IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN	**INTEREST ARBITRATION OPINION AND AWARD**
CITY OF ISSAQUAH, WASHINGTON	**PERC Case No. 13797-I-98-296**
and	**Dispute: Steps E & F on Salary Schedule for Police Officers**
TEAMSTERS UNION, LOCAL NO. 763	**Date: March 10, 1999**

OPINION OF THE INTEREST ARBITRATOR

PROCEDURAL MATTERS

The Arbitrator, Michael H. Beck, was selected by the parties to conduct an Interest Arbitration pursuant to RCW 41.56.450. The parties waived their right to appoint panel members and this matter was submitted to the undersigned as the sole Arbitrator.

A hearing in this matter was held at Issaquah, Washington on December 17, 1998. The Employer, City of Issaquah, was represented by Cabot Dow of Cabot Dow and Associates. The Union, Teamsters Union, Local No. 763, was represented by Michael R. McCarthy of the law firm of Davies, Roberts & Reid, L.L.P.

The parties did not provide for a court reporter and agreed to waive the statutory requirement contained in RCW 41.56.450 that a recording of the proceedings be taken.

At the hearing the testimony of witnesses was taken under oath and the parties presented substantial documentary evidence. The parties agreed upon the submission of simultaneous posthearing briefs which were timely filed and received by the Arbitrator on January 22, 1999. The parties agreed to waive the statutory requirement that the Arbitrator issue his decision within 30 days following the conclusion of the hearing.

ISSUE IN DISPUTE

During their most recent negotiations, the parties were able to reach agreement on all but one issue. The parties determined to execute a collective bargaining agreement (hereinafter the Current Agreement), effective January 1, 1998 and remaining in force and effect through December 31, 2000. With respect to the one issue, mediation failed and the Public Employment Relations Commission certified the following issue for Interest Arbitration:

> Whether Steps E and F on the Salary Schedule will continue to be merit steps, or will be converted to regular steps. (Joint Exhibit A.)

STATUTORY CRITERIA

RCW 41.56.465 directs the Arbitrator in making his decision to "be mindful of the legislative purpose enumerated in RCW 41.56.430 . . . [and to] take into consideration the following factors:"

> (a) The constitutional and statutory authority of the employer;
> (b) Stipulations of the parties;
> (c)(i) For [law enforcement officers] 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;
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> * * *
>
> (d) The average consumer prices for goods and services, commonly known as the cost of living;
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> (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. For those [law enforcement officers] who are employed by the governing body of a city or town with a population of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living.
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> * * *

The legislative purpose your Arbitrator is directed to be mindful of in making his determination is set forth in RCW 41.56.430 as follows:

> 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. (Reviser's note omitted.)

BACKGROUND

The bargaining unit presently consists of 17 law enforcement officers. Appendix A of the Current Agreement provides for a six-step wage rate progression, namely, Step A through Step F. The Agreement indicates that the Step A rate is to be paid during the employee's first six months of employment. The rate then increases step by step with the Step B rate being paid through 18 months of employment, the Step C rate is paid through

30 months of employment, and the Step D rate is paid through 42 months of employment. With respect to Step E and Step F, the two steps in dispute here, the Agreement provides that Step E will be in effect through the 54th month of employment and Step F provides that it will be in effect commencing with the 55th month of employment.

Although each step sets forth the period during which the rate attached to it is to be paid, the Agreement does provide different standards with respect to moving through Step D on the one hand, and through Step E and Step F on the other. Thus, Section A.2 of the Appendix A of the Current Agreement provides as follows:

> A.2 Steps A to B, B to C and C to D are STEP increases which become effective upon completion of the specified months of employment identified in Section A.1. These STEP increases are based on the employee performing adequately at a satisfactory rate of improvement.
>
> A.2.1 STEPS D to E and E to F are performance STEP increases. Pay at these levels shall be only for sustained, superior, outstanding skill and ability, effectiveness and results. These increases must be approved by the Department Head and City Administrator, subject to final authority by the Mayor, which shall not be subject to the grievance procedure.
>
> A.2.2 Section A.2.1 is subject to the parties resolving the issue in arbitration and may be modified by such arbitration

Section A.5 of the Agreement is also relevant to the instant dispute and provides as follows:

> A.5 Master Employee – All employees who have attained STEP F are eligible for a "Master Employee" merit payment. Pay at this level shall be only for performance which clearly and consistently exceeds overall job requirements and standards. This payment shall be approved by the Department Head and City Administrator, subject to final authority by the Mayor, which shall not be subject to the

> grievance procedure. Such payment is effective only for one (1) year. Employees who are approved for a "Master Employee" merit payment shall receive up to five percent (5%) of their annual salary by the end of the pay period for January 31st of the following calendar year.

The Union proposes that Section A.2 be modified so as to read as follows:

> All step increases become effective upon completion of the specified months of employment identified in Section A.1. These step increases are based on the employee performing adequately at a satisfactory rate of improvement. (Union brief, pg. 3.)

Additionally, the Union's proposal calls for the deletion of Section A.2.1. The Employer proposes no change to Appendix A.

The Union's proposal calls for employing the same standard for advancement between Step E and Step F as is called for by the present contract language for advancement between Step A through Step D. Under the Union's proposal, all step increases are to "become effective upon completion of the specified months of employment identified in Section A.1." Furthermore, the step increases are to be based on the "employee performing adequately at a satisfactory rate of improvement."

In support of its position the Union points out that under Section A.2.1 not only does the employee have to demonstrate sustained, superior performance for advancement to Steps E and F, but unlike advancement to Steps B, C, and D, the Employer's determination is not subject to the grievance procedure. In this regard, the Union points out that the Employer has taken the position that no only can it delay or deny advancements to Steps E and F, but it can, at its own discretion, revoke an advancement

to Step E and to Step F at any time it finds an employee is no longer performing in accordance with the standards set forth in Section A.2.1 of the Agreement.

The Employer, on the other hand, contends that the parties' bargaining history, as well as its fair administration of Section A.2.1 of the Current Agreement and predecessor agreements support the Employer's position that the language of Appendix A should remain unchanged. The evidence of bargaining history presented by the parties indicates that as far back as 1975, the parties' collective bargaining agreement had five salary steps, and step increases, in addition to time in service, were subject only to "the recommendation of the Department Head."

Commencing with the 1980-82 agreement, the parties agreed to add a sixth step but also agreed that advancement to the fifth and sixth step, namely Step E and Step F, would be based on the same sustained, superior performance criteria presently included in the Current Agreement. Additionally, the 1980-82 agreement also provided that the Employer determination with respect to advancement to Step E and Step F would not be subject to the grievance procedure. Furthermore, the 1980-82 agreement provided for the first time the same standard for advancement between Step A and Step D, which is presently contained in the Current Agreement.

Leon Kos, the Employer's City Administrator, testified that he participated in the bargaining for the 1980 agreement. It was his uncontroverted testimony that the Employer agreed to a sixth step (Step F) and a salary increase for that step beyond that previously received by the top step police officer. He further testified that in return for this additional step and pay, the Union agreed that the last two steps would become "merit" steps rather than steps based merely on satisfactory performance, and therefore,

the parties included the language which has continued from agreement to agreement and which is now before the Arbitrator.

With respect to the Employer's administration of the merit language in connection with Step E & F, Police Chief Dwayne A. Garrison, who has been Police Chief for 22 years at Issaquah, testified that he believes the Employer has employed a "fair system," pointing out that there have been delays in receiving advancement to Step E or F in less than 5% of the cases. In this regard, the Union admits that presently each of the employees entitled to be at Step E or F, based on their time in grade, are in fact at these steps.

DISCUSSION

The current Agreement effective January 1, 1998 through December 31, 2000 is the first collective bargaining agreement covering police officers that was subject to the state interest arbitration provisions for uniformed personnel. Prior to July 1, 1995, in order for law enforcement officers to qualify for interest arbitration, they had to be employed by a city with a population of 15,000 or more. Issaquah is a city whose population is approximately 9,600. The parties' prior collective bargaining agreement (Union Exhibit No. 10) was effective January 1, 1995 at which time the applicable statute (RCW 41.56.030) still contained the requirement that only law enforcement officers employed by a city with a population of 15,000 or more were eligible for interest arbitration.

In 1988 and again in 1993 the City contracted for and received detailed job classification and salary studies with respect to its overall workforce. The 1988 study

selected nine cities as comparable to Issaquah. The 1993 study eliminated four of the cities selected in 1988 and selected four other cities as comparable to Issaquah. In 1997 there was apparently another classification study performed for the Employer, although the study itself is not in the record. The 1997 Employer study resulted in the selection of 11 comparable cities, five of which had not been selected in either 1988 nor 1993 as comparable cities.

After 1988, the City and the Union used as guidelines in bargaining the comparators which resulted from the 1988 study. The parties followed the same procedure after the 1993 classification study, that is using the comparators selected by that study as guidelines in negotiations thereafter until 1997 when a new list of comparators was selected by the Employer. During the course of the three classification studies, 18 separate cities were identified as comparable cities. The Union proposes that to the extent the Arbitrator needs to rely on comparable cities, these 18 cities should be used as the comparable cities. In this regard, the Union contends that since these 18 cities have been used in the past by the Employer and the Union to assist them in bargaining, these 18 cities amount to a stipulation of the parties pursuant to RCW 41.56.465(b).

The Employer contends that 18 cities are an unmanageable number of cites to be used as comparators. Further, the Employer points out that the comparable cities selected in the past were done for bargaining with respect to all city employees and not for employees eligible for interest arbitration. Thus, the Employer has selected 10 cities out of the 18 cities used in the past which it considers to be the appropriate comparators for this interest arbitration. In this regard, the Employer states in its brief that it selected "the 10 cities most similar in size as to population and assessed valuation to the City of

Issaquah from the cities used by the City in past City-wide classification and pay studies." (Employer's brief pg. 7-8.) The ten cities selected by the Employer, in alphabetical order are: Bonney Lake, Des Moines, Enumclaw, Lacey, Marysville, Mill Creek, Mountlake Terrace, Mukilteo, Snohomish, and Tumwater. The additional eight cities selected by the Union but not selected by the Employer are: Bothell, Kirkland, Mercer Island, Puyallup, Redmond, SeaTac, Sumner, and Tukwila.

I find it unnecessary in order to decide the issue before me to make a determination of appropriate comparators. Thus, even if I were to assume for purposes of argument that the Employer's selected comparators were appropriate, an examination of the relevant evidence regarding these comparators supports the Union's position. In this regard, I note that seven of the Employer comparators provide a six step salary schedule as in the case in Issaquah. One comparator (Lacey) provides for a seven step salary schedule, while two comparators (Des Moines and Mukilteo) have a five step salary schedule. From the foregoing, it is clear that each comparable city requires its police officers to go through the same or similar number of steps to get to the top step. Additionally, the time period involved in reaching the top step in the ten comparators is similar to that at Issaquah. At Issaquah a police officer reaches the top step after 4.5 years, while in six of the ten comparators it takes 5 years to reach the top step and only 4 years in three of the comparators (Bonney Lake, Des Moines, and Mukilteo). It takes 8 years to reach the top step in Snohomish. Thus, nine of the ten comparators are similar to Issaquah in that it takes either 4 or 5 years to reach the top step.

Only Issaquah, however, requires that the last two steps be awarded, "only for sustained, superior, outstanding skill and ability, effectiveness and results." Furthermore,

of the ten comparators, six have no language limiting movement from step to step except for completing the period of time called for by the agreement to move to the next step. Three cities (Des Moines, Mountlake Terrace and Mukilteo) have similar language to that contained in Appendix A, Section A.2 of the Issaquah Agreement with respect to advancements through Step D, namely, a record of satisfactory performance in the prior step. One comparator, Mill Creek, requires that the employee's "performance consistently meets standards, expectations, and requirements of the position." While this language is arguably more specific than that contained in the Issaquah agreement with respect to Steps A-D or in the other three agreements which generally require satisfactory performance, it is, in effect, similar to satisfactory performance language. Furthermore, the Mill Creek language does not require an employee to meet the sustained, superior performance standard required at Issaquah for advancement to the last two steps.

The City contends that the top step police officer salary at Issaquah (Step F) is 7.4% higher than the average top step of the comparators. Further, the City contends that this difference justifies, in light of the bargaining history described earlier in this Opinion, the retaining of the merit steps at Issaquah. Put simply, in the City's view the merit step increases were bought with additional money and should be retained by the Interest Arbitrator.

However, as the Union points out, the economic issue have been settled by the parties having concluded the Current Agreement. All that remains for your Interest Arbitrator is to resolve the question of whether Steps E and F on the salary schedule will continue to be merit steps or will be converted to regular steps. Furthermore, even if economic comparators were appropriate here, top step monthly salaries is not a sufficient

basis on which to make an economic comparison of employees at comparable employers since arbitrators in making such comparisons generally will use an hourly rate of pay, which takes into account salary received for the number of hours the employee is required to work. Additionally, at a minimum, this computation would include additional pay such as longevity and educational incentive. The Employer has not provided an analysis in this regard.

The negotiations for the current Agreement were the first negotiations between the parties here which were subject to resolution by interest arbitration. As the Union points out in its brief, it simply had no opportunity previously to submit the issue in question here to a third party for resolution and, ultimately, had to agree to the Employer's determination of the manner in which the issue should be resolved. Thus, the fact that in the past advancement to Steps E and F required a different and more exacting standard than advancement to Steps B, C, and D does not require a contrary result from the one I have reached here.

The record does not establish arbitrary, capricious, or unreasonable conduct by the Employer in connection with its administration of the merit system with respect to advancement to Steps E and F. However, this fact is really beside the point because what the Union is seeking here is advancement to Steps E and F on the same basis as advancement to Steps B, C and D. In this regard, the comparators, even those selected by the Employer, clearly support the Union's position.

Finally, I note that my decision in this case does not disturb the merit increase provisions with respect to the Master Employee contained in Appendix A, Section A.5. Pursuant to that section, the Employer is free to provide for a merit increase of up to 5%

of annual salary for employees who demonstrate "performance which clearly and consistently exceeds overall job requirements and standards." This payment is at the Employer's discretion and is not subject to the grievance procedure. My decision in this case allows police officers to receive step increases in a manner similar to those received by police officers in the Employer selected comparable jurisdictions, but still allows the Employer to provide a financial incentive for extraordinary performance through the Master Employee provision, without the Employer's determination being subject to the grievance procedure.

AWARD OF THE INTEREST ARBITRATOR

It is the Award of your Interest Arbitrator that Steps E and F on the salary schedule of the parties 1998-2000 Agreement (the Current Agreement) shall be converted to regular steps.

Dated: March 10, 1999

Seattle, Washington

Michael H. Beck, Interest Arbitrator