INTEREST ARBITRATION OPINION AND AWARD

OF

M. ZANE LUMBLEY, IMPARTIAL ARBITRATOR/CHAIRMAN,
KEVIN FERGUSON, EMPLOYER-DESIGNATED PANELIST,
and
MICHAEL McGOVERN, UNION-DESIGNATED PANELIST

CITY OF PASCO, WASHINGTON,

and

LOCAL 1433, INTERNATIONAL ASSOCIATION OF FIREFIGHTERS

AAA Case No. 75 L390 0208 92

PERC Case No. 9968-I-92-214

Draft Opinion and Award Issued to Panelists: June 23, 1993

Final Opinion and Award Issued to Panelists: July 6, 1993

Final Opinion and Award Issued to Parties: July 17, 1993

O P I N I O N

PROCEDURAL MATTERS

The Impartial Arbitrator was selected by the parties as the Chairman of a three-person Interest Arbitration Panel. Kevin Ferguson was designated the Employer member of the Panel and Michael McGovern the Union member of the Panel. A hearing was conducted before the Panel on January 11, 1993, in Richland, Washington. The City of Pasco, Washington, (hereinafter the "City" or "Employer") was represented by City Attorney Greg A. Rubstello. Local 1433, International Association of Firefighters (hereinafter the "Union") was represented by Alex J. Skalbania of the law firm of Critchlow, Williams, Schuster, Malone and Skalbania.

At the hearing, testimony was taken under oath and the parties presented documentary evidence. No court reporter was present. Instead, the Arbitrator tape recorded the proceedings in order to supplement his personal notes. The parties agreed upon the filing of posthearing briefs and timely briefs were received from the parties on January 25, 1993. Thereafter, pursuant to agreement reached at hearing, the Interest Arbitration Panel conferred by telephone on January 28, 1993. On February 26, 1993, at the request of

specified standard be?

The Union asserts a standard should be established and recommends the standard of .10 be adopted; the City argues a standard should not be adopted because one such as that urged by the Union would permit violations of the agreed-upon rule against consuming any amount of alcohol on City premises or during working hours to go without discipline where the standard was not satisfied and because it should be allowed to consider other evidence such as behavior in determining whether an employee is under the influence.

In deciding this issue it is important to note, as the Employer's arguments make clear, that there are two parts to this dispute. One is the City's testing of an employee pursuant to its "reasonable suspicion that an employee is consuming alcohol on City premises or during working hours," which the parties have agreed should appear in Article IX of the City's policy, and the other is the testing of an employee by the City for suspected violation of the agreed-upon Article VIII prohibition of being ". . . under the influence of . . . alcohol on City premises or on City business, in City supplied vehicles, during working hours." While much energy was expended discussing what would constitute "positive" test results, and it appeared initially

analysis, the dispute here relates only to the testing of the second blood sample. The Union's proposal should be adopted because it both comports with the limited examples of the procedure followed by other jurisdictions which were entered in the record and best insures qualified handling of the relevant blood samples. However, the evidence adduced at hearing also demonstrates the parties are in agreement that the local Lourdes Hospital Business Health Service, with which the City has contracted to administer its Employee Assistance Program, employs blood testing procedures which are acceptable to both parties. Accordingly, the second blood sample drawn shall be sent for analysis to either the local Lourdes Hospital Business Health Service facility or a laboratory certified by the National Institute for Drug Abuse or the National Institutes of Health. Lastly, in line with the proposals offered by both parties during negotiations, if such a medical laboratory is not available locally, the second blood sample will also be sent to the State Toxicologist for analysis.

Issue No. 2: Should a specified standard be established in order to clarify the blood alcohol level constituting a positive test for alcohol usage on the part of a firefighter pursuant to the City's policy and, if so, what should that

> samples of the employee's breath or blood for testing for blood/alcohol [sic] level. The employee will be given the election of breath or blood testing. Breath testing shall be performed by qualified personnel on equipment and utilizing procedures approved by the State Toxicologist and promulgated in the Washington Administrative Code.
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> If a blood sample is requested, two samples shall be drawn. One sample shall be sent to the State Toxicologist for analysis and the second sample shall be analyzed by a local medical laboratory. If a local medical laboratory is unavailable, then the second sample shall also be sent to the State Toxicologist for analysis.

DISCUSSION AND ANALYSIS

For ease of understanding, the disputed provisions will be addressed in individual issue form, framed in the fashion proposed by the Union.

Issue No. 1: Must laboratories conducting blood tests pursuant to the City's alcohol testing policy be certified by an appropriate state, federal or nationally-recognized organization?

The Union argues laboratories utilized pursuant to the City's policy should be certified; the City contends no such certification is necessary.

Since the parties have already agreed that, in the event an employee requests a blood test, two samples will be drawn and that one will be sent to the State Toxicologist for

Article VIII, any employer furnished office space, desk, locker, file cabinet, motor vehicle, or any other item of City property maintained for the use of employees in their work.

For this reason, employees are discouraged from bringing to the work place items of a personal nature they would not want viewed or inspected by others.

3. Personal items. Closed personal containers and pockets of trousers, shirts, coats and jackets brought to the work place or placed in City furnished vehicles may be searched for evidence of a violation of any prohibition listed in Article VIII only when reasonable suspicion exists.

4. Police officers. When probable cause exists, an item-by-item search of the uniform parts and personal clothing of a police officer, down to the officer's skin or underwear, may occur in investigation of a violation of a prohibition listed in Article VIII. Any such search shall be conducted out of view of persons not responsible for the search and without physical contact.[2]

Searches will be conducted in the presence of the employee if on duty, if off duty the employer shall make a reasonable effort to advise the employee of the search and give him a reasonable opportunity to return and observe the search. Searches conducted in the employee's absence will be conducted before a bargaining unit representative if the employee is represented.

Whenever the City of Pasco has a reasonable suspicion that an employee is consuming alcohol on City premises or during working hours in violation of this policy, the City may request one or more

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[2] This is the provision referred to above which was intended by the Employer to apply only to police officers.

employee units and its unrepresented employees alike. The policy proposed by the City is set forth in its Administrative Order No. 65-A entitled "Substance-Free Work Place." By the time of the hearing herein, it appears agreement had been reached with respect to all the City's employees except those in the instant unit which includes the City's firefighters holding the rank of captain and below.

The disputed portions of Administrative Order No. 65-A are set forth in Article IX thereof entitled "Inspections." After bargaining and mediation with the assistance of the Washington Public Employment Relations Commission failed, the parties agreed to implement Administrative Order No. 65-A but for the disputed provisions which have been brought before the undersigned panel for resolution at interest arbitration pursuant to RCW 41.56.450. As the City proposed them, those disputed provisions stated:

> IX. INSPECTIONS
>
> 1. Definitions. "Reasonable suspicion" exists when a person responsible for a search is aware of specific articuable [sic] facts, and inferences from those facts, which reasonably warrant suspicion that evidence will be uncovered.
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> 2. City furnished work place, vehicles, lockers, and other receptacles. The City may search at any time for any administrative or work-related reason, including investigation of the violation of the prohibitions listed in

the Impartial Arbitrator, the parties answered in writing several questions for clarification raised with the partisan panelists by the Arbitrator. This response from the parties was received on March 1, 1993, and the record was closed by the Impartial Arbitrator.

The procedure adopted at hearing by the Interest Arbitration Panel called for the Impartial Arbitrator to complete his Opinion within thirty days of his receipt of briefs and forward it to the partisan panelists for concurrence or dissent, signature and return to the Impartial Arbitrator for distribution to the parties. Thereafter, extensions of time were sought by and granted the Impartial Arbitrator.

BACKGROUND

The City has been engaged in the development of a substance-free workplace policy since 1990. After much management discussion, it was determined to limit the testing provisions of the policy to alcohol initially.[1] Once that decision was made, the City hoped to reach agreements on a single policy to be applied uniformly to its four represented

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[1] The policy negotiated on behalf of the City's police officers, however, also includes a drug search policy by virtue of their more frequent contact with drugs in the line of duty.

that that term had relevance only in the context of the latter question, namely whether an employee is "under the influence," it can reasonably be seen as relevant to the matter of consumption on City premises or during working hours, as well.

For purposes of testing for Article VIII violations of the prohibition of being ". . . under the influence of . . . alcohol on City premises or on City business, in City supplied vehicles, during working hours", the Union's proposal of the use of the .10 grams per 100 milliliters of blood/.10 grams per 210 liters of breath used by the State in its prosecution of motor vehicle operator criminal cases is reasonable and should be adopted as the definition of a "positive" test result. Scrutiny of the Pierce County Fire Protection District #9/IAFF Local 2221 Labor Agreement excerpt and the IAFF Model Drug and Alcohol Testing Policy excerpt, both of which were entered in the record as Union Exhibit No. 7, discloses that was the intent of the use of the word "positive" in those policies. Thus, where the Employer chooses to test to determine if an employee is under the influence, a result equal to or greater than .10 grams per 100 milliliters of blood/.10 grams per 210 liters of breath will be required for it to be considered "positive,"

i.e. to demonstrate that the "employee's work performance or conduct on the job is affected in any appreciable degree."

The consumption of alcohol on City premises or during working hours is a different question, however. Because the consumption under either circumstance is a flat prohibition, no discretion concerning impairment is involved. Thus the various court decisions cited by the Union are inapposite. Accordingly, a test administered for purposes of collecting evidence with respect to the question whether an employee has violated the Article IX rule against the consumption of alcohol on City premises or during working hours which demonstrates the presence of <u>any</u> alcohol in the employee's body will be considered "positive." This is not to say, of course, that the presence of alcohol in the body of an employee will demonstrate, in and of itself, that he or she has consumed alcohol on City premises or during working hours. Instead, the presence of alcohol in the employee's body is merely one piece of evidence which may be considered by the City in determining whether an employee, in fact, violated that provision of Article IX of the Employer's workplace policy.

<u>Issue No. 3</u>: Should the City, before it conducts any search in connection with the City's alcohol testing policy

that is subject to a "reasonable suspicion" standard, be required to provide the Local 1433 member who is the subject of the search with prior written notification of the specific facts which have caused the City to have a "reasonable suspicion" that such a search is necessary and appropriate?

The Union asserts the City should be required to provide such advance written notification; the City disagrees.

The parties reached agreement in negotiations that Article IX should define "reasonable suspicion" as follows: "'Reasonable suspicion' exists when a person responsible for a search is aware of specific [articulable] facts, and inferences from those facts, which reasonably warrant suspicion that evidence will be uncovered."[3] With one minor modification, adoption of the Union's proposal that prior written notification of the facts causing the City to have reasonable suspicion be given is warranted. Since, as the Union argues, the City must already be in possession of the "specific articulable facts, and inferences from those facts, which reasonably warrant suspicion that evidence will be uncovered" in order for "reasonable suspicion" to exist, a requirement for a brief recitation of those facts in writing

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[3] Of course, whether the standard of "reasonable suspicion" or some other standard should be applied to certain kinds of searches has yet to be determined and will be decided infra.

before the search occurs is not unduly burdensome. Most importantly, to require the City to list those facts beforehand protects both parties in the event an argument subsequently is raised with respect to after-the-fact notions supporting the search. In disagreement with the City and in agreement with the Union, the reference to written documentation contained in Section 16.03 of Union Exhibit No. 4, the excerpt from the Walla Walla Fire Department Collective Bargaining Agreement, must be taken as a requirement for prior written documentation because that provision also notes, "No such testing may be conducted without the written approval of the Fire Chief." Such a provision would be meaningless if the relevant official were allowed to "document in writing who is to be tested and why the testing was ordered," as that contract also requires, after the fact. The modification of the Union's proposal referenced above is the addition of the Union's designated shift representative as an optional person to whom the City's written reasons may be given in the absence of the affected employee in order that the finding with regard to this issue might be consistent with the finding to be made infra with respect to Issue No. 4.

Issue No. 4: Should any searches that are conducted by

the City in connection with the City's alcohol testing policy be conducted only in the presence of the Local 1433 member who is the subject of the search?

The Union would answer this question in the affirmative. The City contends searches should occur in the presence of the relevant employee if he or she is on duty or in a position to return to the facility in question in response to a reasonable effort on the part of the City to notify the employee, but that it would also be proper to conduct the search in the presence of a unit representative if the employee is not there.

The City's approach is the more reasonable of the two. Firefighters do not work 9 to 5 jobs, five days a week. Instead, they work rotating shifts of 24 hours on duty and 48 hours off duty. In addition, they receive Kelly days, vacation time and sick leave. If the City meets the relevant standard, yet to be determined infra, justifying a search, it should not have to delay a search as long as 48 hours or more. The City's proposal provides for delaying the search temporarily until a reasonable effort to give the employee the opportunity to be present has been made and for conducting the search in the presence of a bargaining unit representative selected by the Union in the absence of the

employee. Those are sufficient safeguards to protect the rights of the employee. In reaching this decision, the rights of the affected employee have been balanced against the rights of the City to conduct its affairs in a timely fashion to safeguard potential evidence of violations of its alcohol policy and, where warranted, to proceed with the gathering of additional evidence on the basis of any discoveries made before that evidence becomes stale.

Issue No. 5: What standard should the City be required to meet before it conducts a search of a Local 1433 member's personal belongings such as the contents of gym bags in connection with the City's alcohol testing policy?

The Union asserts the City should be required to meet the "probable cause" standard before conducting searches of unit employees' personal belongings; the City argues it should have to meet only the "reasonable suspicion" standard with respect to searches of personal belongings.

This issue will be discussed simultaneously with Issue No. 6 below.

Issue No. 6: What standard should the City have to meet before it searches lockers that are provided to Local 1433 members at the City's fire stations?

The Union argues the "reasonable suspicion" standard

should be applied to searches of employee lockers; the City contends it should be allowed to search lockers at any time for any work related reason without satisfying any particular standard.

As noted in the plurality opinion issued by the United States Supreme Court in **O'Connor v. Ortega**, 480 US 709, 715-716 (1987), a case involving the search of the office of a doctor employed by a state hospital:

> We have no talisman that determines in all cases those privacy expectations that society is prepared to accept as reasonable. . . .
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> Because the reasonableness of an expectation of privacy, as well as the appropriate standard for a search, is understood to differ according to context, it is essential to delineate the boundaries of the workplace context. The workplace includes those areas and items that are related to work and are generally within the employer's control. At a hospital, for example, the hallways, cafeteria, offices, desks, and file cabinets, among other areas, are all part of the workplace. These areas remain part of the workplace even if the employee has placed personal items in them, such as a photograph placed in a desk . . .
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> Not everything that passes through the confines of the business address can be considered part of the workplace context, however. An employee may bring closed luggage to the office prior to leaving on a trip, or a handbag or briefcase each workday. While whatever expectation of privacy the employee has in the existence and the outward appearance of the luggage is affected by its presence in the workplace, the employee's expectation of privacy in the <u>contents</u> of the luggage is not affected in the same way. The appropriate standard for a workplace search does

> not necessarily apply to a piece of closed personal luggage, a handbag, or a briefcase that happens to be within the employer's business address. [Emphasis in original].

The City provides individual lockers for the use of each of its firefighters at both its downtown and airport stations. The lockers generally are arranged in groups of three between the beds located in the sleeping area or "bedroom" of each station. Unlike the beds, which are used by more than one employee on a rotating shift basis, each locker is assigned permanently to only one employee. Most are identified by the name of the user on the outside of the door. In those lockers the employees keep not only their employer-provided duty uniforms and PE clothing but also personal gear such as gym bags, shaving and feminine hygiene items, family pictures, house slippers, reading and writing materials, medications and so forth. Employees appear not only to use their lockers during their duty shifts but also to leave items in them when they are not on duty.

Although Fire Chief Dickinson historically has looked freely in the lockers in order to determine whether employees are following his directives such as the prohibition of pin ups and other material likely to offend, the parties are in agreement that employees may place locks on their lockers and that no keys of combinations are provided the City if locks

are used by employees. Moreover, it is undisputed no form is signed by employees which addresses locker entry when lockers are issued. Lastly, it is agreed that anytime the Fire Chief wanted access to a locked employee's locker either for the kind of check referenced above or in order to locate some needed piece of equipment, the relevant employee, if not present at the station, was called in to open the locker. The only occasion cited on which an employee's lock was removed forcibly occurred when it was necessary to clean out the locker of an individual on a long-term disability so that it could be assigned to someone else.

Without question, the lockers provided employees at the fire stations are, in the words of the **Ortega** plurality, ". . . areas . . . related to work and . . . generally within the employer's control." **Id.**, at 715. Thus they ordinarily ". . . remain part of the workplace even if the employee has placed personal items in them . . . ." **Id.**, at 716. However, this ". . . does not necessarily apply to a piece of closed personal luggage, a handbag, or a briefcase that happens to be within the employer's business address." **Ibid.**

Moreover, as has been recognized elsewhere, while it could be inferred unlocked lockers ". . . were subject to legitimate, reasonable searches . . ." by an employer, where

". . . the employee purchases and uses his own lock on the lockers, with the employer's knowledge, the fact finder is justified in concluding that the employee manifested, and the employer recognized, an expectation that the locker and its contents would be free from intrusion and interference." **K-Mart v. Trotti**, 677 S.W.2d 632, 637 (Tex. App.-Houston, 1984). Where breaking of locks on doors leading to an individual's office, desk and storage compartment was permitted, a court, relying on **Ortega**, ruled such a search was legitimate because there were ". . . reasonable grounds to suspect that plaintiff was guilty of work related misconduct and that the search of his former office might turn up evidence thereof." **Diaz Camacho v. Lopez Rivera**, 699 F.2d 1020, 1025 (D.P.R. 1988).

In analyzing the case at hand it is important to remember not only what the dispute involves but what it does not involve. At issue here is the promulgation and enforcement of a substance-free workplace policy which is aimed for the time being solely at alcohol. The dispute does not involve allegations of criminal activity, investigation of compliance with City policies such as the prohibition of arguably offensive or inflammatory pictures or language, or noninvestigative work related matters such as temporarily

mislaid equipment. Thus application of considerations relevant to matters such as those is misplaced.

When one focuses on the narrow dispute here, it seems clear that the standard of "reasonable suspicion" should be applied in the case of searches addressed in both Issues No. 5 and 6.[4] There is no need to treat the two differently for purposes of the Employer's alcohol policy; except as set forth infra the City must have a reasonable suspicion that an employee is in violation of the policy before either a locker or any closed personal container, be it a gym bag, briefcase, or thermos bottle, can be searched.[5] Given the historic use, with the Employer's knowledge and acquiescence, of personal locks on the lockers by employees, the same privacy expectation may be said to exist with respect to both. However, the expectation cannot reasonably be said to exist

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[4] Because allegations of violations of criminal statutes are not involved here, there is no need to elevate the standard the Employer must meet to that of "probable cause" for searches of personal containers brought to the workplace by employees. In this connection, as the Employer notes, employees control the contents of those containers. Moreover, the standard of reasonable suspicion for searches of closed containers and clothing not being worn comports with the standard agreed to by the City and its police officers.

[5] The parties are in agreement that pockets of trousers, shirts, coats and jackets which are not being worn by an employee at the time of a search should be treated in the same fashion as closed personal containers.

as to lockers unless employees choose to place locks on them and the City will not be required to demonstrate reasonable suspicion to search a locker where that is not the case.[6]

Issue No. 7: Should a Local 1433 member who has tested positive on an alcohol test that is conducted pursuant to the City's proposed alcohol testing policy have the option of requesting a second breath or blood alcohol test at the City's expense to determine whether the results of the first test that was conducted were accurate?

The Union asserts employees testing positive to an initial test should be allowed to request that a second test be performed by different personnel on different equipment at the City's expense; the City contends such a procedure should not be adopted unless the second test is performed at the employee's expense.

The essence of the Union's proposal is most reasonable and should be adopted. Both the Employer and its employees have substantial, legitimate interests which must be considered in deciding this issue. The Employer must be

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[6] The record demonstrates some employees do not place locks on their lockers. Some apparently even leave their locker doors ajar. Henceforth, such choices will constitute a waiver. With the policy found appropriate herein, the employees, in essence, may choose their own level of privacy expectation and the Employer will be privileged to act accordingly.

certain its employees are capable of performing their duties free of any alcohol impairment, especially in view of the critical nature of the service rendered the public. Employees, on the other hand, given the seriousness of the charges leading to such testing and the effect the results can have on their livelihood, must be absolutely assured of the presence of due process in the testing procedure. Without doubt, one way to ensure the achievement of both goals is via the accuracy and reliability of the results of the tests utilized.

If an employee chooses to have the initial test performed on his or her blood, a second test automatically will be performed at the Employer's expense under the policy as proposed by the Employer since two samples are drawn for testing at the outset. The dispute thus concerns only the administration of a second test in the event an employee chooses to have his or her breath tested initially and that test produces a positive result.[7]

The record demonstrates the City has available to it on short notice a number of BAC Verifier DataMaster breath testing machines used by law enforcement agencies in the

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[7] What constitutes a "positive" test result has been dealt with in deciding Issue No. 2 above.

of Washington. The parties stipulated that that ɔment produces a test result within a few minutes of the ɡiving of a breath sample. It is also apparent from the record that portable breathalyzer units are accessible to the City. However, the results produced by those machines are not admissible in criminal cases in the State of Washington. Lastly, it will be recalled that it has been determined with respect to Issue No. 1 above that the second blood sample drawn in the event an employee elects to have his or her blood tested will be sent for analysis to either the local Lourdes Hospital Business Health Service facility, a laboratory certified by the National Institute for Drug Abuse or the National Institutes of Health or, in the event such a local medical laboratory is not available, to the State Toxicologist for analysis.

It is eminently reasonable for an employee whose breath tests positive to be able to request a second test. This is particularly so given the fact the parties are in agreement that an employee's blood sample will be tested twice if he or she selects that test rather than a breath test. It is also important to note that the speed with which results are produced when BAC Verifier DataMaster breath testing machines are used for the initial test reduces the overall potential

burden of the testing process on the Employer to little more than that existing in the event the employee had chosen a blood test initially.

However, it accomplishes little to have the second test performed on the same equipment as the initial test. Nor should equipment the results of testing on which are inadmissible in the courts of this state be used for the second test. The best option is to utilize a blood test for this purpose. Since a procedure for conducting blood alcohol tests has already been found appropriate in Issue No. 1 above, a portion of it should be used here as well. Thus an employee testing positive as the result of an initial breath test will be allowed to request a single confirming test be performed on his or her blood by one of the institutions found appropriate in Issue No. 1 above at the Employer's expense. Such a right is not only reasonable but consistent with provisions contained in collective bargaining agreements of several other jurisdictions, excerpts from which were entered in the record by the Union.

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A W A R D

I. It is the Award of the Impartial Arbitrator that Article IX of the City's Administrative Order No. 65-A, the Substance-Free Workplace Policy, shall be worded as follows:

IX. INSPECTIONS

1. Definitions. "Reasonable suspicion" exists when a person responsible for a search is aware of specific articulable facts, and inferences from those facts, which reasonably warrant suspicion that evidence will be uncovered.

2. City furnished work place, vehicles, lockers, and other receptacles. The City may search at any time for any administrative or work-related reason, including investigation of the violation of the prohibitions listed in Article VIII, any employer furnished office space, desk, locker which has no employee-provided lock on it, file cabinet, motor vehicle, or any other item of City property maintained for the use of employees in their work. Lockers with employee-provided locks on them may be searched by the City for evidence of a violation of any prohibition listed in Article VIII only when reasonable suspicion exists.

   Employees are discouraged from bringing to the work place items of a personal nature they would not want viewed or inspected by others.

3. Personal items. Closed personal containers and pockets of trousers, shirts, coats and jackets brought to the work place or placed in City furnished vehicles but not being worn by an employee may be searched for evidence of a

violation of any prohibition listed in Article VIII only when reasonable suspicion exists.

4. Notice and employee presence. The City will provide the Local 1433 member who is the subject of the search, or the Union's designated shift representative in the absence of the affected employee, with prior written notification of the specific facts which have caused the City to have a reasonable suspicion that such a search is necessary and appropriate. Searches will be conducted in the presence of the employee if on duty. If off duty, the City shall make a reasonable effort to advise the employee of the search and give the employee a reasonable opportunity to return and observe the search. Searches conducted in the employee's absence will be conducted before the Union's designated shift representative.

5. Alcohol testing. Whenever the City of Pasco has a reasonable suspicion either that an employee is consuming alcohol on City premises or during working hours in violation of this policy or that an employee is under the influence of alcohol in violation of this policy, the City may request one or more samples of the employee's breath or blood for testing for alcohol level. The employee will be given the election of breath or blood testing for his or her initial test.

   If blood testing is requested, two samples shall be drawn. One sample shall be sent to the State Toxicologist for analysis and the second sample shall be analyzed by either the local Lourdes Hospital Business Health Service facility or a laboratory certified by the National Institute for Drug Abuse or the National Institutes of Health. If such a medical laboratory is not available locally, the second blood sample will also be sent to the State Toxicologist for analysis.

If breath testing is requested, it shall be performed by qualified personnel on equipment and utilizing procedures approved by the State Toxicologist and promulgated in the Washington Administrative Code. In the event of a positive breath test, the employee shall have the option of requesting a blood alcohol test to determine whether the results of the breath test that was conducted were accurate. If such a blood test is requested, only one sample will be drawn and it shall be analyzed by either the local Lourdes Hospital Business Health Service facility or a laboratory certified by the National Institute for Drug Abuse or the National Institutes of Health. If such a medical laboratory is not available locally, the blood sample will be sent to the State Toxicologist for analysis.

A "positive" test administered for the purpose of collecting evidence with respect to the question whether an employee has violated the rule against consuming alcohol on City premises or during working hours shall be one which demonstrates the presence of any amount of alcohol in the employee's body. A "positive" test administered for the purpose of determining whether an employee is under the influence of alcohol shall be one which demonstrates the presence of alcohol in an amount equal to or greater than .10 grams per 100 milliliters of blood or .10 grams per 210 liters of breath in the employee's body. All testing shall be performed at the City's expense.

6. Police officers. When probable cause exists, an item-by-item search of the uniform parts and personal clothing of a police officer, down to the officer's skin or underwear, may occur in investigation of a violation of a prohibition listed in Article VIII. Any such search shall be conducted out of view of persons not responsible for the search and without physical contact.

II. The Panel will reserve jurisdiction for a reasonable period of time after issuance of this Award to assist the parties as may be necessary in implementing Article IX of Administrative Order No. 65-A as directed in Paragraph I of this Award.

Snohomish, Washington

July 17, 1993

M. Zane Lumbley, Impartial Arbitrator/
Interest Arbitration Panel Chairman

Signatures of Partisan Arbitration Panelists
July 6, 1993, Revised Opinion and Award
AAA Case No. 75 L390 0208 92
PERC Case No. 9968-I-92-214

	Concur / Dissent	Concur / Dissent
Issue No. 1	/	✓ /
Issue No. 2	/	✓ /
Issue No. 3	/	✓ /
Issue No. 4	/	✓ /
Issue No. 5	/	✓ /
Issue No. 6	/	✓ /
Issue No. 7	/	✓ /
	Kevin Ferguson Employer Member	Michael McGovern Union Member
	Date	7-8-93 Date

Signatures of Partisan Arbitration Panelists
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	Concur / Dissent	Concur / Dissent
Issue No. 1	KEF /	/
Issue No. 2	KEF /	/
Issue No. 3	KEF /	/
Issue No. 4	KEF /	/
Issue No. 5	KEF /	/
Issue No. 6	KEF /	/
Issue No. 7	KEF /	/
	Kevin E. Ferguson Kevin Ferguson Employer Member	Michael McGovern Union Member
	July 9, 1993 Date	Date