IN THE MATTER OF THE ARBITRATION

BETWEEN

CITY OF BELLEVUE,	
and	INTEREST ARBITRATION OPINION AND AWARD OF JANET L. GAUNT
BELLEVUE FIREFIGHTERS LOCAL 1604, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO, CLC	

PERC Case No. 6811-I-87-162
AAA Case No. 75 390 0125 87

Appearances:

For the Union:	James H. Webster, Esq. Webster, Mrak & Blumberg
For the City:	Janet Garrow, Esq. Assistant City Attorney

Arbitration Panel:

Neutral Chair:	Janet L. Gaunt
Union Representative:	Michael Duchemin
City Representative:	Richard L. Kirkby

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I. INTRODUCTION

This interest arbitration was initiated pursuant to RCW 41.56.450 et. seq. to resolve certain bargaining issues which remained at impasse following negotiations and mediation. As its representative on the three (3) member Arbitration Panel, the Union designated Paramedic Michael Duchemin. The City named Assistant City Attorney Richard Kirkby. Arbitrator Janet L. Gaunt was selected as Neutral Panel Chairperson (hereinafter "Chair").

An initial four (4) days of hearing was conducted on October 28-31, 1987 in Bellevue, Washington. Because of the large number of unresolved issues at the outset of the hearing, three additional days became necessary. These were held on January 20-22, 1988 at the same location. The Union was represented by Mr. James Webster of Webster, Mrak & Blumberg. Assistant City Attorney Janet Garrow represented the City. The hearing was transcribed by a court reporter.

At the outset of the hearing, the City objected to the Union's partisan arbitrator, Michael Duchemin, serving as a witness (Tr. I:11). The objection was based on RCW 41.56.450 which states in relevant part: "No member of the arbitration panel may present the case for a party to the proceedings." After considering the respective arguments of the parties, the Chair interpreted 41.56.450 as precluding partisan arbitrators from serving as an advocate arguing one side's case but not from serving as a witness (Tr. I:24).

At the hearing, both sides had an opportunity to make opening statements, submit documentary evidence, examine and cross-examine witnesses (who testified under oath), and argue the issues in dispute. Following the completion of testimony, the parties elected to make closing argument in the form of post-hearing briefs which were timely mailed and received by the Chair on April 6, 1988. The record in this case is voluminous, covering over 1,500 pages of transcript and over 300 exhibits. As will be seen from the discussion herein, numerous issues were submitted. Consequently, the parties waived the thirty (30) day statutory time limit for a decision.

By agreement of the parties, the Chair drafted the preliminary text of an Award which was then reviewed with the Panel Members and the parties' counsel, who were invited to note omissions or suggest corrections. Following that consultation, these written findings and determination of the issues in dispute were finalized by the Arbitrator.

II. HISTORY OF COLLECTIVE BARGAINING

The parties have been engaged in collective bargaining for the last fifteen years. There have been two prior interest arbitrations; one in 1980 and one in 1982. The term of the parties' most recent collective bargaining agreement was January 1, 1984 through December 31, 1986. In mid-1986, they began negotiations for a successor agreement.

During those negotiations, the parties agreed upon a number of changes to the 84-86 collective bargaining agreement. The City shortened the time for compliance with a union shop provision from ninety (90) to thirty (3) days; expanded work out of class pay; expanded the scope of funeral leave; added a safety committee forum; established a communication procedure to discuss matters of general concern to the bargaining unit including significant changes not included in the Agreement that affect the rights, privileges and working conditions of the unit; agreed to pick up 100% of insurance rate increase; doubled life insurance benefits; improved the insurance bank for on-the-job injury; added a bonus leave provision for good attendance; and provided for a cash out of accrued sick leave at 10%. Ex. 9. Numerous issues remained unresolved, however.

By letter dated March 27, 1987 the Executive Director of PERC certified the parties' impasse on such issues and directed interest arbitration. The major certified issues include:

Article I - Definition of "Base Pay"
Article VII - Reduction, Recall, and Discipline
Article VIII - Vacancies and Promotions
Article X - Education Incentive Pay/Longevity Pay
Article XI - Overtime
Article XII - Hours of Duty
Article XIII - Shift Trades
Article XVI - Holidays
Article XVII - Vacation Leave
Article XVIII - Funeral/Emergency Leave
Article XX - Prevailing Rights
Article XXIV - Grievance Procedure
Article XXX - Term of Agreement
Appendix "A" - Monthly Salaries
Appendix "C" - Longevity

Ex. 1. Numerous sub-issues are presented within each of these unresolved Articles. The parties subsequently agreed that the term of the contract shall be two years, i.e. January 1, 1987 - December 31, 1988.

III. APPLICABLE STATUTORY PROVISIONS

The Panel's authority arises out of RCW 41.56, which prescribes binding arbitration for uniformed personnel upon declaration by the Public Employment Relations Commission ("PERC") that an impasse in bargaining exists. The legislative purpose in providing for interest arbitration was to substitute an "effective and adequate alternative means of settling disputes" in place of strikes by uniformed personnel in order to ensure dedicated and uninterrupted public service. RCW 41.56.430.

In making its determination, the Panel is directed to be mindful of the foregoing purpose and to take into consideration the following factors.

> (a) The constitutional and statutory authority of the employer;
>
> (b) Stipulations of the parties;
>
> (c) ....
>
> (ii) For employees listed in RCW 41.56.030(6)(b), 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 41.56.460.

The interpretation and weighing of the various factors lie within the sound discretion of the Arbitration Panel. In exercising that discretion, the Panel concurs with the argument both sides have made at one point or another during the proceedings that the Panel should endeavor to award the contract it feels would otherwise have been negotiated by the parties if they had not been required to resort to interest arbitration. In other words, what would the Union have been able to obtain at the table if its right to strike had been unfettered. In arriving at this judgment, the "total package" must be considered, not just the issues submitted for interest arbitration.

We adopt as well the principal that the party seeking to change an existing contract provision or established past practice should appropriately bear the burden of persuasion. The Chair's basic approach has been to first identify current practice. A proposed change is then evaluated in terms of how significant a departure it represents from that practice or the practice of comparables. The more significant the change and the less support for it in the practice of comparables, the more compelling the reasons must be for making a change.

While we recognize that parties during collective bargaining will often seek to improve existing procedures, we agree with the view that whoever is proposing such a change should appropriately bear the burden of persuading the Panel that the existing language or practice is unworkable or inequitable and there is a compelling need to change it. If the arguments offered in support of a change do not clearly outweight arguments in favor of the status quo then the status quo should be maintained.

A. The Constitutional and Statutory Authority of the Employer

The City of Bellevue is a non-charter code city created consistent with Article XI, Section 10 of the Washington State Constitution and organized pursuant to Title 35A of the Revised Code of Washington.

B. Stipulations of the Parties

Because of the number of issues in dispute, the parties have stipulated to a waiver of the requirement under RCW 41.56.450 that the Neutral Chairperson issue a written decision within thirty (30) days following conclusion of the hearing. The parties have also stipulated that those contract provisions agreed upon are reflected in Exhibit 9. Further stipulations that relate to particular proposals are discussed in the sections of this Opinion dealing with those proposals.

C. Comparable Employers

Union Position: In order to foster stability in the parties' bargaining relationship, the Union argues that the Panel should adopt the comparable cities selected by Arbitrator Howard Block in the parties' 1982 interest arbitration, modified only to conform to intervening statutory amendments and significant changed circumstances.

Block selected comparable employers from Puget Sound public fire departments. His approach comparing to jurisdictions in the same locale is preferable because those jurisdictions fall within a common labor market, are affected by similar economic variables, and the comparisons are subject to more accurate scrutiny because local conditions are better known and comparison data is more readily available.

The subsequent statutory amendment of RCW 41.56.430(c) ratifies Block's approach. That amendment made it clear that comparisons with out-of-state employers was not favored when there are an adequate number within the Puget Sound area. Although the statute does now allow consideration of two rural fire districts outside the Puget Sound area, Arbitrator Block's rationale requires that they be disregarded.

Interest arbitrators have held that as few as five employers are an adequate number for comparison under RCW 41.56.460(c) and that a range of one-half to twice that of the City is acceptable for similarity of size. City of Seattle and Seattle Police Management Association, PERC No. 4369-I-82-98 (Beck, 1983); City of

Seattle and Seattle Police Management Association, PERC No. 5059-I-84-114 (Krebs, 1984). If one were to measure size in this case by resident service population alone, there are eight public fire departments within a thirty (30) mile radius of Bellevue that fall within ± 50% of Bellevue's size. This is more than an adequate number of comparable employers.

The Union believes, however, that size should be measured by more than the single parameter of resident service population. The circumstances of this case warrant use of the factors of residents service population, assessed value, number of alarms and number of firefighters. By these parameters, the cities proposed by the Union are sufficiently similar in size to permit reasoned comparisons under the statute.

The Union believes only limited changes should be made to the employers found comparable by Arbitrator Block. Redmond should be substituted for Edmonds. It is significantly closer in size on all the factors mentioned, physically borders Bellevue, shares automatic and agreements and a common dispatch center and jointly participates in a hazardous materials response program. At the time of the Block decision, the Redmond firefighters did not have a collective bargaining agreement. They do now. Therefore, substitution of Redmond for Edmonds is appropriate.

In light of the amendment to RCW 41.56.460(c), which now allows comparison with fire districts, four Puget Sound fire districts should also be added, i.e. King County Fire Districts #4 and #39, Pierce County Fire District #2 and Snohomish County Fire District #1. For all of the foregoing reasons, the Union argues

that the following in-state public fire departments should be selected as the appropriate comparable employees under RCW 41.56.460(c).

City/District	Population
Auburn	35,000
Bremerton	32,390
Everett	60,100
Kent	85,000
Kirkland	54,430
Redmond	50,000
Renton	35,360
Tacoma	158,900
KCFD #4	58,000
KCFD #39	81,000
PCFD #2	65,000
SCFD #1	48,600

Of these comparables, the Union argues that heavier consideration should be given to Tacoma and Everett because Bellevue ranks right between these two cities on the multi-factor comparability analysis. They are the only two Puget Sound employers with economies of similar size and maturity, have discontinued the use of volunteer firefighters like Bellevue and, in the case of Tacoma, is the only other department with a Class II rating.

City Position: The City argues that size is the statutory comparator criterion, not proximity or location within a local labor market. This position is supported by the arbitration decisions in Everett Police Officers Association and the City of Everett (Abernathy, 1981); Kent Police Officers Guild and City of Kent (LaCugna, 1980) and City of Seattle and IAFF Local 27 and Seattle Fire Chiefs Association, IAFF, Local 2898 (Beck, 1988).

Proximity, under subsection (f), can be a factor but not in the determination of comparables under the statute.

The City selected comparable employers on the basis of three factors: (1) public fire departments (cities and fire districts); (2) similar size in terms of population served; and (3) west coast states, i.e. Washington, Oregon, California and Alaska. The Union's comparables are fatally defective because they failed to meet these statutory criteria.

To determine "similar size," the City focused on population served. Using a population range of ± 30%, the City determined that only three Washington State public fire departments can reasonably be described as similar in size: Spokane County Fire District No. 1 (88,000); the City of Kent (85,000); and King County Fire District No. 39 (81,000). In the City's view, similar size does not mean twice as big or half as big. Such a range would be so broad as to render the statutory criterion meaningless.

The City notes that a close reading of the Block decision indicates he fashioned his total award regarding comparability on the basis of RCW 41.56.460, factor (f), not on the basis of factor (c). For that reason, the Award is flawed and should not be followed. Since the record indicates only three in-state fire departments are similar in size, and three is not an adequate number of comparators by the Union experts' own admission, west coast comparators must be considered.

Employing the same process it used to identify in-state comparables, the City applied a ± 30% population range factor to

public fire departments in Oregon, California and Alaska. No Alaska departments existed within this range; two Oregon departments did and forty-eight California fire departments. To reduce the California sample to a manageable size, the City took the five departments closest in size to Bellevue. The City thereby arrived at the following list of proposed comparable employers under RCW 41.56.460(c):

City/District	Population
Spokane County Fire District No. 1	88,000
City of Kent	85,000
King County Fire District No. 39	81,000
Eugene, Oregon	106,000
Salem, Oregon	93,300
Orange, California	101,600
Hayward, California	100,600
Inglewood, California	100,500
Santa Rosa, California	97,600
Oceanside, California	96,000

Discussion: The first consideration, in the Chair's view, is the extent to which Arbitrator Block's prior award should be given deference. The record certainly indicates the parties could benefit from some degree of consistency and predictability in their bargaining relationship. The Chair has carefully considered, therefore, the Union's argument that Arbitrator Block's approach to selecting comparables should be followed in this case. I have concluded, however, that at least as to comparables under criteria (c), the statute and intervening circumstances require a different result than that reached by Arbitrator Block.

The most significant change has been the 1987 statutory amendment. Prior to that amendment, RCW 41.56.460(c) provided for the following comparison:

> 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.

(Emphasis added.) That was changed in 1987 to provide for the following comparison for firefighters:

> 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.

(Emphasis added.) (Effective date July 26, 1987.)

Two changes are of significance. First, the parties agree that as a result of the change from "like employers" to "public fire departments," it became appropriate to include fire districts as comparators. Second, the Legislature changed the predeliction for west coast comparators; prescribing instead an initial focus on whether there are comparables within Washington state as a whole; not just on the west coast. Only if there are not enough in-state comparables, does the focus return to west coast comparables. This change, in the Arbitrator's view, reflects a Legislative intent to prefer in-state comparables over out-of-state comparables so long as an adequate number of comparable Washington employers are available.

The City has expressed a concern that the neutral Chair may have some predisposition on the issue of adequate in-state comparables. It derives this concern from an off-the-record conversation between counsel in which the Chair speculated as to how PERC might rule on an unfair labor practice charge filed by the Union because of the City's refusal to disclose which employers it contended were comparable. The Chair did not state this ruling would be the one she would have arrived at. All the Chair did was speculate among fellow attorneys as to how PERC was likely to rule (Tr. 393). She noted as well that how PERC ruled on the ULP was an issue distinct from those the Panel had to decide.

The Chair's predisposition is simply to follow the apparent legislative intent regarding RCW 41.56.460(c). For the reasons already noted, and purely as a matter of statutory construction, the Chair has concluded that the 1987 amendment to RCW 41.56.460(c)(ii) reflects a legislative predisposition to favor in-state comparables; but only where an adequate number exist.

In order to determine whether an adequate number exist, one must first determine what in-state employers are similar in size. As the City correctly notes, this is the one criterion the Legislature left unaltered. It also left that criterion undefined; either as to the parameters of size, i.e. what range is "similar," or the elements of size, i.e. how size is to be measured.

An examination of arbitration decisions submitted by the parties reveals there is no uniform view as to how size is to be measured. For awhile, multi-factor analyses was in vogue, but many parties and arbitrators now seem to be favoring serviced

population and assessed valuation as the principal parameters for measuring size. While the Chair does not mean to suggest that a multi-factor analyses is never justified, she does believe reliance principally on serviced population and assessed valuation of property protected is the better approach. If either of those parameters fall within a range judged "similar" then an employer can reasonably be considered of "similar size" within the meaning of RCW 41.56.460(c)(ii).

Some arbitrators use the combined total for population and assessed value. The problem with this approach is that assessed value in effect controls the result because it tends to be such a larger number than population. The Chair, therefore, feels it is preferable to compare the two factors separately.

Arbitration decisions vary greatly as to how close in size an employer must be to be "similar." The City acknowledges that bands ranging from $\pm$ 20% to $\pm$ 36% have been found reasonable. In actuality, size ranges even broader than that have been found acceptable. Arbitrator Krebs in the City of Seattle (1984) interest arbitration, for example, accepted a range of no less than one-half, no more than two times. Even the City of Renton decision cited by the City does not stand for the proposition that "similar size" cannot encompass employers half or twice as big. In that case, Arbitrator Snow found the City of Edmonds (pop. 25,132) comparable to the City of Renton (pop. estimated at 50,000). Edmonds was obviously half the size of Renton. 71 LA 271, 274.

Clearly, parties and arbitrators have settled upon narrower ranges than ± 50% when a sufficient number of comparators can be found closer in size. The decisions by Arbitrators Beck, Krebs and Snow, however, convince this Chair that the phrase "similar size" in RCW 41.56.460(c)(ii) can appropriately be interpreted to include a range of public fire departments within one-half to two times the size of the department to which comparisons are being drawn. City of Seattle and Seattle Police Management Association, PERC No. 4369-I-82-98 (Beck, 1983); City of Seattle and Seattle Police Management Association, PERC No. 5059-I-84-114 (Krebs, 1984); City of Renton, 71 LA 271 (Snow, 1978). While this concededly reaches to the outermost limits of what could reasonably be construed as "similar size" within the meaning of the statute, the Chair is not convinced it exceeds those limits.

In this regard, the Chair finds persuasive the reasoning of Union expert David Knowles regarding the law of large numbers, i.e. that a decrease in a numerical amount has a much larger impact than an increase in the same numerical amount. (Tr. 1369) It stands to reason that if a department 50% the size of Bellevue is deemed similar, then a department to which Bellevue stands in the same ratio should also be deemed similar on the upper end. Looking at the range in terms of ratios, therefore, rather than percentages, the Chair finds the maximum limits of a range of "similar size" employers would amount to those with populations of 50,327 - 201,310.

The following in-state comparables fall within this range:

City/District	Population
Tacoma	158,900[1]
Spokane Co. Fire Dist. No. 1	88,000
Kent	85,000
King County Fire Dist. No. 39	81,000
Pierce County Fire District No. 2	65,000
Clark Fire District No. 5	60,000
Everett	60,000
King County Fire District No. 4	58,000
Kirkland	57,500
Snohomish Fire District No. 1	55,000
Redmond	52,000

The parties have used identical population figures for Tacoma, Spokane, Kent, KCFD #39, PCFD #2, Clark FD #5, KCFD #4. There are minor discrepancies between the parties' figures for Everett, and Redmond. The figures shown above are those the Chair finds most likely accurate. The record reflects much greater confusion regarding Kirkland and Snohomish FD #1. Kirkland is shown on Union Exhibit 23 as having a service population of 54,430 but on City Exhibit 111 as being 57,500. Then on Exhibit 124 it is shown at 70,000. The Chair has decided to assume Kirkland's population is that shown on City Exhibit 111, i.e. 57,500. Although the Union shows Snohomish at 48,600 on Exhibit 303, the City assigns a population of 55,000 on Exhibit 123, which is consistent with the figure shown on the Washington State Council of Firefighters 1986 Employer Data (Ex. 124). The Chair, therefore, adopts as more accurate the 55,000 figure.

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[1]Even if one employed a size range of ± 50%, the Chair would find Tacoma appropriately included because its assessed valuation falls within that range even though population exceeds it.

The foregoing list of comparables presents good geographical diversity within the state; includes both cities and fire districts (as the statute now requires), includes another city with a Class II rating, and includes local labor market employers. In short, it has a lot more to offer as meaningful comparators than either of the lists proposed by the parties. Arbitrator Block's approach gave controlling weight to Puget Sound cities without regard for size. The Chair agrees that consideration of the practices of employers located within one's local labor market is a traditional factor appropriate under subsection (f) of the statute. It should not be weighted to the exclusion of subsection (c), however.

Testimony and exhibits in the record clearly support a finding that the foregoing list of eleven comparables is an adequate number. Arbitrators applying RCW 41.56.460 have found as few as five comparables to be acceptable although more are clearly preferred. Union expert David Knowles testified that there is no magic number; that based on his experience, parties and arbitrators have worked with as few as five or as many as fifteen. Given the number of in-state comparables, the Chair finds applicable the statutory mandate that other west coast employers should not be considered.

D. Cost of Living

Although the statute provides for consideration of "the average consumer prices for goods and service, commonly known as

the cost of living," the parties agree — for different reasons — that this consideration should not be given any weight in the present case. The Union argues sufficient compensation data is available from comparable employers for 1988 and that data should be favored in determining the wage rates for the contract. The City argues its 3% increase proposed for each year of the contract exceeds the increase in the applicable Consumer Price Index. Therefore, no claim for increased wages can be based on this factor. Both parties' arguments have merit. While consideration has been given to this statutory factor, in the present case it was not determinative.

E. Changes in Foregoing Factors During Pendency of the Proceedings

Changes in Section (c) of the statute have already been discussed. Cost of living changes since the old contract expired are discussed infra.

F. Other Traditional Factors

The Chair finds that among the factors appropriately considered under this section of the statute are the following:

1. Ability to Pay. The City of Bellevue is an affluent community with a strong financial base and sufficient resources to bring its firefighters into parity with other cities. Thus, ability to pay is not in dispute. (Ex. 36)

2. Working Conditions. The Union acknowledges that the City maintains outstanding facilities for its firefighters. Fire stations have been constructed and remodeled with an emphasis on liveability; the City's fire apparatus is state-of-the-art equipment, and the City enjoys a Class II insurance rating, the highest rating given in this state. Chief Dan Sterling asserts the Department is the best in the state and Union witnesses agreed. While the Union feels there is always room for improvement, its members concede they enjoy excellent working conditions in a progressive, well managed City.

3. Wage/Benefit Packages of Other City Employees. The Chair concludes, as did Arbitrator Block in the preceding interest arbitration, that internal comparisons to the wage/benefit packages granted other City employees is appropriate, especially when dealing with a city-wide benefit like group insurance.

4. Local Labor Market Comparisons. Comparisons within the local labor market are traditionally taken into consideration as collective bargaining. The reasons for this have been aptly described by UCLA Professor Irving Bernstein as follows:

> [Local labor market] comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the union because they provide guidance to its officials on what must be insisted upon and a yardstick for measuring their bargaining skill. In the presence of internal factionalism or rival unionism, the power of comparisons is enhanced. The employer is drawn to them because they assure him that competitors will not gain a wage cost advantage and that he will be able to recruit in the local labor market. Small firms (and unions) profit administratively by accepting a ready-made

> solution; they avoid the expenditure of time and money needed for working one out themselves. Arbitrators benefit no less from comparisons. They have "the appeal of precedent and ... awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.

Exhibit 10, pp. 7-8, Quoting Arbitration of Wages, Publications of the Institute of Industrial Relations (Berkeley: University of California Press, 1954) at 54 (emphasis added).

As Arbitrator Block has previously noted, Bellevue is centrally located in the Puget Sound area, which is an integrated economic area with a common labor market.[2] The Chair agrees that comparisons to wage/benefit packages for departments within the same labor market is fully sanctioned by RCW 41.56.460(f). The one qualification this Chair would add is that such comparisons are of limited value if there is too great a disparity in size.

When Arbitrator Michael Beck recently refused to supplement a list of agreed comparables in order to include certain cities representative of the local labor market, he did so because the proposed additions were much smaller in size than the agreed comparables. In that case, the smallest comparable was Long Beach, California with a population of 361,334. The largest local labor market employer proposed by the Union was Tacoma which is less than one-half the size of Long Beach. City of Seattle and IAFF, Local 27, p. 7 (March 1, 1988).

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[2]King, Snohomish, Pierce Counties constitute the local labor market recognized by the U.S. Bureau of Labor Statistics for its Consumer Price Index for the Seattle metropolitan areas.

In the present case, the list of comparables arrived at already includes nine (9) departments falling within the local labor market. The only other department with a Class II rating is included, as are a number of departments that border on Bellevue, e.g. Redmond, Kirkland, and some with whom the City Fire Department has a close working relationship, e.g. Redmond. It also includes many of the departments from which Bellevue gets alot of its firefighter applicants and from which it hires. (Exhibits 141-143.) The Panel concludes, therefore, that the previously described list of comparables sufficiently allows for consideration of this factor (f) comparison and additional cities should not be added.

IV. ISSUES

A. Article I - Definitions

Proposals: The parties have agreed to a revised definition of overtime (paragraph I) as follows: "Overtime means the time worked in excess of the normally scheduled hours of duty, excluding: 1) any time worked in place of a Union official on leave to attend Union business." In addition to that change, the Union proposes elimination of the definition of "Working Conditions" (paragraph J) and addition of a new section entitled "Base Pay." The City opposes both changes.

(1) Definition of Base Pay

Union Position: The Union proposes to add a new section to Article I defining Base Pay as: "any and all direct monetary compensation excepting overtime compensation." The Union's proposed definition would treat overtime under the parties' agreement in the same manner as the FLSA does only liability for overtime would still be incurred at the lower contractual threshold. Presently, there is a two-tiered system which is confusing and difficult for employees to police. The Union's proposal represents prevailing area practice. For that reason, it should be adopted.

City Position: The City proposes retention of the current definition of base pay, which is not incorporated into the contract. Under current practice, base pay is calculated as follows:

> Monthly salary x 12 divided by annual work hours equals base pay up to the FLSA threshold. Thereafter, the FLSA definition of base pay is used.

Exhibit 207. This "two-tiered" system resulted from when the FLSA was superimposed on the parties' existing collective bargaining agreement in 1986.

Contract overtime applies to all hours worked in excess of normally scheduled hours of duty (excluding hours worked in place of a Union official on leave; FLSA overtime applies to those hours in excess of 40 hours per week (for day shift personnel) or in excess of 204 hours in a 27 calendar day period (for 24 hour shift personnel). The Union's proposal would dramatically expand the

manner in which base pay has historically been defined and administered.

The Union's proposal should be rejected because neither state nor federal law requires adoption of the FLSA definition, and in any event the Union's definition is not co-extensive with that in the FLSA. The FLSA definition contains a number of exclusions that would not exist under the Union's definition. The Union's supposed housekeeping measure, therefore, is really a thinly disguised attempt to increase compensation in the form of overtime, pension, and MEBT benefits.

The current two-tiered overtime practice is longstanding and has imposed no hardships on employees. None of the Union's comparables or even any of the Washington comparables utilize the definition proposed by the Union. The current definition of base pay, therefore, should be retained.

Discussion: It was clear at the hearing that even the Union's own witnesses were confused as to the effect of the Union's proposals. As the City correctly notes, the Union's proposal does not simply adopt the FLSA definition of base pay; it is worded in a fashion that would appear to include pay otherwise excluded under the FLSA definition, e.g. monetary compensation received for vacations, holidays, and sick leave. 29 CFR Part 778 (Ex. 209). Thus, the financial impact on the cost of overtime, which is calculated on base pay, would be considerable.

There is also considerable uncertainty as to whether comparable jurisdictions employ a definition of base pay as broad as

that sought by the Union. Compare Exhibit 71 with 210-211. As for the Union's argument that the change would make the policing of overtime requirements easier, the record does not indicate this has been a problem. The same two-tiered overtime calculation is used for the Bellevue Police, the only other employees who qualify for the FLSA 7(K) procedure. It is relatively easy for employees to contact payroll for clarification (Tr. 410). The Chair, consequently, finds the record unpersuasive that any change should be made in the definition of base pay.

(2) Definition of Working Conditions

The Union proposal to eliminate the contractual definition of working conditions is an outgrowth of its positions regarding other sections of the contract, particularly Article XX (Prevailing Rights). The City has represented to the Union that the continuance of the present "working conditions" definition is not intended to operate as a waiver of the requirement to bargain working conditions not already discussed in the contract. (Ex. 249)[3]

The definition in Article I would, however, insulate the City from a requirement of further bargaining as to matters the parties have already addressed in the contract. An obligation to discuss such matters would still arise from Article XXV (Communication Procedure) but formal collective bargaining would not be required.

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[3]As to such conditions, if any waiver arises it would be through application of Article XX (Prevailing Rights).

The Chair finds this provision appropriate and, therefore, no compiling reason to change the status quo.

B. Article VII - Reduction, Recall and Discipline

The Union proposes to add a new section to the parties' collective bargaining agreement to require "just and reasonable cause" to discipline bargaining unit members. The proposed provision, as amended at the hearing on January 22, 1988, reads as follows:

> Section 3. Discipline.
>
> No employee shall be disciplined or discharged except for just and reasonable cause. Disciplinary measures shall be corrective, appropriate and not unreasonably severe. All disciplinary notices or memoranda shall be disregarded for disciplinary and promotional purposes after twenty-four (24) months.

Exhibit 7.

(1) Requirement of Just Cause for Discipline

Union Position: The Union argues that a requirement of just cause for discipline is an almost universal standard in United States labor contracts. It is a standard enjoyed by firefighters in most of the Union's proposed comparable employees, and one the City has agreed to in collective bargaining agreements with two other unions. Without incorporation of an express just cause standard into the contract, adequate protection against unjust discipline does not exist.

The Bellevue Civil Service Commission considers appeal only from discipline that involves discharge, suspension or demotion in

rank. It does not provide a remedy for lesser disciplinary action or for matters such as reassignment from a specialist position carrying premium pay or demotion during an initial probationary period. Moreover, because of its close ties with City administrators and personnel, bargaining unit members lack confidence in the Commission's impartiality. The Commissioners are appointed by the City Manager; advised by the City Attorney's office, which also advises the Fire Administration regarding the initiation of discipline and then prosecutes the case before the Commissioners, and the City's Assistant Personnel Director serves as secretary-examiner of the Commission. Persons appointed to the Commission may be high-minded individuals but they lack the extensive experience of the five respected arbitrators who the parties have agreed to utilize in their grievance procedure.

The Department's internal disciplinary advisory board also affords less protection against unjust discipline. The Chief controls what matters this board hears; the Department appoints two of the three board members; and employees accused of infractions do not have the right to hear the evidence against them or confront their accuser; nor is the board's recommendation even binding on the Chief. A requirement of just cause, therefore, should be added to the contract.

City Position: The City proposes that the status quo be maintained. It objects to the imposition of a parallel disciplinary procedure that would be cumbersome and unnecessary. Pursuant to Chapter 41.08 RCW, the City has been mandated by the State

Legislature to maintain a Civil Service Commission for firefighters. It cannot contract away this obligation; thus, it makes no sense to duplicate it.

The "just cause" standard proposed by the Union is indistinguishable from the "for cause" standard of the Civil Service Commission. Apart from insinuation that the Civil Service Commission is unbiased or unfair, Union witnesses could point to no examples of bias, prejudgment or arbitrary decisions by the Commission. It has never appealed a decision of the Commission.

The City contends the Union's proposed language is non-definitive, ambiguous and misleading. It greatly broadens the scope of departmental action that could be challenged through the grievance procedure; matters historically reserved to management. The City is adamantly opposed to such an unwarranted incursion into a traditionally recognized area of management prerogative. The proposal would foster misunderstandings; encourage otherwise groundless appeals; and strain management-labor relations in a critical area.

The City is especially concerned that the proposal appears to be a blatant attempt to usurp the City's ability to make reassignments within existing job classifications. The City views this as a potentially explosive issue, which could threaten the carefully structured and bargained premium benefit. The City is equally opposed to expanding appeals by probationary employees. If, therefore, the Panel determines that a parallel disciplinary procedure is justified, the Union's proposal should be modified to place some reasonable restrictions on the scope of appeal.

Discussion: To the extent that the Union seeks the option to arbitrate matters otherwise appealable to the Civil Service Commission, its proposal does not represent any intrusion into heretofore reserved management rights because the City concedes it would be subject to the same standard of review in either forum. Ex. 254, Section 5.04.05. While the record is not convincing that results from appeals taken to the Commission differs significantly from results that would otherwise have been obtainable in arbitration, the record is persuasive that bargaining unit confidence in the process would be vastly improved. When bargaining unit members are being disciplined because of alleged misconduct, this becomes an important consideration. The testimony is also persuasive that this was a significant issue to the bargaining unit; one they might well have struck over if accorded that right.

Granting a right to grieve lesser disciplinary actions (oral warnings or written reprimands) clearly would involve intrusion into an area in which the City has vigorously sought to maintain sole discretion. Such a concession is not readily obtained at the negotiating table without some kind of quid pro quo. Yet, in return for an increased ability to seek independent review of management action relating to disciplinary matters, the Union has been unwilling to recognize areas in which the City should be able to manage without intrusion by third parties. The Chair finds this is an obvious area for compromise.

Without some concession from the Union in the area of prevailing rights, the Chair is convinced the Union should not be unilaterally granted the right to arbitrate disciplinary matters.

As a quid pro quo for such concessions, however, the Chair finds compelling reasons to increase the scope of review available to bargaining unit members. In short, the record is persuasive that compelling reasons exist to add a requirement of just cause for discipline or discharge in return for changes in the area of the City's prevailing rights.

If a just cause requirement is added, however, the Chair argues with the City that the right to grieve discipline or discharge should not be extended to probationary employees. Probationary employees do not now enjoy a right to appeal (Ex. 254, Section 4.04) and until they obtain permanent status, the record demonstrates no compelling reasons to change existing practice. The Chair also finds the City's arguments persuasive that the right to grieve disciplinary actions should not be so broad as to include non-disciplinary transfers and reassignments that do not involve demotion in rank. Further reasons for that are discussed in connections with Appendix A.

The second sentence of the Union proposal requires that disciplinary measures be corrective, appropriate and not unreasonably severe. The just cause standard of review already incorporates consideration of such matters, as well as recognizing that for some types of offenses prior corrective action is not required. The Union's language contains no recognition of the latter. The Chair, therefore, declines to adopt it.

(2) Disciplinary Notices

Union Position: The Union's proposed last sentence of Section 3 seeks to limit the City's reliance on past discipline to

justify a particular disciplinary action. After two years the Union argues an employee will have either improved or more severe action will have occurred.

City Position: The City regards the Union's proposal as ill-conceived even as amended. In the City's view, the proper administration of discipline requires retention of disciplinary notices and memoranda even after two years. It's required as well for evaluation, counseling and for the defense of lawsuits against City personnel; which defense the City is obligated to undertake pursuant to RCW Chap. 3.81.

Adoption of this proposal would seriously inhibit the City's ability to carry out progressive discipline and fails to recognize any distinction in disciplinary action based on the seriousness of the offense. It is unnecessary because the Civil Service Commission for cause standard implicitly recognizes that the more distant in time and the less severe a past disciplinary action the less weight it is accorded after time. Furthermore, few comparable jurisdictions have such a provision. This proposal accordingly should be rejected.

Discussion: This is an issue on which the City's arguments are more persuasive. While there may be a point in time when prior disciplinary notices become too stale and irrelevant for reliance in subsequent discipline, arbitrators already consider this when applying the just cause test which the Chair has agreed should be added to the contract. That test recognizes, however,

that there are also factual situations when consideration of prior discipline is both illustrative of a pattern and appropriate. While it is true many employees may outgrow prior disciplinary problems, there are nevertheless cases where problems recur on an infrequent basis but they still recur and not necessarily within two years.

Another problem with the Union proposal is that it would apply not just to use for further disciplinary action but also to promotions. If two individuals are up for promotion, one of whom has a record of repeated misconduct spaced more than two years apart and another with an unblemished record, the Union's proposal would preclude the candidate with the clean record from receiving any credit for that. The Union has not met its burden of proving this is appropriate.

For all of the foregoing reasons, the Chair adopts the Union proposal that a just cause requirement be added to the contract with a right of appeal through the grievance procedure in lieu of appeal to the Civil Service Commission. Necessary revisions to the parties' existing procedure are discussed in connection with Article XXIV. Since the second and third sentences of the Union's proposal regarding Article VII (which presently addresses Reductions and Recall for nondisciplinary reasons) are not being adopted, and adoption of the just cause requirement is found appropriate in part as a quid pro quo for changes in the prevailing rights language of the contract, the revision necessary to add a just cause requirement should be made to Article XX (Prevailing

Rights) not to Article VII. The Chair, therefore, finds no change should be made to Article VII.

C. Article VIII - Vacancies and Promotions

Article VIII in the expired contract consists of just the following sentence: "When a permanent vacancy occurs in the bargaining unit, it shall be filled in accordance with the rules and regulations set forth by the Bellevue Civil Service Commission." Exhibit 6.

Proposals: The Union proposes to amend the foregoing sentence to indicate that the rules applicable are those in effect as of the effective date of the new contract. It proposes a new paragraph setting forth a Modified "Rule of One" that would require the City to promote the highest scoring candidate except where the City can demonstrate that the second or third highest candidate is best qualified.

The City proposes replacement of the current language with a Section 1 stating that "personnel actions" (including vacancies, promotions and disciplinary matters) shall continue to be governed by the Bellevue Civil Service Commission rules. It proposes the addition of a Section 2 stating:

> Nothing contained in this Agreement shall supercede any matter delegated to the Bellevue Civil Service Commission by State Law or by Ordinance, Resolution or laws of or pertaining to the City of Bellevue and such Commission shall continue to have authority over the subjects within the scope of its jurisdictions and authority.

(1) Incorporation of Civil Service Commission Rules

Union Position: The incorporation of these rules is necessary to require the City to bargain with the Union over changes to its hiring and promotional practices. The manner of filling vacancies and making promotions to bargaining unit positions is a mandatory subject of bargaining yet during the pendency of these proceedings the Civil Service Rules governing such matters have been unilaterally changed over objection of the Union thus resulting in an unfair labor practice complaint that is still pending.

Adoption of the Union's proposal would fix the procedures during the term of the parties' agreement and any proposed changes may be addressed in negotiations this summer. It would also allow the Union to utilize the grievance procedure to police compliance with the Civil Service Rules. The Union lacks confidence in the Civil Service Commission to do this, especially since the Commission does not recognize the Union in its proceedings as representative of the bargaining unit.

City Position: The Union's proposal would interfere with the legitimate role of the Civil Service Commission; depriving it of jurisdiction and effectively freezing such rules during the term of the contract. While there is nothing to preclude the City from negotiating personnel rules with the Union, such process merely duplicates the efforts of the Commission and can lead to confusion and uncertainty.

This state has a long and special tradition of Civil Service for police and fire employees. While perhaps due for some amendment, this tradition has for the most part worked well; serving the interests of citizens, employees and employers. The City, therefore, objects to piecemeal elimination and erosion of Civil Service through a bargain-for-what-looks-good-at-the-time approach. If major changes are to be made, the City believes this should be done at the legislative level where the interests of citizens, employers and employees can be taken into account.

There is no merit to the Union's unfair labor practice charge. Although the Commission was created to substantially accomplish the purposes of RCW Chapter 41.08, it performs the same functions and has the same purpose and intent as boards created by RCW Chapter 41.06. No statute requires bargaining by any Civil Service Commission created under and for the purposes of RCW 41.08 with any organized group of employees. Further, the Union had ample opportunity to propose or resist any rules changes which were contemplated by the Commission. The record, therefore, provides no reason to abandon the Civil Service Commission format at this time. The change sought is neither practical nor necessary and should be rejected.

Discussion: The parties disagree as to whether a duty to bargain over this issue even exists. In the City's view, matters delegated to the Civil Service Commission are exempt from collective bargaining under a proviso in RCW 41.56.100. To date, however, PERC rulings hold to the contrary. IAFF, Local 1604 v.

City of Bellevue, PERC Decision No. 839 (PECB, 1980); IAFF, Local 1604 v. City of Bellevue, PERC Decision No. 2788 (Preliminary Ruling, 1987). In the Chair's view, this issue should be left for PERC and the courts to decide. It need not be resolved by the Chair because, even assuming a bargaining obligation exists, the record is not convincing that unilateral changes in applicable Civil Service rules regarding vacancies and promotions should be precluded during the term of the contract.

As the moving party on this issue, the Union bears the burden of persuasion. In part because of changes being made elsewhere in the contract, the Chair finds this burden has not been met. (See the discussion regarding Articles VII, XX, and XXIV.) As the City has noted, there is a long tradition of Civil Service jurisdiction over certain police and fire personnel actions. That tradition is reflected in the fact that most all the comparables do not have contract language that would preclude changes in Civil Service Rules applicable to vacancies/promotions — the subject matter of this article. Exhibits 197, 198. What the Union is seeking, therefore, would appear to be a dramatic departure from what has been customary both in the City of Bellevue and in other jurisdictions. The Chair, therefore, is reluctant to adopt such a change without more compelling reasons to do so.

The record is not persuasive that the Union lacks an adequate opportunity to provide input into any proposed changes to the Civil Service Commission rules and regulations. While the Commission may not recognize the Union for the purpose of any bargaining obligation, the record indicates that the Union nevertheless gets

notice of proposed changes in the Civil Service rules and has an opportunity to provide input. (Tr. 516)

The Union correctly notes that an opportunity to provide input is not equivalent to a requirement of collective bargaining prior to any implementation of changes. For the reasons discussed in connection with Article XX (Prevailing Rights), however, the Chair does not find the record persuasive that this is an area in which the City's latitude to make changes should be cicumscribed. If the Civil Service Commission makes changes which the Union feels are inequitable or unjustified, specific proposals to reverse or modify those changes can be presented when the contract is renegotiated. There are not compelling reasons in the record, however, to preclude the making of any changes simply because they hadn't been previously bargained. The Union's proposed amendment to Article VIII is, therefore, not adopted.

Since Article VIII is entitled "Vacancies and Promotions," the Chair finds the record persuasive that the present language should be amended to read: "Vacancies and promotions shall be governed by the rules and regulations adopted by the Bellevue Civil Service Commission." The City's proposed Section 1, however, would include a reference to disciplinary actions. For the reasons discussed in connection with Article XXIV, that reference is not adopted. Nor is the City's proposed Section 2.

The City's proposal would have the effect of giving priority to Civil Service rules and regulations, even as to matters specifically dealt with in the collective bargaining agreement. This reverses the existing rule that where there is a conflict, the

collective bargaining agreement should prevail. Rose v. Erickson, 106 Wn. 2d 420, 424 (1986). The proposal would also appear to be grounded in the view that matters delegated to the Civil Service Commission are exempt from collective bargaining under the proviso of RCW 41.56.100. As noted earlier in this decision, supra p. 35, PERC precedent holds to the contrary. The City's proposed Section 2 is, therefore, not adopted.

(2) Rule of Three vs. Modified Rule of One

Union Position: Although the Chief has usually selected the top scoring candidate for promotion, there have been exceptions. When a lower scoring candidate has been selected, the Chief has not articulated his reasons for so doing and morale has suffered. Articulation of the reasons is necessary so the employee can work to improve his or her future prospects for promotion.

The Union proposal does not eliminate the "Rule of Three," it merely requires that the superior qualifications of a preferred lower candidate be demonstrated. In light of the applicable one year probationary period, any restriction on arbitrary choice still leaves management an adequate opportunity to evaluate the performance of the top scoring candidate.

City Position: The Union proposal is neither practical nor necessary. It would essentially "gut" the Rule of Three by placing the burden of proof on the City to demonstrate that a lower scoring candidate is best qualified. The City believes this an unreasonable burden.

In Chief Sterling's entire tenure as Chief since 1975, he has chosen not to select the top person on the list on one occasion.

There is no historical justification, therefore, for imposing the rule sought, especially since the Rule of Three is the norm rather than the exception in comparable public fire departments. The City's West Coast and Washington comparables indicate a 7-3 and 8-2 majority, respectively, against use of the Rule of One. The Union, therefore, has failed to demonstrate compelling reasons why the status quo should be changed.

Discussion: The "Rule of Three" currently adopted in Bellevue's Civil Service Rules allows the Fire Chief to select any of the three top scoring candidates on the allocation eligibility list for promotion (or top twenty-five percent if that is larger). This allows the Chief to interject his professional judgment into the selection and promotion of employees and to make appointments necessary to meet department EEO commitments. The City is understandably reluctant to lose this discretion and the record indicates the vast majority of the comparable jurisdictions follow the Rule of Three. Only KCFD #39 and Spokane #1 do not. (City Exhibits 255-257.)

The record does not indicate that to date the Chief has exercised the authority he has retained in an arbitrary or capricious manner. The concern that it is bad for morale for members of the bargaining unit to be passed over without knowing why is certainly a legitimate one. That can be rectified by inclusion of a requirement that in such cases the Department will provide the highest scoring candidates with an explanation. The Chair agrees with the City, however, that a compelling reason to depart from the Rule of Three has not been demonstrated.

D. Article X - Educational Incentive/Longevity Pay

Union Position: The Union proposes the addition of longevity pay to the contract as a way of acknowledging the value of experienced employees. Such pay will help compensate as well for the limited or upward mobility in the fire service. For this reason, longevity pay is well established in comparable Puget Sound cities.

The average net impact of the Union's proposal would be 2.82%; only slightly greater than the average impact (2.53%) for the Union's comparable employers and less than the average (3.09%) for Everett and Tacoma.

City Position: The City objects to the addition of longevity pay on the grounds that educational incentive pay was previously negotiated in lieu of that. When the City conceded its Education Incentive Program years ago, it tied that concession to the forsaking of longevity. Education Incentive has been available to firefighters at a low of 2% to a high of 3 1/2% per year from their first day of employment. Once officer rank is obtained, the benefits increase to 5%. While it is true these benefits don't accrue automatically, an employee has to obtain the necessary education, that was part of the trade-off. In return for that effort by the employee, a benefit is received that excludes in present value the longevity premium the Union seeks.

The trade-off in prior negotiations was recognized in the 1980 interest arbitration award of Arbitrator John Champagne when

he denied the Union's requested addition of longevity. Arbitrator Block likewise found it inappropriate to add longevity to the wage/benefit package. The City does not believe further payments for longevity are beneficial, warranted or reasonable. With regard to comparables, the City notes that the majority of in-state comparables have either longevity or education pay but not both.

Discussion: The record does indicate that longevity pay is customarily included in the contracts of other departments. Among the selected comparables, for example, eight (8) out of eleven (11) provide longevity pay. Only one of those offers both longevity and education pay, however. Prevailing practice is not to pay both.

Members of the bargaining unit already enjoy increased monetary benefits that automatically accrue with additional years of employment. Longer tenure results in greater vacation accrual and increased MEBT for example. In comparison to most other comparables, Bellevue firefighters have more promotional ranks they can move into as they acquire increased seniority; more specialist assignments; and experienced firefighters benefit more regularly from the work out of class premium. (Tr. 379, 706) Thus, recognition and rewards for greater experience are already contained in the contract. In light of this, the City's argument is persuasive that it bargained educational incentive pay into the contract in lieu of longevity pay, and there is no compelling reason now to add the latter. Adoption of the Union's proposal would eliminate

the consideration received by the City when it agreed to add the educational incentive pay. The Chair, therefore, finds no change should be made to Article X.

E. Article XI - Overtime

Proposals: Both sides propose a number of changes in the current Article XI regarding overtime. The Union's proposals seek: (1) to require overtime for training requested by the Department outside regularly scheduled hours of duty; (2) to provide for compensatory time off; and (3) to change the current practice of assigning overtime and incorporate that practice into the contract. The City proposes: (1) to change the current procedure for assigning overtime and (2) to exempt the positions of Medical Services Coordinator and Training Coordinator from overtime.

(1) Training Outside Regularly Scheduled Hours of Duty

Union Position: The Union proposes to add the following new provisions to Article XI:

> C. Any employee requested, required or assigned by the employer or his representative to attend schools, conferences, seminars, meetings or training sessions of any kind outside of his regularly scheduled hours of duty shall be paid at the overtime rate of pay for the actual time spent. When the employer requires an employee to attend fire service schools, emergency medical training, or engage in other travel, per diem and lodging shall be the responsibility of the employer. When possible, payment of authorized expenses shall be made in advance.
>
> D. Employees who attend E.M.T. training or testing while off shift shall be paid at the overtime rate of pay. All employees in paramedic training

programs shall be paid at the overtime rate of pay for any time over the regularly scheduled average weekly hours of duty.

Exhibit 7. The Union proposal is directed primarily at the hardship caused by the City's failure to pay overtime to firefighters in paramedic training. It would also apply to any other training required by the Department outside regular scheduled shifts but not to home study.

Paramedic trainees undergo twelve months of training in Seattle, first in the classroom, then responding to calls within Seattle paramedics. The work they perform should be recognized as work and compensated at overtime rates. Both comparable Puget Sound cities with paramedic programs provide extra compensation to trainees. Tacoma trainees receive their regular salary for fewer than forty (40) hours work at a community college. Everett firefighters get their regular wage plus $350 per month. Bellevue firefighters should also receive additional compensation.

City Position: During the one year period that Bellevue firefighters are enrolled in the Harborview Hospital training program, the City receives no services, yet the firefighters receive their full regular salary with all benefits. In addition, the City pays all costs of training, including a fee of approximately $8,000 per candidate. Upon completion of the training, the paramedic is guaranteed a position at premium pay. The City receives no services and frequently incurs overtime due to the reduction in manpower available to meet minimum staffing. Because the City does not control the number of hours during which

trainees work or study, the granting of this proposal would expose the City to potentially excessive and uncontrollable costs.

While the City undeniably benefits, the benefit runs both ways. Firefighters have an opportunity to expand their career opportunities and increase their monthly compensations. Admission into the program is highly competitive and the opportunity to become a paramedic is one reason why many firefighters seek employment within the City. None of the comparables suggested by either side pay overtime for paramedic trainees. In fact, some departments have decided to hire trained paramedics from other jurisdictions rather than incurring a year's lost productivity and the expenses of training paramedics in-house. The Union proposal, therefore, is unjustified and should be rejected.

Discussion: The training of Bellevue paramedics is already an expensive proposition. It is also a significant benefit for which it is not unreasonable to expect some sacrifice which ultimately is rewarded in the increased compensation that paramedics receive. While the testimony is persuasive that participation in the program is both challenging and exhausting, it is not persuasive that the Union's overtime proposal is justified. Rather the record suggests that such a requirement might well price the program out of the Department and make the hiring of trained paramedics from outside more attractive. This would be to the bargaining unit's ultimate detriment.

The increased earnings opportunity as a paramedic is a benefit that distinguishes the Bellevue Department from many other

comparables where that opportunity either does not exist or where there are far fewer positions available. None of the selected comparables pay overtime for the training (Exhibits 219-220). At best, a few pay a monthly stipend, which is probably a better approach because it represents a fixed cost that a granting employer can budget for. In comparison, the Union's approach in seeking overtime would subject the City to costs outside its control. The record, therefore, is clearly not persuasive that the Union proposal should be adopted.

The prior contract already provides that employees who attend school or conferences off shift at the Chief's request will be paid at a straight time rate for time spent in the classroom. The Union proposal would require overtime. The City has indicated its primary concern with this is the conciseness of the Union's language. As written, it could require overtime when by virtue of attendance at a school or conference the employee works a 40 hour week when he or she would otherwise have been scheduled for more hours than that. Even though the employee worked considerably less that week, overtime liability would attach because some of the hours fell outside of hours the employee would normally have worked. (Tr. 992)

The City is also concerned that the proposed language could be read to require overtime where bargaining unit members are attending classes for certification or to meet educational requirements for advancement. The Chair finds the City's concerns persuasive that enough uncertainty exists as to the effect of the Union proposal in this regard that it should not be adopted. The

issue should be left to the parties for further discussion to see if they can agree upon language that would alleviate the City's concerns.

The record is fairly limited regarding the effect of the Union's propoed language that when the City requires an employee to engage in travel, "per diem and lodging shall be the responsibility of the employer." The City currently pays per diem to employees who travel on City business and usually prepays. It has indicated it intends to continue this practice. It is not clear, therefore, whether the Union's proposed language is designed to just incorporate present practice or effect a substantive change in that practice. The Chair is not persuaded, therefore, that the Union's proposed language should be incorporated into the contract, especially since the issue of travel expenses would seem more appropriately dealt with in some other Article.

(2) Compensatory Time

Union Position: The Union proposes to add the following provision that would allow firefighters the option of taking compensatory time off in lieu of overtime:

> E. Compensatory time shall be defined as time off at the rate of one-and-one-half (1-1/2) times the number of overtime hours worked. Compensatory time shall be used within twelve (12) months of the period during which it is earned. Compensatory time in lieu of payment for overtime shall be at the request of the employee. Employee requests for the scheduling of compensatory leave shall not be unreasonably denied.

Exhibit 7. The intent of this proposal is to provide an additional opportunity for firefighters to schedule time off to deal with the burdens of stress.

The Department's 40 hour employees and other City employees, including police officers, are permitted this option of compensatory time. The widespread acceptance of compensatory time is reflected in FLSA amendments that allows its use (29 U.S.C. §207(e)(1)) as well as in the practices of comparable jurisdictions. Five of the Union's eight Puget Sound cities provide this option as do King County Fire District Nos. 4 and 39 and Pierce County Fire District No. 2. The Union proposal would provide a significant benefit to employees with no significant expense to the City and should, therefore, be adopted.

City Position: Historically, compensatory time has been allowed for non-shift fire department personnel because it was not as disruptive to Department operations and is subject to management discretion. Due to the nature of the fire service and the 24 hour shift schedule, the City objects to the Union proposal as potentially a significant expense because it removes discretion from the City. Allowance of compensatory time off solely at the firefighters' discretion creates the need for additional manpower to fill in, often at overtime rates. This can lead to an expensive cycle of overtime work generating additional overtime needs.

There is no limit in the Union proposal to the amount of comp time that can be demanded and the requirement that the scheduling of compensatory leave not be unreasonably denied has the potential of generating numerous grievance since Union witnesses indicated that practically any denial would be deemed unreasonable. It is significant, therefore, that West Coast and Washington comparables

by a 9-1 majority retain employer discretion to allow compensatory time. The record, therefore, does not support a change in the status quo and the Union proposal should be rejected.

Discussion: The bargaining unit has a meritorious claim for sufficient time off to deal with the stress of an emotionally and physically exhausting job. Employee preference as to when the time off is received, however, should properly rank second to the City's legitimate operational needs. The Union's proposal does not reflect this. It gives primacy to employee preferences as to when they take time off without regard for the costs generated by the timing of that leave. The City, understandably, resists such an approach, as do the vast majority of the selected comparables that provide the option of compensatory leave. While five of the eleven comparables provide the option of comp leave (Clark, KCFD No. 4, KCFD No. 39, Pierce #2 and Redmond),[4] all but KCFD No. 4 retain discretion as to whether the time off is allowed. (City Ex. 222-223).

If the City is allowed to retain the discretion to deny requests for comp time, then there exists no persuasive reason in the record why the possibility of taking leave in lieu of pay should be denied. Instead, providing the option would appear to be in both sides' interests. The Chair finds the record persuasive, therefore, that Article XI should be amended to allow for the option of comp leave in lieu of monetary overtime compensation as follows:

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[4]The Union contends Kent allows compensatory leave but examination of the contract reveals such leave is limited to day shift personnel. Ex. 197, Article 7.3.

Compensatory Time Off: Subject to prior approval of the Department, employees entitled to overtime pay may elect to receive compensatory leave at the rate of time and one-half in lieu of monetary payment at the same rate.

(3) Assignment of Overtime

Proposals: The Union proposes to incorporate into the contract the current practice of assigning overtime with one amendment which reads:

> If no suitable employee can be secured for an overtime detail after the appropriate list(s) have been called through completely one time, the employer may mandatorily assign the overtime detail to one of the first three employees contacted by calling through the list in order a second time after giving consideration to the needs of the employees so contacted.

Exhibit 7. The City proposes to incorporate only the following language regarding the assignment of overtime. (Exhibit 8)

> A chief officer may ask for volunteers for overtime or may require overtime after receiving five refusals to accept an overtime assignment or after contacting five telephone answering machines, or any combination thereof.

Union Position: The Union proposed revision is a concession in response to the City's complaint that the current practice is too time-consuming. The City's proposal would allow for potential favoritism in the overtime assignment process. No comparable jurisdiction has such a provision. The current procedure is fair and has worked well in the past. It should be incorporated into the contract as modified by the Union.

City Position: The City feels the contract needs to prescribe some reasonable parameters regarding the extent to which

fire department administrators must adhere to a rotating list to fill in for unscheduled absences of bargaining unit members. The Union's proposal is not acceptable because it still involves too time-consuming a process. Furthermore, the language re "giving consideration to needs of ... employees" invites grievances and second guessing. The City's proposal should be found preferable, therefore, as a more practical way of addressing the issue.

Discussion: An overtime shift for the basic firefighter rank is worth $420. (Tr. 1031) The bargaining unit, therefore, has a strong interest in trying to ensure that overtime opportunities are fairly distributed among members of the unit. While the City shares that interest, it has developed a concern about the amount of time the present procedure sometimes requires before someone can be found to accept an overtime assignment.

The present procedure is described in Section 12.04 of the Department Operating Procedures. When there is an overtime assignment to fill, Batallion Chiefs proceed to call members of a platoon eligible to work the overtime in order of their rank on an overtime roster. A firefighter's rank changes to the bottom of the list if he/she either works or refuses an overtime opportunity of at least four (4) hours. No change in rank occurs for what is called a "no contact" (i.e. no answer or an answering machine responds), or when the firefighter can't work because of a disability, vacation or shift trade. (Ex. 102, Tr. 1021-1026.) In order to avoid unilateral changes in this procedure, the Union wants the current Department procedures referenced in the contract. The Chair agrees that is appropriate.

One problem presented by the current procedure is that a Batallion Chief has to proceed through the roster until someone with the requisite skills can be found to work the shift. According to Deputy Chief Hamilton, this is not a particular problem if a platoon then working is eligible for the overtime assignment being filled. (Tr. 1032) That is because those individuals can be readily reached at the station where they are working. The practical problem for the City is when it has to reach members of a platoon off duty. In an example entered into the record, a Batallion Chief had to call 22 firefighters before someone finally agreed to work. (Ex. 228)

The Chair appreciates the City's desire for a more expeditious process, but the City's proposal represents a dramatic departure from a process that the record indicates generally works well. It appears to be an overreaction to a problem that arises infrequently. The Union's concern that there is greater latitude for favoritism is certainly justified, so on balance, the Chair is not persuaded the modification the City seeks should be adopted.

The question then arises whether the Union's proposal represents an improvement. While the City would clearly have preferred its proposal which would involve much less time, the Union proposal gives department administrators an option. They need not use it but it does allow for the mandatory assignment of overtime after the roster has been called through at least once. The quid pro quo for this is a requirement that the Department contact at least three individuals and weigh their reasons for not wanting to accept the overtime before deciding which of those three to

select. So long as the Department contacts the number of individuals required, and gives them an opportunity to voice their objections, the Chair finds the risk of grievances over this language to be slight. If that becomes a problem, it can be addressed in the future. The Chair is persuaded, therefore, that the Union's proposal is worth a try as a more reasonable way to address the problem presented. Union's proposed Section F (which will now become paragraph E) is, therefore, adopted.

(4) EMC and Training Director Exemption

City Position: The City proposes to add language to Article XI exempting the medical coordinator (EMC) and training director from overtime provision except when they are performing 24 hour shifts. The City's language would read:

> The Emergency Medical Coordinator and the Training Director are specifically exempt from the overtime provisions of this article except when performing twenty-four (24) hour shifts.

Exhibit 8. This language represents present practice. Neither position receives overtime at the present time because individuals in both work irregular and flexible hours. They are members of the administration staff; participating in all staff meetings and conferences. Both positions are exempt under the FLSA and would be exempt under the City's own pay plan if they were not members of the bargaining unit. Present practice, therefore, should be expressly recognized in the contract.

Union Position: The Union argues that the City has not justified its proposed exemption. It exceeds current practice and

none of the comparable departments have provisions in their contracts exempting any bargaining unit personnel from overtime requirements. The City's proposal, therefore, should be rejected.

Discussion: The City's proposal was designed to ensure that the work days of the EMC and Training Director could be varied without overtime liability provided they did not work more total hours in a week than their regularly scheduled forty (40) hours. The proposal is worded so broadly, however, that it could conceivably allow the City to schedule either position for well in excess of forty (40) hours without any right to overtime. The Union's argument is convincing that this would represent a change in current practice not continuation of it.

The City has not established compelling reasons why existing practice should be changed; it has only offered persuasive evidence that the flexible work hours of these two positions should be recognized in the contract. The Chair, therefore, adopts the following language to reflect existing practice:

> The work days and hours of the Emergency Medical Coordinator and Training Director may be varied without overtime liability provided the total hours worked in a week do not exceed forty (40).

F. Article XII - Hours of Duty

(1) Average Weekly Hours

Union Position: The Union proposes to reduce the average weekly hours of duty for 24-hour shift personnel from 50.48 to 49.56 by increasing the annual number of "Kelly" shifts off from

12 to 14. The Union feels such a reduction is necessary to start bringing Bellevue into parity with comparable Puget Sound Departments, which generally work fewer hours. The Union notes that differences in scheduled workweeks have a significant impact on the firefighters' effective hourly rates of pay. The existing disparity compared to firefighters' Puget Sound peers detrimentally affects bargaining unit morale and should be corrected.

City Position: The City proposes no change in the average weekly hours of duty. It feels firefighters already have enough time off when vacations and holidays are added to the "Kelly" days firefighters already receive. 50.48 weekly hours is very close to the average among the City's Washington only sample and that's including Everett's unusual 42-hour week which really should not be factored in because it resulted not from the collective bargaining process but rather from an initiative approved by the Everett electorate.

The Union proposal is a costly item; one the City estimates would cost at least $84,488 per year (using 1987 figures). In the City's view, the Union has not met its burden of proof that a reduction in hours at this cost is justified.

Discussion: The Chair agrees with the City's contention that Everett data on this issue should be ignored because it does not offer an "apples to apples" comparison. For one thing, the unusually low number of hours per week was not obtained at the bargaining table, it was obtained through a voter initiative.

Secondly, Everett is the only Department whose fire suppression personnel, which would be the majority of the bargaining unit, do not work 24-hour shifts. All other comparables have firefighters working 24-hour shifts. (Ex. 197, Everett collective bargaining agreement, Artice 24.) Thus, while Everett firefighters work fewer hours per shift, they are required to report for more shifts per year. The record supports the conclusion that Bellevue firefighters would regard more frequent shifts, even if shorter, as a significantly worse work schedule. It is appropriate, therefore, to disregard Everett for the purposes of comparing average hours per week and net annual hours worked.

The record indicates the City's workweek is close to the median among the selected comparables; ranking fifth lowest in average weekly hours.

Hours of Work
Selected Comparables

Department	Average Hours Per Week
Pierce	53.26[5]
Kent	53.24
Spokane	53.06
Clark	52.00
Redmond	50.94
Kirkland	50.60
Bellevue	**50.48**
KCFD #4	50.00
Snohomish	48.00
KC #39	48.00
Tacoma	46.60
Average	50.56

[5]For 1988, Pierce County's hours are dropping to 51.84/week. Even then, they remain higher than Bellevue's.

Exhibits 172-74, 197. Only three comparables have significantly lower workweeks (Snohomish, King County #39, Tacoma). Three have pretty close to the same workweek (Redmond, Kirkland and KCFD #4) and four have longer workweeks (Pierce, Kent, Spokane and Clark). Bellevue's average hours per week is slightly below average for the comparables. Consequently, the Chair does not find the record persuasive that a further reduction in the scheduled workweek is justified.

In so ruling, the Chair has considered the total amount of time off that Bellevue firefighters receive in whatever form, i.e. vacation, holiday leave, scheduled workweek. For the reasons discussed later in this Opinion the Chair finds any reduction in hours should be made through increased vacation leave, not through additional Kelly days.

The City's proposed first paragraph to Article XII clarifies existing practice, i.e. the fact that the average set forth is an annualized figure applicable to fire suppression and emergency medical services. The Chair finds this clarification appropriate and, therefore, adopts the City's first paragraph.

(2) Normal Work Week

Proposals: The Union proposes to add a new section to Article XII of the contract to provide as follows:

> The normal workweek for day shift members shall not exceed forty (40) hours. As mutually agreed, the member may work five (5) eight (8) hour days or four (4) ten (10) hour days. Any hours worked by these employees in excess of forty (40) hours per week is overtime work. Day shift members are those members assigned to the following position: Staff Service Coordinator, Medical Service Officer, Assistant Training Coordinator, Emergency Medical Coordinator, and Training Coordinator.

The City proposes to modify Article XII by adding the following:

> The regularly scheduled average weekly hours of duty for employees assigned to fire administration, fire prevention, staff services or to trainings shall not exceed 40 hours. These hours will be scheduled by management personnel.
>
> Temporary or permanent assignments of employees in the bargaining unit to any of the above divisions or sections shall be made as deemed necessary by management.

Union Position: The Union proposal is intended to make clear that the schedule for day shift personnel is five eight (8) hour days unless an affected employee agrees to work four ten (10) hour days. It also delineates those positions assigned to day shifts. The list reflects current practice and, therefore, is not intended to preclude voluntary temporary assignments of 24 hour personnel to a forty (40) hour schedule for special assignments.

The proposal is intended to preclude unilateral reassignment of day shift personnel to a 24 hour shift to avoid the payment of overtime. Such a reassignment is the subject of an unfair labor practice charge and demonstrates the need for clear contract language.

The City's proposal could be read to justify wholesale unilateral changes in scheduled hours that should be a subject of bargaining by the parties. It would serve as a catalyst for division and should be rejected. Instead, the parties' current practice should be incorporated and the Union's proposal adopted.

City Position: The contract should not include new language that would tie the hands of management regarding which personnel and when day personnel will work. Department administration has historically assigned personnel to various day shift positions and determined whether the schedule for those positions would be four ten (10) hour days or five eight (8) hour days. The City proposes to retain such flexibility as do other comparable fire departments.

Discussion: The first issue that must be resolved is the existing practice regarding the scheduled workweek for day shift personnel. Both parties agree there are two basic shifts worked: five eight (8) hour days or four ten (10) hour days. They disagree as to whether an employee can be assigned to a ten (10) hour shift without agreement. According to the Union's "estimation of current practices," the ten (10) hour shift schedule requires mutual agreement. (Tr. 475) City negotiator Cabot Dow disagreed, contending that historically the City has retained the right to assign either ten (10) hour days or eight (8) hour days. (Tr. 758)

Mr. Dow's testimony was corroborated by the testimony of Deputy Chief Robert Pedee. Chief Pedee testified that as long as he has been in the Department, administration has always retained the right to assign either five eight (8) hour days or four ten (10) hour days. They have tried to accommodate employee preference where possible but employees have not been given the right to refuse a ten (10) hour schedule. (Tr. 899) Chief Pedee's

testimony was especially persuasive as to existing practice because he previously served as a negotiator for the bargaining unit. The Chair finds, therefore, that the Union proposal reflects a change in practice not incorporation of it.

Chief Pedee's testimony was persuasive as to existing practice in at least two other respects. He stated that as long as he has been in the Department, management has assigned people from one division to another even if that meant changing someone from a 24 hour shift to a day shift. Pedee acknowledged the Department would first try to get volunteers but if acceptable ones could not be found, it retained the right to make an involuntary reassignment. (Tr. 938) The Department might, for example, move someone onto a forty (40) hour schedule to help reduce an inspection backlog. (Tr. 935-36) The Department has also had a long practice of varying the workdays of day shift personnel as needed to meet Department needs. (Tr. 899)

In the face of this testimony, it becomes evident that the Union's proposal would significantly reduce scheduling and assignment discretion that Department managers have traditionally retained. If the record indicated that management has abused this discretion in the past, there might be more compelling reasons to adopt some limitations. The Chair's impression from the record as a whole, however, is that Department managers have reasonably sought to accommodate employee preferences while retaining the right to make involuntary assignments when department needs could not otherwise be satisfied.

For the foregoing reasons, the Chair finds the Union's proposed new section is unduly limiting of management rights previously and reasonably retained. The City's proposal more closely reflects existing practice and compelling reasons for changing that practice have not been established absent evidence of abuse. The Chair, therefore, adopts the City's proposed first additional paragraph. In order to bring it into conformity with the testimony as to existing practice, the second additional paragraph is modified to read:

> Temporary or permanent involuntary assignments of employees in the bargaining unit to any of the above divisions or sections may be made to meet department needs when acceptable volunteers cannot be found.

G. Article XIII - Shift Exchanges

The current Article XIII on "Off Shift Response" is being deleted by mutual agreement. In its place, the Union proposes article language on "Shift Trades" as follows:

> Employees shall have the right to exchange shifts subject to the prior approval of the Chief or his designee. Such approval shall not be unreasonably denied.[6]

The City proposes much more detailed language which it asserts memorializes the department shift exchange policy while also closing an existing loophole. The City's proposed language as revised during the hearing reads:

> Employees assigned to Fire Suppression duties are granted the privilege to trade scheduled duty periods subject to the following conditions:

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[6]This proposal is stated as amended in the Union's Post-hearing Brief.

1. Requests for shift exchanges shall not result in any additional cost to the department, shall not interfere with Fire Department operations, and shall be made at least two (2) duty shifts in advance with the following exception for unforeseeable circumstances:

a. Personal emergencies;

b. Battalion Chief's discretion will be exercised for other unforeseeable situations.

2. Chief Officers shall be responsible for approving or denying each request after considering the needs of the department, the employee, applicable contract provisions, and the employee's attendance record.

3. Except for personal emergency or to attend school related to fulfilling Civil Service requirements for promotional exams and other job related educational endeavors, no employee shall return more than four (4) or receive more than four (4) — for a total of eight (8) — shift exchanges in a calendar year. An employee may also work an additional 4 times for another in a calendar year if payback is made in the following calendar year. A "Personal Emergency" is an unanticipated, inflexible, personal or business event. These include, non-exclusively, family illness or death, important financial appointments and arrangements, counseling for self or family members, and religious events and ceremonies. With regard to personal emergencies, there shall be no grievance from the decision of the Battalion Chief as to the applicability of the shift exchange privilege to a specific request except for alleged violations of Item #4 (below). Appeals may be directed through the chain of command.

4. This policy shall be applied uniformly to all eligible employees. Reasons for any denials of shift exchanges shall be made in writing and a copy returned to the requesting employee. Employees requesting and agreeing to exchanges must possess equal qualifications and rank, or the ability to act in the higher rank.

5. The employer has no obligation to ensure or facilitate any repayment of time due an employee under this article.

6. Overtime provisions shall not apply to these voluntary, employee initiated shift exchanges.

7. In the event the substituting employee fails to appear, the requesting employee, if at work, has a continuing obligation to perform their duty. Therefore,

> the requesting employee shall remain on shift until properly relieved. In the event the requesting employee is not already on shift and the substitute fails to appear, an overtime replacement will be called, irrespective of manpower requirements. The substitute employee shall be liable for the cost of the overtime employee with such cost to be payable to the City via a payroll deduction initiated by the City. Furthermore, the substituting employee shall be subject to all normal departmental disciplinary procedures, where applicable, for failure to appear.[7]

Union Position: Firefighters have a compelling need for greater flexibility in scheduling time off in order to cope with the stress that is a recognized part of their job and the disruption caused by the nature of their shift schedule. Their workdays vary from week to week, thus without some flexibility in scheduling they cannot take classes that meet on the same days or evenings or reliably attend other functions.

Current departmental operating procedures limit shift trades initiated by an employee to four per year, but this limit can and has effectively been circumvented through the use of "payback" shift exchanges on which there are no limits. The City's attempt to close that loophole is unduly restrictive and serves no legitimate business need, especially since the City would treat the trade of any portion of a full shift as use of one of the four discretionary trades.

The Union's proposal permits the City to deny shift trade requests for legitimate business reasons, such as disruption of training, or defamiliarization with required routines. In light

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[7]This proposal is shown as amended by the City at the hearing (Tr. 1172-73).

of this, the City's insistence on a limit of four trades per year is simply insistence on control for control's sake and runs counter to the widespread practice of shift trades in the fire service. Only Tacoma purports to limit trades, and the limit imposed amounts to four shifts in a 30-day period, or approximately fifty (50) per year. The widespread practice of shift trades in the fire industry is evidenced by the 1985 FLSA amendments that exempt such trades from impacting the maximum hours limitations. Given this widespread practice, the Union's proposal should be adopted.

City Position: Apart from closing the existing loophole regarding payback shifts, the City's proposal is consistent with past practice and easier to administer than the Union proposal. Unlike the Union proposal, the City proposal addresses the potential problem of trade mismatches (i.e. exchanges between employees of dissimilar skills or rank) and memorializes an understanding that overtime will not result from employee initiated exchanges.

The Union's general proposal incorporates a subjective standard ("shall not be unreasonably denied") which may generate disputes. Its proposed unlimited number of trades could potentially interfere with training schedules, knowledge of an area or crew continuity. The City's proposal already allows an unlimited number of emergency and educational shift exchanges. The limit of four is only applicable to discretionary exchanges that don't fall within the exempted category. Past practice indicates four discretionary shift trades when coupled with the unlimited number of

emergency and educational shift trades has satisfied the needs of all but a small number of employees.

No other City employees have an unlimited right to exchange shifts. West Coast and Washington comparables that reference shift trades in their contracts unanimously place constraints on such trades (Ex. 265, 266). The City, therefore, feels it has been quite flexible on this issue and believes further flexibility would adversely affect its ability to effectively administer the Department. The City's proposal best balances the parties' respective needs and should be adopted.

Discussion: Although both sides seek to change prior practice regarding shift trades in some respect, the record as a whole indicates that practice has been working well. While there is an acknowledged loophole in existing department procedures, i.e. no limitation on the number of payback shift trades, the record is not persuasive that this loophole has been abused by members of the bargaining unit. It would appear unduly punitive, therefore, to impose a more rigid limitation when there has been no demonstrable adverse impact on department operations from the present practice.

Only one of the comparable jurisdictions contains a numerical limitation on shift trades in its collective bargaining agreement, and that jurisdiction (Tacoma) has a limit far greater than what the City is seeking herein. Ex. 297. The Chair finds, therefore, no compelling reason for imposing increased limitations on the ability of the bargaining unit to utilize shift trades.

There is also no compelling reason to change existing practice. The present policy, given the lack of restriction on paybacks, provides more than enough flexibility to members of the bargaining unit, especially when one considers what types of trades are unaffected by the existing limitation. It does not apply to trades requested because of unanticipated, inflexible personal or business events. Nor would the limit apply to job related educational endeavors. (City proposal, paragraph 3.b.) Thus, a firefighter's ability to attend classes prerequisite for promotion or educational incentive pay would be unaffected. According to Exhibit 261, it is rare for a bargaining unit member to even utilize the maximum number of four discretionary initiated exchanges per year.

The Chair is not convinced that the present limitation on initiated trades serves no legitimate purpose. For one thing, because of the additional effort required to circumvent the limit by arranging paybacks, it probably serves to reduce the readiness with which bargaining unit members resort to shift trades. Any shift trade request takes administrative time to review and either approve or deny. The City has an understandable concern, therefore, that such requests not be resorted to as a matter of routine. The maintenance of some limitation, hopefully, gives emphasis to the fact that shift requests are a privilege not to be abused.

The record indicates that the City's proposal reflects present practice, except for the section that would limit the number of payback shift trades and two sentences in paragraph 7

regarding substitute overtime liability. That sentence appears unduly harsh and does not reflect current practice. The Chair finds the record persuasive, therefore, that the City's proposal should be adopted as the text of a new Article XIII entitled "Shift Exchanges" provided, however, that the third and fourth sentences of paragraph 7 are deleted and the first sentence of paragraph 3 shall be revised to read:

> Except for personal emergency or to attend school related to fulfilling Civil Service requirements for promotional exams and other job related educational endeavors, each employee shall be granted up to four (4) discretionary shift trade requests per calendar year regardless of the reasons for the trade as long as all other pertinent criteria are met.

H. Article XVI - Holidays

(1) Scheduling of Holiday Shifts and Vacation Leave

Union Position: The Union proposes essentially identical changes to Article XVI (Holidays) and Article XVII (Vacation Leave) regarding the scheduling of holiday comp leave or vacation. The language sought to be added reads:

> Holiday comp leave [Vacation time] shall be scheduled annually in accordance with the requests of the employees. Such requests shall not be unreasonably denied.

Exhibit 7, pp. 12-14.

The Union's proposal is designed to eliminate the Department practice of denying requests in order to maintain a cushion above normal minimum staffing. This practice reduces the flexibility firefighters have in scheduling time off. It creates disparate

hardship for paramedics and drivers because more than two paramedics may not be scheduled off per shift and drivers may not be scheduled off at the same time as the company officer. When rookie firefighters end up with better vacation selection than senior paramedics, morale suffers.

The Union proposal is necessary to accommodate employee's need for time off due to stress and unplanned personal circumstances and would make treatment of requests for time off more even handed. It would prevent the practice of cancelling previously scheduled time off simply to avoid paying overtime as occurred in 1983. Shifts off should not be scheduled so as to create the need for overtime but neither should they be restricted so as to avoid the possiblity of overtime. The Union's proposals, therefore, should be adopted.

City Position: The City proposes no change in the current language regarding the scheduling of vacations or holiday leave. It regards the Union proposal as an attempt to have guaranteed overtime each shift, and insists the record supports the City view that a small buffer above minimum manning is necessary due to unanticipated disability and other leaves (e.g. funeral, emergency). Evidence as to practices in other fire departments does not support the Union's proposal.

The City disputes the Union contention that members of the bargaining unit have had vacations arbitrarily rescheduled. During a high incidence of long-term employee disabilities, the Department did ask for employee volunteers to reschedule vacation,

Kelly, and holiday leaves but an employee has never been required to do so. The Union is simply postulating imagined problems without any basis in historical fact. It has chosen to ignore the operational needs of the department and failed to demonstrate any problems that have arisen under the current contract language.

Discussion: The Chair finds the record persuasive that scheduling down to minimum manning is not something that should be required of the Department. The present contract language reads:

> Time off in lieu of holidays [Vacation time] shall be scheduled at such time as the employer finds most suitable after considering the wishes of the employee and the requirements of the Department.

This language represents an appropriate balance between accommodating firefighters' needs and ensuring sufficient service to the public without incurring excessive overtime costs. While there is sometimes a 2.3 man cushion early in the year, that appears to result from less time off being requested then by firefighters. Most of the year, the Department ends up at or close to minimum manning levels. (Tr. 867, Ex. 201, 202) The practical effect of the Union proposal, therefore, would be to dramatically increase overtime.

The record is not persuasive that there is a compelling need to change present practice. Although Union witness Mike Crosby testified he thought there were times firefighters had had their scheduled vacations cancelled, Deputy Chief Robert Pedee disagreed. According to Pedee's recollection, on the few occasions when problems arose, those situations were resolved with

volunteers. (Tr. 947) In any event, Firefighter Crosby could give only one concrete example of when a vacation was affected, and it is not clear whether that was a vacation prescheduled in December or an ad hoc request later in the year. (Tr. 473-474) Exhibit 83 indicates there have been occasions when the Department indicated it would resort to rescheduling if necessary, but it does not prove that mandatory rescheduling subsequently occurred.

The testimony as a whole indicates that the Department makes a reasonable attempt to accommodate employee requests for time off. Ultimately, however, it places the needs of the Department first; including the need to attempt to stay within budgeted overtime. The Union's proposal would give priority to the needs of the bargaining unit. One can appreciate why the unit would like the additional flexibility sought, but it would be inappropriate to grant them that priority. If the record indicated that prescheduled days off were being cancelled with greater frequency than that shown, a more compelling argument would exist for writing some restrictions into the contract. To date, however, the Department's practice of scheduling above minimum staffing in order to accommodate the additional absences that have historically occurred is fully justified by the record. The Union's proposal to eliminate that practice, therefore, is not adopted.

(2) Holiday Premium Pay

Union Position: The present collective bargaining agreement provides bargaining unit members with five 24-hour shifts off in lieu of the twelve (12) paid holidays designated by the Bellevue City ordinance. The cash equivalent of this leave may be taken

instead of time off. Jt. Ex. 6, p. 20. The Union proposes that in addition to this present benfit, a firefighter working on one of the designated holidays should receive premium pay as follows:

> Employees who work on those days designated as holidays by Bellevue city ordinance shall be paid at the overtime rate of pay.

Ex. 7, p. 2.

The Union argues that this premium would help to mitigate the family sacrifice that working on a holiday represents. Station visitation has already been tightly restricted and the younger employee, who more typically has young children, is disproportionately burden with the sacrifice of working holidays.

Other City employees receive premium pay for holidays when worked. Bellevue police officers get such pay on three holidays and three of the Union's comparables offer premium pay. All of the comparables either by contract or by practice observe a holiday routine, i.e. only limited routine work is required. Bellevue observes such a routine on only two of its holidays. For all of the foregoing reasons, therefore, the Union proposal should be adopted.

City Position: The status quo should be maintained. The five shifts off that are provided in lieu of holidays were calculated to provide an equivalent to a premium for working holidays. The Union in effect would have a premium paid on a premium. The history of negotiations does not support this.

Nor does the practice of comparable jurisdictions. Holiday premium pay for firefighters is the exception rather than the rule. Since firefighters are already getting time off in lieu of holidays, internal comparisons to other City employees don't justify the Union's proposal either. Although police officers receive pay for three holidays, they receive 96 hours of leave in lieu of holidays as compared to the 120 firefighters receive. The status quo, therefore, is not inequitable and should be maintained.

Discussion: As the initiating party, the Union clearly failed to meet its burden of proof on this issue. The testimony of Deputy Chief Pedee was convincing that the grant of a fifth holiday shift off in 1977 was added to effectively give firefighters an amount of paid time off that equated to what they would have received if paid at time and one-half for the number of holidays that firefighters on average work (i.e. 2.75). (Tr. 296, 902, 912-13, 945) The City's argument is persuasive, therefore, that the Union's proposal amounts to a double premium.

It also far exceeds anything done by comparable jurisdictions. The five shifts off received by Bellevue firefighters is comparable to most all of the selected comparables. Union Exhibit 69A. Only one of these, Clark Fire District #5, pays time and one-half for holidays actually worked. Kent pays four hours straight time per holiday worked; far less than what the Union seeks, and King #4 pays double time for Christmas only. All the

rest do not have premium pay for hours worked. (City Ex. 180, 181)

The Chair recognizes the fact that this proposal was motivated in part by a unit concern regarding future limits on holiday visitation. (Tr. 341) This is a concern that should be addressed in other ways with the City. It clearly does not justify the premium being sought by the Union's proposal. That proposal is, therefore, not adopted.

(3) Holiday Leave Cashout

Union Position: The Union's proposed addition of a Section 2 to Article XVI would effect another change as well; providing that:

> An employee who quits, retires, dies, or is terminated will receive compensation at his final base hourly rate of pay for accrued holiday comp leave unused.

Exhibit 7, p. 12.

This change was not discussed much and from what the Chair can find in the record, there were no compelling reasons offered to change from the current practice of paying a pro-rata share of what has been accrued. (Tr. 758, 916)

I. Article XVII - Vacation Leave

Union Position: The Union proposes two changes to this section of the contract. It seeks to have an additional step added to the vacation accrual schedule and to have the vacation accrual rates increased at each of the designated steps by one

shift in 1987 and an additional shift in 1988. The Union argues its proposal is necessary to bring the City vacation accrual rates into parity with those of comparable Puget Sound departments.

City Position: The City proposes no change in Article XVII. The City argues that firefighters have enough time off already and a further increase so soon after the last one is not justified. Firefighters just got an increase in vacation leave in 1985 and 1986. While the present schedule may not reflect as much time off as the average among the Union's comparables, reference to an average is misleading because comparisons should take into account time off provided through other than just the vacation leave schedule. When the total amount of time off that Bellevue firefighters receive under their present contract is considered, the City believes enough is granted and a further increase is not justified.

Discussion: Even though members of the bargaining unit received an increase in vacation as recently as 1986, the Union has convincingly demonstrated that a further increase is necessary to bring the unit closer in line with comparable departments.

The following chart depicts the number of hours of accrued vacation leave firefighters earn in the comparable jurisdictions at each indicated year of completed service. The source of the hours shown is either Union Exhibit 53, 293 or the applicable collective bargaining agreement (Ex. 197). Everett is not

included because of the Chair's earlier ruling that it should not be considered on the issue of hours off duty.

	COMPLETED SERVICE			
	5 years	10 years	15 years	20 years
Clark #5	240	288	336	336
Kent	216	264	264	312
KCFD #4	192	216	240	240
KCFD #39	180	240	300	300
Kirkland	120	156	168	204
PCFD #3	180	252	288	360
Redmond	144	168	216	264
SCFD #1	144	144	192	192
Spokane #1	168	192	216	240
Tacoma	120	136	160	176
Average	170.4	205.6	238	262.4
Bellevue	**144**	**168**	**192**	**192**
Union Proposal 1987	168	192	216	216

At the fifth year level, Bellevue's accrual rate ranks 7th; 15% below average. At the 10th year, it is still 7th and has dropped to 18% below the average accrual for all comparables. By the 15th year, Bellevue has fallen to 8th lowest, 19% below average and at year 20 or higher Bellevue ranks 9th, 27% below average.[8]

The City argues that comparison to the average vacation hours of comparables is misleading because comparisons should take into account total time off, not just vacations. The Chair agrees, but when net annual hours are compared the record is still persuasive that an improvement in the bargaining unit's vacation accrual is justified.

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[8]A comparison has not been made for 25 or more completed hours because only one member of the bargaining unit will reach that level of seniority by 1989 and that individual does not work a 24 hour shift. Union Exhibit 40.

The following charts compare the net annual hours worked for the comparables and Bellevue at each of the above years of experience. The figures for "gross annual hours" are taken from City Exhibits 177 and 178. Holiday hours are derived from Union Exhibit 69A and City Exhibits 177-178. Annual vacation leave is based on Union Exhibit 53, 293 or the contracts themselves, Exhibit 197.

NET ANNUAL HOURS
5 YEARS SERVICE

	Gross Annual Hours	Holiday Leave	Vacation Leave	Net Hours Worked
Clark #5	2704	0	240	2464
Kent	2768	120	216	2432
KCFD #4	2600	120	192	2288
KCFD #39	2496	132	180	2184
Kirkland	2631	96	120	2415
PCFD #2	2768	96	180	2492
Redmond	2652	108	144	2400
SCFD #1	2496	127	144	2225
Spokane #1	2759	104	168	2487
Tacoma	2423	132	120	2171
			Average	2357
Bellevue	**2625**	**120**	**144**	**2361**
Union Proposal (1987)			168	2337

10 YEARS SERVICE

	Gross Annual Hours	Holiday Leave	Vacation Leave	Net Hours Worked
Clark #5	2704	0	288	2416
Kent	2768	120	264	2384
KCFD #4	2600	120	216	2264
KCFD #39	2496	132	240	2124
Kirkland	2631	96	156	2379
PCFD #2	2768	96	252	2420
Redmond	2652	108	168	2376
SCFD #1	2496	127	144	2225

Spokane #1	2759	104	192	2463
Tacoma	2423	132	136	2155
			Average	2321
Bellevue	**2625**	**120**	**168**	**2337**
Union Proposal (1987)			192	2313

15 YEARS SERVICE

	Gross Annual Hours	Holiday Leave	Vacation Leave	Net Hours Worked
Clark #5	2704	0	336	2368
Kent	2768	120	264	2384
KCFD #4	2600	120	240	2240
KCFD #39	2496	132	300	2064
Kirkland	2631	96	168	2367
PCFD #2	2768	96	288	2384
Redmond	2652	108	216	2328
SCFD #1	2496	127	192	2177
Spokane #1	2759	104	216	2439
Tacoma	2423	132	160	2131
			Average	2288
Bellevue	**2625**	**120**	**192**	**2313**
Union Proposal (1987)			216	2289

20 YEARS SERVICE

	Gross Annual Hours	Holiday Leave	Vacation Leave	Net Hours Worked
Clark #5	2704	0	336	2368
Kent	2768	120	312	2336
KCFD #4	2600	120	240	2240
KCFD #39	2496	132	300	2064
Kirkland	2631	96	204	2331
PCFD #2	2768	96	360	2312
Redmond	2652	108	264	2280
SCFD #1	2496	127	192	2177
Spokane #1	2759	104	240	2415
Tacoma	2423	132	176	2115
			Average	2264
Bellevue	**2625**	**120**	**192**	**2313**
Union Proposal (1987)			216	2289

As can be seen from the charts, in terms of net hours worked per year, Bellevue ranks 5th behind KCFD #4, KCFD #39, SCFD #1 and Tacoma at all the various steps except the 20 year level when it falls behind Redmond as well. The Union's 1987 proposed accrual increase of one shift per step does not change this relative ranking but it does offer the benefit of bringing the net annual hours of Bellevue firefighters above the average for the comparables.

It also adds a step for those firefighters who have topped out and no longer have any increased vacation benefit to look forward to. Six bargaining unit members have presently reached this point and within the next two years, another twelve (12) will do so. Of the comparables, six departments have more steps than Bellevue and three of the four that don't (Clark, KCFD #4 and KCFD #39) already provide more vacation for their most senior firefighters than Bellevue does.

The Chair has considered the City's argument that its firefighters already get enough time off. The record as a whole is convincing, however, that given the nature of the job, including its emotional and physical demands, additional time off is fully justified and necessary to bring the unit's accrual rate into parity with comparable departments. The Chair, therefore, adopts the Union's proposal for the addition of one shift to each of the accrual levels for 24 hour shift personnel but finds that change should be effective as of January 1st of this year rather than January 1, 1987 as the Union sought. This delay is justified by the fact that the awarded increase is coming so soon after the

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1986 increase, and the fact that even without any increase in accrual the units' relative rank was still 5th lowest in net annual hours worked and within 1% of the average at most steps. For those same reasons, the Union's proposed additional increase in 1988 is not adopted.

Regarding day shift personnel, the Chair finds it appropriate that they receive a pro-rata equivalent of the increase awarded to 24 hour shift personnel. This pro-rata equivalent shall be based on annual hours worked by day shift personnel compared to those same hours worked by 24 hour shift personnel.

J. Article XVIII - Funeral/Emergency Leave

The only section of this Article that is at issue is Section B: Emergency Leave.

Union Position: The Union proposes to eliminate a requirement in the contract that an employee repay the City for the cost of granting emergency leave. Under the Union's proposal, firefighters covered by LEOFF II would have such leave deducted from accrued sick leave. LEOFF I firefighters who don't accrue sick leave would just receive 48 hours emergency leave without loss of pay.

The City's insistence that firefighters pay back emergency leave, sometimes at a rate of time and one-half, is unfair. Other

City employees have such leave charged against accumulated sick leave. Fire Department managers accrue leave that they do not have to repay. In return for a similar arrangement, the Union would accept an award of emergency leave conditioned on treating funeral leave the same, i.e. accrual on the same basis as department managers for LEOFF I personnel; charged against accrued sick leave for LEOFF II.

The majority of the Union's comparables permit emergency leave to be charged to an employee's sick leave. Only Bremerton, Everett and Redmond do not. The contention that this would cost 2,800 hours of lost time per year is based on a faulty assumption. Firefighters do not suffer serious family emergencies at a rate of one per year. The Panel, therefore, should rectify the existing inequity and adopt the Union's proposal.

City Position: The City proposes the current language be retained. The payback requirement was the quid pro quo for the City's agreement to the broad emergency leave provision currently in effect. Adoption of the Union's proposal would eliminate the consideration received earlier.

The Union's proposal contains no limitation on the number of times emergency leave may be taken in a year, and requires no payback of any sort from LEOFF I members. Contrary to Union claims, its demand is not supported by policies covering other City employees. Those employees may deduct emergency leave from sick

leave only up to 40 hours per year. Police officers are required to pay back emergency leave under the same conditions as firefighters. The unlimited nature of the Union's proposal is of particular concern because unlike other City employees who often need not be replaced, when a firefighter takes emergency leave he or she usually must be replaced. There is thus more cost and adverse impact on the City.

The status quo is already superior for firefighters because emergency leave is unlimited. The Union has failed to demonstrate any convincing reason to change the present provision which is functioning well. No change to Article XVIII, therefore, is justified.

Discussion: The Chair finds the Union's arguments insufficient to support a change in the status quo. As the City correctly notes, other City employees who have the right to deduct emergency leave from sick leave are capped at 40 hours per year. Firefighters are not. There is a limit of 48 hours per incident of leave, but the number of times in a year that such leave may be taken is unlimited. Another distinction exists in the fact that other City employees must charge funeral leave to sick leave as well. Firefighters do not. The Union has indicated this is an area in which it is willing to make a change, and that may serve as a basis for future negotiation, but it is not a persuasive reason to award a change now; not when the annual amount of emergency leave under the Union's proposal would still be unlimited.

The status quo maintains the current consistency regarding leave provisions for both firefighters and police. In this regard, the City's argument is persuasive that there are valid reasons for treating these positions differently than non-uniformed City personnel given the greater likelihood an absent firefighter will have to be replaced, often at overtime rates.

The payback requirement only applies if a firefighter does not have scheduled leave time later in the year that can be transferred to cover the period of the emergency. Union Exhibit 232. Payback at time and one-half is only required if the City had to replace the firefighters and incurred overtime in doing so.[9] This is not an unreasonable requirement and since it served as the principal basis on which the right to emergency leave was granted, that requirement should not readily be changed by this Panel without some other quid pro quo and compelling reasons for a change. The Union has not shown these exist.

K. Article XX - Prevailing Rights

The expired agreement provides as follows:

> Any and all rights concerned with the management and operation of the Department are exclusively that of the Employer unless otherwise provided by the terms of this Agreement. No conditions, rights or privileges of either party are affected unless specifically mentioned in this Agreement.

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[9] In this respect, it can be noted that one of the incidental benefits of not requiring the Department to schedule down to minimum manning is the reduced likelihood that a firefighter will have to pay back emergency leave at time and one-half.

Exhibit 6. The Union proposes no change. The City proposes that this short form management rights clause be amended to become a long form provision that would read as follows:

> The Union recognizes the prerogative and responsibility of the Employer to operate and manage its affairs in all respects in accordance with its lawful authority. The powers and authority which the Employer has not expressly abridged, delegated or modified by this Agreement are retained by the Employer.
>
> Management rights and responsibilities as described above shall include, but are not limited to, the following: [For example]
>
> A. To discipline, suspend, demote, discharge employees for just cause, subject to the Civil Service Rules and Regulations.
>
> B. To recruit, hire, promote, transfer, assign, and retain employees.
>
> C. To layoff employees for lack of work or funds or other legitimate reasons.
>
> D. To determine number of personnel (e.g. total per shift and per equipment), the methods and equipment for operations of the department.
>
> E. To fill vacancies subject to Civil Service Rules and Regulations.
>
> F. To appoint employees to positions within the bargaining unit.
>
> G. To assign work and overtime.
> H. To classify jobs.
>
> I. To determine the duties to be performed by employees in classifications included in the bargaining unit.
>
> J. To determine shift business hours.
>
> K. To determine the length of shifts, starting and quitting times.
>
> L. To schedule work.
>
> M. To direct employees.

N. To discontinue work that would be wasteful or unproductive.

O. To make and modify rules and regulations for the operation of the department and conduct of its employees.

P. To determine physical, mental, and performance standards.

Q. To control Fire Department budget.

R. To take any action necessary in event of emergency.

City Position: The City argues that the management rights clause of the expired contract should be amended to more fully delineate the responsibility and authority of the City. The existing clause is too vague and ambiguous. Moreover, it is unenforceable given decisions of the Public Employment Relations Commission because it lacks the requisite specificity necessary for the commission to infer a waiver of statutory bargaining rights.

The relationship between the City and the Union has become strained in recent years because of what the City perceives as an attempt by the Union to intrude into the area of employer prerogatives. A long form management rights clause would go a long way toward establishing workable parameters. It is also consistent with sound labor-management relations. An expanded management rights clause was awarded in the Everett Police Officers Association and City of Everett interest arbitration (Abernathy, 1981). Long form clauses predominate in the contracts of comparables.

The City believes adoption of its management rights proposal would serve to contain an increasing area of controversy between the parties. Union contentions that the proposal is intended to

force it to abandon statutory rights are without merit. So too is the Union's Motion to Strike. Any contention that the City's proposal violates RCW 41.56.140(4) to the extent that it purports to effect a waiver is untenable. The Ninth Circuit decision in NLRB v. Tomco Communications, Inc., 567 F.2d 871 (1978) made clear that management may insist upon a waiver of the right to bargain during the contract term.

Regarding alleged stipulations, the City stands by the representation of its legal counsel as set forth in her letter of August 19, 1987 (Ex. 249). To resolve any misunderstandings, however, the City has offered the following clarification to its position:

> The City does not intend that granting of its management rights proposal would require the Union to waive any bargaining rights it presently has under Chapter 41.56 RCW. To the extent that Chap. RCW 41.56 RCW requires bargaining over any action or activities enumerated in the City's proposed management rights clause, the City agrees that for the duration of this agreement, the City will bargain that issue and will not assert a waiver against the Union. To the extent that the City has made any statements in its arbitration brief inconsistent with that position, it hereby amends its brief accordingly.

Union Position: The City's proposed amendment is totally inappropriate and should be rejected, as Arbitrator Block did in the parties' last arbitration proceeding. The City represented that its proposal does not involve any waiver of collective bargaining rights. Yet, without constituting a waiver, the provision cannot afford the discretion the City claims it does. For example, the City's proposal would purportedly permit it to unilaterally determine shift business hours, the length of shifts,

and starting and quitting times. Yet these are matters about which RCW 41.56 requires bargaining unless there has been a waiver of that right in the contract either by specific contract term or by some broad management rights clause.

The City's inconsistent positions as to whether its proposal is intended to effect a waiver or not has led the Union to file a post-hearing Motion to Strike. (Motion dated April 16, 1988.) The Union contends it relied on representations by the City's counsel that the City's proposals [for working conditions, reductions in force and prevailing rights] in no way contemplated a waiver by the Union of any right to bargain over proposed charges as to which bargaining would otherwise be required by RCW Chapter 41.56. The Union confirmed this representation by letter dated August 31, 1987. (Union Ex. 248) The City now states that if its proposal is adopted it would "assert waiver by the Union as a defense to any unfair labor practice charge that may arise." City post-hearing brief, p. 115. As a result of this change in position, the City's proposal should be stricken.

The prehearing agreement between counsel concerning the substance of the City's "Prevailing Rights" proposal creates a stipulation that the Panel must honor RCW 41.56.460(a). Alternatively, the City should be estopped from changing its position. In any event, the Panel may not award the proposal and it should be stricken.

Discussion: The first issue that must be resolved is the Union's Motion to Strike the City's proposal. The Chair has

reviewed the parties' prehearing correspondence, testimony at the hearing and subsequent correspondence. There was a statement in the City's posthearing brief that indicated the City would assert a waiver as to anything included in the City's enumeration of management rights. City brief p. 115. While that would be inconsistent with representations the City appeared to be making earlier, the Chair finds any inconsistency has been resolved by the City's clarification set forth supra. That clarification is consistent with the position taken by the City before and during the hearing.

As City counsel Janet Garrow reiterated at the hearing, the City is willing to agree that even if its proposal is adopted, a continuing duty to bargain will exist during the term of the contract as to those enumerated rights that affect wages, hours or working conditions. (Tr. 1086) That was the extent of the "stipulation" the Union asserts arose. Since the City has not ultimately changed its position, grounds for estoppel do not arise. The Motion to Strike is, therefore, denied.

Regarding the merits of the City's proposal, the Chair finds the record persuasive that a longer form management rights clause should be added to the contract. Expanded management rights clauses are commonly found in current collective bargaining agreements. The trend towards their incorporation has certainly been accelerated by the developing PERC case law which holds that short form clauses lack the specificity necessary to infer a waiver of statutory bargaining rights. See, e.g., City of Sumner, PD-1839-A (PECB, 1984); City of Kennewick, Decision No. 482-B PECB (1980). This case law may well explain why seven of the selected

comparables, i.e. Clark, Everett, Kent, King #39, Pierce, Redmond and Tacoma, enumerate a variety of management rights rather than relying on the short form type of clause that the parties presently have.

A longer form management rights clause is an obvious quid pro quo for expanded rights to grieve that have been adopted in this agreement. While the City's proposal is rather broad on its face, its effect is curtailed by the fact it will not preclude further bargaining regarding any changes that affect wages, hours or working conditions as those statutory bargaining obligations are construed under RCW 41.56.

The Chair has considered the fact that disputes will undoubtedly arise as to whether a change affects "wages, hours or working conditions" and thus is not subject to unilateral action. Even allowing for this, however, the City's proposal should reduce conflict in at least some areas. In that sense it represents an improvement over the status quo. It also affords recognition that within some parameters, the City should be able to respond to changing operational needs and conditions unilaterally. That does not preclude bargaining over such matters upon the contract's expiration, it just gives Department management the latitude to act more expeditiously during the interim. The Chair, therefore, finds that the City's proposal should be adopted with the following amendment to reflect clarification as to those enumerated rights for which a continuing duty to bargain will exist: "The City agrees that a continuing duty to bargain exists as to those enumerated rights that affect wages, hours and working conditions

within the meaning of RCW Chapter 41.56." The just cause standard for discipline, etc. in Subparagraph A should also be revised to eliminate the reference to Civil Service Rules and Regulations for the reasons discussed in connection with Article VII (Discipline).

L. Article XXIV - Grievance Procedure

Proposals: The Union proposes to amend Article XXIV in three (3) respects: (1) it would amend the first paragraph to indicate that the Union has the right to grieve in its own capacity; (2) it would amend Step 1 to read "an employee and his Union representative ... shall present a grievance ..."; and (3) it would add a final part stating:

> In the event a grievance involves a claim that an employee could advance before the Bellevue Civil Service Commission, the Union will not proceed through an arbitration hearing unless the employee has first elected arbitration as the exclusive forum to resolve the claim.

The City proposes a change that would require individual employees to file grievances where the matter at issue is strictly of individual concern to that employee but would permit the Union to initiate grievances on its own behalf when the issue is one directly impacting a Union right under the contract.

(1) Union's Right to Grieve

Union Position: The Union asserts this right is crucial and must be recognized in the agreement for two principal reasons. First, it is necessary for the Union to achieve recognition as a

full collective bargaining partner. Second, it is necessary for the Union to effectively police the collective bargaining agreement.

The Union asserts that it is empowered by law to initiate grievances on behalf of bargaining unit employees. The right to prosecute grievances lies at the core of the Union's role as exclusive bargaining representative. While that right is not expressly mentioned in RCW 41.56.080, the NLRB has construed Section 9(a) of the NLRA as conferring the right to file and prosecute grievances. Section 9(a) is virtually identical to RCW 41.56.080. As the Third Circuit has recognized, requiring grievances to be signed by individual employees undermines the representational status of the union. Industrial Union of Marine & Shipbuilding Workers v. NLRB, 320 F.2d 615, 619 (3d Cir. 1963).

Based on what it believes to be its statutory right to file grievances, the Union has filed an unfair labor practice complaint against the City for seeking to deny the Union access to the contractual grievance procedure. The Panel can save the parties protracted litigation by according the Union language which recognizes its proper role.

The ability to file grievances on its own behalf is essential to the Union's ability to police compliance with the collective bargaining agreement. An employee fearing retaliation will not likely file a grievance. The Union must be able to do so to protect the interests of the entire unit. Examples exist in the record of instances when the Union has been thwarted in its effort

to investigate and prosecute a contract violation. The availability of statutory and contract remedies is virtually illusory. Consequently, the Union's right to grieve should be expressly recognized in the collective bargaining agreement and made retroactive to January 1, 1987 in order to allow recourse to the grievance procedure for several disputes that have arisen since expiration of the parties' last agreement.

City Position: The City argues that the Union proposal is an unwarranted departure from the longstanding practice of the parties as memorialized in past collective bargaining agreements. It would open the gate for improperly initiated grievances filed for political or leverage purposes and shift the contractual emphasis from one of addressing employee concerns to that of addressing the Union's concerns as a political body. The City believes the grievance procedure should continue to be directly responsive to the concerns of individual employees.

The City believes the current procedure has served both parties well. It opposes any procedure which places unnecessary obstacles between the City and its employees. Changing Step 1 to require filing of a grievance by both an employee and the Union would appear to abrogate the statutory right of employees to directly file grievances. RCW 41.56.080. The City's proposal in comparison better balances the respective interests. It is based on the same rationale regarding separating employee grievances from more general unemployment claims that served as the basis for Executive Order 11491 regarding federal employee grievances.

The various comparables suggested by both sides are split regarding the right of the Union to grieve on its own. The existing agreement is clear and unambiguous. It precluded that right. To the extent the Union may have had a statutory right, the Union has waived that right through the collective bargaining process.

The Courts have not recognized on a constitutional basis the right the Union asserts. Nor can the argument be supported that the City's proposal would impair the Union's effectiveness. In actuality, it would broaden the scope of the Union's existing rights. Any contention that some employees might not file greivances out of fear of harassment or coercion is without factual basis in the record. What the record actually reflects is the City's desire to encourage employees to raise dissatisfactions directly so that issues can, if possible, be quickly resolved. In short, the Union's proposed, radical departure from past practice is not justified by the record and should be rejected.

Discussion: The Chair finds persuasive the Union's arguments regarding the need to recognize its right to file a grievance, even one dealing with what the City regards as an individual matter. Contrary to assertions by the City in its brief, the Union appears to be seeking to clarify a right it believed it already had. It has not conceded in the past that the right to grieve as a Union did not exist. Lt. Mark Moulton, testifying on behalf of the Union, stated that the Union thought it impliedly had the right to grieve on its own behalf but sought clarification

when it noticed the language in the agreement was open to a different interpretation. Moulton described the Union's proposal as an attempt to reflect what it assumed had been the case. (Tr. 482)

Regardless of whether the Union can be described as having previously waived by contract any statutory right to file a grievance, it is clear the Union is no longer amendable to such a waiver. The record provides compelling reasons why such a waiver should not be required. The Third Circuit Court of Appeals has aptly described the detrimental effect of limiting to employees only the initiation of the grievance process:

> [S]uch a clause would preclude the union from prosecuting flagrant violations of the contract merely because the employee involved, due to fear of employee reprisals, or for similar reasons, chose not to sign a grievance. Hence, redress for a violation would be made contingent upon the intrepidity of the individual employee.

Marine & Shipbuilding Workers, 320 F.2d at 619. The Chair agrees that the Union should not have to rely on the resolve of individual employees to police provisions of the contract applicable to all. Comparable jurisdictions are overwhelmingly in accord. Only two (Clark, King #39) limit the Union's right to grieve as the City seeks to do. The Union's suggested change to paragraph one of this Article is, therefore, adopted.

(2) Employee's Right to Grieve

With regard to the proposed change to Step 1, one has to consider the provisions of RCW 41.56.080 which states:

> that any public employee at any time may present his grievance to the public employer; and have such grievance adjusted without the intervention of the exclusive

> bargaining representative if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, and if the exclusive bargaining representation has been given reasonable opportunity to be present at any initial meeting called for the resolution of such grievance.

(Emphasis added.) This language suggests that employees should be allowed to file grievances without intervention of the Union so long as once a grievance is filed the Union is given notice and an opportunity to be present at any meeting to resolve the grievance. The Union's proposal would appear to conflict with this statutory provision in that it requires an employee to file a grievance jointly with a Union representative. In light of this, the Chair finds that Step 1 should be modified to read:

> The Union or an employee shall present a grievance to the employee's supervisor, who shall give his oral answer within five (5) business days after it is presented to him; provided, however, that if a grievance is filed by an employee without assistance of the Union, the Union shall be given notice of the grievance and an opportunity to be present at any adjustment of the grievance.

(3) Matters Excluded From the Grievance Procedure

As for the Union's proposed deletion of the last paragraph of Article XXIV, the Union has not established compelling reasons to change the first sentence, which the Chair finds should remain as written. The decision to allow disciplinary matters to be grieved, however, requires deletion of the last sentence and the addition of the following paragraph to Step 3:

In the case of disciplinary actions, both appealable to the Civil Service Commission and grievable under the terms of this contract, an election of remedies shall be made after receipt of the Step 3 response. An employee may elect to either pursue an appeal to the Civil Service Commission or continue with the contractual grievance procedure, but not both. Time limits will be extended for either side if necessary to complete a reasonable investigation before the election of remedies is made.

M. Appendix A

The parties have agreed that the duration of the agreement is to be from January 1, 1987 until December 31, 1988. They are in significant disagreement about the appropriate wage rates for that period of time.

(1) Base Monthly Wage

Proposals: The Union proposes an increase in the base monthly wage for 1987 of 10% and another 10% in 1988. The City proposes a 3% increase for each year.

Union Position: The Union argues that the best way to assess whether or not compensation meets or exceeds the market rate is to compare hourly compensation not just base monthly wage. The Union's salary proposal, therefore, is based on a calculation of total compensation divided by the annual hours worked to get a dollar per hour valuation of the City's wage benefit package. Total compensation included salary, pension, assorted salary premiums, e.g. longevity, education pay, engineer pay, specialist pay, scheduled overtime, and employer contributions to such benefits as health, medical, dental, life. Annual hours worked was calculated from the normal workweek less vacation and holiday leave.

According to the Union's calculations, in total compensation per hour an average Bellevue firefighter currently receives $15.30 per hour worked. (Ex. 297) This, it is argued, is well below total hourly compensation for the Union's comparables which averages $16.62. Fully paid departments average $17.25 and Everett and Tacoma, which the Union feels are the most comparable departments, average $18.15. (Ex. 301) For 1988, the comparisons run as follows:

Bellevue	15.56
Union Comparable Cities	17.28
Fully Paid Departments	17.82
Everett/Tacoma	18.86

Exhibit 302. The disparity becomes even greater if one figures in the overtime Bellevue firefighters would receive under the contracts of comparables for working the longer workweek they have now.

The Union's salary proposal together with its proposed hours reduction would result in a top firefighter hourly base wage (excluding other forms of compensation) of $12.85 for 1987 and $14.14 for 1988. This is fully justified by reference to the comparables:

	1987	1988
All Washington Comparables	12.73	13.14
"Block" Cities	12.84	13.19
Union Comparable Cities	12.76	13.13
Fully Paid Departments	13.26	13.58
Everett and Tacoma	14.56	14.96

Accordingly, the Panel should award the Union's salary proposals.

City Position: The City objects to comparisons on the basis of net hourly compensation. Its preferred methodology has been to compare average annual compensation. It agrees with the Union that this amount should include base monthly salary, MEBT, Education Incentive, and premium pay. It disagrees with the inclusion of holiday premium pay, meal or clothing allowances, and the employer cost of insurance benefits.

The City contends it is not aware of any arbiter who has embraced the Union's net hourly compensation methodology. That approach was rejected by Arbiter Champagne in the parties' 1980 interest arbitration and was not fully accepted by Arbiter Block. It is inappropriate because Bellevue firefighters are not hourly rated employees; firefighter labor contracts are not traditionally negotiated on this basis; and the parties have not adopted that methodology in the past. The Union's reference to hourly rates, therefore, should be regarded as nothing more than a mathematical exercise.

Using the City's West Coast proposed comparables, average annual compensation is $30,761. The City's proposal would give its firefighters $34,963. Thus, Bellevue would rank first. Using the City's sample of Washington state comparables (average annual compensation = $33,187), Bellevue would still rank first. Even using the Union's comparables, the City's offer ranks third; above the average of $33,499 and behind only Tacoma and Renton.

The City's proposal exceeds the intervening change in the CPI, and the CPI adjusted without medical is significantly lower. Since the City pays nearly all the medical/dental insurance

premiums for its firefighters and even reimburses them for deductibles and co-insurance payments, it is evident that no adjustment in salaries based on the cost of living is required.

Discussion: The Union relies on its methodology to establish that even with the City's proposed 3% increase for 1987, more is needed to bring the bargaining unit into parity with comparable employers. While it is understandable why the Union would adopt the methodology it has, the Chair is convinced it suffers from some fundamental flaws.

Perhaps the most significant flaw in the Union's approach is the fact that it is too individualized. The Union took the contractual wages and benefits of other departments and applied them to each of the members of its bargaining unit as of the mid point of the proposed contract term. The proper point of comparison should be the wage and benefit package generally; not the average for a particular bargaining unit frozen at a particular point in time. The latter is affected too much by intervening changes. New hires, retirements, lateral transfers all can significantly affect longevity assumptions upon which many of the Union's calculations were based.

Another problem arises from the fact that the Union's calculations applied the contracts of comparable departments to the Bellevue unit without adjusting for the fact that if the unit were working in the comparable jurisdiction, many of the unit members would not be working in the same positions they are now. If the comparable jurisdiction lacked paramedic positions for example,

the lost premium for that was not factored in. While it may have seemed logical to the Union to apply the contract of a comparable jurisdiction to the Bellevue unit as if they continued to work in the same positions and with the same workweek that they presently do, in reality that skews the results. To get the comparable pay and benefits, members of the Department would have to work in the positions offered by the other department subject to the normal work schedules and workweeks of that department. It is erroneous, therefore, to add in overtime as the Union did in its model on the assumption that bargaining unit members would have received this because of the longer week they work in Bellevue.

It is also erroneous, given the Union's approach, to ignore the fact that under a comparable contract there isn't the same opportunity for premium pay, promotions, etc. One of the things the record clearly demonstrates is that there are more opportunities in Bellevue to earn higher pay than in other jurisdictions. The Union's methodology doesn't give appropriate recognition to this.

The availability of computerized spreadsheets makes it easier to adopt an approach like the Union's, but the more complex one gets in the comparison, the more room there is for error to creep in and significantly affect results. The City has correctly noted, for example, that the Union used seniority as of January 5, 1988 for 1987 comparisons. (Ex. 40) It also used <u>all</u> positions in the bargaining unit to calculate average seniority which was then used to compute vacation accruals, longevity pay, etc. for firefighters. This had the effect of generating greater

disparities than actually exist between the top firefighter monthly wages because the seniority of more senior bargaining unit members not earning those wages was utilized.[10]

The record contains other examples of flaws in the Union's methodology that have led the Chair not to adopt its approach. Rather than dwell on those, the Chair will simply note that after carefully considering the record she has concluded that a different methodology needs to be used to draw appropriate comparisons.

The steps and ranks vary so much among comparables that the only helpful point of comparison is to look at a benchmark wage for comparison. The one selected is that customarily used in interest arbitrations, i.e. the top firefighter monthly wage. Arbitrators regularly hold, however, that more than just the raw base wage needs to be considered. An adjusted wage (hereinafter "total monthly compensation") should be utilized. The Chair has concluded that those elements of compensation properly included in this case are: MEBT (or Social Security if paid by the Employer), longevity pay, educational incentive pay, EMT premiums and across the board holiday pay given in lieu of time off.

Too many inequities arise if things like food or clothing allowances are added in and not the value of other benefits a particular comparable may offer, e.g. mileage reimbursement, higher pay out of rank, LEOFF insurance deductibles, etc. As the City

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[10]The City contends this flaw causes average seniority to drop from 9.1 years to 6.9 years but that excludes unit member Chester Zobrest who retired in 1988. As of 1987 when he was still in the unit, it appears average seniority would have been closer to 7.5 years. Union Exhibit 40.

correctly notes, comparables vary significantly in what types of reimbursements they offer, i.e. whether they have adopted a quartermaster system, use of wash and wear uniforms, etc. I find the City's argument the more persuasive, therefore, that only major salary-related items should be included in the calculation of monthly compensation.

Employer contributions for insurance benefits should likewise be excluded. The dollars an employer spends for insurance do not necessarily indicate the value of benefits received by differing bargaining units. Bellevue, through economies of scale, self insurance, more careful shopping, etc., might be paying less per bargaining unit member for a package of benefits broader and better than another unit whose employer pays more. The City should not be penalized for this as it is in the Union's model. Because only the amount of premiums paid is considered, Bellevue firefighters appear to be getting less in the way of insurance benefits under the Union's model whereas in reality the benefits received might be much better than the comparables.

Judging from the evidence in the record, total monthly compensation offered by the selected comparables is as follows:

Adjusted Monthly Salary (1987)

	Top FF Monthly Salary	MEBT	Longevity	Educ Inc	EMT Premium	Holiday Pay	Adjusted Monthly Salary
Clark #5	2427	-	68	-	35	-	2530
Everett	2836	-	74	-	7	142	3059
Kent	2691	-	54	-	-	-	2745
KCFD #4	2758	-	9	-	-	-	2766
KCFD #39	2726	-	25	-	-	-	2751
Kirkland	2714	194	-	-	-	-	2908
PCFD #2	2801	-	-	70	-	-	2871

Redmond	2616	187	-	-	-	-	2803
SCFD #1	2683	-	-	60	-	-	2743
Spokne #1	2334	-	112	-	-	-	2446
Tacoma	2756	-	55	-	-	-	2811
				Average (all comps)			2766
				Average (LLM)			2829
Bellevue	2539	185	-	52	-	-	2830

The entries shown above were derived either from Union Exhibit 297 or from the contract for the applicable jurisdiction. Union Exhibit 297 showed a monthly salary of $2803 for KCFD #4 but that did not take effect until September 1, 1987. Prior to that it was $2,735. The number shown, therefore, is the average salary for the calendar year. For longevity and educational incentive pay, an assumed seniority of 5-9 years was utilized and 45 credit hours since the average seniority for the bargaining unit falls into that range. The amounts shown are derived from Union Exhibits 65, 292 or the contracts themselves. The 5% salary premium that Everett pays in lieu of holiday leave is included because its receipt is not dependent on whether a holiday is worked or not.

Looking solely at total monthly compensation, Bellevue's firefighters with a 3% increase for 1987 would rank 4th at almost exactly the average salary for the local labor market comparables.

Monthly Compensation (1987)

Everett	3059
Kirkland	2908
Pierce	2871
Bellevue	**2830**
Tacoma	2811
Redmond	2803
KCFD #4	2766
KCFD #39	2751
Kent	2745
SCFD #1	2743
Clark	2530
Average (all comps)	2766
Average (LLM)	2829

The Union argues that one should also consider how many hours the bargaining unit has to work to earn the amount of compensation shown. The Chair agrees that is a relevant consideration. While net hourly compensation, i.e. monthly compensation divided by monthly hours worked, should not necessarily be the controlling criterion, it is appropriately considered in order to guard against the effect of a large discrepancy among comparables in hours worked.

In order to convert the Monthly Compensation shown above to an hourly wage figure, it is necessary to calculate the net monthly hours worked for the benchmark employee being used in this case, i.e. top firefighters step, 5-9 year range in longevity. Vacation leave for the specified range varies depending on what year of the range one looks at for which comparable. The Chair has taken the average for those five years using each comparables' vacation accrual schedule.[11] The result is as follows:

[11]Everett has been dropped out of the comparison at this point for the reasons noted in the discussion of vacation leave.

1987 Work Hours

	Gross Annual Hours	Holiday Leave	Vacation Leave	Net Annual Hours	Average Monthly Hours [12]
Clark #5	2704	0	278	2426	202.17
Kent	2768	120	216	2432	202.67
KCFD #4	2600	120	192	2288	190.67
KCFD #39	2496	132	180	2184	182.00
Kirkland	2631	96	139	2396	199.67
PCFD #2	2768	96	202	2470	205.83
Redmond	2652	108	158	2386	198.83
SCFD #1	2496	127	144	2225	185.42
Spokane #1	2759	104	173	2482	206.83
Tacoma	2423	132	126	2165	180.42
Bellevue	**2625**	**120**	**144**	**2361**	**196.75**

Using average monthly hours for each comparable divided into total monthly compensation results in the following relative rankings as to net hourly wage, assuming a 3% increase for Bellevue firefighters:

Net Hourly Wage (1987)

Tacoma	15.58
KCFD #39	15.12
SCFD #1	14.79
Kirkland	14.56
KCFD #4	14.51
Bellevue	**14.38**
Redmond	14.10
Pierce	13.95
Kent	13.54
Clark	12.51
Spokane	11.83
Average (all comps)	14.05
Average (LLM)	14.52

[12] Gross annual hours are taken from Exhibit 177-178. Holiday hours are taken from Exhibits 69A and 177-178 or, in the case of Kirkland, from the contract itself. The Union shows 120 hours for Kirkland in Exhibit 69A but that amount was not applicable until 1/1/88. Annual vacation leave is derived from Exhibit 53,293 or, if not available in those, from the contracts themselves.

As can be seen, Bellevue has dropped to sixth place in this comparison and fallen below the average hourly rate for the comparable departments in the local labor market. The Chair finds the record convincing that Bellevue's relative rank should be brought higher than that. Given the City's ability to pay more, the Class II rating from which its residents benefit, the belief that its department is the best in the state, the level of performance expected of members of the department, the Chair concludes that a 1987 increase of 4.5% is justified.

A 4.5% increase in the base monthly wage results in the following total monthly compensation:

Top FF Salary	MEBT	Educ.	Total Monthly Comp.
2630	188	53	2871

This amount would tie Bellevue for third with Pierce County District #2 and bring the monthly compensation above the average.

Monthly Compensation (1987)

Everett	3059
Kirkland	2908
Bellevue	**2871**
Pierce	2871
Tacoma	2811
Redmond	2803
KCFD #4	2766
KCFD #39	2751
Kent	2745
SCFD #1	2743
Clark	2530
Average (all comps)	2766
Average (LLM)	2829

The net hourly wage that results is $14.59 ($2871 divided by 196.75 monthly hours); placing Bellevue fourth in terms of net hourly wage and above average for the local labor market.

Net Hourly Wage (1987)

Tacoma	$15.58
KCFD #39	15.12
SCFD #1	14.79
Bellevue	**14.59**
Kirkland	14.56
KCFD #4	14.51
Redmond	14.10
Pierce	13.95
Kent	13.54
Clark	12.51
Spokane	11.83
Average (all comps)	14.05
Average (LLM)	14.52

The Chair realizes the increase awarded exceeds the average increases the comparables received for 1987 as well as those the City gave its other employees. (Ex. 144) The benefit of those increases was realized over one and one-half years ago, however. The cost to the City of paying the awarded increase now instead of last January 1, 1987 is significantly less than 4.5%; assuming the money has been prudently invested in the interim. The record indicates the City is very well managed, so that seems a reasonable assumption. There is also the fact that firefighters have had to get by without the enjoyment of or earnings on those increases. Both these considerations reduce the disparity between the 1987 increases other City employees received and a 4.5% increase for firefighters. Given the persuasive evidence in the

record that greater than a 3% increase is required to bring the bargaining unit into more appropriate parity with comparable departments, a 4.5% increase in the base wage for 1987 is hereby awarded.

1988 Base Salary

Regarding the appropriate 1988 base wage increase, the Chair starts out with a presumption that the City's offered 3% is appropriate because the parties have historically set wage increases in the second year of their contract at 90% of the percentage increase in the Seattle CPI-W for the preceding July to July. The record demonstrates the City's offer exceeds what that CPI adjustment would have been. Exhibits 128-129. It also demonstrates that the 1988 wage increases of those comparables for whom there is evidence have been averaging right around 3%.

1988 Salary Increases

Clark	unknown
Everett	2.00%
Kent	2.75%
KCFD #4	2.50%
KCFD #39	3.00%
Kirkland	3.00%
PCFD #2	2.50%
Redmond	3.00%
Snohomish #1	4.00%
Spokane	unknown
Tacoma	3.50%
Average	2.92

Exhibits 193, 295.

The same comparisons for 1988 as were done for 1987 indicate that a 3% base increase for Bellevue will maintain it in third position with regard to monthly compensation and fourth for net hourly wage.

1988 Total Monthly Compensation

	Top FF Monthly Salary	MEBT	Longevity	Educ Inc	EMT Premium	Holiday Pay	Total Monthly Comp.
Clark #5	-	-	-	-	-	-	-
Everett	2893	-	75	-	7	145	3120
Kent	2765	-	55	-	-	-	2820
KCFD #4	2873	-	9	-	-	-	2882
KCFD #39	2808	-	25	-	-	-	2833
Kirkland	2795	200	-	-	-	-	2995
PCFD #2	2871	-	-	72	-	-	2943
Redmond	2694	193	31	-	-	-	2918
SCFD #1	2790	-	-	63	-	-	2853
Spokne #1	-	-	-	-	-	-	-
Tacoma	2852	-	57	-	-	-	2909
Bellevue	2709	194	-	54	-	-	2957

(Exhibits 193,295,65,292.) For KCFD #4 the top firefighter monthly salary is the average for the calendar year. The figure shown on Union Ex. 295 was not in effect until 7/1/88. Redmond added longevity pay effective 1/1/88. (Ex. 197, Appendix A)

Net Monthly Compensation

Everett	3120
Kirkland	2995
Bellevue	**2957**
Pierce	2943
Redmond	2918
Tacoma	2909
KCFD #4	2882
Snohomish	2853
KCFD #39	2833
Kent	2820

1988 Work Hours

	Gross Annual Hours	Holiday Leave	Vacation Leave	Net Annual Hours	Average Monthly Hours fn
Clark #5	-	-	-	-	-
Everett	-	-	-	-	-
Kent	2768	120	216	2432	202.67
KCFD #4	2600	120	192	2288	190.67
KCFD #39	2496	132	180	2184	182.00
Kirkland	2631	96	139	2372	197.67
PCFD #2	2696	96	202	2406	200.50
Redmond	2652	108	158	2386	198.83
SCFD #1	2496	127	144	2225	185.42
Spokane #1	-	-	-	-	-
Tacoma	2423	132	126	2165	180.42
Bellevue	**2625**	**120**	**168**	**2337**	**194.75**

The gross annual hours for Pierce County Fire District have been adjusted to reflect a reduction in the scheduled workweek from 53.23 hours to 51.84 hours. Kirkland's holiday leave hours increased one shift effective 1/1/88 and Bellevue's vacation hours have been adjusted to reflect the additional shift awarded effective 1/1/88.

Net Hourly Wage (1988)

Tacoma	16.12
KCFD	15.57
SCFD #1	15.39
Bellevue	**15.18**
Kirkland	15.15
KCFD #4	15.11
PCFD #2	14.68
Redmond	14.68
Kent	13.91

In light of the foregoing, the Chair is not persuaded that the Union's proposed 10% wage increase for 1988 is justified. The City's proposal is adopted.

(2) New Firefighter/Engineer Classification

Proposals: The Union proposes that a classification of "Firefighter/Engineer" be created and assigned a montly salary 5% greater than that assigned to the firefighter classification at a corresponding pay step. The City proposes no addition.

Union Position: This classification is intended to cover the "driver" position as it is currently known. The Department concedes that drivers have unique responsibilities and skills. They must be able to drive heavy equipment under emergency conditions through residential, commercial and industrial areas. They must be familiar with the streets of the service area, with fire control systems in commercial and industrial buildings, and with fire hydrant location and water available. En route to the scene they are responsible for both firefighters and civilian safety.

Upon arrival at the scene, the driver is responsible for operating the equipment to maintain necessary water pressure; he secures the emergency scene, handles traffic control and is relied on heavily by Company officers for advice on strategy and tactics. Those same officers are initially oriented to a new station by a driver.

The City has recognized the unique responsibilities of drivers. In 1983, it adopted a policy requiring their testing and certification; a process that can take from six months to a year. Department operating procedures require either a Company officer or driver to be on duty at all times. Yet, despite the clear recognition of drivers' extra responsibilities, to date no extra

compensation has been received, even though Chief Sterling has personally gone on record as supporting a premium. The Panel, therefore, should adopt this new classification and premium pay.

City Position: The City argues that a premium for drivers has never been paid and is not customary among the Union's comparables. Only Everett and Redmond pay such a premium. Therefore, neither the parties' history of bargaining, nor comparison with other departments — either those selected by the Union or City, supports the Union demand. Further, any ability the City had to accede to this demand was impaired by Union demands that would impede management's ability to transfer between positions. The proposal, therefore, should be rejected.

Discussion: The Chair agrees that the record presents compelling justification for some monetary recognition of the additional responsibilities drivers assume. The City does not deny these responsibilities are significant. Its own Chief has conceded he thinks some special compensation is justified (Ex. 75). That conclusion is all the more compelling when one realizes that as a result of department policy, drivers not only bear more responsibility than regular firefighters, they also suffer reduced flexibility in when they can take time off because of the rule that either a driver or officer must be on duty at any one time.

The record certainly reflects that driver pay is not yet customary among the selected comparables. Only Everett, Redmond and Spokane #1 presently include this kind of premium (Ex. 150).

Tacoma is adding a premium in 1989, however. Thus, in larger departments, it appears there is a trend towards providing some enhanced monetary compensation for drivers.

The Chair has considered the City's reluctance to add a new classification out of a concern that its ability to transfer between positions and reassign work is further limited. This was one of the considerations supporting the decision to adopt the City's Prevailing Rights proposal. The Chair would also note that under Civil Service Commission rules, the City retains the right to reassign employees from one position to another within the same rank. (Ex. 254, §4.05) The addition of a Firefighter/Driver classification does not create a new rank. Id. §2.05.

Three out of the four comparables in Washington State that include a driver classification utilize set dollar steps that equate to a roughly 5% premium or higher. If such an approach were applied to the parties' present contract, the new classification would fall roughly halfway between the regular firefighter classification and the Firefighter/Paramedic classification. The record suggests such a placement on the salary scale is reasonable. To avoid any subsequent disputes as to what this classification is to cover, however, the Chair finds the new classification should be entitled "Firefighter/Driver." The Chair also finds that in recognition of the fact that a majority of comparables do not yet include a driver premium and since Tacoma is not adding its premium until 1989, the premium in this case should be added effective with the second year of the contract, i.e. January 1, 1988.

(3) Hazardous Materials Specialist Pay

Union Position: The Union proposes a 2.5% premium or $60-$65 per month for the eleven employees serving on the Hazardous Materials Response Unit. It argues this premium is justified by the significantly increased training, responsibilities and risk to personal safety borne by the unit, which responds to all confirmed chemical releases in Bellevue and surrounding cities with whom the City has mutual aid agreements.

Three other cities pay a hazardous materials premium. Kent pays $30 per month; Redmond $15 per month and in Tacoma the rate is $100 per month for the level for which the Bellevue team would qualify. That rate increases to 4% in 1989 and 5% in 1990. The Union's proposed 2.5%, therefore, is well supported in the record.

City Position: The Union proposal is not supported by comparators. It seeks $60-$65 per month when the few comparables that offer such a premium pay $15 or $30 per month. The City objects to this specialty pay as well because of a concern that granting it would result in a reduced ability to change assignments or make transfers.

Discussion: The City has not denied that members of the Hazardous Materials Unit undergo additional training and incur greater risk when called upon to respond to a chemical spill. It has objected to addition of a premium in recognition of this primarily on the grounds that the request is not supported by comparators. As to the amount being sought, the Chair must agree.

Only three comparables have been shown to offer this kind of premium. Two that do presently offer less than half the amount the Union seeks. The Union contends Tacoma offers $100 per month but this assumes members of the Bellevue Unit would qualify for the Tacoma Hazardous Materials II/Level A not the Hazardous Materials I/Level B, which pays $55 per month; an amount again less than what the Union seeks. The Chair does not have a basis in the record from which to make such an assumption other than a post-hearing affidavit.

While the premium sought does seem too high and few comparators offer one at this time, the record does provide a number of compelling reasons why a premium of some sort should be added. For one thing, Redmond jointly participates with Bellevue in the Eastside Hazardous Materials Response program. Redmond will be paying its firefighters a premium beginning in 1989 so it is understandable members of the Bellevue unit would seek one for themselves. A second consideration is Bellevue's relative affluence and the very low cost item this premium represents. Only eleven members of the bargaining unit would qualify. (Tr. 295) There is also the fact that Bellevue is in a high density corridor which increases the likelihood its Unit will be utilized.

Perhaps the most compelling consideration is the fact that the record suggests the City's greatest concern was not addition of the premium but rather the fact that the Union might use that addition to further restrict the City's ability to reassign bargaining unit members to other duties. If the premium were viewed as attached to the work and not to a particular individual, the

City's objections would be greatly reduced. The Chair concludes the City has a valid concern in this regard.

If members of the bargaining unit want the opportunity to earn as many specialty premiums as Bellevue provides, it seems a reasonable quid pro quo for the City to seek recognition that it retains the right to make reassignments even if they result in the loss of a premium. Management needs to retain the flexibility to assign personnel to meet the operational needs of the Department. The Chair finds, therefore, that additional premium pay should only be awarded in return for recognition that receipt of such pay does not constitute a limitation on the right of management to make reassignments.

Subject to that recognition, the Chair finds a specialty premium of $30/month is appropriate effective January 1, 1988. Until then, Kent was the only comparable even offering such a premium. The $30 exceeds what Redmond firefighters will be getting and those firefighters don't receive a premium until January 1989. While this amount is less than other department specialists receive, the Chair finds that appropriate because the record does not indicate that the amount of time required of members of the Hazardous Materials Unit is equivalent to the time spent on those specialist duties for which a premium is already provided in the contract, i.e. maps specialist, etc.

(4) Breathing Apparatus, Small Equipment and Hose Repair, and Maps Specialists

Union Position: The Union proposes to replace the current $50 per month premium assigned to the above specialists with a

premium equal to 2.5% of the top step firefighters' salary. This would amount to $60-$65 per month based on current salary.

The services performed by these specialists, if performed by independent contractors, would cost between $25-$40 per hour. When the Department first awarded premium pay in 1983 for these specialist positions, the $50 premium amounted to over 2% of the top step firefighters' salary. Over time, inflation has eroded the value of this premium and increased the avoided cost to the City. The flat dollar amount should, therefore, be replaced by the 2.5% premium sought.

City Position: Neither the parties' history of bargaining nor consideration of any comparables supports this demand. It should, therefore, be rejected.

Discussion: These special premiums are already an added benefit that members of the bargaining unit receive in Bellevue and would not receive elsewhere. The City is correct, therefore, in noting that an increase cannot be justified on the basis of comparability considerations. The only persuasive justification offered by the Union is the equitable aspect of maintaining the present value of what the benefit reflected when added to the contract in 1983.

Exhibit 129 indicates that the Seattle-Tacoma CPI-W has increased from 300.5 in the first half of 1984 to 315.6 for the first half of 1987. This represents a 5% increase. Using this as a general guide, therefore, even though the Chair is aware of the

CPI's various imperfections, one can conclude that today the equivalent value of the $50 received in 1983 is $52.50. Weighing that consideration and the fact that this amount because of intervening salary increases represents a diminished percentage of the top step firefighters salary compared to when first added, a reasonable adjustment would appear to be an increase to $55 but effective only as of January 1, 1988. This dollar amount in relation to the top step firefighters salary for 1988 would represent approximately 2%, thus maintaining relative parity of the premium vis-a-vis salary even though it is not clear whether that is what the parties intended when adding the $50 premium in 1983.

(5) Emergency Services Coordinator

Union Position: The Union proposes that the current premium for the Emergency Medical Coordinator (or Emergency Services Coordinator as currently designated in Appendix A) be continued at 15% of the rate for Captain. That rate was established unilaterally by the City and it has not offered sufficient justification to reduce the rate. With the expansion of the emergency medical program, the position carries more responsibility than in the past. The City's attempted reduction, therefore, should be rejected.

City Position: The City proposes a premium range from 5% - 15% of the differential over Captain. This, in effect, was intended to result in three steps: (1) a beginning premium of 5%; (2) a 10% premium after six months and satisfactory performance; and (3) a 15% premium after another six months and continued

satisfactory performance. A range provides recognition for improved efficiency in the job as the incumbent learns the duties.

Discussion: The Emergency Services Coordinator is a paramedic, usually an officer, in charge of the Department's Emergency Medical Services program. This program has greatly expanded in recent years and the City does not deny that the duties of this position have increased as well or at least remained the same as when the current premium was established. While the Chair can understand the City's preference for a range of premium steps, she finds no evidence in the record to support a reduction in the starting point for that range from 15%. Yet, that would be the net effect of the City's change. Whoever became EMC under the City's proposal would initially receive 10% less than the City had been willing to pay previously. The Chair agrees with the Union that sufficient justification for such a reduction has not been shown. The present differential should, therefore, be maintained.

(6) Training Coordinator

Union Position: The Union proposes that the premium for Training Coordinator be the same 15% as the Emergency Services Coordinator receives. The Training Coordinator is a senior officer assigned to supervise the Department's training program and develop the annual Training Division budget. The expired contract provided salary for this position at the rate of 10% above Captain but by agreement of the parties, a prior incumbent received a 15% differential. That was decreased to 10% when a new Training Coordinator was appointed. In view of the increased

responsibilities of this position, a downward adjustment is unwarranted.

City Position: The City proposed the same kind of range for this position as for the Emergency Services Coordinator, i.e. 5% - 10% - 15%. The City wishes to establish a range in order to allow recognition of improved efficiency on the job. The earlier agreement to raise the premium to 15% was solely to deal with one particular individual.

Discussion: For the reasons mentioned in connection with the Emergency Services Coordinator position, the City's effort to reduce the initial premium paid the Training Coordinator from 10% to 5% is rejected. Nothing in the record justifies a decrease. Instead, the record indicates the City's own recognition that the position of Training Coordinator is similar in scope and responsibility to that of Emergency Medical Coordinator. This is reflected in the City's proposal to pay both positions comparably. The record is persuasive, therefore, that Training Coordinator should be paid the same as the Emergency Medical Coordinator, i.e. 15% above the rate for Captain.

(7) Medical Services Officer, Assistant Training Coordinator

Union Position: The Union proposes that the salary rate for these positions be equivalent to the top step for Lieutenant-Paramedic rather than maintaining the current two steps. The person assigned to either position must carry out all its responsibilities whether recently appointed or not. The top step rate, therefore, is fully justified.

City Position: The City wishes to retain the current two steps so that after the appointed individuals learn the duties they can be given an increase in grade. That has been the past practice and the City sees no persuasive reason to change it.

Discussion: The position of Medical Services Officer with its current pay rates was just established by agreement of the parties in 1986. The effect of the Union proposal, given the across the board increase granted for 1987, would be to jump the entry level pay rate or this position and the Assistant Training Coordinator over nine (9) percent. The record does not provide compelling reasons for granting that kind of increase.

The City's desire to maintain two steps is consistent with the practice for most other positions and reasonably reflects the fact that with time an individual becomes more productive and efficient once they've learned the duties of a new position. The status quo, therefore, should be maintained.

(8) Staff Services Coordinator (SSC)

Union Position: The Union is proposing that this position be upgraded a step to the same rate as the Medical Services Officer (MSO) and Assistant Training Officer (ATO). The responsibilities of the position have multiplied since it was established in 1982. The SSC has recently been assigned as department safety officer, and the department has doubled in size in terms of apparatus and equipment; thereby increasing the sheer mass of things with which this position must deal. In addition, the mechanics the SSO supervises have become full-time department employees.

In Everett and Kent, the comparable duties are performed by a Batallion Chief, as they were in Tacoma until recently assigned to non-uniformed personnel. The Department itself has recognized the unique duties, delegating to the SSC the authority of the Chief for the purposes of performing his assignment. Such a delegation is rare in the Department. The duties and responsibilities are at least comparable to the Medical Services Officer and Assistant Training Officer and deserve the same compensation.

City Position: The City contends the present 12% differential should be maintained to reflect the difference in rank among individuals customarily assigned to the positions at issue. The SSC is filled by a firefighter. In comparison, the ATO is normally filled by a Lieutenant, and the MSO by a firefighter paramedic. The City, therefore, feels it is appropriate to have the position of SSC one rank down.

Discussion: Both sides have valid arguments to make regarding the relative rating of this position. On balance, however, the Chair finds more persuasive the City's position regarding the appropriateness of maintaining a different rate in recognition of the lesser rank of the individual assigned as SSC. Although the duties of the position may have increased somewhat in the last six years, the record does not demonstrate sufficient grounds for what would amount to a 13% increase under the Union's proposal. Compelling reasons, therefore, have not been shown to change the relative ranking on the salary schedule.

N. Retroactivity

The Chair has considered the parties' respective arguments as to whether the various proposals adopted herein should be applied retroactively to January 1, 1987 or only prospectively from the date of this Award. The retroactive effect of each of the changes being made has been considered and discussed with the parties. The Chair concludes that full retroactive implementation is equitable, appropriate and justified by the fact this interest arbitration is being concluded so late in the term of the contract.

There is one exception to this conclusion. With regard to changes being made to the right to grieve, it is not the Chair's intent to open the door to stall claims not already raised. Therefore, those disputes not already raised in writing, which would otherwise be barred by the time limits of the parties' pre-existing grievance procedure, shall remain barred as untimely.

IN THE MATTER OF THE ARBITRATION

BETWEEN

CITY OF BELLEVUE, and BELLEVUE FIREFIGHTERS LOCAL 1604, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, AFL-CIO, CLC	)	INTEREST ARBITRATION AWARD

After careful consideration of all arguments and evidence and in accordance with the foregoing findings, it is awarded that:

Article I - Definitions

Unchanged except for the agreed revision to paragraph I (Overtime).

Article VII - Reductions and Recall

No change.

Article VIII - Vacancies and Promotions

Revised to read:

Section 1. Vacancies and promotions shall be governed by the rules and regulations adopted by the Bellevue Civil Service Commission.

Section 2. In the case of promotions, if the candidate with the highest score on the applicable Civil Service eligibility list is not appointed, that candidate shall receive a written explanation as to why another candidate was considered best qualified.

Article XI - Overtime

Revised to read as follows (new language underscored):

A. In the event that a need for overtime should occur in the Department, it shall be paid at one-and-one-half (1-1/2) times the basic hourly rate of pay. Subject to prior approval of the Department, employees entitled to overtime pay may elect to receive compensatory leave at the rate of time and one-half in lieu of monetary payment at the same rate.

B. An employee called in for overtime work shall be paid at least a four (4) hour minimum at the overtime rate of pay. The aforementioned 4-hour minimum shall not apply to employees

(a) held over the one hour immediately following the termination of their regular duty shift,

(b) to employees required to attend departmental meetings on their off-duty time, or

(c) to employees who elect to leave when the work is done if the time worked is less than 4 hours. In that event, overtime pay shall be only for actual time worked, computed to the nearest quarter hour.

C. Probationary firefighters called in for training purposes will be paid overtime at one-and-one-half (1-1/2) times their basic rate. Employees required to attend E.M.T. training or testing off-duty to obtain initial certification or to maintain certification shall be paid at the overtime pay rate for actual class time. Off-duty E.M.T. training or testing to recertify as an E.M.T. after certification has lapsed due to the election or poor performance of the employee shall not be compensated.

D. Employees who attend school or conferences off shift at the Chief's request will be paid the employee's straight-time hourly rate for time spent in the classroom. Employees required to attend department meetings on their off-duty time shall be paid at the overtime rate of pay for actual time in such meetings.

E. Overtime shall be scheduled in accordance with the provisions of Section 12.04 of the Department Operating Procedures as updated in 1982 (update OP 82-36) amended as follows:

1. If no suitable employee can be secured for an overtime detail after the appropriate list(s) have been called through completely one time, the employer may mandatorily assign the overtime detail to one of the first three employees contacted by calling through the list in order a second time after giving consideration to the needs of the three employees so contacted.

F. The work days and hours of the Emergency Medical Coordinator and Training Director may be varied without overtime liability provided the total hours worked in a week do not exceed forty (40).

Article XII - Hours of Duty

The City's Proposal is adopted subject to the following revision of paragraph three:

> Temporary or permanent involuntary assignments of employees in the bargaining unit to any of the above divisions or sections may be made to meet department needs when an acceptable volunteer cannot be found.

Article XIII - Shift Exchanges

The City's Proposal is adopted subject to the following revision (underscored) of the first sentence of paragraph 3:

> Except for personal emerging or to attend school related to fulfilling Civil Service requirements for promotional exams and other job related educational endeavors, each employee shall be granted up to four (4) discretionary shift trade requests per calendar year regardless of the reasons for the trade as long as all other pertinent" criteria are met.

Paragraph 7 of the City's proposal is revised to read:

7. In the event the substituting employee fails to appear, the requesting employee, if at work, has a continuing obligation to perform their duty. Therefore, the requesting employee shall remain on shift until properly relieved. Furthermore, the substituting employee shall be subject to all normal departmental disciplinary procedures, where applicable, for failure to appear.

Article XVI - Holidays

No change.

Article XVII - Vacation Leave

New section added to read:

B. Effective January 1, 1988, the above vacation schedule shall be increased as follows for 24 hour shift personnel:

Years of Continuous Service	Vacation Shifts	Hours per Calendar Month of Service
1 through 4	6	12
5 through 9	7	14
10 through 14	8	16
15 through 20	9	18
More than 20	10	20

Day shift personnel shall receive a pro-rata equivalent of the foregoing 1988 vacation increases based on annual hours worked compared to the annual hours worked by 24 hour shift personnel.

Article XVIII - Emergency Leave

No change.

Article XX - Prevailing Rights

The City's Proposal is adopted subject to revision of subparagraph A to read: "To discipline, suspend, demote, discharge employees for just cause."

A final paragraph is added stating: "The City agrees that a continuing duty to bargain exists as to those enumerated rights that affect wages, hours

and working conditions within the meaning of RCW Chapter 41.56."

Article XXIV - Grievance Procedure

Paragraph one - Union proposal adopted. New language reads:

A 'grievance' means a claim or a dispute by an employee or the Union with respect to the interpretation or application of the provisions of this Agreement. The Union has the right, in its own capacity, to act as an aggrieved party in the grievance procedure.

Step 1 - amended to read:

The Union or an employee shall present a grievance to the employee's supervisor, who shall give his oral answer within five (5) business days after it is presented to him; provided, however, that if a grievance is filed by an employee without assistance of the Union, the Union shall be given notice of the grievance and an opportunity to be present at any adjustment of the grievance.

Step 3 - amended to add the following paragraph:

In the case of disciplinary actions, both appealed to the Civil Service Commission and grievable under the terms of this contract, an election of remedies shall be made after receipt of the Step 3 response. An employee may elect to either pursue an appeal to the Civil Service Commission or continue with the contractual grievance procedure, but not both. Time limits will be extended for either side if necessary to complete a reasonable investigation before the election of remedies is made.

Last paragraph - The sentence: "Nor shall any disciplinary actions which may be appealed to the Civil Service Commission be considered grievances and subject to the grievance procedures herein" is deleted.

Appendix A

(1) The monthly salaries shown on Appendix A shall be increased as follows:

Effective 1/1/87 4.5%
Effective 1/1/88 3.0%

(2) Effective January 1, 1988, a new classification "Firefighter/Driver is added to the salary schedule with pay rates 5% above those shown for the firefighter classification.

(3) Appendix A shall be revised to state regarding premium pay: "Receipt of all premium pay shall be contingent upon the specific assignment and the continuous performance of the assigned duties. The City retains the right to make reassignments that result in a loss of premium pay."

(4) Effective January 1, 1988, the premium pay set forth in paragraphs B-D shall be increased to $55/month. A new subparagraph E shall be added thereunder and read: "Hazardous Materials Specialist: $30/month effective 1/1/88.

(5) The current salary for the Emergency Services Coordinator and Training Coordinator shall remain 15% above the rate for Captain.

Retroactivity

The changes adopted in this Opinion and Award shall be retroactive to January 1, 1987; provided, however, that with respect to the right to file grievances, claims not already presented in writing, which would otherwise be barred by the time limits of the parties' pre-existing grievance procedure, shall remain barred as untimely.

Dated this 13th day of June, 1988.

Janet Gaunt

Janet L. Gaunt, Panel Chairperson