall be a new provision on standby which is set forth below:

STANDBY

Section 1.

(a.)Lieutenants shall not be assigned off duty standby time. Captains and majors may be assigned off duty standby time. Such assignment shall not be in excess of one week out of fourteen for captains nor one weekend out of ten for majors, unless compensation is paid in the manner set forth in subsection(b.) below.

(b.)Twenty-five percent of straight time pay.

Section 2.

Standby time shall be defined as that period of time during which an employee is required to remain in a state of readiness to respond to a summons to duty and for which discipline may attach for failure to respond. However, the issuance of a bell boy communicator to an employee does not constitute placing the employee on standby, and no employee shall be restricted in his or her movement or activities by the issuance of the communicator.

Section 3.

The effective date of this Standby provision shall be August 31, 1983.

Article III, Section 4 shall be eliminated. There shall be a new provision on overtime which is set forth below.

OVERTIME

Section 1.

Lieutenants, at the Employer's option, shall either be (a) compensated at the rate of time and one-half (1½) or (b) provided with one hour off, for each hour worked in excess of eighty (80) hours in a biweekly pay period when ordered by the Employer to work such hours. Periods of work beyond eight hours work per day which are either of less than one (1) hour duration or which are performed to complete or fulfill the employee's regu-

lar duties may not be accumulated for compensation as overtime work or for time off as overtime work under this Section.

Section 2.

Captains and Majors, at the Employer's option, shall either be (a) compensated at the rate of time and one-half (1½) or (b) provided with one hour off, for each hour worked in excess of eighty-five (85) hours in a biweekly pay period when ordered by the Employer to work such hours. Periods of work beyond eight hours work per day which are of less than one (1) hour duration or which are performed to complete or fulfill the employee's regular duties may not be accumulated for compensation as overtime work or for time off as overtime work under this section.

Section 3.

The daily work hours of an employee may, upon direction from or with the concurrence of the Employer, be adjusted to accommodate the varying time demands of the activities for which the employee is responsible. For example, upon direction from or with the concurrence of the Employer, an employee may work ten (10) hours one day and six (6) hours the next day or six (6) days one week and four (4) days the following week or any other variation specifically approved by the Employer on a case by case basis.

Section 4.

The effective date of this Overtime provision shall be August 31, 1983.

RETROACTIVITY

The Proposals

The question of retroactivity has been discussed previously in this Opinion. In addition to retroactivity, the Union seeks interest on all monetary amounts due to bargaining unit members.

Arbitrator Discussion and Award

As previously indicated, the parties stipulated to the duration of the Agreement, that being September 1, 1982, through August 31, 1983. Therefore, all provisions of the Agreement are retroactive, except those in which the Arbitrator has specifically set forth an effective date other than September 1, 1982.

In addition to overtime and standby, the grievance and arbitration procedure is a new benefit, and, thus, pursuant to the rationale previously discussed, should not be effective retroactively. It shall take effect on August 31, 1983.

Interest is generally not awarded in these proceedings, and it has not been established that interest is appropriate in this case.

Seattle, Washington
Dated: September 11, 1983 **S/ MICHAEL H. BECK**
Michael H. Beck, Arbitrator