IN THE MATTER OF

INTEREST ARBITRATION

BETWEEN

PULLMAN POLICE OFFICERS' GUILD,

Guild,

and

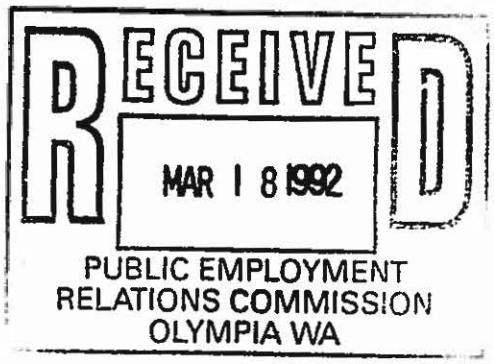
CITY OF PULLMAN, WASHINGTON,

City.

NEUTRAL ARBITRATOR'S

OPINION AND AWARD

(1990-1992 CONTRACT)



HEARING SITE:	City Hall Pullman, Washington
HEARING DATES:	December 15, 16, 1991
POST-HEARING BRIEFS DUE:	February 3, 1992
RECORD CLOSED ON RECEIPT OF BRIEFS:	February 6, 1992
ARBITRATION PANEL:	Michael B. Austin Guild Appointed Member Scott C. Broyles City Appointed Member Gary L. Axon Neutral Arbitrator 1465 Pinecrest Terrace Ashland, OR 97520
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The issues submitted to interest arbitration are as follows:

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INTRODUCTION

This case is an interest arbitration conducted pursuant to RCW 41.56.450, 452, and 460 respectively. The parties to this dispute are the City of Pullman, Washington (hereinafter "City") and the Pullman Police Officers' Guild (hereinafter "Guild"). The status quo is represented by a Collective Bargaining Agreement between the City of Pullman and Teamsters Union Local 690 in a contract which covered the period 1987 through 1989. The Guild succeeded the Teamsters as the representative of people employed in the Pullman Police Department. There are 21 members of the bargaining unit represented by the Guild. The Chief of Police is William T. Weatherly.

The City of Pullman is located in Whitman County, 76 miles south of Spokane and 7 miles west of the Idaho border. The City encompasses a land area of 5.9 square miles. Whitman County is primarily an agricultural county. On the north end of the City, Washington State University occupies 600 acres and has approximately 100 buildings to serve a student population of approximately 16,000. Washington State University is the major employer in the City of Pullman and Whitman County. (G1.10). WSU maintains its own police force.

The determination of the population figure to be utilized for Pullman is complicated by the presence of the large number of WSU students who occupy both on and off campus housing within the City. The 1991 Association of Washington Cities Salary Survey lists Pullman with a population of 23,090. In the City's issue of

$1,880,000 worth of bonds in 1988, the City listed its population at 22,069. (G1.10). The signs indicating motorists are entering Pullman lists the population at 23,478. The City believes the population of Pullman should be discounted by the number of residents occupying dormitories on the WSU campus. The City calculates the figure that should be utilized for making comparisons to be 17,705 persons. On the other hand, the Guild believes the City should be held to the 23,000 figure as it is the one City cites when securing funds from the state of Washington. In a 1981 award between the City and Teamsters Union Local 551 arbitrator Zane Lumbley allocated the total WSU student population on a 50-50 basis between WSU and the City of Pullman. Lumbley determined the 1981 population of the City for purposes of arbitration to be 15,316.

After the Pullman Police Guild was certified to represent the employees of the Police Department, the parties met in both bargaining sessions and later in mediation in an effort to conclude a successor Agreement. The parties reached tentative agreement on several issues, but were unable to conclude a final Collective Bargaining Agreement. This contract will be the first contract between the Pullman Police Guild and the City of Pullman. The Guild also represents non-uniformed personnel covered by a separate Agreement referred to as the Pullman Police Support Services Employees contract.

On the failure of the parties to conclude a Collective Bargaining Agreement, Marvin Schurke, PERC, Executive Director,

certified the remaining 12 unresolved issues for interest arbitration. A hearing was held before the arbitration panel on December 15 and 16, 1991. At the hearing the parties were given the full opportunity to present written evidence, oral testimony and argument. The testimony of witnesses was taken under oath and recorded by a court reporter. The neutral Arbitrator hereinafter ("Arbitrator") was provided with a verbatim transcript for his use in reaching a decision in this case.

The parties agreed to file post-hearing written briefs in lieu of oral closing arguments. The briefs were timely filed and the record closed as of February 7, 1992. Because of the extensive record made in this case, the parties agreed to an extension of the statutory requirement that a decision be issued within 30 days of the close of the record. On February 25, 1992, the Arbitrator met and conferred with the party appointed members of the arbitration panel to discuss the evidence and argument contained in the record of this case. The input provided by the party appointed panel members was of great assistance to the neutral Arbitrator in making his findings of fact and award on the issues presented for arbitration.

The hearing in this case took two full days for the parties to present their evidence and testimony. The transcript contained 468 pages of testimony. The parties provided the Arbitrator with substantial written documentation in support of their respective positions. Comprehensive and lengthy post-hearing briefs were submitted to the Arbitrator with accompanying interest

arbitration awards issued by other arbitrators in the state of Washington.

The approach of this Arbitrator in writing the award will be to summarize the major and most persuasive evidence and argument presented by the parties. After the introduction of the issue and position of the parties, I will state the principal findings and rationale to cause the Arbitrator to make the award on a specific issue. It is also important to note that several of the major issues broke down into numerous sub-issues in which case extensive evidence and argument was also presented. In many of the issues the evidence and argument applied to several different issues and sub-issues. For the sake of brevity, I will try to avoid repeating discussion of the evidence where the evidence applied to more than one issue.

This Arbitrator carefully reviewed and evaluated all of the evidence and argument submitted pursuant to the criteria established by RCW 41.56.460. Since the record in this case is so comprehensive it would be impractical for the Arbitrator in this discussion and award to discuss and refer to each and every piece of evidence or testimony presented. However, in each and every issue the Arbitrator considered all of the evidence and argument submitted in formulating the award.

The statutory factors to be considered by the Arbitrator may be summarized as follows:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c) (i) For employees listed in RCW 41.56.030(7)(a) and 41.56.495, comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the West Coast of the United States:

* * *

(d) The average consumer prices for goods and services, commonly known as the cost of living;

(e) changes in any of the foregoing of circumstances during the pendency of the proceeding;

(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.

ISSUE 1: Wages

A. Background

The contract subject to arbitration covers the years 1990 through 1992. The present salary schedule is represented by the contract which expired at the end of 1989. Pursuant to that contract a beginning police officer starts at $1,845 per month at Step 1 with advancement to $2,263 at Step 5. Sergeants and detectives are paid $2,608 per month. (City Ex. 43). The traditional benchmark comparison is the top step of the police officer classification. The evidence on comparability offered by both sides concentrated on the top step officer pay.

Due to the protracted nature of the negotiations and change in bargaining representatives, the members of this unit have not received a wage increase since 1989. Both parties are proposing retroactivity back to January 1, 1990. The City's offer would put in place a top step police officer's salary on January 1, 1992, of $2,632 per month. The Guild is seeking a salary increase which would place the top step police officer on January 1, 1992, at $2,938 per month. (City Ex. 36). Both parties offered comprehensive and extensive data in support of their respective wage proposals. In the post-hearing briefs counsel for the disputants provided the Arbitrator with a comprehensive review of the evidence submitted during the two days of hearing. The neutral Arbitrator with the assistance of the party appointed arbitrators reviewed the evidence and argument on the wage issue at an executive session.

The driving force behind the positions of the parties on the wage issue was comparability. Each party submitted considerable evidence and argument to support its position on the appropriate comparators for the purpose of establishing wages for Pullman police officers. The Arbitrator was also supplied with several interest arbitration decisions involving other Washington cities. The evaluation of the record in this case is unique in that it involves a three year contract period which will expire approximately nine months from the date of this award. As a consequence, the evidence and findings on the wage issue must be evaluated in the context of a three year Agreement soon to expire.

B. **The Guild**

The Guild proposed that 1990 salaries will be compensated using the average of the top step of the patrolman's salary for each of the five comparator cities selected by the Guild. For 1990, this would translate into a 10% increase. Effective January 1, 1991, an additional 10% would be added to the base salary. Effective January 1, 1992, the base salary would be increased by an additional 7.3% to $2,938. The 27.3% salary increase over the three year period is necessary to establish a top step salary equal to the average top step salary for the five comparable jurisdictions proposed by the Guild. (G1.36).

The five cities selected as its comparable jurisdictions are Kennewick, Pasco, Richland, Walla Walla and Wenatchee. These are the only five Washington cities east of the Cascades with a population between 15,000 and 50,000. According to the Guild, the

geographic area and population make these five cities the appropriate comparables for which to establish Pullman police wages. The Guild advanced four primary reasons why the Arbitrator should adopt the Guild's comparators.

First, the Guild argued that RCW 41.56.460 requires the panel to take into consideration the wages, hours and conditions of employment of like personnel of like employers of similar size on the West Coast of the United States. From the viewpoint of the Guild, like personnel are "uniform personnel of cities of a population of 15,000 or more." RCW 41.56.030(7) defines uniform personnel as law enforcement officers employed by "cities with a population of 15,000 or more." The Arbitrator is bound to respect the definition established by the Washington legislature.

Second, the arbitration panel should reject consideration of Washington cities below 15,000 in population because they do not share a common collective bargaining status. Law enforcement officers employed by Washington cities under 15,000 do not have collective bargaining rights. As such, Washington cities with a population of under 15,000 are not similarly situated and should be excluded from consideration by the Arbitrator.

Third, the Washington Association of Cities utilizes the 15,000 to 50,000 population category for grouping jurisdictional salary surveys. (G1.3(A) & (B)). Fourth, the City utilized that same grouping when it compared itself to other jurisdictions for the purpose of evaluating management salaries. (G1.2) It is the position of the Guild that this grouping reveals a statistically

significant pattern for wages in Washington which the panel should utilize in "determining what is a fair day's pay for a fair day's work for a police officer in the state of Washington."

The parties agree that the appropriate comparators must be located east of the Cascades. Pursuant to that understanding the City and Guild agree that Pasco, Walla Walla and Wenatchee are appropriate comparators. The Guild vigorously rejects the City's proposed comparables of Moses Lake, Ellensburg, Whitman County, the Washington State University Police Department and Moscow, Idaho, as appropriate comparators by which to establish Pullman police wages.

Regarding Ellensburg and Moses Lake, the Guild points out their populations are below 15,000 and thus should be excluded under the collective bargaining statute as too small for comparison. Moscow, Idaho is an inappropriate comparator because it is not a West Coast city. RCW 41.56.460(C)(I) limits comparison to West Coast cities. Arbitrators have held that West Coast cities are those cities located within the states of Washington, Oregon and California. Since Moscow is not a West Coast city and its officers have no collective bargaining rights, the Arbitrator should reject Moscow as an appropriate comparator.

Recognizing that Pullman is located in Whitman County, the Guild asserts Whitman County is not an appropriate comparator. Whitman County is not a like employer because it is a county and county law enforcement officers have no collective bargaining status. In addition, the number of officers and crime statistics do not support the use of Whitman County as a comparator. The

economic circumstances are different in that Whitman County is broke. Turning to the WSU Police Department which the City seeks to compare with for purposes of establishing wages, the Guild asserts WSU does not meet the statutory test of a like employer. WSU is not a city but a university. WSU police officers do not share common collective bargaining status. As such, the Arbitrator should reject the City's attempt to compare Pullman police officers with WSU officers.

The Guild next asserts that the appropriate population for Pullman is 23,000. From the viewpoint of the Guild, the Arbitrator should reject the City's attempt to adjust the Pullman population by some 6,000 to 17,705 persons because of the impact of WSU students. According to the Guild, the City's position on population is inconsistent in that it uses a 23,000 population figure when it seeks state revenue funds, on signs posted at the City limits and otherwise when securing funds from outside sources. WSU students also have a very profound affect on the Pullman Police Department in that its officers must provide police services for students living off campus. Further, Pullman police officers perform police services on the WSU campus in conjunction with the WSU police force.

The City presented an interest arbitration award by arbitrator Thomas Levak in the city of Walla Walla and the Walla Walla Police Guild. (PERC No. 6213-I-86-139). The Guild notes that in the Walla Walla case Levak chose as the Washington comparators the same five cities as proposed by the Guild. Since

Walla Walla and Pullman are very close in size, offer similar geographic positions and the selection of those five cities by arbitrator Levak as valid comparators, the five eastern Washington cities proposed by the Guild offer the best measure for determining a fair day's pay for a fair day's work.

While the City stated in its opening argument that it would not make an inability to pay argument, the Guild felt it was appropriate to examine the City's ability to pay in light of the position taken by the City that it was not in the position to fund the Guild's proposal without major adjustments in its budget. City witness Tonkovich testified at the arbitration hearing that the City had more than enough resources to pay the estimated cost of the Guild's three year proposal of $550,849. (City Ex. 36). The Guild further argues that the City has adequate money stored away in its various accounts to fully fund the Guild's proposal. According to the Guild, the City has historically transferred significant moneys from the general fund to special fund reserve accounts. The 1992 preliminary budget also shows a figure of $1,419,699 for law enforcement. (City Ex. 48). The Guild interprets the City's budgeting process as calling for $424,935 more than is necessary to meet all of the 1991 police expenditures. Since there were no additional personnel added to the police budget for 1992, the Guild reasons it is a safe assumption that the 1991 expenditures reflect the 1992 expenditures. Therefore, the Guild concludes there is more than sufficient funds to meet the cost of the Guild's wage proposal in the 1992 budget.

Turning to the cost of living factor, the Guild argues the five comparables chosen by the Guild reflect favorably in the area of cost of living. In eastern Washington employees must often reside within the employing community. Guild Exhibit G1.8 shows that housing costs for various jurisdictions reflect that the cost of living for Pullman is higher than any of the other comparators. In awarding a salary increase, the higher cost of housing in Pullman should be weighed in favor of a higher salary increase than proposed by the City.

For all of the above stated reasons, the Guild submits its offer represents a wage position which reflects the statutory intent and is within the means of the City to fund.

C. The City

The City proposed a 2% wage increase effective January 1, 1990, and an additional 2% on July 1, 1990. The City would implement wage increases on January 1, 1991, and January 1, 1992, based on a cost of living formula derived from the Seattle CPI for all urban consumers. If the CPI exceeded 5%, a 1/2% increase would be given for each full 1% increase until the CPI reached 10%. Adoption of the City's CPI formula would yield a 5.5% increase for January 1, 1991, and a 6% increase for January 1, 1992. The percentage increase over the base salary would be 16.3% or $369 per month. The top salary for a police officer effective January 1, 1992, would be set at $2,632 per month. (City Ex. 36).

The City argued that this increase would be in line with the pay for top step officers in its selected comparators. The City's 1991, salary study revealed the following:

CITY COMPARABLES
1991 TOP STEP OFFICER SALARY

City	1991 Top Step Officer
Ellensburg	$ 2,475.00
Moscow, ID	$ 2,511.00
Moses Lake	$ 2,510.00
Pasco	$ 2,685.00
Walla Walla	$ 2,562.00
W.S.U.	$ 2,493.00
Wenatchee	$ 3,000.00
Whitman County	$ 2,065.00
AVERAGE	**$ 2,537.63**
PULLMAN OFFER	**$ 2,483.00**

(City Ex. 34)

It is the position of the City that Pullman is unique in that it is characterized as being dominated by a large tax exempt employer which provides its own police services. Further, it is important to note that the City receives neither property taxes nor contractual payments from WSU to support police services. Pullman is a college town without a retail or industrial base.

The City's position on the appropriate comparators was best summarized at page 2 in its hearing brief as follows:

> These cities: Ellensburg, Moses Lake, Pasco, Wenatchee, Walla Walla, Moscow, Idaho, WSU, and Whitman County are quite similar to Pullman in population, financial position, size of department, number of officers, part one offenses, and in various other comparison basis as well. They are all located east of

> the Cascade Mountains and are rural/ agricultural. Four of the five cities are distant from other population centers. Only Pasco is near two other larger cities. Each has one or more college institutions adjacent to or in the City. Moscow is also a college town and only eight (8) miles from Pullman. WSU and Whitman County both provide law enforcement services and are local, public employers. For these reasons and others which will be submitted, the City requests that these cities and agencies be used as comparisons.

The City asks the Arbitrator to reject Kennewick and Richland as appropriate comparators because they have much larger populations than Pullman. In addition, Richland's industrial, commercial and assessed valuation are vastly different from and superior to those of Pullman. Hence, the City submits there simply is no basis for selecting Richland and Kennewick as comparable to Pullman.

The City also asserts the Guild's comparables are seriously flawed. According to the City, RCW 41.56.030(7) does not limit comparisons to those jurisdictions which have collective bargaining and interest arbitration. Arbitrator Levak so held in the Walla Walla case as did arbitrator Michael Beck in Cowlitz County. (PERC No. 6151-I-85-135). Hence, it is proper to include in a list of comparables jurisdictions who do not have collective bargaining and interest arbitration.

The City also contends the Guild's exclusion of comparables from the local job market is inappropriate. Present in the Pullman job market are the jurisdictions of WSU, Whitman County and Moscow, Idaho. The evidence at the hearing indicated that

Pullman police officers work with, support and train sworn officers in the three local jurisdictions. Since the four sworn police forces work closely with each other, it is proper to include them as points of comparison. All of the cities on the City list of comparators fall within the population range of 10,000 to 30,000. Kennewick has a population of 42,780 and Richland has a population of 32,600 which the City believes inappropriately skews the average size of the comparators in a thinly veiled move designed to obtain the Guild's desired bargaining gains.

While the City made no per se inability to pay argument, it does not accept the Guild's position that the City has adequate money to fund a 30% increase in wages for the police unit. The economic picture in Pullman and the state can only be described as "grim and uncertain as to the near future." The mayor's budget message clearly reports the already unfavorable financial standing. (City Ex. 41). Given the stark reality of a local, national and state wide recession, the City's finances face a bleak and uncertain future at best. An award in the amount proposed by the Guild is excessive and would seriously jeopardize the financial standing of the City.

The City also contends the Guild does not understand the limitations on the ability of the City to transfer funds between accounts. The equipment rental fund is designed to replace equipment and is unavailable to fund police salaries. Nor is the City legally able to tap contributions from the utilities fund or transit in order to pay for police salaries.

Turning to the factor of cost of living, the City submits that police salary increases granted over the last three contract periods exceeded both the national and Seattle CPI increases. (City Ex. 71 & 72). Due to the fact that cost of living increases are at the lowest point in 24 years, an award in the amount claimed by the Guild would far exceed rising costs as reflected in the CPI Index.

It is also the position of the City that it is appropriate to utilize a population figure of 17,705 for Pullman. WSU staffs its own police force to service the WSU campus. By virtue of the police services being performed by WSU, City submits it is appropriate to deduct the 6,000 students who occupy university housing on campus for purposes of this proceeding. The police work performed by members of this Department on the WSU campus is primarily that of backup or to provide assistance to WSU officers.

Concerning internal parity, the City submits it has reached agreements with its fire, library, public works, recreation and transit bargaining units. These signed contracts demonstrate the City has dealt fairly and responsibly in a manner satisfactory to those other labor organizations. The contract entered into between the Guild and Support Services includes a package comparable with what the City is offering this unit. It is these internal settlements that should establish the guidelines and basis for an award covering sworn police officers.

The City submits that its offer compares favorably with the average of the jurisdictions it has submitted for purposes of comparison. When the salary settlements provided for the internal and external comparators are evaluated, City concludes this provides the basis for a salary award on the terms offered by the City.

D. Discussion and Findings

At the outset of this issue a few comments about the statutory procedure are in order. RCW 41.56.460 refers to the basis on which an interest arbitration award should be formulated as "standards or guidelines to aid it in reaching a decision." The Arbitrator is then directed to take into "consideration" the factors listed in the provision. The listed criteria are not defined in the law. Arbitral authority has provided some guidance to the application of the statutory factors to particular cases. The statute also provides that the Arbitrator may consider 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." This phrase allows the parties and the interest arbitrator considerable latitude in determining what are the relevant facts on which to base an award to resolve a dispute.

The factors identified in the statute are "standards or guidelines" which cannot be applied with surgical precision. The relative weight to be given to any of the criteria listed in the statute is not defined. Further, it is important to note that this

Arbitrator is responsible for applying the evidence to the statutory factors even if the evidence submitted by the parties is incomplete, misleading, selective or manipulative. Recognizing these problems, it still remains the obligation of this Arbitrator to apply the record evidence to the criteria set forth in the statute. In assessing the evidence and argument on the wage issue, the Arbitrator has attempted to extract facts from the record evidence which provide reasonable and credible support for this award. The starting point for the analysis of the evidence in this case on the wage issue is comparability. Both sides devoted the majority of their evidence and argument to the issue of comparability. Evidence with respect to the other statutory factors was minimal or nonexistent.

The Arbitrator finds after review of the evidence and argument as applied to the statutory criteria that a 5.5% increase on the 1989 base effective January 1, 1990, is justified. For 1991, the base salary shall be adjusted an additional 6%, effective January 1, 1991. The 1991 base salary shall be increased by 7%. Application of these percentage figures will result in a top step wage as follows:

1990	$2,387
1991	$2,530
1992	$2,707

The reasoning of the Arbitrator is set forth in the discussion and findings which follow.

The threshold consideration on comparability is resolving the dispute over what should be the population figure for Pullman. The Arbitrator finds that a population figure of 23,000 should be utilized for determining the jurisdictions with which to compare Pullman for making a wage determination. Pullman uses a population figure in the 23,000 range when it seeks funds from the state or federal government. Pullman used a similar population figure in a 1988 bond issue. The signs posted by the City at the entrance to Pullman announce a population of 23,478. The Association of Washington Cities Survey of Salaries lists Pullman with a population of 23,090. The only place the Arbitrator could discern a listing of a population for Pullman of 17,705 was in the City's argument at arbitration.

The Arbitrator finds the City's attempt to deduct approximately 6,000 resident students from the Pullman population base to be without merit. While it is true WSU has its own police force, WSU is within the jurisdiction of the Pullman Police Department. As the record indicates, the members of this bargaining unit provide police services where students are involved. While the existence of a WSU police force might be a mitigating factor in the population served by the Pullman Police Department, it in no way can serve as the foundation to reduce the police service area of Pullman by 6,000 persons.

The next step in the analysis of the comparability issue is to recognize both parties agree that Pasco, Walla Walla and Wenatchee are appropriate jurisdictions with which to compare

Pullman for determining police wages. The 1991 populations of these jurisdictions are 20,660, 27,020 and 22,080 respectively. The Arbitrator is bound to honor the stipulation of the parties with respect to the three named cities.

The parties have also stipulated that the appropriate jurisdictions by which to set Pullman police wages should come from cities east of the Cascades. The statute refers to "like employers of similar size on the West Coast of the United States." Arbitrators have interpreted the reference to West Coast to mean the states of Washington, Oregon, California and Alaska. Since Moscow, Idaho is not located on the West Coast, it may not be properly considered as a primary comparator. The same would hold true for WSU as it is a university as opposed to a municipal employer. The university is not engaged in the business of providing public service comparable to that of the City of Pullman. Whitman County suffers from a similar problem in that it is a unit of county government as opposed to a city. In addition, Whitman County deputies do not have the benefit of the same collective bargaining statute as is available for Pullman police officers.

Ellensburg has a population of 12,570 and Moses Lake has a population of 11,420. Neither of those jurisdictions meet the 15,000 person test placing their sworn personnel under the interest arbitration procedure. This fact alone argues against making these two jurisdictions a primary comparator under RCW 41.56.460(C)(i). However, in the judgment of this Arbitrator the jurisdictions of WSU, Whitman County and Moscow, Idaho can be properly considered

under the "other" factors element of the statute as they are within the immediate geographic area and labor market of Pullman. In addition, these three agencies support and work together in providing police services in the three communities. Ellensburg and Moses Lake are also entitled to some attention under this provision of the statute. These five jurisdictions serve as a counter balance to the large cities of Kennewick and Richland.

In adopting the Guild's proposed list of comparators, the Arbitrator recognizes that Kennewick and Richland have larger populations than Pullman. The fact that Richland is approximately 10,000 greater in population and Kennewick is approximately 20,000 greater in population still keeps the cities in a reasonable population range. Further, the population difference does not detract from the fact they are Washington cities located east of the Cascades and are covered by the same collective bargaining law. Arbitrator Levak in the Walla Walla award accepted the five same cities which the Guild proposes for this case. Pullman was listed as a comparator for the Walla Walla case. By extension it is appropriate to include the same cities as the primary comparators for this interest arbitration. While not controlling, it is relevant that the City utilized the 15,000 to 50,000 population grouping of cities east of the Cascades, when constructing the appropriate salary for its mayor and City superintendent.

The Arbitrator adopts as the primary point of comparison for measuring the level of police wages for Pullman the following cities:

Pasco
Kennewick
Richland
Wenatchee
Walla Walla

Based on the 1991 Association of Washington Cities Salary Survey, the following population and wage data reads:

POPULATION	CITY	TOP SALARY
	. . .	
20660	Pasco	2685
22080	Wenatchee	3000
27020	Walla Walla	2562
32600	Richland	2903
42780	Kennewick	2962
29028 Avg.		2822 Avg.
23090	Pullman	2263
26.0% Diff.		25.0% Diff.

(Ex. G1.3(a))

A similar study for 1990 revealed an average salary of $2,735 per month or 21% above the Pullman average top step salary. (G1.4). A Guild summary of wage comparisons based on "net hourly wages" asserted a wage increase ranging from 21.05% to 28.65% was necessary to catch-up with the comparable jurisdictions. (G1.6).

A Guild summary of top step police officer increases for 1992 established:

SUMMARY 1992 INCREASES
TOP STEP POLICE OFFICER

	Effective Date	% Increase	1991 Salary	1992 Salary
Kennewick	1/1/92	5.9%	2962	3137
Pasco 90% WEST COAST CPI 10/31/91 - EFFECTIVE 1/1/92 MIN. 3% - MAX. 6%		3 %	2695	2776
Richland			2903	In Negotiations
Walla Walla	1/1/92	7.0%	2562	2742
Wenatchee	1/1/92	4.5%	3000	3135
		Average	2824	2948 (G1.7(a))

The City provided no evidence of the amount of increases set for its list of comparator jurisdictions in 1992. Based on the City's 1991 figures the average top salary of police officers in its list of comparators was $2,537. (City Ex. 35).

While the City argued strenuously for internal comparability on wages with its other bargaining units, the City did not provide the evidence of what the 1992 increases were for those other bargaining units. The one exception was the Support Services contract negotiated between the Guild and the City. The Arbitrator did note from a paragraph in the 1992 mayor's budget message that all City employees be given a 6% increase in line with the provisions contained in the current labor contracts. (City Ex. 41).

The Arbitrator rejects the Guild's proposal which would contractually link the wages for Pullman officers with that of the five comparators. Pullman is a separate and distinct jurisdiction. As such, its wages should not be contractually set as the average

of the five cities. Neither the statute or arbitral authority support such a connection with other like employers. It should be recalled the statute refers to comparability as a "guideline" to consider in establishing wages.

Moreover, adoption of the Guild's proposal would generate a 20% increase for the first two years of the contract. On its face, two 10% successive increases is an amount that would generate excessive costs to the City. In addition, no evidence is present in this record that 10% increases in 1990 and 1991 were the norm in the five eastern Washington cities. Likewise, the City's offer of 2% and 2% in 1990, and 5.5% in 1991, is unacceptable because it will drive the already low wage level even lower in the relative standings of the like jurisdictions.

The average top salary for 1992, of the three jurisdictions the City agrees are comparable is $2,884. Pursuant to the City's proposal, the top salary in 1992, would be $2,632 or $252 per month below the average. The average top salary of the five cities for 1991, was $2,824. On the other hand, adoption of the Guild's proposal would place Pullman officers $99 per month above the average for the three cities. The average top salary for the four cities for 1992, is $2,948. Richland was still in negotiations at the time of the arbitration hearing.

The Arbitrator was unconvinced Pullman should be the wage leader for cities in the 15,000 to 50,000 population range east of the Cascades. This is particularly true when the larger cities of Kennewick and Richland are included in the primary comparator

group. Absent from this record is any evidence Pullman should pay its officers the highest wage of the comparators.

The goal of the Arbitrator is to award a wage package which will make some effort in decreasing the difference between what is paid by this City to sworn officers when compared to the five other eastern Washington cities in the 15,000 to 50,000 population range. Even with the Arbitrator's award of $2,707 per month, Pullman will rank last in the level of pay for police officers. However, the salary is competitive with the two comparators both sides agree are relevant. The award will place Pullman $35 per month below Walla Walla and $65 per month below Pasco sworn officers at the top step. Walla Walla officers received a 7% increase for 1992. On the other hand, Pullman officers will be paid $428 per month less than Wenatchee officers.

While the Arbitrator was not provided with the 1992 salaries on the cities list of comparators, the 1991 salary set by this award will be $2,530 per month or $7 below the average top step in the group of jurisdictions with which the City seeks to compare itself.

The constitutional and statutory authority of the City was not an issue placed before the Arbitrator and therefore not a factor in this award.

Regarding the factor of stipulations of the parties, the stipulation that Pullman should compare itself with cities east of the Cascades was accepted by the Arbitrator and used to select the list of comparators.

Regarding the cost of living factor, the Arbitrator finds this criteria of little assistance because of the lack of current and meaningful CPI data included in the record of this case by the parties. The City did attach some CPI data to its closing brief. Due to the fact this CPI data was not admitted into evidence at the hearing, the Arbitrator did not consider this exhibit.

Regarding the factor of changes of the foregoing circumstances during the pendency of the proceedings, this factor was of no relevance in formulating the award.

Regarding the "other factors" guideline, three elements were of importance in coming to an award. Pursuant to this criteria, the Arbitrator reviewed the ability to pay the proposed wage increase, the City's proposed list of external comparators and internal comparators. The City made no "per se inability to pay argument" in this case. However, the City correctly maintained the amount of money in the budget to fund increases, the probable impact on City services and projects and the long term impact of the salary award are valid elements to consider. Further, the City's position that the current economic climate argues against a wage increase that is out of touch with economic conditions was persuasive. In other words, this Arbitrator has avoided making an award that would have a crippling effect on the ability of Pullman to maintain essential governmental services.

As previously discussed, the Arbitrator considered the City's proposed list of local comparators and cities less than 15,000 as a check and balance on the five cities used as the

primary comparators to establish the wage level for sworn police officers in Pullman.

While the City offered considerable argument with respect to internal comparators, the record was void of evidence of how the other bargaining units such as fire, transit and public works compare in wages with their counterparts performing similar services. The best the Arbitrator could ascertain with respect to 1992 wage increases for other City employees was from the mayor's budget message. The budget message revealed that 6% increases were the norm. The Arbitrator's award of 7% in 1992 while slightly higher than the 6% figure is in line with the internal comparables and the 6% offered by the City.

The award of this Arbitrator will establish a salary schedule that is within the range of reasonableness when compared with the five cities adopted as the primary point of reference with which to set Pullman police wages. Further, the wage schedule is not out of line with the jurisdictions offered by the City for the purpose of establishing wage comparability.

AWARD

The Arbitrator finds after review of the evidence and argument as applied to the statutory guidelines the wage schedule for the 1990-1992 contract period shall be as follows:

1. Effective January 1, 1990, the base salary shall be increased by 5.5%.

2. Effective January 1, 1991, the 1990, base salary shall be increased by 6%.

3. Effective January 1, 1992, the 1991, base salary shall be increased by 7%.

ISSUE 2: Guild Security

A. Background

Article 1 of the 1987-89 contract provides for union security but does not require employees to join the Guild. The Guild proposed new language which would require employees covered by this Agreement to join the union. Employees who are bona fide members of a church or religious body whose religious tenets or teachings prohibit membership in employee associations would be excused from joining the Guild. The City proposed a modification to Article 1 but would continue the voluntary nature of Guild membership for employees.

B. The Guild

The Guild argued that its proposal should be awarded because there has been no objection from any employee to mandatory Guild membership. The record evidence established that 100% of the bargaining unit belongs to the Guild. According to the Guild, the 100% membership speaks in favor of the Guild's proposal. Since the Guild bargains for all members of the bargaining unit it is vital that the Guild receive not only the financial support, but personal participation which mandatory membership brings.

Therefore, the Guild concludes that since it is legally required to bargain for all employees covered by the Collective Bargaining Agreement, it is appropriate that it have the financial support and participation of all employees.

C. **The City**

City takes the position that mandatory union membership should not be included in this Collective Bargaining Agreement. City Exhibit 44 reveals that mandatory union membership or payment of dues does not exist in any other City bargaining unit. In addition, the City's evidence reflected that this provision does not exist in other local comparable agencies. The City's proposed language is consistent with that already agreed to by the Guild in their separate contract covering Support Services. It would be grossly inconsistent to have a mandatory provision in this contract and not in the Support Services contract.

The City also argues that there is no demonstrated need for mandatory membership in the Guild. The union's own evidence established that virtually all sworn employees have voluntarily joined the Guild. Thus, the Guild's proposal should be rejected and the City's proposal awarded.

D. **Discussion and Findings**

The Arbitrator finds the Guild has made its case that financial support should be required from all members of the bargaining unit except those who are excused from membership in employee associations because of bona fide religions tenets. The Arbitrator was not convinced that all employees should be required to join the Guild. Compelling employees to be members of the Guild will not necessarily insure participation in Guild activities. Hence, the Arbitrator will award modified language which requires

employees who elect not to join the association to make a contribution in lieu of union dues.

The Guild has incurred considerable expenses in attempting to bargain its first labor contract with the City. All of the members of the bargaining unit will benefit from the efforts of the Guild, not just those who elect to join the Guild now or in the future. The fact the Guild has 100% membership argues in favor of requiring Guild membership or a contribution in lieu of dues. In a small unit such as this, it is imperative all employees covered by the contract provide financial support to its collective bargaining representative.

The Guild has the legal duty to represent all members of the bargaining unit. Several recent court decisions have imposed very stringent standards on a union's duty to fully and fairly represent all members of the bargaining unit. Regardless of membership in the Pullman Police Officers' Guild, the Guild has a legal obligation to defend the rights of the bargaining unit member, whether or not they provide support to the Guild. Members who do not contribute toward the cost of collective bargaining also receive the value of improved salary and fringe benefits in addition to improved working conditions resulting from contract negotiations. It is a reasonable and fair conclusion that all employees who benefit from the services of the Guild should be required to contribute towards the cost of maintaining the services of collective bargaining and contract administration.

The language awarded does not require employees to join the Guild. It only demands that all members of the bargaining unit pay for the cost of collective bargaining and related contract administration. The language awarded by the Arbitrator does not require individuals to attend meetings or to take part in Guild activities. However, all members of the bargaining unit should be expected to contribute financial support to the Guild for the purpose of performing the duties of an exclusive representative of employees in dealing with the City on labor/management issues. For these reasons, the Arbitrator finds that Article 1 be modified to require a payment in lieu of dues for those employees who do not choose to join the Guild.

AWARD

The Arbitrator awards that Article 1 be amended to read:

1. Membership: Membership or non-membership in the Guild shall be the individual choice of employees covered by this Agreement. However, any employee who chooses not to belong to the Guild shall make a payment in lieu of dues to the Guild.

2. New Employees: A newly hired employee shall determine within thirty (30) days whether he or she wishes to (1) join the Guild and pay Guild dues and fees or (2) decline to join the Guild and pay a service fee equivalent to regular Guild initiation fees and dues as a consideration toward the administration of this Agreement.

3. Equivalent Dues Payment: In accordance with RCW 41.56, objections to joining the Guild which are based on bona fide religious tenets or teachings of a church or religious body as may be determined by the Public Employment Relations Commission will be observed. Any such employee shall pay an amount of money equivalent to regular Guild dues to a nonreligious charity mutually agreed upon by the employee affected and the Guild.

4. Failure to Comply: An employee who is required to maintain membership in good standing and fails to do so and an employee who is required to pay a service fee and fails to do so under the provisions of this Article, shall be terminated upon notice of such fact in writing from the Guild to the City. Termination of such an employee shall become effective within thirty (30) days from the date the City received the notice, unless the employee has remedied the delinquency within said thirty (30) day period provided that the habitual failure to timely pay dues, service fees or charitable contributions shall, upon the request of the Guild, result in the discharge of the offending employee.

ISSUE 3: Supervisory Duties

A. Background

Status quo is represented by Article 6 of the 1987-89 Agreement which provides that an officer assigned to supervisory duties in an acting capacity shall receive the difference between the minimum sergeant rate of pay and patrolman I rate of pay for actual hours worked. The term "Acting Sergeant" is used when a bargaining unit member is temporarily assigned to perform the supervisory duties of a sergeant. Pursuant to the language in Article 6 it is the City's discretion of whether or not to designate an officer as an Acting Sergeant.

The Guild proposed language to require a supervisor to be designated when the patrol supervisor in unavailable. The Guild's proposal would define when the regular supervisor is not available. The City proposed modified language which would continue the discretion of management to designate an acting supervisor when the regular supervisor in unavailable.

B. The Guild

The Guild proposed language to state as follows:

> It is recognized that some employees covered under this Agreement shall perform the duties of a supervisor. Nothing in this Agreement shall in any way interfere with carrying out their supervisory duties.
>
> Police Officers, assigned by the Chief or his/her designee to perform the duty of "Acting Sergeant" shall receive the difference between the minimum Sergeant rate of pay and

Patrolman I rate of pay for actual hours worked.

The Guild's proposal on this issue arose out of a situation where a sergeant was assigned to light duty and was unable to respond to the scene of a crime. The City chose to have the sergeant remain as the shift supervisor even though he was unable to respond. According to the Guild, the officers at the scene were jeopardized as the result of the inability of the supervisor to respond to the situation.

The Guild next pointed to the testimony of Chief Weatherly who agreed there should be an officer in charge when there is not a supervisor available. The Chief also testified that he expected the sergeant to appoint such an officer in charge if he were not there. From the viewpoint of the Guild, the parties are in agreement as to the need for an officer to be assigned for on-the-scene supervision if a supervisor is not available.

In sum, the Guild submits this is a safety issue, and not a monetary issue. While there is a monetary component in the sense that those officers placed in charge of the scene shall receive extra compensation, the motivating force for this proposal is officer safety. Thus, the Arbitrator should award the language proposed by the Guild.

C. <u>The City</u>

The City proposed language to read as follows:

It is recognized that some employees covered under this agreement shall perform the duties

> of a supervisor. Nothing in this agreement shall in any way interfere with carrying out their supervisory duties.
>
> Police officers assigned by the Chief of Police or his/her designee to perform the duty of "Officer in Charge" (O.I.C.) shall receive the beginning sergeant rate of pay.
>
> An O.I.C. may be assigned when a Patrol Supervisor is not available. An officer acting as O.I.C. will be considered to have been acting in that capacity for actual time worked with a minimum of one (1) hour.
>
> "Not available" may be considered to mean that the Patrol Supervisor is unavailable to communicate direction or respond to a field scene when needed.

The City maintains that the Guild's proposal would require it to appoint an acting officer in charge without regard to the circumstances of the individual case. The City's proposal to continue management discretion to assess whether or not it was necessary to appoint an officer in charge should be continued. Adoption of the Guild's proposal would remove the decision making responsibility from the Chief and place it in the Guild.

The City next points out that when an officer is designated as the officer in charge it carries with it a higher rate of pay for that officer. In the view of the City, higher pay and the assignment connected thereto should be controlled by management rather than an automatic contract entitlement.

It is also the position of the City that the Guild's explanation of "Not available" are words to grieve and an attempt to mandate when and how officer in charge assignments are to be made. If the language proposed by the Guild were adopted it would

result in a proliferation of officer in charge assignments and grievances challenging the City when it did not appoint an officer in charge at a particular problem. The City believes that the Guild's four definitions of "Not available" are unneeded and will unduly restrict the exercise of management prerogatives to deal with situations on a case per case basis. Therefore, the Arbitrator should reject the Guild's proposal and award the City's language.

D. Discussion and Findings

The Arbitrator finds the Guild's proposal creates an unreasonable restriction on management's right to determine when and if supervision at a crime scene is necessary. Pursuant to the Guild's proposal an officer in charge would be required without regard to the individual circumstances present at the crime scene or the availability of the patrol supervisor. In the judgment of this Arbitrator, the need to provide police services and deploy human resources in the most efficient manner possible should not be restricted in the manner proposed by the Guild.

The Guild's one example cited to support its proposal does not rise to the level to justify the unnecessary restriction on managerial prerogatives. Adoption of the Guild's proposal would result in a proliferation of officer in charge assignments and increased cost for police services. An officer in charge would be required to be assigned even though the patrol supervisor is capable of handling the situation. Thus, the Arbitrator was not persuaded that a substantial restriction on the ability of

management to determine the level of supervision should be placed into this contract.

Accordingly, the Arbitrator will award the language proposed by the City which continues the present practice of permitting management to determine whether or not an officer in charge is needed.

AWARD

The Arbitrator awards that Article 6 be amended to read as follows:

> It is recognized that some employees covered under this agreement shall perform the duties of a supervisor. Nothing in this agreement shall in any way interfere with carrying out their supervisory duties.
>
> Police officers assigned by the Chief of Police or his/her designee to perform the duty of "Officer in Charge" (O.I.C.) shall receive the beginning sergeant rate of pay.
>
> An O.I.C. may be assigned when a Patrol Supervisor is not available. An officer acting as O.I.C. will be considered to have been acting in that capacity for actual time worked with a minimum of one (1) hour.
>
> "Not available" may be considered to mean that the Patrol Supervisor is unavailable to communicate direction or respond to a field scene when needed.

from work. When the employee is ordered to report to duty on a day off, the employee will be paid a 4 hour allowance at the overtime rate in addition to overtime for the hours actually worked.

The Guild also proposed to add new language to the existing overtime provision. Under the Guild's proposal an employee would have to be given at least seven working days notice prior to any regular schedule or overtime schedule changes. If the notification is less than the required seven days, the employee would be considered as being ordered to work and the provisions of Section 9.03 and/or 9.04 would apply. The Guild also proposed new language that when an employee is returned to work with less than 12 continuous hours off, that employee would be considered to have worked continuously from the previous work period. Compensation for those hours would be at the overtime rate.

The Guild proposed a new Section 9.08 on the subject of standby. An employee who is "requested" to be on standby would be paid a 2 hour allowance at the applicable overtime rate in addition to the hours requested to maintain standby status. An employee who is ordered to be on standby would be paid a 4 hour allowance at the overtime rate in addition to the hours ordered to maintain standby status.

The Guild frames the overtime issue as a "safety, time off issue" rather than a monetary issue. According to the Guild, the City has historically substituted overtime for additional officers. The City continuously overspends its overtime budget.

ISSUE 4: Overtime

A. Background

The subject of overtime is addressed in Article 9 of the 1987-89 Collective Bargaining Agreement. The Guild proposed substantial changes in the overtime article. The City offered some minor changes in the current language. However, for the most part the City is proposing continuation of present contract language.

B. The Guild

The Guild proposes to increase the amount of compensatory time which may be accumulated from 40 hours to 80 hours. Pursuant to Section 9.02 employees with authorized overtime entitlements are allowed to request to be compensated with time off at the time and one-half rate instead of monetary compensation. The Guild would also amend the holiday overtime which currently stands at two times the regular rate of pay to time and one-half the holiday rate of pay.

Section 9.03 compels the City to pay an employee at the overtime rate calculated to the nearest one-quarter hour if that employee is ordered to remain on duty at the end of the shift. The Guild proposed that an employee who is ordered to remain on duty or report earlier than the regular shift would be entitled to two hours at the applicable overtime rate in addition to the overtime for hours actually worked. The Guild would also modify Section 9.04 to require a minimum of 2 hours of overtime when an officer is requested to report on a day off, leave, etc. or after going home

The Guild asserts that the overtime required by the Department is not only excessive, but dangerous.

It is against this background that the Guild has proposed language which is punitive in nature to force the City to reconsider its excessive reliance on overtime to make-up for staffing shortages. In addition, the amount of overtime being worked by members of this bargaining unit creates a situation of officer fatigue causing a serious danger to both the public and the officers. Testimony was also presented that the impact of overtime is seriously disruptive to the family life of members of this bargaining unit. Since overtime is mandatory in this Department, the City should be required to adequately compensate officers for working excessive overtime due to the fact the City has refused to increase the number of police officers.

The seven day notice prior to any regular schedule change is necessary to give officers a reasonable amount of time to plan their family and personal lives. The seven day notice would subject the City to a monetary penalty for its violation. The City would still be able to change the schedule in order to meet its staffing needs, but would be required to pay a monetary penalty for failing to give the seven day notice.

The Guild argues in support of its 12 continuous hours off provision that fatigue presents a real danger for officers and the public. A requirement that an officer be given at least 12 hours off is reasonable protection for the safety of officers and the public. The monetary penalty for failing to comply with the 12

hour off provision will compel the City to provide additional staff. For all of the above stated reasons, the Arbitrator should award the Guild's proposal as an appropriate safeguard for officer safety.

C. **The City**

The City rejects the Guild's proposals on three main grounds. First, the Guild's proposal would increase the overtime cost to the City by a significant amount. Second, the doubling of the amount of compensatory time accrual maximum would increase an already severe scheduling problem. Likewise, the seven day notice of a shift change is not workable due to the nature of police work. Third, the evidence on comparability does not support the Guild's proposals.

In sum, the City believes the Guild's overtime proposal in total, is unreasonable and would have an excessive cost impact on the City. Therefore, the Arbitrator should award the City's proposal which essentially continues existing contract language.

D. **Discussion and Findings**

The Arbitrator concurs with the City that adoption of the Guild's proposal would be excessive in total cost and create an unreasonable restriction on the ability of the City to provide police services. The record does establish that the members of this bargaining unit do work substantial amounts of overtime which intrudes on their ability to maintain a life separate and apart from the Police Department. As such, there is room for some

modification in the overtime article which would not create excessive costs or unduly restrict the Department's ability to maintain its staffing levels.

The Guild's proposal to double the amount of compensatory time available to members of this unit is excessive and should not be adopted. A 20% increase in the maximum amount of compensatory time that could be accrued would set the cap at 48 hours. The availability of a additional 8 hours of compensatory time off should not unduly restrict the ability of the Department to maintain adequate police services. The Guild proposal to increase holiday overtime to time and one-half the holiday rate of pay is excessive. Employees who work holiday overtime are paid an adequate amount at two times the regular rate of pay.

The Guild's proposal to modify Section 9.03 to provide a minimum 2 hour allowance at the applicable overtime rate in addition to the hours worked at the applicable overtime rate when an employee is ordered to remain on duty at the end of his shift or to report early goes beyond the acceptable limit for such circumstances. Under current contract language an employee who remains after the end of the shift is paid for time actually worked, calculated to the next one-quarter hour. This is an acceptable method to deal with an employee who is required to work beyond the normal shift. The contract is silent with respect to an employee who is called to work before the scheduled shift. It is reasonable to compensate an officer who is required to report early with an minimum amount of overtime compensation. A 1 hour minimum

is reasonable for an officer who is expected to report to work early on a particular shift.

Section 9.04 requires the City to pay a minimum of 2 hours at the applicable overtime rate for an employee who is ordered to report for duty on the day off or after going home from work. The Guild's proposal to require minimum compensation for an employee who is "requested to report to duty" is vague and uncertain. The City should only be required to provide minimum compensation when it orders an employee to report for duty on a day off or after going home. A minimum callback payment of 3 hours is the standard in the comparables offered by the Guild. Hence, the Arbitrator will increase the existing minimum callback time to 3 hours.

A 3 hour minimum is warranted to compensate the officer for disruption to his or her personal life on a day off or holiday. Further, the 3 hour minimum is justified as recognition of the fact the officer must not only work the hours but prepare for duty and travel to and from the work site for an additional tour of duty. Accordingly, it will be the award of the Arbitrator to increase the 2 hour minimum callback to 3 hours.

The Guild proposal to require a seven day notice prior to any regular schedule change represents an undue restriction on the ability of the City to staff the police force. Absent from this record is any evidence members have been subjected to frequent and repeated changes in shift schedule without adequate notice. Nor is there evidence that employees have been required to work on a

regular basis without a minimum of 12 hours between shifts. Hence, the Arbitrator rejects the Guild's proposal to add a new section 9.07.

The final proposal of the Guild to add standby pay in Section 9.08 should not become a part of the Collective Bargaining Agreement. The record does not reflect that employees are requested to standby or be at the beckon call of Department management.

AWARD

The Arbitrator awards with respect to overtime as follows:

1. Section 9.01 shall remain unchanged in the successor contract.

2. Section 9.02 shall be amended to provide for a maximum accrual of compensatory time off at 48 hours.

3. Section 9.03 shall be amended to read:

An employee ordered to remain on duty at the end of his regular shift or to report early shall be paid at the applicable overtime rate for time actually worked, calculated to the nearest one-quarter (1/4) hour.

A new paragraph would be added which states:

An employee who has left the workplace and who is called back to duty for a period of time which is less than two (2) hours, shall receive a minimum of two (2) hours of overtime compensation.

4. Section 9.04 shall be modified to read:

An employee called to report to duty on his day off or holiday shall be guaranteed a minimum of three (3) hours at the applicable overtime rate.

5. Section 9.05 shall remain unchanged in the successor contract.

6. Section 9.06 shall remain unchanged in the successor contract.

7. The Guild's proposals to add new language in 9.06, 9.07 and 9.08 shall not become a part of the Collective Bargaining Agreement.

Further, if the holiday falls on a day in which the officer is required to work, the officer should receive the regular pay, plus an extra days pay, and if overtime is required, the overtime rate be one and one-half times the regular pay. According to the Guild, if an employee is required to work on the holiday, an employee should receive recognition of that fact in the form of additional compensation. By making a monetary distinction between a worked and a non-worked holiday, the Guild submits it would encourage the City to reschedule an employee and grant an employee's request for time off.

The City's proposal is defective in that it makes no distinction between the employee who is not required to work and an employee who is required to work when it comes to monetary compensation. Therefore, the Arbitrator should sustain the Guild and award its proposal.

C. **The City**

The City takes the position that present contract language should be continued with a minor change it has proposed. Because members of this bargaining unit enjoy a competitive holiday benefit, the existing contract language should be continued. There is no justification for increasing the cost to the City by awarding the language proposed by the Guild.

Turning to the Guild's proposal to add an additional holiday if a holiday is so proclaimed by the state, federal or City government, City submits that this type of holiday should be handled at the time such declaration of a holiday is made. The

ISSUE 5: Holidays

A. Background

Article 10 of the existing contract incorporates ten designated holidays and one floating holiday. If a holiday falls during the employee's scheduled vacation, employee's day off or if the employee is scheduled to work a holiday, the employee is given another work day off during the month or with the approval of the Chief of Police have eight hours added to the employee's compensatory time bank. Neither party proposes to change the number of holidays available for employees. However, the Guild did propose language which would grant an additional holiday if such holidays were created by declaration, emergency or proclamation of the City. The Guild would also provide additional compensation when an employee worked on a holiday or the holiday fell during the regular day off. The City proposed to continue current contract language with the addition of language which would require personnel working shift work to observe the four traditional holidays.

B. The Guild

The Guild proposed to add language which would add an additional holiday "created by declaration, emergency or proclamation of the City." The Guild reasons that if the federal, state or City government declares a day a holiday, a police officer should be entitled to receive the holiday just the same as other employees who enjoy the benefit. The contract between the City and

the firefighters grants an additional holiday if the day is declared to be such by the mayor. While a different holiday schedule is a rare occurrence, the police officers of this City should not be excluded from receiving additional holidays established by the state, federal or City governments.

The Guild also proposed to add new language to the contract which stated:

. . .

> If the employee's regular day off falls on a holiday, she/he shall receive the equivalent of an extra day off, in comp time or annual leave at their option, for said holiday. (By way of illustration, a person working (5) 8 hour shifts during a week will receive 8 hours of comp time or annual leave.)
>
> At the employee's option, subject to the approval of the Chief or his designee, holidays may be taken off and not worked. Holidays on which the employee elects not to work will be compensated for in comp time at the same rate as those worked. (By way of illustration, the day off plus an additional 8 hours of comp time.)
>
> An employee whose schedule is changed or is required to take the holiday off will be compensated as a day off plus an additional 8 hours of comp time.
>
> Employees working overtime on a holiday will have their overtime rate based on the holiday rate of pay, for all overtime hours worked.

The essence of the Guild's proposal is that if a holiday falls on a day off or during an employee's vacation, the officer should receive, in addition to regular pay, either eight hours compensatory time or annual leave at the employee's option.

City should not be locked into granting an additional holiday simply because another agency declares a holiday.

On the issue of holidays falling within scheduled vacation or days off, the City maintains its proposed language is simpler to administer and less costly overall. The Guild's proposal would complicate the computations and make it more difficult to administer the language. Regarding holidays that are worked, the City argues the present system has served the parties well. The contract should not be complicated with the Guild's vague and confusing language.

In sum, the City submits the Guild's proposal should be rejected as unnecessarily adding to the overtime costs and injecting confusing language into the contract.

D. Discussion and Findings

The Arbitrator disagrees with the Guild's position that it should have a holiday when such is declared by either the federal or state government. The City is an independent political entity which should not be automatically subjected to holidays declared by either the state or federal government. The fact that a federal or state worker may get an additional holiday is not sufficient justification to grant the same to a City worker. However, the Arbitrator was persuaded that if the City declares an additional holiday that members of this bargaining unit should be entitled to that holiday without additional negotiations. The precedent for this is set in the firefighter contract. The

Arbitrator will award language identical to that contained in the firefighter contract mandating an additional holiday when it is so declared by the mayor of Pullman.

A comparison of either the City's list of comparables or the Guild's list of comparable cities establishes that the members of this bargaining unit enjoy a competitive number of paid holidays. This fact argues against the increase in the cost of the holiday benefits which would follow with the adoption of the Guild's proposals. The Arbitrator has awarded salary increases which will increase the compensation for members of this bargaining unit. There is little justification for increasing the cost to the City by adding a provision that will result in higher costs to fund the holiday benefits.

Present contract language requires that an employee who is on a scheduled vacation or on a day off is entitled to recognition for the designated holiday. The contract provides that such an employee will receive a scheduled day off in recognition of the holiday falling during a vacation or day off. Further, with the approval of the Chief of Police, an additional eight hours can be added to the employee's compensatory time bank. While there is some merit to providing additional compensation to employees who work on a scheduled holiday, it is the conclusion of the Arbitrator that the time is not ripe for such increase in the value of the holiday benefit. None of the comparator contracts support an increased overtime rate for all holidays worked.

The Arbitrator will award the continuation of present contract language with the addition of the language that should a holiday be declared by the mayor of Pullman the members of this unit would receive the additional holiday.

AWARD

The Arbitrator awards that Article 10 should be continued in the new contract with the addition of language to state:

> 1. The employee shall also have a holiday on any day so declared by the mayor of Pullman.
>
> 2. All personnel working shift work will observe the traditional holidays as follows:
>
> January 1 - New Year's Day
> July 4 - Independence Day
> November 11 - Veterans Day
> December 25 - Christmas

ISSUE 6: Vacations

A. Background

The vacation benefit is contained in Article 11 of the existing contract. Both parties are proposing to continue the existing vacation allotment. The difference in this issue centers over the amount of time employees should be allowed to accumulate with respect to vacations. Article 11 allows employees to accumulate "up to a maximum of twenty-five (25) days vacation time." The City proposed to continue current contract language. The Guild proposed to increase the amount of vacation time which could be accumulated up to a maximum of 35 days of vacation time. The only issue before the Arbitrator on vacations is whether or not accumulation should be 25 days or 35 days.

B. The Guild

The Guild takes the position that its proposal to increase the accumulation of vacation from 25 to 35 days is supported by comparability. The maximum that can be accumulated in Wenatchee is 50 days, Richland 37.7 days, Pasco 24 to 40 days, Kennewick 35 days, and 1 week from the previous year in Walla Walla. The Walla Walla situation is different in that Walla Walla gives 20 days vacation after 10 years of service, a total annual leave that is much higher than the other comparables.

C. The City

The City takes the position that both internal and external comparators support retention of the 25 day maximum

accumulation of vacation time. According to the City, vacation hours should be used to reduce job stress rather than build up to excess. Increased absences due to vacation also create scheduling problems and increase the City's overtime costs. If an employee with a large amount of vacation accrual terminates with the City, an additional financial burden is placed on the tax payers because the vacation time is not used but must be paid for in cash. The practice within the City is to allow employees to accumulate up to a maximum of 25 days vacation time. That standard should be continued for members of the police bargaining unit.

D. Discussion and Findings

The Arbitrator finds that a slight increase in the amount of time which employees will be allowed to accumulate for vacation is justified. While the City's evidence on internal comparators supports its position, the evidence of either the City or the Guild on the external comparators supports an upward adjustment in the maximum amount of vacation time which can be accumulated. Ellensburg, Pasco, Walla Walla and Wenatchee all provide for significantly more vacation time to be accumulated. Likewise the Guild's evidence from Richland and Pasco demonstrated these cities provide for substantially higher accumulation rates than is present in this contract. The Arbitrator will award an increase in the maximum accumulation rate to 30 days effective January 1, 1992. An increase of 5 days is supported by the external comparators and will be consistent with the internal comparators.

AWARD

The Arbitrator awards that existing contract language be continued except that the paragraph providing a maximum accumulation of vacation time at 25 days be amended to state as follows:

> Effective January 1, 1992, an employee shall be allowed to accumulate up to a maximum of thirty (30) days vacation time.

ISSUE 7: Premium Pay

A. Background

Article 21 of the existing Agreement provides premium pay for officers who work swing or graveyard shift. Premium pay for swing shift is $15 per month and $20 per month for graveyard shift. The sole remaining issue in dispute is the pay differential that should be established for swing and graveyard shifts. The City would continue the existing amount of premium pay while the Guild would increase the premium pay to $50 per month for swing shift and $100 per month for graveyard shift.

B. The Guild

The Guild notes at the outset that while the title of the article is premium pay the issue is really one of shift differential for officers who work swing and graveyard shifts. The Guild suggested that the Arbitrator might relabel this article to reflect its true character. The Guild proposed to increase the shift differential for swing shift to $50 per month and graveyard to $100 per month.

The evidence established that the City agreed to a shift differential of $50 per month per swing shift and $100 for graveyard shift in the Pullman Police Support Services staff contract. All the Guild is seeking by this proposal is to achieve parity for the police officers with the other Guild bargaining unit. It is a proposal the City has the ability to fund. Thus,

the Guild's proposal for increasing the shift differential should be granted.

C. **The City**

The City proposed that the differential for shift work should remain unchanged. While it is true the City agreed to increase the shift differential for Support Services, the higher premium pay was an incentive for settlement at a wage increase lower than this unit is seeking.

The City next argues that the existing shift differential exceeds that of its comparable jurisdictions. Ellensburg, Moses Lake and Pasco provide no shift differential. Walla Walla pays an additional $14.44 per month and Wenatchee pays $30 per month. (City Ex. 55 & 56). Even if the Guild's comparables are accepted, the present contract provides the shift differential which exceeds the jurisdictions cited by the Guild. (City Ex. 57).

D. **Discussion and Findings**

On its fact the shift differential of $15 per month for swing and $20 per month for the graveyard shift is meager and inadequate compensation for officers working non-traditional hours. The City recognized this fact when it increased the compensation to Support Services personnel to $50 and $100 for working swing and graveyard shifts.

The City objects to increasing the shift differential for this group of employees on the ground the higher premium pay was an incentive for settlement in the Support Services contract. There

is no evidence in the record which supports that proposition other than the fact the parties did in fact agree to a certain level of shift differential pay. The Support Services staff has enjoyed the increased premium pay level since January 1, 1990. Accepting the City's position as having some validity, the Arbitrator will make the increase in shift differential effective July 1, 1992 as recognition that differences are present in the total compensation packages available to the two groups of employees. The Arbitrator will also reduce the amount of the increase to $35 per month for swing shift and $60 per month for graveyard shift.

The controlling factor on this issue is internal parity. The non-uniformed employees covered by the Support Services contract work in conjunction with the uniformed officers on swing and graveyard shifts. There is no reason to establish different shift differentials for employees working the same shifts to provide police services for the citizens of Pullman. With the exceptions of the effective date for change in premium pay and reduced amounts, the Arbitrator will award the language contained in Article 24 of the Support Services contract. The increase in shift differential for uniformed officers recognizes that uniformed officers should maintain a closer relationship in compensation paid for shift work to the non-uniformed employees that would result from adoption of the City's proposal. The parties reached tentative agreement on the second paragraph contained in Article 25 of the City's proposal. Hence, it is unnecessary for the Arbitrator to deal with that aspect of the dispute on this issue.

AWARD

The Arbitrator awards new language to be included in Article 25 to state:

> Effective July 1, 1992, an employee who works swing or graveyard shift shall receive premium pay in accordance with time worked. Premium pay shall be thirty-five dollars ($35) per month for swing shift and sixty dollars ($60) per month for graveyard shift. Part-time employees shall receive premium pay on a pro rata basis.

The Arbitrator also awards that the title to Article 21 should be changed to Shift Differential.

ISSUE 8: Training Standards

A. Background

Article 22 of the current Agreement is entitled "Maintenance of Standards." The parties have agreed that the title to Article 22 does not correctly represent the subject of the article. The parties have agreed to retitle the article as Training Standards. In this provision the parties have committed to "encourage each employee to maintain a high degree of personal fitness, proficiency, knowledge and skill in procedures in work." The parties have agreed to continue the first paragraph of the article except to change the reference from union to the Guild. Two major areas are in dispute between the parties in this issue.

The first issue deals with compensation for time spent in travel and attendance at training or schools. The City proposed that any time spent in excess of normal working hours will be compensated for in compliance with FLSA. In essence this means that if three officers drive to Seattle for training, at a time outside of their normal work schedule, only the driver of the vehicle is compensated for the travel time. The Guild proposed that travel time be compensated at the normal rate of pay or overtime if applicable. The current practice is consistent with the City's proposal.

The second area of disagreement concerns a Guild proposal to provide premium pay for the specialized functions of Field Training Officer, Supervisor, Defensive Tactics Instructor and Fire

Arms Instructor. The City made no proposal for additional compensation for the performance of these functions.

B. **The Guild**

The Guild takes the position that officers who are required to travel to and from training without compensation are losing a significant amount of their personal time and not being compensated because they are not driving the vehicle. According to the Guild, it is appropriate that the City be required to compensate employees for the loss of their personal time. Since the training is mandatory and the employee is required to travel to training sites, the employee should be compensated for the travel time.

Regarding the proposal to compensate officers for training work functions, the Guild argued that all of the specialized duty assignments have significant additional requirements and impact on the officer. These duties are fulfilled in addition to the normal work that each member performs as a police officer for the City.

Each of the specialties require extensive education and certification in order to serve in the specialized functions in dispute. Further, the officers who fulfill these specialized functions are required to perform extra work such as maintenance of paper work, development of curriculum, and performing the work at times other than the normal shift. The Guild views this proposal as "extra pay for extra work."

The final aspect of the Guild's proposal would allow members to resign from the specialized training functions. One member testified at the hearing that he has tried to quit the Defensive Tactics Instructor assignment on two different occasions because of the disruption to his personal life. In both cases the officer was not allowed to resign and was required to continue to perform the assignment. The Guild believes that employees should not be required to perform duties over and above a police officer without the member's consent.

C. **The City**

The City objects to the Guild's proposal as it would markedly increase overtime pay in a manner not required by law. According to the City, its obligation to pay officers while engaged in training should be defined by the FLSA. Officers should not be paid overtime for merely riding in a car outside of duty hours.

Turning to the Guild's proposal regarding pay for specialized functions, the City submits the officers accept and perform this training for the extra overtime pay they receive. It would be inappropriate to compensate officers with an additional three percent for each additional assignment of this type as it would constitute pyramiding of pay. The three percent increase would also increase the base for the overtime hours paid. No comparables were offered by the Guild justifying such a pay practice. None of the five cities which the City selected offered training standards pay for officers performing specialized functions.

Moreover, the Chief testified that training officers' schedules are adjusted to accommodate the responsibilities which are carried with the assignment. With a low turnover rate in the Pullman Police Department, the incidents of training recruits is low. Thus, the Arbitrator should reject the proposal of the Guild and award the City's offer on this issue.

D. **Discussion and Findings**

The Arbitrator finds that there is an area of compromise which will recognize the legitimate needs of both sides on this issue. Due to the remote location of Pullman, training which takes place in the Seattle area requires a substantial amount of travel time. In some cases the travel time could amount to an additional day to reach the training site and return. Where the training is required by the City, it is unreasonable for the City to be free of any obligation to the employee who must travel significant distances outside of the normal workday. The City under the agreed on language controls whether or not employees shall attend training and be compensated for it by the City.

The Arbitrator will award language that provides for compensation in compliance with the FLSA. However, when the travel time exceeds three hours, officers shall be compensated at the applicable overtime rate for the time spent in travel in excess of three hours.

The Guild's proposal for premium pay for specialized functions should not be implemented during this round of bargaining. The subject of premium pay for specialized functions

should be deferred to future negotiations. On the other hand, if the City is not expected to compensate employees for performing the specialized functions, the Arbitrator is persuaded that there should be limits on the amount of time a member should be required to serve as a Field Training Officer, Fire Arms Instructor and Defensive Tactics Instructor. The City has a legitimate concern in preventing turnover in employees who perform training for the Department. It costs money and time to get an officer certified to provide the specialized training. The Arbitrator will award language which limits the amount of time an officer can be required to perform a specialized function to three years. Because this is new language, the Arbitrator will set January 1, 1991, as the point from which the three year service requirement shall be measured.

AWARD

The Arbitrator awards a training standards provision to read as follows:

> It shall be the joint responsibility of the City and the Guild to encourage each employee to maintain a high degree of personal fitness, proficiency, knowledge and skill in procedures and work. Training and seminars shall be made available to the employees for this purpose. Employees electing to attend such training while off duty shall do so at no expense to the City, except travel and/or lodging shall be paid by the City if in the opinion of the Chief of Police satisfactory benefits will be gained by the City.
>
> Travel, breaks, etc., going to and from and while attending mandatory training or schools, will be compensated for consistent with normal hours worked. Any time spent in excess of the normal working hours will be compensated for in compliance with FLSA. In the event the time spent in excess of normal working hours exceeds three (3) hours, the amount of time limit over the three (3) hours shall be compensated at the applicable overtime rate.
>
> Special arrangements will be made for swing and graveyard employees to attend schools. Adjusted travel days will be provided so as to avoid the loss of normal days off which fall within the scheduled training or travel to and from.
>
> Officers assigned to specialized functions (I.E., Field Training Officers, Firearms Instructors, Defensive Tactics Instructors) shall not be required to perform any of the three specialized functions for a period in excess of three (3) consecutive years. The initial period for calculating the time spent in these three specialized functions shall be January 1, 1991.

ISSUE 9: Education/Longevity

A. Background

Article 24 of the 1987-89 Agreement offers an educational incentive pay for officers who have completed a specified number of education credits in four identified fields of study. The incentive pay ranges from 2% for one year of study to 10% for a masters degree. A bachelors degree is worth 8%. The majority of the members in this unit receive some level of education incentive pay.

The City would continue the existing language with a modification to add "law and accounting" and "other fields that are mutually approved" to the list of approved major fields of study for which education incentive pay would be allowed. The Guild has a similar proposal on the expansion of the list of approved major fields of study.

The major difference in this Article is a Guild proposal which would combine the education incentive pay with a longevity matrix.

B. The Guild

The Guild notes at the outset that the Pullman Police Department is a well educated Department in which 15 of the 21 bargaining unit employees have a bachelors degree or its equivalent. The Guild offered two main reasons for adding the longevity benefit to the contract. First, the retirement systems under which police officers earn retirement benefits are referred

to as the LEOFF 1 retirement plan and the LEOFF 2 retirement plan. LEOFF 1 does not count education incentive as part of its base pay retirement determination. LEOFF 2 does count education incentives. However, LEOFF 1 does include longevity pay in its base rate determination. The Guild submits that adoption of its matrix system which combines education and longevity would bring "parity to the retirement systems."

The second justification offered by the Guild for its longevity proposal is based on recognition of the value of the veteran officer. According to the Guild, the skill and experience of veteran officers is essential for an effective police agency. Hence, the skill and experience of veteran officers should be recognized by adding the Guild's proposed longevity program to the current contract.

C. <u>The City</u>

The City takes the position that members of this bargaining unit enjoy a competitive and advantageous educational incentive program which yields additional dollars to the members of this Department. From the viewpoint of the City, the addition of longevity pay is not warranted by the comparables.

In sum, the City submits that the members of this unit enjoy a superior educational incentive pay that is more than adequate to keep good officers employed by the City. Longevity pay is unneeded and is not a prevailing practice among the City's comparables. Thus, the Arbitrator should reject the proposal of the Guild.

D. **Discussion and Findings**

The Arbitrator finds the Guild failed to make its case for the addition of longevity pay to the current Collective Bargaining Agreement. The competitive position of the present educational incentive and monetary value to the membership is undisputed. No evidence was offered by the Guild which would justify the payment of additional compensation for longevity with the City. Absent strong evidence of comparability, the Guild's argument for parity under the LEOFF 1 and LEOFF 2 retirement plans is unpersuasive. Therefore, it will be the award of the Arbitrator the Guild's longevity proposal shall not become a part of the Collective Bargaining Agreement.

The parties are close on what fields of study shall be approved for education incentive pay. The City proposed law and accounting while the Guild proposed business administration/accounting as approved major fields for incentive pay. No evidence was offered by the City on why a major in accounting should be the exclusive field in business administration to qualify for incentive pay. The Arbitrator will award the Guild's proposal on this subject.

AWARD

The Arbitrator awards that existing contract language should continue in the successor Agreement with the addition of two fields of study for which education incentive could be paid. The new contract should contain the following language.

5. Business Administration/Accounting.
6. Other fields that are mutually approved.

ISSUE 10: Drug and Alcohol Policy

A. Background

The 1987-89 contract is silent on the subject of drug and alcohol testing. Both parties to this dispute endorse the goal to create and provide a drug free workplace. The crux of this dispute centers over how that goal should be accomplished in Pullman. Each party to this contract issue has advanced their own proposed system to deal with this controversial issue. The proposals offered by each side are comprehensive and complex. There are significant philosophical differences between the approaches proposed by the parties. The Guild characterized its proposal as rehabilitative in nature and the City's as a punitive approach to this subject.

For the sake of brevity, the Arbitrator has not retyped the proposals offered by each party. The Arbitrator has photocopied the proposals of the Guild and included it in this award as Attachment A. The City's proposal is included in this award as Attachment B.

B. The Guild

The Guild's proposal on this issue is modeled after one currently in existence for the Auburn Firefighters. (Guild Ex. 10.1). The Guild takes the position its proposal should be awarded because it takes a rehabilitative approach to the problem of substance abuse. Both parties agree as to the methodology of testing. However, the Guild wishes to prevent the drug testing article from becoming a disciplinary article itself. The City

would still retain the right to discipline employees for misconduct. It is the Guild's position that the purpose of this article should be to enable and assist in the rehabilitation of the officer for the benefit of both the employer and the employee.

The Guild objects to the City proposal which subjects officers who handle narcotics or evidence to "greater scrutiny" than the reasonable suspicion standard established in the Guild's proposal. The definition of greater scrutiny is unknown and without legal precedent. The Guild is also concerned with the City's proposal to allow for a second sample in the event the first sample is lost or destroyed. Since the City has control over the sample, it is obligated to preserve the sample. If the City fails to protect the sample properly, the Guild sees no reason for the City to be allowed to obtain a second sample. The Guild is also concerned about the City's proposal relating to legal drug use. Pursuant to the City's proposal testing would take into consideration legal drug use. According to the Guild, testing should be designed so that legal drug use does not effect the drug test. The officer should not be subjected to any adverse testing results for consuming a substance prescribed by his doctor.

The Guild next argues the City's proposal for LSD testing is flawed since no standards exist for LSD testing. In addition, if testing standards are changed during the term of the Collective Bargaining Agreement, the Guild should have the right to bargain over their inclusion in the contract. The City's proposal would automatically include changes in standards in the Collective

Bargaining Agreement. Therefore, the Arbitrator should award the language proposed by the Guild.

C. The City

The City takes the position that the Police Department needs to be in a leadership role with respect to controlling substance abuse. The public expects the Police Department to provide this leadership and to set an example. The City must retain the right to discipline for substance abuse which it considers, in and of itself, misconduct. The City reasons it cannot tolerate the Guild proposal that an employee must be given the right to treatment instead of discipline. Employees who are disciplined for drug and alcohol related offenses retain their right to grieve under the contract procedures.

The City also objects to the Guild's proposal requiring the City to pay for rehabilitation costs over and above what might be allowed by the insurance carrier. The City submits it should not be subjected to the potential unlimited expense for drug and alcohol rehabilitation.

The City concluded in its post-hearing brief as follows:

> In summary, the Guild's proposal puts the City in the position of not being able to effectively execute a comprehensive substance abuse policy and by doing so undermines the integrity of the Pullman Police Department in the eyes of the public and hampers the City's effort to create and maintain the safest possible work environment for its employees.

D. **Discussion and Findings**

At the outset the reader must recognize both parties concur that a substance abuse policy is appropriate and necessary. The dispute before this Arbitrator centers over which of the proposals should be implemented. The impetus for the bargaining on this subject was provided by the Drug Free Workplace Act of 1988. Both of the proposals offered by the parties go far beyond the minimum requirements of the law. The legislative initiatives are designed to eliminate drug use and abuse in our country.

The Drug Free Workplace Act of 1988 requires the City to take certain steps to incur a drug free workplace. The Drug Free Workplace Act provides a unique circumstance for applying the statutory criteria to a labor dispute. The only factor relevant to this dispute is comparability. However, neither of the parties introduced any evidence of comparability from their list of jurisdictions which the parties sought to compare themselves with for the purpose of establishing a drug and alcohol policy. The failure to offer evidence on comparability results partially from the fact that many jurisdictions have not established in their collective bargaining agreements substance abuse policies.

The state of the record in this case is that there is no historic or current drug abuse problem within the Police Department. The one example referred to at the hearing was an employee with an alcohol problem, a legal substance, in which the parties implemented a rehabilitation philosophy for this employee. The approach of the parties worked to successfully address the

employee's situation. The parties dealt with the situation involving alcohol abuse without any contract language on the subject.

When a party proposes a change or addition to a contract, interest arbitrators traditionally require the party offering the proposal to provide evidence of a demonstrable need for the new language. Absent from this case is a scintilla of evidence there exists among the members of this bargaining unit an abuse problem justifying the intrusive procedure contemplated by either proposal. The motivating factor for including this language in the contract is federal law. In the judgment of this Arbitrator, the parties should proceed slowly when developing contract procedures for dealing with substance abuse. A careful review of the comprehensive language offered by both parties revels that the Guild's approach provides the least intrusive method to meet the requirements of federal law and address this important issue.

Adoption of the Guild's proposal will establish a leadership role with respect to controlling substance abuse and humane treatment of the members of this Department. At this stage of development of a substance abuse program, the Arbitrator concurs with the Guild that a rehabilitative approach is the preferred path to follow when first entering into this complex and controversial area of the law. The City has a legitimate objective in creating a policy for a drug free workplace. When the City is pursuing this legitimate objective, it is important to balance the employer's interest against the level of intrusion into an employee's personal

privacy. The absence of a demonstrable problem within this Police Department compels the Arbitrator to award the Guild's proposal which is carefully limited and reasonably designed to meet the legitimate needs of the City. If in the future, problems with drug and alcohol abuse warrant expansion of the policy, changes can be negotiated in this language in future contracts. Nothing in this record suggests the City of Pullman needs to be a leader in drug and alcohol testing policies in the state of Washington.

The Arbitrator concurs with the City that in one respect the Guild's proposal should be modified. Specifically, in Section 10 of the Guild's proposal the City is required to pay any costs over and above the insurance coverage for the initial treatment and rehabilitation of an employee. The City should not be required to write a blank check for treatment programs beyond that provided for in the insurance policy. The subject of treatment and the cost of paying for such treatment should be deferred until future contract negotiations.

Accordingly, the Arbitrator will award the Guild's proposal with the deletion from Section 10 of the proposal requiring the City to pay for the initial treatment program over and above what might be covered by insurance.

AWARD

The Arbitrator awards that the Guild's proposal shall become a part of the successor contract with one exception. Specifically, the Arbitrator deletes from Section 10 of the Guild's proposal the sentence which reads:

> Any cost over and above the insurance coverage shall be paid for by the City for the initial treatment and rehabilitation.

ISSUE 11: Prevailing Rights

A. Background

The status quo is represented by Article 15 which reads:

ARTICLE XV - PREVAILING RIGHTS

15.01 The Union agrees that the management and operation of the Department are that of the employer unless otherwise provided by the terms of this Agreement.

15.02 The Employer agrees that any and all working conditions, wages, hours and monetary benefits not covered by this Agreement shall be maintained at no less than the highest standards in effect previous to the time of signing of this Agreement.

15.03 No conditions, rights or privileges of either party are affected unless specifically mentioned in this Agreement.

The Guild proposed to continue present contract language. On the other hand, the City offered language which would substantially change the existing provisions. The City's proposed language would include a "laundry list of enumerated management rights."

B. The City

The City takes the position that the laundry list management rights provision has been in effect between the City and its other bargaining units and with the City's comparables. (City Ex. 65 & 67). In addition, the Guild has agreed to a laundry list type of management rights article with its Support Services unit. The Guild should also accept the long form provision with uniformed officers. The City submits that two different provisions on this subject would be confusing and clumsy when the Chief seeks to

administer the two separate contracts. Therefore, the Arbitrator should award what the Guild accepted for the Support Services staff.

C. The Guild

The Guild takes the position that the City's proposal should be rejected. According to the unrebutted testimony from Ron Miller, the current Guild president and shop steward for the Teamsters, there has been no problem with the prevailing rights article which has existed for 21 years. Since the City has not presented the arbitration panel with any reason to change the article, the current contract language should be preserved.

D. Discussion and Findings

Present contract language provides a direct statement that "the management and operation of the Department are that of the Employer unless otherwise provided by the terms of this Agreement." The Arbitrator was not persuaded the present language is a meaningless statement of the retained rights of the City. It is precise and to the point that unless bargained away in this Agreement, the City retains its prerogatives to operate the Police Department as it sees fit.

The City has proposed a significant change in the management rights article by moving from a basic statement of management prerogatives to a "laundry list" of exclusive prerogatives plus an incorporation of statutory rights into the contract. While there is some value in including a laundry list of

enumerated management rights in a collective bargaining agreement for purposes of clarification, the Arbitrator remains unconvinced that the City has offered sufficient evidence to make the substantial changes to the management rights article it seeks by this proposal. First, the existing language has been a fixture in the Collective Bargaining Agreement for 21 years. Second, the City was unable to point to a single situation in which the management rights clause has unduly restricted the ability of management to make decisions regarding police operations.

Third, there is no evidence the Guild or its predecessor has filed unfounded grievances because of the absence of a comprehensive and detailed management rights type of provision. In fact, there is no evidence that any grievances have been filed that were based upon the management rights article. Fourth, the Arbitrator remains unconvinced that the police chief would suffer significant problems because he would be forced to administer different provisions in this subject area for the two bargaining units.

Fifth, while the evidence on comparability would argue in favor of a more extensive management rights provision, the Arbitrator was not persuaded that problems with the existing language warranted taking the mammoth step from a basic statement of management rights to an all encompassing and extremely detailed management rights provision as proposed by the City.

In sum, the City has failed to demonstrate any problems with existing contract language. Absent a showing the existing

language is unworkable or unfair to the City, the Arbitrator is unwilling to award the substantial and significant changes sought in this article by the City.

AWARD

The Arbitrator awards that the existing language should remain in the successor Agreement without modification.

ISSUE 12: Pay Days

A. Background

Employees are currently paid on the last working day of the month. The City proposed to change the payday from the last working day of the month to the fifth working day but no later than the seventh calendar day. The Guild proposed to retain the current system that payday is the last working day of the month.

B. The City

The language proposed by the City for Article 30 reads as follows:

> Contingent upon the approval of all bargaining units within the City, payroll warrants shall be distributed on the fifth working day of the month next following the month for which salaries and wages are earned, as long as this date is no later than the 7th calendar day of the month. Said payroll warrants shall contain all pay elements claimed by the employee and approved by the department head through the last day of the prior month. A permanent employee may also request a salary draw to be disbursed on the twentieth day of each month, or the last regular workday preceding the twentieth. The amount of said draw shall not exceed one-half of the employee's regular monthly take-home salary, excluding such elements as overtime, holiday pay, and other non-recurring entitlements. The request for said draw must be for continuous months, be submitted prior to the 15th day of the effective month, and the draw amount may be changed only in the months of February and July. The draw amount shall be deducted from the employee's monthly payroll warrant.

The City argued that all other City bargaining units have agreed to this change in the day on which employees are paid. The City has also implemented this change with respect to all non-represented employees. The Guild has accepted this revised payday schedule in the new police Support Services Agreement. However, the City cannot implement this change unless it is done on a City wide basis. To adopt a payday schedule which is inconsistent among other employee groups would be administratively expensive and clumsy.

City witness Jack Tonkovich testified that the existing practice does not conform to state law, requirements of the retirement system, state department of labor and industries regulations, as well as those of the social security system. According to the City, the pay proposal would benefit Guild employees who earn overtime in the last week of the month and are currently not paid until the end of the following month. Tonkovich also testified without contravention that the mid-month draw would be of assistance to the employees.

The City's proposal should be awarded in order to bring Pullman into conformance with the federal and state laws and regulations concerning employee pay.

C. <u>The Guild</u>

The Guild maintains that the payday should continue to be the last working day of the month. While the City presented evidence as to the difficulty in calculating overtime and other accounting problems, the City did not explore any alternatives

which might also solve the problems with the payday set as the last day of the month. According to the Guild, the accounting problems presented by the City can be resolved without changing the payday. The Guild is willing to work with the City in seeking viable alternative methods of delivering the pay to employees. The Guild pointed to the testimony of officer Chris Tenant who stated that it would be a hardship on him to have the change in his payday. Officer Tenant testified that he has his house payment scheduled for the first working day of the month. By changing the payday his scheduled house payment would not coincide with the date he receives his salary check. Thus, the Arbitrator should award the existing contract language.

D. **Discussion and Findings**

The Arbitrator finds the City's proposal is warranted. This is another one of those issues where internal parity controls as it deals with a payroll system that is common to all employees of the City. All other bargaining units have accepted the City's proposed language. The City intends to implement the same type of system for non-represented employees.

The City's evidence and testimony of Jack Tonkovich established that there are some real legal problems with the current payroll system. (City Ex. 68 & 69). Adoption of this proposal will help to alleviate those accounting problems without causing substantial inconvenience to the members of this bargaining unit. While it is true some adjustments may have to be made by employees because they will not receive their checks on the last

working day of the month, the Arbitrator was not persuaded that objections from this bargaining unit should holdup the entire modernization of the payroll system.

The Arbitrator concludes the City's proposed language for Article 30 should be adopted.

AWARD

The Arbitrator awards the City's proposal which states as follows:

> Contingent upon the approval of all bargaining units within the City, payroll warrants shall be distributed on the fifth working day of the month next following the month for which salaries and wages are earned, as long as this date is no later than the 7th calendar day of the month. Said payroll warrants shall contain all pay elements claimed by the employee and approved by the department head through the last day of the prior month. A permanent employee may also request a salary draw to be disbursed on the twentieth day of each month, or the last regular workday preceding the twentieth. The amount of said draw shall not exceed one-half of the employee's regular monthly take-home salary, excluding such elements as overtime, holiday pay, and other non-recurring entitlements. The request for said draw must be for continuous months, be submitted prior to the 15th day of the effective month, and the draw amount may be changed only in the months of February and July. The draw amount shall be deducted from the employee's monthly payroll warrant.

Respectfully submitted,

Gary L. Axon

Gary L. Axon
Arbitrator
Dated: March 16, 1992

ATTACHMENT A

PULLMAN POLICE OFFICERS' GUILD

PROPOSAL

OCTOBER 15, 1991

DRUG AND ALCOHOL TESTING POLICY

The procedure outlined in this document for drug and alcohol testing shall become part of the current collective bargaining Agreement between the City of Pullman (the City) and the Pullman Police Officers' Guild (the Guild), and be covered by all applicable articles within that Agreement.

SECTION 01 POLICY:

In recognition and compliance with the Federal Drug-Free Workplace Act, and other applicable Federal Statutes, the City and the Guild are committed to a drug-free workplace and have an obligation to insure public safety and trust with regard to their services and programs. Accordingly, the manufacture, distribution, dispensation, unlawful possession, or use of a controlled substance or drug not medically authorized, which would impair job performance or pose a hazard to the safety and welfare of the employee, the public, or other employees; or the use of alcohol in the work place is strictly prohibited.

It is the goal of this policy to prevent, eliminate or absolve illegal drug usage through education and rehabilitation of the affected personnel.

SECTION 02 INFORMING EMPLOYEES ABOUT DRUG AND ALCOHOL TESTING:

All employees shall be fully informed of the City's drug and alcohol testing policy. Employees will be provided with information concerning the impact of the use of alcohol and drugs on job performance. In addition, the City shall inform the employees on how tests are conducted, what the test can determine and the consequences of testing positive for drug use. All newly hired employees will be provided with this information on their initial date of hire. No employee shall be tested before this information is provided to him/her.

SECTION 02 INFORMING EMPLOYEES ABOUT DRUG AND ALCOHOL TESTING: (continued)

Employees who voluntarily come forward and ask for assistance to deal with a drug and/or alcohol problem shall not be disciplined by the City. No disciplinary action will be taken against an employee unless he/she refuses the opportunity for rehabilitation, fails to complete the program successfully, or again test positive for drugs within two (2) years of completing an appropriate rehabilitation program.

SECTION 03 EMPLOYEE TESTING:

Employees shall not be subjected to random medical testing involving blood or urine analysis or other similar or related tests for the purpose of discovering possible drug or alcohol abuse. If however, objective evidence exists establishing reasonable suspicion to believe an employee's work performance is impaired due to drug or alcohol abuse, the City will require the employee to undergo medical test consistent with the conditions as set forth in this Policy.

SECTION 04 SAMPLE COLLECTION:

The collection and testing of the samples shall be performed only by a laboratory and by a physician or health care professional qualified and authorized to administer and determine the meaning of any test results. The laboratory performing the test shall be one that is certified by the National Institute of Drug Abuse (NIDA). The laboratory chosen must be agreed to between the Guild and The City. The laboratory used shall also be one whose procedures are periodically tested by NIDA where they analyze unknown samples sent to an independent party. The results of the employee tests shall be made available to the Medical Review Physician.

Collection of blood or urine samples shall be conducted in a manner which provides the highest degree of security for the sample and freedom from adulteration. Recognized strict chain of custody procedures must be followed for all samples as set by NIDA. The Guild and the City agree that security of the biological urine and blood samples is an absolute necessity, therefore, the City agrees that if the security of the sample is compromised in any way, any positive result shall be invalid and may not be used for any purpose.

SECTION 04 SAMPLE COLLECTION: (continued)

Blood and urine samples will be submitted as per NIDA Standards. Employees have the right for Guild and/or legal council representation to be present during the submission of the sample. Employees shall not be witnessed while submitting urine specimen. Prior to submitting a blood or urine sample, the employee will be required to sign a consent and release form as attached to this Policy (Attachment 1).

A split sample shall be reserved in all cases for an independent analysis in the event of a positive test result. All samples must be stored in a scientifically acceptable preserved manner as established by NIDA. All positive confirmed samples and related paperwork must be retained by the laboratory for at least six (6) months or for the duration of any grievance, disciplinary action or legal proceedings, whichever is longer. At the conclusion of this period, the paperwork and specimen shall be destroyed. Tests shall be conducted in such a manner that an employee's legal drug use and diet does not affect the test results.

SECTION 05 DRUG TESTING:

The laboratory shall test for only the substances and within the limits as follows for the initial and confirmation tests as provided within NIDA Standards. The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screenings specimens to determine whether they are negative for these five drugs or classes of drugs:

INITIAL TESTING

Marijuana metabolites	100 ng/ml
Cocaine metabolites	300 ng/ml
Opiate metabolites	300 ng/ml
Phencyclidine	25 ng/ml
Amphetamines	1,000 ng/ml

(1) If immunoassay is specific for free morphine, the initial test level is 25 ng/ml.

SECTION 05 DRUG TESTING: (continued)

If initial testing results are negative, testing shall be discontinued, all samples destroyed and records of the testing expunged from the employee's file(s). Only specimens identified as positive on the initial test shall be confirmed using gas chromatograph/mass spectrometry (GC/MS) techniques at the following listed cutoff values:

CONFIRMATORY TESTING

Marijuana metabolites (1)	15 ng/ml
Cocaine metabolites (2)	150 ng/ml
Opiates	
a. Morphine	300 ng/ml
b. Codein	300 ng/ml
Phencyclidine	25 ng/ml
Amphetamines	
a. Amphetamine	500 ng/ml
b. Methamphetamine	500 ng/ml

(1) Delta-9-tetrahydrocannabinol-9-carboxylic acid
(2) Benzoylecgonine

If confirmatory testing results are negative, all samples shall be destroyed and records of the testing expunged from the employee's file(s).

SECTION 06 ALCOHOL TESTING:

A breathalyzer or similar equipment shall be used to screen alcohol use if positive, shall be confirmed by a blood alcohol test performed by a qualified laboratory. This screening test shall be performed by an individual qualified through the Washington State Police Academy utilizing equipment certified by the State Patrol. An initial testing positive alcohol shall meet the standards as set forth in the Revised Code Of Washington (RCW) 46.61.502. If initial testing are negative, testing shall be discontinued, all samples destroyed and records of the testing expunged from the employee's file(s). Only specimens identified as positive on the initial test shall be confirmed using a blood alcohol level.

SECTION 06 ALCOHOL TESTING: (continued)

Sampling handling procedures, as described in SECTION 04, shall apply. A positive blood alcohol level shall meet the standards as set forth in the Revised Code Of Washington (RCW) 46.61.502. If confirmatory testing results are negative, all samples shall be expunged from the employee's file(s).

SECTION 07 MEDICAL REVIEW PHYSICIAN:

The Medical Review Physician shall be chosen and agreed upon between the Guild and the City and must be a licensed physician with a knowledge of substance abuse disorders. The Medical Review Physician shall be familiar with the characteristics of the test (sensitivity, specificity, and predictive value), the laboratories running the tests and the medical conditions and work exposures of the employees.

The role of the Medical Review Physician will be to review and interpret the positive test results. He must examine alternate medical explanations for any positive test results. This action shall include conducting a medical interview with the affected employee, review of the employee's medical history and review of any other relevant biomedical factors. The Medical Review Physician must review all medical records made available by the tested employee when a positive test could have resulted from legally prescribed medication.

SECTION 08 LABORATORY RESULTS:

The laboratory will advise only the employee and the Medical Review Physician of any positive results. The results of a positive drug or alcohol test can only be released to the City by the Medical Reviews Physician once he/she has completed his/her review and analysis of the laboratory's test. The City will be required to keep the results confidential and it shall not be released to the general public.

SECTION 06 ALCOHOL TESTING: (continued)

Sampling handling procedures, as described in SECTION 04, shall apply. A positive blood alcohol level shall meet the standards as set forth in the Revised Code Of Washington (RCW) 46.61.502. If confirmatory testing results are negative, all samples shall be expunged from the employee's file(s).

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SECTION 09 TESTING PROGRAM COSTS:

The City shall pay for all costs involving drug and alcohol testing as well as the expenses involved for the Medical Review Physician. The City shall also reimburse each employee for their time and expenses incurred including travel involving the testing procedure only.

SECTION 10 REHABILITATION COSTS:

Any employee who tests positive for illegal drugs or alcohol shall be medically evaluated, counseled and treated for rehabilitation as recommended by an E.A.P. counselor. Employees who complete a rehabilitation program may be re-tested randomly once every quarter for the following twenty-four (24) month period. An employee may voluntarily enter rehabilitation without a requirement of prior testing. Employees who enter the program on their own initiative shall not be subject to re-testing. The treatment and rehabilitation shall be paid for by the employee's medical insurance program. Any costs over and above the insurance coverage shall be paid for by the City for the initial treatment and rehabilitation. Employees who volunteer to enter the program will be granted necessary time off duty to complete the treatment and rehabilitation program without loss of pay or benefits. Employees who test positive shall be allowed to use any and all accrued and earned leave for the necessary time off involved in the rehabilitation.

If an employee re-tests positive during the twenty-four (24) month period, the employee will be re-evaluated by an E.A.P. counselor to determine if the employee requires additional counseling and/or treatment. The employee will be solely responsible for any costs not covered by insurance, which arise from this additional counseling or treatment.

SECTION 11 DUTY ASSIGNMENT AFTER TREATMENT:

Once an employee successfully completes rehabilitation, he/she shall be returned to his/her regular duty assignment. Once treatment and any follow-up care is completed, and three (3) years have passed since the employee entered the program, the employee's personnel file(s) shall be purged of any such reference to his/her drug or alcohol problem.

SECTION 12 RIGHT OF APPEAL:

The employee has the right to challenge the results of the drug or alcohol tests and any discipline imposed in the same manner he/she may grieve any other City action.

SECTION 13 GUILD HELD HARMLESS:

This drug and alcohol testing program was initiated at the request of the City. The City assumes the sole responsibility for the administration of this Policy and shall be solely liable for any legal obligations and costs arising out of the provisions and/or application of the collective bargaining agreement relating to drug and alcohol testing. The Guild shall be held harmless for the violation of any worker rights arising from the administration of the drug and alcohol testing program.

SECTION 14 CHANGES IN TESTING PROCEDURES:

The parties recognize that during the life of this Agreement, there may be improvements in the technology of testing procedures which provide more accurate testing. In that event,the parties will bargain in good faith whether to amend this procedure to include such improvements. If the parties are unable to agree on the amendments they will be submitted to impasse procedures as outlined in RCW 41.56.

SECTION 15 CONFLICT WITH OTHER LAWS:

This Article in no way intends to supersede or waive any constitutional or other rights that an employee may be entitled to under Federal, State or Local statutes.

ATTACHMENT B

CITY OF PULLMAN

ISSUE: DRUG AND ALCOHOL TESTING POLICY AND PROCEDURES ARTICLE 18

The procedures outlined in this document for drug and alcohol testing shall become part of the current bargaining agreement between the City of Pullman (the City) and the Pullman Police Officers Guild (the Guild), and be subject to all of it's terms and conditions.

SECTION 01 Policy: In recognition and compliance with the Federal Drug Free Workplace Act, and other applicable federal statutes, the City and the Guild are committed to a drug-free workplace and have an obligation to insure public safety and trust with regard to its services and programs. Accordingly, the manufacture, dispensation, possession or use of a controlled substance, drug not medically authorized, or other substance which would impair job performance or pose a hazard to the safety and welfare of the employee, the public, or other employees; or the possession or use of alcohol in the workplace is strictly prohibited.

The City and the Guild believe it is imperative that employees who abuse substances as defined, be aware of the seriousness of such misconduct and the potential penalties. All such employees are encouraged to receive help and treatment as necessary.

To comply with federal law, the City requires that an employee notify their supervisor of any criminal drug statute conviction for any violation occurring in the workplace no later than five (5) days after the conviction. If the employee is engaged in the performance of a federally sponsored grant or contract, the City must notify the agency within ten days of having received notice that the employee has been convicted of a drug statute violation occurring in the workplace. The City will take disciplinary action against or require the satisfactory participation in a state-certified alcohol or drug abuse assistance or rehabilitation program by any employee who is so convicted. Disciplinary action may include dismissal or other appropriate personnel action(s).

SECTION 02 Informing Employees About Drug and Alcohol Testing: All employees shall be fully informed of the City's drug and alcohol testing policy. Employees will be provided with information concerning the impact of the use of alcohol and drugs on job performance. In addition, the City shall inform the employees on how tests are conducted, what the test can determine, and the consequence of testing positive for drug use. All newly hired employees will be provided with this information on their initial

date of hire. No employee shall be tested before this information is provided to him/her.

SECTION 03 Employee Testing: Employees shall not be subjected to random medical testing involving blood or urine analysis or other similar or related tests for the purpose of discovering possible drug or alcohol abuse. If, however, objective evidence exists establishing reasonable suspicion to believe an employee's work performance is impaired due to drug or alcohol abuse or the employee reports to work under the influence of drugs or alcohol or is working under the influence of drugs or alcohol, the City will require the employee to undergo a medical test consistent with the conditions set forth in this policy. In the event that an off-duty officer is required to report for duty and believes that he/she may be impaired due to the consumption of alcohol or prescribed medication, the officer shall inform the duty supervisor. The supervisor may excuse the officer from duty with no threat of disciplinary action or other sanction; or the officer and the supervisor may agree that the officer shall be assigned to a duty which would not require public contact.

Due to the sensitive nature of the duties performed by individuals involved in evidence handling and narcotics investigations, they will be subject to greater scrutiny with regards to applying the reasonable suspicion standard.

SECTION 04 Sample Collection: The collection and testing of samples shall be performed only by a laboratory and by a physician or health care professional qualified and authorized to administer and determine the meaning of any test results. The laboratory performing the test shall be one that is certified by the National Institute of Drug Abuse (NIDA). The laboratory chosen must be agreed to between the Guild and the City. The laboratory used shall also be one whose procedures are periodically tested by NIDA wherein they analyze unknown samples sent to an independent party. The results of employee tests shall be made available to the Medical Review Physician.

Collection of blood or urine samples shall be conducted in a manner which provides the highest degree of security for the sample and freedom from adulteration. Recognized strict chain of custody procedures must be followed for all samples as set by NIDA. The Guild and the City agree that security of the biological urine and blood samples is an absolute necessity, therefore, the City agrees that if the security of the sample is compromised in any way, any positive test result shall be invalid and may not be used for any purpose. In this event, another sample may be taken.

Blood or urine samples will be submitted as per NIDA standards. Employees have the right for Guild and/or legal counsel representatives to be present during the submission of the sample. Employees shall not be witnessed while submitting a urine specimen. Prior to submitting a blood or urine sample, the employee will be

required to sign a consent and release form as attached to this policy (Attachment 1).

A split sample shall be reserved in all cases for an independent analysis in the event of a positive test result. All samples must be stored in a scientifically acceptable preserved manner as established by NIDA. All positive confirmed samples and related paperwork must be retained by the laboratory for at least six (6) months or for the duration of any grievance, disciplinary action or legal proceedings, whichever is longer. At the conclusion of this period, the paperwork and specimen shall be destroyed. Consideration shall be given to the employee's legal drug use and diet in the interpretation of test results.

SECTION 05 Drug Testing: The laboratory shall test for only the substances and within the limits as follows for the initial and confirmation tests as provided within NIDA standards. The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The following initial cutoff levels shall be used when screening specimens to determine whether they are negative for these five drugs or classes of drugs.

INITIAL TESTING

Marijuana metabolites	100 ng/ml
Cocaine metabolites	300 ng/ml
Opiate metabolites (1)	300 ng/ml
Phencyclidine	25 ng/ml
Amphetamines	1,000 ng/ml
L.S.D.	any detectable level

(1) If immunoassay is specific for free morphine, the initial test level is 25 ng/ml.

If initial testing results are negative, testing shall be discontinued, all samples destroyed and records of the testing expunged from the employee's file(s). Only specimens identified as positive on the initial test shall be confirmed using gas chromatograph/mass spectrometry (GC/MS) techniques at the following listed cutoff values:

CONFIRMATORY TESTING

Marijuana metabolites (1)	15 ng/ml
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Amphetamine	500 ng/ml
Methamphetamine	500 ng/ml
L.S.D.	any detectable level

(1) Delta-9-tetrahydrocannabinol-9-carboxylic acid
(2) Benzoylecgonine

If confirmatory testing results are negative, all samples shall be destroyed and records of the testing expunged from the employee's file(s).

Encompassing Language:

The substances and standards in this provision are subject to NIDA regulations and shall be updated as needed to comply with NIDA provisions.

SECTION 06 Alcohol Testing: A breathalyzer or similar equipment shall be used to screen for alcohol use and if positive, shall be confirmed by a blood alcohol test performed by a qualified laboratory. This screening test shall be performed by an individual qualified through the Washington State Police Academy utilizing equipment certified by the State Police and the standards set forth by Washington state law. If initial testing results are negative, testing shall be discontinued, all samples destroyed and records of the testing expunged from the employee's file(s). Only specimens identified as positive on the initial test shall be confirmed using a blood alcohol level. Sampling handling procedures, as described in section 04, shall apply. A positive blood alcohol level shall be that set forth by Washington state law. If confirmatory testing results are negative, all samples shall be destroyed and records of testing shall be expunged from the employee's file(s).

SECTION 07 Medical Review Physician: The Medical Review Physician shall be chosen and agreed upon between the City and the Guild and must be a licensed physician with a knowledge of substance abuse disorders. The Medical Review Physician shall be familiar with the characteristics of the test (sensitivity, specificity, and predictive value), the laboratories running the tests and the medical conditions and work exposures of the employees.

The role of the Medical Review Physician will be to review and interpret the positive test results. He/She must examine alternate medical explanations for any positive test results. This action shall include conducting a medical interview with the affected employee, review of the employee's medical history and review of any other relevant biomedical factors. The Medical Review Physician must review all medical records made available by the tested employee when a positive test could have resulted from legally prescribed medication.

SECTION 08 Laboratory Results: The laboratory will advise only the employee and the Medical Review Physician of any positive results. The results of a positive drug or alcohol test can only be released to the City by the Medical Review Physician once he/she has completed his/her review and analysis of the laboratory's test.

The City will be required to keep the results confidential and it shall not be released to the general public.

SECTION 09 Testing Program Costs: The City shall pay for all costs involving drug and alcohol testing as well as the expenses involved for the Medical Review Physician. The City shall also reimburse each employee for their time and expenses incurred, including travel, involving the testing procedure only.

SECTION 10 Rehabilitation Costs: Any employee who tests positive for illegal drugs or alcohol shall be medically evaluated, counseled, and treated for rehabilitation as recommended by an E.A.P. counselor. The city shall participate in the costs of such rehabilitation to the extent provided under the city-paid medical insurance coverage.

SECTION 11 Duty Assignment After Treatment: Once an employee successfully completes rehabilitation, he/she shall be returned to his/her regular duty assignment. Once treatment and any follow-up care is completed, and three (3) years have passed since the employee entered the program, the employee's file(s) shall be purged of any such reference to his/her drug or alcohol problem.

SECTION 12 Right of Appeal: The employee has the right to challenge the results of the drug or alcohol tests. Any discipline imposed may be appealed through the grievance procedure.

SECTION 13 Guild Held Harmless: This drug and alcohol testing program was initiated at the request of the City. The City assumes the sole responsibility for the administration of this policy and shall be solely liable for any legal obligations and costs arising out of the provisions and/or application of this collective bargaining agreement relating to drug and alcohol testing. The Guild shall be held harmless for the violation of any worker rights arising from the administration of the drug and alcohol testing program.

SECTION 14 Changes in Testing Procedures: The Parties recognize that during the life of this agreement, there may be improvements in the technology of testing procedures which provide more accurate testing. In that event, the parties will bargain in good faith whether to amend this procedure to include such improvements. If the parties are unable to agree on the amendments they may be submitted to impasse procedures as outlined in RCW 41.56.

SECTION 15 Conflict With Other Laws: This article in no way intends to supersede or waive any constitutional rights that an employee may be entitled to under Federal, State or local statutes.