AN INTEREST ABITRATION

BETWEEN THE

MOUNTLAKE TERRACE POLICE GUILD

AND THE

CITY OF MOUNTLAKE TERRACE

OPINION AND AWARD

PERC CASE NO. 15590-1-01-354

JULY 26, 2001

PROCEDURE

The parties to the dispute are the uniformed police officers and sergeants of the Mountlake Terrace Police Department who are represented by the Mountlake Terrace Police Guild (Guild) and the City of Mountlake Terrace (City).

RCW 41.56.450 provides for arbitration of disputes when collective bargaining involving uniformed personnel has resulted in an impasse. The parties have agreed to the selection of the Arbitrator as provided in RCW 41.56.450. The parties have waived the tripartite arbitration panel provided for in RCW 41.56.450 and have submitted their dispute to a single arbitrator.

A hearing was held in the Mountlake Terrace City Hall on May 9, 2001. At the Hearing the testimony of witnesses was taken under oath and the parties were allowed to present documentary evidence. A court reporter was present and a verbatim transcript was prepared and provided to the parties and the Arbitrator.

The parties agreed to submit posthearing briefs and the Arbitrator received the final brief on June 26, 2001. The statute provides the Arbitrator has thirty days to submit his award to the parties and that date is July 26, 2001

APPEARANCES

For the City: Cabot Dow, President
Amie Frickel, Labor Negotiator
Cabot Dow Associates, Inc.

For the Guild: Patrick A. Emmal, Guild Attorney

Emmal, Skalban & Vinnedge

Others present: Connie Fessler, City Manager
Mike Pivec, HR Manager
Scott Smith, Police Chief
Sydney Vinnedge, Guild Attorney
Tom Baisch, Guild Legal Assistant
Don Duncan, Guild President
Jonathan M. Wender, Guild Vice President
Doug Hansen, Guild Negotiator
Mark Connor, Guild Member
Craig McCaul, Guild Member

BARGAINING BACKGROUND

The Guild and the City have been engaged in collective bargaining since at least 1977. During those years the parties have enjoyed a successful and positive relationship settling all contracts without arbitration. The predecessor contract to the contract being negotiated is the 1998 – 1999 Agreement which expired on December 31, 1999. The 1998 –1999 Agreement was not finalized until April 1999. Following this long period of time the parties took to reach agreement, they agreed that they did not want to continue in the same type of bargaining process. They contacted the Federal Mediation and Conciliation Service (FMCS) to provide them with training in a collaborative bargaining approach. They instituted the collaborative approach and it was agreed that the early results were positive. However, some of the issues did not appear to be soluble using the collaborative method and it was decided to discontinue the collaborative approach and to attempt to gain resolution through conventional bargaining. Subsequently the parties requested assistance from PERC, impasse was declared and PERC certified the impasse for arbitration.

ISSUES

The four issues which were certified by the Public Employment Relations Commission (PERC) Executive Director Marvin Schurke are:

1. Duration
2. Article 6.1.4 – Scheduling
3. Article 9 – Wages
4. Appendix "A" – Wages (Grids)

The parties met prior to the Hearing to discuss the Issues. They reported to the Arbitrator at the Hearing that they had resolved issue one and two and that they were asking the Arbitrator to decide issues three and four.

LEGAL BASIS OF ARBITRATION

The statute mandating interest arbitration contains rationale for why the parties must use interest arbitration when an impasse in bargaining occurs.

RCW 41.56.430 The intent and purpose of Chapter 131, Laws of 1973 is to recognize that there exists a public policy in the state of Washington against strikes by uniformed personnel as means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

The statute also provides guidance and direction to the parties and the arbitrator in regard to what factors are pertinent and should be considered in the development of the arbitrator's award. Those factors are set out as follows:

RCW 41.56.465 In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, is shall take into consideration the following factors:

(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) thorough (d), comparison of 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 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.

COMPARABILITY

The issue of Comparability has been discussed, analyzed and developed over the years by the advocates and arbitrators who have implemented RCW 41.56.465. In many interest arbitration awards the lead issue is what jurisdictions should the arbitrator decide are the appropriate ones to compare to the disputing community. In the current dispute that is also the lead issue. The parties have restricted their offer of comparables to cities in the western portion of the state of Washington, however, beyond that there is little agreement between the parties over the contested comparables.

The statute in (c) above makes it clear that comparisons must be made to "like employers of similar size". The definition of similar according to the City would mean that one is to compare cities that are 50% larger or smaller than Mountlake Terrace. The city identified 23 western Washington cities using that formula. The City cited Arbitrators Abernathy, Axon, Beck and Krebs who used population statistics ranging from +/- 20 % to a +47%/

-30 % in nine arbitration cases involving cities and counties in Washington State. (City Brief p.11) The Guild has presented documentation and argument that there is a basis for comparables that exceed the +/- 50% the City is proposing. The Guild quotes the award of Arbitrator Gaunt in this regard to indicate that when she was seeking comparables for the City of Bellevue she considered cities, which were twice as large as Bellevue. In this same award, however, Arbitrator Gaunt said, "Clearly, parties and arbitrators have settled upon narrower ranges than + 50% when a sufficient number of comparators can be found closer in size." (Guild Brief pp.8-9). The documentation submitted by the City is persuasive. For when they applied the +/- 50% population formula they found that there were 23 cities in western Washington that fit that category. Therefore, the comparable population statistics formula that applied to a city the size of Bellevue, one of the larger cities in the state, would not have the same merit in regard to Mountlake Terrace. There are many more cities close to the size of Mountlake Terrace in western Washington then there would be cities similar in size to Bellevue in the whole of Washington.

A review of the literature and prior arbitration awards indicates that either the City's suggestion of ten comparables or the Guilds seven comparables or a similar figure is adequate for purposes of determining comparability. The City said they chose to reduce the 23 cities on their list using assessed valuation which the City said was the "...second most commonly utilized criteria..." (City Brief p.11). Utilizing this formula they reduced the list to five cities of similar size immediately above and below Mountlake Terrace in assessed valuation. The City's list of comparables includes; Issaquah, Marysville, Mt. Vernon, Anacortes, Lake Forest Park, Port Angles, Mill Creek, Tumwater, Oak Harbor, and Monroe. The City's comparables was criticized by the Guild for being too geographically diverse. They pointed to perceived dissimilarities to Mountlake Terrace of the City's comparables from counties other than Snohomish and King. They were critical that the City's list contained only three larger communities and seven smaller ones. Their analogy was that the smaller cities would make Mountlake Terrace look larger when compared to the smaller cities that are "lower paid" (Guild Brief p.13). They

also say that the City ignored the historical significance of the "geographically proximate comparables"(Guild Brief p.13).

The Guild's comparables included Edmonds, Lynnwood, Des Moines, Mukilteo, Tukwila, Lake Forest Park and Mill Creek. The Guild said that their comparables represented communities to which they had compared historically. They justified the comparables as being similar to, and located in proximity to Mountlake Terrace. The Guild stressed that the two largest comparables on their list, Edmonds – 38,600 and Lynnwood – 32,990, share many programs with Mountlake Terrace including joint SWAT, narcotics, training and jail facilities. Also they share dispatch service and their officers back each other up. The Guild also said that their comparables were on or close to I –5, which has a similar impact on the comparable communities and the policing problems it causes.

The Guild said that there was an historical basis for their comparables and that historically their comparables, the City's and the Guild's, included the communities in proximity to Mountlake Terrace. An arbitrator who is presented with a dispute over a list of historical comparables will have to have been presented with significant rationale to change that list. Assuming the list had served as the basis of the parties' bargaining for a period of time, the arbitrator would be most cautious about changing that list on the request of one of the parties. The burden would be on the party seeking the change to provide the reasons for the change. In the same vein, where the parties dispute a historical list of comparables as the parties are doing in the instant case, the party seeking to convince the arbitrator that there is an historical list needs to provide the proof of that list. The testimony of Guild Witness Connor, on the bargaining team since 1985, is contrary to the concept presented by the Guild that there is or ever has been an agreed upon set of comparables.

Mr. Emmal: (Q) "Do you recall that there has ever been a stipulation between the City and the Guild regarding what jurisdictions are comparable?

Mr. Connor: (A) "I don't specifically recall. I would like to think that over the years we have agreed to comparables, but I don't believe it has been every time."(Tr. p. 28)

The City and Guild's witnesses agreed regarding historical comparisons.

Mr. Dow: (Q) "Do you recall any agreement between the City and the Guild on comparisons with other cities, who compared to who?

Chief Smith: (A) "No, I don't ever recall where either side stipulated to or said, yes, those are the comparables." (Tr. p. 145)

It is firmly established on the record that at no time did the parties agree on a historic list of comparables. As was testified to by the parties they have each had there own list and the only time there were the same comparables was by coincidence when the same community showed up on both lists. It would greatly facilitate the resolution of negotiations between the parties if they had a list of comparables they could agree to or the criteria for such a list. However, that does not seem possible. A review of the major problems that prevented the parties from reaching agreement in the current bargaining was economic. If the parties wish to avoid impasse in their future negotiations, they may want to focus on some method of selecting jointly agreed comparables. While in this award I will establish comparables, it is naïve to assume the parties for future negotiations will voluntarily adopt them.

The law is clear that the major criterion to be considered by the arbitrator to determine comparables is to use similar size communities. The list of "other factors" described in (f) are not definitively described. They certainly will include wealth, socio-economic conditions, geography, proximity, etc. The method used by the City in the development of their list as it pertained to size was impressive, but when they switched over exclusively to assessed valuation to limit the number of similar size communities to the exclusion of all other factors seems limiting. Where the parties have as many similar sized communities in their area as Mountlake Terrace does, it seems that to bring in comparators from some distance away seems less than efficacious. To consider the similarity of cities such as Anacortes, Issaquah, Port Angles, Des Moines and Tumwater to Mountlake Terrace while other more similar cities are closer does not seem objective. At the same time the neighboring cities of Edmonds and Lynnwood are well over the size factors used by arbitrators in similar situations. Edmonds is almost twice the size of

Mountlake Terrace and Lynnwood is nearly so. It is obvious based on the circumstances involved that the law as interpreted by a large number of arbitrators does not countenance that great a disparity in the size of similar communities. I am selecting as comparable the following communities:

Arbitrator's Comparables

City	Population	AV/Billions
Mt. Vernon	23,020	1,218
Marysville	21,710	1,304
Oak Harbor	20,910	809
Mountlake Terrace	20,070	1,112
Mukilteo	17,360	1,595
Lake Forest Park	13,070	1,150
Monroe	11,920	708
Mill Creek	11,345	962
Average	15,175	1,107

There were several reasons for the selection of these cities as the comparables for Mountlake Terrace. Of prime importance was the fact that they were all either on the City's or the Guild's lists or as in the case of Mill Creek and Lake Forest Park, both parties list. All except Oak Harbor and Monroe are on I–5 or immediately adjacent to it. I am convinced after listening to the presentation of the parties that much of the crime that the police deal with in Mountlake Terrace and the comparable communities is generated by their location near or on I–5. Oak Harbor, while not on I-5 is a city almost identical in size with Mountlake Terrace and is located adjacent to Snohomish County. Monroe is included, as it is a similar size city located in Snohomish County. Of the comparable cities, four, Marysville, Mukilteo, Monroe and Mill Creek are located in Snohomish County; Lake Forest Park is in King County; Oak Harbor is in Island County and Mount Vernon is in Skagit County. King, Island and Skagit Counties are adjacent to Snohomish County. Both the average population and average assessed valuation are similar to that of Mountlake Terrace.

WAGE GRID

The City proposes a change in the wage grid. A portion of their proposal would drop the current Step B (45 Hours) and Step D (135 Hours). Their explanation for these proposals makes sense and the Guilds concern with the City position regarding changes in the Grid is that it goes beyond the two simple changes outlined here and has become a part of their bargaining position which is to oppose any changes to the educational incentive. (Tr. p.79). At this time the City requires all new hires to have an AA or ninety hours. There is only one person on the D Step and the City proposes to grandfather that officer. The elimination of Steps B and D will not adversely affect any employee and is more clerical in nature than substantive. While it does not meet the definition in (b) above as a stipulation, both parties indicated a willingness under certain conditions to make this change in the Grid.

As to the remainder of the Grid; the City proposes to pay the officers on Step C (AA Degree) a 4% premium and those officers on Step E (BA Degree) an 8% premium. The City's rationale for these changes is that it "trues up" the wage grid. (City Brief p.26) Referring back to previous comments by the Arbitrator regarding changes in long established policies, which have been developed by the parties, the wage grid fits this description. It has been a part of the parties bargaining since the first contract in 1976. The Guild vigorously opposes the modifications proposed by the City and argues it would substantially reduce the wages of their members. Their position that the educational incentive effectively takes the place of longevity that they do not have is a potent argument to retain the current grid as modified. This factor presented by the Guild coupled with a definite reduction in the economic benefits to the Guild members if the changes proposed by the City are implemented, caution the Arbitrator not to make any additional changes in the Grid. This is an area where it appears the best way to make changes is for the parties to make them in future bargaining. As to the City's proposal to give the officers the BA premium after probation rather than waiting until the fifth year, this was a part of their overall grid proposal and will not be implemented.

WAGE ADJUSTMENTS

Arbitrator's Comparables – Fifth Step Wage Comparison

City	%+	1998/5Year	%+	1999/5Year	%+	2000/5Yea
Mt.Vernon	4.3	3,794	4.5	3,973	3.5	4,112
Marysville	3.7	3,822	3.0	3,941	3.0	4,059
Oak Harbor	3.5	3,715	3.0	3,830	3.5	3,694
Mountlake Terrace	5.0	3,864	3.0	4,068		
Mukilteo	4.1	2,742	3.7	3,887	3.8	4,032
Lake Forest Park	3.5	3,741	3.0	3,857	3.0	3,973
Monroe	4.0	3,679	5.9	3,910	3.0	4,027
Mill Creek	3.5	3,839	2.5	3,938	3.4	4,077
Average	3.95	3,774	3.48	3,925	3.3	4,036

The City's position in regard to wage adjustments is to increase the base salary for Year 2000 by 3%, for Year 2001 by 3% and for Year 2002 by 3%. The position of the Guild in regard to wage adjustments is to increase the base Police Officer's salary by 5% and the base Sargent's salary by 6% for Year 2000, increase the base salary by 100% of the CPI-W for 2001 plus 1% and increase the base salary by 100% of the CPI-W plus 1% for Year 2002.

The disparity proposed by the Guild pertaining to the raises for sergeants and officers seems to have some historical basis. According to the City's brief which has a depiction of the raises given to officers and sergeants from 1990 through 1999 there were four years when the sergeants received higher percentage raises than the officers. This of course has increased the difference in salary between officers and sergeants and it has also increased the percentage the sergeants are ahead of the officers in CPI. A second chart showing the cumulative relationship of the salaries to the CPI indicates that the

officers are approximately 1% ahead of the CPI and at the same time the sergeants are approximately 4.5% ahead of the CPI (City Brief p. 17). The City opposes this difference in the raises on the two scales. They feel that the officers and sergeants should receive the same percentage raise. The concept of giving the sergeants a higher percentage raise will of course increase the disparity between them and the officers. It seems that if the parties wish to increase the amount of money they give the sergeants over the officers, it should be bargained and made in a more mechanical manner. An example could be to increase the base salary of the sergeants. I am reluctant to add to the disparity at this time. If in fact there had always been a difference in the percentage increase between officers and sergeants, then it would be logical to continue it. Under the current circumstances, the percentage disparity between officers and sergeants will not be made.

Often in negotiations where impasse is reached the question of the Employer's ability to pay becomes a significant part of the problem and must be taken into account in some manner. Negative economic resources or a bleeding budget, at least at this point in its history, does not impact Mountlake Terrace. In fact the City has shown an increase in revenue and agreed during the Hearing that they had a budget increase of one million dollars. This does not mean that if the City has the wherewithal to pay the Guild's proposal that the Arbitrator, regardless of other factors should make that his award.

Mr. Emmal: (Q) "The City's revenue increased, isn't that true?
Ms. Fessler: (A) "Yes, overall."
Mr. Emmal: (Q) "Are you saying that the City has an inability to afford the wage increase proposed by the Guild?"
Ms. Fessler: (A) "I don't think we have ever said that."
(Q) "So it's not a question of inability to pay, it's a question of desire to pay."
(A) "No. It's a question of financial stability in the long term."
(Q)"But you could pay if you wanted to?"
(A)"I think you are asking me if we have the resources to pay today. The answer is yes"
(Tr. pp.115-116).

The City and the Guild have both raised issues about the application of RCW 41.56.465 (f), normal and traditional factor bargainers consider in contract negotiations. The City expressed concern that the police officers be given the same salary raises as the other bargaining units in the City. The five other units in the City settled for 3% for 2000 and four of them settled for 3% in 2001. However, the fifth, the Teamsters, settled for 3.51% for year 2001. While these settlements are factors to be considered, the aberration of the Teamsters settlement does tend to decrease their precedence value. Had the police always settled in lock step with the city's other bargaining units, and had all units settled on the same figure, both now and historically, this would have been significant. However, while all five units outside of the police received the same settlement in 2000, the Teamsters broke the mold and were given a contingency settlement based on the CPI W of 90% for 2001. Additionally, for the year 2002, two units have settled for the 3% the City is offering the police, three units are marked as "To Be Determined" (Ex. C-45). Nobody can for sure say what these units will settle for in 2002. Considering these facts does not compel the Arbitrator to concur with the City that the police settlement should be the same as the other units.

The guild made an impressive argument for including the cities of Edmond and Lynnwood as comparables. I have discussed the reasons for not including them on the list. I determined that given the circumstances that there were 23 cities of more comparable size, they were just too large to be used in the list of comparables. However, both the City and Guild witnesses expounded on the amount of cooperation and inter action between the Mountlake Terrace, Edmonds and Lynnwood police departments. Edmonds received a 4% and Lynnwood a 4.2% raise for year 2000 (City Ex.C-19 p.9). Had these two settlements been added into the comparables listed below, the average percentage settlement for year 2000 would have been 3.48% instead of 3.3%. I find that while the two cities cannot be listed as comparables, there is a factor that should be given some recognition. The many officers from Mountlake Terrace, Edmonds and Lynnwood who work together on a regular basis and obviously discuss wages presents a cogent argument to include in the settlement a mutual aid factor of 0.30 %. This factor will also

assist the Guild to maintain their relative salary position in regard to the Arbitrator's Comparables – Fifth Step Wage Comparison as number one among the comparables.

The CPI-W for 2000 is 3.5% and for 2001 3.5% (City Brief p.35). During the months preceding the Hearing it was at times higher than it is now and may have had some impact on some of the settlements which were finalized in previous months. The parties presented the opposing positions of what the CPI actually means to wage earners. They raised the question as to whether the CPI should be mathematically applied to wages or is there a factor which is not relevant to the actual cost of living for employees and should that be factored into CPI based raises in wages. The raise the Arbitrator will be establishing for the year 2000 will be based on the Arbitrator's Comparables.

For the year 2001 the following units from the comparables have settled: Mt. Vernon – 4.0%, Oak Harbor – 3.5%, Mukilteo – 3.9%, Lake Forest Park – 3.0% and Monroe – 3.9%. Marysville and Mill Creek have not settled and the City estimated that they would settle at 3.5%, however, that is speculative and the Arbitrator's preference is to use hard data if at all possible. Using just the five settled units from the comparables above the average percentage settlement for 2001 is 3.66%. These comparables present an equitable figure for determining the settlement for the year 2001 and do not seem to be out of line with the CPI.

An additional factor that will be taken into consideration is that the comparables show that Mountlake Terrace has ranked number one on the Arbitrator's Comparables - Fifth Step Wage Comparison grid for 1998 and 1999. In 1999 the Mountlake officer grid was about $100.00 dollars in first position among the comparables. This is to be taken into account in this award as it is not appropriate for arbitration awards to diminish the economic standing of employees without a legitimate cause, financial hardship, economic downturn or similar problems which have not been brought to light in this case. As a matter of fact in Mountlake Terrace the contrary is true. The parties established in both testimony and documentation that the City could pay the current table position of the Guild, an amount well below what the Arbitrator will award.

. The year 2002 presents a different situation as there is not a sufficient list of settled comparables to determine a settlement trend for 2002. The City's proposal is to apply a 3% increase to the base salary and the Guild requests that they receive a raise equivalent to the CPI plus 1%. The City equates their offer of 3% - 2000, 3% - 2001 and 3% - 2002 as equaling 90% of the CPI for the years in dispute. Again, anytime the Arbitrator can secure guidance from the parties it is to everyone's advantage. Processes and procedures that worked for the parties in the past should be more familiar and usually have resulted from the give and take of a traditional bargaining situation. The parties have in the past agreed to allow the wages to be established by the CPI. Those settlements have been based on 90 % of the CPI – W. (Mr. Wender): "We have consistently taken 90 percent of CPI settlements, understanding we do have to work as a team."(Tr. p.75). The settlement for the third year will follow the past procedure of the parties, however, as this should not work to the detriment of any party, the historical position of the salaries on the comparables shall be protected.

AWARD

Wage Grid:

Steps B (45 Hours) and C (135 Hours) shall be deleted from the Wage Grid. The wages of any Guild Members affected by this deletion shall be grandfathered. The remaining steps of the Wage Grid shall remain unchanged except as impacted by the wage raises stipulated in this award.

Salary Increases:

Salary increases shall become effective on January 1, 2000 for the 2000 year, January 1, 2001 for the 2001year and January 1, 2002 for the 2002 year. The payment procedure suggested for retroactive wages in Joint #3 shall be implemented except the percentage raises listed below shall be inserted into the computation and payment procedures.

Base Wage Increase for 2000 – Increase the 1999 base wages (Step A) for police officers and sergeants by 3.6 %.

Base Wage Increase for 2001 – Increase the 2000 base wages (Step A) for police officers and sergeants by 3.66%.

Base Wage Increase for 2002 – Increase the 2001 base wages (Step A) for police officers and sergeants by an amount equal to 90% of the CPI – W calculated between January 2001 and January 2002. However, should the 2002 settlement change the ranking of Mountlake Terrace to less than number one on the Arbitrator's Comparables – Fifth Step Wage Comparison, the base amount shall be increased so that the Mountlake Terrace base salary shall be number one on that list by at least $100.00 dollars per month.

Richard D. Comell — July 26, 2001

Arbitrator — Date