7263-I-88-172

IN THE MATTER OF THE	)	ARBITRATION PANEL'S
INTEREST ARBITRATION	)	OPINION
BETWEEN	)	AND
CITY OF CLARKSTON, WASHINGTON	)	AWARD
"THE CITY" OR "THE EMPLOYER"	)	
AND	)	
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 2299	)	
"IAFF" OR "THE UNION"	)	

HEARING: August 12, 1988
Nendels Motor Inn
Clarkston, Washington

BRIEFS: City's received: October 16, 1989
Association's received: October 16, 1989

HEARING CLOSED: November 3, 1989

ARBITRATION PANEL:

Neutral Chair: Timothy D.W. Williams
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City Representative: Scott C. Broyles, Esq.
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Clarkston, WA 99403

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REPRESENTING THE CITY:

Roy Wesley, Labor Consultant

REPRESENTING THE UNION:

Pamela Bradburn, Attorney

APPEARING AS WITNESSES FOR THE CITY:

Leanard Brunelle, City Clerk
Robert Berreman, Fire Chief
Stan Finkelstein
Association of Washington Cities
Robert Anderson, Police Chief

APPEARING AS WITNESSES FOR THE UNION:

Don Schlies, Member, IAFF Local 2299
Tony Copeland, Member, IAFF Local 2299
Kathy Hopfner, Member, IAFF Local 2299
Dave McConnell, Member, IAFF Local 2299

EXHIBITS

Joint

1. 1986-87 Labor Contract
2. RCW 41.56.450
3. RCW 82.14.030
4. RCW 41.26.100
5. RCW 41.56.122
6. CPI, June 1988
7. Washington State Yearbook, 1977
8. Bargaining Notes (submitted by mail at Neutral Chair's direction on August 22, 1988)

Union

1. Slide script
2. The Valley - Chamber of Commerce publication
3. Comparative chart
4. Survey of Washington cities and counties
5. Survey of non-union pay increases
6. City of Clarkston budget figures
7. Collection of newspaper articles
8. Collection of newspaper articles on 1988 budget
9. Newspaper article, May 20, 1988
10. 1988 monthly salaries
11. 1988 monthly salaries
12. Survey of salaries for city personnel
13. Analysis of fire service
14. Comparable language on non-wage issues
15. Salary survey for management

Supplemental Evidence Submitted by the Union

1. 1989 comparability data
2. 1988 comparability data
3. Bar chart of 1988 comparability data
4. Bar chart of 1989 comparability data
5. Declaration of Kathy Hopfner, September 22, 1989

City

1. Average Wage Rate Index - 1986
2. 1988 pie chart
3. Contingency Reserve Fund
4. October 8, 1987 memo on budget
5. Employee chart
6. 1988 wage increases
7. Comparable data, 1988
8. ACCRA data
9. Comparison of utility rates
10. East-West comparison
11. 1988 tax base comparisons
12. Salary comparison, fire to police
13. Extended comparisons with other communities
14. Fire Chief salaries
15. CPI increase compared to fire fighter increases
16. Yearly advances in CPI
17. Benefit comparables
18. July 26, 1988 Department of Labor letter with attachments
19. Sick leave documents

Supplemental Evidence Submitted by the City

1. 1989 wage increases for fire - cities greater than 3600 population
2. Proximity to Washington's major urban area
3. Written objection to Ordinance No. 1068
4. City of Clarkston Contingency Reserve Fund
5. Average cost of housing
6. National U.S. Cities-CPI Advance/vs. Firefighter increases
7. Firefighters 1988 salaries of comparison cities
8. Memorandum dated September 18, 1989
9. Benefit data (1988-89)
10. ACCRA letter, September 19, 1989
11. Memorandum, September 22, 1989
12. Official returns of the state primary
13. City of Richland Interest Arbitration
14. Clarkston Civil Service eligibility list
15. Firefighters investigated - computer
16. Amendment to IAFF Local 2299, August 5, 1988
17. Boeing's record
18. Joint bargaining notes

BACKGROUND

This matter involves the arbitration of an interest dispute between International Association of Firefighters Local 2299 (hereafter the Union or IAFF) and the city of Clarkston (hereafter the City or the Employer). A hearing was held before an arbitration panel consisting of Union Representative Danny Downs, City Representative Scott Broyles and Neutral Chair (hereafter the Arbitrator) Timothy D.W. Williams. Hearing was held on August 12, 1988 in Clarkston, Washington. Prior to the hearing the parties submitted to the Arbitrator a written notice of the issues still in dispute and the parties' respective positions on those issues. The issues as indicated by the parties are:

compr. 1. Article IX - Wages

compr.(U) 2. Article II - Duration of Agreement

U 3. Article XI - Overtime and Callback Pay

C 4. Article XVI - Unused Sick Leave

5. Article XXIV - Vacation

U 6. Article XXVI - Grievance Procedure

U 7. Article XXIX - City Security

During the hearing the parties resolved their dispute over Article XXIV, Vacation. Thus only six issues remain before the Arbitration Panel.

During the hearing the Panel took evidence and arguments on an issue-by-issue basis in the order as outlined above. As required by RCW 41.56.450, the Chair of the Panel made a recording of the proceedings. At the closing of the hearing

the parties agreed to file post-hearing briefs and set the date for mailing them.

Following the hearing but prior to the filing of briefs, the City filed unfair labor practices with the Public Employment Relations Commission concerning Union activity related to "bargaining, mediations and in the Interest Arbitration hearing conducted on August 12, 1988 in Nendels, Clarkston,..." (copy to Arbitrator dated August 18, 1988). In part the unfair labor practice complaint challenged the list of comparables presented as evidence by the Union during the arbitration hearing.

On September 6, 1988 the Arbitrator sent the parties a letter in response to an oral request from the Union. A portion of that letter read:

> On September 2, 1988 the Union requested an extension of the deadline for filing briefs because the unfair labor practice charge cast uncertainties over what evidence was properly before the arbitration panel. The Arbitrator agreed that the evidentiary question needed resolution before briefs could be filed and granted the extension until September 12, 1988.

The Arbitrator further corresponded with the parties by letter dated September 12, 1988 in which he stated:

> On September 9, 1988, the Arbitrator received from the Union a request for an indefinite postponement for filing briefs in the above referenced matter. The Union contends that the postponement is necessary until the City's ULP on evidence presented by the Union to the Arbitration Panel is resolved. The Arbitrator contacted the City through its representative on the Arbitration Panel. The City agrees to this postponement. Therefore the Arbitrator approved the request.

> The Arbitrator requests that the parties keep him informed as to the progress of the ULP. Based on the final resolution of the ULP, the Arbitrator will determine the next step in these proceedings.

During the summer of 1989 the Arbitrator received a letter dated July 18, 1989 from the City of Clarkston. Enclosed with that letter was a copy of PERC Decision No. 3246. In that decision PERC ruled that the Union had committed an unfair labor practice and, in part, ordered that:

> b. Withdraw the list of comparables relied upon since December 21, 1987, and rely in the currently pending interest arbitration proceedings only upon the set of comparable jurisdictions announced to the employer during the negotiations for a successor collective bargaining agreement for 1988 and/or 1989.
>
> (PERC Decision No. 3246, page 18)

By letter dated July 25, 1989 the Arbitrator notified the parties of his receipt of PERC Decision No. 3246, and requested that they indicate whether because of the passage of time the record should be reopened for supplemental evidence and as to the desired date for the filing of post-hearing briefs. Following both oral and written correspondence from the parties, on September 17, 1989 the Arbitrator sent a letter to the parties which stated in part:

> After discussions with both parties and in an attempt to meet the needs of each, I am setting Monday, September 25th as the date for the filing of supplemental evidence in the above referenced case. The date for filing briefs is Friday, October 13th. Please send a copy of the supplemental evidence and the briefs to each other and all three members of the Arbitration Panel.
>
> As soon as I have a copy of the briefs I will contact the other two members of the panel and

> arrange a meeting date. It is my hope to conclude this matter as quickly as possible.

Supplemental evidence was received by mail from both parties. On October 2, 1989 the Arbitrator received a letter from the City's Representative which indicated that "The City will not raise any challenge or objection with respect to a question of whether the Union's supplementary evidence was timely mailed to me or panel member Scott Broyles."

Briefs were timely received from both parties.

RCW 41.45.450 requires that:

> The Neutral Chairman shall consult with the other members of the Arbitration Panel, and, within 30 days following conclusion of the hearing, the Neutral Chairman shall make final findings of fact and a written determination of the issues in dispute, based on the evidence presented.

On November 3, 1989, the Arbitrator convened a meeting of the Panel for purposes of discussion and consultation. The Panel met in a meeting room at the SEA-TAC Airport. The Panel discussed each issue in turn. During the discussion the Arbitrator asked the representatives to summarize the position and argument of his party for each issue. Following this discussion, the Arbitrator outlined his proposed award on the issue and asked for any response or rebuttal from the representatives. Following the November 3 panel discussion session, the Arbitrator closed the hearing.

Based on the discussion session with the Panel members, and on the evidence and arguments provided by the parties, the Arbitrator fashioned a written arbitration award. In constructing this award, the Arbitrator was mindful of those

criteria set out in Washington Statute RCW 41.56.460 for fire-fighter interest arbitration proceedings. Those criteria are:

> (a) The constitutional and statutory authority of the employer;
>
> (b) Stipulations of the parties;
>
> (c) (i) [this paragraph is not applicable]
>
> (ii) For employees listed in *RCW 41.56.030(6)(b), comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers shall not be considered;
>
> (d) The average consumer prices for goods and services, commonly known as the cost of living;
>
> (e) Changes in any of the foregoing circumstances during the pendency of the proceedings; and
>
> (f) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment

The Arbitrator's preliminary written award was then submitted to the representatives for final review. Modifications to the preliminary award were made to the extent that the Arbitrator was convinced that such modifications were supported by the evidence and arguments.

ISSUES, ANALYSIS AND AWARD

ISSUE 1: ARTICLE IX - Wages

A. Proposals. The Union submitted and argued for the following wage proposal:

> For 1988 the Union proposes a 25% increase effective January 1, 1988. For 1989 the Union proposes an increase of 100% of the 5/87 to 5/88 CPIW, but at least 4% and no more than 10%, effective January 1, 1989.

The Union, in its brief, acknowledges that all relevant cost of living (CPI) data is now available and therefore its wage proposal for the second year would be a 4% increase (Union's Brief, p. 9).

The City argued for a 3.8% across-the-board increase effective January 1, 1988. During the hearing in August of 1988, the City additionally proposed a one year agreement. In its brief provided in the fall of 1989, the City acknowledges that the Panel will probably award a two year increase; and in that event the City argues for a second year increase of 3.9% effective January 1, 1989 (brief page 17).

B. Discussion. The majority of the parties' evidence and arguments focused on this issue. Most of this discussion dealt with increases in the cost of living, comparability, and the City's financial situation. Of these three, the Arbitrator finds the City's financial situation and the matter of comparability to be the most important in determining the appropriate wage increase.

Turning first to the matter of comparability, the Arbitrator adopts[1], for purposes of this award, the City's list of comparables as provided in City Exhibit #7 and City Supplemental Exhibit #7. A key factor in the City's list is what is considers an 18% difference in living costs between the east side of the state of Washington and the west side -- particularly the Puget Sound industrial area. The Arbitrator carefully reviewed the City's arguments on this difference and finds them persuasive. However, he does not find this logic to be applicable to the City of Chehalis. Chehalis is not in the Puget Sound area and the Arbitrator finds nothing in the City's evidence which leads to the conclusion that the cost of living in Chehalis is the equivalent to that in the Seattle area. The list of comparables, therefore, as reconstrued by the Arbitrator, is as found on page 11. This comparability data is drawn from the rank of the First Class Firefighter. On January 1, 1988 the City of Clarkston First Class Firefighter was making a salary of $1790 per month. In order to improve that salary to the average of the comparables ($1947), it would take a 9% increase. Further, to retain the average of the comparables for 1989 ($2064) it would take a subsequent 6% increase.

[1]With the ruling by the PERC in Decision No. 3246, the Arbitrator finds that the City's list of comparables is the only list properly in evidence before the Panel. The Arbitrator finds this list sufficient to help fashion a reasonable decision and to meet statutory requirements. The

Firefighters 1988 Salaries of Comparison Cities

Firefighters	Monthly	*Adjusted for a -18%[2] West Side Living Cost Difference
Toppenish	$1,727.00	$1,727.00
Bonney Lake*	2,372.00	1,945.04
Cheney	2,074.00	2,074.00
Chehalis	2,152.00	2,152.00
Issaquah*	2,242.00	1,838.44
Average	$2,113.40	$1,947.30

Firefighters 1989 Salaries of Comparison Cities

Firefighters	Monthly	*Adjusted for a -18% West Side Living Cost Difference
Toppenish	$1,886.00	$1,886.00
Bonney Lake*	2,467.00	2,022.94
Cheney	2,157.00	2,157.00
Chehalis	2,229.00	2,229.00
Issaquah*	2,470.00	2,025.40
Average	$2,241.80	$2,064.07

While the Arbitrator believes the comparability data fully justifies the above increases, he finds the City's financial situation to be a strong mitigating factor against that level of wage adjustment. In the Arbitrator's view, the evidence establishes that the City has very little reserve funds to absorb wage increases (City's Supplemental Exhibit #4), and that there is only a very limited ability for the City to raise additional funds (testimony of Stan Finklestein).

acceptance of this list by the Arbitrator, however, should not necessarily be considered an endorsement of it for the parties' future negotiations.

[2]The City used a 17% figure here but the Arbitrator does not see a reason for a change.

Moreover, the City of Clarkston continues to face financial impact of being located directly across the state border from Lewiston, Idaho, with whom it competes for any new industry that moves into the area. Further, it is difficult for the City to attract new retail business onto its side of the border. This is a particular problem for Clarkston since sales taxes in the state of Washington are higher than those in the state of Idaho; and thus commercial operations that could raise sales tax revenues for the city tend to migrate across the state border.

In general, the Arbitrator finds the City's arguments with regards to its financial condition to be sufficiently persuasive to justify a lesser wage increase than that supported by the comparability data. Thus, instead of a 9% and 6%, the Arbitrator is awarding a fully retroactive wage increase of 3% effective January 1, 1988, 3% July 1, 1988, 3% January 1, 1989 and 2.3% July 1, 1989. For a First Class Firefighter this will bring about the following wages:

January 1, 1988	$1790+(1790 x .03) = $1844
July 1, 1988	1844+(1844 x .03) = $1899
January 1, 1989	1899+(1899 x .03) = $1956
July 1, 1989	1956+(1956 x .023) = $2001

In addition to the above points of analysis, the Arbitrator points out an additional reason for the amount

and timing of the increases. By providing wage increases at four different times instead of two, there is less immediate financial impact on the City while permitting an upward stretch to the salary schedule. While firefighters get less up-front money in this system, the wage ceiling rises more rapidly and long-term gains are increased. Thus it helps the City with the immediate financial situation while providing assurances that local firefighter salaries will remain in a reasonably approximate position to those in comparable communities ($2001 per month as compared to the comparable average of $2064).

C. Award. The Arbitrator awards the following, fully retroactive salary schedule for all positions within the bargaining unit:

January 1, 1988	3%
July 1, 1988	3%
January 1, 1989	3%
July 1, 1989	2.3%

ISSUE 2: ARTICLE II - DURATION OF AGREEMENT

A. Proposals. The old agreement contained the following language under Article II:

> This agreement shall be effective as of January 1, 1986 and until December 31, 1987 PROVIDED HOWEVER, that this agreement shall be subject to such change or modification as may be mutually agreed upon by the parties hereto.
> (Joint Exhibit #1, page 1)

As has been previously noted, while the City argued against it, the Arbitrator is awarding a two-year agreement. This was specifically necessitated by the fact that the award is being released almost at the end of what would be the second year of the agreement. In the Arbitrator's view, the chain of events related to the filing of the unfair labor practice and the subsequent decision of the Public Employment Relations Commission necessitated an award covering the full two years.

In addition to the time frame for the labor agreement, the City also proposes an addition to the above language which is strongly opposed by the Union. The City proposes adding the following sentence to the language:

> However, neither party shall be obligated to consider the proposals of the other to modify or enlarge provisions of this agreement during its term.

B. Discussion. During the time that the preceding agreement was in effect, the Union filed and won an unfair labor practice (PERC Decision No. 3286) which in part dealt with a unilateral change in work schedules. The Union claimed that such changes had to be bargained prior to implementation. Primarily because of the experiences associated with that unfair labor practice, the City seeks language that helps shut the door to the Union's right to negotiate during the term of the agreement.

Since the finding of an unfair labor practice was based on the Union's statutory rights related to what has often been called the *Continuing Duty to Bargain*, the Union is not eager to surrender these rights through the adoption of new contract language.

The Arbitrator reviewed the positions of the parties on this issue and does not find a substantial difference. The City indicates in its brief that it is willing to extend to the Union the reassurances that the proposed language would not surrender statutory rights (Brief, page 19), The Union in its brief appears most concerned about the City's proposed language primarily because of fears about losing its statutory rights (Brief page 16).

The Arbitrator is awarding new language that reflects the interests of both parties. The language extends assurances to the City that it will not be required to renegotiate provisions in the contract during the term of the labor agreement, and specifically protects the Union's statutory right to negotiate mandatory subjects of bargaining.

C. Award. The Arbitrator directs the parties to adopt the following language for Article II of the agreement:

> This agreement shall be effective as of January 1, 1988 and until December 31, 1989, provided however, that this agreement shall be subject to such change or modification as may be mutually agreed upon by the parties hereto. However, neither party shall be obligated to consider proposals of the other to modify or enlarge provisions of this agreement during its

term; except as may be required by the statutory bargaining obligations set forth in Chapter 41.56 RCW.

ISSUE 3. ARTICLE XI - OVERTIME AND CALLBACK PAY

A. Proposals. Language from the prior agreement for Article XI reads as follows:

> Any hours worked other than regular duty hours shall be paid at one and one-half times the basic rate of pay. There shall be a one hour minimum overtime for callback and holdover situations. Overtime compensation hourly rate shall be computed on the basis of 40 hours work week and shall be payable on the first payday following the hours worked.
>
> (Joint Exhibit 1, page 4)

Over the strong objection of the Union, the City proposes to add the following sentence to the above language:

> It shall not be a violation of this agreement for the chief to temporarily re-schedule the assigned shift of employees in order to reduce overtime expense.

B. Discussion. Testimony during the hearing established that City of Clarkston firefighters have reasonably permanent shift assignments which may last for many years. The City proposes language which would allow it to assign firefighters work outside their regular shift but to be able to avoid paying overtime by calling it a shift reassignment. As the Arbitrator understands it, the employee would then be moved back to their regular shift as soon as this change could happen without the payment of overtime. In other words, the City is not

concerned with the basic right of shift assignment, but rather the right to use a verbal slight of hand[3] to avoid overtime payment.

The Arbitrator finds this to be a substantial change from current contract language which grants overtime for "any hours worked other than regular duty hours." The Arbitrator interprets this phrase to mean that the City pays overtime whenever the employee is assigned to do work other than that which is part of his/her normal shift assignment. The language does not contemplate any right for the City to declare a work day part of an employee's regular shift whenever the scheduling of that day is only temporary and not intended to be an on-going part of the employee's regular shift schedule.

The Arbitrator does not find good reason to award for the City on this issue and, in fact, finds some substantial reasons against such an award. The City did not provide any significant financial problem caused by the inability to temporarily reassign shifts so as to save overtime. In fact, the evidence indicates that this situation has occurred only twice in the last several years.

More importantly, this Arbitrator believes that a primary reason for overtime payment is to provide a financial disincentive to the employer for 1) working

[3]The Arbitrator calls this a verbal slight of hand because the Employer does not intend a shift change in the normal sense of that word but only wishes to describe its action in that fashion so as to avoid overtime payment.

employees excessively long hours and 2) protecting employees from unnecessary encroachment on their right to their private lives. With regard to the second point, the Arbitrator emphasizes the difference between the right of employees to voluntarily agree with another employee to change shifts and the right of the City to simply compel an employee to report for work on a day different from their regular shift. Because it is no longer voluntary, the shift change may, in fact, infringe upon the employee's personal and family life. Thus the need for a financial disincentive which discourages but does not prohibit this action. This is precisely the role of overtime payment. With the above in mind, the Arbitrator wonders if removing this financial disincentive might not increase the chances that the City will more frequently rely upon temporary shift changes to deal with scheduling problems.

For the above reasons, the Arbitrator finds for the Union on this issue and will not award the City's proposed language changes.

C. Award. The Arbitrator directs the parties to place into the new labor agreement for Article XI the language found in the prior agreement without change.

ISSUE 4. ARTICLE XVI - UNUSED SICK LEAVE

A. Proposals. The prior agreement contained the following language for Article XVI:

> Employees shall be compensated in cash at the regular rate of pay for their unused accumulation of sick leave when they are permanently separated from the service by retirement or reduction in force. In the event of death, the employee's beneficiary shall receive the compensation.
>
> A. 24-hour shift employees shall be limited to 63% of the maximum allowable accrual.
>
> B. The payment of unused sick leave for 40 hour employees shall be equal to the maximum accrual of 90 8-hour days.
>
> (Joint Exhibit #1, page 6)

The Union argues to retain the language without change. The City proposes to grandfather current employees so that they continue to receive this benefit but to place all new employees under the program which covers all other City employees. That program does not provide any sick leave cash out.

B. Discussion. There are two reasons why the Arbitrator will support the City's proposed change. First, the Arbitrator is convinced that the language in the prior agreement came about as a result of the City's desire to have a tool to more effectively manage the use of sick leave. It did not come about as a way of providing additional cash to employees. The Arbitrator emphasizes the difference between a bona fide employee benefit versus an

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Second, the Arbitrator fin arguments with regard to for across all employees. be a very divisive elemen of employees that should be

For the above reasons, the Arbitrator will award for the City on this issue.

The Arbitrator directs the parties to place language in the agreement under Article XVI which 1) provide the rights of existing employees to the existing sick leave cash out program, and 2) removes the sick leave cash out program for all new employees (effective the date of this award) and instead places them under a program similar to other City employees.

ISSUE 5 ARTICLE XXVI - GRIEVANCE PROCEDURE

A. Proposals. To the language of the grievance procedure found in the parties' prior agreement, the City would add jurisdiction on the authority of an arbitrator. The

4/ Employers find a sick leave cash out provision to be useful in controlling abuses of sick leave reporting overtime payments that are a result of over-use of sick leave and allowinq more scheduling of work because of better employee attendance.

> City's language states that, "The arbiter shall have no power or authority to render a punitive award and any award so rendered shall be null and void and unenforce-able."

The Union opposes placing this new language in the agreement.

B. Discussion. Having carefully reviewed the arguments and evidence of the parties on this issue, the Arbitrator finds no persuasive reason to adopt the City's proposed language and instead finds reasons to oppose it. One such reason is his concern over the absence of a clear definition for a "punitive" award. Another reason is that while extremely rare and oftentimes not sanctioned by law, there may be those unusual situations in which the facts of the case strongly support some form of a punitive award. Arbitrators have generally been given broad remedial authority in order to properly remedy any contract violation including any of the nature as out-lined above. The City's arguments do not convince this Arbitrator that a change is needed to this approach.

For these reasons, the Arbitrator will find for the Union on this issue and not award a language change.

C. Award. The Arbitrator directs the parties to retain for the new agreement the language from Article XXVI as found in the parties prior agreement.

ISSUE 6: ARTICLE XXIX - CITY SECURITY

A. Proposals. The language from the prior agreement for Article XXIX reads as follows:

The Union and the City recognize the essential nature of the services provided by the Fire Department in protecting the public safety. In recognition of this fact, nothing

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City's language states that, "The arbiter shall have no power or authority to render a punitive award and any award so rendered shall be null and void and unenforceable."

The Union opposes placing this new language in the agreement.

B. Discussion. Having carefully reviewed the arguments and evidence of the parties on this issue, the Arbitrator finds no persuasive reason to adopt the City's proposed language and instead finds reasons to oppose it. One such reason is his concern over the absence of a clear definition for a "punitive" award. Another reason is that while extremely rare and oftentimes not sanctioned by law, there may be those unusual situations in which the facts of the case strongly support some form of a punitive award. Arbitrators have generally been given broad remedial authority in order to properly remedy any contract violation including any of the nature as outlined above. The City's arguments do not convince this Arbitrator that a change is needed to this approach.

For these reasons, the Arbitrator will find for the Union on this issue and not award a language change.

C. Award. The Arbitrator directs the parties to retain for the new agreement the language from Article XXVI as found in the parties prior agreement.

ISSUE 6: ARTICLE XXIX - CITY SECURITY

A. Proposals. The language from the prior agreement for Article XXIX reads as follows:

> The Union and the City recognize the essential nature of the services provided by the Fire Department in protecting the public safety. In recognition of this fact, nothing contained in this Agreement shall permit or grant any public employee the right to strike, or refuse performance of official duties. Any employee who refuses to perform his/her regular duties when so directed by his/her supervisor or superior, may be subject to summary discharge, loss of seniority and any related employee benefits provided. However, such remedy may not be enforced against any employee on other than regular working days, or when such employee is on sick leave or vacation.
>
> The City further agrees that it recognizes the right of the members of Local #2299 not to be required to perform functions of any other Union, with which the City deals, when the particular Union is on strike. However, nothing in this Agreement is to be construed to allow refusal by the Union members to perform their jobs, within their job classification, in event of an emergency.

To this language the City would add the following sentence:

> In the event of an employee violation of the no-strike prohibition, then the only matter subject to question in a grievance appeal shall be the question of whether the question did, in fact, occur. The penalty or discipline administered shall be the exclusive right of the City.

The Union opposes the adoption of this new language and argues that it is neither needed nor does it benefit the City.

B. Discussion. The Arbitrator is convinced that the City's proposed language simply beats a dead horse. Sate law prohibits a firefighter from striking. Moreover, the language from the prior agreement specifically grants to the Employer the right to summarily discharge employees who refuse to perform their regular duties when directed to do so by a supervisor. The Arbitrator finds no evidence, whatsoever, of any tendency on the part of firefighters to strike or refuse their services[5]. And, even if there was the possibility for a job action, the existing statutory provisions and contract language appear to the Arbitrator sufficient to remedy the situation. For these reasons the Arbitrator will find for the Union on this issue.

C. Award. The Arbitrator directs the parties to place into the new agreement the language from Article XXIX from the prior agreement.

Respectfully submitted on this the 3rd day of December 1989 by

Timothy D. W. Williams

Timothy D. W. Williams
Arbitrator and Neutral Chair
of the Arbitration Panel

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[5]The example cited by the Employer as illustrative of a potential problem does not appear to the Arbitrator to encompass a strike or refusal of service situation. That dispute appears to be over the method of doing the work (written reports versus computerized reports), not over whether the firefighters refused to perform vital services.