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IN INTEREST ARBITRATION

Between

TEAMSTERS LOCAL UNION NO 117
(Union, Teamsters)

-and-

THE PORT OF SEATTLE
(Employer, Port)

Re: 2000 - 2002 Agreement Terms

Representatives:
For the Union:
Spencer Nathan Thal

For the Employer:
Otto G. Klein, III

OPINION, DECISION AND AWARDS

by

Kenneth M. McCaffree
P.O. Box 10459
Bainbridge Island, WA 98110

Case No: PERC 15432-1-00-348

Dates of Hearing: Mar 22-23; 26-28; Apr 17-18, 2001

Place of Hearing: Seattle, WA

Date of Award: Sept 20, 2001

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I. INTRODUCTION

A. NATURE OF PROCEEDINGS

These proceedings arose under the Public Employees Collective Bargaining Act of Washington (the "Act"). The Union and the Port are parties to a collective bargaining agreement covering the Police Officers bargaining unit whose term expired on December 31, 1999. These parties began negotiations for a new agreement in the summer of 1999 but were unable to reach agreement on a new contract by the summer of 2000. At this time the issues in dispute were submitted to mediation through the Public Employment Relations Commission (PERC). However, after a

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reasonable period of mediation the parties were still unable to reach agreement on the terms of a new collective bargaining agreement. Accordingly on October 17, 2000, the Executive Director of PERC certified certain issues for binding interest arbitration. The parties selected the undersigned as the neutral arbitrator to conduct the arbitration hearing and to render a final and binding decision on the unresolved issues. This arbitration ensued pursuant to the Act (U 3; T 1, p 5:20-25).

B. THE BARGAINING UNIT

The arbitration concerned the hours, wages and conditions of employment of the bargaining unit that consisted of the uniformed commissioned police officers below the rank of Sergeant and employed by the Port (U 1, p 1). These officers are assigned duties in connection with the operation of the Seattle-Tacoma International Airport ("SEA-TAC") and for work in the seaport and harbor areas of Seattle. The Port of Seattle Police Department has jurisdiction at SEA-TAC, the Marine Terminals, and at other related properties owned and or operated by the Port, although by statute its jurisdiction extends throughout King County and across the state in accord with the Washington Mutual Aid Peace Officer Powers Act of 1985 (U 9).

The Department has an authorized strength currently of 99 fully commissioned officers, of which 79 are officers below the rank of Sergeant. Of these authorized positions, all were filled except for two, giving a current staff of 77 officers (U 10, 12; E 42-44). These officers are assigned to two divisions: the Administrative Division, where nine officers are in the Investigations Section and three in the Support Services Section (U 11; E 42). The remaining officers work in the Police

Services Division that includes the uniformed police patrol and related special teams and units.

C. APPLICABLE STATUTORY PROVISIONS: THE ARBITRATORS'S TASK

As set forth in RCW 41.56.430 and Chapter 131, Laws of 1973, there exists a public policy against "strikes by uniformed personnel as a means of settling their labor disputes" and calls for an "effective and adequate alternative means of settling disputes" (E 20). Following efforts to resolve disputed issues by mediation, the interest arbitration process concludes the "alternative means" for settling disputes in the absence of work stoppages. The law prescribes the decisions of the interest arbitration panel as final and binding, except for court challenge solely on the grounds that the decision was arbitrary or capricious (E 21). However, the legislature saw fit to provide "additional standards or guidelines to aid it (the interest arbitration panel) in reaching a decision" and in RCW 41.56.465 directs the arbitrators to take into consideration the following factors:

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

(b) Stipulations of the parties;

(c)(i) ... (A) 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 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. ....

In this context, the interest arbitration process is a straightforward extension of the collective bargaining of the parties and not a separate independent activity of its own. Such a view however places a heavy burden on the arbitrators, for it requires of them an attempt to ascertain what the parties would have done in the absence of the prohibition of strikes and lockouts and in the presence of an open private sector free labor market environment. As I wrote elsewhere, "at best a decision (under these circumstances) will seldom be more than a rough approximation of this goal" (Thurston County, McCaffree, 1999, p_4). Most subject to error are judgments on the relative "holding power" or "bargaining strength" of each party and its relative feelings of importance on particular issues. But be that as it may be, the arbitrators are required, within the standards and guidelines of the statutes, to mold the objective evidence of "market" (comparable) conditions, the relative weight of pieces of that evidence, and a good faith evaluation of bargaining strength and staying power of the parties on particular issues, into a reasonable package of wages, hours and conditions of employment.

One further matter should be noted with regard to the standards and guidelines in the Act as these related to the task of the arbitrator. Although the statute is mandatory with regard to the consideration of the above standards and guidelines, the Act provides neither for the relative weight of these factors as one relates to the others nor for the measurement of any of them. These are matters left to the judgment and discretion of the arbitrators that will depend, to

some extent, upon the context of the bargaining relationship involved.

D. THE ISSUES

The parties succeeded in resolving several issues among those certified by the Executive Director of PERC on October 17, 2000 (E 1). Issues over "overtime rates," "parking" and "physical fitness" were settled prior to the hearing. In addition, differences between the parties on "court appearances," "long term disability," and "expanded jurisdiction" were resolved during the hearing and or prior to the submission of post hearing briefs. Each of the parties discussed the following issues in their briefs for decision by the arbitrator. I follow the order set forth by the Union to identify issue and relevant current Agreement provision, if any.

1. Drives: Article VIII and Appendix O

2. Make Up Day and the Option Not to Appear: Article XIII, Section 1.a.5.

3. Canine Officers' Work Schedule: Article XII, Section 1.a.

4. Vacation Accrual After 22 Years of Service: Article XIV.

5. Take Home Vehicles: Bomb Disposal Unit: Article XIII, Section 9 and Appendix Q.

6. Take Home Vehicles: Criminal Investigation Section: New Language at Article XXI in new Agreement (by Union).

7. Light Duty: Article XXII, Section 2.

8. Retirees' Health & Welfare Contribution: Letter of Understanding, p. 56 of Agreement.

9. Pacific Coast Benefits Trust Contribution: Article XIX, Section (m).

10. Eligibility for Clothing Allowance: Article XVIII, Section 3.

11. Basic Wage Increases: Appendix A.

12. Canine Team Differential: Appendix A, Section II.G.

13. Dive Team Differential: Appendix A, Section II.H.

14. Tactical Services Differential: Appendix A, Section II.O.

15. Detective Differential: Appendix A, Section II.E.

16. Crisis Negotiation Unit Differential: New Provision (by Union).

17. Bicycle Team Differential: New Provision (by Union).

18. Field Training Officer Differential: Appendix A, Section II.M.

19. Evidence Technician/CSS Differential Pay: Appendix A, Section II.I.

20. Night Shift Premium: New Provision (by Union).

21. Education Incentive Eligibility: Appendix A, Section II.C.

22. Bill of Rights: Appendix B.

23. Drug Testing: Appendix C.

In addition to the above issues, the Employer urged that the effective dates be prospective for each issue except the general wage increase that had been agreed by the parties as retroactive. The Union made no similar general proposal on effective dates, but did address the effective dates for some specific issue proposals.

E. GENERAL HEARING PROCEDURES AND DOCUMENTS

The arbitrator provided the parties with full and equal opportunity to make opening statements, to examine witnesses under oath, to offer documentary evidence, to argue procedural and evidentiary rulings of the arbitrator on issues presented during the hearing, and otherwise to make known their respective positions and the arguments in support thereon on the issues in dispute. Over the course of the seven days of hearings, the Union called 20 witnesses and the Employer five. The names and days on which persons testified are found in the seven volumes and over 1400 pages of transcript that contain the testimony and record of the proceedings.

In addition, the arbitrator accepted 236 pages of exhibits from the Employer. References to Employer exhibits are to the page number among the 236. In addition the Employer submitted the collective bargaining agreements covering the police officers in the cities of Auburn, Bremerton, Federal Way, Kent, Kirkland, Redmond, Renton, and Tukwilla. Finally as exhibits 237 and 238, the Employer offered the King County "Classification/Compensation Project Report" of fifty pages and the "Survey of Police Services," San Francisco International Airport, 1998.

The Union provided 86 exhibits contained in two large notebooks. Among these exhibits was a copy of the current agreement between the Union and the Port, the sections of the new agreement already tentatively agreed to, and copies of the collective bargaining agreements for Seattle, Tacoma, King County, Renton, Bellevue and Everett. Since many of the exhibits were several pages in length, citations include exhibit number and page of the exhibit where relevant.

The parties submitted post-hearing briefs, received by the arbitrator on or about June 25, 2001. At this time the

arbitrator considered the hearings closed and the matters in dispute readied for a final and binding decision under the provisions of the Act. In the submission of briefs the parties waived the provisions of RCW 41.46.450 that specifies a thirty-day time limit for issuing a decision, and agreed to "allow the arbitrator whatever is necessary time to complete his decision" "to do the job right" (T VII, 182:19 - 183:3). The neutral arbitrator, alone, was charged with the responsibility to issue the Opinion, Decision and Award in this case, i.e., the parties chose not to create an arbitration panel by each naming its own partisan arbitration panel member.

II. THE ISSUE OF COMPARABLES

A. POSITIONS AND PROPOSALS OF THE PARTIES ON "COMPRABLES"

A central aspect of the determination of hours, wages and conditions of employment under interest arbitration is deciding what should constitute the "comparables" against which the instant circumstance should be examined. The parties have each proposed a set of "comparables" and argued for their respective set on the basis of the standards and guidelines set forth in the statute noted above.

The **Employer** provided a list of eight municipal jurisdictions as "comparables." These were selected on the basis of the size of the Police Departments in each jurisdiction. The eight jurisdictions included Auburn, Bremerton, Federal Way, Kent, Kirkland, Redmond, Renton and Tukwila. The staffing levels in these jurisdictions were between 60% and 130$ of the level for the Port. According to the Employer, this characteristic of these departments meets the criterion in RCW 41.56.465(1)(c)(i) to make comparisons of "like personnel of like employers of similar size." The Employer noted that the traditional criteria of population, geography and

property evaluation for tax purposes for determining the size of the employer were not available for the Port. Thus the Employer argued that the size of the Police Department was a proper substitute in determining the size of other employers whose wages, hours and conditions of employment of police officers in those jurisdictions could be used to determine the wages, hours and conditions of employment of the police officers at the Port.

In addition, the Employer pointed out that most of these jurisdictions were adjacent to and very near the Port's main activity at the SeaTac airport in south King County and south Puget Sound (T V, 119:19 - 120: 2). Also, the area of these jurisdiction is one in which a majority of the people who work for the Port reside. Further, the Port Police Department has entered into cooperative activities with a number of the eight jurisdictions, such as the Valley SWAT, the Narcotics Task Force, South King County Detectives and association among the police chiefs and administrative personnel of the departments (T V, 120).

The **Union** claimed, on the other hand, that the parties have "a well-established historical practice of using a set of comparables--known as the Seattle Seven—which represents a *quid pro quo compromise* achieved after lengthy negotiations." These jurisdictions included Seattle, King County, Renton, Bellevue, Everett, Tacoma and the Port.

According to the Union, in 1993 negotiations the parties reached a compromise to use the Seattle Seven after the Union had proposed using California airport jurisdictions and the Port had indicated its desire to follow the smaller jurisdictions adjacent to SEATAC (T III, 10-11). Similarly in 1996 negotiations, the parties took the same positions as before, but again compromised to use the Seattle Seven as the basis for reaching an agreement (T III, 15-17). As part of the 1996

negotiation, the parties agreed to a "Mid-term Opener" with regard to compensation (U 1, p 55). The Opener provided for a compensation survey to be based on the compensation of the Seattle Seven and acknowledged an agreement between the parties that "for the purposes of RCW 41.56.465(1)(c)(i), (like personnel of like employers) comparable jurisdictions shall be the cities of Seattle, Everett, Tacoma, Bellevue, and Renton, and King County."

The Union reported that at only one negotiation session for the new agreement did the Employer ever argue for comparables among the smaller jurisdictions and this it did in conjunction with comparisons based on the Seattle Seven. However, the Union rejected the smaller jurisdiction comparables as "irrelevant," contending that the parties had already established the Seattle Seven (T IV, 144:3-12). This translated into a claim that the interest arbitrator should examine and consider the Seattle Seven comparables under the statute provisions of "stipulations of the parties" and "other factors...that are normally or traditionally taken into consideration..." (RCW 41.56.165(1)(b) and (f); (Un Br, p 48).

In addition and in conclusion, the Union claimed support for its position on the use of the Seattle Seven on the basis that bargaining history and a consistent past practice were used in several prior interest arbitrations to support sets of comparables (Un Br, p 48). It further maintained that the past practice of the parties should be continued unless the Employer could show compelling reasons for not doing so, which the Port failed to do in this instance.

The Port acknowledged the desirability of maintaining some continuity and stability in labor relations, but argued here that "at no time was there ever an agreement on the appropriate comparables to be used for comparison" in the current

negotiations (T V, 83:12-25; see testimony of Endressen and Kirk generally, and Tessier at T IV, 159; 161; 165). The Port did not reject use of the Seattle Seven in its entirety in this arbitration. It did maintain, however, that the wages, hours and conditions of employment in the smaller jurisdictions should be examined in connection with those in some or all of the Seattle Seven in terms of the statutory standards and guidelines as a basis for determining the wages, hours and conditions of employment for the police officers at the Port (Er Br, p 8-9).

B. THE APPLICATION OF STATUTORY STANDARDS AND GUIDELINES

As the arguments of the parties above reveal, there is no clear-cut application of the statutory standards and guidelines in the instant case. One guideline provides that comparison of wages, hours and working conditions shall be considered among "like personnel" on the basis of "like employers of similar size." Although the police officers of the Port have similar counterparts in many other jurisdictions, none of those jurisdictions cited by either party as comparables in this arbitration are "similar employers" in any meaningful sense except as public entities with police departments.

Also "size" evades any meaningful measure outside of other Category X airports and comparable sized marine terminals, and as Swanson noted, these comparisons are filled with almost insurmountable difficulties (T III, 46:20 - 47:24). Population, geography, and the property tax base are objective standards for determining size of the police force within city or county jurisdictions. But the Port has no population base, only transient passengers, no substantial tax assessment base specific to its geographic area, and has police officers that generally perform only some of the duties of those in other jurisdictions. Port officers seldom, if ever encounter domestic

disturbances, make infrequent citations for speeding, and deal with relatively fewer major crimes as rape, arson, homicides, aggravated assault, and similar crimes as their counterparts else where (E 52). Indeed, for the most part, the police officers are confined to a very small concentrated geographic location similar to a great extent, to a large shopping mall in most towns and cities.

The Union offered a straightforward application of the RCW by relying exclusively upon the alleged past practice of using the Seattle Seven comparables under the statutory guidelines of "other factors ... that are normally or traditionally taken into consideration..." and "stipulations of the parties." This application is substantially less useful than the Union contended.

First it ignores the crucial element of "size" of "like employers" as a basic ingredient in relying on past practices of the parties. Although the Union cited three earlier arbitrators who refer in one manner or another to the relevance of past practice of the parties in selecting comparables, the past practice related to jurisdictions of similar size among "like employers," as the *City of Seattle and Seattle Police Officers Guild,* Kienest, 1984, p 5 re including Tacoma for wage setting in Seattle (Un Br, p 48). Other referenced arbitration awards made general statements about consideration of past practices of the parties as one guideline among several and without explanation of its application to particular circumstances, a reference no different than the Port's acknowledgement that "continuity and stability in labor relations" were desirable.

Clearly here, the Union's reliance upon King County, Seattle and Tacoma flies in the face of the statutory admonition to consider "like employers of similar size." By no stretch of the imagination can one regard any one of these three

jurisdictions, on the basis of any concept of size, as comparable and similar to the size of the Port. Under such circumstances any comparisons with the Port using these jurisdictions must rely primarily on general labor market conditions, mobility and turnover of officers, and similar factors to demonstrate the applicability of RCW 41.56.465 (1)(f).

Although the parties can agree to disregard size and similarity of jurisdictions, no agreement to do so was reached in the current negotiations. The Union implied the use of the Seattle Seven in prior negotiations and the mid term opener in 1998 as a "stipulation" by the parties under the statute (Br 48). Such is not the case. The very dispute between the parties over what constitutes the appropriate list of comparables is evidence that the parties reached no agreement or stipulation in the instant arbitration. None is now before the arbitrator over an agreed exclusive use of the Seattle Seven as comparables for determining wages, hours and conditions of employment for police officers at the Port.

One other aspect of the exclusive use of the Seattle Seven for comparables should be noted. Even though the parties did use these jurisdictions for comparison purposes in two previous negotiations, this does not affirm their exclusive use in the instant circumstance. Upon the expiration of an agreement, one objective of negotiations is the opportunity to change the terms of the agreement. The employer has that right as well as a union.

Inasmuch as the Employer is now dissatisfied with the comparables used previously, just as the Union is dissatisfied with certain terms of the Agreement whose improvement may be supported by Seattle Seven comparisons, the basic considerations for determining comparables must be reexamined. Of course,

among those considerations are what comparables the parties used in prior negotiations. But also once the statutory standards and guidelines are introduced through the appeal to interest arbitration, the Employer is entitled to contend for and to apply comparisons from other jurisdictions in addition to or as replacement for the past practices with the Seattle Seven. And the interest arbitrator is bound by the statute to give consideration to those comparables and comparisons that fall under the standards and guidelines.

C. SELECTION OF COMPARABLES

I concluded to use the following jurisdictions as the set of "comparables" for the Port of Seattle:

Table 1 - List of Comparables and Departmental Size

AGENCY	DEPARTMENT SIZE* (Commissioned Officers)
Seattle	1244
Tacoma	375
Bellevue	167
Everett	177
King County	611
Renton	84
Tukwila	69
Kent	123
Auburn	72
Federal Way	101
Port of Seattle	99

* Data from E 47 and 48

The parties have used the first six on this list in the form of the Seattle Seven, which includes the Port. The prior use of the wages, hours and conditions of employment in these

jurisdictions would justify their inclusion here, consistent with RCW 41.56.165(1)(f). The final four represent smaller jurisdictions and selected specifically for that reason.

As an interest arbitrator I cannot justify the exclusive use of the Seattle Seven because of the size discrepancies between those jurisdictions and the Port. Although the size of police departments, as measured by staffing levels, has not been traditionally used to determine "similar size" employers, it represents a reasonable substitute in this instance, given the general inapplicability of other measures under the statute to the Port's circumstances as discussed above. It is a measure not inconsistent with the statute. The standards and guidelines in the RCW do not specify the manner in which similarly sized employers will be measured and determined. Although different sizes of staff may represent differences in officer responsibilities and duties, any comparisons of crimes handled by the Port support including the smaller jurisdictions submitted by the Port and excluding the larger ones in the Seattle Seven (E 49-52).

Seattle, Tacoma and King County are simply too large, in every sense, to be examined in any context other than the "labor market" generally, and not as a comparable directly determined by RCW 41.56.165(1)(c)(i). There was no stipulation of the parties under (1)(b) of the standards and guidelines to ignore "like employers of similar size" and accept the exclusive use of the Seattle Seven as comparables. Accordingly under these circumstances and under the standards and guidelines of the statute, the arbitrator must give some consideration to the factor of "similar sized" employers.

The arguments of the Employer concerning the addition of smaller jurisdictions to the Seattle Seven proved persuasive. Not only are the four additions of Auburn, Kent, Tukwila and

Federal Way, as well as Renton of the Seattle Seven, comparable in size on a staffing level basis to the Port's Police Department, these jurisdictions are adjacent to the Port's main area of activity at SEA TAC (E 48). Although it is equally true that Seattle and King County are adjacent jurisdictions, the "neighborhood" effect of these five smaller jurisdictions manifest itself through various cooperative efforts among them and the Port, as SWAT, Narcotics Task Force, and similar activities. Thus on the basis of similar sizes, adjacent locations and cooperative efforts with the Port, I found the addition of the smaller jurisdictions to those jurisdiction that the parties had previously used in negotiations appropriate under the standards and guidelines of the statute.

Although neither Everett nor Bellevue bore a similar geographic relationship to the Port as do the Seattle and King County jurisdictions, I retained those two jurisdictions as comparables to the Port on the basis of their relative size and that both had been used in some respect in the 1993 and 1996 negotiations of the parties. The staffing levels of both cities fall with in a range of 50% to 200% of the Port's staffing level, a range frequently used in interest arbitrations to determine similar sized jurisdictions (E Br, p 5).

In the case of the smaller jurisdictions, I dropped Bremerton, Kirkland and Redmond primarily because none were adjacent to or near the Port or were working with the Port's police in any particular program. Clearly Bellevue is a preferable comparable to any of these because of its closer proximity to the Port's main activities and because it had been used previously by the parties.

One final factor requires brief comment. Above, this arbitrator acknowledged that uncertainty on how a particular term of the Agreement might be determined arose from an

evaluation of the relative "bargaining strengths" of the parties. Here, given the nature of negotiations, the issue of comparables becomes almost a moot subject. As Tessier affirmed, once certain information was provided the parties, both from the Seattle Seven and from the eight smaller jurisdictions offered by the Port, the parties essentially ignored the notion of comparables, and bargained to make a "deal" (T IV, 152:18-22; 153:6-12; 159:1-23; 165:4-16).

I concluded that no "life or death" struggle would have occurred over whether comparisons from the Seattle Seven or from the eight smaller jurisdictions offered by the Port, were used in a non-public open market bargaining situation. Rather a settlement would have been reached without memorializing what "comparables" the parties followed expressly in reaching an agreement on the compensation package, just as occurred in 1993 and 1996. Only because of the arbitration under statutory standards and guidelines does the issue of comparables represent a matter of significant difference between the parties. For all practical purposes, relative bargaining strength on this issue becomes irrelevant even though not necessarily so on what would have been the ultimate level of compensation agreed upon by the parties.

I turn now to the consideration of the specific issues, utilizing the wages, hours and conditions of employment of the ten jurisdictions as bases for determining the wages, hours and conditions of employment for the police officers at the Port. The ten "comparable" jurisdictions are as follows:

Auburn	King County
Bellevue	Renton
Everett	Seattle
Federal Way	Tacoma
Kent	Tukwila

III. BASIC WAGE INCREASE (Item 11).

A. PROPOSALS

The Union proposed a 5% basic wage increase, effective on January 1 of years, 2000, 2001 and 2002.

The Employer proposed a 3% basic wage increase, effective on January 1 of the years 2000, 2001, and 2002.

B. CONTENTIONS IN SUPPORT OF PROPOSALS

1. Union

In support of its proposal for a 5% basic wage increase o January 1, 2000, the Union claimed that the Port officers were behind the Seattle Seven by 5.2% on basic wage plus longevity (U 64, E 67). Also by a similar analysis of the 1999 salaries, the Union found that Port officers received 1.2% less than the average of the Seattle Seven (U 65). Accordingly, the Union concluded that a 5% basic salary increase was appropriate and justified.

The Union was critical of the Port's proposals to make various comparisons including longevity, education incentives, pension and the basic wage, as represented by tables in E 68-91. The Union alleged that most of these were meaningless because "they bear no relationship to the reality of the bargaining unit." As an illustration, the Union noted that no one in the unit has a Master's Degree, and thus those comparisons meant nothing (E 71). Further no information was available on how many of the officers would be eligible for any education incentive. At least one third of them are not eligible since they have been with the Port too short a time, the Union noted. Further, the longevity analyses were not relevant, the Union claimed, since nearly half of the force are not "A" officer, a necessary eligibility for longevity.

The Union objected to the inclusion of health and welfare contributions in the wage analysis, and claimed that such issues were dealt with independently in negotiations. Although the Port claimed a "Cadillac" health plan for officers, no demonstration was made regarding what other jurisdictions provided. Similarly on pension contributions, according to the Union, negotiations were independent of the wage and not relevant for comparison within the determination of the wage changes.

The Union relied upon the experience and expertise of Endressen who alleged, "arbitrators tend to limit compensation factors so that the parties can conduct a simple analysis" (T III, 17, 57). Further the Union argued that "interest arbitrators have rejected efforts by one party to include a wide range of benefits—such as pension and health and welfare contributions—as part of a wage comparison" and cited three such decisions (Un Br, p 53).

Examining other factors, the Union maintained that the 5% increase in 2000 was reasonable. Here the Union noted the need to catch up from 1999 where the data show the Port officer some 2% behind comparables. Further the Union noted that the 3% offer for a basis wage increase from the Port for 2001 would not cover the increase in the cost of living as shown by a 3.4% in December 2000 over the preceding year. Endressen claimed, the Union pointed out that Port officers lost ground relative to the cost of living during the last collective bargaining agreement, and some catch up was required here.

Further, the Union pointed to the ability of the Port to meet the 5% wage increases. It is in a strong financial position and sited a $64 million dollar surplus in 1999 (U 6, p 21-25 and U 84). Also, the Union claimed, based on a survey made by King County, that the Port paid its employees

substantially better than other jurisdictions (U 59). The Union reported, also, that Captains and Lieutenants were given first year increases of 4.75% and 5.75% respectively (E 101). The Union cited the tremendous growth of the Port over recent years and alleged that Officers were required to work harder now than earlier. And finally, the demographics of the police force with the Port allow the increase. Nearly half of the officers have less than five years seniority and thus receive no longevity or education incentive pay. Now is no time for the Port to be frugal, the Union concluded, and urged that the Department must remain competitive so that it avoids the difficulties that it has already experienced with staffing shortages in the early 1990s.

The Union urged adoption of wage increases that would catch-up with and remain comparable to the Seattle Seven and outpace inflation over the contract cycle.

2. Employer

The Port argued that compensation should be analyzed, not basic wages alone. In support of this position, the Port examined the impact of longevity, education incentive and pension contributions upon the comparative relationship of the Port to both the Seattle Seven and to eight smaller jurisdictions, referred to by the Port as the "Comparable Eight." Here the Port claimed that the parties had diverted an unusually large amount of resources to longevity, education incentive and pension in lieu of wages, and any fair comparisons would include all of these variables in determining what is a reasonable basic wage increase each year of the next three.

Through E 68 and 82, the Port alleged that the Port's longevity program pays more than the Seattle Six and the Comparable Eight at five, ten, fifteen, twenty, and twenty-five

years. The Port noted that as the police force ages, that at the higher longevity periods the advantage for the Port officers increases. A similar pattern exists with the education incentive as shown in E 69 and E 83 as is generally true for the pension program of the Port (E 74 and 87). Although how the varies jurisdictions handle social security, supplements and pension contributions directly vary somewhat among the 14 jurisdictions, the Port alleged that Port officers receive a substantially better overall pension program than do officers in the other jurisdictions.

The Port went on to note that the Union had agreed in the mid term opener in 1998 to consider all of the elements of compensation in determining whether further wage adjustments were necessary (T I, 162:24 - 163:3; Appendix R, U 1). Further, the Port's analysis takes into consideration several points of comparison rather than only one as the Union did. The Port argued that no one correct point exists, but that it is better to examine from several points of view in order to get a full understanding of the relationships of various elements of compensation in comparison across the comparables.

Looking at the data per se, the Port found that the Port officers were doing as well and better than the comparables. Per E 90A, the data indicate that the Port officers are anywhere from 2.9% to 5.1% ahead of the Seattle Six at each point of comparison. With the Comparable Eight, the difference increases from 3.5% to 8.4%. In these comparisons the Port included pension, longevity and education incentives. In a table in its brief, the Port shows the range of differences for some 30 comparisons of combinations of basic wage, education incentive, longevity, and pension contributions (Er Br, p 13). From all of these data, it is clear that no catch-up is required, the Port concluded.

The Port presented the wage increases bargained among the 14 comparables that it used. Although some variation exists, among the Settle Six, the average wage increase for 2000 was 3.1%. The negotiated increases for the Comparable Eight was exactly 3.0% per E 93.

The Port relied upon several other sets of data to support its proposal of 3% each year in basic wage increase. First, the increase in the cost of living, as measured by the US CPI-U. was 2.6% in 1999 and 3.4% in 2000. The Port's offer of 6.0% for the two years of 2000 and 2001 matches the corresponding increases in the cost of living. Second any reliance upon the Seattle CPI introduces volatility in the figures, represent seasonally unadjusted data, and by reason of the small sample of prices and quantities in a metropolitan area makes those data unreliable. The Port noted also that the Implicit Price Deflator was even lower than the CPI data (E 140).

Second, the Port contended that a relevant factor was maintenance of internal equity. Here the Port cited the agreements with other Unions with which it had completed negotiations. Among the 14 units, the average wage increase for 2000 was 3.1%, according to the Port (E 100-101).

Third, the Port pointed to the "Cadillac health care" plan as an advantage for Port officers over officers in the comparables, either the Settle Six or Comparable Eight. Its premium went up 8.8% in 2000 and 14.1% this year and represented .75% increase in compensation for the officers (E 97).

Four, the Port contended that the compensation package of the Port officers was competitive with and superior to those of the comparables. Over the last several years, "job satisfaction has been 'very high'," according to Deputy Chief Kimsey (T VI, 144:7-17). No one left the Department in 2000 and only one officer resigned in 1999, to return to college. Only four

officers have left since 1995, and only three went to other police jurisdictions. Clearly there is little turnover, a good indication that the compensation and benefits of the Port meet the competition, the Port concluded.

Finally, the Port argued that the methodology of the Union in support of its basic wage increases was seriously flawed. The Port found the King County findings on wages and salaries in its "Classification/Compensation Project" to be unreliable and not based on any statutory or factual basis for use of the jurisdictions of the study in this proceeding. The Union had based a 12% increase in wages upon this study. Also, the Port alleged that the Union's methods on wage comparisons were specious, dependent upon a "best case" illustration for the officers, and otherwise defective from improper comparisons of compensation elements among comparables. In addition, the Port maintained that the Union's concern over staffing levels was irrelevant and beside the point here as regards wage and benefits levels.

The Union improperly used the maximums of the ranges reported by various entities surveyed by King County without recognizing that ranges vary and without knowledge of whether employees were actually hired at that maximum a fictitious and unreliable figure resulted. The Union made no attempt, nor did the authors of the study to determine if the contents of jobs reported by various entities were correct or were similar for specific classifications. In fact, the Port pointed out that the authors of the study disclaim "the accuracy of the job matches for salary comparison purposes" yet the Union persisted in used the data. The Port offered several examples in brief on the unreliability of the data from the testimony of Officer Salios to reach the conclusion further that the arbitrator should ignore this information (Er Br, p 21-23).

The Port argued that the methodology of the Union was fraught with problems. Not only did the Union ignore the mutual agreement reached in the prior bargaining agreement to compare all elements of compensation when making comparisons, but also no explanation was given on why only wages and longevity alone were used, except that it was the "best case" for the Union. The use of 21-year veterans for longevity and wage comparisons was based on a 1996 survey and thus ignored that the average seniority (longevity) in the Department is less than 10 years in 2000 (E 43-44). Further had the Union used a 22 year employee, that employee would have received an extra 2% for longevity over the 21 year employee and would have completely eliminated any claim of the Union of a needed 2% catch-up in wages, the Port pointed out.

Further the Union included certain premiums in some jurisdictions that were not received by all employees and in other cases excluded such items as education incentives solely because all officers do not receive such a premium, the Port alleged. Similarly in U 65, in a broader analysis, pension and education incentives were excluded, but take home cars were included, without explanation.

Finally, the Port pointed out that in 1999 the Union made an analysis of the compensation packages across the Seattle Six and found no need to reopen the wage bargaining under the mid term re-opener for any catch-up by the Port officers (T I, 162:10-15). Since the Port's offer now is nearly exactly what the average increase obtained by the Seattle Six for 2000, the Port concluded no catch up was required.

The Port contended that the "testimony (of Captain Wilkenson) (was) entirely irrelevant to the economic analysis that (this) Arbiter must engage in" since the issue of staffing has become passé. Although some basis may have existed to go

over the extended history of staffing at the Port, the level of staffing has increased from 75 to 99 between 1997 and April 2001 and any claim of under staffing and overworking officers cannot be sustained, the Port asserted (E 45). Nor can the Union rely upon staffing levels at other airports. These comparisons stumble over differing physical layouts of airports, combinations of police officers and firefighters on some staffs and the use of non-commissioned personnel for traffic control in several locations. The Union exhibits are misleading by reason of mixing commissioned officers with civilian or non-commissioned personnel (U 36, n 6).

Finally on this point the Port maintained that SEA TAC and surrounding Port property were safe. Examining crime statistics, the Port concluded that over the last twenty years, although numbers of passengers through the airport has tripled, the number of crimes reported to the FBI has not increased (E 66A). No correlation exists between crime and passengers that would justify further staffing or higher wages, the Port concluded. "Simply stated, there is nothing in all of the staffing "evidence" offered by the Union that would support in any way an additional wage increase for Port police offices over and above that consistent with local market conditions, internal comparability and changes in the Consumer Price Index" (Er Br, p 30).

C. ANALYSES OF THE DATA ON WAGES

1. The Compensation Package

Some differences exist between the parties over the composition of compensation data that are to be compared across the comparables. The Union argued for a single "representative" mixture of only the basis wage rate and longevity for 21-year employees. On the other hand, the Employer data consisted of a

series of comparisons involving several elements of the compensation package as longevity, education incentive, and pension for employees with different education degrees and varying lengths of seniority.

Since the objective of the interest arbitration is to approximate what most likely would result in an unrestricted and free labor market, ideally the comparisons would be made on all elements of a compensation package, broadly interpreted to mean what ever a prospective employee would take into account in selecting one employer's offer of employment over another. These elements should be weighted by the number of employees of a particular employer who were then employed in each box of the matrix that results from listing each element of the compensation package. This measures the relevance of each element directly and avoids such problems as the Union pointed out about the use of the MA incentive for the Port, for there are no officers to receive that compensation element (Un Br, p 52; E 71). But obtaining weighted compensation packages from each of the comparables is an insurmountable problem here, and less meaningful comparisons must be made. In effect what is done is to compare where the officers are in the Port with the "schedule" of wages and compensation elements at each of the other jurisdictions, including as many elements in the single comparison as can reasonably be manipulated in a straightforward and meaningful way. Indeed the comparison across comparables may be confined, in some instances to consideration only of the "schedule" of compensation elements between the two entities without regard to what the employees actually receive in either jurisdiction.

Thus any single element can give only a partial picture for comparison of compensation, although the basic wage rate may well constitute the most relevant and most import element in the

entire compensation package. But the Employer was correct to insist that the basic wage should be adjusted for longevity, education incentives, pensions and a consideration of relative levels of health and welfare benefits noted as well in relation to relative wages among the comparables (Er Br, p 9-14; 18-19). This comes closer to the "ideal" than a single comparison of the wage of a 21-year employee across several employers, as the Union proposed (U 64, 65). Examining compensation at different levels of longevity or education incentive eligibility provides added information on the relationship of one comparable to another, and allows for comparisons of the "structure" of compensation and not alone a single element as the basic wage.

Finally the Employer was correct to point out that trade offs are made among elements of compensation, and especially in collective bargaining. The recent bargain at Tacoma illustrates this fact. The employer traded a 2% across the board wage increase for the education incentive (E 92). Some employee groups and their employers/unions choose to accept large pension contributions and or better health plans and lower wages relative to another group who choose to take the income now in higher wages rather than as deferred income in pensions later or better health services. Thus an examination of a single element of compensation at a time distorts the true employee compensation relationship among the groups. Accordingly as large a complex of compensation elements as possible that can be put together provides a more valid compensation comparison across the compared jurisdictions than single element comparisons.

2. A "Catch-up" in Wages

I concluded that insufficient evidence supported the need for a "catch-up" in the basic wage rate of the Port Officers for

the year 2000. A "catch-up" is demonstrated neither by comparisons of base rates alone in 1999 across the comparables nor by 2000 basic wages when adjusted for other elements of compensation.

I have reconstructed U 65 to eliminate the special payments included in the base rates for 1999, as the 1.5% premium for patrol for Seattle and King County, the 1% LEOFF II and shift premiums for Tacoma, and 5.24% premium for shift schedule in Renton, and added base rates for Auburn, Federal Way, Kent and Tukwila. The results are as follows:

Table 2 - Base Wage and 21 years Longevity, 1999

Agency	1999 Base	Longevity (21 years)	
Seattle	$4541.00	12%	$54.50
Tacoma	4329.00	8	34.63
Renton	4183.00	7	29.28
King Cty	4264.00	10	42.64
Bellevue	4270.00	6	25.62
Everett	4217.00	9	37.95
Auburn	4139.00	8	33.11
Federal Way	4339.00	4	17.35
Kent	4388.00	5	21.94
Tukwila	4256.00	0	0.00
Average	4303.00	6.9	29.20
Port of Sea	$4314.00	9	$38.82

As is readily apparent by comparing the averages of either the base rate or the additional pay from longevity, that the Port officers were equal to or well ahead of officers in the ten comparables. Nor would this comparison differ if only the Seattle Six were considered. The average monthly base wage remained essentially unchanged, and the Port officer fares slightly better on longevity than the officer in the other six jurisdictions.

As the Employer pointed out in its brief, had the Union relied upon 22 years of longevity rather than only 21, the longevity pay for Port officers would be 2% higher than for other jurisdictions and any claimed deficiency between the Port officers' base pay and seniority in U 65 would have been completely eliminated (Er Br, p 25). No need for a "catch-up" in wages was indicated here.

An examination of base wage rates and longevity for the ten comparables confirms also that no catch-up is necessary in 2000 above the proposed 3% increase of the Port. The following table sets out the 2000 base rates with five, 10 and 20 years longevity data:

Table 3 -Base Rates and Longevity by 5,10 and 20 years, 2000

AGENCY	2000	Longevity		
	Base Rate	5 years	10 years	20 years
Auburn	$4270	$4355	$4457	$4612
Bellevue	4496	4496	4496	4766
Everett	4552	4643	4711	4962
Federal Way	4456	4501	4545	4634
Kent	4528	4619	4664	4754
King County	4420	4455	4632	4774
Renton	4525	4615	4706	4978
Seattle	4702	4796	4984	5266
Tacoma	4548	4637	4724	4910
Tukwila	4375	4375	4375	4375
Average	$4487	$4549	$4630	$4803
Port of Sea (1999)	$4314	$4400	$4530	$4702
Difference-$	173	149	100	101
%	(4.01)	(3.39)	(2.21)	(2.15)

The mean seniority of the Port officers, as computed from E 43 and 44 is almost exactly 10 years. On that basis, a 3% wage increase would put the Port officer above the average by nearly

one percent, clearly no basis for a "catch-up," or any wage increase above the Port's offer. Or looking at that half of the officers at the Port who have five years or less of seniority, the sum of the base rate and 5 year figures together would suggest a 3.7% wage increase (4.01 + 3.39 : 2). On the other hand the remaining half of the force lies at the 10 years longevity and above, and their wage rates support only a 2.18% increase to reach the average of the comparables in 2000. Combining the two groups provide no basis for a "catch-up" and supports no more than a 3% general wage increase for 2000 for Port officers.

3. The Wage Increase for 2000

a. Supplemental Compensation Elements. As the data in Table 2 above suggest, a 3% basic wage increase for 2000 would be appropriate and consistent with the rates paid among the ten comparable jurisdictions. But the argument above also indicated that wages might be offset by other elements of compensation. Here however, the immediate data on other generally received compensation elements suggest just the opposite. The Port officers are much better off, on the average, than officers in the comparable jurisdictions when pension contributions and education incentive pay are added to the base rate at five, 10 or 20 years of longevity. I have computed the percentage by which the Port officers exceed the average of ten comparables, given a three percent general wage increase. I have relied upon the data in E 75, 77, 79, 89, 90, and 91 with random verification of the Employer's computations by comparison with other tables and recourse to the raw data in the appropriate collective bargaining agreement. The results were as follows:

Table 4 - Percentage Excess of Port Wages over Average of Ten Comparables, Given a 3% Basic Wage Increase, by Longevity, Pension and Education Incentives, 2000

Pay Element	Longevity		
	Five Year	Ten Year	Twenty Year
Longevity + Pension	3.2%	4.3%	4.6%
Longevity + Pension + AA Degree	3.6%	4.9%	5.4%
Longevity + Pension + BA Degree	4.0%	5.5%	6.2%

Clearly, the comparable wage rate at the Port was not offset by much lower compensation from pension contributions and an education incentive pay for Port officers relative to their counterparts among the ten comparables. Rather, the Port officers are relatively better off, in comparison to the average compensation among the comparables with regard to these combinations of compensation elements. The 3% basic wage offer of the Port is fully supported and, given the excess percentages by which Port salaries exceed the average of the comparables, a generous offer.

I concur also with the Employer with regard to the consideration of health and welfare benefits in addition to wages. Some groups of employees do choose to take extra benefits in health services rather than in wages, since it has both a tax advantage for the employee as well as a cheaper cost for a given package of health benefits when purchased for a group by the employer. The Health Plan cost for the Port equals

9.5% and 10.5% of the monthly basic wage in 2000 and 2001, respectively (computed from E 96, 97 and 67).

But here again, no basis exists to consider the wages of the Port officers out of line because the health plan benefits provided by the Port are minimal. The health plan benefits package, provided at no cost to the employee by the Port, is equal to, if the plan does not exceed what is provided among the comparables. No great detail was provided regarding what health plans other jurisdictions have. However, the "Cadillac" plan of the Teamsters would be difficult to improve upon, and difference between plans of other jurisdictions that might be better than the Port's officer health plan, and the Port's plan would be insignificant and unable to justify any additional wage increase above the 3% proposed by the Port to compensate for a less extensive health plan.

The Union raised an issue regarding the inclusion of pension contributions, specifically social security payments by the employer, and or health and welfare benefits in the compensation comparisons, and cited the decisions of other interest arbitrators to ignore or set aside the consideration of these items. The basic claim was that these payments by the employer did not represent direct compensation paid to employees, or that such benefits had widely differing values to individual employees.

The objection to including these benefits because different employees may value them differently mis-characterizes the comparisons called for in the statute. The argument pertains to variations in intrinsic value of say health benefits among individual workers for a given employer. But all employees of that employer do produce a consensus of what shall be obtained, i.e., for each employer some common value has been attached to the benefits package.

Here the comparisons are among similar employers where in each case the employees of each employer have reached a consensus represented by the cost of a particular package of benefits. The appropriate comparison is not unlike comparing the mean values of two separate and different Bell curves where each curve represents the variations in individual values of the benefits among workers of each employer. The analysis cited by the Union at page 53 of its brief erroneously mistakes the values along the single curve of a single employer as the basis for comparisons among similar employers for the needed comparisons of mean values of each employer's curve across several employers.

Nor do I find the reasoning of the Union regarding the exclusion of social security payments by the employer to be reasonable or proper. Pension and social security contributions are deferred income, and in the case of social security can be paid only to the individual employee or his estate. Because social security payments are made to a government retirement plan, as Social Security, rather than a private one, as the Teamsters Pacific Coast Benefits Trust, provides no reasonable basis upon which to exclude this element of compensation (Un Br, p 54 - Decisions cited). Further, in as much as some of the comparables in this case pay to private plans and other to social security, exclusion of one category of retirement benefit would distort the compensation packages, and in this case make the compensation package of the Port officers relative to the comparables even more advantageous. Just as I am unwilling to overlook the $475 per month per officer pension contribution by the Port--some 10.4% of a basic wage rate of 3% more than received in 1999-- neither is it either economically correct nor fair to ignore the payment of 6.75 percent of wages in social security by several of the comparables (E 74, 87, 88).

b. Additional Factors in Determining Wage Increases.

(1). Cost of Living. Changes in the cost of living as measured by the Consumer Price Index fail to justify any basic wage increase beyond 3%. The annual rise in the US CPI-U from November 98 to November 99 was 2.6% and for the similar period in 2000 was 3.4% (E 109 and 110). However the latest data (August 21, 2001) show an annual increase in the CPI U of 2.7% (Internet: BLS). The latest data on the Implicit Price Deflator, although not precisely a cost of living measure, was at 2.61% (E 139). Thus a 3 % increase in wages in each year would readily meet changes in the cost of living. Nor is there much likelihood that a sudden burst of inflation will occur in the near future with unemployment now the highest that it has been in several years. Inflation is unlikely to occur in an economy that is even only mildly depressed, as seems to be the state of affairs at this time.

The Union argued for use of the Seattle Metropolitan Consumer Price Index. It shows an increase of 3.0%, 4.1% and 4.0% for the periods shown above for the US CPI-U. On this basis the Union argued for a higher than 3% annual wage increase to match the loss in purchasing power implied by these figures. The Port's proposed annual increases in wages have been less than the cumulative total of 11.1% for changes in the Seattle CPI-U.

I have set this argument aside for two major reasons. First, metropolitan indexes are volatile and subject to random errors and inaccuracies. The sample base is small and not subject to seasonal adjustments. Because of these reasons, the Bureau of Labor Statistics recommends that the index not be used for wage adjustment purposes as proposed here by the Union.

Second, the parties relied upon the US CPI-U in the expiring Agreement. The Union offered no compelling reason why

a change should now be made, given the above considerations regarding the Seattle CPI-U.

The changes in the cost of living fit the proposal of the Port more closely than does the proposal of the Union.

(2) Other Bargained Wage Settlements by the Port. Other union negotiated wage settlements at the Port for 2000 are comparable to its proposal here. From E 100 and 101, I have computed the "weighted" percentage wage settlement among the 15 contracts reported in that exhibit. The weights were the number of employees in each bargaining unit as reported at the hearing. Thus the 4.1% settlement of the Engineers involving 66 employees was weighted over four times as much as the 3.2% settlement for the I.D. Access group of only 14 employees, represented by the Teamsters. The result was that among 595 employees to whom these settlements applied, the weighted average wage increase for 2000 was 3.1%. On the basis of internal equity, the Port's proposal of a 3% increase in 2000 is more reasonable than the 5% proposed by the Union.

Several reasons exist to consider other union wage settlements that the Port has made for 2000. Although these settlements undoubtedly were affected by their own particular circumstances, the Employer has a reasonable basis to insist upon consistency and internal equity among employee groups. Certainly the Union would wish to do as well as others in negotiating with the Employer. And undoubtedly references occurred during bargaining about the progress of and settlements reached by the Employer and other Unions. Under these circumstances, the consideration of in house settlements is readily justified under the statute as one of those factors "normally and traditionally taken into consideration in the determination of wages, hours, and conditions of employment."

Other Port wage settlements with other bargaining units, under the principle of maintaining consistency and internal equity among employee groups, supports the 3% wage increase offer to the Police officers by the Port for the year 2000.

(3). Wage Settlements Among the Comparables. Although much of the discussion above has been concerned with the actual level of compensation among the comparables, another measure of wage change is the percentage change negotiated year to year. Although in an unrestricted market some tendency for wage levels of various employers to gravitate to the average would likely occur, at the same time some Employers chose to be "high wage" employers, and other to be "low wage" employers. In these circumstances, the somewhat better trained and experienced individuals tend to go to the high wage employer and thus a structure of wage levels becomes established in the labor market. Many unions attempt then, under these circumstances and as a minimum effort, to keep in step with the market wage structure, and seek annual wage changes that will keep its bargaining unit members at least in the same relationship to other groups as existed in prior years. Employers will seek to keep the same or possibly lower position relative to other employers. Thus on this basis consideration of the percentage changes negotiated by each similar employer becomes relevant in determining a wage increases for the Port officers.

In Table 4, the known negotiated wage changes for 2000, 2001 and 2002 are set forth:

Table 5 - Negotiated Percentage Changes in Basic Wage Rates, by Year for Ten Comparable Jurisdictions

AGENCY	YEAR 2000	2001	2002
Auburn	3.0%	4.0%*	--
Bellevue	2.7	--	--
Everett	2.8	3.4	--
Federal Way	2.8	3.5	--
Kent	3.2	3.9	--
King County	3.6	3.5	3.5
Renton	3.0	3.0	3.0
Seattle	3.5	3.5	3.5
Tacoma	3.0**	--	--
Tukwila	2.8	3.4	--
Average Increase-	3.0	3.5	3.3
Other Port EES --	3.1	--	--
US CPI-U***	2.6	3.4	2.7

* Jan 1 - 3.5%; July 1 - 1.0%
** Plus 2% buy out of Education Incentive Pay
*** November to November, except 2002 is July to July

The average basic wage increase negotiated for the year 2000 among the ten comparables is within a fraction of a percentage point exactly 3%. This datum supports the amount of the Port's offer and proves unpersuasive for a basic wage increase of 5%.

The negotiated wage increases for the following two years are somewhat higher. I return to a consideration of these data below.

(4). Employee Turnover. One measure of a deficiency in compensation is the departure of employees for "greener pastures." If an employer has failed to keep up with the market, employees do leave for higher paying and preferable positions elsewhere.

No evidence in the departure and turnover of police officers at the Port support any large increase in compensation and benefits. In 2000 no officers left the bargaining unit and only one in 1999 who quit to return to college, not exactly an indication that the compensation conditions at the Port were depressed and undesirable. Furthermore, in the preceding four years, 1995 through 1998, four employees left, only three of who went to other police departments. Overall, the conclusion is unmistakable, the conditions of compensation and other benefits of the Port are strong enough that employees wish to remain in the Port's employ.

In addition, according to Sergeant Monohan a shortage of police officers exists and other departments "are competing very strongly for candidates" (T I, 187:1-3). Although this situation may cut both ways in that on one hand its difficult to recruit new officers, certainly in a shortage market. If, on the other hand the Port compensation package did not meet the competition and a little better, some employees would be resigning and taking positions in other departments. But such is not the case here. The fact of so little turnover is a strong indication that the compensation package and conditions of employment at the Port are adequate and fair. Further the recruitment of a third of the staff in the last four years supports also that the compensation package is competitive and adequate.

c. Union Arguments in Support of a 5% Basic Wage Increase.

In addition to the weight of the analysis of wage data above that lends little support to the Union proposal of a %5 increase in the basic wage rate in each of three years of the contract, I was not persuaded also by arguments made directly in support of the Union's proposal.

(1). **King County Study.** Data and information presented from the King County Classification/Compensation Project was of little or no value in determining basic wage rates for the Port officers, notwithstanding that the Union claimed Port employees were paid over 12% more than employees were paid in several other local government jurisdictions.

The King County Study was a classification study. Its objective is the establishment of ranges for job classifications, not the wages of individuals. Aside from an attempt to use the study for a purpose for which it was not designed, numerous deficiencies and defects exist in the study, not the least of which was that several of the employer jurisdictions involved in the study could not meet the standards and guidelines required by the statute for examining wages and conditions of "like employers" to the Port. I do not intend to set forth these here in as much as most of the Study's shortcomings were developed in sufficient detail in the cross-examination of Officer Solois (T IV, 113 - 125; 128 - 130). I note only that the authors of the study affirm on page 2 of 50 "The Classification/Compensation Project staff does not verify the accuracy of the job matches for salary comparison purposes" (E 237). This should have been sufficient to discourage further examination of this document for the purpose of determining basic wage levels for police officers at the Port.

(2) **Staffing Levels and Overworked Officers.** Second the Union cited the substantial growth in passenger traffic at both the airport and the sea terminal to allege that officers now work harder than previously. Not irrelevant to this contention was the tremendous amount of overtime worked by the officers. Although acknowledging that the overtime was paid for by the Port and substantially enhanced the incomes of Police employees, the Union expressed concern over the need for

additional staff so as to avoid the pitfalls of understaffing during the early 1990s.

Although a great deal of time was spent on the need for adequate staffing, I found no central thesis on what should be the staff level and why that level vis a vis the one that now exists. I did note that the Port has increased the number of commissioned officers in the Department by nearly one-third as well as replace senior employees who retired in the last three or four years, and was continuing to seek new hires to keep the complement at full strength. These circumstances left me unconvinced that the situation merited special consideration as a factor to justify a 5% across the board increase in basic wages for the Port officers in each of the three years of the proposed new agreement.

(3). **Ability to Pay.** A final contention of the Union for a 5% basic wage increase rested on the claim that the excess of income over expenditures of the Port that resulted in a $64 million surplus in 1999 could be used, in part, for that purpose. Also the Union pointed out that the average salary cost per officer has dropped in recent years as the average longevity of the bargaining unit members fell substantially with retirements and then new hires. These circumstances provide no reason for the Port to be "frugal" in its approach to wage increase, the Union argued, and urged the 5% wage increase on this apparent ability to pay by the Port (Un Br, p 52-53).

I've set aside this contention for several reasons. Surplus and or "profits" represent compensation for the capital involved. Even though no "stockholders," per se, are present to receive the surplus of the Port as a public entity, it is not altogether clear employees, by higher wages, are entitled to any anticipated or required distribution of that or future surpluses

any more than taxpayers, by lower taxes, or customers of the Port, by lower charges.

The use of savings in salaries from a more junior workforce than in earlier years as a basis for and a source of funds for wage increases now is not a persuasive argument. The logical implication of this suggestion is that by providing greater increases now on salaries, when the bargaining unit members achieved some greater longevity, the Union would be willing to reduce the amount of wage increases because the average cost of salaries to the Port had gone up. This is an ingenious contention but not convincing for a 5% salary increase now.

d. Conclusion on 2000 Wage Increase. I concluded that the preponderance of data and arguments thereon supported the Port's offer of 3% basic wage increase for 2000. No catch-up in wages from prior years was required. Supplemental compensation elements as pension, health and welfare, longevity and education incentives made the circumstances of the Port officer even more advantageous relative to salary levels among the comparables. In addition, cost of living data, other settlements by the Port with other unions, and the pattern of settlements among the comparables supported the Port's 3% offer rather than the 5% proposal of the Union. Finally, the affirmative contentions of the Union for a 5% basic wage increase were not persuasive.

I shall direct the parties to incorporate in the new agreement a basic wage increase of 3%, effective January 1, 2000.

4. Wage Increases for 2001 and 2002

The parties provided very little data or argument over what should be the basic wage increase in the last two years of the contract. The settlements reported in Table 5 above suggest an

increase of 3.5% on the basis of eight settlements among the ten comparables. Other information was the cost of living changes in 2000 and 2001, and its pessimistic or optimistic forecast for falling or increasing more in 2001. Some reference was made to anticipated changes in the economy generally, but without much available other than speculation.

I have concluded to hold the basic wage increase for the years 2001 and 2002 at 3% each year. I based this conclusion on the following considerations.

First, the known settlements of the same three years as proposed in this contract, on average, have only marginally exceeded the 3%, i.e., 3.3%. The other settlements among the comparables for 2000 were the end of other contracts and do no represent current thinking and settlements on wage changes, and on that account should be given less consideration.

Second, although some increase in the US CPI-U for 2000 would suggest slightly greater than 3%, the trend clearly has been reversed in 2001 such that over the two years an increase in wages of 3% each year would maintain purchasing power for the officers. In addition, although forecasting is somewhat speculative and uncertain on accuracy, the current continued lowering of the interest rate by the Federal Reserve affirms no inflationary pressures are at work in the economy. Further, the unemployment rate, reported in mid August by the Department of Labor, was the highest in nine years, hardly a harbinger of a booming economy and inflationary pressures to justify a larger wage increase to avoid declining purchasing power as prices rise. From an economic point of view, a declining and at best a stagnant investment and stock market further indicate no great chance that prices will run up sufficiently to justify any thing above the 3%.

Third, and most important, the extent to which the compensation package of the Port officers exceeds the average of the ten comparables, as shown in Table 4, provides substantial support for denying a salary increase in excess of 3% on the basic wage rate. Even the five year officer receives 3.2% to a 4.0% more salary than his counterparts elsewhere, even after a 3% wage increase in 2000. Officers with greater longevity enjoy even greater advantage over the others in the ten comparable jurisdictions. When these data are combined with the "Cadillac" health plan of the Port, the case becomes even stronger for only a 3% increase in base salaries each year over the next two years, as the Port has offered.

Thus I shall direct the parties below to provide for basis wage increases of 3% on January 1 of each 2001 and 2002.

D. DECISION AND AWARD: BASIC WAGE RATE INCREASES (Item 11)

I decided and award that Appendix A, PAY RATES be competed at Section I as follows:

A. Effective January 1, 2000, increase the 1999 basic wage rates by 3%.

B. Effective January 1, 2001, increase the 2000 basic wage rates by 3%.

C. Effective January 1, 2002, increase the 2001 basic wage rates by 3%.

IV. EDUCATIONAL INCENTIVE ELIGIBILITY. (Item 21).

A. PROPOSALS OF THE PARTIES

The Union proposes that the educational incentive be available to officers upon the completion of probation.

The Port proposes to leave the eligibility conditions as in the current Agreement, available only to the Police Officer "A" classification.

B. CONTENTIONS IN SUPPORT OF PROPOSALS

1. Union.

The Union pointed out that no good reason exists for the current eligibility rule for the officer to await "A" classification, generally 5 years service unless a lateral transfer new hire with experience. Since the Port recognizes that education has a benefit to the employer, that benefit accrues upon the arrival of the officer. Delaying until probation is completed, as proposed by the Union, allows acquisition of experience with the Port to complement the educational achievements.

Second, a majority of the comparable jurisdictions (Seattle Six) offer the educational incentive at completion of probation or earlier in the service career of the officer than is done by the Port. Bellevue, Renton and Everett offer full educational incentive at the completion of probation (T VI:52-53). None among the Seattle Six who have an educational incentive offers it as late in the career of the officer as does the Port.

Third, the educational incentive is needed for recruitment purposes, as was illustrated by the testimony of Officer Minnehan (T III, 189). The failure to match the educational incentive of other near by jurisdictions risks the loss of many of the younger officer only recently recruited, and intensifies

the difficulties of recruiting additional staff, the Union claimed.

Fourth, the Union pointed out that the absence of the educational incentive among the younger staff creates a substantial differential in pay between them and those with longevity in excess of 5 years. Since the Port is saving on the cost per officer with the high proportion of new recruits in the last three years, no reason exists for the Employer not to lower the educational incentive eligibility levels to that proposed by the Union.

2. Employer

The Employer contended that a comparison of the Port's education incentive plan with those offered in other jurisdictions makes clear that the Port's plan is a good one. Because the Port has an excellent longevity plan, the current addition of education incentive makes the Port's situation even that more attractive to employees. Many jurisdictions have longevity or educational incentive programs but not both as Seattle and Bellevue.

The testimony of Officer Minnehan that the Union advanced, left the situation confusing. Although alleging certain benefits were offered to the Department by education, Officer Minnehan was unable to identify what jurisdictions had incentive programs for education and those that did not. Her testimony made clear that the Port's programs were sufficient to attract new hires, and would not lead to a loss of personnel.

The Port emphasized that it took about five years to train an officer adequately, and cited the testimony of Sergeant Klineberger to this effect (T II, 108:1-14). This represents the threshold, according to the Port, that the parties have relied upon for an officer to be eligible for the educational

incentive, and the period to wait to receive the longevity premium. Some officers transfer laterally into the department, generally come in at a higher level and do not have to wait for the five years for either.

Noting that some jurisdictions provide the education premium immediately upon completion of probation and that other provide it after some period of years, as King County and Kent, the Port concluded that its position was secure since it has had no difficulty in recruiting new police officers, and recent hires have not been leaving the Department. The Port concluded that the status quo in the Agreement with regard to the educational incentive should be retained.

C. ANALYSIS

I concluded that some adjustments should be made to the eligibility conditions for receipt of the educational incentive premium. Several reasons support changes in the direction of the Union's proposal.

First, the Union's argument has substantial validity that benefits of education accrue upon the beginning of employment and not some several years later. I do recognize, however, that the value of education may well be enhanced by experience but that does not eliminate the benefits of an education without experience. Employment applications for many employers specify that years of education may be substituted for years of experience and visa versa in meeting qualifications for job opportunities. I could find no reason why this principle would not hold for police officers, as well, once probation had been successfully completed.

Second, the majority of the ten comparables (Auburn, Bellevue, Everett, Federal Way, Renton and King County) provide for educational incentive pay earlier in the careers of police

officers than does the Port. Although this is not an overwhelming circumstance vis a vis the Port, the data lean toward the Union's proposal.

Third, the one group among the Port officers that currently is farthest behind in compensation relative to its similar group among the comparables are the new hires and those with less than 5 years longevity. This can be seen clearly in Table 3 where the base rate and those with only five years longevity are farther behind the average of those groups among the comparables than is the case for other longevity groups at the Port. Accordingly, providing for the educational incentive to apply after probation would tend to equalize the compensation of new hires at the Port relative to new officers elsewhere.

Finally, although both education and experience contribute to the value of an employee, to some extent these measures of greater value and increased productivity overlap. Clearly the addition of many years of seniority tends to diminish the value of a college education as skills and expertise, specific to a particular classification or profession are acquired by on the job experiences. At high levels of longevity, with individuals of equal capacities and competence, any differences in performance between the one with a college education and the one without may be difficult if not impossible to determine. Accordingly, I shall propose below that the educational incentives now a part of the Agreement be applied to all employees hired since June 1, 1996 with the proviso that the employee shall be eligible for the educational incentive or longevity, which ever is greater, but not both.

I propose this adjustment to the eligibility of education incentive for two reasons. First, on the basis of Table 3, it will improve the wage position of the new hires relative to their comparables and in subsequent years will reduce the

position of those in higher longevity classifications vis a vis others in a similar position among the comparables. The structure will shift such that the "4.01%" in Table 3 will tend to fall and the "2.21%" at 10 years longevity will tend to go up. Overall the wage rates of the Port will fit the pattern in the ten comparable jurisdictions more effectively than now.

Second a substantial number of the comparables have developed a matrix of educational incentive and longevity, not entirely unlike that incorporated here. In addition a matrix between longevity and educational incentive recognizes the interrelationship between the two and that increased productivity does not result cumulatively from the two factors, education and on the job experience (longevity). The two factors provide overlapping value to the employer.

D. DECISION AND AWARD: EDUCATIONAL INCENTIVE ELIGIBILITY (Item 21)

I decided and award that Appendix A, PAY RATES be completed at Section V. Educational Incentive in the new Agreement as follows:

A. For officers hired before June 1, 1996:

Base pay for Port Police Officer "A" classification shall be increased by the following educational incentive schedule.

Percent of "A" Rate	Degree
2%	Associate of Arts Degree
4%	Bachelor's Degree
6%	Master's Degree

B. For officers hired since June 1, 1996:

(1). Base pay for Port Police Officer "E", "D", "C" and "B" classifications shall be increased by the following educational incentive schedule:

Percent of "A" Rate		Degree
2%	----------	Associate of Arts Degree
4%	----------	Bachelor's Degree
6%	----------	Master's Degree

(2). Base pay increases provided for in (1) above shall be available only to those police officers who have successfully completed probation.

(3) Police officers, hired since June 1, 1996, shall be eligible to receive the educational incentive or longevity pay, whichever is larger, but not both.

C. This Section V Educational Incentive of Appendix A, PAY RATES shall be effective January 1, 2000.

V. CANINE TEAM DIFFERENTIAL (Item 12).

A. PROPOSALS OF THE PARTIES

The Union proposes a canine team differential of 4% of the employee's base pay.

The Employer proposes to continue the canine team differential at 2% of the employee's base pay.

B. CONTENTIONS IN SUPPORT OF PROPOSALS

1. Union.

The Union argued for the higher differential because of the extensive training and FHA certification required for each team of officer and dog. Five teams of explosive-detection and one narcotics-detection team are maintained by the Port. The Port has all but one of the certified explosives-detection teams in the State.

In addition to the regular patrol duties, the officers on the canine teams must care for their animals and maintain control over them at all times. When called out to conduct a search for explosives, the officer on a canine team faces "perhaps the greatest physical risk of any police officer," the Union claimed.

Further, the Union contended that the canine team differential among comparables was greater than at the Port. Reporting only the differential for the Seattle Six, the Port is at 2%, the lowest of any of the six jurisdictions, even though the most stringent training is required at the Port. The average cited by the Union for the six jurisdictions was 4.6%, and its proposal was only for a 4% differential.

Although the officers receive one-hour time off and one hour of overtime for each shift worked and one hour for each day off for care of the animal, according to the Union, this "time premium" should not be taken into account when determining the

differential since "it is not a 'premium' at all." "It is nothing more than pay for hours worked during what would otherwise be off-duty time." Care of the dog is work time and resulted from a Fair Labor Standards Act lawsuit. This pay is separate and distinct from the differential premium pay, the Union asserted and should not be counted toward comparisons among the comparables.

Finally, the Union believes that a comparative analysis cannot be done that is accurate and comprehensive because of the differing arrangements among the jurisdictions, and reliance should be placed on the simple straightforward differential percentage provided by other jurisdictions. Accordingly, on the basis of the above reasons and considerations, the Union requested an increase to four percent in the canine team pay differential, primarily because of the higher differential at other jurisdictions.

2. Employer

The Employer contended that the Port officer on the canine team receive both a time and a pay premium that is 70% higher than the next highest premium paid among the smaller jurisdictions and over double what is provided by any of the Seattle Six. On this basis no increase in the 2% differential is justified.

Acknowledging that the computation of pay for the officers on the canine teams may be complex, the Port maintained that the total compensation should be considered, not the single differential premium pay alone. In some jurisdictions, a time premium is provided; in others both a differential pay and a time premium are provided and in Bellevue and King County only a differential is paid. Thus it is essential to reduce all of the extra compensation to these officers to a common base of hours.

In this regard the Port officer received pay for 598 hours for care of the animal and for work on the team. Seattle has 325 hours, Everett at 182, Renton at 248 and Tacoma at 208 hours. Kent allows 180 hours and Tulwila 244 (E 190-192; Er Br, p 68). This compares to 598 hours paid for by the Port including one hour of released work time on each scheduled shift.

Even though the pay differential is lower at the Port than elsewhere, the time premium is substantially greater. No increase in the pay premium is warranted under these circumstances.

C. ANALYSIS

The substantive issue between the parties in this instance is how to compute the premium, i.e., whether both time and pay premiums should be considered. Since some officers on canine teams in other jurisdictions get only a pay premium, as in King County, yet must do the same work as those who receive both a pay and a time premium, as in Renton, logically both should be computed in order to make reasonable and like comparisons across comparables. I rejected the Union argument that time premiums should be ignored in comparisons across the comparables.

The reasonableness of counting both time and pay premiums is illustrated by contrasting King County and the Port's compensation to the canine teams. King County pays its officers on the canine team a 10% premium on the second step, or in 2000, $417.10 each month. At the Port, the officer receives one hour and a half of overtime on each scheduled day in addition to working a full shift, one hour of which is allowed for care of the dog. Thus whether the hour of released time is counted towards a time premium, the Port officer does receive a 2% pay differential plus 13 hours of overtime (19.5 hours at straight

time) during each month for work on the canine team and for care of the animal. This amounts to approximately $590.00 per month (13.3% of base pay with a 3% increase over 1999), or substantially more than the King County officer receives.

But in addition, the Port officer receives one hour each day with pay to care for the dog that is not available to the King County officer. Even if the later is not counted as a premium time, no pay advantage exists for King County officers over the Port officers on the canine teams. But including the time off and time paid each day for care of the dog, as the Port argued, makes the Port premium pay for the officer on the canine team more than that paid in any jurisdiction among the comparables (E 191 and 192; CBAs).

On the basis of consideration of the practices among the comparables alone, I concluded that the proposed increase in differential pay for the officers on the canine teams should be set aside and the provisions of the current agreement continued in the new contract.

D. DECISION AND AWARD: CANINE TEAM DIFFERENTIAL (Item 12).

I decided and award that Appendix A, PAY RATES be completed at Section VII. ASSIGNMENT AND SPECIALTY PAY, paragraph D. Canine Differential in the new Agreement, as follows:

The pay differential for an officer assigned to the K9 unit shall be 2% above the employee's base pay rate. Such officer shall also receive the following compensation:

(1) (as now agreed between the parties) .... ETC.

VI. DIVE TEAM DIFFERENTIAL (Item 13).

A. PROPOSALS

The Union proposes a dive team pay differential of 4%.

The Port proposes to retain the current dive team pay differential of 2%.

B. CONTENTIONS IN SUPPORT OF PROPOSALS

1. Union

The Union argued for an increase in the dive team differential because of the "significant risks and dangers" in operating in a "hostile environment." Risks exist even when training, from embolism, tide, visibility and marine life. These risks have resulted in injury to many, the Union noted (U 70 and 71). In addition to actual service dives numbering eight to twelve a year, the team must train once or twice a month.

The Union pointed out that the dive teams operates in the same waters, do the same tasks as other dive teams in the area. Although Bellevue, Renton and Tacoma have no team, the others pay an average of almost 5% among the Seattle Six. This percentage is well above what the dive team receives at the Port and justifies the increase from 2% to 4%, according to the Union. Even though the number of call-outs are few, the team must be prepared at all times and undergo continual training.

The increase in the differential is fully justified by the comparables and fully warranted given the nature of the work.

2. Employer

The Employer noted that the dive team is made up of persons who like to dive and thus given the few times the team is called out, no increase in the differential is warranted at this time, the Employer contended.

The dive team had only three calls in the first three months of 2001, none of which were unusual. These included the recovery of items fallen from the dock during the earthquake, unwinding a line around a cargo ship's propeller, and recovery of some drugs that had been thrown overboard during a drug bust. Although the dive team performs a valuable service to the Port and the community, the infrequency of incidents for which team members are called does not warrant an increase in the dive team premium, and those that have occurred seldom require only a few members of the team. According to Ms Kirk, the Port dive team is used much less frequently than either the King County or Seattle dive teams (T VI, 51:1-3).

Finally, the Port alleged that it has had no difficulty in getting officers to serve on the dive team as more officers apply than there are positions available. Those who are on the team are diving enthusiasts, and enjoy the opportunity whether paid or not, the Port pointed out (T II, 24:10-17).

The approximate $1,000 premium pay now given the dive team members each year is adequate and fair, and the increase to 4% is not warranted, the Port concluded.

C. ANALYSIS

I concluded that the 2% dive team differential now paid is adequate and fair for the "extra" work that the officers do in this instance. Clearly, differential pay for certain work is related to the availability of the skill to do it and to the frequency with which work of that kind is required or needed. Here the evidence on the infrequent use of the dive team and on the nature of its make up of diver enthusiasts affirms that the team does not compare to the teams in other jurisdictions. Although the quality of the team need not be questioned, I concluded that the dive team for the Port was more of a

convenience than a necessity, and hence the 2% differential in pay appeared adequate. I affirm below that no change in the dive team differential should be incorporated in the new agreement.

D. DECISION AND AWARD: DIVE TEAM DIFFERENTIAL (Item 13).

I decided and award that Appendix A, PAY RATES be completed at Section VII, ASSIGNMENTS AND SPECIALTY PAY, paragraph F. Dive Team Differential in the new Agreement, as follows:

Officers assigned to dive team duty shall receive 2% differential above the employee's base pay rate.

VII. TACTICAL SERVICES DIFFERENTIAL: (Item 14).

A. PROPOSALS

The Union proposes a tactical services (TSU) team differential of 4%.

The Employer proposes to retain the differential of 2% for the tactical services unit in the current Agreement.

B. CONTENTIONS IN SUPPORT OF PROPOSALS

1. Union

Although the Port has had a SWAT team for several years, actual incidents were infrequent and most of the effort went into training. In the spring of 2000, the Port joined the Valley SWAT team composed of officers from Kent, Renton, Auburn, Tukwila and now Federal Way. Here the teams train twice a month and Port officers respond to assist other jurisdictions with regard to "live" incidents.

The Union contends that the differential should be increased to 4% because Renton, Kent and Auburn as well as others in the Seattle Six pay officers, on average, a 4% differential for work on the tactical service unit. Port officers on the Valley SWAT team receive less than other members of the team, and according to the Union, should be receiving a pay differential equal to the 4% average among other jurisdictions.

2. Employer

The Employer believes that the 2% pay differential for the TSU is sufficient in relation to the work the team members must do. The Port team has been and is relatively inactive. It was because of this that the Port joined the Valley Response Team (SWAT) so that the Port officers could get some practical experience outside of training. But even now, if an incident

arises where a TSU may be required, that jurisdiction decides if Valley Response Team members from other jurisdictions, including the Port, are required. Even then usually only two members would respond. The workload of the Port TSU team is very low, and until more experience is gained in the Valley SWAT team, the differential should remain unchanged.

In addition, the Port pointed out that among the five jurisdictions on the Valley Response Team, neither Federal Way nor Tukwila provide for a differential, although the other three do. The average of these five is just over 2%, the Port pointed out. Further, although the tactical response teams in Seattle, King County and other Seattle Six jurisdiction do pay a higher pay differential than the Port, the volume of activity is many fold greater than at the Port. The type of incidents for which a SWAT is required do not appear at the Port except in rare circumstances. Accordingly the risks and dangers involved are much less at the Port than elsewhere.

The Port contends that the differential for the TSU be left at 2% and suggested that after more experience is gained with the Valley Response Team that the matter be reexamined at that time.

C. ANALYSIS

A major difference between the TSU with the Port and other jurisdictions is the frequency with which incidents arise over which the special skills and expertise of the SWAT would be more effective than regular officer efforts. "Shooters, hostage situations, barricaded person situations" are far more numerous among other jurisdictions than at the Port. As Kimsey testified there has not been a "terrorist" attack at the Port in 28 years. As the Employer emphasized, "there simply are not that many

events on Port property that require a SWAT team presence" (T VI, 213:3-6).

The risk and dangers to which the TSU members may put themselves relative to the normal duties of regular officers appear as the primary reason for a pay differential for TSU. Because Port officers are much less frequently put in the "uniquely dangerous" situations, little reason exists to increase the differential relative to those officers in other jurisdictions who have a much heavier burden of uncommon and somewhat more dangerous incidents.

Although the larger jurisdictions among the comparables pay a higher differential for TSU than the Port, they have a larger demand for the services of such units. On the other hand, as pointed out by the Port, the jurisdictions that make up the Valley Response Team average a 2.1% differential compared to the 2% paid by the Port (E 193). Under these circumstances, I concluded that no basis existed to increase the pay differential for the TSU at this time. I do note the Port impression that once the Valley Response Team gets in full function and the Port TSU gains more experience in handling unique and dangerous situations, the differential should again be reexamined for a possible increase.

D. DECISION AND AWARD: TSU DIFFERENTIAL. (Item 14).

I decided and award that Appendix A, PAY RATES be completed at Section VII, ASSIGNMENTS AND SPECIALTY PAY, paragraph C. TSU Differential in the new Agreement, as follows:

Effective January 1, 2000, the pay differential for an officer assigned to TSU shall be ___two___ percent (_2%_) above the employee's base pay rate.

VIII. DECTECTIVE DIFFERENTIAL (Item 15).

A. PROPOSALS

The Union proposes a detective differential of 4%.

The Employer proposes to retain the 3% detective pay differential in the current Agreement.

B. CONTENTIONS IN SUPPORT OF PROPOSALS

1. Union

The Union pointed out that the detectives at the Port perform duties similar to the duties in other departments, have the same risks and workings conditions, for the most part, as detectives in other departments, and currently are busier than ever. The Port and Renton at 3% pay the lowest premium for detective work among the Seattle Seven, the Union stated, with the most common differential being 4%. These circumstances support the 4% differential rather than the current 3%, the Union concluded.

2. Employer

The Employer contended that the 3% differential was more than adequate given the generous clothing allowance by the Port and the nature of the crimes investigated there relative to the situations in other jurisdictions (E 192). There are fewer crimes to investigate at the Port of a more complex nature such as rapes and homicides that require the full panoply of skills of a detective, than among the comparables. The Port noted that an average of 2,245 cases of burglary were investigated per comparable among the Seattle Six but the Port had only 22. There were no rapes or homicides at the Port in 1999 (E 50). Also, according to the Port, Tacoma pays no premium, Bellevue went to 4% only by reducing its clothing allowance, and among the Seattle Six, the average pay differential is only 3.6%. When

the relatively more generous clothing allowance at the Port is considered, the 3% pay differential should be retained in the new Agreement, the Employer concluded.

C. ANALYSIS

Although it would appear that the nature of the investigative work at the Port is somewhat different and requires less expertise overall than in other department among the comparables, the pay differential for the ten comparables lends an average less than the 3% now paid by the Port. Three pay no differential, two pay 3% and five pay 4%, for an average of 2.6%. When the larger clothing allowance at the Port relative to other jurisdictions is considered, the 3% now paid the detective as a premium represents near the best among the comparables. On this basis I concluded to leave the detective differential at 3% as in the current Agreement.

D. DECISION AND AWARD: DETECTIVE DIFFERENTIAL (Item 15).

I decided and award that Appendix A, PAY RATES be completed at Section VII, ASSIGNMENTS AND SPECIALTY PAY, paragraph A, Detective Differential in the new Agreement, as follows:

The pay differential for an officer assigned as a detective shall be __three__ percent (_3%_) above the employee's base rate.

IX. CRISIS NEGOTIATION UNIT DIFFERENTIAL. (Item 16).

A. PROPOSALS

The Union proposes to add to the Agreement a pay differential of 3% for the Crisis Negotiation Unit

The Employer proposes to retain the current practice of paying no differential for officers assigned to the CNU.

B. CONTENTIONS IN SUPPORT OF PROPOSALS

The **Union** based the proposed 3% differential upon the training required for this work, that the employee faces risks beyond those accepted by a regular patrol officer, and that Everett and Seattle departments pay 4% and 3% respectively for the CNU. The proposal of the Union is for the lowest among those who pay the differential among the comparables, and should be placed in the new Agreement.

The **Employer** contended that only two call outs were made in the last year, that no primary danger to the officer is evident, only to the suicidal subject that is being dealt with, and that among the ten comparables only Everett, Seattle and Auburn pay a premium for officers in the CNU (T I, 89:25 - 90:3; 91:2-5; E 192, U 66). The Employer concluded that no basis existed here to support any pay differential for officers on the CNU.

C. ANALYSIS

I concluded that the work of this unit was relatively negligible, that no special risks arise from the work, and that the prevailing pattern among the ten comparables was to follow the practice of the Port and not provide a differential for CNU work.

D. DECISION AND AWARD: CRISIS NEGOTIATION UNIT DIFFERENTIAL. (Item 16).

I decided and award that

No pay differential for the Crisis Negotiation Unit will be included in the new Agreement.

X. BICYCLE PATROL DIFFERENTIAL. (Item 17).

A. PROPOSALS

The Union proposes to add a bicycle team differential of 3% to the new Agreement.

The Employer proposes to retain the current practice of paying no differential for officers assigned to the bicycle patrol.

B. CONTENTIONS IN SUPPORT OF PROPOSALS

The **Union** contended that the pay differential for the bike patrol was justified because it increases the efficiency and productivity of the patrolman. In addition, more risks are associated with the bicycle than normally since riding is done in crowds and among traffic where accidents are more likely. The Union noted also that the speed of movement of the officer brings him upon a situation more rapidly than under other patrol practices, and increases risks to him in that way.

The Union noted also that Bellevue and Renton officer receive a 3% premium for being a part of the bicycle team, which is the same pay differential sought here (U 66; E 192). The increased productivity, added risks in riding a bicycle, and the pay in comparable jurisdictions justify the 3% differential that should now be added to the new Agreement, the Union concluded.

The **Employer** acknowledged that it benefits from the use of bicycles by the officers, but officers do so for only a part of their shift, although this depends upon the exact assignment. None of the officers have certifications from the State or the IMPBA (T II, 46:2-8). Further, as Sergeant Bartol acknowledged the risk of riding a bicycle downtown is significantly higher than in the areas that Port police generally ride their bikes (T II, 47:4-15). Both Bellevue and Renton police ride in traffic-congested areas, the Port noted. Not mentioned by the Union is

the fact that none of the other jurisdiction among the ten comparables provides for a pay differential for the patrolman on a bicycle. According to the Employer, "the mere fact that officers ride bikes does not and should not require that they be paid additional money." Here the facts do not support implementation of a premium for the bike patrol, the Port concluded.

C. ANALYSIS

I concurred with the Employer in this instance. The contention regarding extra risks and dangers encountered by the bike patrol were not persuasive. Riding a bike only part of a shift discounts the appropriateness of a pay differential. And here, no support can be gained by looking at the comparables. Eight of the ten do not have bike patrol pay differentials. Accordingly, I concluded that the new Agreement should remain silent regarding any pay differential for patrol officers that ride bicycles.

D. DECISION AND AWARD: BICYCLE PATROL DIFFERENTIAL. (Item 17).

I decided and award that

No pay differential for patrol officers who ride bicycles will be included in the new Agreement.

XI. FIELD TRAINING OFFICER DIFFERENTIAL. (Item 18).

A. PROPOSALS

The Union proposes to increase the FTO pay differential to 5% without regard to the number of recruits assigned including none or to the Phase of training.

The Employer proposes to pay the FTO a differential of 6% during Phase II training and 4% during Phase III training, payable only during the month when a recruit is assigned to the officer.

B. CONTENTIONS IN SUPPORT OF PROPOSALS

1. Union

The Union contends that the proposal of the Employer takes advantage of a mutual agreement to grant the Port relief by a 4% flat rate because the latter now is no longer beneficial to the Port. The Port now wants an only-while-training rate because it is less expensive to have such a rate when the number of recruits is anticipated to decrease and an increase in the number of FTOs will further reduce the compensation of those officers.

The Union argued that the training of recruits takes an enormous commitment of time and energy since the FTO works with the recruit every day and must take additional time to complete paperwork and patrol functions (See T I, 74-75).

Asserting that the Port proposal is a self-serving one and unjust, the Union contended "the evidence demonstrates that there are good reason for maintaining the flat rate." It is easier to administer and no difficulties arise over when an officer trained a recruit. Other specialty pay premiums are paid for all hours worked and not just when engaged in the activity of the specialty. Further, the FTOs without recruits still have duties and responsibilities by continued training and

maintenance of skills; breaks to decompress; relearn, work through problems and develop improvements for the program. According to the Union training by the FTOs does not cease at the end of Phase III training who play an important role in the development of young officers.

Finally, the Union maintained that the Port proposal would undermine the program of training. The program is "mentally draining" because of the responsibilities in training, the Union asserted. Difficulties exist now in retaining officers. Kitamura opined that the Port proposal would lead to no FTOs, and that if none volunteered, no commitment for training would be forthcoming if the Employer compelled an officer to be an FTO. The future of the Department depends upon adequate and proper training of the new officers, the Union concluded, and now is not the time to reduce the compensation of the FTO as the Port proposes. The pay differential for FTO should be 5% regardless of the number of recruits trained, the Union concluded.

2. Employer

The Employer noted first that only one officer was still in Phase II training and none were currently in or scheduled to enter the academy, and thus there is much less activity in the FTO program than over the last couple of years (T I, 93:17 - 94:18; T II, 78:13-23).

According to the Employer there is a significant difference in the level of activity for an FTO during Phase II and during Phase III that justifies a difference in the specialty pay. In Phase II the recruit rides with the FTO, but in Phase III, he does not (T V, 188:10-21). Here the FTO is to be "available" for the recruit to answer questions and discuss problems, etc. During both Phases reports are made, but the Phase III requires a monthly evaluation only. Officer Minnehan testified that she

had little contact with her Phase III FTO (T III, 194:9-14). And further, the Port alleged, that if an officer was not working at all, no differential pay should be allowed. Here the FTO is not subject to being called out but has assignments controlled by the Port. The FTO is either assigned or not assigned,

Among comparable jurisdictions practices support the Port's proposal. Among the Seattle Six, three pay FTO only while actually training, two have no differential, and one pays the officers a differential on all hours worked (E 188). Among the smaller jurisdictions, only Auburn pays for all hours, while Kent and Tukwila pay only while training. Tukwila has no differential, however in 1998 the city bought out specialty pay with a 1.3% across the board wage increase (CBA, p 21). Premiums are lower and most jurisdictions pay only while training is going on, the Port noted.

In conclusion, the Port noted that the slow down in training now justified the payment of the differential only when the officer is training. In addition, the greater intensity of training in Phase II justified the higher rate than during Phase III training. Finally, the Port proposal is generous and exceeds what is being done among the comparables. The Port proposal should be placed in the new Agreement, the Port concluded.

C. ANALYSIS

The differences in the proposals raised three issues. The first is the matter of a flat rate for all training or separate rates for different phases of training. The second issue was determining the level or levels of the pay differential. The third issue concerned the payment of the FTO only while training or for all hours worked.

The differences in the level of effort, its intensity and the range of responsibilities as well as specific duties to be performed in Phase II persuaded me that differential rates made the most sense. The above description of the work by the Union related primarily to Phase II and demonstrated a major difference in what the FTO must do in the earlier training period relative to Phase III. The latter is more in the role of observer and evaluator, as the training technique, rather than on the spot, face-to-face, instruction and relationships. The latter training practices are more far more demanding of the trainer than the Phase III activities. Accordingly, I concluded that FTOs in Phase II training should receive a higher differential in pay than those in Phase III.

Second, the Port's proposal of 6% and 4% for Phase II and Phase III work respectively exceeds the payments made for training in the ten comparable jurisdictions. Table 6 summarizes training pay.

Payment on all hours occurs in only two jurisdictions, and at a rate substantially lower than the 5% proposed by the Union. Rather payment of a premium among the remainder of the ten comparables, if paid at all to Field Training Officers, is made only when training takes place and a recruit or recruits are assigned to the FTO. Although why the King County specialty pay is so substantially higher than the others went unexplained, including it with the others makes a single rate average of 4.9% or just above 5% only 3.75% if King County is excluded as an unexplained aberration. When balanced against the fact that three jurisdictions pay officers no training premium at all, the Port proposal is clearly equal to or better than the average of what is paid among he ten comparables and deserves implementation.

Table 6 - Pay Differentials and Periods Paid for Field Training Officers among Ten Comparable Jurisdictions, 2000

AGENCY	Percent Differential	When Paid
Auburn	3%	All Hours
Bellevue	2	All Hours
Everett	0	N/A
Federal Way*	0	N/A
Kent	6	When Assigned
King County	11.5	While Train'g
Renton	3	While Train'g
Seattle	0**	N/A
Tacoma	2***	While Train'g
Tukwila	2	While Train'g

* Bought out premium pay in 1998 for 1.3% salary increase.
** 3% paid for Academy instructor; not pay for FTO.
*** 2% paid for 60 days, then goes to 5%.

I have given little weight to the allegations that the adoption of the Port proposal will lead to the demise of the Port's training program or to the fact that the compensation of some FTOs may decrease under the Port Proposal. Since other jurisdictions use the same or similar format in training that the Port uses, and those jurisdictions are paying less than the Port for the FTO differential, I am not convinced the training program will fall apart. In addition, the testimony indicated that Sergeant Klineburger conceptualized the proposal of the Port in the first place (T V, 188:22 - 189:15; VI, 39:6-23; II, 106:4-9). Nor is there any reason to believe that lower compensation than previously paid by the Port, if that in fact will be the case, should lead to disastrous results. And finally, I rejected any notion that any officer assigned to training, even if not a volunteer, would fail to give his best efforts to the program.

For these reasons and considerations I found the Port proposal the preferable one for the differential pay for Field Training Officers.

D. DECISION AND AWARD: FIELD TRAINING OFFICER DIFFERENTIAL. (Item 18).

I decided and award that Appendix A, PAY RATES be completed at Section VII, ASSIGNMENTS AND SPECIALTY PAY, paragraph H, Field Training Officers Differential in the new Agreement, as follows:

(1). The pay differential for an officer assigned as a Field Training Officer for training recruits during Phase II shall be six percent (6%) of the employee's base rate for the period while training a recruit.

(2). The pay differential for an officer assigned as a Field Training Officer for training recruits during Phase III shall be four percent (4%) of the employee's base rate for the period while training a recruit.

(3). The officer assigned as a Field Training Officer shall receive the 6% or 4% of his monthly base salary, as applicable, for any month in which he/she is in a training status for one-fourth or more of the officer's regularly assigned straight time work hours during that month.

(4). To be eligible for either the 6% or 4% differential the officer must be certified and assigned as an FTO.

(5). Although the Department shall assign the recruits to be trained by each FTO, ordinarily, but not necessarily always, only one recruit will be assigned to each FTO in Phase II at one time and ordinarily no more than two will be assigned each FTO in Phase III at one time.

XII. EVIDENCE IDENTIFICATION TECHNICIAN/CRIME SCENE SPECIALIST DIFFERENTIAL PAY. (Item 19).

A. PROPOSALS

The Union proposes differential pay of 5%, 7% and 10% for the three levels for Evidence Identification Technician/Crime Scene Specialist.

The Port proposes to retain the current differential pay steps at 3%, 5% and 7%.

B. CONTENTIONS IN SUPPORT OF PROPOSALS

The **Union** alleged that this position of evidence technician/crime scene specialist is a unique one and essential to the Department. The single incumbent is now at the highest level, and for the most part is doing work that in other jurisdictions is performed by Sergeants or Lieutenants. The position was modeled after one in Bellingham that the Union asserts pays a higher rate than at the Port. Accordingly, the Union argued to increase the levels of premium from 3%/5%/7% to 5%/7%/10%.

The **Employer** pointed out that the incumbent was at the highest level and had been there for a number of years, and at the present time received the next to largest premium of any officer in the Department. Since in other jurisdictions by reason of the much larger number of crimes, usually three positions are maintained instead of only one as at the Port. Many of those positions provide only a 3% premium, the Port stated (T VII, 153:24 - 154:3). In many cases civilians do the work with no "premiums." Other evidence rooms have a Sergeant in charge that supervises two or three or more employees. Here the evidence room is so small that the incumbent does the work without any supervisory duties and what Sergeants and

Lieutenants get elsewhere is irrelevant to the Port's circumstances, the Employer argued. Since the premium must be based on the position and not the person who may be occupying it at the moment, according to the Port, no basis exists for increasing the premium for the Identification Evidence Technician/Crime Scene Specialist position.

C. ANALYSIS

In the absence of any direct comparables, I was not persuaded to adopt the proposal of the Union for an increase of 2% in each step of premium pay for this position. Although the Port situation was established on the pattern of the Bellingham Police Department, the time lapse since then (1987) makes a comparison with any position in that Department unreliable in addition to falling outside of a comparable jurisdiction as determined above. Officer Demetruk acknowledged that to the extent that portions of the job could be identified elsewhere in surveys, the going premium was about 3%, although the location of these positions was not identified (T VII, 153:22 - 154:3).

Further I concurred with the Employer that comparing what the incumbent in this position does to the duties and responsibilities of Sergeants and Lieutenants in other jurisdictions of the comparables was irrelevant, for the most part. This position has no supervisory duties and operates a relatively small evidence room and to the extent that crime scene management is necessary, only a relatively few incidents (crimes) occur in relation to what goes on even in the smaller jurisdictions among the ten comparables (see E 52).

I was not persuaded that the premiums should be increased as the Union proposed for the Identification Evidence Technician/Crime Scene Specialist.

D. DECISION AND AWARD: EVIDENCE IDENTIFICATION TECHNICIAN/CRIME SCENE SPECIALIST. (Item 19).

I decided and award that Appendix A, PAY RATES, be completed at Section VII, ASSIGNMENTS AND SPECIALTY PAY, paragraph G, Crime Scene Specialist/Evidence Identification Technician in the new Agreement, as follows:

Recognizing the technical nature of this assignment, ... (etc.).

Candidates for this assignment shall be evaluated ... (etc.).

The differential premiums, as a percent of the employee's base pay, shall be as follows:

First Step: ------ 3%
Second Step: ----- 5%
Third Step: ------ 7%.

XIII. NIGHT SHIFT PREMIUM. (Item 20).

A. PROPOSALS

The Union proposes to add a 5% of base pay premium to the Agreement for work on the night shift at Section VIII of Appendix A, PAY RATES.

The Employer proposes to retain the current practice of not paying a night shift premium.

B. CONTENTIONS IN SUPPORT OF THE PROPOSALS

The **Union** argued that the night shift disrupts family life and merits a premium for that fact. It contended also that in a bidding system, few senior officers are on the night shift, and thus inexperienced officers are primarily on duty. This reduces the effectiveness of the night shift force. And third, the City of Tacoma provides a 5% shift differential for the graveyard shift. These elements justify the 5% night shift proposal of the Union, it concluded.

The **Employer** on the other hand maintained that it had encountered no difficulty in getting qualified officers to work on the night shift, that, in fact, some employees for various reasons prefer to work at night. Indeed, the officers have four nights out of each week without work on the current three 12½ hour shift current weekly schedule, a very favorable schedule, the Port asserts. In addition, the proposed shift premium amounts to a 2½ percent increase for the bargaining unit, assuming that half work at night and half on the day shift. Given the position of the Port officers' salary wise relative to officers in the comparables, no such increase in compensation can be justified. Nor is there any evidence of an industry practice to provide night shift differentials, and none except Tacoma among the Seattle Six or among the smaller jurisdictions pay such a premium. The Union's proposal should be rejected, the Port concluded.

C. ANALYSIS

I concurred with the Employer's position in this instance and shall deny the addition of a shift premium to the new Agreement. The arguments of the Employer above are persuasive relative to those of the Union.

The absence of any practice in the industry generally as well as among the ten comparables to provide a night shift premium, except Tacoma weighs against an arbitrator breaking "new ground" for the parties in this proceeding. Although an equal distribution of experience and seniority might be advantageous, the employer has the prime responsibility to determine the competency and adequacy of its patrols. Testimony of Kimsey indicated that the watches were filled properly (T VI, 173:20 -174:3). Finally, the increased compensation that would result from the premium is not justified when salaries of Port officers are compared to those of other jurisdictions (Tables 3 and 4 above).

Lastly I noted the quotation by the Port of a recent decision by Arbitrator Snow regarding attitudes of workers towards evening and night work (Er Br, p 78). Some workers prefer swing and graveyard work as much as others desire day work, and find it a rational schedule for their circumstances. Although many of us prefer only day work, this is no longer universally true, if it ever was the case.

I shall deny the addition of the night shift premium as proposed by the Union.

D. DECISION AND AWARD: NIGHT SHIFT PREMIUM. (Item 20).

I decided and award that,

The proposed Section VIII, Shift Premium, Appendix A, PAY RATES shall be omitted from the new Agreement.

XIV. OPTION NOT TO APPEAR ON MAKE-UP DAY. (Item 2).

A. PROPOSALS

The Union proposes to retain the current language in Article XIII, Section 1.a.5 and place it as item 9 in Article XI - Hours of Work and Overtime, Section 1. - Schedule for Patrol Officers, B. - Make Up Day, of the Tentative Agreement, U 2, p 9, as follows:

"Make-Up" Day: If an officer so chooses not to work a make up day, the hours will be charged against their (his/her) vacation or holiday balances.

The Employer proposal at E 165-166 substitutes the following for the Union's proposed item 9 above:

If an officer is on vacation for all days during a 28-day cycle (or cannot have the make-up day scheduled during the cycle due to the requirements of Section B.5 (above)), the make-up day will be charged against his or her vacation or holiday balances.

It is the intent of the Port's proposal at Article XI.1.B. in the new Agreement that the officer shall be required to actually work the "make-up" day.

B. CONTENTIONS IN SUPPORT OF PROPOSALS

1. Employer

Since the regular seven-day schedule requires only 37.5 hours during the period, in order to achieve the contracted 40-hour workweek, a "make-up" of 10 hours is required in each 28-day cycle. The Employer seeks to require the officer to work that 10-hour "make-up" shift and eliminate the opportunity for the officer to opt out of the make up day. As the Employer explained, "currently, an officer can simply call in and say that he/she wants to use accrued holiday or vacation time rather than work the make-up day, and not bother coming to work" and "opt out of the make-up day on short notice" (Er Br, 43).

The Employer advanced the following reasons for the proposed change. First, if officers could not opt out, the Port could make better use of the make-up day for training purposes, as bringing in trainers from outside the Department. Second, scheduling could be made with greater certainty. "Holes" in the schedule from those on vacation and other scheduled absences could be filled with a measure of certainty. A unilaterally "opt out" of the make-up day leaves the Department in the position of relying on overtime in most instances, according to Kimsey (T VII, 75; E 167).

Although the Union attempted to show that only a small percent of the employees opt out, usually no more than three or four officers, or about 10% of those on patrol, in any one 28-day work cycle, the Employer pointed out that it had no way of knowing which 10% will not show up, and leaves the Port with the problem of filling holes, as noted above.

Third, no other police department has any such provision in its contract that allows an officer to unilaterally choose not to come in on a scheduled workday. None of the Seattle Six or any of the smaller jurisdictions provide for this practice (E 169-70). This day is unlike any other, for even approval must be obtained for a regular vacation day, the Employer pointed out.

In addition, a further problem occurs with the make-up day because of the frequency with which the officers called in "sick" on the make-up day. Ms Brower, who is the Department scheduler, testified to some concern over whether the current system is being abused by the "sick calls" of officers (T I, 124:10 - 125:2). The Port has no effective way to monitor this behavior it claimed.

Not every make-up day can be used for training, but, in fact, many make-up days are used for training. Port officers do

a substantial amount of training. Any claim by the Union that all make-up days should be used for training is without merit, the Employer maintained. On the other hand, the Port concluded that all parties believed that more training than now done could and should be undertaken, and the make-up day is a logical time to do it if the officers can be depended upon to report for duty on the make-up day. The Port's proposal is geared to "more effectively manage mandatory training" requirements and to provide scheduling certainty, and should be adopted by the Arbitrator, the Port concluded.

2. Union

The Union argued that the Port did not nor could it demonstrate a need to eliminate the right of officers to opt out of a make-up day. The Port claimed that exercising the right to opt out impaired the ability of the Port to schedule generalized or "mass" trainings. However, Training Officer Chang testified that he has not encountered any problems with scheduling trainings because of an officer opting out of the make up day. Although Chang had the impression that make up days would be used for training, it has primarily been used to supplement patrol needs rather than training, a matter acknowledged by Kimsey as well (T VII, 29; T III, 170-171).

Further, according to the Union, the number of officers who opt out is very small, only three, four or so from among some 76 officers (U 53). These officers have not disrupted the training schedule. But, of course, the Union points out, the Port's proposal is not limited only to those who opt out of training

The Union pointed out that it had no objection to the continuation of the seven-day advance notice by the officer to the scheduler of exercising the right to opt out. Indeed this was a concession the Union alleged to have made in order to

protect the employer from unexpected opting out by an officer, and to allow the scheduler adequate time to find a replacement. The Union pointed out that the Port has the right to deny an opt-out by an officer who fails to give at least seven days notice.

According to the Union, the Port has not met its burden to establish that a change in contract language is justified. Very few officers opt out and when they do it does not disrupted the training schedule. The Union has given the Employer a means to deny the opt-out right if the officer fails to provide a seven days' advance notice. The Union claimed that the existing language and memorandum of understanding represents a reasonable balance between the Department's need to be able to schedule training and patrol and the officer's need to have some flexibility to opt out of a make-up day. The Union denied any abuse of the right, and no justification for a change in the language. The Union requested that the arbitrator retain the exiting language that allows officers the flexibility to opt out of a make-up day and charge it against their vacation or holiday balances.

C. ANALYSIS

The contract language in dispute is unique and found solely in the Port Agreement. Nothing similar exists in any of the agreements of the ten comparables. In addition, the proviso reverses the usual employer-employee relationship in that it places in the hands of the employee the decision to work or not to work, rather than to do so at the request and direction of the employer. These two considerations give substantial weight to the Port's position and weighs on the side that the Employer would "hold out" a long time before continuing this provision as it is because of the inroads on "managerial rights."

The argument of the Employer that the opt-out opportunity of the officers interfered with certain types of training had merit. The evidence on the extent of training on the make-up days was at best mixed and unclear. Clearly some training was done on the make-up days. But a major and valid expressed concern of the employer was about "generalized" training opportunities, such as "HIV type training, blood born pathogen issues, safety issues" and other "state and federal ... mandatory trainings," even though many make-up days were used for specialty training (T VI, 175:7-12; 176:1-3). Although no training programs had been cancelled because of opting out of officers, the Employer voiced reluctance to plan such generalized training on make-up days, especially with outside instructors, by reason of the uncertainty officers would attend (T VII, 175:7-20).

The Union argued that a minimum of interference would occur since only four or five officers opted out each 28-day cycle. This circumstance cuts two ways. If only a small number take advantage of the opting out, then the right to opt out is not a particularly important one. On the other hand, the Employer's contention raised a larger issue. The Employer has no knowledge of which four or five will opt out, and thus the interference with either training and or patrol assignment assumes a larger burden on the Employer than the numbers of those opting out at any time would indicate. Either the training and or its schedule are disrupted or the Employer must fill the "hole" left in patrol by call-ins on overtime, a specific cost to allow the individual officer the opportunity to opt out.

Notwithstanding the above arguments, the Union makes a valid and persuasive argument that the Employer may prevent an employee from opting out of the make-up day if proper advanced notice is not provided, and thus avoid the short run problems

alleged above.. Under the Letter of Understanding between the parties clarifying the opting out procedures, the officers are required to give notice "within seven days of being notified of the scheduled 'make-up' day" (U 52). If proper notice is not given, the officer may not opt out of the make-up day unless the Deputy Chief of the Department gives prior approval.

Brower was clear to affirm "there's certain occasions where you got less than seven days notice" (T I, 125:16-24). Exactly why the "seven day notice" has not been enforced on training schedules was not made clear. Potential grievances over decisions to deny opting out of make-up days may be involved. Although the decisions to deny one officer, but allow another to have the day off is filled with grievance potential, the Union agreed not to press grievances where decisions were made in good faith (U 52). This still leaves reasonableness of decision criteria and their consistent application as bases for grievances. Additionally the matter may be related to Brower's concern over calling in sick on scheduled make-up days and the inability of the Port to monitor such behavior adequately without creating divisiveness between management and officers (T I, 124:14 - 125:2).

From another perspective, it is not altogether clear that the Union has no burden to demonstrate the desirability and effectiveness of this provision in the same way that the Employer carries a burden to demonstrate the difficulties and problems with its existence. It may be an employee right obtained in prior bargaining, but as any issue, it becomes subject to review, retention, revision and/or elimination in the process of negotiations on a new agreement. Under these circumstances, justification for the existence of a provision is just as relevant as justification for its elimination in interest arbitration.

I found the Union's arguments here largely defensive and for the most part void of any basis on why the employee should be allowed to opt out of a "make-up" day, aside from the point made above on adequacy of notice to opt. Opting out of a "make-up" day is a "perk," and provides a "benefit" to the employee, but I could find no justification for the "officers' **need** to have some flexibility to opt out of a make-up day" (emphasis added). In the normal course of events, each officer now has the option to request an emergency leave and or vacation day at any time. No evidence came forth to suggest that the Employer unreasonably denied any such requests, if the employee faced a personal or family emergency, ran into unusual circumstances, or a special event of even a nominal nature, as a planned family outing, for example. As best that I could determine, the opt out day came as a simple desire not to work that day, and not for any reason other than to take a vacation or holiday at the immediate behest of the employee. This is a "benefit" found in no collective bargaining agreement among the ten comparables.

In addition, although officers work long shifts of 12 ½ hours, for four days each week and for the same four days each week, the employee has time off work. (I recognize that some of the officers are on call by reason of membership on specialty teams but that on call service is paid overtime for the call out as well as a pay differential for being on the team). I could find no pressures of the job that would justify the need each month for each officer to be assured of four days rather than only three days off work in a particular week. If pressure is severe, and I assume at times it is, employees still have recourse to request vacation and holiday leaves for recuperation or to decline additional overtime work. Where fatigue may result from volunteered overtime work at overtime pay rates, the option to take off work with straight time vacation or holiday

pay would be preferable for the employee rather than discontinue overtime work. But such a practice would be consistent with the notion of "taking unfair advantage" thru the opt-out opportunity on the part of the employee, matter frowned upon by both Union and Employer.

The Employer actually addressed two problems: the inability to schedule training on make-up days with the confidence that all officers would show up, creating uncertainty in the overall training program and especially for mandated generalized training sessions; and second, the problems of filling in patrol "holes" with officers on make-up days since uncertainty again prevailed on whether or not the officers would report, and when they did not, the cost of overtime rather than straight time resulted.

I have concluded that these problems can be separated. I shall provide below that all days on which training, specialized and general, is scheduled are mandatory for attendance in the same manner as the three regular 12½-hour shifts during each seven days. However, for other assignments or to fill patrol "vacancies," the employee shall have the right to opt out of the make-up day assignment if notice in writing is submitted to the Deputy Chief no later than seven days following receipt of the notice of the scheduled make-up day. Late notices shall no longer be accepted even for approval by the Deputy Chief, and those assignment out of which the employee did not opt under the seven day provision become mandatory work assignments as the regular weekly 12½-hour shift. In cases of emergency or other wise when an absence is necessary, the employee will be required to seek leave in the regular and normal manner by the use of vacation and holiday balances.

D. DECISION AND AWARD:OPTION NOT TO APPEAR ON "MAKE-UP" DAY

I decided and award that Article XI - Hours of Work and Overtime, Section 1: Schedule for Patrol Officers, B. - Make-up Day, shall include item 9 in the new Agreement, as follows:

9. Notwithstanding the other provisions of this Section 1.B,

(a). No officer may choose not to work a make-up day if the day is scheduled for training.

(b). An officer may choose not to work a make-up day (1) if the day is scheduled for patrol or other duties NOT training, and (2) if the officer shall have given a written notice to the Deputy Chief within seven days of the receipt of notice of his/her make-up day assignment pursuant to the posted 28 day cycle schedule.

(c). The hours of a make-up day not worked pursuant to (b) above will be charged against the officer's vacation or holiday balances.

(d). If an officer is on vacation for all days during a 28-day cycle (or cannot have the make-up day scheduled during the cycle due to the requirements of Section B.5 (above)), the make-up day will be charged against his or her vacation or holiday balances.

XV. CANINE OFFICERS' WORK SCHEDULE. (Item 3).

A. PROPOSALS

The Port proposes to place canine officers on a 4 day, 10 hour per day seven-day schedule, as shown at E 172, figure 1 or 2.

The Union proposes to retain the current 3 day, 12½ hour per day seven-day schedule, as currently done at E 172, figure 3 or U 54, figure 1.

B. CONTENTIONS IN SUPPORT OF PROPOSALS

The **Employer** contended that the new schedule of 4/10s was required to increase the visibility of the canine team on patrol in the airport and thus to meet increased pressure from the Federal Aviation Administration to do so. The present arrangement of a 12½ hour shift was ill suited to use canine teams on patrol where as the 4/10s makes combinations of increased patrol time and adequate training much more available.

The Employer pointed out that under the 4/10s as much training time could be obtained as Kennel Master Thompson estimated was being undertaken now, and canine officers will have enough time for training. The Port has no intention of assigning the canine officer to the drives as part of the patrol, since this would not be an effective use of the canine. FAA interest in greater canine visibility in the airport would be inconsistent with assignment of the canine officers to the drives, the Port maintained.

The Port denied that any great difficulty would result from working the canine officers only nine hours alongside of the regular patrol schedule of 12½ hour shift as the canine officers could be used outside the hours of midnight to 6:00 a.m. Officers scheduled for the 10-hour make-up days are integrated into the regular daily schedule of patrol officers without great

difficulty, the Employer noted. In addition, although canine officers would be required to work three extra days in each 28-day cycle, they would work 2½ hours less on each day. Finally, the Port pointed out that the canine officers receive an especially lucrative premium for their participation on the canine teams.

Since a committee during negotiations, made up of employer and officers, including canine officers, looked favorably upon the new schedule of 4/10s, the Port asked that the arbitrator put it into effect in the new Agreement.

The **Union** maintained that the present schedule worked, so there was no need to fix it. In addition it was well liked by the officers, and so should be maintained. Clearly the Department was aware of the scheduling complexities involved in integrating the canine teams further into patrol work. The new schedule would conflict with the 12½-hour daily shift arrangement, the Union claimed. Even though the Department seeks additional patrol time, that is not sufficient basis to discard a system that works now and that the officers are happy with, the Union alleged. Few gaps, if any in the patrol schedule would be fixed by the change in hours for the canine teams. To do so, the Union claimed, would reduce necessary training time. Many departments do not put canine teams on patrol at all. Not irrelevant is the increase in days worked by the canine officers under the Port plan.

The Union concluded to assert that the Port had offered insufficient justification for changing the canine schedule from a system that "works well" to one that will be complex and difficult. The Union requests that the Arbitrator order that the canine schedule remain a three 12½-hour shift as currently staffed or on the basis of the schedule recommended by the canine team at U 54.

C. ANALYSIS

I have concluded that a change in the schedule of the canine officers from the current 3 days per weeks with 12½ hour shifts and the make-up day to a week of 4/10 brings no substantial advantage. The new schedule would complicate scheduling unnecessarily, and would reduce the officers from four days off to only three, a disadvantage most other officers in the bargaining unit do not have.

In addition, since the Port is concerned about insufficient patrol activity by the canine team, modifications can be made under the current schedule to do so. First, I am somewhat concerned what is the "current" schedule. The one shown by the Employer is different than the one presented by the Union (E 172; U 54). The Union schedule shows nine patrol shifts where the Employer shows only five.

As I understood the Port sought more patrol shifts with the canine teams and approximately half the time on patrol and half in training. The schedule shown by the Union meets that objective. An extra day of training for one team each week beyond what the table shows could be planned. This would allow eight patrols and seven shifts for training, plus the make-up day in training to equalize what the Port sought. As I understand and apply the Union schedule, each team would have 12½ hours of training each week, and once in each cycle an extra 12½ hours plus the ten-hour make-up day for training. Over the cycle, this equates to 72½ hours of training, or 18 hours per week or about what Thompson said the teams got now in training (T I, 59:16-18). The balance would leave 87 ½ hours for patrol in eight shifts.

I do not presume to know all of the intricacies of scheduling, but I was convinced that the objective of half on patrol and half in training or nearly so could be accomplished

by the present schedule. On that account the schedule does not need to be changed with resulting moderate complexities and a loss of three days off each 28-day cycle by the officers. The Port's legitimate objective of more visibility of the canine teams at the airport, as indicated by the FHA, could be accomplished.

Accordingly I shall direct the parties below to establish a schedule, based on 12½ hour shifts that will equalize the time spent in training with the time spent on patrol and to do so per the proposed language of paragraph D, with some modification at Section 2 of Article XI Hours of Work and Overtime of the new Agreement.

D. DECISION AND AWARD: CANINE OFFICERS SCHEDULE (Item 3).

I decided and award that Article XI Hours of Work and Overtime, Section 2 - Schedule for Non-Patrol Officers, paragraph D of the new Agreement be completed, as follows:

Canine Officers Schedule. The daily schedule of 12½ hour shifts for canine officers shall remain as presented by the Union (as the present schedule in page 2 of U 54), **except that the schedule shall be to provide approximately equal time spent in training (including the 10 hour make-up day) and time spent on patrol in each 28-day cycle. The parties shall establish a committee of one canine officer, one patrol officer, union representatives and management representatives to develop the full and detailed schedule for the 28-day cycle.**

XVI. VACATION ACCRUAL AFTER 22 YEARS OF SERVICE (Item 4).

A. PROPOSALS

The Union proposes to add eight hours of vacation for each year of service up to a maximum of thirty years of service, i.e., 208 hours after completion of twenty-three (23) years of service, 216 hours after completion of twenty-four (24) years of service, etc. to thirty years.

The Employer proposes to leave the vacation accrual unchanged as it is in the current Agreement.

B. CONTENTIONS IN SUPPORT OF THE PROPOSALS

1. Union

The Union argued, in the first place, that senior employees needed additional hours of vacation since many were working large numbers of overtime to augment their retirement benefits by high earnings in years before retirement. Second, among the Seattle Six, five departments provide vacation accrual beyond the 21 years of service now offered by the Port. Among these jurisdictions, the maximum accrual of vacation is higher in each than in the Port. The Union noted that the Employer's analysis at E 175 shows that the Port is "significantly below its comparables in terms of vacation accrual after 22 years."

Maximum accruals average 234 hours among the Seattle Six. If the Union proposal were adopted, the maximum accrual at the Port would be 256, equal to Bellevue, although slightly higher than the average. This level of vacation accrual is not unreasonable given the heavy load of overtime that the senior officers now work. In any case, matching the average is a modest request and puts the Port fully in line with the comparables. The Union proposal is fully justified, and the "arbitrator should adopt its vacation proposal or some modified version of

it to achieve a reasonable and fair improvement in the benefit accrual."

2. Employer

The Employer computed the maximum accrual under the Union plan as 264 hours. According to the Employer, the Union proposal is bereft of any support. Although Officer LaBissoniere thinks vacations are important and additional time is required to "rest, recuperate and regenerate," from all of the overtime, the Port pointed out that the overtime was all-volunteer and additional vacation is hardly an appropriate way to solve the issue. Better to remove officers from the drives, the Employer stated. It seems a bit paradoxical to justify the need for more vacation days on the basis that some officers are voluntarily giving up the vacation days they already have to work overtime on the drives.

The Employer contended that the vacation accruals and schedules were very beneficial to the officers now, and any change is not warranted. Officers work three days on, and then have four days off, on non-rotating shifts, ample time off work. At twenty years of service the Port offers exactly the same vacation accrual as the Seattle Six. After 22 years, the Port provides 200 hours, and the average of the Seattle Six at 25 years is only 217. Among the smaller jurisdictions, the Port exceeds the averages there. These circumstances indicate no need to expand the vacation accruals for Port officers, the Employer concluded and asked the arbitrator to deny the Union proposal.

C. ANALYSIS

My examination of the vacation accruals among the Seattle Six after 25 years service shows that four of them provide 216 hours of vacation. If Federal Way is dropped from the analysis because it is a new Department and has no offices with over 20 years of service, the average vacation accrual at 25 years of service for the remaining nine jurisdictions is 208. On the basis of these two data, both of which exceed what the Port now provides for its senior officers, I concluded that some addition to the 200 hours currently accrued at 22 years of service should be extended.

I concluded that a fair adjustment at this time would be to extend the vacation accrual to 208 hours after 23 years of service and to 216 hours after 25 years of service. Comparisons with the comparables cannot justify any additional vacation accrual at this time. Accordingly I deny the remainder of the Union proposal.

D. DECISION AND AWARD; VACATION ACCRUAL AFTER 22 YEARS OF SERVICE. (Item 4).

I decided and award that Article XII - Vacation, Section 1: Rates of Accrual should be amended following paragraph (g) in the new Agreement, as follows:

(h) 208 Hours of Vacation: After completion of twenty-three (23) years of continuous service.

(i) 216 Hours of Vacation: After completion of twenty-five (25) years of continuous service.

XVII. TAKE HOME VEHICLES: BOMB DISPOSAL UNIT (Item 5).

A. PROPOSALS

The Union proposes to add paragraph (q) at the end of Article XXI - Benefits in the new Agreement, as follows:

(q) BDU Cars.

1. The Port agrees to provide each officer on the BDU team with an assigned car for the duration of that officer's assignment on the BDU team.

2. Notwithstanding any provision in the collective bargaining agreement, the parties agree that BDU offices assigned a car in accordance with the provision in paragraph 1 above, shall not be entitled to 50% standby pay if they work in excess of seven on-call shifts in a 28-day cycle. All other provisions regarding on-call and call-back pay shall still apply. This agreement applies solely to the BDU team, and nothing in this paragraph shall be construed as in any way limiting the rights of officers who are not on the BDU team.

The Port proposes that the provision of three cars to the BDU of five members that are assigned on a rotating basis should remain unchanged. This the current practice under the Agreement.

B. CONTENTIONS IN SUPPORT OF PROPOSALS

1. Union

The Union supported its proposal by arguing that provision of the cars would alleviate the number of times members of the BDU would be on stand-by pay because of exceeding the contractual limit of seven days on call in each 28-day cycle. Currently, the Department consistently assigns officer on call for more than seven days, and creates a problem. In addition, the Department faces time-consuming and costly hassle associated with the vehicle trading that is required in moving the three vehicles among the five member BDU team. This constant rotation and trading are inefficient and time consuming for both the officers and the Department, the Union claimed, stating that it

interferes with patrol and or training time. Finally, the Union maintained that Officer Wesson had generated a study for the Chief and found that additional vehicles were available at the Port for assignment to the BDU, including, for one, a truck that on occasion was provided to the unit. Wesson claimed that the assignment of two additional vehicle would not be expensive.

According to the Union, the officers and the Union would be willing to exchange the receipt of the take home vehicle for each BDU member for release of payment of the 50% standby pay for officers assigned on call more than seven consecutive days as set out in the contract. The Union claimed that this would solve both problems, and urged the arbitrator to accept its proposal to provide all members of the BDU with a take home vehicle.

2. Employer

The Employer contended first that the decision to assign vehicle to the BDU was premature, since the Chief has not had an opportunity to study the report of Officer Wesson, and believe there may be a better way to solve current problems of the BDU than by assigning two more vehicle to the Unit. Second, the Employer noted that each on call BDU member is given a take home car, and that with three vehicles these can be rotated among the members of the BDU as each members takes a turn in being on call and not on duty. Wesson's testimony concerned the period prior to the use of the third vehicle, which the Employer claims has and will ameliorate the situation substantially.

The Employer pointed out that increasing the number of take home cars will not materially impact the Port's response to a bomb incident. In case of a threat only one or two members of the Unit are called out, not all of them. The on call offices will have the take home car. Although the car may provide some

convenience to the officer, the cars will not provide any better service or protection to the public.

Finally, the Employer disagreed with the testimony of Wesson regarding how expensive the cars would be. With the expectation of an expansion of the BDU, thus additional estimated costs of $37,000 per year after an initial outlay of $20,000 represent a substantial investment for little gain, the Employer argued. After the Chief completes his analysis of the situation, the Union can expect other ideas on how to resolve the officers' concerns. For now, the Union proposal should be denied, the Employer concluded.

C. ANALYSIS

I have concluded that take home cars for each member of the BDU is not justified, and accordingly have opted to retain the current language and practice under the current Agreement. Two major considerations support this judgment.

First, although it would be more convenient for each officer on the BDU to have his own assigned car, I was persuaded that such an assignment does little, if anything to improve the efficiency of the bomb squad to protect the airport and its travelers. When only two are called out for any one incident, with three cars assigned, two must be able to respond. Any additional cars would not improve this efficiency aspect of the work of the BDU.

Second, the provision of a vehicle is an expensive undertaking that has as it prime advantage the reduction of inconvenience to BDU members in exchanging the cars from one on-call period to another. I noted in the Wesson memorandum of November 2, 2000 that "overtime is authorized for the vehicle exchange..." (U 56, p 3). Nearly 1000 hours of overtime could be paid for by the estimated cost of $37,000 annually, or nearly 20

hours for each seven-day period. I cannot visualize, in the absence of extreme abuse in the time to make the weekly exchanges that this number of hours would be required.

The Port asserted in its footnote, page 55 that the 50% standby pay for an officer on call after seven consecutive days is no issue but has been incorporated in the new Agreement.

For these reasons I set aside the Union proposal to provide all members of the BDU with an assigned Port vehicle.

D. DECISION AND AWARD: TAKE HOME VEHICLE - BOMB DISPOSAL UNIT. (Item 5).

I decided and award that,

There shall be no addition to the new Agreement at Article XXI - Benefits to assign a take home Port of Seattle car to each member of the Bomb Disposal Unit.

XVIII. TAKE HOME VHEICLE: CRIMINAL INVESTIGATION SECTION (Item 6).

A. PROPOSALS

The Union proposes to add a paragraph at the end of Article XXI - Benefits of the new Agreement, as follows:

> The Port shall provide each officer in the Criminal Investigation Section with an assigned take-home vehicle for the duration of that officer's assignment in the Criminal Investigation Section.

The Employer proposes to retain the current practice and status quo.

B. CONTENTIONS IN SUPPORT OF PROPOSALS

1. Union

Among the ten detectives in the CIS, three now have vehicles that each may take home and the other seven each have a vehicle assigned to them, but without permission to take it home. According to the Union, the vehicle should be taken home by all of the detectives since special equipment is maintained in each vehicle, equipment that a detective needs at the scene of a crime. When the detective must go to the airport area to obtain a vehicle, unnecessary delay results in the investigation process. In addition, the detectives are stationed some two miles from the airport, too far for walking distance to the terminals, and vehicles are used to move to and from the airport and their headquarters office. Vehicles are needed when witnesses must be interviewed.

The Union argued that the present system is inefficient. Coming from home a detective must first go to the airport, and this delay can endanger an investigation, the Union insisted. It is important for detectives to respond quickly to a crime scene.

It is for the speed in reaching a crime scene that other police departments do allow vehicles assigned to detectives to be driven to the detective's home. Having a car at home for a detective is an enforcement tool, Lt Jensen asserted. Since the three detectives on special task forces may take the cars assigned to them to their homes, others should be permitted to do so for the same reasons. The work of all detectives is very much the same, the Union pointed out.

Although the Port alleges it is expensive to allow cars to go home, this cost is negligible, the Union claimed, and small in relation to the benefits derived from allowing the cars at the detective's home. Detectives need to be mobile and the permission to take the care home is an essential ingredient of that need, the Union contended. The arbitrator should accept the Union proposal, it concluded.

2. Employer

The Employer contended that the seven detectives in the CIS without permission to take cars home that have been assigned to them is a practice that should continue without any changes in the new Agreement. The three detectives, who do have cars to take home work on special task forces, are located in separate offices from the others and two of them have to go downtown or to the port area. The seven detectives spend most of their time at the airport, and in the event of a call out would more likely than not go to the airport where their car is located. Most of the work by these detectives occurs at the airport, or during shifts when the detective may get his/her assigned car at the airport to do witness interviews and other trips away from the airport.

The Employer pointed to the example of Lt Jensen about one detective who had to drive past the crime scene, then come back

to the crime, and then retrace his steps to get his private car to return home. Under examination, Jensen acknowledged that he was unaware of any impact on the investigation occurred in this instance. The lieutenant could provide no other examples of delay where the detective had to drive past the crime scene to obtain his car at the airport with the required investigative materials.

The Employer asserted that it was willing to take a short delay occasionally in the arrival of a detective or crime scene investigator rather than incur the expense of providing essentially commuting transportation for the members of the CSI. Using the case of Lieutenant Jensen, the Port found that the cost would be over $3,000 per year to provide him with a car that could be taken home. In addition, detectives very infrequently are required to report to the scene of a crime from home to an investigation away from the airport, the Employer pointed out."

According to the Employer in conclusion, "the Union's proposal to provide take home cars for detectives should be denied.

C. ANALYSIS

I have concluded to leave the assignment of cars to detectives unchanged under the new Agreement. I reached this conclusion for the following considerations.

First, a large proportion of crimes investigated by the detectives are at the airport where their specially equipped cars are kept (T II, 72:17-23). Thus an assigned Port car at home becomes essentially a "commuting" vehicle, going where the officer would ordinarily go in his/her private vehicle. In addition, a share of the work, such as some witness

interviewing, will be done during the shift of the employee when that officer will already have a car.

Second, no evidence indicated that the detectives were called out a substantial number of times to areas other than the airport where obtaining the assigned car and equipment at the airport would not allow a relatively expeditious arrival at a crime scene (T II, 88:9 - 89:5; 91:16 - 92:8). Many crimes to which detective go away from the airport occur during the regular shift of the detective when a car is available.

Third, other Police Departments do frequently assign detectives take home cars, as Tacoma, for example. But in these circumstances the detective has no concentration of locations of the crimes as is the case at the airport. The detective may be required to go any place in the entire City of Tacoma, and going directly from home represents a more efficient operation than going to a central location for equipment and transportation.

Fourth, as Lieutenant Jensen and Deputy Chief Kimsey explained, special circumstances, as a trip some distance from the airport, or a very late night duty, supervisors allow the detectives to take the car home and return it the next morning under special circumstances, as a trip some distance from the airport or very late night duty. According to Kimsey this happens frequently, and the Department tries to be flexible in this regard (T VI, 205:7-21; T II, 74: 1-13; 85:13-18).

Fifth, as Lieutenant Jensen computed with the aid of the Port spokesman, the cost of assigning a take home vehicle to each detective could be $3,000 or more per year, depending, of course, on how far the detective lived from the airport (T II, 70:11 - 71:25)

On the basis of these considerations, the assignment of take home cars to all detectives does not appear to improve

efficiency sufficiently in relation to the additional cost to justify the adoption of the Union's proposal.

D. DECISION AND AWARD: TAKE HOME VEHICLES - CRIMINAL INVESTIGTION SECTION (item 6).

I decided and award that,

There shall be no addition to the new Agreement at Article XXI - Benefits to assign a take home Port of Seattle car to each member of the Criminal Investigation Section.

XIX. LIGHT DUTY. (Item 7).

A. PROPOSALS

The Employer proposes to add Section 4 - Light Duty, Article XV - Long Term Disability in the new Agreement, as follows:

Officers may be required to work light duty, consistent with state law. If an employee is sick and unable to perform his/her light duty assignment, the employee is required to use accrued sick leave.

State law provides at RCW 41.04.520--**Disability leave supplement for law enforcement officers and fire fighters--Employee to perform light duty tasks.**

While an employee is receiving disability leave supplement, the employee, subject to the approval of his or her treating physician, shall perform light duty tasks in the employee's previous department as the employer may require, with no reduction in the disability leave supplement.

The Union proposes to retain existing language in Article XXII, Section 2 of the current Agreement that contains no reference to light duty while on long term disability. (Eliminate Section 4 on Light Duty, Article XV - Long Term Disability, in the new Agreement; U 2, p 28).

B. CONTENTIONS IN SUPPORT OF PROPOSALS

The **Employer** contended that the Port had many duties that could be performed by an officer on temporary light duty, in a recovery stage from or during long term disability from regular duties. Developing information of an historical nature, writing procedure manuals and the like could readily be assigned and done in a light duty status. The Port affirmed that it would assign light duty only if the officer's attending physician indicated the officer could do the designated light duty. In addition, the Port insisted that an officer on light duty, if he

or she became ill, that sick leave benefits be used rather than the supplemental benefits for long term disability.

The Port argued that it is mandated to make the best possible use of its resources. On occasion an officer will be unable to perform all of the essential function of his/her regular position. But under these circumstances the Port is entitled to receive some value from that officer's training and skills, to the extent reasonably consistent with the officer's medical condition.

The Union sought a clause in the new Agreement that prohibited light duty work. The Employer seeks productive tasks from an officer rather than simply have the officer stay at home. The Port's position is stronger since it can more effectively utilize its resources without personal disadvantage to the officer.

The Port's proposed light duty provision should be adopted, the Port concluded.

The Union opposed the clause on light duty assignments as proposed by the Port. Aside from contending that the Port had shown no reason to change the contract language, the Union claimed that the language and practice of the current Agreement allows an officer to decline to work light duty and simply receive the duty disability payments. Even if the officer were to do light duty work, the requirement to supplement the officer's pay to equal his/her base pay is still required. On this basis there is no need to charge any sick leave against the officer's balances. Further, the Union contended that the Port has not demonstrated that any comparable department has similar light duty language. The Port has failed to establish a need to change the existing contract language. The Union requests that the Arbitrator decline to adopt the Port's proposal.

C. ANALYSIS

I concluded that the new Agreement should contain a provision with respect to light duty. The following considerations led to this conclusion.

First, underlying the individual employee/employer employment relationship and contract is the obligation of the employee to provide a "fair day's work" in response to the employer's assurance of a "fair day's pay." Here, if the employee, who has been injured on the job and on a long term disability, is able to provide some share of that "fair day's work" during his recovery period at the same time that the employer provides the full "fair day's pay," the underlying principle of the employment contract affirms that the employee should be obligated to provide what work that he is able to do. The employee should be subject to assignment to light duty within the limitations imposed by his personal and attending physician.

Second, of course the collective bargaining agreement may alter the underlying obligations of the employee and employer. Although the Union alleged in brief at pp 35-36 that "the current contract language and practice allows (sic) for an officer to decline to work light duty and simply receive the duty disability payments," I was unable to find any language that in any expressed or ambiguous way permitted the employee to decline expressly to work light duty. Article XXII and Appendix G made no reference to light duty work. If the current language does so provide as the Union asserted, the Union's proposal in U 24, p 8 "that no officer be required to work light duty while they are on duty disability" was not called for. No information was provided on "practice," and I found none in the transcripts.

Third, other jurisdictions among the comparables do provide for the assignment of light duty in instances of long term

disability. First, I could find no provision in the collective bargaining agreements of any of the ten comparables that the employer was denied the right to assign light duty work as requested here by the Port. Second, among the ten comparables, four made no mention of light duty by implication or expressed language. Two agreements affirmed that officers on long-term disability were subject to state law. As noted above state law does provide at RCW 41.04.520 that employees receiving disability leave supplement "shall perform light duty tasks..." subject to the approval of his or her treating physician. The remaining four agreements had some clearly implied or expressed reference to light duty assignments (U 13, Bellevue, p 13; U 16, Renton, Appendix D; U 17, Seattle, p 47 and 70, and also Memorandum of Understanding, June 23, 2000, p 2, and Er Book II, Kent, p 16, Article 6.7 - Light Duty). These provisions and circumstances of the ten comparables support the inclusion of the light duty provision in the new Agreement.

Finally, the contention made by the Port is a reasonable one. It should make the best possible use of its resources. Clearly an officer able to work on light duty, even part time, provides some productivity compared to remaining off the job entirely while in the latter stages of recovery from a duty disability. For this reason, the practice of light duty assignments is a common one across private industry generally.

As for the use of accrued sick leave by an officer on light duty, the principle is sound that normally when an officer cannot perform his/her assigned job because of illness, that employee would be expected to use accrued sick leave in order to get paid for the time off. The same principle reasonably applies to an officer that is assigned light duty, with one caveat. As Kirk pointed out the use of accrued sick leave would

apply only to those illnesses "unrelated to the light duty injury" or condition (T V, 182:5-14).

For these considerations and rationale, I was persuaded that the new Agreement should contain the proposal of the Port regarding light duty assignments and the use of accrued sick leave for non-duty disability related illnesses and conditions while on light duty.

D. DECISION AND AWARD: LIGHT DUTY (Item 7)

I decided and award that the following paragraphs shall be included in the new Agreement at Section 4 - Light Duty, Article XV - Long Term Disability:

The Employer may require officers receiving a disability leave supplement to work light duty, consistent with RCW 41.04.520 and other applicable law.

If an officer is unable to perform his/her light duty assignment by reason of an illness or injury unrelated to the duty disability injury or condition, the officer is required to use accrued sick leave.

XX. RETIREES' HEALTH AND WELFARE CONTRIBUTION (Item 8).

A. PROPOSALS

The Union proposed that the Employer pay the $39.85 per month premium that is now being deducted from the pay of active employees in the bargaining unit for the RWT-Plus Plan, a plan that provides medical coverage for retirees. Specifically, the Union ask that the following language be added as Section 5: Retirees' Health and Welfare Plan, in Article XX - Teamsters Health and Welfare Programs in the new Agreement:

> Effective January 1, 2000, the Port of Seattle shall continue to pay to the Retirees' Welfare Trust the amount necessary each month for participation in the RWT-Plus Plan without any reduction or diversion of the officer's wages.

The Employer opposes the addition of the above provision and proposed that the practices under the current Agreement be continued.

B. CONTENTIONS IN SUPPORT OF PROPOSALS

1. Union

The Union offered several contentions in support of its proposal. First, the Port agreed to an opener in the current Agreement in order to negotiate the RWT-Plus Plan, after the Teamsters developed the retirees' health plan. The parties have now incorporated the plan in the Agreement (U 1, p 56). Second, the payment of the $39.85 premium for active employees by the Employer is an important issue since many of the officers are now reaching an age where early retirement will occur and these persons require health plan coverage until each reaches an age to be covered by Medicare. (The RWT-Plus Plan then becomes a Medicare supplementary plan). The Union suggested that the above provision could be implemented by an offset in the wage increase determined by the arbitrator.

Third, the Union pointed out that the Port has already agreed to pay in full the above premium for two bargaining units represented by the Teamsters, the ID access/police specialists and the bus drivers. In addition, the Port agreed to pay for half of the premium for Captains and Lieutenants. Also, the Port has offered payment of the full premium in a complete package to the Police Communications Specialists.

Finally, the Union acknowledged that no other police department pays for retirees' health and welfare plans. At the same time, according to its computations, the Port officers receive so much less compensation than those in other departments, that this contribution to the health and welfare plan would tend to balance out the differences in compensation between the Port's officers and officers in other departments.

In all, the Union alleged that it makes sense for the Port and its Police Department to be consistent with other groups that work at the Police Department and accordingly, the Port should pay the full amount of the $39.85 premium for the RWT-Plus Plan for the police officers.

2. Employer

The Employer pointed out that not one of the comparables among either the Seattle Six or the smaller jurisdictions pay for retirees' medical. The Union offered not one collective bargaining agreement among police departments in any other jurisdiction that the employer paid for retiree medical, even though Mr Williams sits on the Board of Trustees of the retirees' medical plan.

Second, the Employer rejected the plan because of its costs, not for "philosophical" reasons. Williams acknowledged that the cost would double in the next seven years (T I, 158-159). This is an amount that constitutes a very significant

increase given that the current premium represents about 1% of the salary of police officers, the Port pointed out, a contribution unjustified in relation to other benefits and salary level enjoyed by the Port's police officers.

The Port has agreed to include retirees' medical coverage in two other bargaining units that represent about 10% of the employees at the Port. This fails to represent a pattern, or a trend, the Port argued. The Port did acknowledge that it had agreed to pay for half of the retirees' plan premium for the Captains and Lieutenants, but only in conjunction with a significant change in work hours to the benefit of the Port and in the context of a general adjustment of salaries and benefits of these officers in relations to the sergeants and officers.

Finally, the Port offered consideration of the Union's proposal in the context of a wage award that recognizes the cost of the retirees' health plan "and as part of an overall package that allows the Port to reassign the drives work." Reassignment of the drives work will impact the senior officers who use its overtime for enhancing prospective retirement benefits. The retirees' health coverage represents an offset. Here the same arrangement should be made with the officers as with the captains and lieutenants, and the employee pays half of whatever is the cost of the retirees' plan.

However, given the Union's failure to even offer any evidence on this issue from any other jurisdiction, application of the statutory factors augurs strongly for maintenance of the status quo, the Port concluded.

C. ANALYSIS

I have concluded that the Union proposal should be implemented in part. I shall amend the provision offered above to provide that the officers shall continue to pay one half of

the premium for the retirees' health plan, effective January 1, 2002. The following considerations led to this conclusion.

First, in bargaining with the Union for other bargaining units at the port, the Port has failed in each instance to sustain its position to refuse to pay for the retirees' plan premium of $39.85. The significance of these bargains is not the proportion of employees at the Port who are covered by the Employer's contribution to the retirees' health plan, but that the Teamsters Union has been successful in obtaining this concession from the Port as a part of the bargained package in each prior case. For these units, the Union was free to use whatever economic or bargaining tactics and pressure that were available or needed.

Second, the willingness of the Union to sacrifice wage increases for the addition of Employer paid retirees' health plan premium indicated a strong resolve to achieve this provision in the Agreement (Un Br, p 38, fn 7) .

Third, a fourth of the officers have 20 years of service or more, and are or will soon be eligible for retirement (E 43-44). This issue is a matter of some consequence to them, even though a relatively new "benefit" available to employees generally.

Combining these factors and circumstances, I concluded that the Union would have argued long and hard, with substantial staying power, to achieve some concession regarding Employer payment of all or part of the premium for the retirees' health plan. I recognize that other jurisdictions among police departments do not provide this benefit at the employer's expense at this time. But the "comparables'" guidelines and standards of the statute are not absolute in determining wages, hours and conditions of employment. I submit here that the Union's interest in this matter would have been sufficiently strong in an unrestricted "free market" that the Port would have

conceded and thus may well be the "break-thru" with regard to this benefit among police and other public agencies.

I shall make the change in who pays the premium for the RWT-Plus Plan effective on January 1, 2002. I do so on the basis of the current level of compensation of the officers and other changes made in the total economic package in the new Agreement.

D. DECISION AND AWARD: RETIREES' HEALTH AND WELFARE CONTRIBUTIONS (Item 8).

I decided and award that Section 5 - Retirees' Health and Welfare Plan in Article XX - Teamsters Health and Welfare Program of the new Agreement shall provide as follows:

The Port of Seattle shall continue to pay to the Retirees' Welfare Trust the amount necessary each month for participation in the RWT-Plus Plan and shall continue to deduct that amount from the net monthly wages of each eligible officer, except, effective January 1, 2002, the amount to be deducted from the officer's wages shall be only one half (1/2) of said monthly amount.

XXI. PACIFIC COAST BENEFIT TRUST CONTRIBUTIONS: (Item 9).

A. PROPOSALS

The Union proposes to incorporate in Article XXI - Benefits, Section (n) - Pacific Coast Benefit Plan, paragraph one, as follows:

Effective January 1, 2000, the employer contribution shall be $1.20 per hour.
Effective January 1, 2001, the employer contribution shall be $1.25 per hour.
Effective January 1, 2002, the employer contribution shall be $1.30 per hour.

The Employer rejects the proposal of the Union and proposes that the employer contribution shall remain at $1.15 per hour for the duration of the new Agreement.

B. CONTENTIONS IN SUPPORT OF PROPOSALS

The **Union** offered two arguments in support of its proposal. First, the five cents per hour increase is the continuation of a well-established bargaining history of doing so. The parties should continue to do so. Second, the increase in the contribution is required to keep the value of the retirement fund from decreasing. If the contribution is left constant, inflation will devalue the funds and the contribution specifically, at the rate of three or four percent per year, the Union contended. It urged acceptance of the proposal above by the arbitrator.

The **Employer** contended that the Port officers now receive a better retirement/pension program than any of the ten comparables, and accordingly no increase is justified. Noting that the Port pays 6.2% of salary in lieu of social security and that it pays $1.15 per hour to the PCBT, it contributes $475 per month plus $1.15 per hour for all overtime hours. The contribution to PCBT is approximately $215 per month, according

to the Employer. None of the Seattle Six exceed the total contribution of the Port to pension and social security. But in addition, the smaller jurisdictions contribute only the amount of social security, except for Kent that augments retirement by a 2% of the base wage contribution. The Employer alleged further that "many of them (jurisdictions) require ... a matching contribution from the employee" to obtain the employer contribution. Here no match is required and the contributions vest fully immediately, the Port pointed out.

No reason exists for increasing the pension contribution other than "wanting more of seemingly everything" for the Union failed to provide any evidentiary or factual basis to support their request. The Union's proposal should be rejected, the Port concluded.

C. ANALYSIS

I concluded to deny the proposal of the Union. I do so on the basis primarily of the argument made by the Employer that the amount of the pension contributions as a whole at the Port now exceed amounts contributed to retirement and pension program in each of the ten comparable jurisdictions. Renton contributes the most at better than 9% of the employee's wage but the Port's contribution of 6.2% plus $1.15 per hour exceeds 10% of base wages (E 74-87).

In addition, as argued above in the discussion section on the "Supplemental Compensation Elements," the compensatory level of the Port officers exceeds the average compensation among the ten comparables. That circumstance militates against acceptance of the Union's proposal here to increase the hourly contribution rate to the PCBT.

D. DECISION AND AWARD: PACIFIC COAST BENEFITS TRUST CONTRIBUTION (Item 9).

I decided and award that Section (n) - Pacific Coast Benefit Plan in Article XXI - Benefits in the new Agreement shall read as follows:

Effective January 1, 2000, the employer contribution shall be $1.15 per hour.

(As tentatively agreed by the parties): **The Union reserves the right to convert to an alternate tax deferred plan that would provide for individual direction of investment alternatives at any time during the term of this contract upon sixty-days notice to the Port of Seattle, provided that the change would involve no additional cost to the Port of Settle.**

XXII. ELIGIBILITY FOR CLOTHING ALLOWANCE. (Item 10).

A. PROPOSALS

The Union proposes that the three officers assigned to the Administrative Section should be eligible for a clothing allowance as those officers in the Criminal Investigation Section. The Union would included the following provision in Section 3 - Clothing Cleaning Allowance in Article XXIV - Uniforms and Equipment in the new Agreement:

> Effective upon the month following ratification, the Port shall pay a clothing/cleaning allowance of seventy dollars ($70) per month to police officers assigned to the Criminal Investigation Section and the Administrative Section.

The Employer proposes that the officers in the Administrative Section be given no clothing/cleaning allowance as is the current practice.

B. CONTENTIONS IN SUPPORT OF PROPOSALS

1. Union

The Union noted first that the officers in the Criminal Investigation Section received a clothing/cleaning allowance of $70 per month. Three remaining officers in the Administrative Section, Fleet and Supply Officer, Research and Development Officer, and the Training Officer, do no receive any allowance although all are provided a uniform as members of the bargaining unit. The latter three officers are subject to the same dress code as the detectives, and should therefore receive the same allowance, the Union asserted. Officers do have an expense to meet the dress code and to keep clothes cleaned. The addition of three more officers to those who receive the allowance is a small expense.

According to the Union, a majority of other jurisdictions provide a clothing/cleaning allowance for plainclothes officers

including those in similar positions to the three above. The Union asserted "there is no reason to treat the officers in the Administrative Section any differently than the officers in other Administrative Sections."

Although these offices are given uniforms, it is not practical to wear them in their present positions with body armor and other equipment. These officers dress in accord with the civilians and other Port personnel with whom they interact, and should be given a clothing/cleaning allowance as other officers who do the same thing.

2. Employer

The Employer argued that the allowance requested by the Union should be denied. First, the Employer pointed out that the $70 per month or $840 per year was substantially greater than that received by any similarly situated officers in the comparable jurisdictions. Other jurisdictions average about $400 per year.

Second, the Employer contended that the allowance for the detectives was bargained specifically with the fact in mind that the three positions in the Administrative Section would not be included. There is a significant difference in the duties of those individuals who are in the Criminal Investigation Section and of those in the Administrative Section, the Port claimed. The former have duties in undercover, attending court, and appearing in a wide variety of circumstances where suits and dress are essential. The three officers in the Administrative Section can meet the dress code with Dockers and a polo shirt.

Third, the clothes that the three wear to work can be used for all sorts of casual wear unrelated to the Department, the Employer asserted. The Port concluded "it should not be expected to provide an additional $840 in compensation (to the

three Administrative Section officers) so these can buy Dockers and polo shirts." The casual attire these employees are allowed to wear should not trigger a substantial payment by the Port to them. "The Union proposal should be rejected by the Arbiter."

C. ANALYSIS

Although there is merit in what the Port argues about compensation for normal casual attire in the Administrative Section, I was persuaded that these three officers should be provided with some benefit with regard to clothing and cleaning. Seven of the ten comparables do provide a clothing/cleaning allowance for plainclothes officers whether detectives or used in administrative positions as indicated here. Except for King County, cleaning is provided among the jurisdictions. In addition, although the officers in the Administrative Sections do not meet with the "civilian" public as much as those in the Criminal Investigation Unit, they are not entirely isolated. Wearing the officer's uniform could be done occasionally. Good reasons were offered on why this would not be very practical for one at a desk job, primarily, because of being fully armed and carrying the usual equipment.

Although I conclude that the three officers should receive some allowance here, I see no reason to provide the full $840 per year under the circumstances. The average received in clothing/cleaning allowances for plainclothes officers among the ten jurisdictions is approximately $360 per year. Accordingly, I shall incorporate in the Agreement below an allowance for the three officers in the Administrative Section of this amount, primarily as a cleaning allowance and only nominally for the purchase of clothes uniquely essential for their positions.

D. DECISION AND AWARD: ELIGIBILTY FOR CLOTHING ALLOWANCE (Item 10).

I decided and award that the following provision shall be incorporated in the new Agreement as Section 3 - Clothing/Cleaning Allowance, in Article XXIV - Uniforms and Equipment:

The Port shall continue to pay a clothing/cleaning allowance of seventy dollars ($70) per month to police officers assigned to the Criminal Investigation Section.

Effective on October 1, 2001, the Port shall pay a clothing/cleaning allowance of ninety dollars ($90) at the end of each calendar quarter thereafter to police officers assigned to the Administrative Section, namely the Fleet and Supply Officer, the Research and Development Officer, and the Training Officer.

In addition to ensuring the rights of officers are protected, the parties recognize that the process must protect the interests of the public and the Department.

A second change was proposed for the Preamble as well. This change removed the requirement that the investigation must be performed by "superior officers," and allowed the Port Police Department directly to determine who would do the investigating. Here the Port alleged that an investigation should be undertaken immediately in some instances by the supervisor present rather await the arrival and briefing of a "superior officer." In addition, in such matters as a sexual harassment charge a specialist in that area rather than a superior officer of the Department might more appropriately undertake the investigation. The Port should not be limited to who the Chief determines should conduct a particular investigation.

The relevant sentence in the Preamble would now read:

These questions often require immediate investigation ... by the Port Police Department.

A third change is proposed for the first paragraph in Section B. The Port argued that the internal investigative procedure should be reserved for matters relatively significant. Such "minor" issues on conduct as late to work and absences can be discussed between supervisor and employee without getting into formal procedures of notification, etc. According to the Employer, "the internal investigation process should be applicable to investigatory matters that could reasonably lead to the officer's suspension and/or termination." The proposed clause amends the present contract language by the addition of the first sentence and by eliminating the words "non-criminal" but adding "such" at the beginning of the second sentence in the following paragraph:

XXIII. BILL OF RIGHTS (Item 22)

A. PROPOSALS

The Employer's proposal and the current provisions on the officers "Bill of Rights" have been attached to this section. The Union proposes to continue the current language.

The Port has proposed several nominal language changes to the current provision, primarily for clarification and simplification, to which the Union raised no specific objection other than that the changes were relatively insignificant and unnecessary. In addition, the Port proposed three substantive changes to which the Union strongly objected.

B. CONTENTIONS IN SUPPORT OF PROPOSALS

1. Employer

Although acknowledging that the Bill of Rights had been around for a number of years, the Port insisted that it needed to be brought "into the 21st Century." The Port noted, however, that the investigation of police officers is a matter that has received substantial public scrutiny particularly in recent years. This increased public interest brought a review of the Bill of Rights to assure that "the department, for its own well being and survival, has a fair and impartial internal investigation process." Thus the first change proposed by the Port, it alleged, sought to point the investigative process in that direction specifically, calling to attention that the process not only protects the rights of officers, but takes into consideration the interests of the public and the department as well.

For these reasons, the Port proposed to add to the Preamble the following sentence:

B. The following procedures shall apply to all administrative (i.e., non-criminal) investigations of misconduct that, if proved, could reasonably lead to a suspension without pay or termination for that officer. In ... such cases the employee shall be informed in writing of the nature of the investigation and whether the employee is a witness or suspect.

The fourth change offered by the Port concerns the additional two paragraphs in Section B. The Port has combined these into a single one that states as follows (deleted language is marked through; underlined is new language):

If an employee is a suspect, the employee shall be provided with ~~(a copy of the complaint and related statements before the employee is required to make a written statement. Such information shall include the name, address, and any other)~~ that information necessary to reasonably apprise the employee of the general allegations of such complaint. Except in unusual situations, this information will include the name of the complaining party. The above applies in cases of misconduct and violations of department rules and regulations. When the internal Investigation Section is assigned to investigate non-criminal cases, the accused shall be notified within five (5) working days.

The Employer pointed out that the old language does not require disclosure of the complaint and related statements to the officer unless the Port requests a written statement from the officer. According to the Port, this implies that interrogation can take place without providing the officer with any information simply by interrogating the officer without requesting a written statement. Although this may have been the means whereby the parties intended that less serious matters would be handled without a written statement, the Port argued that all "significant" interrogation should be treated similarly, regardless of whether a written statement is requested. According to the Port, "a guideline and procedure should be applicable to all investigations that balances the

interests of the Port and the officer in a fair and logical manner."

The Port's change eliminates the requirement to provide the officer with the name and address of the complainant and a copy of the complaint. The Port contends that in some circumstances good reason exists not to disclose the name of the complainant such as one officer filing a complaint with the belief that another was engaging in fraudulent activity. Of course, in cases of anonymous complaints the Port must investigate but cannot provide the name of the complainant. Ordinarily, except for unusual circumstances, the name should be provided the officer.

The Port objects to providing the address of a complainant. The Port believes that such a provision will "chill" the likelihood of a person making a complaint. The address information leaves open the opportunity for the complainant to be harassed or otherwise suffer recrimination. According to the Port, the public should be encouraged to provide information about Port employees, both kudos and complaints.

In addition, the Port argued that the current language provides unnecessarily broad requirements in the provision of information to an officer prior to an investigative interview with that officer. Information provided should not be "all related statements," but rather should only provide that information necessary to reasonably apprise the employee of the general allegations of the complaint. Some offices currently believe that the language now means the Port gives the officer all of the information that it has. This is unreasonable, the Port argued. At times it is necessary to hear what an officer has to say prior to an opportunity for the officer "to frame his or her answer." Of course, an officer must be apprised of the general nature of the allegation(s) so that he can prepare for

the interview. The language proposed by the Port is found in other agreements, such as King County, Tacoma, Everett, and is fully supported by the comparables, the Port asserted.

Three final changes are minor in nature, according to the Port. Section C contains an inconsistency on when an interrogation should be undertaken, when the officer is on duty, or during the daytime. The Port offered the following language:

C. Any interrogation of an employee shall be at a reasonable hour. ~~(preferably when the employee is on duty unless the exigencies of the investigation dictate otherwise. Where practicable, interrogations shall be scheduled for the daytime.~~

Further Section F has been modified regarding "intimidation." The Section reads as follows:

F. The employee shall not be subjected to any offensive language, nor shall he/she be threatened with dismissal, transfer, or other disciplinary punishment as a guise to attempt to obtain his/her resignation, ~~(nor shall he/she be intimidated in any other manner)~~. No promises or awards shall be made as an inducement to answer questions.

The Port contended that this phrase "nor shall he/she be intimidated in any other manner," is redundant in part and that it raises an issue of subjective feeling on the part of the employee. According to the Port, there is no way for it to guarantee that an employee will not feel intimidated even in the simple process of being interviewed. This phrase should be deleted.

The parties agreed to a change in Section G that deletes unnecessary and redundant language. It now reads:

G. The Port will comply with any applicable state or federal restrictions that prohibit the use of a (~~It shall be unlawful for any person, firm, corporation, Port Districts of the State of Washington, its political subdivision or municipal corporation to require any employee covered by his/her Agreement to take or be subjected any~~) lie detector or similar tests as a condition of continued employment.

The final change proposed by the Employer is an addition to Section K, as shown by the underlined language.

K. All case documentation shall remain confidential within the Internal Investigation Section and to the Chief of Police, and any other member of Police or Port management with a reasonable need to know. Only cases that are classified as sustained shall be forwarded to the Department Administrative file as well as a conclusion of findings to Human Resources for inclusion in the employee's personnel records.

The present language is unduly restrictive on who should receive the results of an investigation, according to the Port. For example, even the Deputy Chief is not allowed to see the results of an investigation. The results should be available to any with in the Port of Seattle who have a reasonable "need to know," the Port asserted. Each situation will be different and no intent is involved here that the results of an investigation will be broadcast, only that certain people at various times may well have a proper reason to know the results of the investigation. Interests of officers will be protected, but this provision "fairly balances the needs of all parties," the Port concluded.

The Port requested that the Arbiter adopt its Bill of Rights proposal.

2. Union

The Union raised three major objections to the proposed changes of the Port. Initially the Union pointed out that the Bill of Rights had existed in its present form for approximately twenty years without a problem. On this basis alone, the Bill of Rights should be retained.

The first objection concerned the deletion of the sentence "a copy of the complaint and related statements before the employee is required to make a written statement." This

sentence ensures that the officer have sufficient information about the incident so that he or she can respond accurately to the allegations by receiving a copy of the complaint and related statements. The Union asserted that all of this information was essential since the officer would have many contacts that day, and a real risk existed that the officer would misunderstand the allegation(s). The investigation of officers is a very serious matter, can threaten an employee's career and affect discipline, promotions, appointments and related matters.

The Union pointed out that these documents need only be presented when they exist and when an officer is being required to make a written statement. The Department can conduct investigations without a signed complaint, and in these instances of anonymous complaints, the Department has effectively supplied the officers with sufficient information. There has been no problem, and therefore there is no reason to change the language.

The Union contended that the accused officer should be provided both the name and the address of the complainant. When the information exists there is no reason not to provide it, the Union concluded.

Although the Port asserts that providing the name and address of the complainant may chill complaints by citizens who fear reprisal, they can make anonymous complaints. No evidence indicated that any officer had ever misused the information on name and address of a complainant, or that any citizen had ever expressed any concern about that possibility. Clearly there is legitimate reason for the officer to know the name and address of the complainant. The Officer should be able to have legal recourse against the complainant if the allegations are found to be frivolous and yet may have affected the officer's career adversely.

According to the Union, the Port must be required to provide a copy of the complaint, if it exists, and the related statements and relevant information. The Officer is entitled to identify the complainant and respond accurately to the allegations. These rights are basic in a democratic society and no reason why they should not be afforded to police officers. The present language in Section B should be retained, the Union concluded.

The third and final objection of the Union applied to the deletion of the phrase "be intimidated in any manner" from Section F. Although the Department pointed out that all investigations were inherently intimidating, it could not promise that an officer would not feel intimidated. There has been no problem by an officer asserting intimidation. Further, the language creates a standard that would have to be proven, rather than a mere subjective feeling of being intimidated. No remedy is specified so, according to the Union, the language becomes symbolic rather than anything else. The Port's proposal raised suspicion among the officers that the Department wanted flexibility to be able to engage in investigations that are oppressive and intimidating. This is a wrong message. The language of this section should remain unchanged.

The Union urged the arbitrator to retain the existing language in the Bill of Rights.

C. ANALYSIS AND DISCUSSION

1. Preliminary Considerations

A collective bargaining agreement must provide a clear balance between the rights of management to manage, on one hand and the rights of employees to an objective, fair and just treatment regarding their conduct on the other. Obviously the right to manage includes directing, correcting, and even

disciplining employees when necessary. And at the same time, the employees must be protected with adequate safeguards against arbitrary and capricious decision making by employer representatives.

An integral part of balancing these rights includes the process and procedures for investigating and disciplining employees. Even though there have been no "problems" yet at the Port of Settle, the rights of employees, more than in any other area, deserve procedural protection by advanced preparation and concern for the potential problems of biased and arbitrary treatment. The Employer has wisely recognized this need. Properly here it seeks to clarify and amplify its obligations and responsibilities by revisions to a document with some ambiguities, redundancies, and needed improvements in defining the rights of both the employee and the employer. Age alone cannot guarantee the appropriateness of the processes and procedures in a Bill of Rights.

For the most part I have found the proposals of the Port in modifying language in the Bill of Rights to represent clarifications and improvements that redound to the benefit of both the Employer and the members of the bargaining unit. Most of these were not discussed by the Union and no objections were raised in testimony (T II, 146-47). In considering the Employer's suggestions below, I have set forth only a few comments regarding those changes in the Bill of Rights to which the Union raised little or no specific objection. However, the main substantive difference between the parties concerns what information shall be provided to an employee **before** the employee is initially interviewed regarding a complaint or allegation of misconduct.

2. "Uncontested" Language

There were six nominal language changes proposed by the Port to which the Union made no comment in brief, and only indirectly in testimony. For the most part the contentions and statements by the Employer set forth above were reasonable and persuasive that the changes should be made, even though in most instances the substance of the section of the Bill of Rights was left intact. I have accepted the following changes and shall incorporate them in the final version of the Bill of Rights.

1. In the preamble, add the sentence on the "interests of the public and the Department."

2. Remove reference to investigation being done only by "superior officers" in preamble.

3. In first paragraph of B, application of procedures in Bill of Rights only when serious matter involved likely to lead to suspension or termination.

4. Removal of inconsistency in Section C, setting interrogation at "a reasonable hour."

5. Confining compliance with state and federal law re lie detector to the Port only, in Section G.

6. Distribution of results of investigation to any with a "reasonable need to know," in Section K.

Some objection to distributing the results of an investigation outside of the Department was implied in the testimony of Officer LaBissoniere who affirmed that at negotiations the Union had opposed including the Executive Director of the Port as one who could receive an investigative report (T II, 149:4-14). What was implied was to confine results solely within the Department.

It is understandable the officer involved and the Union would wish to reduce the distribution of any adverse report as much as possible. At the same time, legitimate reasons exist for senior management to know what is going on inside the organization it is to direct. The Police Department is not autonomous and is a part of the Port of Seattle. Senior members of the Port's administration are responsible for what happens in the Police Department even though the Chief is the immediate executive officer and head of the Department. In addition, in specialized circumstances, Human Relations and Labor Relations personnel may need to know as well.

The proposal of the Port in this instance is a common one, that reports are distributed to those with a "reasonable need to know." The Chief should be able to determine with good reason and without being arbitrary or capricious who should receive an adverse report or be provided with knowledge of disciplinary action about an officer.

3. Intimidation

I concurred also in the Port's proposal to eliminate the words "nor shall he/she be intimidated in any other manner" from Section F. These considerations led to this conclusion.

First, the Port argued correctly that the phrase is redundant in part. Clearly proof of intimidation in investigation would reasonably come via threats, offensive language and promises of rewards or punishments. The inclusion of the above phrase raises issues of subjective concern on the part of the employee being investigated, matters to be resolved primarily by recourse to those things already specifically prohibited during the investigation by the other language in the Section. The Union recognized this characteristic of the phrase when it claimed that the phrase created a standard that would

have to be proven, and not the mere assertion of a subjective feeling of being intimidated.

Second, at the same time feelings cannot always be ignored and their assertion do represent subjective evaluations. The contention of the Port has merit that the fact all internal investigations are inherently intimidating, all investigated officers could claim some feelings of intimidation, a burden on the Port that it has no way to overcome if it is to fulfill its obligations of investigating complaints.

I cannot confirm how officers viewed this proposal of the Port. By eliminating this phrase, the Union asserted that some officers were suspicious of a desire by the Port to gain flexibility to be able to engage in investigations that are oppressive and intimidating. Given the language of the Section above, I find this suspicion unfounded. The Section clearly prohibits any conduct by interrogators to intimidate officers being investigated. No testimony or other evidence indicated any bad faith on the part of the Port in proposing the removal of this phrase from Section F.

For these reasons I shall affirm below the Port's proposed deletion of "Nor shall he/she be intimidated in any other manner" from the language Section F.

4. Employer's Release of Information

The Agreement provides in its current form that when an employee is considered a suspect and prior to interviewing that employee, the Port must provide the employee with (1) a copy of the complaint; (2) any related statements; (3) name and address of complainant; and (4) "any other information necessary to reasonably apprise the employee of allegations of such complaint." As testified to by both Officers LaBissoniere and Monohan, the Union believes this language means that the

employer must disclose all information that it has to the suspect employee prior to the interview (T II, 124:14-17; I, 192:9-24; 203:24 - 205:1). On the other hand the Port's proposal provides "that information necessary to reasonably apprise the employee of the general allegations of such complaint" and, except in unusual situations, the name of the complainant would be included.

Thus the difference between the Union and the Port arises over whether all information should be given to the employee, including name and address or only information required to let the employee know the allegations, including the name of the complainant in most instances.

I found the arguments in support of the need for "all the information" before an investigative interview to be weak and unpersuasive. Although police officers are busy employees, any action or any failure to act of sufficient importance to make the employer consider a suspension or termination of the employee is a matter that a reasonably alert individual would not forget. And if the officer were uncertain from the statement of the allegations from the employer in the absence of "all the information," the interview demands only the honesty of the respondent. If he/she gives the best and most complete answers possible, nothing more can be expected.

The information to provide to a prospective interviewee depends primarily upon the objective of the interview. At least two objectives are discernable in the various versions of the Bill of Rights among the agreement in the ten comparable jurisdictions. (See Tacoma, U 18, Sections 32.1, 32.7 and 32.10). On the one hand, a complaint arises that names an employee. That employee is usually referred to as a "suspect." Therefore it is incumbent upon the employer to investigate to determine if misconduct or a violation of the rules and

regulations of the employer occurred. An interview of the "suspect" under these circumstances would generally be referred to as an "investigative interview" with advance knowledge that the employee is a "suspect" and that discipline could result from the action and or inaction of the employee being investigated.

On the other hand, once an employer determines that misconduct has resulted and that discipline would ordinarily be imposed, the employee is advised that his behavior is a basis for discipline, In effect, the employee is charged with misconduct. But before discipline is administered, the employer holds a "disciplinary interview" or "hearing" and provides the employee with the full opportunity to defend him/herself against the evidence upon which the employer would rely to sustain any discipline.

The current language in the Bill of Rights is ambiguous with regard to which of these interviewing situations are involved. What the Employer's proposal does is to make clear that the interview of the "suspect" is an "investigative interview," and not a "disciplinary interview." As to the former, seven of the ten comparables supply information to the "suspect" prior to the investigative interview in terms identical to or similar in substance to that proposed by the Employer here. These are Everett (E 222, Section 8.1.1.1); King County (E 213, Art 19); Tacoma (E 216, Section 32.1); Renton (CBA, Art 15.B.5, p 23); Auburn (CBA, Art 18.1.e, p 17); Federal Way (CBA, Art 13.2.b, p 13); and Kent (CBA, Art 1.1.D, p 30). The expressions used are "provide in writing of the allegation of such complaint" (Auburn); "employee informed of the nature of the matter in sufficient detail to reasonably apprise him/her of the matter" (Federal Way); "inform in writing the nature of the allegations" (Everett); "apprise in writing of

the allegations of such complaint 24 hours before interview" (Renton); "before interrogation informed of the nature of the matter in sufficient detail to reasonably apprise him of the matter" (King County); "if suspect, ... told nature of the complaint and identity of the complainant" (Tacoma); and finally in the Kent agreement, if a suspect, advise who is complainant or victim, what took place, where and when.

Although two of the above jurisdictions (Tacoma and Kent) contain requirements in their agreements to disclose the name of the complainant, only one agreement among the ten comparables requires that the address of the complainant be disclosed to the employee prior to the interview. The current provisions among the comparables were sufficient to ignore the Union's claim that the address of the complainant should be disclosed prior to the investigative interview. But in addition, the contention that the complainant's address was needed to allow the employee to proceed with suit against a complainant with a frivolous complaint ignores the timing issue. But no basis exists to have the address before the complaint has been investigated and the employer reaches some decision regarding the validity of the complaint. And if the employee was exonerated because of a frivolous complaint, I submit that "damages" would be hard to obtain.

On the basis of the above considerations, findings of fact and rationale, I concluded that the proposed language of the Employer in the second paragraph of Section B clarifies and improves that section of the Bill of Rights and should be adopted, as follows:

If the employee is a suspect, the employee shall be provided with that information necessary to reasonably apprise the employee of the allegations of such complaint. Except in unusual situations, this information will include the name of the complaining party.

D. DECISION AND AWARD: BILL OF RIGHTS

I decided and award the following modifications, revisions and amendments to the Bill of Rights for inclusion in the new Agreement:

In the Preamble, begin on line six as follows:

...questions often require immediate investigation by the Port Police Department. In addition to ensuring the rights of officers are protected, the parties recognize that the process must protect the interests of the public and the Department. In an effort to insure that these investigations are conducted in a manner that is conducive to good order and discipline, the following guidelines are promulgated:

A. (No change).

Replace Section B with the following:

B. The following procedures shall apply to all administrative (i.e. - non-criminal) investigations of misconduct, which, if proved, could reasonably lead to a suspension without pay or termination for that officer. In such cases the employee shall be informed in writing of the nature of the investigation and whether the employee is a witness or suspect.

If the employee is a suspect, prior to an investigative interview the Port shall provide the employee with that information necessary to reasonably apprise the employee of the allegations of such complaint. Except in unusual situations, this information shall include the name of the complaining party. The above applies in cases of misconduct, and violations of department rules and regulations. When the International Investigation Section is assigned to investigate non-criminal cases, the accused shall be notified within five (5) working days.

Replace Section C with the following:

C. Any interrogation of an employee shall be at a reasonable hour.

D and E. (No change)

Replace Section F with the following:

F. The employee shall not be subjected to any offensive language, nor shall he/she be threatened with dismissal, transfer, or other disciplinary punishment as a guise to attempt to obtain his/her resignation. No promises or awards shall be made as an inducement to answer questions.

Replace Section G with the following:

G. The Port will comply with any applicable state or federal restrictions that prohibit the use of a lie detector or similar tests as a condition of continued employment.

H, I, and J (No changes)

Replace Section K with the following:

K. All case documentation shall remain confidential within the Internal Investigation Section and to the Chief of Police, and any other members of Police or Port management with a reasonable need to know. Only cases that are classified as sustained shall be forwarded to the Department Administrative file as well as a conclusion of findings to Human Resources for inclusion in the employee's personnel records.

L. (No change).

PORT OF SEATTLE PROPOSAL

APPENDIX B

POLICE OFFICERS' BILL OF RIGHTS

All employees within the bargaining unit shall be entitled to protection of what shall hereafter be termed as the "Police Officers' Bill of Rights" which shall be added to the present Rules and Regulations of the Port Police Department. The wide ranging powers and duties given to the department and its members involve them in all manner of contacts and relationships with the public. Of these contacts come many questions concerning the actions of members of the force. These questions often require immediate investigation by ~~superior officers designated by the Chief of~~ the Port Police Department. In addition to ensuring the rights of officers are protected, the parties recognize that the process must protect the interests of the public and the Department. In an effort to insure that these investigations are conducted in a manner which is conducive to good order and discipline, the following guidelines are promulgated:

A. The police officers covered by this agreement do not waive nor will they be deprived of any of their Constitutional or Civil Rights guaranteed by the Federal and State Constitution and Laws, afforded any citizen of the United States.

B. The following procedures shall apply to all administrative (i.e.- non-criminal) investigations of misconduct which, if proved, could reasonably lead to a suspension without pay or termination for that officer. In ~~non-criminal~~ such cases the employee shall be informed in writing of the nature of the investigation and whether the employee is a witness or suspect.

If the employee is a suspect, the employee shall be provided with ~~a copy of the complaint and related statements before the employee is required to make a written statement.~~

~~Such information shall include the name, address, and any other~~ that information necessary to reasonably apprise the employee of the general allegations of such complaint. Except in unusual situations, this information will include the name of the complaining party. The above applies in cases of misconduct, and violations of department rules and regulations. When the Internal Investigation Section is assigned to investigate non-criminal cases, the accused shall be notified within five (5) working days.

C. Any interrogation of an employee shall be at a reasonable hour, ~~preferably when the employee in on duty unless the exigencies of the investigation dictate otherwise. Where practicable, interrogations shall be scheduled for the daytime.~~

D. The interrogation (which shall not violate the employee's constitutional rights) shall take place at a Port of Seattle Police station facility, except when impractical. The employee shall be afforded an opportunity and facilities to contact and consult privately with an attorney of the employee's own choosing and/or representative of the Union before being interrogated.

An attorney of the employee's own choosing and/or a representative of the Union may be present during the interrogation, but may not participate in the interrogation except to counsel the employee.

E. The questioning shall not be overly long and the employee shall be entitled to such reasonable intermissions as he/she shall request for personal necessities, meals, telephone calls, and rest periods.

F. The employee shall not be subjected to any offensive language, nor shall he/she be threatened with dismissal, transfer, or other disciplinary punishment as a guise to attempt to obtain his/her resignation, ~~nor shall he/she be intimidated in any other manner~~. No promises or awards shall be made as an inducement to answer questions.

G. The Port will comply with any applicable state or federal restrictions that prohibit the use of a ~~It shall be unlawful for any person, firm, corporation, Port Districts of the State of Washington, its political subdivision or municipal corporation to require any employee covered by his/her Agreement to take or be subjected to any~~ lie detector or similar tests as a condition of continued employment.

H. An employee shall be permitted to read any material affecting his/her employment before such material is placed in the employee's personnel file, and an employee shall be allowed to rebut in writing material placed in his/her personnel file. Such written rebuttal shall also be included in the employee's personnel file.

I. As a department locker is assigned to an officer, who places his/her lock on such locker, locker search without notice may not be conducted without the permission of the officer or without a search warrant, provided, however, with 24-hour notice to the officer involved, a locker inspection may be conducted by the Chief or the Chief's designee. Such an inspection may be conducted by order of the Chief without the requirement of employee's

permission and without a search warrant. The employee shall have the right to be presented during such locker inspection.

J. Officers will have an opportunity to sign complaints of misconduct or resulting findings of such complaints before such material is entered into their personnel files. The officer's signature constitutes acknowledgment that he/she has seen the material prior to its filing.

K. All case documentation shall remain confidential within the Internal Investigation Section and to the Chief of Police, and any other members of Police or Port management with a reasonable need to know. Only cases which are classified as sustained shall be forwarded to the Department Administrative file as well as a conclusion of findings to Human Resources for inclusion in the employee's personnel records.

L. There shall be a separate confidential Internal Investigation Section file for unfounded cases. Such unfounded case file may be opened for legitimate "need to know" reasons with the approval of the Chief and/or Deputy Chief. Such approval will be documented.

XXIV. DRUG TESTING (Item 23)

A. PROPOSALS

The Employer proposed three changes to the provisions on Drug Testing-Substance Tests as set out in Appendix C of the current Agreement. These include the following:

(1). Explicitly provide that the Port may engage in reasonable suspicion testing for all members of the bargaining unit. (Amend 4th paragraph in Preamble and modify 1st paragraph in D).

(2). Delete the requirement that an officer may challenge through the grievance procedure the results of a drug test prior to the time discipline is imposed. (Modify F.1).

(3). Allow the Port to discuss the results of a drug test with representatives from Human Resources. (Amend G.2).

The Union proposed to retain the existing language in the new Agreement at Appendix C. The Union recognized the possibility of extending the substance tests to all employees rather than confining the tests only to probationary officers. It proposed a revised set of pre conditions to Drug/Alcohol Testing as those now found in Section B. The proposal of the Union and the Employer's counter proposal are considered below after examining the three proposed changes of the Employer set out above.

B. CONENTIONS IN SUPPORT OF PROPOSALS

1. Employer

The Port offers the revisions and amendments to the current language on Drug/Alcohol Testing in the Agreement to make clear that all police officers are included under the existing Port policy that allows "reasonable suspicion" testing of employees. Some ambiguity may be argued under the current language of the Agreement that silence regarding coverage of non-probationary

officers implies these employees are not subject to the Port's policy on drug and alcohol testing. Rather than await a specific instance, the Port asserted that making the matter specific and clear at this time is a protection to the officers that certain procedures will be followed and assures all parties that the drug policy is applicable to all members of the bargaining unit.

Sergeant Monohan affirmed that some kind of standard was required prior to imposing a drug test (T I, 197:1-14). According to the Employer, the most common was the standard of "reasonable suspicion." Kirk testified, "that looking at other jurisdictions, most of them have 'reasonable suspicion'"(T V 199:5-13). This standard should be applicable to the police officers at the Port, the Employer concluded.

The Port argued that the proper time to challenge the testing and test procedures was after discipline had been imposed (if the results were positive) rather than prior to discipline. Under the provision in E 7 of the drug and alcohol policy, the employee can have the untested sample sent to another lab at the Port's expense for checking on the accuracy of the first test. The Port contended that this latter provision was sufficient. Going through the grievance procedure before discipline was imposed was neither reasonable nor feasible, the Employer concluded, citing a series of possibilities that would be untenable. One crucial situation would be should the Employer eventually decided not to discipline, say in the case where legitimate use of prescription drugs had created the positive test result and a long and lengthy process had to be followed in order to dismiss the case.

The third change was to assure that the Human Resources department had access to the positive results of drug or alcohol tests. Human Resources can handle sensitive circumstances such

as the instance of an officer testing positive for either alcohol or drug use. This department now coordinates drug testing throughout the Port and represents the appropriate expertise to handle these issues (T V, 202:19-25). As now written it is not clear that the Department is involved. The Policy should be revised to make clear that the Human Resources Department is involved, the Port concluded.

2. Union

The Union pointed out that there was no evidence of any current problems regarding drugs or alcohol in the Department, as testified to by Kimsey (T VI, 166). According to the Union, the Department has not tested all of the probationary employees under the Policy, according to Sergeant Monohan (T I, 193). Further, the Union noted that the Policy does not cover all commissioned officers in the Department such as the Chief or Deputy Chief. It questioned the purpose of the Port to ensure that its commissioned workforce was drug free.

The Union offered no additional comments or arguments regarding the Port's proposed changes in the policy. It did contend, however, that if the arbitrator accepted the standard of reasonable suspicion on testing, that certain preconditions should be established. These proposals and those of the Employer are considered below.

C. ANALYSIS AND CONCLUSIONS ON THE EMPLOYER'S PROPOSALS

I found the suggested revisions of the Employer in Drug and Alcohol Testing to be well founded. For the most part the Union does not object to the extension of the policy expressly and explicitly to include all members of the bargaining unit, and specifically the non-probationary officers. The basic issues

rested in determining what standard should be used in ordering a test.

I noted first that the Port does not propose random testing for non-probationary officers. Rather the standard of "reasonable suspicion" is proposed. Clearly, the standard of reasonable suspicion is noted specifically in four agreements among the ten comparables. So far as I could find, no drug testing policy per se was incorporated in the agreements with other jurisdictions, presumably since the governmental units involved set these policies for all employees of that government entity. Further, as the Employer pointed out, the standard of reasonable suspicion is the universal one, albeit noted as synonymous with "probable cause" (See N. Brand, Ed., Discipline and Discharge in Arbitration, BNA, 1998, p 208-9).

I shall direct the incorporation of the revisions in Drug/Alcohol Testing as proposed by the Employer into Appendix C Drug/Alcohol Testing in the new Agreement, and specifically to the inclusion of non-probationary employees under the policy and the incorporation of a "reasonable suspicion" standard for the ordering of a drug or alcohol test.

D. PRE CONDITIONS FOR TESTING UNDER REASONABLE SUSPICION

The Union and the Employer concurred in the following three pre-conditions to testing on the basis of reasonable suspicion:

1. The Port shall inform employees in the bargaining unit what drugs or substances are prohibited.

2. The Port shall provide in-service training containing an educational program aimed at heightening the awareness of drug and alcohol related problems.

3. The Port and the Union shall jointly select the laboratory or laboratories which will perform the testing.

Three issues arose over remaining preconditions to testing of non-probationary employees. First, although the parties agreed that a Lieutenant or higher officer authorize or approve that a test should be ordered, the Union insisted that the decision maker should be DRE state certified. The Employer argued that this was an unnecessary standard, that police officers were already trained to make assessments about whether an individual is impaired by alcohol or drugs. The DRE certification prepares an individual for court testimony regarding various narcotics, a level of expertise far in excess of that necessary to make observations and reach a conclusion under the standard of reasonable suspicion.

I concurred here with the Employer that the DRE certification was unnecessary. Police officers, more so than other employees, are training to make observations and reach conclusions regarding the incapacity of individuals who may be under the influence of alcohol or drugs. Accordingly, I shall incorporate as item four among preconditions for testing non-probationary employees, the following:

4. A Lieutenant or higher ranked officers shall be the Police Department representatives to authorize or to approve a drug/alcohol test.

Second, although the parties agreed on the need for a written report to document the decision to order the test, they differed on when the report should be prepared. Here the Union insisted upon the report <u>prior</u> to the administration of any test. The Employer proposed only that "upon request" of the employee, would a report be prepared <u>after</u> the test, setting forth the basis for the reasonable suspicion justifying the test.

Clearly, a report before the test may well delay the testing procedure until any traces of the drug had dissipated

from the employee's body. This consequence effectively negates the relevance of the test in the first place. Testing for drugs are time sensitive, and should be done with dispatch as soon as a decision has been reached to order a test for any employee.

At the same time, the basis of the decision to order the test should be documented in writing and supplied the employee upon request. The documentation should be timely and not left open as the Employer's proposal does, until the officer essentially gets around to it. Rather the written report for the basis of the decision should be done immediately and no later than the end of the shift on which the test was ordered. This assures fresh recall and increases the likelihood of accurate reporting of the observations on the appearance, behavior, speech and body odors in relation to the work performance of the employee.

I shall include among the pre conditions for a reasonable suspicion test the following:

5. The officer authorizing or approving a drug or alcohol test under this Appendix C shall provide a written report to the Chief, and to the employee, if requested, that documents the basis for ordering the test under the reasonable suspicion standard. The report shall be completed no later than the end of the shift on which the test was ordered.

The sixth proposal of the Union included a provision for liquidated damages in the event the employee proved that the drug testing was to harass the officer. Clearly a provision is appropriate that affirms drug testing will not be used to harass any officer. The inclusion of a liquidated damages provisions as suggested by the Union has not been included in drug policies to the knowledge of this arbitrator, and generally is regarded as inappropriate in collective bargaining agreements based on good faith relationships. I found no objective basis for the inclusion of such a provision here, and accordingly shall

incorporate among the pre conditions for testing of non probationary officers the following:

6. The Port shall not use the drug-testing program to harass any officer.

The seventh precondition offered by Union on destroying negative test results is already covered in Section G.2 of the Drug Testing Policy.

D. DECISION AND AWARD: DRUG/ALCOHOL TESTING

I decided and award the following amendments and revisions to Appendix C on Drug/Alcohol Testing for inclusion in the new Agreement:

The Preamble is unchanged except the following revision of its fourth paragraph:

As referred to herein, testing shall be applicable to all entry-level probationary employees and to any other employee for whom the Port has a reasonable suspicion that the employee is working while under the influence of alcohol or drugs.

Section A remains unchanged.

Section B shall read as follows:

B. Preconditions to Drug/Alcohol Testing. Before an employee may be tested for drugs or alcohol based on reasonable suspicion, the Port shall meet the following prerequisites:

(1). The Port shall inform employees in the bargaining unit what drugs or substances are prohibited.

(2). The Port shall provide in=service training containing an educational program aimed at heightening the awareness of drug and alcohol related problems.

(3). The Port and the Union shall jointly select the laboratory or laboratories that will perform the testing.

(4). Lieutenants or higher ranked officers shall be the Police Department representatives to authorize or to approve a drug/alcohol test.

(5). The officer authorizing or approving a drug or alcohol test under this Appendix C shall provide a written report to the Chief, and to the employee, if requested, that documents the basis for ordering the test under the reasonable suspicion standard. The report shall be completed no later than the end of the shift on which the test was ordered.

(6) The Port shall not use the drug-testing program to harass any officer.

Section D. Testing Mechanisms remains unchanged except the introduction shall read as follows:

D. <u>Testing Mechanisms.</u> The following testing mechanisms shall be used for any drug or alcohol tests performed pursuant to the testing procedure.

Section E. remains unchanged.

Section F.1 is revised as follows:

F. <u>Consequences of positive test results.</u>

1. An employee who tests positive shall have the right to challenge the accuracy of the test results, before any disciplinary procedures are invoked, as specified in Section E.7 above.

Section F.2 remains unchanged.

Section G remains unchanged except that the last sentence in G.2 shall read as follows:

All positive test results will be kept confidential, and will be available only to the Chief, one designated representative of the Chief, the Human Resources Department and the employee.

XXV. DRIVES AND WORK JURISDICTION (Item 1)

A. PROPOSALS

The Employer proposes to change the work jurisdiction of the bargaining unit to exclude work on the roadway that leads into and out of the main terminal, referred to generally as the "drive work." Police officers have been responsible to direct and control the traffic on the drives. The Employer proposes to staff the drives with non-commissioned personnel from out side the bargaining unit. The Port suggested the following language for the new Agreement:

> Beginning January 1, 2002, the Port may assign drive work, that does not require a fully commissioned police officer, to non-bargaining unit employees of the Port. Prior to that date, the parties will meet and seek to resolve through a joint labor-management committee, issues related to the transition. The parties will also discuss whether earlier implementation is feasible. It is also agreed that before any bargaining unit members are involuntarily laid off during the term of the Agreement, the Port will first lay-off any non-unit employees performing the drive work. The parties agree that this does not in any way prohibit the Port from seeking voluntary lay-offs by unit members by enhanced severance packages, etc.

The Union opposes the change in work jurisdiction of the bargaining unit and seeks to retain the present language in the Agreement.

B. CONTENTIONS IN SUPPORT OF THE PROPOSALS

1. Employer

A major and central contention of the Employer was the ineffective and inefficient use of police officers with high level of training and expertise to direct traffic that could be done by non-commissioned or civilian employees on the drives. Officers universally regard the drives work as at the bottom of the chart of duties and responsibilities. According to the Employer officers who testified described the work as "least

desirable," a "thorn," or "nasty." The work is routine, boring and inconsistent with the type of training and expertise of police officers, the Employer maintained. It is routine and mundane where not a lot of skill and expertise is required to move cars.

The Port argued that employees could be hired directly to do the traffic control work, and would be more effective than the police officers. The employees would be hired for the job and would know that is what they are there for. They would know the complexities, limitations and conditions of the job for which they could be trained specifically. Employees to direct traffic require less education, experience, and expertise than do police officers.

The Employer maintained that the civilian and or non-commission personnel would control recalcitrant citizens more effectively than the police officer. If a motorist fails to comply with the instructions of the traffic officer, the non-commission employee has recourse to assert that he must call a police officer to enforce the law. In this case the police officer arrives with greater force and impact than if he had been the one that initially confronted the driver. The combined efforts of the non-commission employee and the police officer would lead to easier and greater compliance with instructions than the police officer alone, the Port concluded.

The Port noted that the situation would not improve in the future, as passenger traffic and thus motorized traffic into and out of the airport would continue to increase. If the Port is required to hire more police officers, it is only throwing more good resources about in a bad way. Not irrelevant here would be the ability to hire employees at a lower wage than that paid to officers, whose skills and expertise, as argued above, would not be used fully.

The Port pointed to the experiences at other airports where traffic was controlled and directed by civilian or non-commissioned officers. According to the Employer, the reports were universally good and demonstrated that the proposal of the Port was a good one. Commander Longton from Minneapolis/St Paul airport reported on the experience there that now has used non police officers on traffic control for nearly fifteen years. That airport is near in size and configuration to SEA TAC. According to the Employer, Longton affirmed that the success there was exactly what the Port was claiming here. The use of police officers inside the terminal and back up to the personnel on the drives worked most effectively. They had encountered no difficulties in citizens not obeying the non-commissioned employee, but actually traffic control had improved and complaints declined.

The Port pointed to the use of civilians and other to control traffic at other airports. In U 39, 14 of 29 airports used non-commissioned employees in 1992. Both Kimsey and Lindsey have traveled about the country and observed the use of non-commissioned employees in traffic control at the airports, and both affirmed that their use had meet with good success. This experience affirms even more that the plan proposed by the Port will work. According to the Employer, the 91-20 plan that was developed in the mid 1990s was found by Lindsey to be workable, a conclusion confirmed, according to Lindsey, by Captain Wilkenson and Officer Salois who worked extensively on the project.

The Port denied that the absence of officers on the drives would lessen security at the airport. The police officers would still be around, and would be a stronger deterrent if stationed inside of the terminals. Here the officers would be available to respond to emergencies either inside the terminal or on the

drives. Any emergencies at the airport have originated inside the terminal, not on the drives, the Port asserted.

The Port alleged also that the use of non-commissioned personnel would improve customer service. First, employees would be working on the drive that wanted to be there, who regarded it as their job and wanted to perform the drive activity. Second, complaints would decline, the Port believed on this basis. In addition, the ability to have police support from inside the terminals would enhance the performance of those on the drives. Longton asserted that complaints did decline at the airport in Minneapolis/St Paul with specifically trained personnel for the drives work.

Finally, the Port argued there would be cost savings, probably primarily in the long term, and not now. A source of funds would be the reduction in overtime. Twenty-nine officers had over $20,000 of overtime, mostly earned on the drives last year. Fifteen of them had salaries in excess of $100,000. With out knowledge of what the new salary would be for the new drives workers any accurate determination of possible savings is precluded. But the Port insisted that the main economic and efficiency gain was in the more effective use of resources, where police officer could be used to the best advantage with their training and expertise. Clearly, in the long run, the Port would be able to employ new personnel at lower salaries and cost, and from declining overtime work. The Port proposed to protect fully the police officers by proposing to lay off all non-commissioned personnel on the drives before any police officers, should unexpected events lead to smaller needs at the airport. But with a growth in seaport traffic, a need for police officers will grow, the Port asserted.

In summary the Port maintained that its "proposal fairly balances the respective interests of the parties, and the

public. The officers will not longer be expected to perform a task they disdain. The unit will be buffered from layoffs caused by the reassignment. ... The concerns raised by the Union and officers over the excessive amount of overtime at the Port will be ameliorated. The Port will be able to have police officers assigned to duties more consistent with their training and pay. The Port will be able to assign more employees onto the drives to assist with traffic flow. The Port and the public will have employees on the drives that want to be there. It will be a 'beneficial thing' for everyone. The Port's drive proposal should be awarded by the Arbiter," the Employer concluded.

2. Union

In its introduction to this issue, the Union alleged that it was "by far the most important issue to all of the officers in the bargaining unit." Noting further that the traffic control work had been a core part of the bargaining unit work for over thirty years, the Union decried the Port's attempt to transfer that work to employees outside of the bargaining unit. It alleged further that the Port had failed to meet its burden to show the change is justified and that benefits of the change outweigh the interests of the employees and the Union. The Port's proposal on the drives issue of work jurisdiction must be rejected, the Union concluded.

Initially the Union asserted that the Port bears a heavy burden to show that the change in bargaining unit work is needed or desirable, practical or reasonable in the absolute and in relation to the interests of the parties. It asserted further that the arguments in support of the change must clearly outweigh those that hold to the status quo. Support for these

principles arose in part from cited interest arbitration awards (Un Br, p 6).

Through testimony of bargaining unit representatives, the Union showed that the drives work was core bargaining unit work, for as many as ten officers regularly are assigned to this work each day. It has been a part of the work jurisdiction of the unit for over thirty years. In addition, many of the positions on the drives arise from overtime, a significant source of income to members of the unit. But in addition, the Port has recognized that the drives work was bargaining unit work. Swanson acknowledged so specifically in the resolution of the tollbooth grievance in 1992. Traffic control work was then and is now bargaining unit work, the Union affirmed.

Also, the Union noted the 1996 negotiations where the existing language of the contract was drafted affirming that drives were in the bargaining unit jurisdiction, as shown in Appendix O. Swanson affirmed that the Port would "work with them to protect this jurisdiction." Further, two arbitration decisions during the term of the current agreement confirmed that the drives work was in the work jurisdiction of the Union (U 26 and 27). These decisions noted that "job security is dear to union members" and protection of their work jurisdiction through the recognition and union security clauses affirms their interests in maintaining work jurisdiction.

The Union pointed out that the subject of excluding the drives work from the unit had been discussed for many years. But in all of this time, no agreement had been reached. The Union stressed that in the example from the Minneapolis/St Paul airport, used by the Port to support its claim for the use of civilian employees on the drives, the union and the employer agreed to the change in work assignments. Further, the Union emphasized the officers' interests in preserving their work by

their unanimous rejection during current negotiation of a Port proposal that included changes in the assignment of drives work. Although this matter related in part to the issue of whether or not the drives issue was a permissive or mandatory subject for bargaining, the unanimous opposition of the officers is a circumstance that the arbitrator cannot overlook in appraising the effect of the Port's proposal on the members of the bargaining unit.

The Union offered a major contention that the Port had failed to prove that using limited commission personnel would work at SEA TAC. First, the Union claimed via the testimony of LaBissoniere and Monahan that the police officers have the best ability to keep the traffic moving. LaBissoniere has 28 years of experience in working on the drives, and that first hand experience cannot be ignored in evaluating the effectiveness of police officers. Of relevance here the Union noted, is the growth and expected growth in traffic on the drives over the next five years as passenger volumes expand. Pressure on the drives grows with increase in the number of passengers, and officers are most capable to meet the increased pressure. The resistance of citizens to traffic control requires the presence and authority of the commission police officer. The Port's arguments were unable to doubt this effectiveness, the Union summarized.

Further, according to the Union, no basis exists to assert that use of civilians will improve the situation. Citizens will increasingly defy non-commissioned personnel. Further delays will result as uniformed offices are called to resolve the matter. Here the Union stressed again the practical experience and according to it, "the best testimony" on the operation of the drives systems and the likely deficiencies of the use of non-commissioned personnel.

The Union claimed that every study of the drives issue had concluded that police officers were the most effective way to ensure traffic keeps moving (U 30, 33, 38). The Port offered no study of a thorough evaluation of the management of the drives system and that concluded use of civilians would work. The Port relied upon the testimony of Longton who claimed the use of civilian personnel would work, but admitted he had no first hand knowledge of the SEA TAC situation. He agreed that success in one location did not necessarily guarantee success in another location. Longton had made no study of SEA TAC upon which he could rely for his judgments. Also, the Union claimed that Kimsey's testimony was an opinion only, even though he had traveled extensively and belonged to a number of organizations related to airport management and police responsibilities. His testimony must be considered less valuable than that of those directly involved in the system as Monahan and LaBissoniere, the Union asserted.

Finally, the Port failed to demonstrate that the security of the drives and terminal would not be lessened with the departure of the police officers from the drives. As now assigned these officers can respond to problems in the terminals as well as meet problems on the drives, the Union stated. On the drives the police officers represent another layer of security. Clearly, the Union asserted, the law enforcement capability of the police officer is a considerable asset to the security of the Port. Without officers assigned to the drives, the Port will lose a significant security layer, the Union concluded.

Finally the Union argued that the benefits to the Port were must less than the costs to the officers and the Union. First, no real evidence was submitted to show that the civilian personnel would reduce costs, and argued only that the Port

could make better use of its police officers. Yet when ask, Deputy Chief Kimsey could not affirmed where police officers would be reassigned from the drives to improve their functioning. According to the Union, the Port failed to provide any tangible benefit by the use of non-commissioned personnel on the drives that could in any measure offset the elimination of many drives positions and a large body of core bargaining unit work for the Union and its members.

Utilizing the elements that have been used to appraise the reasonableness of contracting out work, the Union emphasized again that the there was a thirty year past practice of including the traffic control work on the drives as core bargaining unit work. The history of negotiations by the parties and arbitration decisions affirmed that the contract protects the drives as bargaining unit work. The effect upon the members of the unit and the Union is substantial from the Port's proposal, the Union continued. Employees are negatively impacted by loss of positions and loss of substantial overtime income. The Port's proposal gives neither any guarantee that positions will not be lost nor where the ten or more officers now working on the drives would be reassigned. Thus the bargaining unit is faced with both loss of positions and loss of income. With the Port's proposal this represents a permanent loss, and not a temporary one.

In conclusion, the Union contended, "For all of these reasons, any justification that the Port has offered for its proposal simply cannot outweigh all of the factors that favor the Union's position." Accordingly, the Union respectfully requests that the Arbitrator reject the Port's proposal with respect to the drives and retain the current contract language unchanged.

C. ANALYSIS AND DISCUSSION

I have concluded that the work jurisdiction of the bargaining unit should be left undisturbed during the term of the new Agreement. Accordingly the proposal of the Employer to reassign the drives work to noncommissioned and or civilian employees has been set aside. The following considerations led to this conclusion.

For the most part the contentions and arguments of the Employer fell short of demonstrating a clear preference over those made by the Union. This was particularly the case with respect to the issue of the relative effectiveness of civilians versus police officers in working the drives. Although no issue can be made over the fact that civilians have successfully functioned as traffic control personnel at other airports, the issue concerns the relative effectiveness of the two groups. Traffic control is an aspect of police work, and cannot be considered as outside the normal or ordinary functioning of police officers. This fact confronts the Port's argument that traffic controllers can be trained specifically for the job. But to a certain extent, police officers are also so trained.

Nor could I conclude that the enforcement mechanism suggested by the Port would be any more effective than the mere presence of police officers on the drives, in the first place. The Port argued that with civilians there would be two steps in enforcement. First the request and order of the traffic controller is made. If he/she were not successful in moving the motorist, a call would be made for a uniformed police officer. The officer's impact would be greater than had the officer made the request to "move on" to the motorist in the first place, according to the Port. Although this may be true, equally so is the fact that when, in the first instance, a uniformed police officer requests a motorist to move along, that request has

greater impact than when the motorist is ask by a traffic controller to do so. Thus fewer situations arise in the first place that would require the "enforcement" strategy of the Port. The presence of the officer at hand at the time of resistance lends immediate enforcement action, if necessary, and avoids delay in calling for an officer from the terminal and explaining the incident for his resolution. The evidence is not clear at all that the impact will be the greatest in moving traffic appropriately by a two step process over the immediate presence of the police officer giving instructions directly and initially to motorists and others on the drives.

Contrary to the contention of the Union, the use of civilian traffic controllers, limited commissioned or non-commissioned personnel does work to control traffic on airport roadways and drives, or so many other airports would not have such personnel assigned to that work (U 31, E 238; T VI, 112-113). But the issue is not feasibility or whether the civilian system of traffic control works, for it does. Rather the central consideration is whether that system works better and with fewer resources to accomplish the same purposes and level of productivity as a system solely staffed by commissioned police officers. I found the Employer's case and arguments in this latter regard to be weak and relatively unpersuasive.

The Port acknowledged that there probably would be no savings at least initially, only that additional personnel could be obtained at a very minimum of cost. I understood the strategy of the Port to include the expectation of a reduction in the number of officers on staff now as senior officers retire in the near future. In addition, as the airport is expected to expand, and the seaport area particularly, the Port expects additional police officers will be required. The need for officers to fill the positions of those retiring and the need

for officers to fill new positions as the airport and seaport increase activity will absorb those officers reassigned from the drives. Thus the jobs of present bargaining unit members are protected and no additional officers will need to be hired for some time. Finally, the Port would replace the police officers from the drives with lower paid noncommissioned personnel who specialize only in traffic control. However a consequence of this strategy is substantially larger total costs over the next several years until open positions from retirements and from increased Port activity catch up with the present staffing level, even if a substantial amount of overtime now paid police officers for working on the drives is eliminated.

Although not stated but implied by the Port, the alternative strategy would be to increase the number of police officers to fill positions resulting from increased airport and seaport activity and to hire replacements for those who retire, if the drives remained staffed by police officers. But the record was devoid of any reasonable direct comparisons between these two potential strategies. It was not clear whether one course of action was more resource efficient than the other.

A public employer should be in the position to demonstrate its proposed action either saves or doesn't save resources. Here in the case of the drives proposal I could find no source within the testimony or among the exhibits that laid out the alternatives before the Port and the relative costs of the two systems although some unreliable attempts were made a few years ago (U 38, p 78-80;U 48). This comparison was essential to be done by and for a public employer whose bottom line is not the governing objective of its activity. Such a cost comparison is a prerequisite for so significant a change in operations before an interest arbitrator orders a change in the work jurisdiction

under a collective bargaining agreement between the Port and the Teamsters.

Two considerations remain upon which the conclusion to retain the current work jurisdiction for this bargaining unit was based. The first concerns the issue of security, and the "onion" theory of layers of protection at the airport. The visibility and presence of police officers has a calming as well as law enforcement aurora, and some impact does result from their presence on the drives as the first layer of security. Although I may have viewed this matter differently on September 10, 2001 than when writing this a week later, the current uncertainties regarding security at airports and other public places suggest that the evident presence of police may have some mitigating effect on criminal and terrorist activities. The public perception of a proposed decline in the number of police officers on the drives might well suggest a decline in security measures at an unfortunate time whether or not security truly was less in any degree.

Second, there can be no doubt that the protection of its work jurisdiction is a major matter of importance to the Union and its members. At the introduction of this issue, the Union described the drives as "by far the most important issue to all of the officers in the bargaining unit" (Un Br, p 5). Several of the officers were clear that they would not give up the drives. LaBissoniere said "we're not going to give up that type of money to put civilian people out there and replace us" (T II, 154:17-20; see also T II, 132-33; 136-37). The matter has been discussed for years without an agreement. In current negotiations, the Port presented a offer to the Union with the Port's drives proposal included. The Port's proposal was unanimously rejected. The work jurisdiction has included the

drives work for over thirty years and now accounts for more than one fourth of the work of the bargaining unit.

These factors have persuaded this arbitrator to affirm that the Union would have been adamant in holding to its position on work jurisdiction, and only an extensive set of guarantees and or substantial money inducements would have changed its position. I found nothing in the Port's set of proposals considered herein that would have been sufficient to offset the apparent strength of resolve by the Union and the police officers to keep the drives work. I have concluded that the Union would have prevailed on this issue in an open market circumstance by its greater "bargaining strength."

D. DECISION AND AWARD: DRIVES AND WORK JURISDICTION

I decided and award that

The Employer's proposal to staff the drives with non-commissioned personnel from outside the bargaining unit is denied.

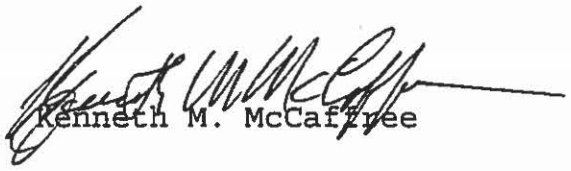
XXVI. CONCLUSIONS

The awards have been set forth at the end of each section and shall not be reproduced here.

I have written language in modifying some of the proposals. If you cannot agree on what is the intent of the language, I regard it my responsibility to clarify at the request of either party within ninety days of the date of these awards, so that whether you agree or not, both of you will understand at least what was intended. My decision in each case is intended as a final and binding one.

All awarded changes in the Agreement are effective upon ratification of the new Agreement unless stated otherwise in the specific item's award.

Respectfully Submitted



k Kenneth M. McCaffree