



**Impartial Arbitrator  
and Chairman**

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**For the  
Fire Fighters**

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**For the City**

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**REPRESENTING THE FIRE FIGHTERS:**

**Mr. Dan Downs, Spokesperson**

**REPRESENTING THE CITY:**

**Mr. Roy Wesley, Spokesperson**

**WITNESSES FOR THE FIREFIGHTERS:**

**Mr. Dave McConnell, President, Local 2299  
Mr. Rolin Heytvelt, Secretary/Treasurer,  
Local 2299  
Mr. Steve Heninger, Captain**

**WITNESSES FOR THE CITY:**

**Mr. Robert Berreman  
Mr. Leonard Burrell  
Ms. Betty Erikson  
Mr. Robert Andersen  
Mr. Al Kruger  
Mr. Niel Ausmann**

**EXHIBITS:**

**Joint**

- 1 1980-81 Agreement**
- 2 1982 Budget**
- 3 Washington Collective Bargaining Statute**
- 4 Tentative Agreement**

**Firefighters**

- 1 Civil Service Ordinance**
- 2 1973 Budget Document**
- 3 Annual Fire Report for 1981**
- 4 Job Descriptions for Firefighters (not official)**
- 5 Potlatch Corporation**
- 6 Cleaning Receipts**
- 7 Medical Insurance Figures**
- 8 Firefighters' Time Cards for Vacation**

City

- 1 Legal Problems with the Agency Shop Provision
- 2 Walla Walla County
- 3 Teamsters & Colville, Washington
- 4 City of Everett Arbitrator's Award, February 11, 1981
- 5 Elkouri & Elkouri, pp. 391-392
- 6 Average Firefighters Hours Worked
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City Exhibits (Continued)

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ISSUES IN DISPUTE

Article IV      Union Security

<b>Article VII</b>	<b>Prevailing Rights</b>
<b>Article VIII</b>	<b>Hours of Duty</b>
<b>Article XIII</b>	<b>Advanced Life Support</b>
<b>Article IX</b>	<b>Wages</b>
<b>Article XIV</b>	<b>Clothing Allowance</b>
<b>Article XIX</b>	<b>Life Insurance</b>
<b>Article XXI</b>	<b>Holidays</b>
<b>Article XXII</b>	<b>Medical Coverage Plan</b>
<b>Article XXV</b>	<b>Vacation</b>
<b>Article XXXII</b>	<b>Management Rights</b>

## **INTRODUCTION**

**During prehearing conference the parties stipulated that they had accepted the language from the expired agreement on Duration and had agreed on a two year contract (January 1, 1982 to December 31, 1983). The parties also stipulated that the cost of living data they used is the May to May CPI-W All Cities. The Arbitrator received from the parties after the hearing a copy of the tentative agreements for the new contract. The Arbitrator listed that document as Joint Exhibit 4.**

**RCW 41.56.450 provides that:**

**The neutral chairman shall consult with the other members of the arbitration panel and, within thirty days following the conclusion of the hearing, the neutral chairman shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on the commission, on each of the other members of the arbitration panel, and on each of the parties to the dispute.**

**The neutral chairman consulted with the other members in a day-long conference held in a meeting at City Hall in Spokane, Washington. The following award is a response to the arguments and evidence presented by the parties, the discussions of the arbitration panel, and the application of the criteria which RCW 41.56.460 requires the Arbitrator to use when rendering an award.**

## **ISSUES, DISCUSSION AND AWARD**

## **ISSUE 1. UNION SECURITY**

- A. Proposals: The Fire Fighters proposed an agency shop provision which requires that each member of the bargaining unit who is not a member of the union pay a fee equal to the union dues. Union membership is not a requirement. The proposed language provides a protection for those with bona-fide religious tenets on non-association.**

**The City argued against including this proposal in the labor agreement.**

- B. Discussion: This issue would currently have no impact on either the City or the Union as all of the present members of the bargaining unit are also members of the Union. This provision could have an impact on future employees who would choose not to join the Union. Therefore the arguments of both parties focused on the potential future problems that could be encountered if the labor agreement did or did not have a union security provision.**

**The Arbitrator is convinced by the arguments of the Union that a union security provision should be included in the contract. Simply put, the agency shop requires that each member of the bargaining unit contribute an equal amount towards the purchase of the services provided those members by the Union. The law requires, under the principle of "duty of fair representation," that the Union provide its services equally to all members of the bargaining unit regardless of union membership. Fairness dictates that the members of the unit share equally these costs. City Exhibit 1 provides an analysis of the court's reaction to an agency shop in public employment. The courts have clearly upheld the agency shop. Moreover, evidence presented indicated that an agency shop provision is found in a large number of public sector labor contracts.**

**The City argued that it did not want to be placed in the position of having to make union membership or union fees a condition of employment. The City expressed concern over the potential for litigation of an agency shop provision. The Arbitrator has some sympathy for these arguments but notes again the court decisions which have upheld the agency shop. Moreover, the problem of potential litigation does not sway the Arbitrator. The potential for litigation is widespread throughout a labor agreement and that fact does not address the fundamental question of appropriateness or fairness.**

- C. Award: The Arbitrator is awarding the agency shop provision**

as proposed by the Union with some editing to eliminate redundancy. This provision reads:

#### **ARTICLE IV - UNION SECURITY**

**Any permanent employee who is not a member of the union, shall as a condition of employment, pay the union a monthly service charge equal to the monthly union dues as a contribution towards the administration of this agreement.**

**The right of non-association of employees, based on bonafide religious tenets or teachings of a church or religious body of which such employee is a member, are safeguarded. Such employee shall pay an amount of money equivalent to regular union dues and initiation fee to a non-religious charity or to another charitable organization mutually agreed upon by the employee affected and the union.**

**The employee shall furnish written proof that such payment has been made by the 15th of each month.**

**If the employee and the union do not reach agreement on such matter, the Public Employment Relations Commission shall designate the charitable organization.**

#### **ISSUE 2. PREVAILING RIGHTS**

- A. Proposals. The expired agreement contained the following prevailing rights:**

#### **PREVAILING RIGHTS**

**All rights, privileges and working conditions enjoyed by the Employees at the present time, which are not included in the Agreement shall remain in full force, unchanged and unaffected in any manner, during the term of this Agreement, unless changed by mutual consent.**

**The City proposes deleting this provision and the Fire Fighters argued to retain it.**

- B. Discussion: The Arbitrator is awarding language which provides a "prevailing" rights to monetary benefits and provides for discussion of any proposed changes of working conditions. The Arbitrator was convinced by the City arguments that the existing language was unnecessarily vague, broad, and had great potential for unnecessary conflict. The Arbitrator's awarded language protects existing monetary benefits with the requirement of mutual consent for change. This language is consistent with the mandatory nature of any item involving compensation. While the Arbitrator's language removes the restriction of "mutual consent" from attempted changes to working conditions, the language does require discussion prior to any implementation. Clearly the employees through their union should be allowed to provide input into any proposed change prior to the finalization of that change.**
- C. Award. The Arbitrator awards the following contract language:**

#### **ARTICLE VII - PREVAILING RIGHTS**

**Monetary benefits enjoyed by members of the bargaining unit at the time of the execution of this agreement which are not included in the agreement shall remain in full force, unchanged and unaffected in any manner, during the term of this agreement, unless changed by mutual consent. The City agrees to discuss with the union any changes in working conditions prior to implementing those changes.**

#### **ISSUE 3. HOURS OF DUTY**

- A. Proposals: The Fire Fighters propose a reduction in hours of duty for those firefighters with a 24 hour duty shift from 56 hours per week to a 55.538 hour week. This would be accomplished by giving each fire fighter one 24 hour shift off each year, scheduled by the Fire Chief at his convenience. The City argued for the retention of current language.**
- B. Discussion: The Arbitrator is persuaded by City arguments to retain existing language. Union contention that the Assistant Fire Chief could fill in on shifts was not per-Chief already spends a large portion of his time filling in**

on shifts and is therefore unavailable during this time for administrative duties. The Union proposal would result in an even greater loss from the administrative duties.

More importantly, the Arbitrator carefully reviewed comparable cities and could find no support for a change from those comparable. The Arbitration Panel, during its meeting on April 19, agreed upon the following list of comparable which are presented along with their hours of work.

Toppenish, WA	54
Pullman, WA	56 (46)
Lewiston, ID	56
LaGrande, OR	56
Pendleton, OR	56
Ontario, OR	56
Cheney, WA	56
Moses Lake, WA	54

Pullman, Washington, according to testimony presented at the hearing, has recently gone through a change, but the information on that change was not clear and so the Arbitrator excludes Pullman from the analysis on the issue. The average of the above data (less Pullman) is 55.42 hours per week which would appear to justify the proposal of the Union. However, the Arbitrator finds that the norm (the figure that occurs most often) is the more appropriate statistical measure in this case. Fifty-six appears five times and fifty-four appears twice. Clearly fifty-six hours is the general standard for these cities and therefore the Arbitrator will not provide any change.

- C. Award: The Arbitrator directs the parties to retain the language on this issue from the most recently expired labor agreement.

#### **ISSUE 4. ADVANCED LIFE SUPPORT**

- A. Proposals: The Fire Fighters request the following contract language:

A. Employees who obtain and maintain certification as a State of Washington "Physician's Trained Mobile Intravenous Therapy Technician" shall receive thirty dollars (\$30.00) per month.

B. Employees who obtain and maintain



**certification as a State of Washington  
"Airway Management Technician , shall  
receive thirty dollars (\$30.00) per month.**

**The City argued to retain the current provision which  
provides \$25 per month benefit for each of the above.**

**B. Discussion: The City position, if implemented, would trans-  
late into a "freeze on the level of this stipend for a four  
year period. The \$25 stipend went into effect in January of  
1980, remained the same in 1981 and, as proposed by the City,  
the same in 1982 and 1983. Meanwhile the salary schedule has  
increased each year. The result is that compared to salary,  
this stipend has decreased (calculated as a percentage of  
salary). The Arbitrator is convinced by Fire Fighter argu-  
ments on this issue. The City pays, with this stipend, for  
a valuable skill and for the same reasons that the salary is  
adjusted upward, the compensation for these unique skills  
ought also to be adjusted.**

**C. Award: The Arbitrator directs the parties to place the fol-  
lowing language in their labor agreement:**

**A. Employees who obtain and maintain certi-  
fication as a State of Washington "Physician's  
Trained Mobile Intravenous Therapy Technician  
shall receive \$27.50 per month commencing with  
the month of May 1982 and \$30.00 per month begin  
ning with the month of January 1983.**

**B. Employes who obtain and maintain certi-  
fication as a State of Washington "Airway Manage-  
ment Technician," shall receive \$27.50 per month  
commencing with the month of May 1982 and \$30.00  
per month beginning with the month of January 1983.**

#### **ISSUE 5. WAGES**

**A. Proposals: The City offers to increase wages by 7% in 1982  
and by a figure which is 80% of CPI-W All Cities 1981-82,  
not to exceed 7%. The City also proposes to provide 3% for  
increases in medical insurance in 1982 and no increase in  
1983.**

**The Fire Fighters outlined their wage proposal as follows:**

**January 1, 1982 the wages for all positions listed in the 1982 wage schedule shall be increased by an amount equal to 90% of the increase in the "all cities" consumer price index for urban wage earners as measured from May 1980 to May 1981.**

**The above amount shall be increased \$75.00 on January 1, 1982, \$50.00 on July 1, 1982 and \$25.00 on October 1, 1982.**

**January 1, 1983 the wages for all positions listed in the 1982 wage schedule, as modified last on October 1982, shall be increased by an amount equal to 90% of increase in the "all cities" consumer price index for urban wage earners as measured from May 1981 to May 1982. The above amount shall be increased \$50.00 January 1983 and \$25.00 on July 1, 1983.**

**C. Discussion: RCW 41.56.460 provides the criteria by which the Arbitration panel must reach its decision. The criteria which are directly applicable to the issue of wages are the following:**

**(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.**

**(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 arguments of the parties focused almost entirely on the above criteria. The Arbitrator used those criteria, the arguments of the parties and the input of the Arbitration Panel members to determine the final award on this issue.**

Comparability is a key criteria which the Arbitrator is required to use. The cities which the panel established for basis comparability are listed under the discussion of Issue 4. The panel chose those cities for several reasons. Size was a key factor and most of these cities are closely related in size. RCW 41.56.460.C refers to cities on the west coast and does not limit the comparison to the state of Washington. Therefore, the comparisons included three Oregon cities of similar size in the eastern part of the state. The panel also limited its comparables to cities east of the mountains finding that in both Oregon and Washington the mountains provide not only a physical boundary but also a socio-political boundary. Finally, the panel included Lewiston and Pullman because they constitute the immediate neighbors to Clarkston and also comprise the marketplace within which the Clarkston City employees purchase their goods and services.

The comparables and their current salaries for the top Fire Fighters class in 1972 are listed below.

Moses Lake	1703
Cheney	1599
Pullman	1529
Pendleton	1523
LaGrande	1469
Toppenish	1433
Lewiston	1413
Ontario	<u>1065</u>
Average	\$1467

Currently the top fire fighter in Clarkston is making \$1283. The parties have agreed to eliminate the \$30 EMT stipend because all firefighters are now required to be EMT. The \$30 is to be added into the salary schedule which gives a current salary figure of \$1313 for a First Class Fire Fighter. The panel is awarding a 9% across-the-board increase which provides a salary of \$1431. \$1431 places Clarkston third from the bottom of the eight cities. It also places Clarkston just below Toppenish and just above Lewiston.

Increase in cost of living is a second factor that the Arbitrator is required to use. The parties stipulated that they use the May to May CPI-W as their measure of increase in the cost of living. May 1980 to May 1981 CPI-W All Cities was 9.8%. The City argued that this figure ought to be reduced because the CPI overstates the increases and the

Arbitrator would agree. However, the Arbitrator notes that the cost of living data combined with the comparability data fully justifies the 9% increase.

The City offers for the second year of the agreement 80% of CPI-W May 1981 to May 1982, with a limit of 7%. The Arbitrator feels that 80% is too low, primarily because recent CPI data indicates an actual drop in cost of living.\* That drop however is directly related, among other factors, to a dramatic decline in home prices and home mortgage rates. The City, in its brief, indicates that rising home and home mortgage costs are a major contributor to overstatement. However, likewise, declines in home and home mortgage costs result in an understatement of the increases in the cost of living.

\* Bureau of Labor Statistics Pacific Cities and U.S. City Average, March 1982. Released April 23, 1982

The Union uses a figure of 90% of CPI-W which the Arbitrator projects to be a more accurate figure. Therefore, for the year beginning January of 1983 the Arbitrator directs the parties to give the salaries an across-the-board adjustment equal to 90% of CPI-W (urban wage earners and clerical workers) U.S. city average.

The final criteria that the Arbitrator is required to use is the catch all category of "such other factors . . . normally taken into consideration. Two such factors are important in this dispute. First is the concern of the City over its ability to pay. The panel was very mindful of that factor during its considerations. The comparability data and cost of living data would both support a greater increase than that provided. Yet the financial condition of the City tempered those factors with the resulting award.

Second, the City also expressed the need to keep a balance between the increases granted to the different employee groups. While the Arbitration Panel took note of that concern, Washington statute does not establish as a critical variable the salaries provided all other employee groups. The fact that the employee groups are separate bargaining units requires that they be treated individually.

C. Award: The Arbitrator awards the following salary increase:

Retroactive to January 1, 1982 the wages for all positions listed in the 1981 wage schedule shall be increased by thirty dollars (\$30) and then increased again by nine percent (9%).

**January 1, 1983 the wages for all positions listed in the 1982 wage schedule shall be increased by an amount equal to 90% of the increase in the "all cities" consumer price index for urban wage earners as measured from May 1981 to May 1982. This increase is limited to a maximum of 7%.**

#### **ISSUE 6. CLOTHING ALLOWANCE**

- A. Proposals: The only portion of this article that is in dispute is the cleaning allowance. The Fire Fighters propose that the following new paragraph be added to the old Article:**

**All bedding, uniforms, protective clothing and devices required of employees in performance of their duties, and cleaning thereof shall be furnished by the employer.**

**The City argued that the cleaning provision in the letter of understanding signed by the parties December 22, 1980, should now be included as a single sentence addition to Article XIV. That cleaning provision provided \$15.03 per man per month for cleaning.**

- B. Discussion: Evidence presented at the hearing demonstrated that the current cleaning allowance was not being fully utilized. The Union believed that the City was holding back on some of the allowance. Yet the evidence established that the Fire Chief had not refused to clean any item requested. Since the Fire Fighters are not fully utilizing their current allowance, the Arbitrator cannot award an increase or an open-ended provision.**
- C. Award: The new agreement should contain a paragraph B for Article XIV - Clothing Allowance. Paragraph B will read:**
- B. Employer shall provide a cleaning allowance for the cleaning of duty uniforms in the sum of \$15.03 per month per man. Said cleaning allowance is to be administered by the Fire Chief, at his discretion.**

#### **ISSUE 7. LIFE INSURANCE**

**A. Proposals: The Fire Fighters propose an increase in City paid life insurance from \$10,000 to \$20,000. The City argued to retain the existing benefit.**

**B. Discussion: Comparability is the critical question on this issue. How does the City's life insurance benefit compare with the comparable cities as established by the Arbitration Panel? That comparison is as follows:**

<b>Pendleton</b>	<b>\$10,000</b>
<b>Lewiston</b>	<b>5,000</b>
<b>Toppenish</b>	<b>5,000</b>
<b>Ontario</b>	<b>10,000</b>
<b>LaGrande</b>	<b>10,000</b>
<b>Pullman</b>	<b>10,000</b>
<b>Moses Lake</b>	<b>10,000</b>
<b>Cheney</b>	<b>None</b>

**The above data clearly shows that the City is comparable with its current program and therefore the Arbitrator will not order a change.**

**C. Award: The Arbitrator directs the parties to retain the existing life insurance benefit.**

#### **ISSUE 8. HOLIDAYS**

**A. Proposals: The Fire Fighters propose raising the holiday pay from \$55 to \$65 for 1982 and from \$65 to \$75 for 1983. The City argued to retain the current stipend of \$55.**

**B. Discussion: A careful review of the data presented by the parties to the Arbitration Panel was inconclusive. The data demonstrated that each city in the list of comparables has its own unique holiday plan. An accurate comparison based on the limited data available for those eight cities is just not possible.**

**The Arbitrator does find that this issue can be evaluated in the same manner as the salary schedule. Increases in holiday pay ought to reflect increases in the salary schedule. This would clearly happen for a regular employee who would receive time and a half on a holiday. As this employee's basic salary goes up, so will his holiday pay. The Arbitrator will therefore direct an increase of \$5 in 1982 and another \$5 in 1983. The \$5 in 1982 is roughly 9% - the same as the increase in salary. The \$5 in 1983 is greater than the increase in salary for that year, but still justi-**

fied on the basis that while salary went up in 1981 by 7%, holiday pay did not.

The Arbitrator was not persuaded by the Fire Fighters claim of discrimination. Clearly when the mayor gives the secretarial staff or other forty hour per week employees Friday afternoon off (which certainly does not happen often) but does not provide a similar time off to the Fire Fighters, the Fire Fighters lose out on a benefit enjoyed by other employees. However, the fifty-six hour week has its own special pluses which would not necessarily be enjoyed by the other City employees. In this case the minuses need to be accepted with the pluses.

C. Award: The Arbitrator directs the parties to change Article XXI - Holidays to read as follows:

All members of the Clarkston Fire Department, Local 2299, shall be entitled to twelve (12) paid holidays. Each member shall receive sixty dollars (\$60.00) per holiday pay, payable on the first pay period following the holiday. This increase to take effect May of 1982. Beginning January 1983, holiday pay will be sixty-five dollars (\$65.00). Designated holidays shall be as follows:

1. New Years Day
2. Lincoln's Birthday
3. Washington's Birthday
4. Memorial Day
5. Columbus Day
6. Independence Day
7. Labor Day
8. Veterans Day
9. Thanksgiving Day
10. Day after Thanksgiving
11. Christmas Day
12. Floating Holiday of Employee's Choice,

and any day designated by the public proclamation of the Chief Executive of the State or the Mayor of the City of Clarkston, as a legal holiday or a day of Thanksgiving.

## **ISSUE 9. MEDICAL COVERAGE PLAN**

- A. **Proposals:** Currently the City provides employee medical for Fire Fighters, along with employee and dependent dental with orthodontia. Dependent medical is available at the employee's expense. The Fire Fighters propose maintaining the same medical/dental program but having the City pick up 67% of the premium for full family medical in 1982 and all of full family medical in 1983. The City proposes to maintain current programs but to pick up 33% of dependent medical in 1982 with no additional increase in 1983.
- B. **Discussion:** Comparability is again a critical question on this issue. The comparable cities and their medical/dental programs are as follows:

Employer pays full family coverage

	<u>Medical</u>	<u>Dental</u>
Toppenish	100%	100%
Lewiston	100%	0%
Pendleton	100%	0%
Ontario	100%	0%
LaGrande	100%	100%
Pullman	100%	100%
Cheney	70%	100%
	(95% in 1983)	(employee only)
Moses Lake	100%	100%

Clearly Clarkston is not comparable to these other cities. However, the City argued that comparison should be made between the costs of programs because the cost reflected the quality of the programs. The City's programs are high quality and costly. The data available on cost is one year old but shows Clarkston paying a total premium of \$75.35, Toppenish \$145.19, Pullman \$114.00, Cheney \$97.48, and Moses Lake \$155.50.\* Data on the other cities is not available. The 1982 data would undoubtedly show an increase in the above data.

\*From 1981 Salary Survey, Washington Local Government Personnel Institute

Based on this comparability data the Arbitrator will award a two step increase in medical benefits. To soften the financial impact on the City, the Arbitrator's award will take effect on July 1, 1982 and July 1, 1983. The Arbitrator's award is a flat sum amount that should bring the City into comparability with the dollar amount paid for



benefits by the other cities by 1983.

- C. Award: The Arbitrator awards the following changes in the medical/dental program:

The Employer agrees to keep in force and continue full payment for the present Fire Fighter Medical/Dental program, Medical plan to be in accordance with R.C.W.

Beginning July 1, 1982, the Employer will pay \$40 towards the premiums of medical insurance for dependents of employees who wish to participate in the medical coverage plan.

Beginning July 1, 1983, the Employer shall pay \$80 towards the premiums for medical insurance for dependents.

#### ISSUE 10. VACATION

- A. Proposals: The Fire Fighters propose the following vacation schedule:

Paid vacation leave accrual per year shall be as follows:

<u>Years of Employment</u>	<u>Vacation Accrued</u>
1 year	4 shifts
2 years	6 shifts
3 years	8 shifts
6 years	10 shifts
8 years	12 shifts
15 years	15 shifts

Vacation time may not be accumulated beyond the calendar year in which it is earned except for the first year, and except by the employee securing advance permission from the employer, or when the employee cancels or postpones his vacation at the request of the employer.

The City accepts the changes in language but argued for the following accrual:

<u>Years of Employment</u>	<u>Vacation Accrual</u>
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1 year	3 shifts
2 years	5 shifts
7 years	8 shifts
15 years	10 shifts

**B. Discussion:** Two factors are important with this issue. First is the translation from the existing contract language which uses weeks of vacation as opposed to shifts. Both parties agree to change to shifts. A guiding principle for this change is the fact that a firefighter's workweek is 40% longer than other City employees (40 hours vs. 56 hours). Therefore one week of vacation should also provide for a Fire Fighter 40% more hours. Currently Fire Fighters receive:

<u>Duration of Employment</u>	<u>Current Benefit</u>	<u>Translated to Hours</u>
1 year	one week	56 hours
2 years	two weeks	112 hours
7 years	three weeks	168 hours
15 years	four weeks	224 hours

The proposals of the two parties are as follows:

City 's		Fire Fighters	
<u>Duration of Employment</u>	<u>Proposed Benefit</u>	<u>Duration of Employment</u>	<u>Proposed Benefit</u>
1 year	72 hours	1 year	96 hours
2 years	120 hours	2 years	144 hours
7 years	192 hours	3 years	192 hours
15 years	240 hours	6 years	240 hours
		8 years	288 hours
		15 years	360 hours

Clearly the City's proposal is more comparable and superior than the existing benefit. (The Arbitrator does distinguish between the existing contractual benefit and the existing practice which often provides actual hours off greater than the benefit. He can find no basis in fact for this increased benefit.)

The second important factor concerns the question of comparability. Is the actual amount of vacation comparable to the other cities used for comparison purposes. The Arbitrator carefully reviewed the comparative data and found great diversity. He concluded after careful study that at the low end there is a lack of comparability but not at the high end. Adjustments are therefore made.

- C. Award: The Arbitrator directs the parties to place the following vacation article in the contract:

**ARTICLE XXV VACATION**

<b>Years of Employment</b>	<b>Vacation Accrual</b>
<b>1 year (minimum 1600 hours)</b>	<b>4 shifts</b>
<b>2 years</b>	<b>6 shifts</b>
<b>7 years</b>	<b>8 shifts</b>
<b>15 years</b>	<b>10 shifts</b>

Vacation time may not be accumulated beyond the calendar year in which it is earned except for the first year, and except by the employee securing advance permission from the employer, or when the employee cancels or postpones his vacation at the request for the employer.

**ISSUE 11. MANAGEMENT RIGHTS**

- A. Proposals: The City proposes the following management rights provision:

The City reserves exclusively all rights whether heretofore exercised or not which are concerned with the operation of the Department including its mission and decisions related thereto, service efficiency, and any and all policy decisions.

The City retains exclusive authority to manage the Department in accordance with past practice; adopt operating rules and establish employee conduct and performance standards, discipline, layoff, discharge for cause, assign work, promote or demote, schedule hours of work, determine the number of personnel to be assigned to duty at any time.

These management rights may be exercised without prior negotiations with the union and shall not be subject to the grievance or arbitration procedure contained herein.

This proposal constitutes a rewrite of existing language

**and a strengthening of management's rights.**

**The Fire Fighters argued against any change.**

**B. Discussion: The Arbitrator cannot support the City's proposed changes in the Article for three important reasons. First, the changes delete the language which reads, "unless otherwise provided by the terms of this Agreement." That phrase recognizes that the terms of the Agreement do limit some of management's rights and that recognition is important.**

**Second, the phrase "shall not be subject to the grievance or arbitration procedure contained herein," potentially conflicts with the definition of the grievance found in the grievance procedure. That definition states that a grievance is a dispute over the interpretation of the agreement. Since some if not all of the provisions of the agreement limit management rights, are the interpretations of the provisions grievable or not? The grievance procedure says yes but the proposed management rights clause would say no. The grievance procedure spells out what is grievable (interpretations of the provisions of the Agreement) and that restriction should remain uncontested by the management's rights clause.**

**Finally, assuming that the grievance procedure remains in force for provisions of the agreement, then the specific problem identified by the City (City Exhibits 31-38) would not be resolved even under the proposed language. The claim by the Fire Fighters, found in City Exhibit #33, is that the City violated Article III - Recognition, and Article IX - Wages, when they hired a volunteer fire fighter as a full-time temporary without paying a full-time wage. That claim is grievable under the definition of a grievance found in the labor agreement. The City might prevail in arbitration, but nevertheless the issue is grievable. The proposed language would add a question about its grievability but then that question would itself be a matter for arbitration.**

**C. Award: The Arbitrator directs the parties to retainn the recently expired contract language on management rights.**

**Respectfully submitted on the the third day of May 1982 by**

**Timothy D. W. Williams**

**Arbitrator**