

IN THE MATTER OF
SNOHOMISH COUNTY FIRE DISTRICT No. 7

AND

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,
LOCAL 2781

Date Issued: September 10, 1998

INTEREST ARBITRATION OPINION AND AWARD

OF

ALAN R. KREBS

Appearances:

SNOHOMISH COUNTY FIRE DISTRICT No. 7

Otto G. Klein, III

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,
LOCAL 2781

James H. Webster

IN THE MATTER OF

SNOHOMISH COUNTY FIRE DISTRICT No. 7

AND

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS,
LOCAL 2781

OPINION OF THE INTEREST ARBITRATOR

PROCEDURAL MATTERS

In accordance with RCW 41.56.450, an interest arbitration hearing involving certain uniform personnel of Snohomish Fire District No. 7 was held in Snohomish, Washington, on May 12, 1998. Rather than convening the three-person arbitration panel called for in the statute, the parties agreed to present this dispute to a single arbitrator. Snohomish County Fire District No. 7 was represented by Otto G. Klein, III, of the Summit Law Group. International Association of Firefighters, Local 2781 was represented by James H. Webster of the law firm Webster, Mraz & Blumberg.

At the hearing, witnesses testified under oath and the parties presented documentary evidence. There was no court reporter, and, therefore, the Arbitrator tape recorded the proceedings for the sole purpose of supplementing his personal notes.

The parties agreed upon the submission of post-hearing briefs. The Arbitrator received the briefs on August 12, 1998.

ISSUE

The Union represents about 36 of the uniformed employees in the District's Fire Department. The Union and the District are parties to a collective bargaining agreement which expired on December 31, 1996. They were unable to reach agreement on a new contract despite their efforts in negotiations. Only one matter remains at issue. The District proposed, and the Union resisted, amending the bargaining agreement by adding the following underlined language to §17.1 of their expired agreement:

17.1. Overtime pay rates shall be effective for all employees covered by this Contract who have worked over forty (40) hours in a seven (7) day cycle for employees assigned to eight and ten hour shifts, forty five hours for employees assigned to nine hour shifts, or two hundred four (204) hours in a twenty-seven day cycle, depending on which cycle they have been assigned.

The effect of the District's proposal would be to remove the additional compensation received by firefighters working the daily 9-hour shift, which is over and above the standard monthly wage received by other Department firefighters.

APPLICABLE STATUTORY PROVISIONS

Where certain public employers and their uniformed personnel are unable to reach agreement on new contract terms by means of negotiations and mediation, RCW 41.56.450 calls for interest arbitration to resolve their disputes. In interest arbitration, an arbitrator or arbitration panel adjudicates a resolution to contract issues regarding terms and conditions of employment, which are at impasse following collective bargaining negotiations. The parties agree that RCW 41.56.450 is applicable to the bargaining unit of firefighters involved here.

RCW 41.56.465 sets forth certain criteria which must be considered by an arbitrator in deciding the controversy:

RCW 41.56.465 Uniformed personnel--
Interest arbitration panel--Determinations--
Factors to be considered. (1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, it shall taken into consideration the following factors:

- (a) The constitutional and statutory authority of the employer;
- (b) Stipulations of the parties;
- (c) (i) ...
(ii) For employees listed in RCW 41.56.030(7)(e) through (h), comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state

of Washington, other west coast employers may not be considered;

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

(e) Changes in any of the circumstances under (a) through (d) of this subsection during the pendency of the proceedings; and

(f) Such other factors, not confined to the factors under (a) through (e) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. ...

* * *

RCW 41.56.430, which is referred to in RCW 41.56.465, reads as follows:

**RCW 41.56.430 Uniformed personnel--
Legislative declaration.** The intent and purpose of this 1973 amendatory act is to recognize that there exists a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

APPLICABLE PROVISIONS OF THE EXPIRED COLLECTIVE BARGAINING AGREEMENT

* * *

ARTICLE 10 Working Hours and Shifts

Section 10.1 - The District and the Union recognize that employees covered by this

Contract may be working in a standard eight (8) hour shift, a standard nine (9) hour shift, a standard ten (10) hour shift, or a standard twenty four (24) hour shift.

Section 10.2 - The standard eight (8) hour shift shall consist of five (5) consecutive work days, followed by two (2) days off. The standard schedule shall begin at 0800 hours on Monday and will run until 1700 hours with one (1) hour for lunch. (This shift will apply for employees of the rank of Probationary Fire Fighter and employees assigned to light duty activities only.)

Section 10.3 - The standard nine (9) hour shift shall consist of five (5) consecutive work days, followed by two (2) days off. The standard schedule shall begin at 0800 hours on Monday and will run until 1700 hours.

Section 10.4 - The standard ten (10) hour shift shall consist of four (4) consecutive work days followed by three (3) days off. This standard schedule shall normally begin at 0700 hours until 1700 hours or as mutually agreed upon by the Union and the District.

Section 10.5 - The standard twenty four (24) hour shift shall begin at 0800 hours on the specific day established by the District and such employees shall be on duty for twenty four consecutive hours. The shift schedule will be the MODIFIED DETROIT 56 HOUR WORK WEEK SCHEDULE.

Section 10.6 - Under the terms of the Fair Labor Standards Act the Employer and the Union do hereby agree that the work period for employees covered under this Contract shall be forty (40) hours in a seven (7) day cycle and two hundred four (204) hours in a twenty seven (27) day cycle.

Section 10.7 - The Union and the District agree that any employee covered under this contract on off duty hours is not required to remain in the range of the Fire District alarm system and is not required to respond to any alarms.

* * *

ARTICLE 17 Overtime Pay

Section 17.1. [See language in Issue section above]

* * *

Section 17.4 - Overtime shall be at the rate of one and one half (1 1/2) times the employees regular rate of pay and shall be paid in 15 minute increments of time.

* * *

ARTICLE 23 Salaries

Section 23.1 The ... monthly wage scale shall be as follows:

* * *	* * *
Firefighter 3	* * *
* * *	* * *

ARTICLE 24 Kelly Time

Section 24.1 The Modified Detroit 56 Hour Work Week Schedule requires the firefighter to work a standard fifty-six (56) hour week. Kelly Days shall be scheduled and earned in the same manner as Holiday and Vacation Time, in accordance with the procedures outlined in Article 14.

<u>YEAR OF CONTRACT</u>	<u>KELLY DAYS</u>	<u>WORK WEEK</u>
	* * *	
1996	10	51.46

BACKGROUND

The District provides fire suppression, rescue, emergency medical and paramedic services to an area of about 48 square miles in unincorporated parts of Snohomish County. It also contracts to provide fire protection to the city of Mill Creek. The District's fire chief, Richard Eastman, estimated that the District's population, based on figures put together for the Everett naval base's impact statement, is about 40,000 to 45,000. Richard Peters, the local Union president, testified that he was told when he was hired in 1991 that the service population was 55,000, and that is the figure used as the correct answer for a question on the population which is on the District's firefighter I exam. The District maintains seven fire stations, which is more than the average for a department of its size. The District staffing policy, which is referenced in the Agreement, is to maintain on duty a minimum of 11 career firefighters during the day, and 8 at night.

Of the 36 employees in the bargaining unit, 30 work a 24-hour shift. With their scheduled Kelly days off, these employees have a 51.46 hour workweek. The other six employees work on the day shift. The day-shift employees work from 8 a.m. until 5 p.m. Four of the day-shift employees work a 9-hour schedule amounting to a 45-hour workweek since they receive a paid lunch hour. They are required to have their lunch at the station. They must respond to calls during their lunch hour, though if their lunch

is interrupted, they may resume their lunch hour when they return to the station. Two of the day-shift employees are on probation, since they are in their first year of employment. Probationary employees on the day shift work a 40-hour workweek based on an 8-hour schedule with an unpaid lunch hour during which they are free to leave the station. Unlike other employees, the four day-shift employees working a 9-hour schedule receive an hour of overtime pay each day which is built into their schedule.

The District also utilizes volunteers and residents to provide service otherwise provided by firefighters. The volunteers are assigned to fire stations, but they live at home and generally work at jobs outside of the community. If there is an alarm and their station responds, the volunteers are called to come to the station and man the apparatus. The residents actually stay at the station and are supposed to be there from 5 p.m., when the day-shift employees leave, until 8 a.m., when the day-shift employees return. The residents have some flexibility in their hours depending on their personal work schedule or commitments. Many of the residents actually reside at the stations. Neither the volunteers nor the residents are considered by the District to be employees. Both are paid based on a point system which is not considered pay, but rather a reimbursement of expenses for items such as mileage on their vehicles, insurance and laundering of their uniforms. Chief Eastman testified that there are eight residents on duty each

night. Each is paid about \$27.50 per night. To provide coverage on weekend days, the District utilizes volunteers and residents and pays them at or near minimum wage for those hours.

OVERTIME PAY FOR 9-HOUR SHIFT EMPLOYEES

The District's current monthly base wage for a top-step firefighter is \$4214. For firefighters working a 24-hour shift, this breaks down to an hourly wage of \$19.10. Day-shift firefighters, because they work fewer hours, receive an hourly wage of \$24.30. For their ninth hour of work each day, day-shift firefighters receive an overtime wage of \$36.45 per hour. The current total annual cost of paying the four day-shift firefighters for their ninth hour of work each day is a total of \$39,444. If all six day-shift firefighters were off probation and at the top step, the annual cost of the ninth hour would increase to \$60,684. The additional annual cost to the District of paying the overtime rate for the ninth hour of work, rather than the base rate, is currently a total of about \$13,000, with a potential cost of about \$20,000. The District's proposal, if adopted, would end the practice of paying firefighters assigned to the daily 9-hour shift an overtime premium or any premium over the standard monthly firefighter salary for their regular 45-hour weekly schedule.

EMPLOYER'S FINANCIAL CONDITION

Chief Eastman testified that the bulk of the District's budget comes from property taxes, and it does not have large reserves. He further testified that the District paid cash out of current revenue for two stations that it recently built. Chief Eastman testified that during the past three years the District has purchased a new ladder truck, two new pumpers, and two new medic units.

DESIRABILITY OF 24-HOUR SHIFT vs. 9-HOUR SHIFT

Mr. Peters testified that the 24-hour shift is traditionally the normal shift in the fire services. Chief Eastman testified that the 24-hour shift is more attractive to firefighters than the day shift. The six least-senior firefighters occupy the day-shift positions. There is a letter of understanding in which the parties agreed that day-shift personnel can move to vacancies in 24-hour positions based on seniority. Mr. Peters testified that he knows of two day-shift firefighters who have left to take 24-hour positions with other departments. There are a variety of reasons why the 24-hour shift is more desirable than a 9-hour shift despite providing what amounts to a significantly lower monthly wage. Employees on a 24-hour shift typically work 8 days a month so they have to commute to work much less often than day-shift employees. Mr. Peters testified that day-shift personnel

are denied the continuity and family-type atmosphere that 24-hour employees have. He testified that whereas 24-hour personnel generally work with the same lieutenant and crew each shift, day-shift personnel have to work with three different crews and with different lieutenants who have perhaps different expectations. Moreover, day-shift personnel have considerably less days off to spend on personal or other activities.

COMPARABLE JURISDICTIONS

One of the primary standards or guidelines enumerated in RCW 41.56.465 upon which an arbitrator must rely in reaching a decision is a "comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of like employers of public fire departments of similar size on the west coast of the United States." The statute requires the use of comparable employers within the state of Washington if an adequate number of in-state comparable employers exists.

The parties agree that the following eight fire districts are comparable to the District at issue here:

<u>District</u>	<u>Employer's Representation of Population Served</u>	<u>Union's Representation of Population Served</u>
Snohomish County F.D. #1-11 (recently combined)	130,000	120,000
Snohomish County F.D. #12	46,000	42,000
King County F.D. #4	53,000	56,000
King County F.D. #11	43,000	40,000
King County F.D. #16	31,000	31,000
King County F.D. #36	45,000	44,000
King County F.D. #40	38,000	38,000
King County F.D. #43	36,500	45,000

In addition, the District advocates that the following fire district should be viewed as comparable:

<u>District</u>	<u>Employer's Representation of Population Served</u>	<u>Union's Representation of Population Served</u>
Snohomish County F.D. #8	35,000	29,000

The Union would add the following city fire departments as comparable:

	<u>Population</u>
Bothell	30,000
Edmonds	31,000
Lynnwood	32,000
Mountlake Terrace	26,000

Of the employers suggested as comparable by the parties, employees classified as firefighters work exclusively 24-hour shifts, except in Snohomish County Fire Districts Nos. 8 and 12, and King County Fire District No. 43. In Snohomish County Fire

District No. 8, five firefighters work a 45-hour week and receive overtime pay only if their workweek exceeds 45 hours in a week. In Snohomish County Fire District No. 12, nine firefighters work a schedule of four 10-hour days per week. They receive overtime pay for hours worked beyond 40 in a week. In King County Fire District No. 43, two firefighters work a 45-hour workweek. These two individuals receive a 10 percent premium above the standard firefighter rate.

Chief Eastman testified that Snohomish Fire District No. 4, a neighboring jurisdiction with which he had some discussions about contracting for service, utilizes a 45-hour schedule and pays overtime only after 45 hours. The District does not assert that Snohomish Fire District No. 4 is a comparable jurisdiction.

POSITION OF THE DISTRICT

The District contends that firefighters assigned to a 45-hour weekly schedule should receive the same monthly compensation as the firefighters working a 24-hour shift. In other words, the District's position would eliminate not only overtime pay for the ninth hour of work in a day, but also any additional compensation for that hour over and above the standard monthly wage rate for firefighters which is contained in the Agreement. The District observes that under the Fair Labor Standards Act, 29 U.S.C. §553.220, firefighters can work various work cycles of more than

the traditional 40-hour workweek without receiving overtime pay. The District alleges that the practice of the comparable jurisdictions supports its proposal. The District points out that none of the three comparable fire departments that have day-shift firefighters pay overtime to firefighters for working any part of their regular shift. The District also points to the practice of Snohomish Fire District 4, where firefighters work a 45-hour shift and are paid in the same fashion as the District proposes in this proceeding. The District maintains, while District 4 is not comparable with this department, its proximity and the fact that it "almost merged with the District" makes its practice an "other factor" encompassed by the Act, and thus relevant to this proceeding. The District notes that its 45-hour firefighters receive a premium of 18.75 percent above the standard monthly pay, almost twice the size of the only other district that pays any premium at all. The District maintains that the factor of internal equity favors its position. In this regard, it asserts that, in essence, the 9-hour shift firefighters work the same amount of time as the 8-hour shift firefighters, but receive a premium that amounts to almost \$10,000 per firefighter above the amount received by the 8-hour firefighters. Also, the "blended" average hourly rate paid to 9-hour firefighters, including the overtime premium, works out to those firefighters receiving about 35 percent more per hour than the 24-hour shift firefighters. Further, even for their first 40

hours of work, the firefighters working the 9-hour shift make more money on an hourly basis than do lieutenants and almost as much as battalion chiefs. The District maintains that the day-shift jobs are entry-level positions, and a shift premium is not needed in order to get people to accept these positions.

POSITION OF THE UNION

The Union contends that the District's proposal to reduce weekly compensation for firefighters who are assigned the least desirable work schedule should be rejected. It reasons that the District's proposal would undermine morale. The Union argues that the 9-hour schedule's disadvantages outweigh the five hours of weekly overtime pay which attaches to the assignment under conditions negotiated by the parties in prior agreements. These disadvantages include more frequent commuting, less opportunity for shift trades, and having to adapt to varying supervisors and peers on different 24-hour shifts. The Union alleges that the District's utilization of day-shift personnel furthers the District's improper compensation agreement with "residents." According to the Union, the District's arrangement with residents violates federal law, 29 U.S.C. §203(e)(4)(A) and 29 CFR §553.103(a), because an individual may not be employed as a firefighter and serve as a volunteer for the same public agency. The Union further argues that the District's proposal is not

supported by comparisons with firefighters of comparable fire departments. In this regard, the Union asserts that only 2 of the 13 comparable employers identified by the Union utilize a 9-hour shift schedule, and only one of those does so without paying a substantial wage premium to firefighters so assigned. Finally, the Union suggests a reduction in wages is unjustified given the District's robust financial health, as evidenced by its new stations and equipment paid for out of operating revenues, and its operation of a higher than average number of stations considering the District's size.

DISCUSSION

The District and the Union in previous collective bargaining negotiations agreed to provide an hour of overtime to firefighters assigned on a daily basis to work nine hours. Presumably, that past agreement was reached voluntarily as part of an overall compromise deemed by the parties to be sufficiently fair to be adopted. The District bears the burden of establishing sufficient justification for a change in this previously reached bargain. For the reasons described below, I find that there is insufficient basis for diminishing the overtime benefit provided to employees working a 9-hour shift.

The District relies on the statutory criteria of comparability as well as "internal equity," which is a factor

frequently considered by arbitrators. I am not persuaded that either of these criteria warrants a reduction in the existing benefit. Of the eight fire departments which the parties agree are comparable to the District and of the five additional jurisdictions suggested by one or the other party,¹ only two fire departments maintain a 9-hour daily shift.² Neither of these two jurisdictions, Snohomish County Fire District No. 8 and King County Fire District No. 43, provides a pay premium as generous as the District here, though District No. 43 does provide a 10 percent premium to firefighters working the 45-hour shift. However, none of the other suggested or agreed upon comparable jurisdictions permit the employer to assign a daily work schedule of nine hours. Rather, firefighters in all those other districts generally work a traditional 24-hour firefighter schedule.

Thus, only a very small minority of even the comparable jurisdictions suggested by the District supports its position that it should be able to assign a five day/9-hours-per-day schedule without the payment of overtime. The District's suggestion that the Arbitrator should only focus on the two

¹ Based on the single issue presented and the practice of the agreed-upon comparable employers, as supplemented by any combination of suggested additional comparable employers, I find no reason to lengthen this Decision with a discussion of which fire departments are or not comparable to the District here.

² In addition, Snohomish County Fire District No. 12 employs firefighters to work a schedule of four 10-hour days per week. There, firefighters on that schedule receive overtime for working beyond 40 hours in a week. Here, the Agreement allows Snohomish County Fire District No. 7 to assign such a shift under the same conditions. Snohomish Fire District No. 4 is not a comparable jurisdiction, as the District concedes. No statistics regarding Snohomish Fire District No. 4 were proffered. The significance of vaguely described unfruitful discussions between Fire District No. 7 and Fire District No. 4 regarding contracting for services cannot be determined. Based on the limited evidence presented regarding District No. 4 which makes any comparison with District No. 7 particularly conjectural, significant weight cannot be accorded to that admittedly non-comparable fire district.

jurisdictions that allow such a regular schedule ignores the fact that the Union has in the past negotiated a significant concession by permitting a five day/9-hours-per-day schedule, which is contrary to the practice in most other comparable fire departments. It is undisputed that this schedule is a very undesirable schedule for firefighters, even with the overtime compensation which was previously negotiated. Only the least senior employees work this schedule, and they switch to the 24-hour schedule as soon as an opening exists for which their seniority qualifies them. They transfer despite the loss of the overtime premium, since no such premium is built into the 24-hour schedule. There was no evidence that any employees working the 24-hour shift have ever sought to transfer to the 9-hour shift despite the significantly higher total compensation which the daily shift provides. Moreover, two employees on the 9-hour schedule transferred to other fire departments to work 24-hour shifts. It is understandable that the parties negotiated not only the District's right to establish such an undesirable shift for firefighters, but concomitant premium pay for that shift. That one allegedly comparable jurisdiction provides no premium for such a shift, and an agreed upon comparable jurisdiction provides a lesser premium hardly establishes any sort of trend. Rather, it indicates that while most comparable jurisdictions do not have a daily 9-hour schedule for firefighters, the few that do all have different methods of compensating that schedule. In

these circumstances, it cannot be said that the District's compensation for this schedule is out of line with comparable jurisdictions.

The District's internal equity arguments are also not persuasive. Hourly pay for firefighters working 24-hour schedules with "Kelly" days off cannot be fairly compared with hourly pay for employees working a 5-day-per-week schedule. Employees working a daily schedule do not sleep at the fire station during their assigned shift. Work assignments for firefighters in the evening may not be the same as day-time assignments. As a result of the recognized special characteristics of 24-hour shifts, firefighters routinely have regular workweeks which exceed 40 hours and do not necessitate overtime. That is different than most of the rest of the nation's work force for which overtime is standard after 40 hours. In these circumstances, it is neither surprising that a department which employs both firefighters working 24-hour shifts and firefighters working daily 8-hour shifts pays each the same monthly salary, nor that it pays overtime to daily employees for working more than 8 hours in a day, while not providing such overtime to those working the regular 24-hour shifts. There is just little significance to a comparison of hourly pay rates of firefighters on 24-hour shifts traditional to fire services with hourly pay rates of firefighters working a daily schedule in the same manner as the rest of the population.

The additional compensation which 9-hour employees earn in relation to the 8-hour employees was apparently negotiated to reflect the additional hour which the 9-hour employees must remain in the fire station, as well as perhaps the probationary status of the 8-hour employees. Your Arbitrator does not find it to be inherently unreasonable that the 9-hour employees would receive additional overtime compensation for remaining on duty during their ninth hour of their daily schedule. Indeed, this practice is consistent with Sections 10.6 and 10.7 of the Agreement, where the parties recognized that the work period for employees is 40 hours in a 7-day cycle and 204 hours in a 27-day cycle and that employees on off-duty hours are not required to respond to alarms. The District can avoid overtime under their negotiated agreement if it assigns a schedule of either five 8-hour days, four 10-hour days, or the 24-hour shifts with "Kelly days."

Finally, ability of the employer to pay is a factor often considered by interest arbitrators. Here, there is no contention that the District is unable to continue to pay the overtime benefit to firefighters working a daily schedule of 9 hours. In fact, the District's recent addition of two new stations and its purchase of expensive equipment without incurring any debt reflects a healthy economic situation.

In sum, the District's proposal to remove the previously negotiated overtime pay for firefighters assigned to the 45-hour

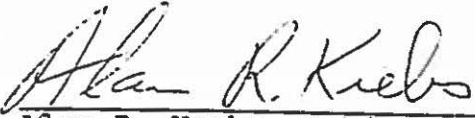
shift is not sufficiently supported considering the referenced governing standards set forth in RCW 41.56.465. Neither consideration of the practice of allegedly comparable jurisdictions, nor of other factors normally considered by arbitrators, such as internal equity and ability to pay, justifies a change in the existing language.

AWARD OF THE INTEREST ARBITRATOR

There shall be no change in Article 17, §17.1.

Redmond, Washington

Dated: September 10, 1998


Alan R. Krebs, Arbitrator