

IN THE MATTER OF INTEREST)
 ARBITRATION)
)
 BETWEEN)
)
 CITY OF WALLA WALLA)
)
 AND)
)
 WALLA WALLA FIREFIGHTERS,)
 LOCAL 404)

OPINION AND AWARD
 OF
 GEORGE LEHLEITNER
 ARBITRATOR

RECEIVED

DEC 5 1986

PUBLIC EMPLOYMENT
 RELATIONS COMMISSION
 OLYMPIA, WA

HEARING: November 12, 1986

INTEREST George Lehleitner
 ARBITRATOR: 3348 Holiday Drive South
 Salem, Oregon 97302

REPRESENTING THE CITY:

C. Akin Blitz, Attorney at Law

REPRESENTING THE UNION:

Michael Tedesco, Attorney at Law

I. INTRODUCTION

The undersigned was selected as the neutral interest arbitrator by the Walla Walla Firefighters, Local 404 (Union) and the City of Walla Walla, Washington (City). The selection was pursuant to RCW 41.56.030(6) and RCW 41.56.450, et. seq. At the commencement of the hearing, both parties formally waived their statutory right to appoint advocate arbitrators and agreed the undersigned arbitrator was authorized to decide their dispute in place of a full arbitration panel.

A hearing was held on November 12, 1986, in Walla Walla, Washington. The City was represented by C. Akin Blitz, Attorney at Law, and the Union by Michael Tedesco, Attorney at Law. Both sides were given a full opportunity to make presentations on each issue in dispute and to examine and cross-examine witnesses, as necessary. In addition to the verbal and documentary evidence, the arbitrator informed the parties that he reserved the right to officially consider any change in the Consumer Price Index (CPI), which occurs between the date of hearing and the issuance of his award. Neither party objected. The hearing was closed at the conclusion of the evidentiary phase on November 12, 1986.

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II. BACKGROUND

At the outset of the hearing, one of the firefighters presented a slide show to help the arbitrator better understand Walla Walla's history.

Walla Walla is a city of approximately 25,600 persons located in southeastern Washington. It has a rich historical heritage and has had professional firefighters since the 1880's.

The land around Walla Walla is devoted primarily to farming and ranching. However, the City also has a four (4) year college and serves as a major medical center for this region. In addition, there are large food processing plants near Walla Walla and a major correctional facility.

III. ISSUES

The only issues presented to the arbitrator are Salaries and Hours of Work. As a practical matter, the two (2) issues are inextricably intertwined inasmuch as the Union's proposed reduction in hours represents an additional cost item to the City.

For purposes of clarity, the arbitrator will discuss the two (2) issues separately, but will attempt to explain the impact of one on the other.

Issue #1 - Salaries

Firefighters are compensated in accordance with a negotiated salary schedule. For the period from December 26, 1984, to December 26, 1985, a fireman (Range 89) is paid an entry level monthly wage of \$1,592.00 and a top step fireman earns \$2,033.00 per month. Proportionately higher salaries are paid to enginemen, paramedics, lieutenants and captains.

A. The Union

The Union proposes a three (3) year agreement with 7% wage adjustments in each of the first two (2) years and a wage reopener in the third year. Under the Union's proposal, the wage adjustment in the first year would be retroactive to December 26, 1985.

The Union's arguments are summarized as follows:

1) The Union's salary proposal must be read in conjunction with its hours of work proposal. Walla Walla's monthly salary, unlike the salary paid by comparable Washington departments, is based on a 56 hour week. Therefore, an important aspect of the Union's proposal is to reduce the 56 hour week to 53 hours per week so as to bring Walla Walla more in line with other departments. Unfortunately, the City opted not to accept a plan to implement this reduction effective March, 1986 with the result that, compared on an hourly basis, Walla Walla

wage rates are very unfavorable. The Union's current proposal will not phase in an hours reduction until 1987. Therefore, it is essential to grant meaningful wage relief in the first two (2) years of the agreement.

2) This is a department which provides diversified fire services. Besides the normal suppression and prevention activities, this department provides sophisticated EMT services. In this regard, eleven (11) employees are qualified as paramedics. The firefighters should receive compensation commensurate with their expertise and job duties.

3) Based on the City's current payroll costs, including base salary, longevity pay, insurance and retirement, the Union's proposed 7% increases in each of the first two (2) years would cost approximately 6.4% per year.¹ In view of the City's excellent financial condition, there is more than enough money to pay this increase.

4) There is not an ability to pay issue in Walla Walla. The Union's exhibits demonstrate that this City has done an excellent job of maintaining substantial cash reserves. This has been accomplished in large part by consistently underbudgeting revenues and overbudgeting expenditures (Union Exhibits 9-11).

¹ The arbitrator's costing figures are taken from Union Exhibit 7. Those figures have been modified to reflect the change in health insurance costs noted by the City at hearing.

5) The City's own budget documents show healthy reserves. This leaves the City with a substantial fund balance in the general fund. For instance, from 1983 through 1985, the fund balance in the general fund increased from 5.96% to 17.34% (Exhibit U-16). Some of these funds should be used to pay a competitive wage rate to Walla Walla firefighters.

6) The factor of comparability strongly favors the Union. In assessing this factor, the parties have agreed to use the list of comparables developed by Arbitrator Levak in a recent interest arbitration award involving the Walla Walla police. However, in order to make a meaningful comparison with these comparators, it is necessary to calculate the Walla Walla wage rate on an hourly basis. This is necessarily so because Walla Walla firefighters work 56 hours, as against an average of 53.7 in the comparator cities. It is also necessary to factor in pension pick up, where applicable. When these adjustments are made, a comparison of wage rates among the agreed to comparables reveals the following, as of June 30, 1985:

SALARY COMPARED BY HOURLY RATE AS OF JUNE 30, 1985

<u>JURISDICTION</u>	<u>TOTAL</u>	<u>SUPPRESSION HOURS WORKED</u>	<u>HOURLY RATE</u>
Albany, OR	\$2,084	56	\$8.59
Hanford, CA	\$1,726	56	\$8.35
Kennewick, WA	\$2,247	50	\$8.92
Klamath Falls, OR	\$1,819	50.3	\$10.37
Pasco, WA	\$2,164	56	\$7.90
Pendleton, OR	\$1,918	56	\$7.11
Pullman, WA	\$1,872	53	\$8.15
Richland, WA	\$2,226	50.9	\$10.09
Turlock, CA	\$2,202	56	\$9.07
Wenatchee, WA	\$2,231	53	\$9.71
Average	\$2,049	53.7	\$8.83
Walla Walla, WA	\$2,033	56	\$8.38
Variation	-.78%	2.3	-5.09%

7) The wage disparity as of June 30, 1985, widens considerably when one compares salaries as of June 30, 1986.

Comparisons as of this date reveal the following:

SALARY COMPARED ON AN HOURLY RATE AS OF JUNE 30, 1986

<u>JURISDICTION</u>	<u>TOTAL</u>	<u>SUPPRESSION HOURS WORKED</u>	<u>HOURLY RATE</u>
Albany, OR	\$2,163	56	\$8.91
Hanford, CA	\$1,776	56	\$7.32
Kennewick, WA	\$2,359	50.3	\$10.82
Klamath Falls, OR	\$1,910	56	\$7.87
Pasco, WA	\$2,296	50	\$10.60
Pendleton, OR	\$1,982	56	\$8.17
Pullman, WA	\$1,928	53	\$8.39
Richland, WA	\$2,226	50.9	\$10.09
Turlock, CA	\$2,267	56	\$9.34
Wenatchee, WA	\$2,362	53	\$10.28
Average	\$2,127	53.7	\$9.18
Walla Walla, WA	\$2,033	56	\$8.38
Variation	-4.41%	2.3	-8.74%

If these comparisons were projected further until June 30, 1987, the disparity would increase to 8.28% on a monthly basis and 12.43% on an hourly basis, assuming an increase among the comparator cities of 4%. In sum, it is apparent that, even when salaries are compared on a monthly basis, Walla Walla has a comparability problem that is increasing. Now is the time to address this problem.

8) Percentage increases among the comparator cities in 1985-86 averaged 3.81%. The City cannot afford to lose further ground in view of these increases. The theory behind the Union's proposed increases is to bring Walla Walla wages in

line in 1986 and then conform hours to those utilized in the comparator cities in the final year of the contract (1987).

9) Economic data indicates that economic conditions in this area have remained relatively stable from 1982 to the present. In fact, the unemployment rate has steadily declined during this period (Exhibit U-26). Meanwhile, assessed values have steadily increased (Exhibit U-29).

10) Interestingly, the cost of living in Walla Walla is higher than it is in the Tri Cities area. Thus, it is more meaningful to compare costs in Walla Walla with those in Seattle than with those in the Tri Cities area.

11) The City's threat to RIF employees in the event its wage proposal is exceeded is ridiculous in view of this City's substantial cash reserves.

12) The cost of living data offered by the City is largely irrelevant because Walla Walla is in an obvious catch up situation. Moreover, firefighter increases on the west coast have traditionally exceeded the CPI. If the City fails to make similar adjustments, the catch up problem will be exacerbated.

13) Overtime costs under the FLSA are not considered by interest arbitrators when they develop a wage award. This is because FLSA costs are statutorily mandated.

B. The City

The City proposes a two (2) year agreement with a 1.5% increase on the base in the first year. The City's proposal in the second year, as the arbitrator understands it, is to use the same methodology Arbitrator Levak used in the recent Walla Walla police award.²

The City's arguments are summarized as follows:

1) The City's proposed 1.5% increase in the first year actually amounts to an increase of 3% due to the increased costs of implementing FLSA.

2) The fund balances shown by the Union for 1984 and 1985 have declined dramatically. The 1985 figure of \$907,297.00 has dropped to \$757,452.00 for 1986 and is projected to drop further to \$538,000.00 by 1987.

3) The City Manager's 1987 budget message speaks to some of the economic realities facing the City. In a word, the City is experiencing declining revenues, resulting in less money to pay employee salaries. Projected increases are not budgeted for the fire department and any increases awarded in interest arbitration will have to come out of the fire department's budget. This would mean firefighter layoffs.

² The City did not specifically propose a figure for the second year, but mentioned that, if this methodology is used, the City may find itself with a "catch up" problem amounting to approximately 1%. Apparently, the City is amenable to adding this 1% to the second year adjustment.

4) Another indicator of the City's financial condition and its inability to pay a wage adjustment of the magnitude proposed by the Union is the decline in the 1987 general fund budget from \$7,678,300.00 in 1986 to \$7,252,600.00 in 1987.

5) The arbitrator should adopt Arbitrator Levak's methodology for comparing relevant jurisdictions as well as the comparators he selected. In his police award, Arbitrator Levak found that Walla Walla was 5.5% below the 1985 average wage of the comparator jurisdictions. Thus, a 5.5% adjustment, effective December 25, 1985, was awarded to bring Walla Walla in line with the average 1985 wage paid in the comparator jurisdictions. Applying this same methodology to the firefighters reveals the following:

TOP STEP FIRE FIGHTER WAGE

(Highest wage paid 7/1/85 - 12/31/85)

<u>JURISDICTION</u>	<u>WAGE</u>	<u>PERS</u>	<u>TOTAL</u>
Albany	2041*	6%	2163
Pendleton	1870	6%	1982
Klamath Falls	1716	6%	1819
Hanford	1660	4%	1726
Kennewick	2247		2247
Pasco	2164		2164
Pullman	1872		1872
Richland	2226		2226
Turlock	2202		2202
Wenatchee	2250		2250
Average	2025		2065
Walla Walla	2033		2033
Variation	+ .4%		-1.5% (\$32)

* includes EMT pay

The above comparisons indicate the firefighters are only 1.5% below the 1985 wage rate paid by the comparator cities. Thus, only a 1.5% adjustment is needed to bring Walla Walla wage rates in line with those paid by the comparator cities. This is precisely what the City is proposing.

6) Looking at wage comparisons among the same comparators in a different way, the following chart reflects calendar 1986 wage adjustments for all California and Washington cities, except Richland and Walla Walla, which are not settled. The chart also shows the highest FY 1985-86 Oregon wage.

Wage Comparison for Top Step Fire Fighter Positions

<u>JURISDICTION</u>	<u>JUNE 30 1986</u>	<u>PERS</u>	<u>TOTAL</u>
Albany	\$2,041*	6%	\$2,163
Pendleton	1,870	6%	1,982
Klamath Falls	1,802	6%	1,910
Hanford	1,708	4%	1,776
Kennewick	2,359		2,359
Pasco	2,296		2,296
Pullman	1,928		1,928
Richland	2,226		2,226
Turlock	2,267		2,267
Wenatchee	2,362		2,362
Average	\$2,086		\$2,127
Walla Walla	\$2,033		\$2,033
Variation	-2.5%		-4.4%

* includes EMT pay

Even using this method, which was not done by Arbitrator Levak, the City is only 4.4% behind the average of the comparator

cities. Obviously, the Union's wage demand exceeds this differential.

7) The CPI projections cited by Arbitrator Levak to support a wage increase in the second year are too high. First, wage adjustments paid to firefighters from 1981 to the present indicate firefighter wage rates track almost precisely with increases in the CPI. Second, a review of the CPI data for 1986 reveals the cost of living has remained remarkably flat during this period. More specifically, the index (US CPI-W) stood at 324.9 in September, 1986, which was only 1.5% higher than the 324.3 figure for December, 1985. Even assuming the CPI increases by as much as 2% in 1986, this would indicate that at most a 2% adjustment is warranted to keep up with the cost of living. A 4% figure may be more realistic for 1987.

8) As the Union acknowledges, the Union's wage demands must be considered in conjunction with its proposal to reduce the work week from 56 hours to 53. Without getting into all the specifics at this time, the City estimates the unbudgeted overtime impact of this proposal amounts to \$43,340.00.

9) The impact of the Union's proposed 7% increases in the 1986 and 1987 can be illustrated by reviewing the effect of the Levak police award on the City's budgetary process. To summarize, the City budgeted 2.4% for salary costs in 1986 and nothing in 1987, as compared with Levak's award of 5.5% in 1986 and 4.5% in 1987. Even with a reduction of one (1)

position in 1986, the end result is a 1987 shortfall of \$39,740.00 and a likelihood of additional employee layoffs.

10) An award equal to or even close to the Union's proposed 7% increases in the first two (2) years would cause similar problems. In this regard, the City budgeted 2.4% for increased public safety salary costs in 1986 (the City's proposed 1.5% adjustment plus an additional 1.5% in FLSA costs more than exhausts this amount) and nothing in 1987. According to the City's estimates, an award of 7% in each of the first two (2) years would result in net unbudgeted costs of \$134,582.00. Moreover, when the \$43,340.00 unbudgeted costs associated with the Union's reduction in hours proposal is factored in, the total in unbudgeted costs amounts to \$177,922.³ Obviously, this is entirely unacceptable to the City.

11) Internal consistency (i.e., wage parity) supports the City's proposal. The City's non-represented and general unit employees both received 1.5% in 1986. Moreover, applying the same methodology used by Arbitrator Levak to develop the police award leads one to this same 1.5% figure.

C. Discussion

The Washington Statute (RCW 41.56.450(a)-(f)) sets forth the criteria to be applied by interest arbitrators in developing interest awards. The arbitrator's award is based on an application of these criteria to the facts in this

³ The arbitrator has modified the figures contained in Exhibit C-10 to reflect 7% adjustments for 1986 and 1987.

case. What follows is a summary of the focal points in that analysis.

The Constitutional & Statutory Authority of the Employer

This factor was not an issue.

Stipulations of the Parties

The parties agreed to use the comparables developed by Arbitrator Levak in the recent interest arbitration award involving the City and its police officer bargaining unit.

The parties also agreed that the arbitrator could officially notice and consider CPI figures issued subsequent to the hearing date, but prior to the issuance of his award.

Finally, the City agreed to make every reasonable effort to issue a paycheck including whatever adjustments are awarded prior to Christmas.

Comparability

(1) Methodology

Comparability is one of the key statutory factors in this case. The parties managed to narrow the scope of the arbitrator's inquiry considerably by stipulating to a list of comparable jurisdictions. More specifically, this was accomplished by agreeing to use the comparables developed by Arbitrator Levak in the recent police award. What the parties did not

agree to, however, is the methodology to be applied in comparing Walla Walla wage rates with those paid by the comparator departments.

Both parties use top step firefighter wage rates for comparative purposes, but the Union does so by comparing salaries on an hourly basis, whereas the City compares monthly wage rates. According to the Union, it is necessary to compare hourly wage rates in the firefighters' case because in Walla Walla, unlike in most of the agreed upon comparator jurisdictions, firefighters work a 56 hour week.

The arbitrator agrees with the Union's argument on this point. For reasons explained in another section of this award, the arbitrator has not awarded a reduction in hours, as proposed by the Union. Consequently, Walla Walla firefighters are in the position of working 56 hour weeks, as distinguished from the 53.7 average among the comparator departments. This being so, the only apples and apples comparison is one in which hourly, not monthly, wage rates are compared.

It should also be pointed out that an hourly wage rate comparison for firefighters is not contrary to the police award rendered by Arbitrator Levak. Simply stated, there was no indication in the police award that hourly versus monthly wage rate comparisons was an issue. Stated another way, there was no indication in the police award that Walla Walla police officers work different hours than their counterparts in the comparator jurisdictions.

Another interesting methodology question is whether the arbitrator, in developing his award for 1986 (i.e., December 26, 1985 through December 26, 1986) should use 1985 or 1986 wage rates. The City, citing the Levak award, argues that 1985 wage rates should be used.

It is true that Mr. Levak's 5.5% award in the first year took, in his words, "the City in 1986 only to the average of the 1985 wage." (Levak award at page 27.) However, in this arbitrator's view, it would be a misreading of Arbitrator Levak's award to say he thereby precluded the consideration of 1986 settlements in developing an award. That simply is not what he said. Moreover, a reading of the entire award reveals that Mr. Levak, in accordance with the statutory mandate, did not limit his analysis to the factor of comparability. He also considered the other statutory criteria.

The question of using 1986 settlements is particularly interesting in this case because the Walla Walla contract runs from December 26 to December 26, as distinguished from some of the comparator cities, which run from July to July. Under these circumstances, a logical approach is to average wage rates among the comparator departments as of both 1985 and 1986. More specifically, the arbitrator will average the hourly wage rates as of June 30, 1985, and June 30, 1986, and compare that average with the hourly wage rate paid to Walla Walla firefighters.⁴

⁴ The 1985 wage comparisons cited by the Union are as of June 30, 1986, as opposed to the 1985 City figures, which are as of December 31, 1985. For obvious reasons, the arbitrator will average the 1985 and 1986 figures as of June 30th in each year.

(2) The Comparisons

Once the methodology is determined, the comparisons themselves are relatively straightforward.

The average monthly wage among the comparator cities as of June 30, 1985, is \$2,049.00 and the hourly rate is \$8.83. As of June 30, 1986, the average monthly rate increases to \$2,127.00 and the hourly rate to \$9.18. If the wage rates as of these two (2) dates are averaged, the new monthly figure becomes \$2,088.00 and the hourly rate becomes \$8.97. Comparing this figure (\$8.97) with the Walla Walla hourly rate of \$8.38 indicates that Walla Walla is 6.57% behind the average wage rate paid by the comparator cities.⁵

(3) Other Considerations

Without question, comparability is one of the most important statutory factors. This is particularly true in a "catch up" situation because the need for "catch up", if shown, tends to render the cost of living factor less important. Moreover, the apparent absence of an inability to pay a reasonable, but not excessive, wage increase in Walla Walla also tends to make the comparability factor more paramount.

⁵ Interestingly, wage rate comparisons using slightly different time periods result in similar figures. Thus, for example, if hourly wage rates as of December 31, 1985, only are used, Walla Walla is 5.57% behind the average. And, if the average of wage rates as of December 31, 1985 and June 30, 1986 are used, the difference increases to 6.97%. Finally, if wage rates as of June 30, 1986, only are used, the differential increases further to 8.7%.

Nevertheless, the arbitrator's analysis should not be based entirely on comparability and the perceived need for "catch up". Simply stated, the statute directs interest arbitrators to consider all of the relevant statutory criteria. Thus, for example, if a public employer has limited financial resources or the CPI is flat, these factors would militate in favor of a more conservative approach. Stated another way, a wage adjustment that may seem appropriate on the basis of a straight comparability analysis may no longer be appropriate after all of the statutory criteria are considered.

The Cost of Living

The cost of living, as measured by the CPI, is another of the statutory factors the arbitrator is required to consider.

A review of the All Cities CPI-W (the index referenced by Arbitrator Levak in the recent police award) shows that the index remained flat during 1986. Even assuming a healthy increase in the index during the last two (2) months of the year, the increases over last year are going to be minimal. On the other side of the coin, the arbitrator is of the opinion that rapidly fluctuating oil prices and a recessionary economy over the last several years make the index more unreliable than might otherwise be the case. Finally, as the Union correctly points out, firefighter wage settlements statewide have outstripped the CPI on a consistent basis. Thus, to the extent Walla Walla firefighters receive less, the City will be faced with a serious "catch up" problem.

The CPI is particularly useful in terms of projecting on appropriate wage adjustments in the second or third year of a multi-year agreement. In this regard, the City acknowledges that growth of approximately 4% is projected for 1987. Arbitrator Levak projected similar growth in the cost of living and awarded a 4.5% for 1987. And finally, a review of recent settlements suggests to this arbitrator that a 4% increase in the second year is appropriate for Walla Walla firefighters.

Changes During the Pendency of the Proceedings

Other than newly issued CPI figures for October, 1986, which the arbitrator noticed and considered, this factor has no bearing on the arbitrator's award.

Other Factors Traditionally Considered

The Washington interest arbitration statute, unlike its counterpart in Oregon, does not specifically identify ability to pay as one of the applicable criteria. Nevertheless, the ability to pay and the interest and welfare of the public is certainly one of the factors traditionally considered by arbitrators in fashioning interest awards.

This factor need not be discussed at great length, under the circumstances of this case. The undersigned arbitrator agrees with the analysis of Arbitrator Levak on this point. Essentially, he concluded that the City had sufficient funds

in its budget to pay a reasonable wage adjustment without affecting service levels. However, the arbitrator will award split increases in the first year solely for the purpose of minimizing the fiscal impact on the City, while at the same time maximizing the amount of "catch up".

Summary

The arbitrator's award is designed to bring Walla Walla firefighter wage rates in line as much as possible with the average paid by the comparator cities. To accomplish this with the least amount of fiscal impact, the arbitrator will spread the increases in the first year into adjustments effective December 26, 1985, and June 26, 1986.

The arbitrator will award a two (2) year agreement with a 4% increase in the second year. The arbitrator is unwilling to award a two (2) year agreement with a reopener in the third year because of the outstanding "hours of work" issue. A two (2) year agreement provides sufficient stability, while at the same time giving both sides an opportunity to address the hours of work issue, if desired, during the next round of negotiations.

D. Award

Based on an application of the statutory criteria to the facts of this case, the neutral arbitrator makes the following:

- 1) Effective December 26, 1985, increase all bargaining unit wage rates by 3.25%.

2) Effective June 26, 1986, increase all bargaining unit wage rates an additional 3.25%.

3) Effective December 26, 1986, increase all bargaining unit wage rates by 4%.

Issue #2 - Hours of Work

Article 20 of the current agreement contains the following relevant contract language:

ARTICLE 20 - HOURS OF WORK AND OVERTIME

20.01 Employees assigned to a twenty-seven (27) day work cycle shall have an average annual week of fifty-six (56) hours. The work force shall consist of three (3) shifts, designated as "A" shift, "B" shift, and "C" shift. Each shift shall work twenty-four (24) hours from 0730 to 0730. The configuration of the twenty-seven (27) day work cycle shall be shown in Appendix A.

Employees not assigned to the twenty-seven (27) day work cycle (Appendix A) shall work forty (40) hours per week, Monday through Friday, 8:00 a.m. to 5:00 p.m., except exempt holidays, unless alternative work hours and days are mutually agreed to by the employee and the City.

20.02 All hours worked in excess of an employee's regularly scheduled shift shall be paid at an overtime rate of one and one-half (1-1/2) times his regular rate of pay which will be computed by dividing his regular annual salary by 2912 hours.

20.03 In an overtime period, employees will be guaranteed a minimum of two (2) hours overtime pay. In any overtime situation, the employee may, at the discretion of the shift commander, be required to work the minimum paid time. . .

APPENDIX "A"
Shift Schedules

Day #	1	2	3	4	5	6	7	8	9
Shift Working	A	C	A	B	A	B	C	B	C
Day #	10	11	12	13	14	15	16	17	18
Shift Working	A	C	A	B	A	B	C	B	C
Day #	19	20	21	22	23	24	25	26	27
Shift Working	A	C	A	B	A	B	C	B	C

The current contract also contains language in Section 21.01(B) whereby individuals using less than 36 hours of sick or disability leave per calendar year receive twelve (12) additional vacation hours.

Finally, under current contract language, permanent employees enjoy one "floating holiday" per year, which can be taken at the time of their choice, subject to departmental approval (Section 18.02).

A. The Union

The Union proposes to reduce the average fifty-six (56) hour week referred to in Section 20.01 to a fifty-three (53) hour week effective October 1, 1987. The Union further proposes to reduce the "2912 hours" referred to in Section 21.02 to "2756 hours." To describe the method of implementing its proposal, the Union offers the following new contract language:

"20.07 The decrease in hours from a 56 hour work week to a 53 hour work week will be accomplished through the use of Kelly Days. A calendar with kelly day scheduling will be made available to the City by the Union prior to the scheduling of vacations.

The kelly day scheduling will be such as to provide 12 hours of time off during each 27 day cycle. The 27 day cycle will begin for all shifts on April 15, 1986 and carry on from that date to infinity. Kelly days will be scheduled on the beginning and end shifts of each shift's three day go around.

The use of pre scheduled kelly days will be suspended for the double vacation periods in the summer months. These suspended kelly days will be placed in compensatory time banks at time and one half. (for use of the comp time banks see the comp time article).

Kelly days are regularly scheduled days off. They are not holidays or bonus days off but are the same as any other day that an employee is not scheduled to work.

Vacations may not be taken in lieu of kelly days except during the summer months.

NEW ARTICLE -- COMPENSATORY TIME

Compensatory time will be accrued through non use of kelly days during the four cycles of double vacation slots in the summer months.

Accrued comp time must be scheduled between double slot vacation periods (ie September to June) so as

to eliminate any comp time banks before the start of another double summer vacation period.

The employee will schedule the comp time in his bank by seniority in the same way as vacations are picked. This pick will take place so as to facilitate use of all available time slots immediately following the double summer vacation slots.

If the Fire Chief finds an employee is failing to deplete his comp time bank, the Chief may appoint mandatory days off so as to eliminate any carry over of accrued comp time."

Finally, as part of its proposed "hours of work" package, the Union is willing to drop the "floating holiday" and the 12 hour non use of sick leave bonus for fifty-three (53) hour personnel.

The Union's arguments are summarized as follows:

1) The Union has gone to great lengths to be flexible on this issue. First, the Union has modified its initial proposal for a fifty (50) hour week and has also agreed to reduce the hours factor in Section 21.02 from 2912 to 2756. Second, the Union, as part of its "hours of work" proposal, has agreed to relinquish the special 12 hour non sick leave usage bonus as well as the "floating holiday". Third, the Union has proposed new "compensatory time" language, which limits employee use of comp time. And finally, the so-called "kelly day" method of implementing the 53 hour work week is specifically designed to minimize the impact on the City. In this regard, the Union's willingness not to take "kelly days" during the peak vacation period demonstrates the flexibility of its approach.

2) The factor of comparability strongly supports the Union's proposal. Among the comparator cities used in the police award and agreed to by both sides in this case, the average suppression hours worked is 53.7, as against the 56 worked by Walla Walla firefighters. Even more to the point, all of the comparable Washington jurisdictions work 53 hours or less.⁶ Simply stated, the 56 hour week is not the norm for firefighters in Washington.

3) The Union estimates under the current 56 hour schedule the City's FLSA costs will amount to approximately \$15,000.00. This cost will be eliminated if the Union's kelly day proposal is implemented, thereby saving the City this amount of money in FLSA costs.

4) The most credible evidence suggests the City would be able to implement the Union's proposal without undue disruption or expense. In fact, during bargaining, the matter was discussed at some length with the Fire Chief and he came back to the Union with the plan the Union is now proposing. Moreover, even assuming the City's estimate of \$43,340.00 in additional overtime costs is accurate, that figure must be reduced by \$15,000, which is the amount the City would save in FLSA costs. The end result would be a cost factor of \$27,500.00 or 2.5%.

⁶ In Pullman, firefighters are assigned to work a 56 hour shift schedule, but are entitled to take 12 hours off per month, as assigned by the City or as mutually agreed (see, Exhibit C-8). The practical effect of this arrangement is that firefighters in Pullman have an average 56 hour work week.

B. The City

The City adamantly opposes the Union's "kelly day" proposal.

The City's arguments are summarized below:

1) The fact that the Fire Chief discussed the Union's proposal with the firefighters and suggested how the work schedule would have to be adjusted to accomplish their goal is irrelevant. The more important point is that the Union's proposal was taken to the City Manager and was rejected because it was unworkable and far too expensive.

2) The fire department is currently staffed at minimum levels, as evidenced by a net reduction of seven (7) positions over the last seven (7) years. A review of this year's calendar shows that at any given time at least one firefighter is scheduled for vacation and during the summer months two (2) people are normally scheduled off for this purpose. This means that each shift is left at minimum manning levels, so that absences created by sick leave have to be filled on an overtime basis. Last year, this amounted to 76 days a year in which the City had to pay overtime. The City estimates the Union's "kelly day" proposal, if implemented, would increase this usage to 201 days a year, at an increased cost of approximately \$42,500. Even without considering the scheduling nightmare created by such a proposal, the increased cost is clearly unacceptable.

3) There are a host of other problems with the Union's "kelly day" proposal. Simply stated, it severely limits management's ability to assign and direct work. For instance, it increases the complexity of deciding how to transfer employees between shifts. It also creates the potential problem of having inexperienced people assigned to a particular shift and in some cases would result in the City having to pay "out of position" premiums.

4) The Union's "kelly day" proposal is not properly before the arbitrator. Under WAC 391-55-220, neither party is permitted to arbitrate issue(s) not among the issues presented to the mediator. The letter from PERC Executive Director Marvin Schurke to the parties directing them to proceed to arbitration does not include the Union's "kelly day" proposal as an issue in dispute.⁷

C. Discussion

The jurisdictional argument raised by the City need only be discussed briefly. Apparently, the City contends the "kelly day" proposal was not among the issues presented by the Union in mediation. Unfortunately for the City, the credible evidence does not support this contention (see, Footnote 7).

⁷ The May 19, 1986, letter from PERC Executive Director Marvin Schurke to the parties lists "Article 20 - Hours in Work Week" and "Article 20.02 - Hours of Work" as outstanding issues. The credible evidence established that the Union's "kelly day" proposal was raised before and during mediation (testimony of City Negotiator Thomas Steele).

Turning to the merits of the "kelly day" proposal, the Union's comparability data is extremely persuasive. More to the point, the average work week among the agreed upon comparators is 53.7, as compared with 56 in Walla Walla, and all of the Washington cities on the list work 53 hours or less. In view of this comparability data, the arbitrator would be inclined to go along with the Union's proposed reduction in work hours, if it could be accomplished without too much disruption and/or fiscal impact. However, given current manning levels in Walla Walla, the arbitrator is persuaded the proposal would be too costly and disruptive at this time.

In analyzing the Union's "kelly day" proposal, it is appropriate at the outset to draw a distinction. The obvious objective of the proposal is to reduce the average work assignments from 56 hours per week to 53 hours per week. As indicated previously, this objective is understandable in view of the agreed upon comparability data. What is more troubling, however, is the Union's proposed plan for implementing the proposal. The arbitrator is well aware that many, if not most, of the refinements contained in the plan were a result of the Fire Chief's input. The arbitrator also recognizes that the plan represents a good faith effort on the part of the firefighters to be as flexible as possible, while at the same time achieving their objective of reduced hours. Be that as it may, the plan, if implemented, would necessarily limit management's prerogative to assign work. This being so, it seems to this arbitrator that it would be preferable to simply award a reduction in

hours and leave it to management's discretion how that would be implemented.

However, the arbitrator is unwilling to award the proposed reduction in work hours at this time. While such an award would certainly not be out of line with hours worked in comparator departments, existing circumstances in Walla Walla indicate reduced work hours would create more problems than they would solve. This conclusion is based primarily on current manning levels, which would likely result in substantial overtime costs, if the Union's proposal were implemented. In this regard, it is difficult to draw meaningful comparisons with the comparator cities on this issue because the arbitrator does not know what the manning levels are in each of these departments. Moreover, as a practical matter, the fact that Walla Walla apparently has little, if any, leeway in manning various shifts could also make scheduling substantially more difficult under the Union's proposal.

Based on the foregoing, the arbitrator will not award the reduction in work hours proposed by the Union at this time. However, the City must understand that it is not the same as the other Washington jurisdictions on this issue and is likely to be faced with a strong comparability argument in future negotiations. Moreover, the City must also understand the relationship between hours of work and salaries. Simply stated, if Walla Walla expects its firefighters to work more hours than their counterparts in the comparator departments, then this difference has to be reflected in their wage rates.

D. Award

Reject the Union's proposal.

Respectfully submitted this 3rd day of December, 1986,

A handwritten signature in cursive script, appearing to read "George Lehleitner".

George Lehleitner
Arbitrator