In the Matter of Interest Arbitration between PIERCE COUNTY FIRE DISTRICT NO. 7 District, and INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL NO. 2175, Association.	)	Re: Contract Issues in Dispute PERC Case No. 10358-I-93-00221

INTEREST ARBITRATION

DETERMINATIONS AND AWARD

Arbitration Panel: PAUL P. TINNING, Neutral Chairperson
BILL R. WILLIAMS, District Member
MICHAEL J. McGOVERN, Association Member

Dated: 23 September 1993

TABLE OF CONTENTS

INTRODUCTION

By telephonic contact in late May of 1993, Michael J. McGovern, President, Washington State Council of Fire Fighters, and Association member of the arbitration panel herein, advised the undersigned Arbitrator that he had been selected by the parties herein to serve as neutral chairperson of an arbitration panel[1] (hereinafter the "panel") empaneled to resolve an "interest" dispute concerning terms and conditions of employment between PIERCE COUNTY FIRE DISTRICT 7 (hereinafter the "District") and the INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS LOCAL 2175 (hereinafter the "Association"). The instant case is identified as PERC No. 10358-I-93-00221 assigned by the Public Employment Relations Commission (PERC) of the State of Washington.

The purpose of the neutral chairperson (hereinafter "Chair") is, after consultation with panel members, to make written findings of fact and written determinations of the issue in dispute. RCW 41.56.450

At the request of the parties, hearings in this matter were held on July 27 and 28, 1993, in a conference

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[1]In addition to the undersigned Neutral Chairperson and Michael J. McGovern as panel members, the panel included Bill Williams, Executive Director of Pierce County Fire District No. 9, representing Fire District No. 7.

room in Fire Station 71 located in Spanaway, Washington. The parties were afforded a full and complete opportunity to be heard, to call witnesses, to introduce evidence and present argument. Upon conclusion of their case presentations, the parties agreed to submit post-hearing briefs, with simultaneous service on each other, postmarked September 1, 1993. The Association's brief was received by the Chair on September 1, 1993; and the District's brief was received on September 3, 1993, at which time the Chair declared the hearing closed.

APPEARANCES

For the District:

MICHAEL J. MEGLEMRE, Puget Sound
Public Employers
WILLIAM E. THOMAS, Chief, Pierce County
Fire District 7

For the Association:

JACK M. ANDREN, President,
IAFF Local 2175
TIM LOOKABAUGH, Bargaining Unit
Representative
JOHN SEERLEY, Bargaining
Unit Negotiator

BACKGROUND

A. District

The District provides fire suppression and emergency medical services to a populace of 38,000. Such services are provided by 15 fire fighters, including a chief.

B. Association Bargaining Unit

The 15 fire fighters in the bargaining unit are represented by the Association for purposes of collective bargaining. They work a rotating 24-hour modified "Detroit" shift schedule which averages 56 hours per week, with a pattern of six (6) days on duty and three (3) days off duty. The average work week, however, is reduced to 53 hours by using "Kelly" days scheduled throughout the year.

The District and the Association are parties to a collective bargaining agreement covering the period from 1990 through 1992.

C. Consolidation of Fire Districts

The District and Pierce County Fire Districts Nos. 6 and 9 entered into an "Interlocal Agreement for Consolidation of Operations," effective January 19, 1993,

for purposes of consolidating operational and administrative services throughout the districts. The three (3) "Districts," as they are collectively referenced, contracted with Bill Williams, Chief of District No. 9, to be the Executive Director of the consolidated operations (Assoc. Ex. 1). According to District Chief Thomas, such consolidation would become operational, subject to voter approval, in January 1, 1994.

D. Comparable Jurisdictions

A. Association

The Association proposed that Pierce County Fire District Nos. 6 and 9 be used as comparable jurisdictions in determining wages and terms of employment for District employees that it represents primarily on the grounds that consolidation of the three (3) districts is imminent and partially operational; therefore, the Association argued that the wages and conditions of employment for District employees should be comparable to those in the other two (2) districts, especially District 9 (Assoc. Br. 8; Assoc. Exs. 1-11).

The Association acknowledged that the parties have historically relied upon a list of comparable jurisdictions as far back as the 1970's, claiming that such listing was rejected by the Association because of

the pending consolidation of the three (3) districts (Assoc. Br. 8).[2]

The Association submits that the list of comparable jurisdictions presented by the District at the arbitration hearing had never been relied upon or agreed to by the parties (Assoc. Br. 8). Moreover, the Association submits that the District's comparables are "flawed" and should not be relied upon.

B. District

The District proposed a list of comparable jurisdictions based upon three (3) criteria allegedly relied upon in such interest arbitration proceedings, namely:

> 1. Geography -- Comparable jurisdictions ... from within a 30-mile radius of the City of Seattle and ... restricted to the counties of King, Pierce, Kitsap and Snohomish. These ... counties constitute the Puget Sound Regional Council, a federally mandated metropolitan planning organization ('MPO').
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> 2. Population -- Jurisdictions with a ± 50% that of Pierce County District 7.

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[2]The panel notes that the comparable jurisdictions historically relied upon by the parties included Pierce County Fire Districts 2, 3, 5, 6 and 9.

3. Assessed Valuation -- Jurisdictions with assessed valuation ± that of Pierce County District 7. (Dist. Br. 6)

Out of the 16 jurisdictions which satisfied all of the foregoing criteria, the District claimed that it selected, based upon assessed valuation, eight (8) jurisdictions as comparables, four (4) of which were higher and four (4) of which were lower than the District's assessed valuation (Dist. Br. 6). Of the eight (8) jurisdictions chosen, the District claimed that it excluded the City of Monroe Fire Department because a new labor agreement had not been reached and wages and benefits were still at the 1991 level. Therefore, the District chose the following as comparable jurisdictions: (1) Bremerton City Fire Department; (2) Kitsap County Fire District No. 15; (3) Pierce County Fire District No. 6; (4) Lake Stevens Fire Department; (5) Snohomish City Fire Department; (6) Pierce County Fire District No. 21; and (7) Poulsbo City Fire Department (Dist. Br. 6).

In support of its selection of comparable jurisdictions, the District argued that in City of Bellevue, infra, Arbitrator Gaunt concluded that:

> [A]n examination of arbitration decisions ... reveals that there is no uniform view as to how size is to be measured. For awhile, multi-factor analysis was in vogue, but many parties and arbitrators now seem to be favoring serviced populations 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). (Emphasis by District.) (Dist. Br. 7)

The District submits that the comparable jurisdictions chosen comport with statutory intent and purpose, including arbitral approval (Dist. Br. 7). In contrast, the District argued that the Association did not objectively select comparable jurisdictions as evidenced by its reliance in contract negotiations on an alleged past practice of using, as comparable jurisdictions, the following jurisdictions: Lakewood Fire Department; University Fire Department; and Pierce County Fire District Nos. 5, 6 and 9, but then during the arbitration hearing rejected three (3) of those comparables and relied solely on Pierce County

Fire District Nos. 6 and 9. Notwithstanding data that reveal wages in the District, which includes the District's wage and/or benefit package offer of 3.6 percent, rank second only to District 9, the District submits that such revelation presumably accounts for the Association's deletion of formerly relied upon comparable jurisdictions and its sole reliance on District 9 for wage and benefit parity (Dist. Br. 8-9, Dist. Table 1).

In rejecting the Association's proposals for parity with District 9, the District pointed out that there were considerable differences between both districts, namely, that District 9 employs 34 career fire fighters in contrast to 15 firefighters employed by the District; that the current population of District 9 is 55,000 which exceeds that of the District by 17,000; that the assessed valuation of District 9 is $1,543,948,622 compared to the District's assessed valuation of $835,780,160; that the service area of District 9 is 44 square miles which is twice the size of the District's service area; and that in 1992 the District responded to 2,698 calls, or 25 percent more calls than the District (Dist. Br. 9).

C. Finding of Fact

1. The panel finds that the parties proposed comparable jurisdictions which had not been agreed upon and which were different from comparable jurisdictions historically relied upon by them in the past. As noted earlier herein, those jurisdictions included Pierce County Fire Districts 2, 3, 5, 6 and 9.

2. In light of considerable differences between the parties over the comparable jurisdictions to be used in this proceeding, the panel finds and concludes that for purposes of review and analysis of current wage and benefit data that the jurisdictions of Pierce County Fire Districts 2, 3, 6 and 9 historically relied upon by the parties will serve as comparators in determining wage and benefit increases on a "total package" basis. Pierce County Fire District 5 was not included as a comparator on the ground that the wage and benefit data for that jurisdiction are based upon data for 1991.

D. Determinations and Award

1. The panel, in view of the foregoing findings, determines that four (4) of the five (5) comparable jurisdictions which the parties have historically relied on

in contract negotiations will serve as comparators for purposes of determining wage and benefit increases on a "total package" basis, namely, Pierce County Fire Districts 2, 3, 6 and 9.

ISSUES IN DISPUTE

The instant interest arbitration proceeding relative to an impasse in collective bargaining between uniformed personnel and public employers in the State of Washington arose under the statutory provisions of RCW 41.56.430. The arbitration panel is empowered to make its determination taking into consideration the legislative purpose stated in RCW 41.56.430 and the following factors:

> (a) [T]he constitutional and statutory authority of the employer;
>
> (b) [S]tipulation of the parties;
>
> (c) * * *
>
> (ii) [F]or ... [fire fighters] ... 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) [T]he average consumer prices for goods and services, commonly known as the cost of living;
>
> (e) [C]hanges in any of the foregoing circumstances during the pendency of the proceedings; and
>
> (f) [S]uch 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

By letter of April 16, 1993, Marvin L. Schurke, Executive Director of the Public Employment Relations Commission (herein "PERC"), certified to Association representatives that 15 issues remained in dispute between the District and the Association (Jt. Ex. 1). Subsequent to such certification, three (3) of the issues (Witness Services, EMT, Hazard Material Technician Pay), were withdrawn and, at the close of the hearing, the Association withdrew the issue concerning procedure for changing rules and regulations.

The issue of Light Duty was resolved by the parties at the hearing with the assistance of the arbitration panel.

The 10 issues remaining in dispute are as follows:

1. Monthly Rates of Pay (Article 8, Section 1);

2. (a) Hours for Shift Employees (Article 9, various Sections)
   (b) Hours for Day Employees
   (c) Normal Working Hours (shift)
   (d) Scheduling of "K" Days

3. Vacation Accrual for Day Shift (Article 12, Section 2);

4. Seniority/Personnel Reduction (Article 19, Sections 1, 2);

5. Medical and Dental Premiums (Article 20, Section 3);

6. Sick Leave Accrual for Day Shift
   Sick Leave Buy-back (Article 21, Sections 2, 6);

7. Effect of Employer Failure to Answer Grievance
   Time Period to File Grievance
   Time Period to Advance Grievance to Fire Chief (Article 22, Sections 4, 5, 5.1);

8. Pay Out of Classification (Article 23);

9. Deferred Compensation (Article 28, Sections 2, 2.1); and

10. Chain of Command (Article 33).

With regard to disputed issue number 7 (Grievance Procedure, Article 22), Association representative Andren

claimed that such issue was resolved by the parties during contract negotiations, noting that the District was allowed to reintroduce the issue during mediation as part of a package offer which was rejected by the Association. In light of the background surrounding this issue, Mr. Andren objected to the inclusion of such issue in the list of disputed issues certified by the Executive Director of PERC. He likewise objected to the chairperson allowing the subject issue to be heard, discussed and argued during the instant arbitration hearing (Assoc. Br. 3, footnote 1).[3]

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[3]References to the parties' post-hearing briefs will be designated "Assoc. Br." (Association Brief) and "Dist. Br." (District Brief) followed by the page number(s). References to the exhibits will be designated as follows: "Jt. Ex." (Joint Exhibit); "Assoc. Ex." (Association Exhibit); and "Dist. Ex." (District Exhibit).

FINDINGS OF FACT AND DETERMINATIONS

Issue 1: Monthly Rates of Pay (Article 8)

A. Association

The Association proposed a wage increase of 7.6 percent over base salary, based solely on the current salary schedule for District 9 (Assoc. Ex. 12; Assoc. Br. 8-9). The Association's proposal is premised largely on the pending consolidation of Districts 6, 7 and 9.

B. District

The District offered a wage and benefit package of 3.6 percent based on the consumer price index (CPI-U) for the Seattle area (Dist. Ex. 3; Dist. Br. 17-21). In support of its proposal, the District relied upon comparable jurisdictions which the panel rejected in favor of the parties' reliance on historical comparable jurisdictions.

C. Findings of Fact

1. The panel finds that District 5 is currently at impasse in contract negotiations and is still working under a 1991 labor agreement. In view of 1991 contract

wage data for that jurisdiction, the panel concludes that District 5 should not be included as a comparable jurisdiction for purposes of calculating an average monthly wage. The panel further notes that District 6 will receive an additional three (3) percent wage increase effective December 1, 1993.

2. The panel finds that a review and an analysis of the monthly wage data of the comparable jurisdictions reveal an average monthly wage of $3573. The panel notes that the current monthly wage of the District's first class fire fighters is $3347, or $226 or 6.75 percent below the average monthly wage of the comparable jurisdictions.

3. RCW 41.56.430 specifically provides for comparing the "... wages, hours, and conditions of employment of like personnel of public fire departments ...." In applying such statutory directives, coupled with consideration of the proposed consolidation of the three (3) fire districts (6, 7 and 9) operationally targeted for January 1, 1994, the panel finds that a wage increase of 6.75 percent for District bargaining unit employees is appropriate and reasonable.

D. Determinations and Award

1. The panel, in light of the foregoing findings, determines and awards a wage increase of 6.75 percent for bargaining unit employees retroactive to January 1, 1993.

Issue 2: Work Hours (Article 9)

(a) Hours for Shift Employees

A. Association

The Association proposed a reduction in hours of 24-hour shift employees from 53 to 50.92 hours retroactive to January 1, 1993 (Assoc. Ex. 14; Assoc. Br. 10). In support of its proposal, the Association relied solely on the existing contract language in the District 9 labor agreement. The Association calculated the cost of such proposal at 3.9 percent.

B. District

The District proposed to maintain the current work week for 24-hour shift employees at 53 hours (Dist. Ex. 4; Dist. Br. 21-23). In support of its proposal, the District relied on a list of comparable jurisdictions which the panel rejected.

C. Findings of Fact

1. The panel finds that a review and an analysis of the data of comparable jurisdictions reveal an average work week of 51.62 hours for 24-hour shift employees in those jurisdictions.

2. The panel finds that the data of such comparable jurisdictions warrant some modification to the District's current work week, specifically, that another K-day be granted thereby reducing the work week of 24-hour shift employees from 53 to 52.54 hours.

D. Determinations and Award

1. The panel, in light of the foregoing findings, determines and awards that 24-hour shift employees of the District be granted another K-Day, thereby reducing their work week from 53 to 52.54 hours.

(b) Hours for Day Employees

A. Association

The Association proposed that Article 9, Section 2 of the current bargaining agreement be deleted and that the following language be substituted therefor:

> [T]he normal working hours for day personnel shall be forty (40) hours per week, Monday through Friday, from 8:00 a.m. to 5:00 p.m. to include a one-hour lunch period. Employees covered under this section of the contract may work a flex schedule, work load permitting. (Assoc. Ex. 16)

In support of its proposal, the Association claims that such proposed language is an "exact duplicate" of language contained in the current labor agreements in Pierce County Fire District Nos. 6 and 9, noting, however, that the District 6 agreement contains additional language dealing with day-shift suppression employees who work a four (4)-day week, 11-hour days (Assoc. Ex. 16; Assoc. Br. 10-11).

The Association submits that the subject proposal represents an increase of 3.9 percent over the current base (Assoc. Br. 10).

B. District

The District contends and argues that the Association's proposal to reduce the work week of day-shift employees from 45 to 40 hours, including virtually all of the other Association proposals in this arbitration proceeding, are premised on reliance on similar, if not identical, contract provisions contained in the bargaining agreements of Fire Districts 6 and 9, with special emphasis on District 9. Such reliance on but two (2) jurisdictions, which the District submits are not comparable as evidenced by the fact that District 9 has an assessed valuation of $1,543,948,622, whereas the District's valuation is

$835,780,160, is not persuasive evidence for such proposals (Dist. Ex. 5; Dist. Br. 23-24).

In rejecting the subject proposal, as well as the other Association proposals, the District contends and argues that the acceptability of each proposal must be based upon "... overwhelmingly hard, concrete, positive and persuasive evidence," citing in support therefor the interest arbitration case of Kennewick Police Officers' Benefit Association and the City of Kennewick (1984), wherein Arbitrator Charles S. LaCugna stated, in pertinent part, that:

> [P]arties change the status quo if the proposing party can adduce overwhelmingly hard, concrete, positive, and persuasive evidence to show a proposal is not only desirable but practical and necessary. (Dist. Op. Statement)

The District also relied on City of Bellevue and Bellevue Firefighters Local 1604, PERC Case No. 6811-I-87-162, (1988), wherein Janet L. Gaunt, neutral chairperson, stated, in adopting the "total package" concept, that:

> [W]e adopt as well the principal [sic] that the party seeking to change an existing contract provision or established past practice should appropriately bear the burden of persuasion ... 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 [sic] arguments in favor of the status quo then the status quo should be maintained. (Dist. Br. 12-13)

While acknowledging that the subject proposal may be "desirable" to the Association, the District claimed that it fails to meet the foregoing test of acceptability. Moreover, the District submits that the proposal impinges on the right of management to change the work week and/or its specific characteristics therein (Dist. Ex. 5).

The District also contends and argues that the subject proposal to reduce the hourly work week would severely impact operations by virtue of an annual reduction in hours approximating 11.1 percent, and a 12.5 percent increase in the hourly rate of pay (Dist. Ex. 5).

C. Findings of Fact

1. The panel finds that a review and analysis of data of comparable jurisdictions reveals that day-shift employees in all four (4) comparable jurisdictions work 40 hours per week.

2. The panel further finds that Districts 2, 6 and 9 provide that such work week is from 8:00 a.m. to 5:00 p.m., Monday through Friday.

3. The panel takes judicial notice of the federal Fair Labor Standards Act which requires that public employers and public employees cannot waive the overtime requirement for time worked over 40 hours per week as cited in U.S. Department of Labor Wage & Hour Division 29 CFR Chapter V, Subsection 500.10.

D. Determinations and Award

1. The panel, in light of the foregoing findings, determines and awards that day-shift employees of the District shall work 40 hours per week, Monday through Friday, from 8:00 a.m. to 5:00 p.m., including a one-hour lunch period, and that they may work a flex schedule, work load permitting.

(c) Normal Working for Shift Employees

A. Association

The Association proposed new contract language providing normal working hours for shift employees from 7:00 a.m. to 5:00 p.m. weekdays and to noon on Sunday in return for a commitment that paid personnel on duty will participate in volunteer training on Tuesday evening

(Assoc. Ex. 17; Assoc. Br. 11-12). In support of its proposal, the Association relied on the same contract language contained in the District 9 labor agreement.

B. District

The District rejected the Association's proposal on the ground that it intrudes upon the right of management to schedule employees (Dist. Br. 23-24).

C. Findings of Fact

1. The panel finds that a review and an analysis of the data of comparable jurisdictions reveals that the labor agreements in two (2) of the jurisdictions (Districts 3, 6) are silent on the issue of normal work hours.

2. The panel further finds that the labor agreement in District 9 contains identical contract language as that proposed by the Association, and the labor agreement in District 2 contains contract language substantially similar to that proposed by the Association.

D. Determinations and Award

1. The panel, in light of the foregoing findings, determines that the contract language in the District 2

labor agreement regarding the issue of normal working hours for shift personnel provides a manageable, productive work schedule for both the District and the Association.

2. Accordingly, the panel determines and awards that the following language be incorporated in the new labor agreement between the parties:

> Productive hours for shift personnel shall be 8:00 a.m. - 5:00 p.m., Monday through Friday and 8:00 a.m.- 5:00 p.m. on Saturday and Sunday, excluding holidays.
>
> One hour of productive time shall be set aside for physical training Monday through Friday.
>
> Duties assigned during productive hours on Saturday and Sunday shall be limited to PR activities and in-station projects (i.e. - weekly station cleaning, weekly hose change, in-house training opportunities, etc.)
>
> Training drills may be scheduled during non-productive hours (excluding holidays) on a reasonably limited basis. Such drills shall be pre-scheduled on the quarterly training schedule. PR activities (i.e. - public display, parades, standby during fireworks displays, etc.) may be scheduled during non-productive hours. The employees involved in the drill and/or PR activity shall be compensated with an equal amount of standby time during productive hours prior to such events taking place.

> Nothing herein shall limit the District in exercising discretion in varying the hours of duty of any employee in accordance with past practice.

(d) Scheduling of "K"-Days

A. Association

The Association proposed that shift employees select their K-Days (Assoc. Ex. 18; Assoc. Br. 12-13). In support of its proposal, the Association relied solely on identical contract language contained in the labor agreements of District 6 and District 9.

B. District

The District rejected the Association's proposal on the ground that it is unreasonable (Dist. Br. 21).

C. Findings of Fact

1. The panel finds that a review and an analysis of the data of comparable jurisdictions reveals that the labor agreement in District 3 is silent on the issue of selecting K-Days.

2. The panel further finds that the labor agreement in District 2 provides that K-Days[4] are scheduled by that District.

3. The panel further finds that the labor agreements in District 6 and District 9 contain contract language identical to that proposed by the Association.

D. Determinations and Award

1. The panel, in light of the foregoing findings, determines and awards that the current contract language be retained with respect to the scheduling of K-Days.

2. The panel further determines and awards that the current contract language be amended only to reflect the panel's determination and award regarding Issue 2 -- Hours for Shift Employees --, specifically, that "... 24-hour shift employees of the District be granted another K-Day thereby reducing their work week from 53 to 52.54 hours."

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[4]The panel notes that a "K"-Day in fire fighter parlance is understood to be a 24-hour day off to accomplish a reduction in weekly work hours for jurisdictions that work less a 56-hour work week, but on a 56-hour schedule.

Issue 3: Vacation Accrual for day Shift (Article 12)

A. Association

The Association proposed that, by virtue of the proposed reduction in hours for day-shift employees from 45 to 40 hours, there would be a corollary reduction in accruable vacation hours. The Association submits, for example, that under the 40 hour work week that an employee with one (1) to 12 months of employment would accrue, 3.333 hours of vacation as opposed to 3.75 hours under the current labor agreement (Assoc. Ex. 5; Assoc. Ex. 19).

B. District

The District, as noted earlier herein, takes the position that since this proposal is collateral to the Association's proposal regarding day-shift hours that a decision by the arbitration panel on the latter will be dispositive of the former (Dist. Ex. 5).

C. Findings of Fact

1. The panel finds that as a result of our findings, determinations and award in issue 2 (b) regarding hours for day-shift employees, specifically, that the work week for such employees be reduced from 45 to 40 hours,

8:00 a.m. to 5:00 p.m., Monday through Friday, with a one-hour lunch period and that such employees may work a flex schedule, workload permitting, that such determination and award are dispositive of issue 3 regarding vacation accrual for day-shift employees.

D. Determinations and Award

1. The panel, in view of the foregoing finding, determines and awards that the Association's proposal for vacation accrual for day-shift employees be adopted and incorporated in the new labor agreement.

Issue 4: Seniority/Personnel Reduction (Article 19)

A. Association

The Association proposed that in the event of a reduction in force that the least senior employee be laid off first; that such employee be given an opportunity to return to work before a new employee is hired; and that seniority shall not be determined by rank, but rather by date of hire, including use of overall test scores where two (2) or more employees have the same date of hire (Assoc. Ex. 20).

The current labor agreement provides a four-tier seniority system, namely, first by rank; second by continuous service in rank with the District; third by continuous time in service with the District; and fourth by continuous service as a volunteer with the District.

The Association further proposed that the District maintain a current seniority list on all bargaining unit employees (Assoc. Ex. 20; Assoc. Br. 14).

In support of its proposal, the Association argued that Fire Districts 6 and 9 have similar contract language (Assoc. Ex. 20; Assoc. Br. 14). In further support of the subject proposal, Association representative Seerley testified under cross-examination by the District

that the proposal represents the surest way to "alleviate" any problems that might arise from consolidation of the District with Districts 6 and 9.

B. District

The District contends and argues that the Association's proposal represents another infringement on the right of the District to manage and direct the workforce. In rejecting such proposal, the District submits that five (5) of the seven (7) comparable jurisdictions it relied upon allow management to determine how to effectively use its resources in the event of a reduction in force (Dist. Ex. 6; Dist. Br. 24-26).

C. Findings of Fact

1. The panel finds that a review and an analysis of the comparable jurisdictions reveal that the labor agreements in District 6 and District 9 contain contract language governing seniority, namely, by date of hire and specifically, that seniority is not determined by rank.

2. The panel further finds that the civil service rules in District 2 provide that seniority is governed by date of hire.

3. The panel also finds that the labor agreement in District 3 contains contract language governing seniority similar to the current contract language of the District.

D. Determinations and Award

1. The panel, in view of the foregoing findings, determines and awards that the Association's proposal governing seniority, specifically, by date of hire, be adopted and incorporated in the new labor agreement.

Issue 5: Medical and Dental Premiums (Article 20)

A. Association

The Association proposed that the District contribute 100 percent of the premium for the combined employee and dependent medical, dental and orthodontic insurance (Assoc. Ex. 21; Assoc. Br. 15-16). In support of its proposal, the Association relied on similar contract language in the District 6 labor agreement, including the maximum premium cap of $514, or 100 percent of the current premium in District 9. The Association calculated the cost of such proposal at 1.3 percent.

B. District

The District proposed to maintain the current contract language governing District/employee contributions for medical/dental insurance, specifically, a monthly maximum of $425, with a District/employee equal share of $44.50 ($89) for a total cost of $514 (Dist. Ex. 7; Dist. Br. 26-27). In support of its proposal, the District relied on its list of comparable jurisdictions which the panel rejected.

C. Findings of Fact

1. The panel finds that a review and an analysis of the comparable jurisdictions reveal that each jurisdiction pays, in effect, 100 percent (i.e., District 9, contributes a maximum cap of $514, which is currently 100 percent cost of premium) and the other three (3) jurisdictions contribute 100 percent of premium for medical/dental insurance without any cap).

D. Determinations and Award

The panel, in light of the foregoing finding, determines and awards that the District's maximum contribution for medical/dental insurance be increased to $514, plus 50 percent of the contribution in excess of $514 effective the first day of the month following the date of this opinion and award.

Issue 6: Sick Leave (Article 21)

(a) Sick Leave Accrual for Day Shift

A. Association

The Association proposed that full-time day-shift employees accrue paid sick leave at the rate of 17 hours for each full month of service cumulative to a maximum of 1170 hours as opposed to 18 hours each month with the same maximum accumulation, under the current labor agreement (Assoc. Ex. 22; Assoc. Br. 16).

B. District

The District proposed that the existing contract language governing sick leave be retained in its entirety. The District pointed out, however, that the decision by the arbitration panel on the Association's proposal regarding shift hours worked will be dispositive of the subject proposal by the Association (Dist. Ex. 8; Dist. Br. 27-29).

C. Findings of Fact

1. The panel finds that as a result of our findings, determinations and award in issue 2 (b) regarding hours for day-shift employees, namely, that the work week

for such employees be reduced from 45 to 40 hours, that such determination and award are dispositive of issue 6 (a) regarding sick leave accrual for day-shift employees.

D. Determinations and Award

1. The panel, in view of the foregoing finding, determines and awards that the Association's proposal for sick leave accrual for day-shift employees be adopted and incorporated in the new labor agreement.

(b) Sick Leave Buy-Back

A. Association

The Association proposed a new contract provision requiring that the District buy back unused sick leave in excess of the cumulative maximum at the "... rate of .25% of the employee's base pay ..." payable in "November" of each year and that such payment will be treated as "regular income" (Assoc. Ex. 23; Assoc. Br. 17). In support of such proposal, the Association submits that the subject language is identical to the language contained in the bargaining agreement in District 9.

B. District

The District rejected the Association's proposal on the grounds that it represents an "extorniate" claim that the District, according to the Association, would benefit from a buy-back of sick leave in excess of the cumulative maximum because employees would not use sick leave rather than losing it (Dist. Ex. 8). Rather, the District argued that the Association's proposal would "... encourage an employee who may be ill, perhaps contagious, to report for work" (Dist. Ex. 8; Dist. Br. 28).

Moreover, the District submits that it does not "pay off" employees for not using their medical coverage, nor does the insurance carrier rebate insurance premiums on those employees (Dist. Ex. 8).

C. Findings of Fact

1. The panel finds that a review and an analysis of the data of comparable jurisdictions reveal that District 9 is the only jurisdiction that provides a sick leave "buy-back" program at the rate of 25 percent for sick leave in excess of the maximum accrual.

D. Determinations

1. The panel, in light of the foregoing finding, determines that the Association's proposal for sick leave "buy-back" is not supported by the record evidence.

Issue 7: Grievance Procedure (Article 22)

A. Association

The Association argued that the grievance contract language tentatively agreed to by the parties during negotiations on November 4, 1992, be adopted and incorporated in the new collective bargaining agreement (Assoc. Ex. 24; Assoc. Br. 17).

In support of its position, the Association submits that the District reopened negotiations concerning the grievance procedure over the Association's objection and continuing objection in this arbitration proceeding, claiming that such matter should not be considered by the arbitration panel because the tentative agreement between the parties is "binding" (Assoc. Ex. 24; Assoc. Br. 17).

B. District

The District argued that the Association's motion at the arbitration hearing to strike the District's grievance procedure proposal on the grounds that the parties reached tentative agreement (TA) on such matter during negotiations has no basis in the state of Washington public sector bargaining law which does not preclude changing positions during negotiations, mediation and arbitration. Moreover, the District submits that the parties, at the

outset of negotiations, established a ground rule reserving the right to change, modify or delete any language covered by a TA up until joint ratification of the agreement, referring to such rule in jest as "... [I]t ain't a deal till the fat lady sings" (Dist. Br. 3).

The District further pointed out that PERC mediator Downing rejected the Association's petition to disallow the changes proposed by the District during mediation and thereby certified such changes to PERC. Such changes, according to the District, were prompted by the Association's alleged abuse of the current contract grievance language which, the District submits, permitted the Association to avoid a grievance arbitration case (Dist. Br. 3).

The District contends and argues that either party may alter its position during negotiations, mediation and interest arbitration (Dist. Br. 3). In support therefor, the District relied on the interest arbitration case of International Association of Firefighters Local 876 and Spokane County Fire District No. 1, PERC Case No. 07233-I-88-0171 (1988), pp. 49-51, wherein Arbitrator (Chairperson) Kenneth M. McCaffree stated that:

> [T]he Union pointed out in several places that the District offered a three percent salary increase for 1988 in mediation and that the Union reduced its demand for a wage increase from 21 percent to 6.3 percent. The Union entered this arbitration with a proposed 6.3 percent wage increase, whereas the District withdrew its prior offer, and argued that no increase was justified.
>
> [T]he implication of the Union argument, along with comments about the 'model' firefighters, was that the employer had no basis for changing its position between mediation and arbitration. The chairman disagrees, and believes these arguments represent a misconception of interest arbitration as construed generally and in the Washington statute specifically.
>
> In the first place, the statute places no requirements on either party to go into arbitration on the same basis that they left mediation. No place in the statute is any reference made to 'last offer' arbitration. Not only may the employer or union change its position on a specific issue in interest arbitration, but the panel is not required by the guidelines to examine or rationalize settlement only within the range of the last offers of the parties prior to arbitration. The panel examines the proposals of parties at the arbitration, not what they have been or might have been or should be in the judgment

> of one party or the other with regard to the other's proposal. The function of the party in arbitration is to convince the panel and the neutral chairman specifically that its position in arbitration is meritorious, whatever its position at that time.
>
> [I]n addition, the purpose of interest arbitration is a means to replace the strike among public uniformed personnel, per RCW 41.56.430. Certainly in the course of a strike, an employer seldom leaves on the negotiating table what was there before. A strike is a new 'ball game,' with a different set of rules than the usual course of negotiations.
>
> [S]uch, also, is the case with interest arbitration under the Washington statutes. The panel of arbitrators is an agency of the state, not of the parties, and its functions are set by the statute, not by the parties. The process of interest arbitration brings uncertainty into the settlement possibilities. Since interest arbitration is a last resort effort (in lieu of a strike), and a recognition of the failure of the parties to reach a mutually acceptable agreement, this uncertainty provides a valuable incentive to the parties to reach their own settlement. If interest arbitration was approached with the concept that what the employer had offered is certain, or the employer knows its maximum liability

> from the union's last offer, neither has any reason to settle, but can spend a little time and effort, and hope to improve its situation. Nothing gained is only a small loss. Interest arbitration is the last resort for settlement under a different set of rules and guidelines, and with an element of uncertainty. It is directed towards providing the parties with an incentive to exercise their greatest effort to reach agreement on their own, and, in doing so, to strengthen and improve the relationship between union, employees and employer. (Dist. Br. 4-5)

The District proposed to amend Section 4 of Article 22, which deals with time limitations for processing a grievance which is automatically sustained for untimely response by the District, by deleting the forfeiture language for untimely response, specifically, that which "... presumes that the claim made in the grievance is sustained and that the satisfaction will be provided" and substituting therefor the language "shall advance the grievance to the next step of the grievance procedure" (Dist. Ex. 9; Dist. Br. 13-17).

In support of its proposal, the District submits that the contractual grievance procedures in all seven (7) comparable jurisdictions relied upon by the District, including, for that matter, District 9 which

was relied upon by the Association, provide that failure to comply with grievance time lines merely advances the grievance to the next step of the grievance procedure rather than sustaining the grievance and providing remedial relief therefor as required by the parties' current labor agreement. Under such current contract language, the District argued that the Association has manipulated timelines and has sought remedial relief for a grievance because of the District's untimely response (Dist. Ex. 9; Dist. Br. 13-17).

The District also proposed to amend Step 1 of the grievance procedure contained in Section 5, Article 22 of the current labor agreement by adding new language in parentheses to the 14-day time line requirement for the aggrieved and/or the aggrieved's representative to meet with the aggrieved's supervisor upon "... knowledge of the alleged grievance" as follows: "(but in no event more than ninety (90) calendar days from the alleged violation)" (Dist. Ex. 9; Dist. Br. 13-17).

The District also proposed in the foregoing paragraph to delete language in the first sentence thereof following "Step 1," specifically, that which states "or following knowledge of alleged grievance" (Dist. Ex. 9; Dist. Br. 13-17).

In support of its proposals, the District argued that such additions and deletions to the current contract language are appropriate because the current language provides an "... open-ended appeal right" whereby the Association could conceivably file a grievance over an alleged violation which occurred years ago, claiming that it was just made aware of such alleged violation (Dist. Ex. 9; Dist. Br. 13-17).

C. Findings of Fact

1. In light of the persuasive reasoning articulated by Chairperson McCaffree in International Association of Firefighters Local 876, infra, coupled with the unrebutted claim by the District that at the outset of contract negotiations that the parties established a ground rule reserving the right of either party to change, modify or delete any language covered by a tentative agreement (TA) up until joint ratification of the agreement, the arbitration panel finds that the Association's position that the District's grievance procedure proposals should not be considered on the ground that tentative agreement (TA) on such matter was reached by the parties during contract negotiations in November of 1992, is without merit. Accordingly, the panel rejects the Association's argument.

2. With regard to the District's proposal to delete the forfeiture language in Section 4 of Article 22 of the current agreement with regard to an untimely response by the District to a grievance, thereby resulting in the grievance being sustained and remedial relief provided therefor, the panel finds, absent any discussion or argument on the merits of the proposal by the Association at the arbitration hearing or in its post-hearing brief, that such proposal is reasonable and equitable, irrespective of taking any comparable jurisdictions into consideration. The rather harsh result of the existing contract language which, in effect, would sustain a grievance and provide remedial relief therefor if the District untimely responds to such matter does not, in our opinion, promote harmonious labor-management relations, especially in the area of handling and processing grievances in an objective and fair manner as part of the continuous collective bargaining process.

Moreover, the panel finds that merely advancing a grievance to the next step of the grievance procedure under the District's proposal, rather than sustaining it and providing remedial relief therefor under the current contract language in the event of the District's untimely response, poses no irreparable harm to either party or the grievant.

3. With regard to the District's proposal to amend Section 5, Article 22 of the current labor agreement by adding new language in parentheses to the 14-day time line requirement for the aggrieved and/or the aggrieved's representative to meet with the aggrieved's supervisor upon "... knowledge of the alleged grievance" as follows: ("but in no event more than ninety (90) calendar days from the alleged violation)," the panel finds, absent any discussion or argument on the merits of the proposal by the Association at the arbitration hearing or in its post-hearing brief, that such proposal likewise is reasonable and equitable, irrespective of taking any comparators into consideration. Moreover, the panel finds that such proposal poses no irreparable harm to either party or the grievant.

4. With regard to the District's proposal to delete current contract language in Section 5 of Article 22 which states following "Step 1," "or following knowledge of alleged grievance," the panel finds, absent any discussion or argument on the merits of the proposal by the Association at the arbitration hearing or in its post-hearing brief, that such proposal, by deleting language of questionable purpose in light of clear and unambiguous language which precedes it, reasonably clarifies the processing of a written grievance. Moreover, the panel finds that such proposal poses no irreparable harm to either party or the grievant.

D. Determinations and Award

1. The panel rejects the Association's contention and argument that the tentative agreement (TA) reached between the parties during contract negotiations in November of 1992 is binding and, hence, the District's grievance procedure proposals are not to be considered in this arbitration proceeding.

2. The panel, in light of the foregoing reasoning and findings of fact, determines that the District's grievance procedure proposals be adopted in their entirety and incorporated in the new collective bargaining agreement.

Issue 8: Pay Out of Classification (Article 23)

A. Association

The Association proposed a new contract provision for additional compensation whenever an employee is required to perform the duties of a position rank above the rank of such employee who shall paid at the base rate of the higher position or rank (Assoc. Ex. 25; Assoc. Br. 18-19).

If the higher position vacancy or "Acting Position" exists for 31 days or less, such vacancy, according to the Association would be filled from the shift on which it exists utilizing the department's promotional list. In the event there is no shift employee on the promotional list or there is no promotional list, the Association proposed that such vacancy be filled using the District's seniority list.

The Association further proposed that if it were known that such vacancy would extend beyond 31 days then employees on the promotional list would, in rank order of placement, be afforded the opportunity to fill the vacant position. If such "temporary officer" were promoted to a permanent position, presumably a position of higher rank,

the Association proposed that the time spent in such position would be applied to the probationary period of the permanent position.

In support of its proposal for pay out of classification, the Association contends and argues that the labor agreement in District 6 contains the same language, except that the employee filling the higher position rank must work within that rank more than four (4) hours to be entitled to the higher pay of that rank, noting, however, that such pay is retroactive to the first hour if the employee works more than four (4) hours (Assoc. Ex. 25; Assoc. Br. 18-19).

Moreover, the Association further contends and argues that the labor agreement in District 9 contains similar language except that the employee filling the higher position rank must work within that rank more than 12 hours to be entitled to the higher pay of that rank, noting, however, that such pay is retroactive to the first hour if the employee works more than 12 hours (Assoc. Ex. 25; Assoc. Br. 18-19).

B. District

The District rejected the Association proposal on the grounds of its cost impact and its intrusion and erosion of management rights provided in Article 14, Section 2 of the

labor agreement. In terms of cost impact, the District submits that if the Association's proposal were adopted that it would increase, for example, the hourly pay of a lieutenant from $16.03 to $17.63 if such employee worked out-of-class as a captain, or an additional 4.8 percent. The District contends and argues that the current contract language provides that if such employee worked out-of-class as a captain that such employee would receive a premium equal to one-half the difference between the two (2) positions, namely, an additional 80 cents per hour (1/2 of $1.60 difference = .80) or $16.93 (Dist. Ex. 10; Dist. Br. 29-31).

With regard to management rights, the District contends and argues that the Association's proposal intrudes upon those rights by requiring that out-of-class assignments be based solely on seniority,[5] thereby depriving the District of its ability to assign qualified employees to higher ranked positions. Moreover, the District submits that under the Association's proposal that a "temporary officer" could, by applying any time worked out-of-class towards the probationary period of the higher rank if the

---

[5]The panel notes that the Association's proposal for out-of-classification pay is not based "solely" on seniority. Rather, the proposal states that such assignments will be made first from the department's promotional list and if no shift employee is on such list, or there is no promotional list, then seniority will govern in filling the vacancy.

such officer were ever promoted to that rank, conceivably satisfy most, if not all, of the probationary period time requirements before being promoted to the higher rank (Dist. Ex. 10; Dist. Br. 29-31). The District submits that Chief Thomas confirmed such a possibility in his testimony.

The District submits that the labor agreements in six (6) of the seven (7) comparable jurisdictions relied upon make no provision for assignment of out-of-class pay based on seniority, nor do they credit time worked in the higher rank towards the probationary period of that rank. The District acknowledged, however, that the labor agreement in District 6 does provide that all time worked as a temporary officer is credited towards the probationary period (Dist. Ex. 10; Dist. Br. 30).

C. Findings of Fact

1. The panel finds that a review and an analysis of the comparable jurisdictions reveal all four (4) jurisdictions pay the base rate for the position being filled to employees working out-of-classification.

2. The panel further finds that all four (4) comparable jurisdictions have different requirements for the number of hours required to be worked in the higher

classification in order to qualify for the higher rate of pay.

D. Determinations and Award

1. The panel, in light of the foregoing findings, determines and awards that the current contract language of Article 23 be amended to provide that employees who work out of classification shall be paid at the base rate of the position being filled.

2. The panel hereby determines that the current contract language of Article 23 be amended to read as follows:

> Any employee covered by this Agreement who is required by the Fire Chief or his designee to accept the responsibilities and carry out the duties of a position or rank above that which they normally hold, they shall be paid the base rate for the position being filled. An employee shall be paid hour for hour when fulfilling a higher rank or position, at the higher rate.

Issue 9: Deferred Compensation (Article 28)

A. Association

The Association proposed to amend the current language of Article 18, Section 2 of the labor agreement, which provides a deferred compensation package based upon employee contributions, by adding new language requiring that the District, effective January 1, 1993, shall match such funds up to a maximum of $100.00 per month (Assoc. Ex. 26; Assoc. Br. 19-20).

In support of its proposal, the Association contends and argues that the labor agreement in District 6 requires that that district match employee contributions to a deferred compensation package up to a maximum of $50.00 per month, and that the labor agreement in District 9 requires that that district match employee contributions to a deferred compensation package up to a maximum of $100.00 per month. The Association calculated the cost of such proposal at three (3) percent over base (Assoc. Ex. 26; Assoc. Br. 20).

B. District

The District rejected the Association's proposal on deferred compensation, claiming that it represented an increase in wages of 2.9 percent over and above the

District's proposed CPI wage increase of 3.6 percent (Dist. Ex. 11; Dist. Br. 31-32).

C. Findings of Fact

1. The panel finds that a review and an analysis of the data of comparable jurisdictions reveal that each jurisdiction contributes various amounts to deferred compensation packages on a matching basis with their employees.

2. The panel further finds that such data reveal that such jurisdictions contribute an average of $93.75 per month per employee on a matching basis.

D. Determinations and Award

1. The panel, in light of the foregoing findings, determines and awards that the District contribute a maximum of $50 per month per employee on a matching basis to the deferred compensation plan retroactive to January 1, 1993.

Issue 10: Chain of Command (Article 33)

A. Association

The Association proposed new contract language providing that "paid personnel" are subordinate to "paid officers, and that "[V]olunteer officers hold rank over volunteer personnel only" (Assoc. Ex. 27; Assoc. Br. 20).

In support of its position, the Association contends and argues that the labor agreement in District 6 contains similar language and that the organizational chart in District 9 provides the same results (Assoc. Ex. 27; Assoc. Br. 20).

The Association submits that its proposal is grounded on the assumption that:

> ... a resident volunteer with less than three years as a firefighter can take a volunteer Lieutenant's exam (which is different than the career Lieutenant's exam) and have the fire ground authority to order a 10 year career fighter who acts as a relief shift commander. (Assoc. Ex. 27; Assoc. Br. 20)

B. District

The District rejected the Association's proposal on the basis that there is a past practice of long standing whereby "... volunteer firefighters enjoy the same privileges and authority of rank enjoyed by the paid staff" (Dist. Ex. 12; Dist. Br. 32-53). The District submits that such proposal, according to Chief Thomas' testimony, would have a "very severe demoralizing effect on volunteers," claiming that teamwork is essential for safety purposes.

The District submits that its structure is paramilitary in nature, thereby rejecting the Association's underlying premise that a "... paid probationary firefighter, just out of the academy, ... [would] be superior in rank to a non-paid volunteer Captain with 15 years of service" (Dist. Br. 12).

C. Findings of Fact

1. The panel finds that a review and an analysis of the comparable jurisdictions reveal that the labor agreement in District 6 has contract language similar to that proposed by the Association.

2. The panel further finds that department policy in District 9 provides for a chain of command similar to that proposed by the Association.

3. The panel also finds that District 2 has no volunteer firefighter personnel.

4. The panel also finds that the labor agreement in District 3 is silent with regard to chain of command.

D. Determinations and Award

1. The panel, in light of the foregoing findings, determines and awards that the Association's proposal regarding chain of command be adopted and incorporated in its entirety in the new labor agreement.

RECAPITULATION OF DETERMINATIONS AND AWARD OF ARBITRATION PANEL

Comparable Jurisdictions

1. The panel, in view of the foregoing findings, determines that four (4) of the five (5) comparable jurisdictions which the parties have historically relied on in contract negotiations will serve as comparators for purposes of determining wage and benefit increases on a "total package" basis, namely, Pierce County Fire Districts 2, 3, 6 and 9.

Issue 1: Monthly Rates of Pay (Article 8)

1. The panel, in light of the foregoing findings, determines and awards a wage increase of 6.75 percent for bargaining unit employees retroactive to January 1, 1993.

Issue 2: Work Hours (Article 9)

(a) Hours for Shift Employees

1. The panel, in light of the foregoing findings, determines and awards that 24-hour shift employees of the District be granted another K-Day, thereby reducing their work week from 53 to 52.54 hours.

(b) Hours for Day Employees

1. The panel, in light of the foregoing findings, determines and awards that day-shift employees of the District shall work 40 hours per week, Monday through Friday, from 8:00 a.m. to 5:00 p.m., including a one-hour lunch period, and that they may work a flex schedule, work load permitting.

(c) Normal Working for Shift Employees

1. The panel, in light of the foregoing findings, determines that the contract language in the District 2 labor agreement regarding the issue of normal working hours for shift personnel provides a manageable, productive work schedule for both the District and the Association.

2. Accordingly, the panel determines and awards that the following language be incorporated in the new labor agreement between the parties:

> Productive hours for shift personnel shall be 8:00 a.m. - 5:00 p.m., Monday through Friday and 8:00 a.m.- 5:00 p.m. on Saturday and Sunday, excluding holidays.
>
> One hour of productive time shall be set aside for physical training Monday through Friday.
>
> Duties assigned during productive hours on Saturday and Sunday shall be limited to PR activities and in-station projects (i.e. - weekly

station cleaning, weekly hose change, in-house training opportunities, etc.)

Training drills may be scheduled during non-productive hours (excluding holidays) on a reasonably limited basis. Such drills shall be pre-scheduled on the quarterly training schedule. PR activities (i.e. - public display, parades, standby during fireworks displays, etc.) may be scheduled during non-productive hours. The employees involved in the drill and/or PR activity shall be compensated with an equal amount of standby time during productive hours prior to such events taking place.

Nothing herein shall limit the District in exercising discretion in varying the hours of duty of any employee in accordance with past practice.

(d) Scheduling of "K"-Days

1. The panel, in light of the foregoing findings, determines and awards that the current contract language be retained with respect to the scheduling of K-Days.

2. The panel further determines and awards that the current contract language be amended only to reflect the panel's determination and award regarding Issue 2 -- Hours for Shift Employees --, specifically,

that "... 24-hour shift employees of the District be granted another K-Day thereby reducing their work week from 53 to 52.54 hours."

Issue 3: Vacation Accrual for Day Shift (Article 12)

1. The panel, in view of the foregoing finding, determines and awards that the Association's proposal for vacation accrual for day-shift employees be adopted and incorporated in the new labor agreement.

Issue 4: Seniority/Personnel Reduction (Article 19)

1. The panel, in view of the foregoing findings, determines and awards that the Association's proposal governing seniority, specifically, by date of hire, be adopted and incorporated in the new labor agreement.

Issue 5: Medical and Dental Premiums (Article 20)

1. The panel, in light of the foregoing finding, determines and awards that the District's maximum contribution for medical/dental insurance be increased to $514, plus 50 percent of the contribution in excess of $514 effective the first day of the month following the date of this opinion and award.

Issue 6: Sick Leave (Article 21)

(a) Sick Leave Accrual for Pay Shift

1. The panel, in view of the foregoing finding, determines and awards that the Association's proposal for sick leave accrual for day-shift employees be adopted and incorporated in the new labor agreement.

(b) Sick Leave Buy-Back

1. The panel, in light of the foregoing finding, determines that the Association's proposal for sick leave "buy-back" is not supported by the record evidence.

Issue 7: Grievance Procedure (Article 22)

1. The panel rejects the Association's contention and argument that the tentative agreement (TA) reached between the parties during contract negotiations in November of 1992 is binding and, hence, the District's grievance procedure proposals are not to be considered in this arbitration proceeding.

2. The panel, in light of the foregoing reasoning and findings of fact, determines that the District's grievance procedure proposals be adopted in

their entirety and incorporated in the new collective bargaining agreement.

Issue 8: Pay Out of Classification (Article 23)

1. The panel, in light of the foregoing findings, determines and awards that the current contract language of Article 23 be amended to provide that employees who work out of classification shall be paid at the base rate of the position being filled.

2. The panel hereby determines that the current contract language of Article 23 be amended to read as follows:

> Any employee covered by this Agreement who is required by the Fire Chief or his designee to accept the responsibilities and carry out the duties of a position or rank above that which they normally hold, they shall be paid the base rate for the position being filled. An employee shall be paid hour for hour when fulfilling a higher rank or position, at the higher rate.

Issue 9: Deferred Compensation (Article 28)

1. The panel, in light of the foregoing findings, determines and awards that the District contribute a maximum of $50 per month per employee on a matching basis to the deferred compensation plan retroactive to January 1, 1993.

Issue 10: Chain of Command (Article 33)

1. The panel, in light of the foregoing findings, determines and awards that the Association's proposal regarding chain of command be adopted and incorporated in its entirety in the new labor agreement.

TABLE 1 COMPARABLE JURISDICTIONS
SENIOR FIREFIGHTER

1993 Wages, Hours, Benefits Comparison

Dept. Name	1st class monthly	Weekly Hours	Day Hours	Hourly Rate	Med/Den Mo. Cap	Med/Den Percent	Defered Comp.
District #2	$3553.00	49.54	40	$16.55		100	$150.00
District #3	$3693.00	53	40	$16.08		100	$75.00
District #6	$3444.00	53	40	$15.03		100	$50.00
District #9	$3602.00	50.92	40	$16.32	$514.00		$100.00
Average	$3573.00	51.62	40	$16.00	$514.00		$93.75
Current #7	$3347.00	53	45	$14.57	$446.00		$0.00

Footnote: Although District #5 has been a historical comparable, the panel has not included them in this table because wage and benefit information available only for 1991.

Signed this 24th day of September, 1993.

Respectfully submitted,

PAUL P. TINNING
Neutral Chairperson

MICHAEL J. McGOVERN
Panel Member for the Association

BILL R. WILLIAMS
Panel Member for the District

Service of this arbitration award and determinations by certified mail to Michael J. Meglemre, District representative, and Jack Andren, Association representative. Service of this arbitration award and determinations by regular mail to Bill R. Williams, Panel Member; Michael McGovern, Panel Member; and Marvin L. Schurke, Executive Director, PERC. 24 September 1993

Signatures of Arbitration Panel Members
Determinations and Award
PERC Case No. 10358-I-93-00221

	Concur / Dissent	Concur / Dissent
Issue No. 1	BRW /	/
Issue No. 2(a)	/ BRW	/
Issue No. 2(b)	BRW /	/
Issue No. 2(c)	BRW /	/
Issue No. 2(d)	BRW /	/
Issue No. 3	BRW /	/
Issue No. 4	BRW /	/
Issue No. 5	BRW /	/
Issue No. 6	BRW /	/
Issue No. 7	BRW /	/
Issue No. 8	BRW /	/
Issue No. 9	BRW /	/
Issue No. 10	/ BRW	/

Bill R. Williams
District Member

9/24/93
Date

Michael J. McGovern
Association Member

9/24/93
Date

The Chair concurred with the determination and award in the issue of deferred compensation (No. 9); however, he registered concern as to whether the deferred compensation plan is empowered to accept ~~retro~~active contributions by the District.

PAUL P. TINNING, Neutral Chairperson

24 SEPTEMBER 1993
Date