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**IN ARBITRATION PROCEEDINGS PURSUANT TO
RCW 41.56.465 *et seq.* AND CHAPTER 391-55 WAC**

In the Matter of the Interest Arbitration

between

LONGVIEW POLICE GUILD,

and

CITY OF LONGVIEW.

RE: Interest Arbitration; PERC No. 15438-I-00-350

OPINION AND AWARD

of

LUELLA E. NELSON,
Interest Arbitrator

October 8, 2001

Portland, OR

This Interest Arbitration arises between LONGVIEW POLICE GUILD ("Guild"), and CITY OF LONGVIEW ("City" or "Employer"). LUELLA E. NELSON was selected to serve as Neutral Chairperson. The parties agreed to waive the panel provided for in RCW 41.56.450.

At a hearing held on June 27 and 28, 2001, in Longview, Washington, the parties had the opportunity to examine and cross-examine witnesses, introduce relevant exhibits, and argue the issues in dispute. On July 12, 2001, the Guild sought to reopen the record to submit additional evidence. That evidence was described as a memorandum prepared by a budget analyst for the City which allegedly contradicts record evidence from the City regarding the budgetary impact of bargaining proposals. The City opposed that request. In a telephone conference, the Arbitrator directed the Guild and the City to analyze the disputed document and determine whether the alleged discrepancy could be explained. The record was not reopened. Both parties filed post-hearing briefs on or about August 20, 2001. The parties agreed to waive the 30-day time limit for preparation of this Opinion and Award.

In arriving at her Decision and Award, the Neutral Chairperson weighed and considered the following criteria set forth in RCW 41.56.465(1) pursuant to the Impasse Resolution Rules of the Washington Public Employment Relations Commission ("PERC"), WAC Chapter 391-55-200 *et seq.*:

- (a) The constitutional and statutory authority of the employer;
- (b) Stipulations of the parties;
- (c) (i) For employees listed in RCW 41.56.030(7)(a) through (d) [law enforcement officers], comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;
(ii) For employees listed in RCW 41.56.030(7)(e) through (h) [fire fighters], comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered;
- (d) The average consumer prices for goods and services, commonly known as the cost of living;
- (e) Changes in any of the circumstances under (a) through (d) of this subsection during the pendency of the proceedings; and
- (f) Such other factors, not confined to the factors under (a) through (e) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. For those employees listed in RCW 41.56.030(7)(a) who are employed by the governing body of a city or town with a population of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living.

APPEARANCES:

On behalf of the Guild:

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On behalf of the City:

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FACTS, ARGUMENTS, AND ANALYSIS

BACKGROUND

The City's police department ("Department") bargaining unit consists of ten sergeants and 37 police officers. The Department is headed by Chief Robert Burgreen. The current Guild President is Police Officer Jeffrey Davis; he also was involved in negotiations for the 1998-99 Agreement. Police Officer Scott McDaniel was the note-taker for the Guild negotiating team in 1995, and also participated in 1998-99 negotiations and in the negotiations that led to this proceeding

COMPARATORS

The City is located in Cowlitz County, Washington. It sits near the Columbia River on the Interstate 5 corridor, roughly 50 miles northwest of Portland, Oregon, the nearest sizable city. Its population of 34,660 ranks 23rd in size among Washington cities in the 2000 census.

The parties agree that three Washington cities meet the statutory definition of comparators, i.e., "like employers of similar size." They disagree regarding some of the criteria to be used to identify additional comparators. The comparators proposed by the parties are listed in a series of tables attached as appendices for ease of reference.

Initially, the parties agree that comparators should have a population within 50-150% of that of the City (i.e., 17,330-51,990). 31 Washington cities lie within this band, ranked 14th through 60th in size. The Guild would omit all cities east of the Cascade Mountains; its proposed comparators, in total, range in population from 29,267 (Des Moines) to 50,052 (Renton) and rank between 14th and 36th in size. The City would rank seventh out of 11 jurisdictions in population if the Guild's list were used. The City would include three cities east of the Cascades, but would omit most cities in the central Puget Sound area; its proposed comparators, in total, range in population from 18,397 (Port Angeles) to 42,514 (Olympia) and rank between 17th and 58th in size. The City would rank fourth out of nine jurisdictions in population if the City's list were used. The proposed comparators are as follows:

<u>AGREED-UPON</u>	<u>CITY</u>	<u>GUILD</u>
Bremerton	Mount Vernon	Auburn
Lacey	Pasco	Des Moines
Olympia	Port Angeles	Edmonds
	Richland	Lynnwood
	Wenatchee	Puyallup
		Redmond
		Renton

Neither party's list of proposed comparators matches the comparators either used in recent rounds of bargaining. In 1995 negotiations, and again in 1998-99, the proposed comparators were as follows:

AGREED-UPON

CITY

GUILD

*Auburn
|Bremerton
*Edmonds
|Lacey #Walla Walla
*Lynnwood
|Olympia
*Puyallup
*Redmond

#Clark County Sheriff
#Cowlitz County Sheriff
^Richland

*Des Moines
#Kent¹
*Renton

* = on Guild comparator list in this proceeding
^ = on City comparator list in this proceeding
| = on agreed-upon comparator list in this proceeding
= omitted from both parties' comparator lists in this proceeding

Thus, of the cities currently urged by the City as comparators, four (the agreed-upon cities plus Richland) were on the City's 1995 and later lists. Of the cities currently urged by the Guild as comparators, all were on the Guild's 1995 and later lists, and all except Des Moines and Renton were on the City's lists. The record does not reflect what comparators the City used in negotiations prior to 1995; the Union proposed a list composed largely of out-of-state jurisdictions in 1992.

Both in earlier negotiations and in this proceeding, the Guild has argued that cities in Eastern Washington and north of the central Puget Sound area are not comparable to the City because of their geographic location. In this proceeding the City argues that cities in the central Puget Sound area are by and large not comparable because of the economic impact from their participation in or proximity to the booming economy in much of that area. The City urges that the relevant geographic distinction is not between Eastern and Western Washington, but between rural and urban cities.

The City submitted evidence on assessed valuation as an additional factor in identifying "like employers." Applying a ±50% test to its assessed valuation of \$1,631,516,520, the City would include only cities whose assessed valuation was between \$815,758,260 and \$2,447,274,780. Application of this test identified 26 cities (in addition to the City) within the chosen valuation range, of which 17 also fall within

¹ Kent's population in the 2000 census exceeds the agreed-upon population range.

the $\pm 50\%$ population range. Of the agreed-upon comparators, Bremerton and Lacey fall within this range; Olympia is slightly above the top of the range. Two Guild proposed comparators (Des Moines and Puyallup) also fall within this range; the remainder of the Guild's proposed comparators exceed it. The City would rank eighth out of eleven jurisdictions on this factor if the Guild's comparator list were used. The City would rank third out of nine jurisdictions if the City's comparator list were used.

The City argues assessed valuation per capita as an additional measure of demographic similarity. The City's assessed valuation per capita is \$47,072. The cities that fall within the $\pm 50\%$ population band range in assessed valuation per capita from \$28,546 to \$191,992. The range for the Guild's proposed comparators is \$37,852 (Bremerton) to \$137,300 (Redmond), with an average of \$72,341; the City would rank tenth out of eleven jurisdictions using this measure. The range for the City's proposed comparators is \$29,678 (Pasco) to \$61,954 (Olympia), with an average of \$47,676; the City would rank fifth out of nine jurisdictions using this measure.

Finally, the City proposes retail sales tax receipts per capita as a measure of demographic similarity. It submitted that data only for the parties' respective lists of proposed comparators. The retail sales tax receipts per capita for City comparators range from \$107 (Richland) to \$293 (Olympia), with an average of \$163; the City would rank fourth out of nine by this criterion. The retail sales tax receipts per capita for Guild comparators range from \$51 (Des Moines) to \$427 (Lynnwood), with an average of \$243; the City would rank seventh out of eleven by this criterion.

As many arbitrators have observed, the selection of comparators is not an exact science. The arbitrator must use the data in evidence to develop a list of manageable size which "more closely resembles the important attributes of the subject jurisdiction than those jurisdictions not on the list." *See, e.g., City of Pasco (Police Department)* (Wilkinson, 1995). Although circumstances may call for the use of unique criteria in any given case, certain criteria have become accepted as those most likely to facilitate development of such a list. Chief among those are the parties' agreement to use particular comparators, population, the history of use of certain comparators, and geographic proximity. Assessed valuation has been suggested as

an additional important factor in public safety units. Further, in jurisdictions reliant on sales taxes, those revenues can augment the more traditional criteria.

In this case, the parties both look to a population band in the $\pm 50\%$ range, a traditional parameter. It has been suggested that use of equal-sized bands above and below the subject jurisdiction's population gives excessive weight to less-populous—and usually less prosperous—cities, in part because there are more small towns.² The data in this case demonstrates the statistical underpinning of this argument; outside the comparators urged in this case, all but one of the remaining cities in the chosen population band is smaller than the City. Even within the comparators urged in this case, more than half are smaller than the City, particularly among the comparators urged solely by the City. However, the parties have offset the arguable bias by excluding the vast bulk of smaller jurisdictions from their proposed comparators; of the smallest ten, only one (Port Angeles) is proposed by either party, whereas seven of the eight cities larger than the City are proposed. Thus, with one exception at the low end, the range under consideration is effectively -24% to +44%.

Interest arbitrators give considerable weight to geographic location. That has been particularly true of the geographic division the Cascade Range creates between Eastern and Western Washington. In large part, this preference arises out of the theory that bargaining, and by extension interest arbitration, is intended to establish wages and other terms and conditions of employment that permit retention and recruitment within the relevant labor market. The relevant labor market is those jurisdictions to which a unit employee is likely to look in considering either an alternative employer or an alternative career. A variety of economic, social, and climatic factors make relocation from west to east, or vice versa, a less likely move than one on the same side of the Cascades. A move from a relatively rural location to the heart of an urban area is nearly as unlikely. Strict application of these assumptions would result in virtually no comparable jurisdictions,

² Kaplan, *Interest Arbitration and Factfinding, Some Principles and Perspectives*, U. of O. LERC Monograph Ser. No. 13, at 35-36. Kaplan suggests that, to maintain symmetry, a lower limit of minus 50% should be matched by an upper limit of plus 100%. Application of this theory in this case would add four jurisdictions – Shoreline, Kennewick, Lakewood, and Bellingham – each of which has a number of major demographic distinctions from the City.

because the City stands nearly alone in its population band in rural Western Washington. Thus, it will be necessary to include jurisdictions which are not likely competitors for the City's workforce. However, in the Arbitrator's view, a preference for Western Washington comparators remains appropriate.

The City's proposal to exclude all "central Puget Sound" cities is too broad. The term "central Puget Sound" itself is undefined. The City apparently includes Olympia and Lacey within this definition, but nonetheless accepts those comparators because of their comparatively distant location vis-a-vis the heart of the area. The fact that the Puget Sound area, in general, has boomed in recent years does not mean that each jurisdiction within the area has shared in that boom. On the contrary, nothing could be more common than disparate economic growth in pockets within a metropolitan area.³ Moreover, excluding all jurisdictions in the area apparently covered by the term "central Puget Sound" would limit the remaining candidates to cities which are quite distinct from the City in all or most of the traditional factors. The Arbitrator therefore cannot discount the entire Puget Sound area from Olympia past Everett. Instead, some comparators will have to be cherry-picked from among the jurisdictions in that area to find those most comparable to the City.

In this regard, it is appropriate to give considerable weight to the comparators previously used in negotiations. Other than arguments of counsel, no explanation has been given for the sea change in comparators used by the City mid-bargaining. The Arbitrator has compared the jurisdictions deleted from the City's prior lists with those substituted. The striking characteristic of the substitutions is that most of the jurisdictions the City would add are smaller, poorer, and more geographically distinct from the City than those it would delete. This is particularly true of the proposed addition of Port Angeles, a small community distant from the I-5 corridor, which has been particularly hard-hit by the decline in the timber industry. While the City has also had economic challenges in recent years, the record does not show that its economy has suffered a downturn of similar proportions.

³ Consistent with this common experience, the record in this case demonstrates stark economic contrasts between, e.g., Pasco and its sister cities, a phenomenon which was also observed by Arbitrator Wilkinson in the 1995 interest arbitration involving Pasco.

An arguable exception to the pattern of substituting smaller and less affluent communities is the deletion of Walla Walla, for which Wenatchee is a somewhat close substitute. Walla Walla is slightly larger, but slightly poorer, than Wenatchee, and shares Wenatchee's isolated geography. Both Wenatchee and Walla Walla are distant from any major city, albeit the Tri-Cities area is close enough to have some economic impact on Walla Walla.

Walla Walla is also superficially similar to Pasco in that it is only slightly smaller, has a slightly higher tax base, but is in a more rural part of Eastern Washington. Pasco, however, is anomalous in several regards that make it an unlikely comparator. Arbitrator Wilkinson noted the economic conditions of that city in the mid-1990's. Data submitted by the City shows Pasco continues to be a deeply troubled city economically. Its economic condition is particularly striking when one compares it to the nearby city of Richland, which had unemployment rates at only a fraction (sometimes less than 1/3, and never more than half) of its poorer sister. Pasco, like Richland, is distinct from the City not only because of its Eastern Washington location, but also because it is part of the Tri-Cities area and thus is subject to Hanford's economic impact. No comparable single economic engine exists in the Longview area.

In any event, Pasco, Wenatchee, and Walla Walla share such significant differences from the City that it is difficult to justify substituting two such cities for one, particularly where Walla Walla has not historically been agreed upon as a comparator and is such an unlikely competitor for personnel from the subject jurisdiction. Because of its location and the impact of Hanford, Richland must also be discounted. By far the most comparable of the City's separately proposed comparators is Mount Vernon. Like the City, it is geographically removed from the heated Seattle economy and in a primarily rural area of Western Washington, but still along the I-5 corridor. It is smaller, but its assessed valuation per capita and retail sales tax receipts per capita are reasonably similar.

At the other end of the spectrum, the Union has historically urged the inclusion of Renton and Des Moines, and proposes to include all of the Puget Sound jurisdictions used as comparators by the City in 1995 and since. Des Moines is closer to the City in demographics than Renton. Des Moines is also more similar

to the City than most of the jurisdictions proposed separately by the City—except for its per capita retail sales tax receipts, which are very low at less than 50% of the next lowest proposed comparator. However, this factor is not a major determinant in assessing the comparability of a jurisdiction, and it is offset by a respectable assessed valuation per capita. Thus, of the Union’s proposed comparators other than those previously used in negotiations, Des Moines is the most similar to the City; indeed, in some respects it resembles the City more closely than some of the other comparators used in past negotiations.

The Arbitrator’s final list of comparators reflects a diversity of demographic factors which balance one another. It includes the stipulated jurisdictions of Bremerton, Lacey, and Olympia. It also gives weight to the parties’ history of using certain comparators; Auburn, Edmonds, Lynnwood, and Puyallup will be included for this reason. Although Redmond was also used as a comparator in prior negotiations, it has become more economically distinct from the City due to the boom in technology, and will be excluded. As the Puget Sound economy continues to evolve, it is possible that others of the larger jurisdictions proposed by the Guild may become so unlike the City that they will no longer be fairly considered “like employers of similar size;” however, on this record, that time has not yet come. Des Moines and Mount Vernon are both smaller cities which offset the larger jurisdictions that dominated the historic comparators. Also, as discussed below, their inclusion makes the group of comparators large enough to permit analysis of the data in a manner that compensates for the absence of current contracts in two jurisdictions. The final list is:

Bremerton
Lacey
Olympia

Auburn
Edmonds
Lynnwood
Puyallup
Des Moines
Mount Vernon

ISSUES CERTIFIED FOR INTEREST ARBITRATION

PERC initially certified 23 issues for interest arbitration.⁴ Before and during this proceeding, the parties reached agreement in nine areas and partial agreement as to some of the remaining 14. The issues remaining in dispute will be referred to by their original numbers for ease of comparison with the parties' proposals.

ISSUE 1: Article 6.01(a)(d) – General Wage Increase

The City proposed wage increases in each year equivalent to 85% of the Portland, Oregon, CPI-W. For June 1999, the Portland CPI-W was 2.5%, making that wage increase 2.125% for all wages earned in 2000. For June 2000, the Portland CPI-W was 3.4%, making that wage increase 2.89%, to be paid retroactively to January 1, 2001. For 2002, the City proposes to apply 85% of the Portland CPI, but would limit the wage increase to no less than 2.5% and no more than 5%, effective January 1, 2002. The Guild proposed wage increases of 4% in the first and second years and 100% of the Portland CPI-W in the third year.

Comparison With Like Employers

The interest arbitration process does not have as its goal bringing wages in the subject jurisdiction to a level that equals or exceeds those of the comparators, nor even to one that represents the average wages of the comparators. Rather, if one has chosen comparators that reflect a fair cross-section of comparable jurisdictions, the interest arbitration process should simply maintain the subject jurisdiction's relative standing vis-a-vis those comparators. In this regard, the result of interest arbitration should approximate the result the parties themselves would have achieved had bargaining led to a final agreement. Absent extraordinary and locally isolated changes in the subject jurisdiction's economy, one would not expect bargaining to result in wage increases so out of step with similar jurisdictions as to change relative standings significantly.

The comparators' collective bargaining agreements cover varying periods. Olympia and Puyallup (as well as all of the excluded proposed City comparators other than Richland) have not settled for 2001.

⁴ PERC certified two additional issues which were not presented to the Arbitrator. One, "Article 11 (new section) – Annual Leave Limitations," was subsumed within Issue 14. The other, "Article 16, Duration," was resolved by the parties' agreement on a three-year contract.

The Guild bases its calculations for wages rates on either the 2001 rates or the last wage rates before 2001 for that comparator.⁵ The City submitted bar charts which report monthly wage rates for 1999 and 2000.⁶

The Arbitrator began with a comparison of wage rates in 1999, the last year of the most recent Agreement. Where possible, the Arbitrator calculated wage rates of comparators either from contracts in evidence that cover those years or by backing out the wage increases specified in later contracts into earlier years. Where that could not be done, the Arbitrator used the figures from the City's bar charts for 1999 and 2000. Bringing the 2000 wage rates forward into 2001, for the two cities whose contracts have not yet settled, permits a rough analysis of the wage trend in the years from 1999 to 2001. However, these calculations underestimate the wage trend for 2001 because they do not account for likely increases in Olympia and Puyallup. The Arbitrator has estimated the degree of distortion through a separate calculation that excludes Olympia and Puyallup and compares that with the calculations using all nine comparators.

One comparator, Edmonds, has a salary schedule whose top step applies at 10 years; the remaining comparators top out by 5 years, although four partially make up for that with longevity pay. Edmonds also pays longevity pay. The Arbitrator ran scenarios using various rough permutations of base wages with and without longevity pay. While in some cases the precise ranking of the City within comparables would change if longevity pay were calculated in, the ultimate conclusions to be drawn were not affected significantly by going beyond the base wage for the top step in each jurisdiction, in this case at the 10-year level (to include Edmonds).

The parties' arguments raise the question of when to factor in benefits beyond the base wage in comparing jurisdictions. Rather than factor in the value of all benefits in setting wage rates, it is preferable

⁵ In two jurisdictions, the Guild took as its "top step" base wage rates the wages for positions which are not comparable to rank-and-file officers in the City's work force. The Arbitrator therefore has used the top step wage for the next position down in the wage structure for those cities.

⁶ Some of the jurisdictions' agreements begin in 2000 or 2001, and therefore do not include wage rates for 1999 and/or 2000. The source material for the City's bar chart entries for those jurisdictions is not in evidence.

to consider the value of benefits when viewing the final package as a whole. However, where a benefit is such an integral part of the pay rate as to be subsumed within it, it is appropriate to consider that benefit at an earlier point. For example, where a substantial part of the bargaining unit is at the top step of the pay range due to relatively low turnover, arbitrators traditionally compare pay at the top step among comparables. Longevity pay is readily fungible with additional steps to compensate for lengthy service. A senior police officer contemplating a change in employers will factor in any loss of longevity pay in deciding whether to make such a move. However, unless using longevity pay would significantly affect the outcome of the base wage analysis, it is preferable to avoid the complication of adding in that figure at this stage of the analysis.

In 1999, the City's monthly wage was \$4,261. The comparators' average wage for police officers with 10 or more years' seniority was \$4,237.91, or \$23.09 (.5448%) below the City's wage. The City ranks fifth out of these ten jurisdictions in wages. Backing out Olympia and Puyallup, the average wage for 1999 at the 10-year mark was \$4,200.20, or \$60.80 (1.43%) below the City's wage. The City would rank third out of these eight jurisdictions in wages.

For 2000, the comparators' average wage at the 10-year mark was \$4,383.69, or 3.4399% above average 1999 levels. Backing out Olympia and Puyallup, the average wage for 2000 at the 10-year mark was \$4,351.39, or 3.5996% above 1999 levels for those seven.

For 2001, the nine comparators' average wage at the 10-year mark was \$4,517.70, or 3.057% above 2000 levels. Backing out Olympia and Puyallup, the average wage for 2001 at the 10-year mark was \$4,523.68, or 3.9594% above 2000 levels for those seven. If one applied the average percentage increase of the other seven comparators to Olympia's and Puyallup's 2000 wage rates to estimate their 2001 wages, the adjusted average 2001 wage for the nine comparators at the 10-year mark would be \$4,557.26.

Both parties' proposals would change the City's standing vis-a-vis the comparators. The Guild's proposal would widen the gap between the City's wages and the average comparator's wages for 2000 and 2001; the City would change rank, from fifth to fourth out of ten jurisdictions in 2000 and to second out of ten in 2001. The City's proposal would move wages from slightly above the comparators' average to slightly

below it in 2000, and further below it in 2001; it would change its rank from fifth to sixth in 2000. In 2001, the City's proposal would make it sixth of ten jurisdictions in wages, without accounting for future wage settlements in Olympia and Puyallup; if those jurisdictions' wage settlements approximated the wage increases of other comparators, the City would slip to seventh. The following sets out the wage impact of the parties' proposals in the years in question in table form:

	Adjusted ⁷ 2001 10-year Base Pay	2001 10-year Base Pay	2000 10-year Base Pay	1999 10-year Base Pay
Average	\$4,557.26	\$4,517.70	\$4,383.69	\$4,237.91
City Offer	\$4,477.31	\$4,477.31	\$4,351.55	\$4,261.00
Difference	\$(79.95)	\$(40.39)	\$(32.14)	\$23.09
% Difference	(1.7543)%	(0.8940)%	(0.7332)%	0.5448%
Guild Offer	\$4,608.70	\$4,608.70	\$4,431.40	\$4,261.00
Difference	\$51.44	\$91.00	\$78.64	\$23.09
% Difference	1.1287%	2.0143%	1.7939%	0.5448%

The Arbitrator ran other scenarios using different sets of comparators,⁸ with substantially similar results. Thus, this factor suggests that a wage increase somewhere between the parties' proposals would be in line with the compensation at "like employers of similar size."

⁷ Adjusted figures for 2001 assume that the wage increases for Olympia and Puyallup for 2001 would equal the average percentage increase for the remaining seven comparators for 2001. The Arbitrator acknowledges, however, that it is unlikely those wage settlement will be as high, in percentage terms, as those of the comparators.

⁸ Because three of the four excluded comparators proposed by the City have not settled for 2001, it was not useful to attempt a comparison for that calendar year with that set of comparators.

Cost of Living

The City argues wage rates in this unit have increased by more than the Portland CPI-W since 1990, and thus argues there is no basis for granting a wage increase greater than the Portland CPI. It further notes evidence that housing prices in the area have not experienced the inflation found in Portland as well as in the Puget Sound area, and thus argues the Portland CPI overstates the increase in the cost of living. It also proposes, as an alternative measure, the Implicit Price Deflator, and introduced the IPD monthly figures from July 2000 to March 2001. Those figures show that, on a rolling 12-month basis, the IPD ranged from 1.93% to 2.53%. The City argues 85% of the Portland CPI-W is appropriate as a measure of the cost of living because it has used that figure historically as its benchmark.

The Guild argues an appropriate test of changes in the cost of living would use an average of Portland, Seattle, and All-Cities CPI-W figures. This alternative measure would yield 2.46% for 1999 and 3.6% for 2000. It was used in a 1987 interest arbitration involving Cowlitz County in which the parties had not agreed on the appropriate inflation index. This isolated instance, in the Arbitrator's view, does not provide a solid base for changing the measure historically looked to by the parties.

Despite the benchmark the City used in bargaining, in practice the parties have incorporated wage increases at or above the Portland CPI-W in their final agreements. In 1999, the parties agreed to a two-step wage increase, of 2% in January and an additional 1.75% in July. The Portland CPI for the prior year (June 1997-June 1998) had been 2%; the CPI for 1999 (June-June) was 2.5%. The diagram submitted by the City for earlier years in the decade shows the same pattern, with one additional element. In 1996, the Guild proposed, and the City agreed, to eliminate longevity pay (except for officers with more than 20 years' seniority, who receive an additional \$25 per month) in return for a 1.7% wage increase beyond the cost of living, effective January 1, 1996. Consistent with this change, base wages moved roughly in harmony with Portland CPI until 1995, then diverged upward. The fact that City police officers' base wages have outpaced the Portland CPI in the past decade is thus partly an artifact of the longevity buy-out. This history is one

indicator of the trade-off between longevity pay and base wages, discussed earlier.⁹ It does not suggest that wages have outpaced the Portland CPI to such a degree as to suggest a correction is in order. Thus, in view of the parties' history, a wage increase equaling or exceeding the Portland CPI is well within reason.

Local Labor Market

The City offered information on the wages received by Cowlitz County deputies and police officers for the City of Kelso (the only other town of any size in Cowlitz County) as an indication of the labor market within Cowlitz County. The duties of a deputy and those of a city police officer are sufficiently different from those of a county police officer that the comparison with a county is of very limited utility.

The evidence regarding Kelso wage rates cuts both ways. The most recent Kelso contract expired in 1999. In 1999, Kelso police officers earned \$4,004 monthly at the top step, while City officers earned \$4,261 at the top step. However, Kelso has a population of 11,895. Despite its small size, its officers' base wage rate exceeded that of three of the City's five separately-proposed comparables, suggesting that the local labor market requires a somewhat higher wage than might otherwise be expected of a town its size. In addition, Kelso police received longevity pay. Those hired before 1996 received between 2% and 8%, depending on seniority; those hired in or after 1996 will receive 2% in longevity pay at five years' seniority and 4% at ten years' seniority. At ten years' seniority, the longevity increment of 4% would make the total monthly wage \$4,164,¹⁰ less than \$100 below the wages received by City police officers; those with 20 years' seniority (all of whom would have to have been hired before 1996) would receive a longevity increment of 8%, reversing the ranking and bringing the Kelso monthly wage to \$4,324. This wage progression suggests

⁹ One of the excluded comparators, Port Angeles, also demonstrates this fungibility. Although Port Angeles is a very small jurisdiction, and next to the lowest-paying of the proposed comparators in base wages, only Renton pays larger increments of longevity pay. If those payments were factored into the calculation, Port Angeles would move up two places among the excluded comparators.

¹⁰ All of the City's separately-proposed comparators except Pasco also would have received longevity pay of between 1% and 4% at ten years' seniority, with larger incentives at greater seniority.

that, to retain senior officers in the local labor market, Kelso has had to pay more than the City, even though it is next door.

The City also offered evidence regarding the general wage differentials between Cowlitz County and counties in “central Puget Sound.” The data was on a county-by-county basis which does not differentiate between, e.g., the Microsoft-enhanced economy in and around Redmond and less prosperous cities elsewhere in King County. The City also offered data regarding wage adjustments for local employers, both public and private, in Longview and Cowlitz County. Wage increases for 2000 ranged from 2 to 3%, and from 2.5 to 3.7% in 2001. No evidence was submitted regarding the relative size of the workforces or the types of work performed by many of the employee groups. For a variety of reasons, uniformed personnel often receive larger wage increases than civilians. Thus, one would not expect to see a wage increase for this unit at the low end of the range of local wage increases. This data tends to support a wage increase somewhat larger than the City’s proposals, but not as large as the Guild’s proposals.

Local Economic Conditions

The Cowlitz County unemployment rate historically has been considerably worse than those in counties clustered around Puget Sound. Like 23 other counties (out of 39) in Washington, Cowlitz County is considered to be a “Distressed Area.” Like other communities along the Columbia River, the City was affected by the shut-down in the aluminum industry generated by energy shortages, which contributed to a spike in unemployment in the spring of 2001. Other local employers also closed or relocated, contributing to a general shift in the local economy away from manufacturing. On the other hand, a new industrial park, The Mint Farm, is under construction, and a Denver steel company reportedly plans to relocate operations from Portland to the Port of Longview (which, however, does not lie within the City).

Some aspects of the County’s economic position improved in 1999, particularly relative to other counties. Per capita income rose that year by 5%, a rate that was exceeded only by King (10.4%), Island (6.6%), Pend Oreille, Clark (6%), and Wahkiakum (5.5%) Counties. Other counties which showed better performance in per capita income earlier in the decade slowed in 1999. Because the figures for 2000 in

evidence speak in terms of median household income, no comparison can be made between 2000 and earlier years. Retail sales tax revenues increased from 1998 to 1999, then returned to approximately the 1998 level in 2000 and are projected to drop further through 2001. Building permit revenues, however, declined in 1999 and have continued to decline.

Based on revised forecasts presented at a City Council hearing held two weeks before hearing in this matter, the City Council voted to reduce expenditures across the board by 1.5%. According to the City's witnesses, the above factors, plus the impact of the legislature's response to Measure I-695, contributed to the downward revision from earlier forecasts for 2001.

The City's financial picture for 2001 is noticeably less rosy than it was in 1999, when negotiations began for this Agreement, or even in 2000, the first year under this Agreement. While that change in circumstances cannot be ignored, it also cannot be a significant factor in determining wages for this contract term. Had the parties reached agreement in 1999 or early 2000 in the ordinary course of bargaining, they would have based the wages for this three-year contract on conditions and projections as they were at the time. The wages to which they agreed would have remained in effect despite subsequent economic changes. It would discourage good faith bargaining to require employees, after the fact, to subsidize their community for the period between the end of the last contract and the date when interest arbitration concludes by awarding a smaller pay raise than would otherwise be warranted by the data. Indeed, if the City's financial picture had instead become substantially more rosy in the intervening period, it also would not have been proper to award employees a more generous pay raise than would otherwise be warranted by the data. The data well into 2000 supported a pay raise consistent with other economic factors in this case.

Workload

Crime rates in the City have remained fairly flat in the past few years. However, after a drop in 1998, the call load per officer increased slightly in both 1999 and 2000. All of the increase in overall calls for service was in Priority 4 calls (routine service calls) and Priority 3 calls (non-emergency calls investigatory in nature with possible suspect); there was a slight decline in Priority 1 calls (life threatening

calls in progress) and a larger decline in Priority 2 calls (calls requiring immediate action). This factor tends to suggest that the work load per officer has increased somewhat, but the severity of the problems addressed has decreased marginally. It thus does not suggest that a major change in status is warranted.

Recruitment and Retention

Between 1990 and 2001, nine officers left the City, of whom two each left in 1998, 2000, and 2001. Two employees who left shortly before the arbitration hearing relocated to Vancouver, where their homes were located; one of those informed Chief Burgreen that he would be making more money as a result of the move, but ascribed his primary reason for leaving to a desire to be closer to home.

The County experienced fluctuations in applications from various sources between 1999 and 2001. After a decrease in applicants from all sources in 2000, it experienced a large increase in applications received in 2001, particularly from Cowlitz County and central Puget Sound; Oregon continued to decline as a source of applicants, while Washington cities outside Cowlitz County and central Puget Sound showed a smaller increase. Overall, the retention and recruitment statistics do not indicate any problem with either sufficient to warrant an increase larger than otherwise warranted by the data.

Internal Parity

Historically, uniformed personnel within the City have received larger annual wage increases than other employee groups. Police on average have fared better than fire fighters, although in the latter part of the decade the gap narrowed somewhat. The City's witnesses testified it has decided to try to bring police and fire wage rates closer. While the parties would be free to agree to such a departure from historical patterns, it would be inappropriate to impose such a change through the interest arbitration process. Therefore, the internal parity issue will not be factored into the analysis.¹¹

Conclusion

¹¹ Even the unit with the lowest increases, employees represented by the ATU, nonetheless enjoyed total wage increases exceeding 85% of the Portland CPI over the decade. Thus, if internal parity were to be considered, this history plus the history of greater increases for uniformed personnel would argue for a figure greater than the City's offer.

The evidence does not suggest that either an unusually large or an unusually small wage increase is in order for this unit. Thus, an award of either party's offer would not be consistent with the purposes of the interest arbitration statute. The appropriate wage increase falls between those two poles, but closer to the Guild's proposals than to the City's.

The parties' most recent contract began the year with a wage increase equal to the prior year's Portland CPI for June (2%) and added a mid-year increase of an additional 1.75%, thus back-loading part of the wage increase. The wages paid by like employers of similar size, the local economic and labor market factors, and other factors contemplated by the statute, the primary ones of which are discussed in detail above, lead to a conclusion that it would be appropriate to award the following wage increase:

2.5% effective January 1, 2000

1% effective July 1, 2000

3.4% effective January 1, 2001

0.5% effective July 1, 2001

100% of the Portland CPI-W effective January 1, 2002

This award backloads the wage increase to some extent, but permits employees to maintain their relative position vis-a-vis comparators. The City will start 2000 barely ranking fifth just above Bremerton in base pay; it will move ahead of Olympia mid-year, but average fifth for the year as a whole. In 2001, it will remain ahead of Olympia (assuming no future wage settlement in that city), and thus move to fourth out of ten; backing out Olympia and Puyallup, it will maintain its rank of third out of the remaining eight.

ISSUE 2: Article 6.01(c) – Longevity Pay

The Guild proposed a new provision for longevity pay of 2% after 10 years of service, while retaining the additional \$25 longevity pay for employees with 20 or more years of service. The City opposed this proposal. If the Arbitrator were writing on a clean slate, she would be inclined to award longevity pay in lieu of a portion of the general wage increase. Such a provision is very common; indeed, two thirds of the proposed comparators, and all but one of the City's separately-proposed comparators, provide for longevity

pay. However, the parties only recently negotiated longevity pay out of their Agreement. While they are free to negotiate it back in if experience has taught them that its removal was unwise, it would be inappropriate to use the interest arbitration process to require this result. Accordingly, the City's proposal of maintenance of the status quo will be awarded.

ISSUE 3: Article 6.06 – Deferred Compensation Match

The Guild proposed a new provision reading “The City shall provide a Deferred Compensation Program and match up to two percent (2.0%) of an employee’s annual deferred compensation contribution.” The City opposed this proposal.

Of the selected comparators, two, Bremerton and Olympia, provide a deferred compensation match benefit to employees; three excluded proposed comparators also provide it, and the City provides it for fire fighters. The City argues this benefit is more common among jurisdictions that have opted out of the Social Security program. Olympia is such a jurisdiction. The City has opted out of Social Security for fire fighters, but not for police. It further notes that fire fighters negotiated this benefit in lieu of compensation for medical aid response pay which the City had previously paid. The Guild suggests this benefit would be appropriate if the Arbitrator concluded unit employees were entitled to more compensation than the City’s current financial situation calls for. In this regard, it argues this benefit has a deferred impact and, if police officers respond to it as City fire fighters have, may be used at less than the fully allowed level, further reducing the financial impact.

The Arbitrator did not conclude that the City’s current financial situation warrant a reduction of the wage increase that is otherwise warranted. While the goal of the proposed benefit is laudable, it is not supported by the enumerated statutory factors or by the parties’ bargaining history. Accordingly, the City’s proposal of maintenance of the status quo will be awarded.

ISSUE 4: Article 6.07 – Shift Differential

The Guild proposed a new provision for a night shift differential of \$1 per hour. The City opposed this proposal.

The 1999 Agreement called for officers to work five nine-hour shifts at a time, followed by three days off, and to rotate from days to swing to graveyard. It did not provide for any form of shift differential. The City and the Guild agreed to try a different schedule, of four 12-hour shifts followed by four days off, on an experimental basis. In approximately December 1999, employees voted to continue the 12-hour shifts.

Sergeant Steven Rehaume testified officers on the night shift have a greater fatigue factor because of the need to switch to a daytime schedule on their days off and then back to a night schedule. Chief Burgreen does not favor night shift differential because the seniority bidding processes tends to relegate junior officers to the night shift; a night shift differential thus tends to increase the pay of junior rather than senior officers. He testified such a provision is relatively uncommon among police.

One of the selected comparators, Mount Vernon, provides a shift differential; its officers work either five eight-hour shifts or four ten-hour shifts weekly. Wenatchee also provides this benefit to officers working rotating or straight night shifts; that agreement provides for eight-hour days unless an alternative work schedule is arranged.

The enumerated statutory criteria do not support this proposal. There are policy arguments for and against it; however, if officers find it difficult to function effectively on a 12-hour shift, night shift differential is not the most obvious response to the problem. Accordingly, the City's proposal of maintenance of the status quo will be awarded.

ISSUE 5: Article 14.01(a) – Medical and Dental Care Benefits

ISSUE 8: Article 14.01(c) – Changes in Benefit Plans

ISSUE 9: Article 14.02 – Benefit Premium Cost Calculations

ISSUE 10: Article 14.03(a) – Premium Sharing

The City proposed a comprehensive change in the provisions for health insurance. Those proposals were certified as five different issues, one of which (Issue 7) has been accepted by the Guild. The four related proposals listed above will be discussed as a package. The Guild objects to such a comprehensive revision of the proposals through the interest arbitration processes. It asserts the ultimate goal of the changes

proposed by the City is to pass more costs to employees, as well as to provide uniform benefits among different bargaining units and permit cost savings. It urges such an overhaul of the language should be deferred to bargaining for the next Agreement, and argues other bargaining units should not become “silent negotiators” for this Agreement. As discussed below, it also has specific objections to some individual proposals.

The City proposed to delete reference to specific insurance plans in several paragraphs and to delete a requirement that “the level of benefits shall be at the same level as 1995.” It further proposed language which would permit it to change insurance carriers so long as the level of benefits remains “substantially the same” as those in existence; prior language would have required that benefits be “equivalent to” existing plans. The City additionally would add language committing the parties to review and consider cost saving measures if aggregate insurance premiums increased by more than 10% per year.

The City argues the references to particular plans are out of date because of intervening changes in insurance plans and the continuing volatility of insurance providers in Cowlitz County. Currently, each of the City’s current carriers continues to provide coverage in Cowlitz County. However, one of the three, Kaiser, recently reach agreement with the only local hospital only after protracted discussions, and on unfavorable terms. Some insurance carriers have abandoned this market in recent years.

The City argues it needs additional flexibility in changing plans, and argues the “substantially the same” language protects employees’ interests. It notes that plan benefits vary, and argues the intent of the language is to permit it to select a plan whose benefits are substantially the same, even if one benefit is slightly better and another benefit is slightly worse than the previous plan. It argues the “review and consider” language does not compel the Guild to accept benefit reductions, but merely provides a process for exploring cost savings. It seeks to compel the Guild to participate in such a process because the Guild declined to participate in a similar committee that recently explored a change in insurance carriers. The Guild did, however, accede to the change that resulted from the committee’s efforts.

The Guild has no objection to the language calling for the parties to review and consider cost savings measures, but argues the proposed change from “equivalent” to “substantially the same” would permit degradation of coverage. It objects to tying “positive” aspects of the proposals to a split of premiums.

The City proposed to eliminate reference to plans “named above” and to eliminate the separate calculation of Guild dental rates from those of employees in other bargaining units. It argues the latter change is proposed primarily for administrative convenience. The Guild opposed this proposal on the grounds that it would give the City a further opportunity to change plans.

The current language requires the City to pay 90% of total premiums using the highest cost medical plan. The City proposed to continue this 90% level through 2002 so long as the City’s contribution for 2002 did not increase by more than 10% over 2001; if the aggregate premium increased by more than 10% for that year, the City proposed to share the excess increase equally with employees. It further proposed a Voluntary Employee Benefits Association (VEBA) account for employees who receive insurance as a dependent (e.g., via a spouse’s medical insurance plan). It further proposed that the Guild participate in a City-wide employee/labor/management benefits committee to review ways to control health care expenses. The Guild found the VEBA acceptable and was willing to consider the benefits committee, but opposed requiring that employees split the cost of premium increases over 10%.

Recent annual increases in insurance premiums have been in double digits, up to 33.3%. The City changed one insurance plan because of rate increases. It predicts that insurance rates for 2002 will increase; Kaiser, the highest-cost plan, is projected to increase by 20%. It is expected that rates for the other plan will not increase enough to cause the City’s share of premiums to increase by more than 10% over the highest cost plan premiums. Kaiser plan participants would have up to a \$58.59 increase in their share of premiums if the projected increase occurs, unless they chose to change plans during open enrollment.

The City recently negotiated the same change in premium sharing language in other bargaining units. The City has provided new benefits beyond those proposed, to all City employees. Those benefits include a Section 125 plan which permits employees to pay their share of health insurance premiums with pre-tax

dollars; medical savings plans; day care spending accounts; automatic payroll deposits; and the option of retiree health care coverage.

Unit employees currently pay larger insurance premiums than do employees of all of the comparators except Olympia. The Lacey contract calls for employees to share increased premium costs if those increases exceed 10%; however, employees currently pay no premiums. The Pasco contract calls for that city to pay 100% of the premiums up to \$440, share premiums above that amount equally with employees up to \$572, then absorb all costs above \$572; employees currently pay no premiums for health insurance and pay \$18 per month for dental coverage. The variation in health benefits provided by the comparators defy any attempt at comparing the benefits received by employees in return for their share of premiums.

The changes in Article 14 proposed by the City would affect the choice of carriers or plans and the degree of cost sharing only for 2002; the insurance decisions have already been made and premium shares determined for 2000 and 2001.

One must tread particularly carefully in drafting provisions for health insurance plans, because even slight variations in language can result in employee dissatisfaction over benefits. Thus, unless the record unequivocally demonstrates both the need for a change in language and the appropriateness of the specific language proposed, the Arbitrator will not award a language change. Put another way, the City's language proposals must stand and fall as a whole; the Arbitrator will not redraft or redact the proposed language.

Looking first at the language regarding benefit levels, the language of Article 14.01(a) requiring benefits at "the same level as 1995" is a very strict standard to meet in changing plans if applied literally. The County nonetheless was able to work around that limitation in making a change of carriers affecting not just this unit, but all City bargaining units. This success argues against changing language for the sake of providing flexibility unless one can be certain that the change will not introduce unintended ambiguity. The language of Article 14.02(c) requiring a level of benefits "equivalent to" those in existence is not as strict a standard. It is, however, a higher standard than "substantially the same as." In view of the parties' experience under the existing language, the need for this change is not established. The Guild's response suggests

there is substantial room for bargaining on changes to the language regarding benefit levels; for that matter, there is room for bargaining regarding strategies for cost containment. In these circumstances, the course of action most conducive to encouraging vigorous and good faith bargaining is to leave this language untouched and permit full engagement on this issue.

This leaves the question of the anticipated premium increases for 2002. The City is not alone among employers in facing staggering increases in health care costs, although the magnitude of the increase is particularly stunning when one considers what is otherwise a fairly low increase in the cost of living in this area. The proposed increase in the employee's share of Kaiser coverage alone is the equivalent of over half the initial monthly wage increase granted in this proceeding. Changes in insurance cost sharing are particularly hard-fought battles. Their appropriateness will, in part, depend on the outcome of the proposed language changes. Accordingly, the Guild's proposal of maintenance of the status quo is awarded.

ISSUE 6: Article 14.01(a) – Dental and Orthodontia Coverage

The Guild initially proposed to add dental coverage under the Kaiser plan and to add an orthodontia plan. It has now withdrawn the proposal for dental coverage because the City cannot obtain such coverage, but continues to press for orthodontia coverage. The City opposed adding orthodontia coverage.

Five comparators—Auburn, Bremerton, Edmonds, Olympia, and Puyallup—provide orthodontia coverage. The City's insurance broker testified orthodontia is only available on a unit-wide basis. In view of the evidence regarding the likely increase in the City's health insurance premiums, this is not the time to add another health care benefit. Accordingly, the City's proposal of maintenance of the status quo is awarded.

ISSUE 7: Article 14.01(b) – Long-Term Disability Waiting Period

The parties have reached agreement on this issue. Effective January 1, 2001, the waiting period will be 90 days rather than the prior 180 days.

ISSUE 11: Article 7.04 – Clothing Allowance

The parties have reached agreement on this issue. The clothing allowance will be increased from \$100 to \$150 annually, effective January 1, 2001, and will include "appropriate footwear" along with clothing and equipment.

ISSUE 12: Article 11.05 – Annual Leave Accrual

The Guild proposed to increase annual leave accrual by 24 hours across the board. Police officers currently accrue leave at rates from 136 (for new hires) to 288 hours annually; officers with ten years' seniority earn 216 hours, of which 120 are vacation and 96 are holiday hours. The City opposes this change.

Because of their 12-hour shifts and the Kelly days, unit employees are scheduled for 2,053 hours annually. Most of the comparators are scheduled for 2,080 hours annually. The City argues this makes an increase in annual leave unwarranted because its officers already work fewer net hours (after deducting annual leave) than many jurisdictions. The Guild argues that 12-hour shifts make the work hours more exhausting, and therefore that more annual leave is warranted. It further argues its proposal would "bridge the gap" between the City and comparable jurisdictions in total compensation with little short-term impact.

The City's officers accrue fewer vacation hours than any of the comparators (with the possible exception of Olympia which combines annual and sick leave for some officers), as well as the smallest total of vacation and holiday hours. The Guild's proposal would represent a substantial increase in time off. In view of the substantial wage increase awarded and the likelihood of major insurance benefit cost increases, such a substantial increase in benefits is not warranted at this time. Accordingly, the Arbitrator will award the City's proposal to maintain the status quo.

ISSUE 13: Article 11.06(c) – Annual Leave Usage

The parties have agreed to the City's proposed language change. As a result, Article 11.06(c) reads:

All annual leave shall be expended on an hour-for-hour basis, e.g. nine hours of accrued leave time for a nine-hour shift taken as annual leave. Annual leave shall also be deducted hour for hour when less than a full shift is taken.

ISSUE 14: Article 11.07 – Annual Leave Carryover

Unit employees accrue annual leave at between 136 and 288 hours per year; employees with 10 years' seniority accrue 216 hours per year. Currently unit personnel can carry over annual leave earned in two calendar years, plus an additional week of annual leave previously earned, from one calendar year to the next. To that amount can be added any excess amount caused by the City's cancellation of scheduled vacation. Thus, a ten-year employee could carry over up to 472 hours plus any cancelled vacation. The City proposed to reduce the carryover to the annual leave earned in one calendar year, plus 40 hours (256 hours), and to require excess leave carryover caused by cancellation of scheduled vacation to be cashed out. This provision would take effect on January 1, 2002, giving employees until the end of 2002 to use or cash out excess accrued leave. If the City has insufficient funds to pay for all or part of the annual leave to be cashed out, the City's proposal would permit the excess leave to be carried over. The Guild opposes this proposal.

No evidence exists of the size of the accrued leave bank within this bargaining unit. The City argues it is concerned about significant unfunded liability from the fact that significant annual leave banks may be built up; it is also concerned at the difficulty that would be involved in scheduling annual leave if employees with large leave banks chose to use it. A review of the nine comparators' agreements reveals that the amount of leave a ten-year employee can carry over ranges from 184 (Edmonds) to 480 (Olympia – all employees except LEOFF I); the median figure is 240, and four out of nine comparators use this figure.

The parties' Agreement is far more generous in this regard than the typical comparators' provisions. The record does not reflect the genesis of this departure from the norm. Such accrued leave is a valuable hedge against future uncertainties, for which one would ordinarily expect some other benefit to be traded if it were to be removed from the Agreement. Further, the record does not fully support the claim that this proposal will improve operational or financial difficulties. In the short run, if a significant number of employees have built up large leave banks, requiring them to either take or cash out excess accrued leave by the end of 2002 would generate either a staffing problem or a cash flow problem. Accordingly, the Arbitrator will award the Guild's proposal to maintain the status quo.

ISSUE 15: Article 2.10 – Guild Leave

The Guild has withdrawn its proposal on this issue.

ISSUE 16: Article 2.13 – Use of Police Reserves

The parties have reached agreement on this issue, with modifications to the language initially proposed by the Guild. The revised language reads:

The City shall not employ Reserve Police Officers to perform bargaining unit work without bargaining with representatives of the Guild. The Chief of Police retains the right to utilize Reserve officers in any capacity during an emergency situation as defined in Article 8.01(a) of this Agreement, as well as for the following events: Fourth of July; Cruise Night; New Year's Eve.

It also adds a new provision, Article 8.01, Definitions, as follows:

8.01 Definitions

The following definitions shall apply to this entire agreement:

- a. **Emergency:** A sudden, generally unexpected occurrence demanding immediate action which must be declared by management.

ISSUE 17: Article 4.03(a)(b) – Employee Files

The parties have reached agreement on the City's proposal for Article 4.03(a), which makes the language gender neutral and clarifies that files will be confidential "to the extent permitted by law." They also agreed to the City's proposal for Article 4.03(b), which makes the language gender neutral, clarifies that an exception to the right to inspection and review applies only to Sergeant's "working" files, and reduces the time period for placing a response to information in the file from ten to seven days. The only remaining issue is the language proposed by the Guild for Article 4.03(b), which would require that any information in the Sergeant's working file that is used for discipline be put in the report and made available to the employee. The parties agree to the concept, but the City does not believe the proposed language accomplishes the purpose of expressing this agreement.

The Arbitrator hesitates to tread where parties familiar with the Agreement have made their mark. However, it appears the concern with the language proposed by the Guild is over the manner in which it

refers to “contents” of the Sergeant’s working files. The Arbitrator believes the following language states the parties’ mutual agreement, and so awards this language:

- c. If materials from a Sergeants’ working file are used to discipline an employee, all materials so used will be moved into the permanent Personnel File as provided in Article 4.03(b) and shall be subject to inspection, review, and copying to the same extent as other materials in the permanent Personnel File.

ISSUE 18: Article 4.06 – Bump Back Privileges

The parties have agreed to the City’s proposed language, which adds a new Article 4.06(c) reading:

The seniority of employees who are bumping back shall include their previous time in grade at the position they are bumping back to plus their time in grade at the higher position(s).

ISSUE 19: Article 5.04(a)-(f) – Discipline and Discharge Procedures

A 1996 Memorandum of Understanding (“MOU”) attached to the Agreement provides for six forms of employee correction, which can be summarized as follows:

1. Counseling and/or instruction is not “disciplinary action,” and undocumented verbal reprimands will not be used as a basis for later discipline. Coaching and counseling will be verbal only with no “supporting written disciplinary documentation.”
2. Written warnings are documented disciplinary action and are retained for one year, or until the next evaluation, whichever comes first. They can be issued by a Sergeant with approval by a Captain or the Police Chief, are the first formal discipline, and may be appealed.
3. Written reprimands can be issued by a Sergeant with approval by a Captain or the Police Chief, and are retained for two years.
4. A suspension without pay is administered by the Police Chief and remains in the file for four years
5. A demotion is administered by the Police Chief and remains in the file for five years.
6. Termination is administered by the Police Chief and is retained as long as the file exists.

The MOU begins with two preliminary paragraphs, the second of which discusses the difference between willful misconduct and an honest mistake, and the disciplinary consequences thereof.

The City proposes to roll the MOU (excluding the preliminary paragraphs) into the Agreement and make a number of changes in the lower levels of the disciplinary process. Specifically, it would remove the provisions specifying that coaching and instruction are not discipline and that undocumented verbal reprimands are not discipline.

mands cannot be used for later discipline. It would also permit a Sergeant to maintain documentation of a coaching and counseling in a working file “to be used in the officer’s performance evaluation as deemed appropriate by the sergeant.” It would remove both the verbal and written warning steps and define a written reprimand as “corrective” action, without specifying whether it can be appealed. It would add a provision permitting coaching, counseling, and written reprimands to be used for later discipline.

Chief Burgreen testified he considers coaching or instruction to be a form of discipline. He also believes written warnings are superfluous. The City argues its proposed modifications will “provide a more traditional progressive discipline framework.”

The Guild agreed to conform the language to current practice, by adding the following language to the phrase specifying a coaching and counseling is verbal: “and may be documented and placed in a working file.” However, it argues this step should remain non-disciplinary to permit a supervisor to discuss and document concerns without having to resort to discipline, but to follow up with formal discipline if the conduct continues. With regard to the removal of the “written warning” step, Sergeant Rehaume testified that when the parties negotiated the MOU in 1996, the City proposed to add that step.

The City’s proposal would turn a constructive non-disciplinary response into the first step in a more abbreviated disciplinary process. While the streamlined structure envisioned by the City would not be outside the realm of common practice, neither is the current structure. The current structure has the advantage of having been mutually agreed upon. In view of the Guild’s acknowledgment that the City has a legitimate interest in maintaining a record of coaching and counseling in the event the conduct continues, the Arbitrator will award the current language, with the modification proposed by the Guild.

ISSUE 20: Article 5.06 – Officer Bill of Rights

In an undated MOU attached to the Agreement, the parties agreed to an “Officer Bill of Rights.” The City proposes to roll this MOU into the Agreement and modify the language in several respects. The parties have reached agreement on this issue, with the exception of a new provision proposed within paragraph (d) and the proposal to title the contract provision “Internal Investigations” rather than “Officer Bill of Rights.”

On brief, the City proposes a title of “Internal Interrogations” and argues that title more accurately reflects the purpose of the Article. However, the term “Officer Bill of Rights” has become a term of art in the police world. Accordingly, that title will be awarded.

Most of the proposed language changes are housekeeping changes, such as making the language gender neutral, specifying the disciplinary steps to which the provision applies, and specifying which City official will take action. In paragraph (b)(6), the parties agreed to modify the City’s proposal slightly by substituting “current legal requirements” for “current legal practices.” In paragraph (d), dealing with complaints from the public, the proposal to which the Guild objects is new language reading as follows:

3. Officers who receive complaints which are not sustained for alleged acts of misconduct may be subject to remedial training as deemed appropriate by their commanding officer.

Chief Burgreen testified even unfounded complaints may suggest the need for training – for example, communications training could be appropriate in response to complaints of rudeness, or sexual harassment training could be an appropriate response to complaints of sexual harassment. The City argues such training is not disciplinary in nature and does not carry a stigma.

The Guild argues that training which follows an investigation will be considered punishment, no matter what it is called. In this regard, it notes that training is known in the Department as “positive discipline.” Sergeant Rehaume testified coaching and counsel are available to a sergeant to modify an officer’s behavior, and that there could be instances where training was appropriate. He believes he has the authority to suggest such training without this language, but a captain would have to order the training if the officer was unwilling to go voluntarily. His objection to the language change is that, by coupling the training concept with a complaint that was not sustained, the language makes the training appear to be discipline.

In view of the Guild’s apparent agreement that training in the circumstances described by Sergeant Rehaume would not be a contract violation, the language proposed by the City is superfluous. Accordingly, the Guild’s proposal to exclude this new provision from the Officer Bill of Rights provision is awarded.

ISSUE 21: Article 8 – Shift Schedule

The parties reached agreement on this issue prior to the hearing in this matter.

ISSUE 22: Article 8.02 – Kelly Day Sell Back

The parties reached agreement on this issue prior to the hearing in this matter.

ISSUE 23: Article 8.04 – Compensatory Time Cap

The parties reached agreement on this issue prior to the hearing in this matter.

LUELLA E. NELSON - Neutral Chairperson

WITNESSES FOR THE GUILD

Scott McDaniel, Police Officer, City of Longview
Steve Beck, Research Analyst, Garrettson Goldberg Fenrich & Makler
Ty Anthony Mauck, Detective, City of Longview; and Vice President, Longview Police Guild
Michael Alan Rabideau, Patrolman, City of Longview
Steven Allen Rehaume, Sergeant, City of Longview
Jeffrey L. Davis, Police Officer, City of Longview; and President, Longview Police Guild

WITNESSES FOR THE CITY

Scott Bailey, Regional Economist, State of Washington Employment Security Department
Denise Gabel, Insurance Consultant, Inter-West Benefit Consultants
Kurt Sacha, Finance Director, City of Longview
Vicki Taylor, Human Resources Director, City of Longview
Edwin R. Ivey, City Manager, City of Longview
Robert William Burgreen, Chief of Police, City of Longview
Gerald Flaskarud, Real Estate Broker, Coldwell Banker

EXHIBITS

City

- 1.1 State of Washington Revised Code of Washington (RCW) excerpts
- 1.2 Washington Administration Code (WAC) excerpts
- 1.3 Collective Bargaining Agreement January 1, 1999, through December 31, 1999
- 1.4 October 20, 2000, PERC Certification of Issues
- 1.5 June 12, 2001, Joint Statement to Arbitrator
- 1.6 June 13, 2001, City letter to the Interest Arbitrator
- 1.7 City Proposal – Contract Language
- 1.8 June 13, 2001, Guild letter to the Interest Arbitrator
- 1.9 June 14, 2001, Guild correction to letter of June 13
- 1.10 June 20, 2001, Guild acceptance of City proposals on Issues 7, 11, and 14 [sic]
- 1.11 Guild Proposal – Contract Language
- 1.12 City Police Department Organizational Chart, June 2001
- 1.13 City Police Department Employee Roster, June 15, 2001
- 1.14 Police Officer recruitment flyer
- 1.15 Police Sergeant Position Description
- 1.16 Police Officer Position Description
- 2.1 City's Methodology Regarding Comparable Employers
- 2.2 Census 2000 tables, Ranking of Counties and Cities and Towns by Total Population, Washington
- 2.3 Senior Taxing District Levies Due in 2000
- 2.4 List of City and Guild Comparables
- 2.5 Chart of Population for City Comparables
- 2.6 Chart of Assessed Valuation for City Comparables
- 2.7 Chart of Assessed Valuation Per Capita for City Comparables
- 2.8 Chart of Retail Sales Receipts Per Capita for City Comparables

- 2.9 List of Agreed-Upon Comparables, 3 jurisdictions
- 2.10 Chart of Population for Guild Comparables
- 2.11 Chart of Assessed Valuation for Guild Comparables
- 2.12 Chart of Assessed Valuation Per Capita for Guild Comparables
- 2.13 Chart of Retail Sales Tax Receipts Per Capita for Guild Comparables
- 2.14 Bar Chart of Comparables Within Central Puget Sound Area
- 2.15 Map showing locations of City and Guild Comparables
- 2.16 Map showing locations of City Comparables
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