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PUBLIC EMPLOYMENT
RELATIONS COMMISSION
OLYMPIA, WA

IN THE MATTER OF

CITY OF PASCO

AND

PASCO POLICE ASSOCIATION

PERC No.: 08062-I-89-00182

Date Issued: February 12, 1990

INTEREST ARBITRATION OPINION AND AWARD

OF

ALAN R. KREBS

ARBITRATION PANEL

NEUTRAL CHAIRMAN: ALAN R. KREBS
CITY APPOINTED MEMBER: GARY CRUTCHFIELD
UNION APPOINTED MEMBER: CLIFF NELSON

Appearances:

CITY OF PASCO

Greg Rubstello

PASCO POLICE ASSOCIATION

John Hoag

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IN THE MATTER OF
CITY OF PASCO
AND
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OPINION OF THE NEUTRAL CHAIRMAN

I. PROCEDURAL MATTERS

In accordance with RCW 41.56.450, an interest arbitration hearing involving certain uniformed personnel of the city of Pasco was held before an arbitration panel consisting of three persons. City of Pasco appointed Gary Crutchfield as its designee on the Panel. Pasco Police Association appointed Cliff Nelson as its designee on the Panel. Arbitrator Alan R. Krebs was selected as the Neutral Chairman of the Panel. The hearing was held in Pasco, Washington, on October 24 and 25, 1989. The City was represented by Greg Rubstello, Pasco City Attorney. The Association was represented by John Hoag of the law firm Aitchison, Snyder & Hoag.

At the hearing, the testimony of witnesses was taken under oath and the parties presented documentary evidence. No court reporter was present, and, therefore, the Neutral Chairman tape recorded the proceedings for the sole purpose of supplementing his personal notes.

In view of the lengthy record, the parties agreed to waive the statutory requirement that the interest arbitration award

be issued within 30 days following the conclusion of the hearing. The parties also agreed that the Neutral Chairman alone would issue the resulting Decision, after accepting input from the City-appointed arbitrator and the Union-appointed arbitrator.

The parties agreed upon the submission of post-hearing briefs. The briefs of the parties were received by the Neutral Chairman on November 22, 1989.

II. APPLICABLE STATUTORY PROVISIONS

Where certain public employers and their uniformed personnel are unable to reach agreement on new contract terms by means of negotiations and mediation, RCW 41.56.450 calls for interest arbitration to resolve their disputes. In interest arbitration, an arbitrator or arbitration panel adjudicates a resolution to contract issues regarding terms and conditions of employment, which are at impasse following collective bargaining negotiations. The parties agree that RCW 41.56.450 is applicable to the bargaining unit of police officers involved here.

RCW 41.56.460 sets forth certain criteria which must be considered by an arbitrator in deciding the controversy:

41.56.460 Uniform Personnel--Interest Arbitration Panel--Basis For Determination. 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 it in reaching a decision, it shall take into consideration the following factors:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c)(i) For [police department] employees . . . comparison of the wages, hours and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;

(ii) For [fire department] employees . . . comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers shall not be considered;

(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; and

(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.

RCW 41.56.430, which is referred to in RCW 41.56.460, reads as follows:

41.56.430 Uniformed personnel--
Legislative declaration. 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.

III. ISSUES

The Association represents 38 of the uniformed employees in the City's Police Department, up to and including the rank of sergeant. The Association and the City are parties to a collective bargaining agreement which expired on December 31, 1988. They were unable to reach an agreement on a new contract despite their efforts in negotiations and the efforts of a mediator. In accordance with RCW 41.56.450, the executive director of the Washington State Public Employment Commission certified that the parties were at impasse on a number of issues. The statutory interest arbitration procedures were invoked. The unresolved issues are:

1. Hours of Work
2. Call Back
3. On Call
4. Travel Time
5. Vacations
6. Sick Leave
7. Accumulated Sick Leave Cash Out
8. Light Duty
9. Seniority
10. Zipper Clause
11. Management Rights
12. Creation of New Classifications

13. Bill of Rights
14. Grievance Procedure
15. Use of Tobacco
16. Career Development Plan
17. Bilingual Incentive
18. Medical and Dental Insurance
19. Disability Insurance
20. Wages

IV. COMPARABLE JURISDICTIONS

One of the primary standards or guidelines enumerated in RCW 41.56.460 upon which an arbitrator must rely in reaching a decision is a "comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of like employers of similar size on the west coast of the United States." To determine which other employers are alike and of similar size, arbitrators frequently compare population and assessed valuation. In recognition of this, both sides here presented such figures to the Arbitrator. The number of officers in a department may also be considered an indication of the size of an employer and these figures were also supplied.^{1/} Both sides agree that the following Washington cities, Wenatchee, Aberdeen, and Walla Walla, are comparable to Pasco for the purpose of RCW 41.56.460(c)(i). They disagree as to other comparable jurisdictions.

^{1/}The City asserts that the size of the department is irrelevant, particularly in view of the difference between subsections (c)(i) and (c)(ii) of RCW 41.56.460. I do not agree that the reference to "public fire departments of similar size" in subsection (c)(ii) necessarily means that the size of a police department is irrelevant under subsection (c)(i).

The Association asserts that in Washington State, Kennewick and Richland are also comparable, particularly since they are both adjacent to Pasco and form the labor market of the Tri-Cities, of which Pasco is a part. The City contends that Pasco is not comparable to Richland and Kennewick in view of the disparity in size. Instead the City urges that the cities of Pullman and Centralia be considered as comparable. The City asserts that it has selected as comparable jurisdictions those which are generally within a range of plus or minus one-third of Pasco's population and assessed valuation, and which are at least fifty miles from a large urban metropolitan area. The Association asserts that Pullman and Centralia are both too small and isolated to be compared with Pasco.

As out-of-state comparable jurisdictions, the Association proposes Calexico, San Pablo, and Yuba City, California, and Grants Pass, Oregon, because like Pasco, they all have high crime rates for their size. The City opposes the use of crime statistics to select comparables. It asserts that San Pablo and Yuba City are situated too close to large metropolitan areas to be considered as comparable. In addition, the City asserts that Yuba City greatly exceeds the acceptable ranges for population and assessed valuation. The City proposes as out-of-state comparable jurisdictions the California cities of Brawley, Barstow, and Delano, and the

Oregon cities of Ashland, Klamath Falls, and Roseburg. The Association asserts that the City was not justified in rejecting jurisdictions which were within 50 miles of a large metropolitan area since the statute does not authorize such a restriction and because Pasco itself is part of a larger metropolitan area. The Association also points out that the jurisdictions suggested by the City are not comparable to Pasco in their crime statistics.

Pasco is situated in southeast Washington, in close proximity to the cities of Kennewick and Richland. Together, the three cities are generally referred to as the Tri-Cities. The economy of the area is significantly affected by the Hanford nuclear project and associated nuclear and scientific service industries. Richland is most affected by the nuclear industry. Kennewick is the region's retail commercial center. Pasco's economy is based largely on transportation, agriculture, and, to a lesser degree, retail trade. Pasco is smaller than both Kennewick and Richland, both in terms of population and assessed valuation:

	<u>Population</u>	<u>Assessed Valuation</u>	<u>Number of Officers</u>
Pasco	17,560 ^{2/}	\$370,548,515 ^{3/}	38
Kennewick	36,880	877,158,000	47
Richland	29,970	898,926,577	41

The figures for the agreed-upon comparable jurisdictions are:

	<u>Population</u>	<u>Assessed Valuation</u>	<u>Number of Officers</u>
Aberdeen	17,140	\$385,000,000	35
Walla Walla	25,690	491,906,230	34
Wenatchee	19,950	573,127,849	31

The figures for the additional Washington jurisdictions suggested by the City, and opposed by the Association, are:

	<u>Population</u>	<u>Assessed Valuation</u>	<u>Number of Officers</u>
Centralia	11,840	\$272,039,592	18
Pullman	22,270	295,426,001	20

^{2/}Dan Underwood, the City's finance director, testified that this is the population figure which the state officially recognizes for Pasco for 1989 and is contained in a publication of the state office of Financial Management dated August 1989. The Association asserts that Pasco's population is 18,520. The basis for this figure is not apparent from the record. The population figures offered by the City for Washington cities appear to be more current and more supported by the evidence, and, therefore, will be utilized.

^{3/}I have utilized the City's figures since, according to Mr. Underwood, they are current as of 1989. The figures for assessed valuation presented by the Association are different. It is not clear that the Association's figures are for 1989.

The figures for the Oregon and California cities which were suggested by either the Association or the City are reflected below:

	<u>Population</u>	<u>Assessed Valuation</u>	<u>Number of Officers</u>
Ashland, OR	16,810	\$482,582,620	21
Grants Pass, OR	17,220	398,474,000	27
Klamath Falls, OR	17,250	409,000,000	28
Roseburg, OR	16,264	518,000,000	31
Barstow, CA	20,560	464,998,317	28
Brawley, CA	19,000	242,520,844	27
Calexico, CA	18,500	238,522,000	28
Delano, CA	21,004	285,985,000	29
San Pablo, CA	21,350	489,270,000	34
Yuba City, CA	22,300	693,731,000	33

I have selected the following as jurisdictions which are comparable to Pasco:

Aberdeen, WA
 Kennewick, WA
 Pullman, WA
 Richland, WA
 Walla Walla, WA
 Wenatchee, WA
 Grants Pass, OR
 Klamath Falls, OR
 Barstow, CA
 Delano, CA

Aberdeen, Walla Walla, and Wenatchee were selected since the parties agreed that they are comparable to Pasco.

Richland and Kennewick were selected even though they are each significantly larger than Pasco in population and assessed value. Pasco, Richland, and Kennewick comprise a single metropolitan area with the same labor market. Their

police forces must compete for the same pool of employees. It is understandable that the employees of each would be aware of the contractual benefits paid by their neighboring cities, and that such awareness would affect their expectations. Thus, neighboring jurisdictions are often given special consideration when determining comparables. On the other hand, a disparity in size may serve to reduce or eliminate that special consideration.

Pasco is reasonably close to Richland and Kennewick in the size of its police force. In view of this and particularly because of the special consideration which is warranted by their proximity, I find that the terms and conditions of employment of the police officers in Richland and Kennewick are relevant here. In my opinion, Richland and Kennewick are not so much larger than Pasco so as to be obviously of unlike size. This is not a situation where a small city is being compared to a large city or even a medium size city. Pasco, Richland, and Kennewick are all small cities. Their proximity dictates they should be compared if it can be reasonably argued that they are alike in size.

Moreover, the other cities which the parties have stipulated as being comparable, while closer in population and assessed valuation to Pasco, are isolated rural communities. While Richland and Kennewick are larger than Pasco, their consideration here provides balance, since the

other jurisdictions which have been agreed to by the parties as comparable or which have been selected by the Arbitrator, are not part of a larger metropolitan area as is Pasco.^{4/}

The other jurisdictions which I have selected represent all those jurisdictions which one or the other of the parties suggested as comparable and therefore supplied necessary contract information, and which have a population and an assessed value which are plus or minus 30 percent that of Pasco. Thus, ten jurisdictions will be utilized for purposes of comparison, six from Washington State, two from Oregon, and two from California.

I have determined not to use crime statistics, as suggested by the Association, in order to select appropriate comparable jurisdictions. Crime statistics are not referenced in the statute as a basis for selecting comparable jurisdictions. I might utilize such statistics in order to reduce the number of jurisdictions of "similar size," which is the criteria set forth in the statute, down to a more manageable level. However, that is not necessary here since the number of similarly sized jurisdictions which are available for my consideration are already at a manageable and reasonable level.

^{4/}One of the Employer's exhibits indicates that the population of the metropolitan area of the Tri-Cities is considerably over 100,000 in population.

V. COST OF LIVING

RCW 41.56.460(d) requires that the arbitrator take into consideration "[t]he average consumer prices for goods and services, commonly known as the cost of living." The City asserts that in making his determination on the appropriate wage increase for 1989, the Arbitrator should focus on the change in the CPI-W, West Coast Cities - C index at the time negotiations were just beginning in October 1988, and again in July 1989. The City asserts that in making his determination on the appropriate wage increase for years subsequent to 1989, the Arbitrator should focus on the change in the cost of living for the 12-month period preceding October 1989 and October 1990. The consumer price index referred to by the City is published by the United States Department of Labor, Bureau of Labor Statistics. It measures the increase in the cost of consumer goods for urban wage earners and clerical workers in cities of 50,000 to 330,000 in population on the west coast of the United States. This index represents the smallest class of cities measured in any of the published west coast indices. The City uses this index in bargaining with its other bargaining units.

The Association asserts that the U.S. CPI-W is a more reasonable yardstick to use. In support of this, it points out that there is no support for the use of the CPI-W, West Coast Cities - C index among the comparable jurisdictions.

However, the Association could point to none of the comparable jurisdictions which has utilized the U.S. CPI-W which it has proposed.^{5/}

I have determined to utilize the CPI-W, West Coast Cities - C index for the periods suggested by the City. It appears that this index would more likely reflect the cost of living change in Pasco, which is a small west coast city, than would the national index. The Tri-Cities metropolitan area has a population which falls within the parameters of the index suggested by the City. The period October 1987-88 shall be examined since it reflects the period that the parties would most likely have used had they resolved their contract differences in a timely manner. The July 1988-89 period shall also be considered, since RCW 41.56.460(e) requires the consideration of changes which occur during the pendency of the proceedings. The applicable index reflects the following annual change in the cost of living for small west coast cities:

<u>Year Ending</u>	<u>CPI-W, West - C Index</u>
October, 1988	3.7
July, 1989	4.0

With regard to the cost of living, it is also significant that the average cost of homes in the Tri-Cities region has

^{5/}Klamath Falls utilized the U.S. CPI-U. The "U" references all urban consumers. No evidence in this regard was presented with regard to Richland, Kennewick, or Grants Pass.

gone down each year since 1981. This is reflected in a report prepared in March 1989 for the U.S. Department of Energy. For instance, in 1988, the average price for a house in Pasco decreased by 2.5 percent. This has been caused by a decreasing population and a resulting increase in housing vacancy rates. The declining cost of housing in Pasco serves to bring down the cost of living to a level which may be less than the CPI figures reflected above.

VI. OTHER CONSIDERATIONS

In addition to the specific criteria set forth in RCW 41.56.060(a) - (e), RCW 41.56.060(f) directs the Panel to consider "such other factors . . . which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment." Such factors, which are discussed below, have been considered, but with lesser weight than that which is given to the specifically enumerated criteria of comparability and cost of living.

A. Ability to Pay

A factor frequently raised in contract negotiations and also considered by arbitrators is the ability of the employer to pay wage and benefit increases.

The City asserts that it is in a position to grant a reasonable and fair wage increase. The City does point out

that it has just recently emerged from a situation in which its revenue had been declining over the past four or five years and that its population and assessed real estate valuation is still in decline. The City further points out that it has exercised its taxing authority to the maximum except for a business and occupations tax. Finance Director Underwood testified that such a tax is not politically feasible anywhere in Eastern Washington. The number of City general fund employees has decreased each year since 1984, while during the same period there has been an increase in the number of police employees.

The Association asserts that the City has the ability to pay whatever increase the panel orders. It points out that the City's ending general fund balance has increased for the past two years.

According to figures supplied by the City, its sales and use tax base has increased at only about a 2 percent annual rate from 1986 through 1988. At the same time, property assessments have decreased by more than 3 percent per year, and its population has declined. The City has had to cut its work force except for the police department. Several thousand jobs in the area were lost as a result of the decision of the U.S. Department of Energy to close the Hanford nuclear reactor and end another nuclear-related project. The Pasco economy is hurting. Finance Director

Underwood expected the local economy to be even worse than it is, and therefore the City was able to end the year with more funds in its reserve account than it expected.

The City admittedly can afford some compensation increase for its police officers. However, the depressed state of the local economy must be kept in mind when determining the amount of the increase that can be afforded.^{6/}

B. Settlements With Other City Bargaining Units

From the standpoint of both the City and the Association, the settlements reached by the City with other bargaining units are significant. While those settlements are affected by the peculiar situation of each individual bargaining unit, still there is an understandable desire by the City to achieve consistency. From the Association's standpoint, it wants to do at least as well for its membership as the other City unions have already done. At the bargaining table, the settlements reached by the City with other unions are likely to be brought up by one side or the other. Thus, it is a factor which should be considered by the Arbitrator.

^{6/}The Association attached to its brief a newspaper article which dealt with the local economy. It would be inappropriate to consider that information since it was not presented as evidence during the hearing. The Association correctly points out that RCW 41.56.460 calls for the consideration of changes which occur during the pendency of the proceedings. Nevertheless, such information must be presented at hearing. If the new information is sufficiently significant, then the hearing could have been reopened. There has been no request to reopen the record.

The City's 1989 collective bargaining agreement with the fire fighters, who also are entitled to utilize interest arbitration, calls for a 3 percent wage increase. The 1989 agreement with the Pasco Police Association concerning the non-sworn police department employees calls for a 2.5 percent wage increase. The agreement covering the public works and parks department employees provides for a 3 percent wage increase. Also receiving a 3 percent wage increase in 1989 were the non-represented employees, including management.

C. Turnover

Police Chief Don Francis testified that 25 police officers have left the department for various reasons since 1980. Of these, he was aware of only five who gave as the reason for leaving that they were going to a job that would provide more money or benefits. Association President Gary Schweighardt testified that the average length of service among the police officers is only about four years. It is not clear from the record whether the level of turnover is higher than in other police departments. The turnover rate does seem rather high and there does seem to be some problem with officers leaving to obtain more favorable compensation. There was evidence of one highly recruited officer candidate who elected to work in Richland where the compensation level is higher.

D. Work Load

The Association asserts that no one can claim that the City's police officers do not earn their wages. The City has the highest rate of crimes per capita in the state. If the number of crimes in the City is divided by the number of officers, Pasco ranks seventh out of 63 in the state. Several officers testified that they work very hard in a stressful environment.

VII. HOURS

The first sentence of Article XI - Hours of Work, Section 1, of the expired Agreement reads:

The City will declare a standard
41.25 hour duty week consisting of five
(5) days of 8.25 consecutive hours. . . .

The Association has proposed amending this provision to reflect an 8-hour day and a 40-hour week. The Association asserts that there is no justification for officers working an extra 15 minutes per day, and that the vast majority of comparable cities do not have such a schedule. The City asserts that the current language should remain. It contends that the extra 15-minute period is necessary for "lineup," that the current language was only recently negotiated into the contract, and that the Association is making a back-door attempt to increase the possibility of overtime.

The parties' 1984-86 agreement required that officers appear for "lineup time" which would be a 15-minute period prior to the regular 8-hour day. Under that agreement, the officers were not entitled to extra compensation for working that 15-minute period. Chief Francis testified that line up time, also referred to as roll call time or briefing time, is traditionally used by police departments to convey information to the officers who are coming on duty. Such information may relate to serious crimes that have occurred since they were last on duty, things to watch out for during their patrol hours, and administrative information. It can also be used to critique serious incidents and for mini-training sessions. Another reason for line up time, according to Chief Francis, is to make sure that there is coverage on the street during the time when officers are coming in at the end of their shifts and other officers are first coming on duty.

In 1986, as a result of a court decision, the City was compelled to compensate officers for the time spent in line ups. The City and the Association reached an agreement that permitted the continuation of the extra 15-minute line up period, but required compensation for it at straight time.

Frequently, line up time has not been used for briefing, but rather for other routine duties. Detective James Hathaway was a patrol officer until his promotion in June

1989. Detective Hathaway testified that during the last three years that he was assigned to patrol, he did not attend more than 12 to 15 briefings. Some shift commanders did not utilize the line up time for briefings. Detective Hathaway testified that when line up time was utilized by the shift commander, it was often used just to read aloud bulletins that had already been passed around to the patrolmen. Sergeant Charles Chambers testified that as shift commander, he was expected to conduct a 15-minute briefing to the incoming officers. However, according to Sergeant Chambers, more often than not, his officers would be going on calls before a briefing was done. Chief Francis confirmed that officers are often dispatched during the briefing period, so as to avoid having to pay overtime to officers who are about to go off duty.

None of the jurisdictions which have been selected as comparable, provide for an 8.25-hour day or 41.25-hour week. None provide for a standard workweek which is longer than 40 hours.^{1/}

I conclude that the disputed language shall be changed to read as follows:

The City shall declare a standard 40 hour duty week consisting of five (5) days of 8 consecutive hours. . . .

^{1/}The city of Barstow provides for a standard work period of 80 hours in a 14-day work period.

The amended language reflects the standard which is generally contained in the contracts of the comparable cities. If line up time is traditional, then apparently it is being scheduled within the 8-hour day in all the comparable cities. Here, there is not a firm tradition of utilizing the line up time as a briefing period. To a significant extent, the extra 15 minutes has been utilized to extend the patrol hours of the officers. There is insufficient basis for the officers here to be treated differently from officers in the comparable jurisdictions.

VIII. OVERTIME

A. Threshold

The expired Agreement provides:

ARTICLE VIII - OVERTIME

Section 1. Except as otherwise provided herein, overtime work shall include only that work performed by employees at the discretion of the Chief of Police or his designee, which exceeds the standard 8.25 hour work day or 41.25 hours of work in a seven day work period. Except as otherwise provided herein, overtime work shall be paid at the rate of one and one-half (1-1/2) times the employee's "regular rate of pay" as that term is defined in the FLSA.

* * *

The City proposes that the overtime threshold be expanded to that permitted by federal law, which is 165 hours within a 28-day work period. The City argues that this is necessary

to reduced overtime costs which were increased as a result of federal law. The City asserts that comparable cities are beginning to use overtime thresholds other than the 8-hour day/40-hour week. The Association asserts that the City has not provided any evidence which would justify its 28-day plan and that none of the comparable cities have such a system.

Chief Francis testified that the overtime budget has been "going out of sight each year . . ." and has been "getting more and more all the time." In fact, according to statistics provided by the City, overtime has generally decreased over the years. The amount of dollars spent on overtime during each of the past three years has been less than the amount spent in any of the preceding five years. Information on overtime thresholds was provided for seven of the selected comparable cities.^{8/} Five^{9/} of the seven provide for overtime after working 8 hours in a day or 40 in a week.^{10/} In one other,^{11/} overtime is defined as hours

^{8/}Information was not provided for Richland, Kennewick, and Grants Pass.

^{9/}Aberdeen, Pullman, Walla Walla, Wenatchee and Klamath Falls.

^{10/}Pullman not only has an 8/40 threshold, but also a threshold of over 171 hours in a 28-day work period. Wenatchee does not provide overtime for less than 30 minutes worked, but pays a full hour of overtime after the extra 30 minutes is worked.

^{11/}Barstow.

actually worked over 80 hours in a 14-day period. In another comparable city,^{12/} overtime is not defined in the contract.

Neither a comparison with the comparable cities, nor other sufficient reasons, supports the City's contention that the overtime threshold should be changed to 165 hours within a 28-day work period. In view of the change which has been ordered with regard to the hours section of the Agreement, the first sentence of Article VIII, Section 1 shall be modified to read as follows:

ARTICLE VIII - OVERTIME

Section 1. Except as otherwise provided herein, overtime work shall include only that work performed by employees at the discretion of the Chief of Police or his designee, which exceeds the standard 8 hour work day or 40 hours of work in a seven day work period. . . .

B. Call Back

Article VIII, Section 2 of the expired contract provides:

Section 2. Call-Back/Court-
/Training. Overtime worked due to call-back but which is not an extension at the beginning or end of a normal shift shall be paid a minimum of three (3) hours at the overtime rate. Overtime due to court appearances requiring less than one (1) hour of the employee's time shall be paid two (2) hours at the employee's overtime rate. Otherwise overtime due to

^{12/}Delano.

time in court shall be paid a minimum of three (3) hours at the overtime rate per twenty-four (24) hour day with additional hours worked paid on an hour for hour basis as required when an employee is actually in the courtroom or required to be in the Public Safety Building prior to the giving of testimony; Provided, however, such minimums are paid only when call-back for court time is not an extension of the shift, either at the beginning or the end it shall be at the overtime rate only for the actual time spent in court. In Service Training time (outside of a scheduled shift) shall be paid at employee's straight time rate with a minimum of two (2) hours.

The Association proposes that there should be a flat four hours for call back. The Association argues that its proposal will help compensate the officers for the disruption of their daily lives. Officer Gary Schweighardt testified that if a subpoena for him to appear in court is cancelled and he is notified at home, just as he was leaving for court, he receives no compensation, despite the obvious inconvenience involved.

The City argues that the current contract language regarding call-back time is consistent with that of the comparable cities.

The language of the expired Agreement calls for a minimum of two to three hours of call-back pay at the overtime rate. This serves to provide compensation for the inconvenience involved in being called back to work during off-duty time. The question here is whether the call-back provision which

has been previously negotiated by the parties is unfair. There is nothing inherently unfair about the two and three hour minimums which are contained in the expired contract. Moreover, these levels are generally not inconsistent with the contract provisions applicable to the comparable cities:

Call-back Minimum Hours

Aberdeen	3	
Kennewick	3	
Pullman	2	
Richland	4	
Walla Walla	3	
Wenatchee	2	on duty days for the officer,
	4	on off-duty days
Barstow	0	
Brawley	4	
Grants Pass	2	
Klamath Falls	3	on-duty days, 4 on off-duty days.

Therefore, no change in the existing language for call-back pay shall be ordered.

C. Standby Pay

The Association has proposed a new section which would provide for compensation at 25 percent of the employee's normal hourly pay when that employee is on-call. The Association asserts that certain employees are required to wear a pager so as to be available for immediate call back. The Association contends that this limits the employee's ability to go where he wishes on his own time, and therefore is deserving of additional compensation. The City contends that the Association's proposed standby pay provision is not

common among the comparable cities. It further asserts that testimony at the hearing showed that employees who did carry a pager on weekends were essentially unrestricted in their travel and activities, except to respond to the pager when called.

The standby pay issue relates to a practice by the Department of having detectives, on a rotating basis, carry a pager over the weekend. In the event of a major crime, the detective with the pager is called in to work. Detectives normally do not work on weekends. Gary Schweighardt presented the only testimony in this regard. Officer Schweighardt is not a detective. Officer Schweighardt testified that he did not know of any restrictions upon the freedom of the on-call detective to travel over the weekend. He testified that they were told that on-call detectives could go fishing. Officer Schweighardt does not know if there are any restrictions on the on-call detective regarding response time or how far that detective could travel.

It is not clear from the record whether any of the comparable jurisdictions require detectives to carry a pager while off-duty.

Although detectives may be asked to carry a pager, there is no evidence that their actions or travel are restricted, or that the on-call detective may be penalized in some manner for failing to report. There is insufficient evidence to

establish that the situation for the off-duty detectives is significantly different from other officers who may be called in to work in an emergency. The pager may help the City to contact a detective. However, its use does not, in itself, place a special burden on the detective so as to restrict travel or activities. If something more, in fact, is required of the detective with the pager, such as a requirement that he or she report to work within an hour of being paged, or that he or she not travel far from the City, then the Association may have had a stronger argument.

As the term suggests, standby pay refers to a situation where employees are paid to standby to report to duty. No standby pay shall be ordered here, since it has not been shown that employees are required to standby in a manner which materially interferes with their off-duty time.

D. Travel Time

The Association has proposed amending the overtime article to reflect that travel time to and from in-service training shall be considered time worked. Article VIII, Section 3 of the expired Agreement reads:

Section 3. Other Rules. The following additional rules for overtime shall be followed:

a. In Service Training. Travel time to and from classes shall not be claimed as overtime.

* * *

The Association asserts that it would not find the existing language to be troublesome if the in-service training was conducted in the Tri-Cities area. The Association finds fault with the failure of the City to compensate employees for the time that is required to travel to distant training areas. The City asserts that it has paid officers for travel to out-of-town training as required by federal law. It also points out that paid travel time is not provided by the contracts of the comparable jurisdictions.

Officers are, on occasion, required to travel to distant locations, such as Seattle or Olympia, in order to attend training. The City has not paid overtime for time spent in travel beyond the normal work day. The City has required officers to work a full shift and then, on the same day, travel as much as 250 miles by bus or car in order to arrive at the training site on time.

The City provided information regarding seven^{13/} of the comparable jurisdictions. None of them provided for paid travel time.

There is insufficient basis for the Association's request that all travel time to and from in-service training should be considered as time worked. Such a request is contrary to language which has been previously negotiated by the parties.

^{13/}No information on this issue was supplied with regard to Richland, Kennewick, and Grants Pass.

The Association's request is unsupported by reference to the comparable cities or by other evidence. No change in contract language shall be ordered in this regard.^{14/}

The parties have previously agreed that travel time to and from training classes cannot be counted as overtime. Even in the absence of such language, arbitrators have usually been unwilling to grant compensation for travel time in the absence of a specific agreement to that affect.

Badger Coal Co., 77-2 ARB Para. 8537 (Wren); Public Service Co., 52 LA 639 (Klein, 1969).

IX. VACATION CREDIT

Under the expired agreement, vacation credit accrues as follows:

ARTICLE XIV - HOLIDAYS AND VACATIONS

Section 1. Vacations. (a) Vacation Credit. All regular employees shall receive vacation credit at the rate of one (1) work day for each month of continuous service starting from the date of his probationary employment. After entering his tenth (10th) year of continuous service each employee shall earn vacation credit at the rate of one and one-fourth (1-1/4) work days per month. After entering his fifteenth (15th) year of

^{14/}The Association has pointed out an apparently unfair requirement that officers work a full shift and then travel over 200 miles by car or bus on the same day without additional compensation. Regarding that specific problem, the Association's proposal is overly broad.

continuous service, each employee shall earn vacation credit at the rate of one and one-half (1-1/2) work days per month.

* * *

The Association proposes that this language be replaced with the following:

ARTICLE XIV - HOLIDAYS AND VACATIONS

Section 1. Vacations. (a) Vacation Credit. All regular employees shall receive vacation credit in an amount equal to the following table:

<u>YEARS OF SERVICE</u>	<u>DAYS/MONTH</u>
<u>0-5</u>	<u>1.0</u>
<u>6-10</u>	<u>1.25</u>
<u>11-15</u>	<u>1.50</u>
<u>16-20</u>	<u>1.75</u>
<u>21-25</u>	<u>2.0</u>
<u>26-</u>	<u>2.25</u>

* * *

The Association asserts that there is a large gap between the City's vacation accrual rate and the rates of the comparable cities.

The City argues that the current language should be retained. It recognizes that the vacation hours currently granted is on the low side of average after 15 years of employment. The City points out that no testimony on this issue was presented at the hearing. It also points out that a change at this time would benefit only three employees.

The chart on the following page shows the number of annual vacation hours accrued in the comparable cities. The first

column reflects the number of hours accrued during the first five years of employment. The second column reflects the vacation accrual during the sixth through tenth year of employment, etc.

Annual Vacation Accrual for Years of Service

	<u>1-5</u> ^{15/}	<u>6-10 Years</u>	<u>11-15</u>	<u>16-20</u>
Aberdeen	120 hours	144 hours	160 hours	200 hours
Kennewick	No information provided			
Pullman	96	120	144	168
Richland	No information provided			
Walla Walla	80	120	160	160
Wenatchee	96	120	144 ^{16/}	160
Barstow	120	160	160	160
Delano ^{17/}	80	104 ^{18/}	144 ^{19/}	160
Grants Pass	100	120	160	160
<u>Klamath Falls</u>	<u>110</u> ^{20/}	<u>144</u>	<u>168</u>	<u>168</u>
Average	100.25	129	155	167
Median	98.00	120	160	160
Pasco	96	96	120	144

^{15/}Some cities increase the rate of vacation accrual at the start of the fifth year, while others provide for the increase at the end of the fifth year. In either case, the city was listed in the 6-10 year category. The other categories have been treated similarly.

^{16/}This rate is an average for the period since the rate changes from 120 to 160 after 12 years.

^{17/}Delano has a higher rate for employees hired before November 1984.

^{18/}This is an average figure for the period since the accrual rate changes each year.

^{19/}This is an average figure for the period since the accrual rate changes each year.

^{20/}This is an average figure for the period since the accrual rate changes in the third year.

While the vacation accrual rate in Pasco is competitive during the first five years of service, after five years, it is clearly behind all of the comparable cities. There has been no justification offered for such a discrepancy. Therefore, I shall order that vacation accrual be raised to the prevailing rate among the comparable cities. The revised language shall read:

ARTICLE XIV - HOLIDAYS AND VACATIONS

Section 1. Vacations. (a) Vacation Credit. All regular employees shall receive vacation credit at the rate of one (1) work day for each month of continuous service starting from the date of his probationary employment. After entering his sixth (6th) year of continuous service each employee shall earn vacation credit at the rate of 1.25 work days per month. After entering his eleventh (11th) year of continuous service, each employee shall earn vacation credit at the rate of 1.50 work days per month. After entering his sixteenth (16th) year of continuous service, each employee shall earn vacation credit at the rate of 1.67 work days per month.

X. SICK LEAVE

A. Sick Leave Accrual, Cap, and Cash Out

In the expired Agreement, Article VII, Section 3.a provides:

a. Accrual of Sick Leave - Sick leave shall accrue at the rate of 8.25 hours for each month for each regular employee to a maximum accumulated sick leave of 120 days; however, the severance benefit provided

hereafter shall be based on the product of twenty-five percent times the accrued number of sick leave days up to a total of 90 days.

The Association proposes that the sick leave accrual rate be changed to 8.0 hours per month and that there be no cap on the amount that can be accumulated and on the severance benefit. The City opposes these changes.

No evidence was presented regarding the cap on severance benefits. The situation in the comparable jurisdictions for the sick leave accrual rate and cap is reflected in the following chart:

<u>City</u>	<u>Sick Leave Accrual Rate</u>	<u>Cap</u>
Aberdeen	8 hours/month	960 hours
Kennewick	8	960
Pullman	8	800
Richland	8	None
Walla Walla	8	960
Wenatchee	8	960
Brawley	8	None
Delano	Not Specified in Contract	
Grants Pass	8	None
Klamath Falls	8	960
Pasco	8.25	960

I find that a change in the sick leave accrual rate to 8.0 hours per month is appropriate. This rate is consistent with the rate in all of the comparable cities and also conforms with the change in the normal work day which has been decided elsewhere in this Opinion. The 960-hour sick leave cap is typical of the caps contained among the

comparable cities and shall be retained. Since there is no evidence justifying a change in the cap on sick leave cash out, I find that no change in that item is justified.

The Association also proposes that the following language be added to the Agreement:

Any employee promoted outside of the bargaining unit should have his LEOFF I sick leave cashed out effective the date of his promotion.

The Association reasons that there is a need to recognize a natural hesitancy on the part of the individual officers to accept promotions if it means possibly giving up those accrued benefits. The City opposes this proposal.

No evidence was presented regarding this issue. I find insufficient reason for adding the proposed language to the Agreement.

B. Light Duty

Currently, Article VII, Section 5 provides:

Section 5. Return to Work. LEOFF II officers will be allowed to return to work after full recuperation from serious illness or disability after a maximum period of six (6) months. No light duty is available to such officers.

The Association proposes that the City make a reasonable effort to place disabled officers into light duty positions. The Association asserts that this would permit the City to

get needed work done, while employees keep working instead of languishing on sick leave. The City responds that the current language should be maintained.

Detective Richard Morrell testified that he was able to, and did, function as a detective despite a recent injury that would have prevented him from performing patrol duties. Detective Morrell testified that disabled patrol officers could perform detective type functions. Detective Robert Moore testified that after he was injured, he was asked to come in to work in the detective section on a limited duty basis. Officer Ken Roske testified that he was off work for 14 days because of an on-the-job injury. He utilized his sick leave during that time. Officer Roske testified that he would have been able to perform light-duty work after being out about five days. Officer Dennis Cummins testified that he broke his finger while on duty and was off for two months. He believed that during this period he could have been doing follow-up interviews of witnesses or other light-duty work. Officer Bill Corbett testified that an injury caused him to be off work for three or four months. He used up his sick leave and then was uncompensated. Officer Corbett believes he could have worked during this time by taking reports over the phone and interviewing witnesses.

Chief Francis testified that there is a limited amount of light-duty work that could be done and limited space for it

to be performed. Captain Dennis Kasperek testified that the light-duty concept would place a difficult administrative burden on the City. He testified that the department is cramped for space and there is no reasonable space for the light-duty work to be performed. Captain Kasperek also testified that keeping the light-duty employee busy would be burdensome on the administration.

Of seven comparable cities surveyed, none had contract language which allowed or required light-duty arrangements.^{21/}

I find there to be insufficient reasons for requiring the City to consider light-duty assignments. While the option of performing light-duty work would be a benefit to the employees, it also would create a burden on the City. Each time there was an officer absent because of injury, there could very well be a dispute as to whether light-duty work could be found for that officer. There is no support for the Association's position among the comparable cities. I find insufficient basis for adding the light-duty requirement to the Agreement.

C. Paternity

Article VII, Section 6 currently reads:

Section 6. Paternity. Employees
will be granted up to five (5) consecutive

^{21/}No information was provided regarding Richland, Kennewick, and Grants Pass.

days off without pay immediately after the birth of their (legitimate) child if sick leave is not otherwise available. The employee at their option may use accumulated sick or vacation leave benefits in order to avoid the loss of pay during the period of paternity [sic] leave.

The Association has proposed making the leave paid, instead of unpaid, and the deletion of the requirement that the status of the newly born child be "legitimate." The City opposes these proposals.

The Association's request for paid paternity leave is denied. No evidence was presented to support this request. There is no indication that any of the comparable cities provides such a financial benefit.

The Association's proposal that the word "legitimate" be removed as a requirement is reasonable. As the Association points out, the relationship between parents and children does not depend on the marital status of the parents. Therefore, the first sentence of Article VII, Section 6 shall be amended to read as follows:

Employees will be granted up to five
(5) consecutive days off without pay
immediately after the birth of their child
if sick leave is not otherwise available.
. . .

D. Sick Leave Procedures

The City has proposed that Article VII, Section 2 be modified so that the procedures for the use of sick leave set

forth in Section 3.c for LEOFF II employees be incorporated into the LEOFF I employee section. The City points out that one Association witness testified that the provisions of subsection 3.C are reasonable and in fact have been expected of LEOFF I officers. No Employer witness testified regarding this proposal. It is not clear from the record why this change in contract language is desired or needed. I find insufficient basis to justify a change to Article VII, Section 2.

E. Family Illness

The City proposes an amendment to Article VII, Section 4 which concerns family illness. The City would like to see state statutory requirements for the use of sick leave for caring for sick children replace the existing contract language. No evidence was presented which would explain or justify the City's desire or need to amend the Agreement in this regard. I find insufficient basis to justify a change to Article VII, Section 4.

XI. SENIORITY

The Association asserts that there should be a new article which would define seniority and describe how layoffs would be handled. The City asserts that this subject is adequately covered by state and local civil service rules. The Association responds that the subject should be in the contract so that any changes would have to be bargained, and

so that the Association would have a say in selecting an impartial decision maker.

No evidence was presented on this issue except that the Association pointed out that four of the six comparable Washington cities contain a provision defining seniority. Since there is no indication of any problem with the current civil service method of handling seniority, I find insufficient basis for requiring a change in the Agreement.

XII. ZIPPER CLAUSE

The Association proposes that the zipper clause contained in Article II, Section 3 be deleted from the Agreement. In this provision, the parties agreed to waive the right to bargain regarding any matter not covered by the Agreement. The Association reasons that such a provision strains the relationship, since either party could unilaterally implement regarding terms and conditions of employment that would fall within the coverage of the broad zipper clause.

I find there to be insufficient basis for changing the contract language in this regard. The Association presented no evidence showing a need to eliminate this existing contract provision. Three of seven comparable cities^{22/} have a zipper clause in their contract.

^{22/}Wenatchee, Barstow, and Delano have zipper clauses. Aberdeen, Pullman, Walla Walla, and Klamath Falls do not. No information in this regard was presented for Richland, Kennewick, and Grants Pass.

XIII. MANAGEMENT RIGHTS

The Association has proposed that the following language be added to the existing management rights clause of the Agreement:

4. The Employer will not utilize these rights to avoid responsibilities as outlined under this collective bargaining agreement, and specifically will not exercise its rights to give employees time off on an involuntary basis in order to cut back on hours of work to save money, and will not sub-contract out any bargaining unit work, including hiring private security guards to patrol city property, and will not enter into pre-employment "yellow dog" contracts with those persons who are hired into positions represented by the Association.

These are items specifically listed in this provision: time off to save money, sub-contracting security guards, and pre-employment contracts.

A. Time Off to Save Money

The Association asserts that it proposed this language in response to an assertion by a City representative during negotiations that the City could send Association members home during a shift in order to save money.

I find insufficient basis for adding this provision to the Agreement. The Association does not assert that its position is supported by reference to the comparable cities. There is no evidence that this provision is necessary to deal with a real problem. There is no indication that employees

have ever been sent home during a shift in order to save money, and there is no indication that such is planned.

B. Subcontracting

This issue arose when the City hired private security guards to patrol Memorial Park in 1988. Chief Francis testified that the City was experiencing problems at its Memorial Park and Volunteer Park. Both were infested with drug dealers, prostitutes, and transients. The City did not have enough officers to take care of the situation in both parks. It handled the situation at Volunteer Park with its own officers. It contracted with a local security patrol company to place private security guards in Memorial Park and keep them there all day. These private security guards were not deputized. They were intended to be used as a deterrent to the presence of undesirable people in the park. The guards were instructed to call the police department on the radio if undesirable people entered the park and stayed. The problem at the parks was solved.

The Association asserts that the hiring of private security guards is a departure from past practice and is removing income from the Association members.

I find insufficient basis for adding this provision to the Agreement. The Association has not asserted that its position is supported by reference to the comparable cities. There has been no showing that the temporary use of the

security guards has had a significant adverse affect on the bargaining unit. No employees have been laid off, and, in fact, the City has added significantly to the size of its police force. The security guards were successfully used for a temporary problem. They did not serve as police officers. They had no power of arrest. Rather, they served only as a presence to deter trouble, and to contact the police if they witnessed any problem. The use of these security guards does not justify adding to the Agreement a provision which would prohibit the City from contracting out.

C. Preemployment Contracts

The Association proposes that the City not be permitted to enter into preemployment contracts with new employees. The Association asserts that this is aimed at the City's practice of requiring new hires to sign an agreement to reimburse the City for the costs of training if the new hire leaves the Department within 24 months. The Association reasons that the current City practice amounts to individual bargaining and is a circumvention of the bargaining agent. The Association points to several arbitration decisions where arbitrators have held that an employer cannot enforce individual agreements concerning working conditions that have not been agreed to by the union. It also points to a decision by the Washington Public Employment Relations Commission which held that a union had standing to contest an

employer's requirement that all new employees not use tobacco products on or off duty, even though it did not apply to current employees. Kitsap County, Dec. 2872 (PECB, 1988).

The Association has not contended that its position is supported by reference to the comparable cities. There is no evidence that the pre-hire agreement required by the City is unusual. There is also no evidence that the City has ever applied the pre-hire agreement. If the City has engaged in unlawful unilateral conduct, then the proper forum would be before PERC or perhaps before a grievance arbitrator. Here, there is just insufficient basis for finding that there should be a specific clause in the Agreement banning all pre-hire individual contracts.

D. Long Form Clause

The City proposes to replace the management rights clause currently in the Agreement. The City asserts that long form management rights clauses, such as it proposes, are commonly found in collective bargaining agreements. However, the management rights clause which the City proposes is about the same length as the one it is intended to replace. The language is different. However, there is no evidence which would show why the proposed new language should be favored over the language which was in the expired Agreement. I find there to be insufficient basis for a change in the management rights clause contained in the previously negotiated Agreement.

XIV. CREATION OF NEW CLASSIFICATION

The Association proposes the following new article:

ARTICLE IIIA - CREATION OF NEW CLASSIFICATIONS

Should the Employer create new classifications which are added to the Pasco Police Association, or the Employer substantially changes the duties of the classifications which are represented by the Association, or as a result of a PERC decision, new classifications are added to the Association, then the Agreement shall be open for the sole purpose of negotiating wages and working conditions for those classifications.

The Association argues that this clause is needed to deal with an accretion to the bargaining unit. The Association reasons that once the new positions are within the unit and covered by the Agreement, there should be negotiation over how those positions are paid and how they are worked.

The City argues that there is no need for this provision. The City points out that the Association is by law entitled to impact bargaining on subjects for which decision bargaining is not required by the employer.

I find insufficient evidence to support an additional article dealing with new classifications. The Association has not contended that its proposal is supported by reference to the comparable cities. There is no evidence that any problem in this area has ever arisen in the past or is expected in the future. The Association has not met its burden of proving why this new language is warranted.

XV. BILL OF RIGHTS

The Association has proposed that a very lengthy officer "bill of rights" be included in the Agreement. This proposal sets forth 3 1/2 single-spaced typewritten pages of numerous protections for the officer. These rules and restrictions relate to departmental disciplinary investigations, personal information that the officer may be required to disclose, political activity by the officer, the use of lie detector tests, and matters related to personnel records and evaluations. The Association asserts generally that these rules are necessary in order for officers to obtain due process. The City questions the need for such an article.

Chief Francis testified that the Department has had policies and procedures regarding internal investigations and disciplinary matters since 1984, when he worked together with representatives of the Association to establish them. Chief Francis further testified that no Association representative has ever indicated to him that these policies and procedures were inadequate. Association President Schweighardt testified that he was not aware of any problems with the manner in which internal investigations are conducted.

The Association has offered no detailed evidence or arguments which would support any of the many matters which are contained within its proposed bill of rights. Of the seven comparable cities for which such information was

provided,^{23/} only two ^{24/} contained a bill of rights article, and those related to internal investigations only. I find there is insufficient basis for requiring the inclusion of a bill of rights in the Agreement.

XVI. GRIEVANCE - DISCIPLINE PROCEDURE

The expired Agreement provides that disciplinary actions which may be appealed to the City Civil Service Commission are not subject to the grievance procedure. The Association proposes to allow employees the option of appealing any disciplinary action through the grievance procedure or through the Civil Service Commission. The Association asserts that it would be more equitable if both parties have a hand in the selection of the decision maker. The Association asserts that a majority of the comparable cities settle discipline matters through the grievance procedure.

The City asserts that the current handling of disciplinary appeals by the Civil Service Commission is a process that has worked, and no change is necessary. The City points out that this process is set forth in RCW Chapter 41.12 which provides a uniform statewide body of law setting forth both procedural and substantive standards for the

^{23/}No such information was provided with regard to Richland, Kennewick, and Grants Pass.

^{24/}Aberdeen and Walla Walla.

discipline of city police officers. The City points out that the Association's proposal does not establish any standards to be used by a grievance arbitrator in a disciplinary matter. The City notes that there is a well established body of case law interpreting Chapter 41.12 which serves to provide for stability, uniformity and predictability.

I find insufficient basis to adopt the Association's proposal. There is no evidence which would indicate any problem with the current method of handling discipline. There is not even any indication of mistrust of the current system by bargaining unit members. Among the comparable cities, five provide for the arbitration of disciplinary disputes;^{25/} four do not.^{26/} Thus, no trend is apparent.

XVII. SMOKING

The City proposes the following new article:

Employees who have not signed agreements not to smoke, both on the job and off the job, as a condition of employment at the time of initial hire shall have until June 1, 1990, to totally quit smoking. Until June 1, 1990, employees who have not previously signed agreements not to smoke as a condition of employment at the time of hire shall confine their smoking to off the job. All

^{25/}Kennewick, Pullman, Richland, Grants Pass, and Klamath Falls.

^{26/}Walla Walla, Wenatchee, Barstow, and Delano. The parties disagree as to the situation in Aberdeen. The contract language for Aberdeen is not clear in this regard.

new employees shall, as a condition of their employment sign an agreement not to smoke, both on the job and off the job, as a condition of employment.

The City will pay up to \$300.00 (one time) for tuition reimbursement to any existing employee who enrolls and completes a stop smoking program in order to quit smoking.

The City asserts that this proposal is intended to maintain a healthful working environment and to reduce the costs of health insurance coverage. The Association asserts that there has been no showing that this requirement is needed or that there is a fitness problem in the Department due to smoking. The Association asserts that if a smoking article must be included, it should be a positive one, such as increasing the pay of nonsmokers by 2 percent.

In RCW Chapter 70.160, the Washington State legislature recognized the increasing evidence that tobacco smoke in closely confined spaces may create a danger to the health of nonsmokers. In view of this, the legislature banned smoking in public places, except in designated smoking areas. One commentator has suggested that employers may face costly litigation if they fail to protect their nonsmoking employees from smoking employees. Raymond L. Paoletta, "The Legal Rights of Nonsmokers in the Workplace," 10 U.P.S. Law Rev. 591-632 (1987).

Officer Schweighardt testified that a number of officers use tobacco products and that because of the stressful nature of the job, officers are smoking more and more.

I find that there is insufficient basis for adding a no-smoking provision to the Agreement. There is no evidence of any support for these proposals among the comparable cities. The City's proposal goes way beyond the protection of nonsmokers. The City's proposal would restrict the use of tobacco products off premises and during off-duty time. There is no evidence of the effect on the City of officers continuing to smoke while not in the presence of nonsmoking employees.

XVIII. CAREER DEVELOPMENT PLAN

A. Education/Longevity

Article XVIII in the expired agreement provides, in pertinent part, as follows:

* * *

Effective 1/1/87 each employee shall be eligible for an education premium for compensable work upon obtaining a college degree in one of the above specified areas of study in the following amounts:

a. Police Officer:

<u>Degree Level Achieved</u>	<u>0-5 yrs</u>	<u>6-10 yrs</u>	<u>11+ yrs</u>
AA (AS)	\$50/mo	\$75/mo	\$100/mo
BA (BS)	\$100/mo	\$125/mo	\$150/mo

b. Sargeants [sic] and Corporals:

Officer Schweighardt testified that a number of officers use tobacco products and that because of the stressful nature of the job, officers are smoking more and more.

I find that there is insufficient basis for adding a no-smoking provision to the Agreement. There is no evidence of any support for these proposals among the comparable cities. The City's proposal goes way beyond the protection of nonsmokers. The City's proposal would restrict the use of tobacco products off premises and during off-duty time. There is no evidence of the effect on the City of officers continuing to smoke while not in the presence of nonsmoking employees.

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a. Police Officer:

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AA (AS)	\$50/mo	\$75/mo	\$100/mo
BA (BS)	\$100/mo	\$125/mo	\$150/mo

b. Sargeants [sic] and Corporals:

<u>Degree Level Achieved</u>	<u>Amount</u>
AA (AS) in Police Related Field	\$75/mo
BA (BS) in Police Related Field	\$125/mo

c. Evidence Technition [sic] (if remains in bargaining unit):

<u>Degree Level Achieved</u>	<u>Amount</u>
AA (AS) in Police Related Field	\$40/mo
BA (BS) in Police Related Field	\$80/mo

The above language provides extra longevity pay only for employees with a college degree.

The Association seeks to separate the longevity and education premiums and have them calculated on a percentage basis. The Association's proposal reads as follows:

* * *

Section 2. Education/Longevity. Each employee shall be eligible for the following premiums in the following amounts:

Completed Years of Service	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	
Premium for Longevity	%		2	2	2	2	2	3	3	3	3	3	5	5	5	5	5	7	
Two Years College Premium	%	2	2	4	4	4	4	4	5	5	5	5	5	7	7	7	7	7	9
Bachelor's Degree Premium	%	3	3	5	5	5	5	5	6	6	6	6	6	8	8	8	8	8	10

(The above percentages are computed from the base wage of the eligible employee.)

The Association asserts that the City needs a better trained and better educated officer. The Association contends that the Department's high rate of turnover indicates that there needs to be incentives to make officers stay and keep their experience and education in the City.

The City proposes to retain the current contract language. It asserts that the longevity pay schedule is a disincentive to promotion and to employees furthering their education. It asserts that benefit levels should not be calculated on a percentage basis so as to automatically rise with wage increases. Rather, it contends that the premium should be set at a fixed dollar amount. It further asserts that the current amounts paid are fair and appropriate when compared with the comparable cities.

Of the seven comparable cities, for which data was provided,^{27/} only Walla Walla combined educational incentive and longevity in a manner which is somewhat comparable to Pasco. In Walla Walla, an officer with only a high school degree does receive a longevity premium in the following amounts:

5 years	-	\$17 per month
10	-	25
15	-	32

^{27/}Such data was not presented for Richland, Kennewick, and Grants Pass.

An officer in Walla Walla with a college degree receives additional pay which varies with the officer's longevity:

	<u>AA</u>	<u>BA</u>
5 years	1%	2%
10 years	2%	4%
15 years	3%	6%

The situation in the other six comparable cities is reflected below:

<u>City</u>	<u>Longevity-Monthly</u>	<u>Educational</u>	<u>Incentive-Monthly</u>
		<u>AA</u>	<u>BA</u>
Aberdeen	None	None	None
Pullman	None	4%	8%
Wenatchee	\$15-60	None	None
Klamath Falls	None	4%	10%
Barstow	None	\$92	\$138
Delano	\$40 after 8 yrs	\$100	\$125

Based upon a comparison with the comparable jurisdictions, there is insufficient justification for the City to pay both separate longevity pay and educational incentive. I base this finding on several considerations. First, only one other comparable city pays separate longevity pay and educational incentive. Second, the parties have relatively recently negotiated a format which combines consideration of longevity and education. Third, one comparable city has a similar format. For these reasons, and particularly because of the lack of support among the comparable cities for paying a longevity premium in addition to an education premium, I have determined to maintain the

current format of combining the premium for education and longevity.

I find that a percentage increase is appropriate, rather than a set monthly sum. The comparable cities are about evenly split on this. The use of a percentage figure rather than a dollar figure should lessen the risk of conflict over this issue in the future.

Below is the language which shall replace the second paragraph of Article XVIII. It reflects figures which are within the parameters of the comparable cities:

* * *

Effective 1/1/89 each employee shall be eligible for an education premium for compensable work upon obtaining a college degree in one of the above specified areas of study in the following amounts:

a. Police Officer:

<u>Degree Level Achieved</u>	<u>0-5 yrs</u>	<u>6-10 yrs</u>	<u>11+ yrs</u>
AA (AS)	2%	3%	4%
BA (BS)	4%	6%	8%

b. Sergeants and Corporals:

<u>Degree Level Achieved</u>	<u>Amount</u>
AA (AS) in Police Related Field	3%
BA (BS) in Police Related Field	6%

c. Evidence Technician (if remains in bargaining unit):

<u>Degree Level Achieved</u>	<u>Amount</u>
AA (AS) in Police Related Field	2%
BA (BS) in Police Related Field	4%

B. Bilingual Incentive

The Association proposes the following addition to the Agreement:

Section 3. Bi-Lingual Incentive

A. Any Association member who is bi-lingual in Spanish and whose proficiency in Spanish is to the extent that that officer is utilized to translate for the department, shall receive 5% premium pay for having the capability to do bi-lingual translation.

B. Any Association member who believes that he or she is bi-lingual in Spanish shall submit written notification of that fact. Should the City disagree with whether or not the Association member is bi-lingual in Spanish, that matter shall be resolved in arbitration pursuant to the grievance procedure of this Agreement.

The Association argues that extra pay for fluency in Spanish is warranted because of its value to the City and also because of the extra work which Spanish-speaking officers are called upon to perform. The City opposes this proposal because it has not been shown that such incentive pay would produce new bilingual employees. The City asserts that the proposed bilingual incentive is not an incentive at all, but rather a premium pay for usage of a language skill already acquired by a few department employees. The City points out that under the expired Agreement employees can already receive tuition reimbursement for Spanish courses, and that education/longevity pay is given for degrees obtained from

college course work, including Spanish classes. The City further points out that Spanish-speaking employees are afforded additional work and overtime opportunities.

The City has a significant Spanish-speaking population. Chief Francis testified that he would like to have a few more Spanish-speaking officers. Currently there are two. Detective Robert Mancillas is one of them. He testified that he is called upon on a daily basis to translate for other officers or for the dispatcher. He has been called many times at home at all hours to do this. Often this takes up only five or ten minutes per call. Detective Mancillas testified that he was discouraged by a supervisor from requesting overtime for such short periods. Detective Mancillas further testified that either he or the other Spanish-speaking officer must be the first officer through the door on almost every search warrant which involves narcotics. Detective Mancillas testified that as a result of his having to translate, he has less time to perform his regular detective functions, and his work load and stress level keep mounting. Officer David Allen, in a written statement, indicated that he has to use one of the Spanish-speaking officers on a daily basis, in order to communicate with witnesses.

Three of the comparable cities offer extra compensation for officers who are fluent in Spanish. In Barstow,

qualified bilingual officers receive 5 percent of base hourly salary for actual time spent in providing bilingual services. In Klamath Falls, an officer receives 5 percent extra pay for proficiency in a foreign language. In Delano, a bilingual officer receives an additional \$25 per month.

I agree with the Association's position that an officer who is fluent in Spanish deserves extra compensation. Such officers have special value to the City. They provide a necessary service which other officers are incapable of performing. More demands are placed upon them, both while on duty, as well as during their off-duty hours.

While most of the comparable cities do not offer extra pay for Spanish-speaking officers, it is unlikely that most of them have the significant Spanish-speaking populations which would cause such officers to be so valuable. A significant minority of the comparable cities do provide premium pay for bilingual officers.

I find that the City shall provide additional compensation to those officers who are fluent in Spanish, in an amount which would increase their base wages by 2 percent. The 2 percent figure is less than that paid by Klamath Falls, but more than the amount paid by Barstow and Delano. The following section shall be added to Article XVIII:

Any Association member who is fluent in Spanish shall have their base wages

increased by 2 percent. Such proficiency shall be reasonably determined by the City.

XIX. MEDICAL INSURANCE

The current Agreement reads:

ARTICLE X - MEDICAL, DENTAL, AND LIFE INSURANCE

Section 1. Medical and Dental
Insurance for Employees and Dependents.
Effective January 1, 1987, through December 31, 1988, the parties have agreed to the following:

- a. The City will pay up to Two Hundred Dollars (\$200.00) per month per Employee for medical and dental insurance.
- b. The Employee and the Employer will share any rate increases on a fifty-fifty basis up to a total premium of Two Hundred and Sixty Dollars (\$260.00) per month for medical and dental insurance.
- c. The employer will pay any excess premiums above \$260 per month.

The City retains the right to maintain a self insurance program or to select insurance carriers, for the purpose of containing the premium rate increases. During the term of the Agreement, the City retains the right to:

- i. Raise the deductible and medical to One Hundred Dollars (\$100.00) per person per calendar year to a maximum of Three Hundred Dollars (\$300.00) per covered family per calendar year.
- ii. Maintain a deductible and Eighty/Twenty percent (80%/20%) co-insurance which apply to all covered medical and expenses incurred, with the exception of the first Five Hundred Dollars (\$500.00) of accident expenses, which will

be covered One Hundred Percent (100%) to Five Hundred Dollars (\$500.00) and not subject to the deductible.

iii. Establish a Twenty-five Dollar (\$25.00) deductible per person per calendar year on dental to a maximum of Seventy-five Dollars (\$75.00) per covered family of Class 2 and Class 3 dental expenses. The deductible will not apply to Class 1 dental expenses, i.e., covered diagnostic and preventive care.

Section 2. Vision Care. LEOFF II officers shall be eligible for reimbursement to an annual maximum of Two Hundred Dollars for the combined usual and customary charges for (a) visual examination, (b) corrective lenses, (c) frames. The program will not cover oversize, photogray, or decorative glasses. An examination and new lenses may be obtained every twelve (12) months, but only if the latter are medically required. Repair and/or replacement of broken or lost glasses is not an eligible expense.

Section 3. Life Insurance. The City, for the term of this Agreement, shall continue to provide an employer-paid plan with benefits increased to Fifteen Thousand Dollars (\$15,000.00) of face value term insurance.

The City proposes to raise the amount it would pay per month for medical and dental insurance to \$225 effective January 1, 1989, and to \$250 effective January 1, 1990, and to share equally with the employee any rate increases above these amounts. The Association proposes that Article X should read as follows:

ARTICLE X - MEDICAL, DENTAL, AND LIFE INSURANCE

Section 1. Medical and Dental Insurance for Employees and Dependents.

Effective January 1, ____, through December 31, ____, the parties have agreed to the following:

The City agrees to provide a medical an dental insurance plan that is equivalent to or better than the plans in effect on the date of the signing of this Contract. The City will pay the premium cost for the coverage.

The City retains the right to maintain a self insurance program or to select insurance carriers, for the purpose of containing the premium rate increases.

The insurance coverage provided by the City shall contain the following features:

i. A maximum deductible of Seventy Five Dollars (\$75.00) per person per calendar year to a maximum of Two Hundred Twenty Five (\$225.00) per covered family per calendar year.

ii. The deductible and Eighty/Twenty percent (80%/20%) co-insurance will apply to all covered medical expenses up to Twenty Five Hundred Dollar (\$2,500). Upon reaching the Twenty Five Hundred Dollar (\$2,500) cap, coverage will be One Hundred Percent (100%). An exception to the deductible coverage will be the first Five Hundred Dollars (\$500.00) of accident expenses, which will be covered One Hundred Percent (100%) to Five Hundred Dollars (\$500.00) and not subject to the deductible.

iii. A maximum Twenty-five Dollar (\$25.00) deductible per person per calendar year on dental to a maximum of Seventy-five Dollars (\$75.00) per covered family or Class 2 and Class 3 dental expenses. The deductible will not apply to Class 1 dental expenses, i.e., covered diagnostic and preventive care.

iv. The City shall provide each employee a complete physical examination,

at no cost to the employee by a physician of the City's choice, during the pendency of this Agreement. Provided however, that the employee has not had a complete physical within the last three (3) years.

Section 2. Vision Care. LEOFF II officers shall be eligible for reimbursement to an annual maximum of Three Hundred Dollars for the combined usual and customary charges for (a) visual examination, (b) corrective lenses, (c) frames. The program will not cover oversize, photogray, or decorative glasses. An examination and new lenses may be obtained every twelve (12) months, but only if the latter are medically required. Repair and/or replacement of broken or lost glasses is not an eligible expense.

Section 3. Life Insurance. The City, for the term of this Agreement, shall continue to provide an employer-paid plan with benefits increased to Fifteen Thousand Dollars (\$15,000.00) of face value term insurance.

Section 4. The Employer will provide a monthly income disability insurance policy for each LEOFF II member. The policy shall provide compensation at 66-2/3% of total monthly base salary after ninety (90) days and continuing until age sixty-five (65).

The Association asserts that the vast majority of the comparable jurisdictions do not favor having employees pay for some part of their insurance premium. The Association asserts that the increasing insurance costs have been harmful to the employees. The Association further asserts that the maintenance of benefits language is necessary in order to prevent the City from being able to change the plan unilaterally to the detriment of the employees.

The City argues that the present premium cost sharing arrangement helps keep rate increases down by making the employee conscious of the costs of medical services. The City asserts that a number of the comparable jurisdictions have some sort of cost sharing provision or an absolute cap. The City asserts that there is no evidence why a maintenance of benefits provision should be included. It points out that its insurance plan covers all City employees and, therefore, a maintenance of benefits agreement can prevent or inhibit a change in coverage desired by City employees overall. The City further points out that the Association proposal for City paid LEOFF II disability insurance was not pursued at the hearing, and that this proposal finds little support among the comparable cities.

The City is currently self-insured for its medical coverage. Premiums increased to \$249 per month in May 1989. Several employees testified to the considerable out-of-pocket medical costs which they have incurred under the present system.

The situation in the comparable jurisdictions is described on the following page:

<u>City</u>	<u>City Currently Pays 100% of Premium</u>	<u>Cap on City-Paid Premium</u>	<u>Maintenance of Benefits Provision</u>
Aberdeen	Yes	No	? (Name of plan is in Contract)
Kennewick	Yes	No	? (Not in evidence)
Pullman	Yes	No	Yes
Richland	Yes	No	? (Not in evidence)
Walla Walla	Yes	Yes	Yes
Wenatchee	No	Yes	No
Grants Pass	Yes	No	? (Not in evidence)
Klamath Falls	Yes	No	Yes
Barstow	Yes	No	Yes
Delano	<u>No</u>	<u>Yes</u>	<u>No</u>
	8-Yes/2-No	3-Yes/7-No	4-Yes/2-No

I find that Article X, Section 1 shall be amended to read as follows:

Section 1. Medical and Dental Insurance for Employees and Dependents.
Effective January 1, 1989, through December 31, 1990, the following shall apply:

a. The City will pay up to Two Hundred and Seventy Five Dollars (\$275.00) per month per Employee for medical and dental insurance.

b. The Employee and the Employer will share any rate increases which result in a premium of over Two Hundred and Seventy Five Dollars (\$275.00) on a fifty-fifty basis up to a total premium of Three Hundred and Twenty Five Dollars (\$325.00) per month for medical and dental insurance.

c. The Employer will pay any excess premium above Three Hundred and Twenty five Dollars (\$325.00) per month.

The City retains the right to maintain a self-insurance program or to select insurance carriers, for the purpose of containing premium rate increases. The City agrees to provide a medical and dental insurance plan that is at least substantially equivalent to the plans currently in effect.

During the term of the Agreement, the City retains the right to:

I. Maintain a deductible in the medical insurance program of One Hundred Dollars (\$100.00) per person per calendar year to a maximum of Three Hundred Dollars (\$300.00) per covered family per calendar year.

II. Maintain an Eighty/Twenty Percent (80%/20%) coinsurance which apply to all covered medical and expenses incurred, with the exception of the first Five Hundred Dollars (\$500.00) of accident expenses, which will be covered One Hundred Percent (100%) to Five Hundred Dollars (\$500.00) and not subject to the deductible.

iii. A maximum Twenty-five Dollar (\$25.00) deductible per person per calendar year on dental to a maximum of Seventy-five Dollars (\$75.00) per covered family or Class 2 and Class 3 dental expenses. The deductible will not apply to Class 1 dental expenses, i.e., covered diagnostic and preventive care.

The new language retains the premium co-payment concept which the parties have previously negotiated. The cap has been substantially raised so as to encompass the large premium increase which occurred during 1989. In effect, the City will pay the entire premium for 1989, and will do so again in 1990 unless there is more than a 10 percent premium increase during that year. I do not believe it is unreasonable for employees to bear some risk in the event of skyrocketing health insurance costs as they have in the past. On the other hand, the prevailing practice among the comparable cities is that the employers are currently bearing

100 percent of the cost of health insurance. In view of this, a substantial increase in the Employer-paid premium is justified in order to meet the increased cost.

I agree with the Association that there should be a provision which protects the employees from unilateral benefit cuts. Not only does such a provision seem inherently fair, it is also in line with the practice of the majority of the comparable cities for which relevant information was provided.

No evidence was presented which would justify an improvement in vision insurance. The Association's proposal in this regard is rejected. There is also insufficient evidence to support the Association's proposal for a reduction and cap on the deductibles for medical expenses, or for its proposal for physical examinations.

The Association's request for a disability insurance policy for LEOFF II members is rejected. The Association provided no evidence or argument in support of this proposal.

XX. WAGE INCREASE

The Association has asked for a 9 percent increase for 1989. It asserts that this increase is justified by comparison with the comparable cities. The Association requests a 5.4 percent increase for 1990 since that figure represents the increase in the cost of living. The

Association asserts that the contract should have a two-year duration since that is traditional for the parties.

The City's position is that the 1989 wage increase should be 3 percent in view of both the average wage and the average total monthly compensation of the comparable cities, as well as the cost of living. The City asserts that the contract should run for three years and that the wage increases for 1990 and 1991 be set at 85 percent of the CPI-W, West Coast-C for the years ending October 1989 and 1990, respectively.

In order to determine how the wages paid in Pasco compare with the comparable cities, I have compared the base monthly wages for top-step officers. I have not added in other elements of compensation such as insurance, education premiums, longevity pay, and hours, since these other subjects have been specifically dealt with elsewhere in this Opinion, and it is my understanding that the City will offer benefits in these areas which are roughly comparable to the other cities. Below are listed the base monthly salary for top-step officers in the comparable cities during 1989:^{28/}

^{28/}The figures listed are those provided in Association Exhibit 20.

Aberdeen	2706
Kennewick	2710
Pullman	2263
Richland	2633
Walla Walla	2336
Wenatchee	2703
Grants Pass	2297
Klamath Falls	2227
Barstow	2851
Delano	<u>2167</u>
Average	2489
Median	2484
Pasco	2389

The City's 1988 base wage level for a top-step officer is 4.2 percent below the average of the comparable cities, and 4.0 percent below the median.

In 1989, the comparable cities provided the following increases in base level wages:

Aberdeen	15.5%
Kennewick	3.9
Pullman	3.7
Richland	2.5
Walla Walla	2.9
Wenatchee	7.1
Grants Pass	4.0
Klamath Falls	8.0
Barstow	4.5
Delano	3.0

The average wage increase paid by the comparable cities was 5.5 percent. The median increase was 3.95 percent. The discrepancy between the average and the median figures is caused by the large increase in Aberdeen, which was twice as large as any of the other comparable cities.

I find that a base wage increase of 3.7 percent is appropriate for 1989. That increase matches the cost of living increase from October 1987 to October 1988, which is the period the parties would have most likely considered when negotiating a 1989 wage increase. A 3.7 percent increase doesn't quite get the officers to the average base wage level for the comparable cities. Still, the increase provided is slightly larger than the compensation increase negotiated with the other City bargaining units. This increase is in line with the increases provided in the comparable jurisdictions. Moreover, it would place the City sixth out of eleven in base wages in relation to the comparable cities. Thus, the City would be ranked right in the middle with five comparable cities paying more and five paying less. Also, the other benefits which have been awarded here must be considered. The decrease in the work day, the increase in vacation accrual, the change in the longevity/education premium, the increase in the level of City-paid health premiums, and the new premium for Spanish-speaking officers, all have a significant monetary cost to the City. I have also taken into consideration the adverse economic climate in the City. While the City may finish the year with a larger cash balance than it anticipated, there is no evidence that that cash balance is extraordinary. It must also be remembered that the City is

limited in the amount of revenue that it can generate, and as a result has had to reduce the number of non-police employees that it employs. For these reasons, and in view of the statutory criteria that requires consideration of not only comparability, but also cost of living and other factors normally taken into consideration in the determination of wages, I find that a wage increase of 3.7 percent for 1989 is appropriate.

Both parties urge special consideration of the cost of living increase in determining the appropriate wage increase for the second year of the contract. I find that the wage increase for 1990 shall be 90 percent of the CPI-W, West Coast-C for the year ending October 1989. This should result in a wage increase which is close to the cost of living increase, when that figure is adjusted downward for the element of health costs which is assumed in large part by the City. It is also significant that the cost of housing in the City has steadily been going down over a period of years. Therefore, I believe it is likely that the wage increase which I have found to be appropriate for 1990 is the most likely figure to match the employees' actual increase in living costs.

I find that a two-year agreement is appropriate. The expired agreement has such a duration, and no evidence was presented which would support a longer duration.

Redmond, Washington

Dated: February 12, 1990

S/ALAN R. KREBS
Alan R. Krebs, Neutral Chairman