

BEFORE THE ARBITRATOR

In the Matter of the Interest
Arbitration Between

Spokane International Airport

 the Employer

 and

International Association of Fire Fighters
Local 1789

 the Union

**ARBITRATOR'S
AWARD**

PERC No. 15834-I-01-364

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Date of Award: October 26, 2002

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WITNESS LIST

For the Employer:

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Cabot Dow, Labor Consultant

For the Union:

Dennis Thompson, Firefighter SeaTac Airport, Local 1257, 27 years

Chris Wetherell, Firefighter/EMT, member of Local 1789 negotiating team

Tim Lively, Lieutenant-EMT and President, Local 1789

EXHIBIT LIST

Employer Exhibits:

Re: Comparables (Includes Witness Notebook)

1. Demographic Stats
2. Median Household Income
3. Median Home Prices - 1st Quarter 2002
4. Fire Depts in Eastern Washington
5. Fire Depts in Eastern Washington with IAFF Locals
6. Fire Depts in Eastern Washington with IAFF Locals (sample) Ranked by Assessed Valuation
7. Fire Depts in Eastern Washington with IAFF Locals (ranked by AV Per Capita)
8. Fire Depts in Eastern Washington with IAFF Locals (sample) Ranked by Median Family Income
9. Fire Depts in Eastern Washington with IAFF Locals (sample) Ranked by Median Family Income
10. 2002 WA State Fire Service Directory
11. Spokane Airport Interest Arbitration Labor Contracts Comparables
12. Population Calculation
13. Spokane Airport Traffic & Operations Report
14. Valuation Calculation
15. Spokane Airport Board (agenda notes/memos)
16. City of Spokane West Plains Annexation Feasibility Study

Re: Union Business

1. Union Business/Positions of Parties
2. Overtime Term of Agreement

Rebuttal (Witness Notebook)

1. Spokane Airport IAFF Bargaining Unit ranked by Years of Service
2. Spokane Airport IAFF Bargaining Unit Compensation

3. Benchmark Firefighter/EMT who has completed 13 years of service
4. 2001 Compensation Study
5. Longevity Pay Comparisons
6. 2002 Compensation Study
7. Longevity Pay Comparisons
8. Proposed Firefighter wages
9. 2002 Compensation Study
10. 2002 Compensation Study
11. Incident Reports
12. Other Collective Bargaining Agreements at SIA
13. IAFF Local 1789 vs. Spokane Airports (Complaint for wrongful conversion of monies)
14. IAFF Local 1789 vs. Spokane Airports (Declaration of Tim Lively, William Reeves, Peter Fairchild)
15. IAFF Local 1789 vs. Spokane Airports (En Banc)

Supplemental Exhibits (Submitted by the Employer on Sept. 12, 2002)

16. Spreadsheet wage analysis
17. Spreadsheet with medical-dental information
18. Spreadsheet wage analysis

Union Exhibits:

Exhibit A.-Certification Letter, Proposals, Statutes

1. 05/30/01 PERC Certification Letter
2. 07/03/02 Local 1789's proposals to Arbitrator Wilkinson
3. Correction documents to Local 1789's Social Security Replacement Plan Proposal
4. 07/03/02 Airport's proposals to Arbitrator Wilkinson
5. Chapter 41.56 RCW
6. Chapter 391-55 WAC

Exhibit B.- General Information About Spokane International Airport

1. Information re Airport from website www.spokaneairports.netxohost.com
2. 08/28/90 Amended Spokane County/City Airport Agreement
3. Title 41 – Aeronautics
4. The Flyer (The Spokane Airports Bulletin)
5. Airport Budget
6. Map
7. 07/14/02 Excerpt from the Seattle Times

Exhibit C.-Bargaining History

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3. Exhibit A
 - a. 6/16/00 Negotiations Ground Rules

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- a. 6/16/00 Negotiations (transcript)
- b. 6/16/00 Contract Meeting Minutes
- c. 8/01/00 Negotiations (transcript)
- d. 8/01/00 Contract Meeting Minutes
- e. 8/10/00 Negotiations (transcript)

- f. 8/10/00 Contract Meeting Minutes
- g. 9/08/00 Negotiations (transcript)
- h. 9/08/00 Contract Meeting Minutes
- i. 9/26/00 Negotiations (transcript)
- j. 9/26/00 Contract Meeting Minutes
- k. 10/5/00 Negotiations (transcript)
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- m. 10/6/00 Negotiations (transcript)
- n. 10/6/00 Contract Meeting Minutes

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- 1. Position Statement of Local 1789 Regarding Comparability
- 2. Relevant Excerpts from Recent Interest Arbitration Awards Discussing Comparability Issues
- 3. 10/5/00 Local 1789's Tentative Comparison List
- 4. 06/30/02 Memorandums from Homer Burson and Bertrand Kekahuna regarding wage and benefits for contract negotiations
- 5. 12/03/68 Information relating to 1968 negotiations
- 6. 1970-1971 CBA
- 7. 1971-1974 CBA
- 8. 1974-1976 CBA
- 9. 1977-1979 CBA
- 10. 08/14/68 Agreement for Mutual Aid in Fire Protection
- 11. Definitions of Geographic Areas including OMB/BEA
- 12. Spokane County Area Profile taken from the internet
- 13. 10/16/01 Letter from Office of Financial Management to Kathleen Davis, Dept. of Transportation re 2001 Highway Urban Area (HUA) population estimates
- 14. List of Bargaining Unit Members' relationship to the local economy
- 15. WA State Council of Firefighters, 63rd Annual Convention
- 16. List of Local 1789's bargaining members who have resigned
- 17. 10/03/98 CRITIQUE: Spokane County Disaster Drill
- 18. 07/15/02 Email from Meyers to Skalbania re Aircraft Rescue Fire Fighting (ARFF) duties through the Pasco Fire Dept.
- 19. Spokane Airport Approximate Aircraft Assessed Values
- 20. 12/12/91 1992 Comparability Data for IAFF 1257 Firefighters (Port of Seattle)
- 21. Rank of Washington State Cities and Towns by April 1, 2001 Population Size
- 22. 11/20/01 Memo to WSCFF Educational Seminar Delegates from Chris Heminger re 2001 WSCFF Wage and Hour Survey
- 23. Spokane County Fire District 9 information
- 24. Picture of Spokane International Airport

Exhibit E.-Wages/Longevity

- 1. 2000 Fire Department Salaries
- 2. Compensation Data
- 3. August 1999 Consumer Price Indexes
- 4. 2001-2003 Wage Increases Received by Local 1789's Proposed Comparators
- 5. 09/20/01 Spokane Airports Job Description
- 6. Spokane Airports Position Description for Airport Firefighter
- 7. Local 1789's Position Statement Regarding Wages/Longevity

Exhibit F.-Social Security Replacement Benefit

1. Position Statement Regarding Local 1789's Social Security Replacement Proposal
2. International Association of Firefighters, Local 1789 v. Spokane Airports, 146 Wn.2d 207; 45 P.3d 186; 2002 Wash. LEXIS 256
3. 12/15/99 Local 1789/Spokane Airports, Case No. 99-2-03838-4; Order Granting Plaintiff's Motion For Summary Judgment
4. Ass'n of Firefighters, Local 2088 v. City of Tukwila, 22 Wn.App. 683; 591 P.2d 475, 1979
5. 06/30/99 Local 1789/Spokane Airports, Case No. 99-2-03838-4; Complaint For Wrongful Conversation of Monies
6. Local 1789/Spokane Airports, Case No. 99-2-03838-4; Plaintiffs First Interrogatories Propounded to Defendants
7. 11/22/99 Statement of Facts from Michael E. Eno re position of Fire Chief
8. 11/22/99 Local 1789/Spokane Airports, Case No. 99-2-03838-4; Declaration of Tim Lively
9. 12/09/98 Letter from Employment Security Department to Mark Jucht re OASI
10. Chart listing the cost of Employer/Employee Medicare/Social Security
11. 08/10/00 Fax from Fred Cox to Spokane Airport re 401(a) Pension
12. 10/06/00 Information from IAFF #1789 on SSI
13. 01/01/97 Port of Seattle Firefighters' Retirement Plan and Trust
14. 07/13/02 Letter from Jack Cates to Alex Skalbania re w/drawl of SS
15. 3rd Proposal Prepared for Spokane Airport Firefighters
16. 07/02/02 Retirement Plan Solutions presented to Local 1789
17. 07/11/02 Guardian Advantage presented to Local 1789
18. 07/12/02 Principal Financial Group presented to Local 1789
19. Local 1789 v. Spokane Airports, Case No. 99-2-03838-4; 12/2000
20. 07/08/02 Letter from Byron Walters, CPA calculating SS (FICA) and Medicare taxes

Exhibit G.-Medical Insurance

1. 07/03/02 Request for Inspection of/or copies of public records made by William Reeves, Local 1789
2. List of Washington Physicians Services
3. 11/30/01 Memo from Sherrie Rydbom re Medical & Dental Insurance
4. 12/08/00 Memo from Sherrie Rydbom re Medical & Dental Insurance
5. 09/08/00 LEOFF Health and Welfare Trust Insurance (MSC) Plan 2000 rates
6. Law Enforcement Officers and Firefighters Health & Welfare Trust
7. Local 1789's Position Statement Regarding Medical Insurance
8. Medical Insurance Information for ARFF Bargaining Unit

Exhibit H.-Hours of Work

1. 09/08/00 Package Proposal from Local 1789 to Spokane Airport
2. 23 Day FLSA Cycle Clarification page
3. Local 1789's Position Statement Regarding Hours of Work

Exhibit I.-Working Out Of Class

1. Position Statement Regarding Local 1789's Working Out of Classification Proposal

Exhibit J.-Management Rights

1. CBA Provisions Specifying Disciplinary Standards To Be Utilized By Local 1789's Comparators

Exhibit K.-Sick Leave

1. WA Advance Legislative Service Statenet, 2002 Wa. ALS 243; 2002 Wa. Ch. 243; 2001 Wa. SB 6426
2. 2002 WSLC Legislative Report. Article: Collective Bargaining Wins!
3. Local 1789's Position Statement Regarding Sick Leave

Exhibit L.-Union Business

1. Local 1789's Position Statement Re The Airport's Union Business Proposal

Exhibit M.-Overtime Pay

1. Position Statement of Local 1789 Re The Airport's Overtime Pay Proposal

Exhibit N.-Interest Arbitration Awards

1. 09/20/00 Teamsters Local Union 117 v. Port of Seattle, PERC No. 15432-1-00-348

Exhibit – COMPARABLES BINDER

SIA	1998-2000-Spokane Airport Board / Local 1789
Pasco	1998-1999-City of Pasco / Local 1433
Sea-Tac	2001-2003-Local 1257 / Port of Seattle
Sea-Tac	1998-2000-City of Sea-Tac / Local 2919
City of Spokane	2000-2002-City of Spokane / Local 29
Spokane Fire Dist. # 1	
Spokane Fire Dist. # 8	
Spokane Fire Dist. # 9	
<hr/>	2000-2002-Spokane Fire Dist. #1 / Local 876
<hr/>	2001-2003-Spokane Fire Dist. #8 / Local 3711
<hr/>	2001-2003-Spokane Fire Dist. #9 / Local 2916
Yakima	2001-2003-City of Yakima / Local 469

Exhibit O.-ADDITIONAL EXHIBITS (Submitted by Local 1789 on Sept. 12, 2002)

1. Summary of Economic Data Comparisons
2. Cheney 2001 Economic Data
3. Declaration of Gary Hartford and Attachments
4. Pasco 2001 Economic Data
5. City of Spokane 2001 Economic Data
6. Spokane 1 2001 Economic Data
7. Spokane 8 2001 Economic Data
8. Declaration of Jeffrey P. Wainwright
9. Spokane 9 2001 Economic Data
10. Yakima 2001 Economic Data
11. Summary of Why Airport's Additional Proposed Comparators Are Not Appropriate
12. Comparison of Local 1789 2001 Economic Data to 2001 Economic Data for Mature Spokane Area Bargaining Units
13. Comparison of Local 1789 2001 Economic Data to 2001 Economic Data for Cheney and Mature Spokane Area Bargaining Units
14. Comparison of Local 1789 2001 Economic Data to 2001 Economic Data for Cheney and all Spokane Area Bargaining Units
15. Comparison of Local 1789 2001 Economic Data to 2001 Economic Data for Cheney, Pasco, Yakima and All Spokane Area Bargaining Units
16. Washington State Employment Security Department Study, "A Labor Market and Economic Comparison of Rural and Urban Washington"
17. 2001 Base Wage Increases Received By Airport's Proposed Extra Comps
18. Declaration of Tim Lively Regarding Social Security Replacement Benefit
19. Declaration of Tim Lively Regarding Union Business Issue
20. City of Richland Exhibit #22 from City of Richland vs. IAFF, Local 1052 Interest Arbitration Hearing

I. PROCEEDINGS

This dispute, between the Spokane International Airport (the Employer) and the International Association of Fire Fighters Local 1789 (the Union) concerns certain terms of a labor agreement between the two parties with an effective date of January 1, 2001, and an expiration date of December 31, 2003. The new labor agreement will replace the parties 1998-2000 Collective Bargaining Agreement. The parties reached an impasse in their negotiations on a number of issues. Pursuant to RCW 41.56.450, those issues were certified for interest arbitration by the Public Employment Relations Commission (PERC) and submitted to neutral arbitrator Jane R. Wilkinson for resolution. During the course of the hearing, the parties resolved the issues identified in the next section. An evidentiary hearing, converted, by stipulation of the parties, to a "mediation-arbitration" ("med-arb") on the unresolved issues was held in Spokane, Washington on July 17 and 18, and August 23, 2002. A court reporter recorded and transcribed the evidentiary portion of the proceedings and each party had the opportunity to present evidence, examine and cross-examine witnesses and argue its case. The parties sent the Arbitrator additional documents and exhibits on September 12, 2002. The Arbitrator received the parties' post-hearing briefs, limited to 12 pages, on September 27, 2002, which shall be deemed the closing date of hearing.

II. ISSUES RESOLVED DURING THE HEARING/MED-ARB

At the Arbitrator's urging, during mediation/arbitration or otherwise, the following issues certified for interest arbitration were resolved voluntarily by the parties, who asked that the Arbitrator memorialize them in this award. They are as follows, with changes to the 1998-2001 contract language shown by strikethroughs (for deletions) and double underscore (for additions).

A. Health Benefits - Union Proposal

The parties agreed to the following language amendments:

In accordance with RCW 41.26 (Law Enforcement Officers' and Fire Fighters' Retirement System) or other applicable State laws, the Employer shall provide a medical program for the Employee at no cost to the Employee. The Employer shall pay medical, dental and life insurance premiums for all Employees. At the present time, medical insurance is provided through the ~~Association of Washington Cities~~ LEOFF Health and Welfare Trust [MSC Preferred Plan] for active LEOFF I Employees and from either ~~Association of Washington Cities~~ LEOFF Health and Welfare Trust [MSC Preferred Plan] or other medical insurance that has been selected and made available by the Airport for LEOFF II Employees. Dental and life insurance coverage for both LEOFF I and LEOFF II employees shall be selected and made available to other Airport Employees. The Employer agrees to pay dependent medical/dental premiums for Employee's dependent up to the total premium amount charged for LEOFF I firefighters, including Employee and dependent/s, by the ~~Association of Washington Cities~~ LEOFF Health and Welfare Trust FMSC Preferred Plan] and the dental program selected and made available to other Airport employees and their dependents. The Employer reserves the right to choose the most economical medical and dental insurance providers of substantially equivalent coverage as agreed upon in the current contract. Further, any determination by the applicable insurance company which, as a result of Employee's failure to follow the procedures set forth by such insurance company, reduces benefits or otherwise penalizes Employee shall be the responsibility and liability of such Employee and will not be the liability of Employer.

Employer agrees to provide Union involvement in the evaluation process of medical/dental health care providers prior to any changes being made in the current coverage plans.

B. Working out of Classification - Union Proposal

The Union voluntarily withdrew this proposal.

C. Approved Leaves of Absence, Sick Leave (both parties made proposals)

As to the first paragraph regarding family leave, the parties agreed to withdraw their respective proposals. Instead, they will insert language stating that the maximum leave permitted under that section will be coextensive with state and federal law.

D. Management Rights - Union Proposal

The Union proposed to insert just cause language in the contract's "Management Rights" article. In agreeing to a settlement, the Union stipulated that the just cause language would apply only to the discipline and discharge of employees.

E. Term of Agreement

The parties agreed that the term of the Agreement would span the years 2001 through 2003, subject to any mutually agreed upon modification.

III. STATUTORY CRITERIA

In RCW 41.56.465, the Washington Legislature specified that interest arbitrators must apply the following criteria when determining the terms of a new collective bargaining agreement for fire fighters (emphasis in boldface added):

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

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

(b) Stipulations of the parties;

(c)(ii) For employees listed in RCW 41.56.030(7)(e) through (h),¹ 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

¹ RCW 41.56.030(7)(e) through (h) states in relevant part that:

"Uniformed personnel" means:

.... (e) fire fighters as that term is defined in RCW 41.26.030; (f) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other fire fighting duties; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer.

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.²

The Legislative purpose, referenced as a criterion in the above quoted statute and found at RCW 41.56.430, states:

Uniformed personnel -- Legislative declaration.

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 a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

In resolving the issues in this dispute, whether or not fully articulated herein, the Arbitrator has been mindful of these criteria and has given consideration to all of the evidence and arguments presented by the parties relative to these criteria. The Arbitrator also recognizes that interest arbitration is an extension of the collective bargaining process. The arbitration should endeavor to approximate the result that reasonable parties themselves would likely have reached in good faith negotiations. *E.g., Kitsap County Fire Protection District No. 7 (IAFF Local 2876), PERC No. 15012-1-00-333 (Krebs, 2000); City of Centralia (IAFF Local 451), PERC No. 11866-I-95-253 (Lumbley, 1997).*

IV. BACKGROUND INFORMATION

The Spokane International Airport is operated by the City and County of Spokane under RCW 14.08. It is required to provide a fire response by the Federal Aviation Administration (FAA). The FAA categorizes the airport as a "C" airport, which is much smaller than SeaTac's "Ex" category. The core response required by the FAA is to combat aircraft fires, but the Airport chooses to provide additional service. There is no resident population except for 480

² Employees listed in RCW 41.56.030(7)(a) are law enforcement officers in jurisdictions of a specified size.

inmates of a jail population located on airport property. The airport is also located within the boundaries of Spokane County Fire District 10, whose jurisdiction can overlap. The workload of the bargaining unit is low, with an average call volume of 1 to 2 calls per day, many of the calls are not of an emergency nature.

The Spokane International Airport employs 16 bargaining unit fire fighters; in addition, there are two unfilled vacancies.

The parties' last contract expired on December 31, 2000. The parties negotiated for, but were unable to reach agreement on a successor contract, but at the outset of the hearing they stipulated to a contract term of three years, beginning January 1, 2001, and ending December 31, 2003.

The Executive Director of the Public Employment Relations Commission (PERC) certified a number of issues for interest arbitration and this proceeding concerns those issues; some issues that the Union claimed were mandatory subjects of bargaining but over which the Employer disagreed were held in abeyance pending PERC's determination of the Union's unfair labor practice charges. Those issues were not considered by the Arbitrator in these proceedings and are not addressed in this award.

V. SELECTION OF COMPARATORS

A. Parties' Proposed Comparators

1. Union's Proposed Comparators

The Union proposes the following jurisdictions as comparators to the Spokane International Airport:

SeaTac Airport Fire Department ³	Spokane Fire District No. 9
Spokane Fire District No. 8	City of Pasco
Spokane (Valley) Fire District No. 1	City of Yakima
City of Spokane	

³ During the med-arb, the Arbitrator discouraged the Union from pursuing SeaTac Airport as a comparator because the cost of living and general wages are substantially higher in the Seattle area, as compared with Spokane. The Union did not continue to advance this comparator.

2. Employer's Proposed Comparators

The comparable jurisdictions proposed by the Employer are:

City of Walla Walla	City of Sunnyside
City of Moses Lake	Spokane Fire District No. 8
City of Cheney	Spokane Fire District No. 9
City of Wenatchee	Chelan Fire District No. 1 ⁴
City of Pasco	

B. Positions of the Parties

Union's Position

The Union focused on the local Spokane labor market, and added to that three municipal fire departments in the state that serve airports. The Union contends its comparator selection is preferable because:

1. The Airport lacks a "resident" population or "assessed valuation;" therefore, the methodology used by interest arbitrators is not applicable to this case.
2. Arbitrator McCaffree faced the same dilemma in an interest arbitration dispute involving the Port of Seattle. He opted to select all local labor market comparators, including the largest entities (cities of Seattle, Tacoma and Bellevue) within that local labor market.
3. The local labor market approach makes sense because bargaining unit members train with and live close to the members of the bargaining units of the City of Spokane, Spokane Fire District (FD) No. 1, Spokane FD No. 8, and Spokane FD No. 9. Cost of living factors are virtually the same.
4. Several former members of the bargaining unit have resigned to take employment with other Spokane area fire departments, which shows that the Airport operates and must compete within the Spokane labor market.
5. The parties bargaining history has reflected their agreement to use Spokane area fire departments as comparators, and in particular the City of Spokane. See Union Exh. D-4 through D-9. Arbitrator McCaffree considered the parties bargaining history in the SeaTac Airport interest arbitration proceeding previously referenced.
6. Using the City of Spokane is also appropriate because it is one of the "owners" of the Airport and if the proposed annexation takes place, the Airport will be solely within the City's jurisdiction.
7. The comparators are balanced, given that Spokane FD 8, which has negotiated only two labor agreements, is the lowest paying comparator proposed by either party by a

⁴ During the med-arb, the Arbitrator discouraged the employer from pursuing Chelan Fire District No. 1 as a comparator, believing it was too far on the fringe, and the Employer heeded this advice. Also during med-arb, the Employer indicated it was willing to compromise on comparators by dropping the City of Wenatchee and adding the Union-preferred City of Yakima. The Union would not agree to the proposed compromise, but the Employer adhered to this revised set of comparables thereafter, which it referred to as its "compromise" comparator group.

significant margin. But, if Spokane FD 8 is utilized, mature bargaining units also should be used.

8. Cheney also could be considered a local labor market comparator, except that it does not employ any fire fighters even though it has a pay scale for fire fighters. The lowest paying bargaining unit member is a Lieutenant (Fire Officer) position; this has been the case for at least 10 years. If Cheney is used in this case, Lieutenants should be used as the benchmark classification for comparison purposes.⁵

9. Although going beyond the Spokane area for comparators is not necessary, should the arbitrator choose to do so, Yakima and Pasco are the most appropriate because their fire departments serve their local airport and perform airport-related ARFF duties; those cities are also located in metropolitan areas of Eastern Washington having populations in excess of 100,000.

10. The Employer inappropriately proposes comparators located in relatively rural, low paying areas (Moses Lake, Walla Walla and Sunnyside). Union Exh. O-16 shows that workers in these markets earn less than urban labor markets such as Spokane.

11. The Employer's view fails to recognize the unique work and specialized skills and training (ARFF work) of Local 1789 bargaining unit members.

Employer's Position

To select comparators, the Employer focused on the population serviced, assets protected, size of bargaining unit, as well as geography. The Employer contends:

1. There are 2000 employees at the airport, but not at the airport all at one time. Passenger traffic plus "meters and greeters" brings the daily population up to about 8000 people, the Employer estimates. Again, not all 8000 people are at the airport at one time.

2. Regarding structure valuation at replacement value, the airport estimates its terminal, hangars and other facilities to be worth about \$270 million. (This errs on the high side because it used the construction cost of Concourse C, \$186 sq. ft., structures such as hangars or the parking structure have a much lower replacement cost). Buildings are insured for \$134 million. For aircraft, the Employer used a figure the City of Spokane used in its annexation study, which was \$150 million.⁶ The Employer also considered median family income and other economic indicators.

3. The Employer calculated a net hourly wage analysis that included longevity at the 13-year benchmark (the average longevity of the bargaining unit). (The hours exceed the hourly of the comparables, but the pay is high enough to overcome that, the Employer asserts; also consider the substantially lower workload).

⁵ The Arbitrator notes, however, that neither party submitted a spreadsheet showing Lieutenant's pay among their proposed comparators.

⁶ By comparison, the Union estimated the value of aircraft parked at the airport on any given night at \$996 million (based on listed values for type of aircraft; the Union witness testifying to this did not know whether these were new or depreciated values). According to the Union, the total property value estimate, not including land, military aircraft, and other personal property at the airport, is roughly \$1.5 billion. See Exh. D-19.

C. Arbitrator's Analysis and Determination - Comparators

Having a list of suitable comparator jurisdictions is necessary for a full evaluation of all four issues certified for interest arbitration. Therefore, a comparator list will be selected at the outset of this discussion. The Employer is a unique employer because it lacks an appreciable resident population and does not have an assessed valuation or other readily determinable valuation that could be considered comparable to an assessed valuation. The airport is jointly owned by the City of Spokane and Spokane County. It pays no taxes and is not carried on the assessor's books. The training and typical duties of the bargaining unit fire fighters differ from other fire fighters in certain respects. On the training side, airport fire fighters must be trained in Aircraft Rescue and Fire Fighting (ARFF); it is required by the FAA. Aircraft fires involve highly combustible fuels, plastics and magnesium. The aircraft itself is a expensive item that is damaged easily (when measured in dollars) by fire. On the other hand, airport building and aircraft fires are rare, and most of bargaining unit member's duties' involve emergency medical response or non-emergency incidental duties.

As the parties well know, comparability is not precisely defined by statute, but the statute does require the Arbitrator to compare "like personnel of public fire departments of similar size" As both parties reminded the Arbitrator, when determining comparability, arbitrators give the greatest consideration to population served, geographic proximity or labor market, and assessed valuation. See, e.g., *Kitsap County and Kitsap County Sheriff's Guild*, PERC No. 13831-I-98-299 (Buchanan, 1999); *City of Bremerton and Bremerton Police Officers' Guild*, PERC No. 12924-I-97-279 (Axon, 1998); *City of Centralia and International Association of Firefighters, Local No. 451*, PERC No. 11866-I-95-253 (Lumbley, 1997); *Spokane County and WSCCCE, Council 2*, PERC No. 10159-I-94-235 (Levak, 1995).

There is no set number of comparators needed, but this Arbitrator prefers a minimum of five. Other arbitrators have expressed a similar preference. E.g., *City of Centralia, supra* (the

arbitrator selected four comparators, stating he would prefer a greater number if more that were "very comparable" existed); *City of Kennewick and International Association of Firefighters, Local 1296*, AAA 75 300 00225 96 (Krebs, 1997) (the arbitrator noted that using only four comparators approached "the borderline of a minimal number," but that six comparators were sufficient for the case); *Thurston County and AFSCME Local 618-CD* (Axon, 1999) (a proposed screen yielded only four comparators; the arbitrator therefore added more to the list).

Comparability determination is rarely an easy task and in this case it is extremely difficult because of the unique character of the Employer. The Spokane Airport Fire Department does not have truly "like personnel" comparable to those of other jurisdictions of the State, save for SeaTac Airport. The SeaTac Airport Fire Department is not of similar size to Spokane's (69 fire fighters in Seattle, compared with 16 at the Spokane airport). Importantly, SeaTac Airport is located in the highest cost of living area in the State, while Spokane is one of the lower cost of living urban areas.

The Employer presented evidence that the workload of its fire department is considerably lighter than other fire departments, primarily because there are few fires at the airport; most of the work is EMT work or handling miscellaneous non-emergency tasks, and even then, the number of incidents per year are much lower than the other fire departments or districts under consideration here. The Union counters this evidence by showing that the airport fire fighters are unique in the training required for the job. They must have specific FAA-mandated "AARF" training in order to respond to aircraft emergencies. It is fortunate that the airport has not had an aircraft emergency in recent memory; nevertheless, it must constantly be prepared for one. The Union also notes that under the status quo, bargaining unit members work more hours per year than many or most of the proposed comparators.

Another difficulty with selecting comparators in this case is that the airport has almost no resident population served, nor does it have an assessed valuation. Both parties attempted to

provide a surrogate "population" and "valuation" for the airport. Although those efforts were not without a rational basis, they could easily be challenged as inadequate, particularly with respect to the evidence on valuation. Arbitrators consider "assessed valuation" and sometimes other indicators of revenue for the purpose of finding jurisdictions of comparable wealth under the theory goes that all else being equal, the jurisdiction having ample resources will pay higher wages than the jurisdiction that perennially struggles to balance its budget. The relative assessed valuations may also reflect, with some variation, the local cost of living. The population served is another frequent indicator of comparability since there can be a correlation between wages and the jurisdiction's population. Typically, the arbitrator compares the resident population of various jurisdictions, as opposed to the transient population. About 480 inmates in a prison located on Airport land comprise the sole "resident" population of the Airport.

Despite these difficulties, the Arbitrator nevertheless must select comparators. The parties agree⁷ on the following comparators: Spokane Fire District 9, which is geographically proximate to the Spokane airport, Spokane Fire District 8, also geographically proximate, and the cities of Pasco and Yakima, both of whose city fire departments have jurisdiction over their local commercial airport.

The demographic, bargaining unit size and other pertinent information of the other proposed comparators are shown in the next table. As is seen, the Arbitrator is eschewing the use of assessed valuation and population served because of they do not work well with a stand-alone airport jurisdiction.

⁷ The Arbitrator is referring to the Employer's "compromise" list of comparators in her assumption concerning the jurisdictions to which the Employer would agree.

Table I

Comparator	BU Size	No. Incidents Per Yr	No. Incidents Per BU Member	City Median Household Income	City Median Per Capita Income	County Media Per Capita Income	County Median Home Price
Spokane Airport	16+2	409	25.6	32,273 ^a	18,451	19,233	106,400
Joint Comps							
Pasco City	39	2840	72.8	34,540	13,404	15,459	134,200
Spokane #9	29	2145	74.0	n/a	n/a	19,233	106,400
Spokane #8	12	783	65.3	n/a	n/a	19,233	106,400
Yakima City	84			29,475	15,920	15,606	105,900
Union Proposed Comps							
Spokane City	324			32,273	18,451	19,233	106,400
Spokane #1(Valley)	121			32,273	18,451	19,233	106,400
Employer Proposed Comps							
Walla Walla	44	5783	131.4	35,900	15,792	16,509	125,000
Moses Lake	25	? ^b	?	36,467	16,644	15,037	93,000
Sunnyside	12	1862	155.2	27,583	10,366	15,606	105,900
Cheney	? ^c	1111	(uses volunteers)	28,047	12,566	19,233	106,400
Wenatchee	30	1927	64.2	34,897	19,498	19,273	134,900

^a For "City Median Household" Income, the Arbitrator used the City of Spokane as Spokane Airport's benchmark, even though it is located in an unincorporated area of the county, it is close to the City limits of Spokane and has been targeted for annexation by the City.

^b An Employer exhibit states that Moses Lake has 500 incidents per year, but the Arbitrator believes that this only is the number of fire incidents per year.

^c As the Arbitrator understands it, Cheney has an officers-only bargaining unit; she therefore surmises the size of the bargaining unit is in the single digits; she was unable to locate data, however, on the exact size.

The Arbitrator is not particularly troubled by the fact the comparator list does not include stand-alone fire departments, or that only two comparator fire departments have fire fighters with AARF training and service their municipal airports. Although the Spokane Airport fire fighters have the specialized training required by the FAA, they mostly have the same skills, same training and perform the same services as fire fighters in other bargaining units in the state. The Arbitrator notes, for example, that the Washington Employment Security Department describes the job of "fire fighter" (Code 33-2011) as:

Control and extinguish fires or respond to emergency situations where life, property, or the environment is at risk. Duties may include fire prevention,

emergency medical service, hazardous material response, search and rescue, and disaster management.⁸

This job description could easily fit the Spokane Airport bargaining unit, as well as all of the other fire department or fire district bargaining units in the State of Washington. It is doubtful that when the Legislature referenced "like personnel" in RCW 41.56.465, it meant personnel with wholly identical skills, training and work assignments. Although the Spokane Airport fire fighters have the additional training and certification required by the FAA and also work longer hours, the job they perform on routine basis is similar to other fire fighter bargaining units, except that their workload is, according to the Employer's evidence, considerably lighter.

Because, the Spokane airport lacks an easily quantifiable valuation and population, in this Arbitrator's opinion, substantial consideration should be given to fire departments of comparable size, *i.e.*, having a comparable number of paid personnel. This criterion is specifically spelled out by the Legislature in the statute. To reiterate, RCW 41.56.465 requires interest arbitrators to look to "public fire departments of similar size." Arbitral precedent has used population and assessed valuation as key areas of inquiry, and the statute is flexible enough to allow this interpretation. Nevertheless, the only specific criterion in the statute is "public fire departments of similar size." Indeed, experience suggests there is a correlation between the number of fire fighters employed by a jurisdiction and its wages.

There also is a correlation between location and wages. A small city fire department located on Seattle's border would likely pay more than one located in a rural area, but it would pay less than the City of Seattle pays its fire fighters. Similarly, arbitrators have noticed that jurisdictions located on the I-5 corridor tend to pay more than similarly sized jurisdictions that are far removed from this busy transportation network. *Thurston County (AFSCME Local 618-CD (Axon, 1999); City of Longview (Longview Police Guild), PERC No. 15438-1-00-350*

⁸ See the WEB site for the Washington Employment Security Department, Labor Market Information, at <http://www.wa.gov/esd/lmea/>.

(Nelson, 2001); *Intercity Transit (Transit Workers)* (Krebs, 1995); *City of Mountlake Terrace (Mountlake Terrace Police Guild)*, PERC Case No. 15590-1-01-354 (Croll, 2001).

Thus, some consideration (but not exclusive consideration) should be given to the local labor market, which has a bearing on wages. The Union urges the Arbitrator to place primary emphasis on local labor market comparators, citing Arbitrator McCaffree's SeaTac Airport Police award to support its assertion. See, *Port of Seattle (Teamsters Local 117)*, PERC 15432-1-00-348 (McCaffree, 2001). The Arbitrator's reading of that award, however, indicates that Arbitrator McCaffree also considered the size of the police force, just as the Arbitrator will be doing in this proceeding, although he did include jurisdictions with considerably larger police forces as comparators. The Arbitrator will be likewise doing so, given that the three of the four stipulated comparators are much larger than the Airport's bargaining unit.

This consideration cuts both ways for the parties. The City of Spokane is within the local labor market and is the wage leader. The Employer opposes this comparator because of its large size. The City of Cheney likewise is within the local labor market; the Union opposes it because of its small size and because it currently only employs a lieutenant equivalent and above in its bargaining unit. Otherwise, it uses volunteers. The Arbitrator will include both of these jurisdictions, believing the objectionable considerations of each tends to be canceled by the other.⁹ The Arbitrator believes using four local labor market comparators is appropriate, so long as the final list is balanced. The Arbitrator rejects the more distant Spokane FD No. 1 (Spokane Valley) as a comparator because it would unreasonably tip the comparator list to the large, local fire departments.

The local labor market list should be balanced by two additional comparators closer to the size of the Airport bargaining unit. The Employer has offered Walla Walla, Wenatchee, Moses Lake and Sunnyside. Of those four, the Arbitrator selects Walla Walla and Wenatchee as being demographically most similar to the Airport. Median per capita and household income in Wenatchee is similar to the Spokane area, and the size of its bargaining unit would pass a +100% screen. The Arbitrator rejects Sunnyside as being too demographically dissimilar. The choice between Moses Lake and Walla Walla is a close one, but ultimately, the Arbitrator finds Walla Walla to be preferable. A particular problem with Moses Lake is that according to the record, it does not have a current labor agreement in place with its fire fighters. The Employer's method of "aging" wages from the expired contract is problematical, in this Arbitrator's opinion. In sum, the final list of comparators that the Arbitrator will use in this proceeding is as follows:

Spokane FD No. 8	City of Pasco
Spokane FD No. 9	City of Yakima
City of Spokane	City of Walla Walla
City of Cheney	City of Wenatchee

VI. PAY ISSUES

A. Proposals - Wages, Number of Steps, Retirement Plan/Social Security Replacement, Longevity Pay and Hours of Work

1. Wages, Number of Steps:

The Employer proposed the 2001, 2002 and 2003 year wage increase per step to be based

⁹ The Arbitrator does not agree with the Union, however, that the City of Spokane should be used as a comparator because the parties have historically used that city's fire fighter bargaining unit as a comparator. First, the Union's evidence shows only that the parties used the City of Spokane as a comparator in the late 1960's to the mid 1970's. See Union Exh. D-4 through D-9. This period is far too remote to be considered relevant. Among other things, airlines were still regulated and making money and the Public Employment Collective Bargaining Act, RCW Ch. 41.56, had yet to be enacted and in force. More importantly, although arbitrators will at times give consideration to "historical" comparators, they also make it clear that the comparator list can and must change when relevant circumstances change. Arbitrators are most apt to give great weight to historical comparators when it appears that a party proposes to deviate merely because it doesn't like the wage package of the comparator, but lacks any other particularly good reason.

on seventy percent (70%) of the current year CPI-U (West "C") index for the month of August, with a minimum of 1.5% and a maximum of 2.5% per year.

The Employer also proposes changing the salary schedule to seven steps (from five steps) to align it with other Airport employees.

The Union's proposal was as follows:

100% West Coast B/C CPI (August), min/max 3% - 5%, plus, for 2001, an additional .75% over the COLA increase, and for 2002, an increase of .5% over the COLA increase. Specifically, the Union's proposal would add this language to the contract:

Effective on January 1, 2001, the base wage for all bargaining unit members will be increased by 100% of the West Coast B/C CPI for the month of August, with a minimum increase of 3% and a maximum increase of 5%. Additionally, effective on January 1, 2001, the base wages for all bargaining unit members will be increased by an additional 0.75% over and above the COLA increase set forth above.

Effective on January 1, 2001, the base wage for all bargaining unit members will be increased by 100% of the West Coast B/C CPI for the month of August, with a minimum increase of 3% and a maximum increase of 5%. Effective on January 1, 2002, there will be an additional base wage increase for all bargaining unit members of 0.5 0%.

Effective on January 1, 2003, the base wage for all bargaining unit members will be increased by 100% of the West Coast B/C CPI for the month of August, with a minimum increase of 3% and a maximum increase of 5%.

The Union opposed any changes to the number of steps in the salary schedule.

2. Retirement Plan/Social Security Replacement

The Union proposed to add the following language to the Collective Bargaining Agreement:

The Employer agrees to pay six and two tenths percent (6.2%) of the taxable base wage on behalf of the members of the bargaining unit up to the annual maximum limits for Social Security to the Spokane Airport Firefighter's Retirement Fund, in lieu of Social Security. If the percentage contribution for Social Security changes during the term of this agreement, the Employer's percentage contributions to the fund would change accordingly.

The Employer also agrees to pay an amount equal to 1.45% of the employees Taxable Wage Base to employees hired prior to April 1, 1986. This payment represents the moneys formerly paid by the Employer for the employees Medicare contributions. Employees hired on or after April 1, 1986 shall be subject to Medicare coverage.

The Employer opposed the Union's proposal.

3. Longevity Pay

The Employer proposed reducing bargaining unit member longevity pay by amending the contract language's longevity pay rates as shown (double underline indicates new language, strikethrough indicates language to be stricken):

After 5 years 1.5 2% of Step 5

After 10 years 3 4% of Step 5

After 15 years 5 6% of Step 5

After 20 years 7 8% of Step 5

After 25 years 9 10% of Step 5

The Union opposed the Employer's proposal.

4. Hours of Work

The Union proposed to amend the status quo contract language in the following manner (double underline indicates new language, strikethrough indicates language to be stricken):

In accordance with the Fair Labor Standards Act, ~~the regular schedule will consist of three consecutive nineteen (19) day work cycles. The average work week for the Fire Department employees shall be 51.53 hours per week. The work cycle shall be twenty-three (23) days for employees on twenty-four (24) hour duty shift. Not to exceed (174) hours. There will be three work shifts utilized by the Employer, Shift A, Shift B, and Shift C. All Employees will work a cycle of twenty-four (24) hours on duty and forty-eight (48) off duty. Thus, during each 23 day FLSA cycle, two work shifts will be regularly scheduled to work eight (8) 24 hour shifts during that cycle and one work shift will be regularly scheduled to work seven (7) 24 hour shifts during that cycle.~~ Shift times will start at 0715 and end at 0715 the following day. Employees may relieve each other coming on and going off duty not to exceed 15 minutes unless approved by the shift officer. The scheduled Kelly day cannot be accrued, carried over, nor can it be substituted for sick days. If an Employee is sick on the scheduled Kelly day, the Kelly day will not be rescheduled. ~~Work hours will consist of one hundred forty four (144) hours per each nineteen (19) day cycle, Work hours will consist of (174) hours per each twenty-three (23) day cycle,~~ through the use of vacations, floating holidays, military leave, emergency leave, other days off provided and authorized by law, or an additional day off, if necessary. Additional shifts off will be scheduled at least thirty (30) days in advance whenever possible.

Each firefighter will receive ten (10) Kelly Days per fifteen (15) FLSA cycles. Firefighters will receive Kelly Days only during those FLSA cycles when, if they did not receive a Kelly Day, they would be regularly scheduled to work a sufficient number of shifts (8) so that they would otherwise exceed the FLSA overtime threshold for that cycle. Firefighters will choose their Kelly Days by seniority and in accordance with the Article Approved Leaves of Absence. If an Employee is scheduled for a Kelly Day off and his/her time is reduced to ~~one~~

~~hundred forty four (111) hours or less during the nineteen (19) day cycle;~~ (174) hours or less during the twenty three (23) day cycle then in effect by some other means, such as vacations, military leave, or any other lawful means, the Kelly Day off will not be canceled. Any such leave taken during the Kelly Day Cycle will be on a second call-in basis if applicable as defined in Vacation Article.

The Employer opposed the Union's proposal.

B. Positions of the Parties

Employer's Position

The Employer contends that its economic position is reasonable because:

1. The "status quo" with respect to social security replacement is unique. No social security replacement payments were made under the old contract; instead, as the result of litigation, the payments were made retroactively. With no social security replacement, the Airport's proposal would nonetheless place the bargaining unit 5.6% above the comparator average, with medical and dental included, and .4% above average without the inclusion of those items. The Airport's proposals would allow the bargaining unit to keep pace with changes in the cost of living. If social security replacement is set at 25%, the bargaining unit's wage (including medical and dental) would be 9.1% over the comparator average for 2001, and 7% above for 2002. The inclusion of social security replacement is clearly unjustified.
2. The Arbitrator should bear in mind that the "replacement" payments presently under consideration represent far greater value than the tax payments originally made to the IRS. Social Security is not a vested retirement system, and the tax payments may or may not have inured to the benefit of individual fire fighters at some future date. The replacement payments vest immediately and can be invested in ways to virtually guarantee the principal. Furthermore, as a result of their opt-out decision, the Union members now no longer make their previously required non-deductible 6.2% FICA contribution—they thus received a 6.2% "raise" by opting out in that they now recover that additional amount from each paycheck.
3. The reason the Employer proposed changing the number of steps in the salary schedule was to conform the fire fighter bargaining unit pay schedule with the pay schedules of other Airport employees.

The Employer opposed the Union's hours of work proposal for the following reasons:

1. The number of hours worked has been accounted for in bargaining unit compensation package; the Union's proposal results in an effective wage increase of 2.85%.
2. This increase cannot be supported by a comparator analysis.
3. The number of hours worked by fire fighters at the Airport is reasonable given that their workload is so light. The uncontroverted evidence shows that the historical volume of emergency, fire, and medical calls to which the Airport Fire Department responds is so low as to be virtually unique. There were only nine calls involving fire

incidents per year in 1999, 2000 and 2001. There were on average approximately 2 aircraft calls per month, almost all of which involved the fire fighters standing by and the aircraft landing without incident. The overwhelming majority of the calls to which the Airport fire fighters respond are Emergency Medical Service/Rescue calls or "assist" calls, which involve activities such as fire fighters picking up mace or other restricted items that have been collected at the Airport screening areas. Considering all types of calls, including, for example, false alarms or trips to pick up items seized by security personnel, the Airport Fire Department on average only responds to approximately one call per day. Accordingly, the evidence demonstrates that there is no justification for altering the status quo and reducing the hours worked by the Airport fire fighters.

Union's Position

The Union's contentions in support of its wage and retirement plan proposals are summarized next:

1. Bargaining unit members deem it imperative to maintain their current level of pay and social security replacement benefits, and to maintain its relative standing vis-à-vis its comparators.
2. All the comparators proposed by both sides received year 2001 base wage increases in excess of the 2.9% that bargaining unit members would receive with an increase based on 100% of the CPI.
3. To the extent that data is available, it is clear that the base wage increases that these same comparators will receive in 2002 and beyond will be close to or will exceed the cost of living as well.
4. Retaining the longevity and social security replacement benefits will simply allow employees to maintain its current position relative to the comparator group. Any reduction would be contrary to the intent of RCW 41.56.430.
5. Maintaining the status quo regarding the social security replacement benefit is particularly important, given the protracted and legal proceedings needed to secure this benefit. One of the important factors which led to the State Supreme Court's ruling in favor of Local 1789 with respect to the above-referenced litigation was the fact that there was strong evidence in the record in that matter (including a Declaration from a former Airport Fire Chief) that the Airport considered social security benefits to be an integral part of the overall compensation that it paid to the members of Local 1789's bargaining unit; that this subject had been discussed by the parties during previous collective bargaining sessions; and that if this compensation was taken away from the members of Local 1789's bargaining unit without being replaced, they would be significantly damaged. See Union Ex. F-2 through F-9. The elimination of any portion of this benefit is the equivalent of a reduction in employee compensation.
6. Moreover, a modification of the social security replacement benefit coupled with a CPI-linked wage increase would cause the bargaining unit to fall behind its comparator group. See Union Ex. O-12 through O-15, O-17 and E-4 .

The Union argues that its hours of work proposal should be adopted because:

1. The total hours worked (2756) for bargaining unit members was greater than any comparator proposed by either party, except for the relatively new Spokane FD 8 bargaining unit. The average difference is 4.5%.
2. The Union therefore seeks to reduce the hours worked to about 2644 hours per year, close to the comparator average, in a way that allows the Airport to meet its fire fighting needs efficiently. (See Union Exh. A-2).
3. The parties would utilize a 23-day FLSA work period rather than the current 19-day FLSA work period. Bargaining unit members would receive "Kelly Days" during those work periods (which would be 2 out of every 3 work periods) when such Kelly Days would be necessary in order to reduce the number of hours worked by a bargaining unit member below the applicable FLSA overtime threshold. The proposal would retain the current three platoon system.
4. The Union's highest priority is to maintain the status quo on social security replacement and compensation standing; the hours of work is secondary.

The Union opposed the Employer's proposed reduction in the number of steps on the salary schedule because in the last contract, the parties agreed to increase the number of steps from three to five. Cabot Dow, testifying for the Employer, did not know how the Employer's proposed new step structure would affect employees nearing the top of the salary schedule. The Employer presented no compelling reason for changing this recently negotiated item and it had not even thought out the implications of its proposal.

The Union opposed the Employer's proposed reduction in longevity pay; this is simply a form of a pay cut that has no rational basis.

C. Arbitrator's Analysis and Award - Wages, Social Security Replacement, Longevity Pay and Hours of Work

1. Comparator Wage Analysis

The net hourly wage paid in 2001 by the comparators the Arbitrator previously selected, as compared with the wage paid in 2000 to the Spokane Airport bargaining unit is shown on the next table (Table II). Medical benefits have not been included in this analysis because the spreadsheets submitted by the Employer showing the cost of those benefit did not include two of the comparators the Arbitrator selected here (Cities of Spokane and Wenatchee). In addition, the Arbitrator has questions about the data presented, in particular why the cost of insurance is significantly lower outside of the Spokane area. Is this because those bargaining units are receiving significantly inferior benefits, or is it because the cost of insurance in those areas is simply less? On the other hand, the Arbitrator is mindful that the health and dental

benefits of this bargaining unit are excellent, and in terms of cost to the employer, exceed that of all of its comparators, with the possible exception of the two comparators for which data is lacking. The Arbitrator studied the medical benefits in the Spokane Fire Department's collective bargaining agreement and although no cost to the employer is shown, it appeared that those benefits were close to, but slightly less generous, than those received by the Spokane Airport fire fighters.

Table II

Jurisdiction	Hourly	Total Annual Salary
Spokane Airport (2000)	\$18.51	\$51,008
Comparators (2001)¹⁰		
City of Pasco	\$20.32	\$52,836
Spokane FD No. 8	\$15.09	\$43,937
Spokane FD No. 9	\$21.73	\$57,187
City of Spokane	\$23.99	\$58,374
City of Yakima	\$21.03	\$56,197
City of Wenatchee	\$19.51	\$48,691
City of Cheney	\$18.82	\$48,931
City of Walla Walla	\$18.96	\$49,296
Average:	\$19.93	\$51,931
Spokane Airport vs. Average	- 7.67%	-1.81%

A computation based on 2002 comparator pay rates produced similar results, assuming a CPI-based increase in the Spokane Airport bargaining unit's wages for 2002.

2. Other Considerations (Statute explicit or "normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment")

a). Changes in the Cost of Living

The applicable (August to August) CPI-U (West Coast "C") change for the years of the contract under consideration are as follows:

Year	CPI change ¹¹
2001	2.9%
2002	2.7%
2003	1.6%

b). Ability to Pay

Arbitrators typically consider an employer's ability to pay wage and benefit increases both in absolute and relative terms. Although this consideration is not explicitly spelled out in RCW 41.56.465, it is a consideration that would fall under subsection (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." It also is a consideration that affects the issues certified for interest arbitration.

The Employer stipulated that there exists no special consideration regarding its ability to pay. Although it urges the judicious deployment of its resources, it does not claim any dire financial condition that would justify a less than adequate wage package for the bargaining unit members.

Given this uncontroverted information, the Arbitrator will proceed on the assumption that

¹⁰ The pay figures shown in Table II are taken from the Employer's exhibits. The pay rates the Union presented for Pasco, Spokane FD No. 8, and Yakima were slightly lower than the Employer's; therefore using the Employer's figures did not prejudice the Union. The Union's salary figure for Spokane FD No. 9 was higher, but the Arbitrator believes this is an error. Adding the Union's underlying figures on Union Exh. E-2 produces close to the same salary figure that the Employer presented.

¹¹ The 2001 and 2002 CPI escalators are a matter of record. The 2003 escalator, which was unavailable at the time of hearing but has since been released by the federal Department of Labor, Bureau of Labor Statistics (BLS), shows that the August 2001 (111.2) to August 2002 (113) increase in the CPI-U, "West-Size Class B/C" was 1.6%. See the BLS WEB site at <http://www.bls.gov/cpi/home.htm#data> where the Arbitrator's input query produced the following result:

12 Months Percent Change	Year	Aug
Series Id: CUURX400SA0,CUUSX400SA0	1998	1.0
Not Seasonally Adjusted	1999	2.6
Area: West - Size Class B/C	2000	2.9
Item All items	2001	2.7
Base Period: DECEMBER 1996=100	2002	1.6

there is no issue concerning the Employer's ability to fund wage or other economic increases, but she will recognize that as a prudent public employer, its allocation of resources should be consistent with good business practices.

c). Turnover

The Union presented evidence that three fire fighters in three years (one in 2000, and two in 2002) left their employment at the Spokane Airport and joined the Spokane Valley Fire Department (Spokane County Fire District No. 1) where the wages and benefits are superior. Out of 16 filled positions in the bargaining unit, this turnover rate is not shocking, but it is higher than what the Arbitrator has observed in other jurisdictions, and thus is a consideration favoring the Union.

d) Stipulations

The parties' stipulations relevant to the issues before the Arbitrator have been taken into account in conjunction with the issue to which such stipulations pertain, regardless of whether or not mentioned explicitly in this award.

e) Changes

There are no relevant changes in the statutory factors that have taken place during these proceedings about which the Arbitrator is aware.

D. Arbitrator's Conclusion and Award - Wages, Social Security Replacement, Longevity Pay and Hours of Work

1. Retirement Plan/Social Security Replacement and Wages

This retirement plan/social security replacement issue is by far the most contentious in this proceeding; the Arbitrator surmises that without this issue, the dispute would not have proceeded through interest arbitration. The issue also presents a novel and difficult determination for the Arbitrator.

The parties' prior Collective Bargaining Agreements contained no language on a retirement fund. But, a Washington State Supreme Court ruling issued in April 2002 held that the

Employer, during the life of the 1998-2000 Collective Bargaining Agreement, was obligated to contribute an amount equal to its former social security contribution (6.2% of wages, plus an additional 1.45% for employees hired before 1986) to a bargaining unit pension fund. *Internat'l Association of Firefighters Local 1789 v. Spokane Airports*, No. 70667-1 (Wa. S.Ct. April 25, 2002). The genesis of the dispute was described by the Court as follows (footnote omitted):

In 1962, Airport, which operates its own fire department at the Spokane International Airport, contracted with the federal government in order that its fire department employees could obtain social security coverage. Consequently, each of its employees, all of whom were Union members, thereafter paid 6.2 percent of their wages into a social security account and 1.45 percent of their salary into a Medicare account. Airport matched the contributions of its employees.

On March 9, 1999, the employees, by means of Union referendum vote, exercised their right to opt-out of the social security plan. Airport then obtained refunds from the federal government for the amount of money each fire department employee paid into a social security and Medicare account during the period 1995 through 1998 and for Airport's matching contributions.

Union brought this suit against Airport in Spokane County Superior Court, on behalf of the fire department employees, alleging that Airport 'wrongfully . . . convert{ed} ... those refunds' of the employees' money.' ... It demanded that Airport reimburse the employees for the social security and Medicare taxes that had been withheld from the employees' paychecks between the years 1995 through 1998. Union also asked that the matching contributions that Airport paid into its employees' social security accounts be paid over to it for the benefit of the employees. Although Airport eventually returned to the employees the funds that had been withheld from their paychecks for social security and Medicare coverage, it refused to pay over to Union the matching payments it paid into the employees' accounts from 1995 to 1998.

Union moved for a summary judgment requesting reimbursement by Airport of '{a}ll contributions to Social Security and Medicare for the years 1995 through 1998, {for} . . . the employees for whom they were contributed.' ... It also sought a judgment requiring Airport to continue to contribute to each individual firefighter's qualified retirement plan, of plaintiffs' choosing, in the amount of 6.2% and 1.45% of each employee's monthly wages for each month the defendant failed to make such payments from and after March 9, 1999, until the expiration of the current bargaining agreement.

The Supreme Court affirmed the lower courts' rulings in favor of the Union. Thus, pursuant to court order, the Employer became obligated "to continue to contribute to each individual firefighter's qualified retirement plan," 6.2% of each employee's monthly wage "for the duration

of the existing [1998-2000] collective bargaining agreement." The Employer also was obligated to contribute 1.45% for those employees hired prior to April 1, 1986. (Employees hired subsequent to that date remained, by law, subject to the statutory Medicare contribution). The Court said nothing about what would or should happen after the expiration of the Collective Bargaining Agreement then in effect.

Exactly how to address this issue in a subsequent interest arbitration award poses a dilemma for the Arbitrator. There are substantial considerations supporting both sides' positions, which are outlined next.

Considerations supporting the Union's proposal include:

1. The Supreme Court decision represents a hard-won (and expensive) victory for the bargaining unit; although the Union prevailed at every judicial level, the Employer continued its appeal to the highest level.

2. The Supreme Court decision is arguably now the status quo; arbitral precedent is that an interest arbitrator does not change the status quo absent a compelling reason.

3. What the Union proposes is not costing the Employer anything more than it was paying prior to the bargaining unit electing to opt out of social security. Stated differently, had the bargaining unit elected not to opt out, the Employer would be making an identical contribution in the form of the required social security contribution.

4. The Union's proposal is at least partially supported by the Arbitrator's comparator analysis, when viewed on an hourly basis. This analysis shows an overall wage lag of over 7%.

5. Of the eight comparators, one has negotiated a partial social security replacement benefit, one pays the social security tax, four have a deferred compensation benefit or deferred medical (VEBA) benefit (including the one that pays the social security tax). The cost to the employer of these benefits range from a low of 2% of annual salary to a high of 7.8% (paid by Cheney, 6.2% of that benefit is the social security tax).

In the Arbitrator's opinion, there also are valid considerations supporting the Employer's opposition:

1. It is an odd sort of "status quo:" It was not freely negotiated but imposed by judicial fiat, that is, by operation of law. The Supreme Court did not rule that the social security replacement should be carried forward into the next contract; in fact, the operation of law invoked by the court specifically ended with the Collective Bargaining Agreement then in effect. Although the court tied the employer's obligation to the 1998-2000 contract's expiration, it specifically held that the obligation was not something arising from that labor agreement. Instead, it held that the obligation was "an inferred contractual obligation" of the employer that "flows from the compensatory nature of the social security benefits in this employment relationship." Because the obligation did not arise from the Collective Bargaining Agreement, there was no need to require the Union to follow the grievance and arbitration procedures of that agreement. If the court's analysis is carefully considered, it places the interest arbitrator, whose role is confined to defining a new labor agreement after considering the disputed proposals' rationale for departure from the old agreement, in an enigmatic position vis-à-vis this prior extra-contractual obligation of the employer.

2. Although the comparator jurisdictions (except Cheney) have opted out of social security, only one negotiated a social security replacement, and it was a partial one (Spokane FD No. 9, with a 4% replacement). In fact, the record suggests that many, if not most, of the bargaining units in the state have opted out of social security without securing a specific replacement contribution from the employer.¹²

3. Although (assuming no replacement) by opting out of social security, employees saved their Employer its share of the social security contribution, the employees also saved their

¹² The record, however, contains references to social security replacement benefits for SeaTac Airport fire fighters, and IAFF Locals 31 (Tacoma) and 2088 (Tukwila).

share of that contribution, and thus increased their own disposable income by the same amount. The Union's proposal does not require a matching employee contribution.

4. An employer's social security contribution is not, or at least is not perceived as being, as valuable as a retirement plan contribution in the same amount. The large number of bargaining units that have opted out of social security suggests that they do not believe they will realize full value from these contributions. As the dissent noted in this bargaining unit's litigation with the Employer:

[E]ach worker's benefits, though flowing from the contributions he {or she} made to the national economy while actively employed, are not dependent on the degree to which he {or she} was called upon to support the system by taxation.

Internat'l Association of Firefighters Local 1789 v. Spokane Airports, supra, (Madsen, J., dissenting). In other words, there are winners and losers under the social security system. Perceiving oneself as a "loser" under the social security system is a powerful motivator for electing to opt out. As the Employer explained in its post-hearing brief, social security is not a vested retirement system and the contributions may or may not inure to the benefit of individual fire fighters at some future date. Replacement payments, on the other hand, vest immediately and can be invested in ways to virtually guarantee the principal.

5. Although the hourly comparator analysis shows a 7.67% pay lag overall between the bargaining unit's 2000 wages and the comparator average for 2001, when viewed on an annual salary basis, the pay lag is less than 2%. There are sound reasons (the bargaining unit's lighter workload and the excellent medical benefits) to temper the 7.67% figure by considerations supporting a comparison based on annual salaries.

Ultimately, the balancing of all of the above considerations militate against both parties' proposals going into these proceedings. The most significant consideration overall, in this Arbitrator's opinion, is the comparator analysis. As shown above, the 2001 pay lag of this bargaining unit when viewed on an hourly basis is 7.67%. When not viewed on an hourly basis, the pay lag is considerably smaller. All things considered, the Arbitrator believes the hourly

analysis should be given greater weight because the bargaining unit does work longer hours. She appreciates that this consideration is counterbalanced by the less demanding work performed by the unit, and she will adjust the final award slightly to reflect this. Nevertheless, longer working hours means less free time for other pursuits; in addition, less demanding work may be less desirable for many from a psychological standpoint.

After weighing and considering the various factors identified above, the Arbitrator concludes the 7.67% "catch-up" indicated by the hourly wage analysis should be reduced to an economic package equal to 7.4% of the year 2000 benchmark wage for this bargaining unit. This 7.4% economic package will be allocated as follows:

- A CPI-based wage increase of 2.9% for the year 2001
- A retirement plan contribution of 4.5% for the year 2001 and each succeeding year of the contract.

In addition, the Arbitrator will award CPI-based increases for 2002 and 2003.

2. Longevity Pay and Steps on the Salary Schedule

The Arbitrator's view is that pay issues in interest arbitration should normally be confined to base salary issues, absent extraordinary circumstances (such as that presented by the social security issue in this case). The Employer has shown no reason for reducing wages through a reduction in longevity pay. Nor is its desire to gain parity with other airport employees sufficient reason to change the number of steps on the salary schedule, particularly when the status quo was so recently negotiated by the parties. These Employer proposals are denied.

3. Hours of Work

The objective of the Union's proposal is to reduce the total number of regular hours worked by bargaining unit personnel. The reduction is about one and one-half hours per week, the Union estimates. The effect in the reduction of hours is a higher net hourly wage. This simply is a back door way of enhancing the wage package for the bargaining unit, one that would not

actually increase the total compensation of bargaining unit members, but which would have a cost to the Employer. The Union has presented no particular justification for this approach, other than to point out that bargaining unit members' hours tend to be longer than comparable fire departments. However, the work performed is less intense, as the Employer contends.

As the Arbitrator stated in conjunction with the Employer's proposals on longevity pay and reduction in steps on the salary schedule, her view is that wage enhancements (or the opposite) should be dealt with through the front door, in other words, through the wage analysis itself. She finds no justification in this case for improving the employees' position through a reduction in hours in this case. Were she to rule otherwise, she would have made a proportionate reduction to the economic award to the bargaining unit. The Union made it clear it strongly prefers money to a reduction in the number of hours worked. Accordingly, the Union's proposal is denied; the status quo with respect to working hours will remain in effect.

VII. UNION BUSINESS ISSUE

A. Proposals

The Employer proposes the following modification to the prior contract language:

The Employer agrees to release one Union Officer or Union designated representative without loss of pay to attend official firefighters conferences, conventions and regional seminars, limited to three (3) seminars or conferences per year for the entire Union. In addition, the Employer agrees to release one Union Officer or Union designated representative per shift ~~if staffing allows without loss of pay to conduct Union business~~ at the determination discretion of the Chief.

The Union opposes the change and would maintain the status quo.

B. Positions of the Parties

Employer's Position

The Employer advances the following in support of its proposed change to Article IV on Union Business:

1. The purpose of the Airport's proposed amendment is simply to remove any reference

in Article IV to mandatory shift staffing levels consistent with the Airport's proposal to remove mandatory shift staffing levels from the agreement. Minimum manning is the subject of one of the unfair labor practice charges filed in this matter by the Airport. In the event that the minimum staffing provision is eliminated from the parties' agreement as a result of the ULP proceeding, the language in Article IV of the agreement regarding Union Business should be amended to omit any reference to mandatory staffing levels because they will no longer exist.

2. Moreover, the Union has made no showing that the discretion of the Chief that exists under the status quo should be disturbed.

Union's Position

The Union contends that:

1. This language was just modified during the 1998 negotiations between the parties so as to memorialize and to better reflect a practice that had already been in effect between the parties for some time; the local agreed to ensure that the Employer would not incur any increased cost because of the absence of a Union representative for Union business purposes because of minimum staffing requirements.

2. The parties' practice has been for the Union to provide a replacement bargaining unit member if the Union officials' absence compromised minimum staffing. Thus the clause ensures that the Employer will not pay overtime or incur any financial burden.

3. Because the language was just changed in 1998 and the status quo is working satisfactorily, there is no reason to change the language

C. Arbitrator's Analysis and Award on the Union Business Issue:

Timothy Lively, in his affidavit (Exh. U-O19), explained that:

1. The language regarding Union Business that is contained in Article IV of the 1998-2000 CBA between SIA and Local 1789 was just modified during the 1998 negotiations between the parties. The purpose of this modification was to memorialize and to better reflect a practice that had already been in effect between the parties for some time, whereby Local 1789 has agreed to ensure that no cost would result to the Airport if the absence of a Union representative for Union business purposes would otherwise have caused Department staffing to be reduced below the minimum levels that have been recognized by the parties as being necessary.

3. Thus, at no time that is relevant hereto has the absence of a Union representative for Union business purposes caused the Airport Management to have to pay any overtime pay or to incur any other financial burden. ...

The Employer apparently does not assert this assertion or the other factual assertions of the Union, and this alone is sufficient reason to deny the Employer's proposal. Moreover, the

Employer's argument in favor of its proposal assumes: 1) success in both the unfair labor practice proceedings before PERC and any subsequent interest arbitration proceeding on the same subject; and 2) the existing language is incompatible with its success. The Arbitrator believes that the problematic nature of these assumptions make its proposal premature, at best. Therefore, its proposal is denied.

VIII. SICK LEAVE FOR NEW HIRES ISSUE

A. Proposal

The Union proposes amending Article XIV, "Approved Leaves of Absences" as follows:

LEOFF II Firefighters (employed as Firefighters after October 1, 1977) shall, upon employment, be advanced a credit of ~~six (6)~~ twelve (12) shifts of sick leave. In the event an Employee does not successfully complete probation, the monetary value of any sick leave used during the time of employment shall be deducted from Employee's last payroll voucher. In the event an Employee successfully completed probation, Employee shall commence earning sick leave at the rate of one shift per month (24 hours). Any sick leave which was advanced during the probationary period but which was not used will be credited to the Employee's sick leave record. ...

The Employer opposed this change.

B. Positions of the Parties

Union's Position

The Arbitrator should award the union's sick leave proposal because:

1. It will equitably protect the income of newly hired bargaining unit members should they incur a work related injury or other injury early in their employment. The current CBA allows members to supplement worker's comp payments with sick leave.
2. New hires are perhaps more likely because of their relative inexperience, to be injured on the job and are less likely to have the resources for unpaid sick leave.
3. There will be no immediate financial impact for the employer because there are no entry employees in the bargaining unit. A cost to the employer would accrue only if it hired a new employee who had to use sick leave.
4. The current CBA contains language protecting the employer against sick leave abuse.
5. Local 1789's Sick Leave proposal is well-supported by comparable data. (See Art. 18.3 of Pasco CBA; Art. XVIII of City of Spokane CBA; Art. 11 of Spokane 1 CBA; Art. 34

of Spokane 9 CBA).

Employer's Position

The Employer opposes the Union's proposal, noting that it did offer any evidence at the hearing or the mediation showing a hardship associated with the current contract provision adequate to change the status quo. As such, the Union failed to meet its burden and the status quo with respect to sick leave should be maintained, the Employer contends.

C. Arbitrator's Analysis and Award on New Employee Sick Leave Issue:

The Union has not shown any pressing need for the change it proposes; its arguments are based on unproven assumptions. Moreover, it failed to offer a comparator analysis on probationary employee sick leave. Therefore, its proposal is denied.

IX. OVERTIME CALCULATION ISSUE

A. Proposal

The Employer proposes the following new language; the Union opposes this language:

Overtime will be added to the payroll for the pay period during which the overtime is performed. Overtime will be only based on actual time worked and does not include other compensated time off. If time is lost during the pay period for unexcused absence, then overtime pay shall not prevail until the overtime hours worked exceed the unexcused absence hours. It is understood that nothing in this Article shall require payment for overtime hours not worked.

The Union opposes this change.

B. Positions of the Parties

Employer's Position

The Employer objects to using unworked hours in the calculation of the overtime threshold; this defeats the purpose of overtime pay.

Union's Position

The Union opposes the proposal, in particular because the Employer has not shown any compelling need for the change. It was unable to show that its was incurring undue expenditures for basing overtime on compensated time off.

C. Arbitrator's Analysis and Award on Overtime Calculation Issue:

The Arbitrator agrees with the Union's position on this proposal. Therefore, it is denied.

X. FINAL AWARD

The decision and award of the neutral Arbitrator in this dispute is as follows:

A. Wages, Number of Steps

Effective January 1, 2001: the bargaining unit shall receive a wage increase equal to 100% of the most recent annual CPI-U (West Coast "B/C") index for the month of August, which, according to the record, equals 2.9%.

Effective January 1, 2002: the bargaining unit shall receive a wage increase equal to 100% of the most recent annual CPI-U (West Coast "B/C") index for the month of August, which, according to the record, equals 2.7%.

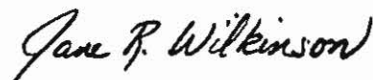
Effective January 1, 2003: the bargaining unit shall receive a wage increase equal to 100% of the most recent annual CPI-U (West Coast "B/C") index for the month of August. Although this figure was not available during the evidentiary proceedings, the federal Bureau of Labor Statistics has since released the data for August 2002. According to that data, the applicable inflator is 1.6%.¹³ Accordingly, bargaining unit wages shall be increased by 1.6% for 2003.

B. Social Security Replacement/Retirement Plan: The Arbitrator awards the following contract language:

The Employer agrees to pay four and one-half percent (4.5%) of the taxable base wage on behalf of the members of the bargaining unit up to the annual maximum limits for Social Security to the Spokane Airport Firefighter's Retirement Fund.

- C. Longevity Pay: Employer's proposal denied.
- D. Hours of Work: Union's proposal denied.
- E. Union Business: Employer's proposal denied.
- F. Sick Leave for New Hires: Union's proposal denied
- G. Overtime Calculation: Employer's proposal denied.

Date: October 26, 2002



Jane R. Wilkinson, Chairperson
Neutral Arbitrator

¹³ See footnote 11, *supra*.