

IN THE MATTER OF)
INTEREST ARBITRATION)
BETWEEN)
THE INTERNATIONAL ASSOCIATION)
OF FIREFIGHTERS, LOCAL 453,)
Union,)
and)
CITY OF WENATCHEE, WASHINGTON,)
City.)

PERC CASE 16058-I-01-374
ARBITRATOR'S OPINION
AND AWARD
2001-2003
COLLECTIVE BARGAINING
AGREEMENT

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Alex J. Skalbania
Emmal Skalbania & Vinnedge
4241 - 21st Ave. W., Suite 104
Seattle, WA 98199-1271
Bruce L. Schroeder
Summit Law Group PLLC
Suite 300
1505 Westlake Avenue North
Seattle, WA 98109-3050
Gary L. Axon
P.O. Box 190
Ashland, OR 97520
(541) 488-1573

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I. INTRODUCTION

The International Association of Firefighters, Local 453 (Union) and the City of Wenatchee, Washington (City) are signatories to a Collective Bargaining Agreement effective January 1, 1998 for a minimum period of three years or until such time as a successor agreement can be negotiated. The 1998-2000 agreement continued in effect during the negotiations for a successor agreement. The parties were unable to resolve all of the issues in dispute through negotiation and mediation.

In a letter dated October 19, 2001, Marvin L. Schurke, Executive Director, Public Employment Relations Commission, certified for interest arbitration as provided in RCW 41.56.450 ten issues as follows:

1. Hours of Work - Article VI, Sections 6.1 and related articles of agreement related to four-platoon staffing system
2. Kelly or Debit Days - Article VI and related articles of agreement related to debit days, total yearly hours of work
3. Wages for 2001, 2002, 2003 - Article 10
4. Industrial Insurance - Article 25
5. Overtime Pay and Compensatory Time - Article 15
6. Vacation provisions - Article 12
7. Shift Changes - Article 17
8. Buy-Out for Loss of Promotional Opportunities
9. Entire Agreement language (Article 31)

10. Safety provisions - new Article proposed
as Article 30

Un. Ex. 3.

The case was scheduled for hearing before this Arbitrator for a final and binding resolution.

Prior to the arbitration hearing, several issues arose regarding the status of certain proposals to be presented to the Arbitrator for a decision. The legal disagreements continued to the date of the arbitration. To the credit of counsel, the parties were able to work out a resolution of the disagreements so the case could proceed to hearing.

The City of Wenatchee is located in Chelan County. The City has a population of 27,930. Wenatchee is in an area of north central Washington, whose primary industry is agriculture and an aluminum smelter. For 2001, the assessed valuation of the City was \$1,314,504,217. In 2001, the City had general fund revenues of \$13,694,900.

Thirty bargaining unit members working out of two stations provide fire and rescue services to the citizens of Wenatchee. Fire Chief Glen Tibbs, along with two assistant chiefs oversee the operation of the Fire Department. Fire and rescue services are delivered by what is referred to as a four-platoon system, each headed by a battalion chief. Three of the issues before this Arbitrator are directly related to a City proposal to move from a four-platoon system to a three-platoon system.

At the commencement of the arbitration hearing, the opening statements from counsel revealed a sharp difference of

opinion over the issue of a four-platoon versus a three-platoon system. A significant amount of hearing time was devoted to the presentation of the evidence and argument on the issues relating to the four-platoon versus three-platoon dispute. The Union characterized the conflict over the platoon system as the overriding issue in this contract dispute.

A dispute also arose over the comparables to be used as a guide for the Arbitrator in formulating the Award on the ten issues. Article 10.4 of the 1998-2000 contract specifies ten Washington cities which "shall be used as the basis for comparison." The enumerated cities are as follows:

| | |
|-------------------|--------------|
| Aberdeen | Mount Vernon |
| Auburn | Olympia |
| Kennewick | Pullman |
| Longview | Richland |
| Mountlake Terrace | Walla Walla |

In addition, the parties also disagreed over the methodology and means by which to compare wages and contract benefits of Wenatchee firefighters with their counterparts in other cities.

The City proposed to delete Article 10.4 from the contract. According to the City, the ten Washington cities no longer are a representative group of comparators to be used by Wenatchee. The Union challenged the City on its attempt to modify the list of comparators. In order to continue with the arbitration hearing, the City stipulated to the use of the ten jurisdictions specified in Article 10.4. However, the City did not stipulate to the weight to be accorded to each of the ten cities on the list.

Pursuant to the stipulation of the parties and Article 10.4, the Arbitrator will utilize the ten listed cities as a guide to developing this Award.

The hearing in this case required two days for each side to present their evidence and testimony. The hearing was tape recorded and copies of the tapes were made available to the Union and the Arbitrator by the City. Testimony of witnesses was received under oath. At the hearing, the parties were given the full opportunity to present written evidence, oral testimony, and argument regarding the issues in dispute. Both the Union and the City provided the Arbitrator with substantial written documentation in support of their respective positions on the ten issues.

Moreover, the parties also submitted comprehensive and detailed post-hearing briefs in further support of their positions taken at arbitration. The approach of the Arbitrator in writing the Award will be to summarize the major, most persuasive evidence, and arguments presented by the parties on the ten issues. After the introduction of the issue and the positions of the parties, I will state the basic findings and rationale which caused your Arbitrator to make an award on the issues.

This Arbitrator has carefully reviewed and evaluated all of the evidence and arguments submitted pursuant to the criteria established by RCW 41.56.465. Since the record in this case is so comprehensive, it would be impractical for the Arbitrator in the discussion and Award to restate and refer to each and every piece of evidence, testimony, and argument presented. However, when

formulating this Award, the Arbitrator did give careful consideration to all of the evidence and argument placed into the record by the parties.

The statutory criteria are set out in RCW 41.56.465, as follows:

(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) (i) For employees listed in RCW 41.56.030(7)(a) through (d); comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;

(ii) For employees listed in RCW 41.56.030(7)(e) through (h), comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered;

(d) The average consumer prices for goods and services, commonly known as the cost of living;

(e) Changes in any of the circumstances under (a) through (d) of this subsection

during the pendency of the proceedings;
and

(f) Such other factors, not confined to the factors under (a) through (e) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. For those employees listed in RCW 41.56.030(7)(a) who are employed by the governing body of a city or town with a population of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living.

Because of the voluminous record and extensive arguments in this case, the parties waived the thirty (30) day period an arbitrator would normally have to publish an interest arbitration award under the statute.

ISSUE 1 - HOURS OF WORK

A. Background

Article 6 of the current contract defines the hours of work for members of this bargaining unit. The dispute over hours of work directly involves two other related topics found in Issues 2 and 8. The parties' proposals and arguments are intertwined among the three issues concerning the subject of the four-platoon versus three-platoon system. In reviewing the three issues, the Arbitrator evaluated the evidence and argument as a whole in formulating the Award. While your Arbitrator will make a separate award on each issue, the discussion and findings equally applies to Issues 1, 2, and 8.

The Department currently operates on a four-platoon system for scheduling and other purposes. Each platoon consists of seven bargaining unit members. The composition of a platoon is one battalion chief, two captains, two engineers, and two firefighters. A platoon member works 24 hours on, 48 hours off, 24 hours on, and 96 hours off. In addition, a platoon member also works 12 extra 24-hour shifts throughout the calendar year. The extra shifts are called "Debit Days." The Debit Days ensure each member is assigned a workweek that averages 48 hours throughout the year.

The four-platoon system became a part of the agreement with the 1991-1992 Collective Bargaining Agreement and has remained in effect until this date. Prior to the 1991-1992 contract, the parties operated under a three-platoon system. The City offered proposals in Issues 1, 2, and 8 which would return the Wenatchee

Fire Department to a three-platoon system effective January 1, 2003. The Union seeks to preserve the status quo of the four-platoon system under Article 6 and advanced several proposals to preserve and strengthen the four-platoon system.

B. The City

The City believes it has offered numerous legitimate reasons for conversion back to a three-platoon system. According to the City, the three-platoon system will offer a number of operational and financial advantages to the City and to the public. Those benefits include safety enhancement to firefighters, increased productivity and training, increased team-building within the Fire Department, financial savings, and better overall management of the Department. City Ex. 1.7. The City submits all of these benefits were ultimately done with a vision of carrying out the City of Wenatchee's Fire Department Mission Statement. City Ex. A. The City maintains the Union's defense to the proposal ignored all components of the Mission Statement and focused almost exclusively on the firefighters' desires for more contiguous days off.

The City's arguments are summarized in the following section:

1. The City's three-platoon system would enhance firefighter safety because the staffing levels would increase from seven individuals on any given platoon to ten bargaining unit members on a platoon at any given time. The platoon would be composed of one battalion chief, two captains, two engineer/firefighters, and five firefighters.

The Union offered no evidence countering this enhanced safety benefit.

2. A primary benefit of the three-platoon system involves training productivity. Training classes must be scheduled four separate times in order to reach all four platoons. Offering of the training on four separate occasions increases the cost to provide training to personnel working at an overtime rate. In addition, a firefighter who works a Debit Day with a different platoon during which training is held, that firefighter may also receive the same training on his normal schedule which means the person has to sit through the class twice or do nothing during the time training is conducted.

3. The City argues one of the most significant downsides of the current four-platoon system is the fact there is no continuity in crews from one shift to the next. City witnesses testified that on any given day it was very difficult to know who, in fact, was working in light of the fact that employees are primarily in charge of scheduling their Debit Days. This has the additional impact of having employees work outside their normal rank. The City submits the integrity of each platoon will yield greater benefits through a three-platoon system.

4. Although financial savings were admittedly not the primary motivation for the change to the three-platoon system, there will be savings nonetheless. Chief Tibbs testified there would be coverage available for an additional 210 shifts under the three-platoon system than under the current four-platoon system. This would allow the possibility of coverage without backfilling at overtime rates. While this will not eliminate backfilling at overtime rates, it will make a substantial dent in the overtime exposure inherent in the current system.

Additional financial savings would be gained by the elimination of the cumbersome four-platoon scheduling system that is ripe for costly errors. The doubling up of two battalion chiefs that exists under the four-

platoon system would be eliminated. The current scheduling system has resulted in an astronomical increase in the Department's overtime budget.

The three-platoon system would also cure one of the ironies of the existing contract where employees are not working the contractually called for 48-hour workweeks. Article 6.1. With the 52-week year, the firefighters are averaging 47.65 hours per week. City Ex. 1.16. This oversight has cost the City more than \$105,000 over the decade the four-platoon system has been in place. With the City's proposal, the workweek would become 48 hours in a full calendar year or 48.07 hours when rounded to 52 weeks. The City would once again receive the benefit of the bargain of having employees work 48 hours per week.

5. A major benefit to be derived from the City's three-platoon proposal is better overall management of the Department. The current four-platoon system is top heavy with nearly a one to two ratio of officers to firefighters. This is wildly in excess of what is demanded in the job. With the three-platoon system, there is a vertical alignment within the shifts which increases the possibility for accountability. The three-platoon system would allow fire administration to see the shifts eight times per month rather than five under the current system. The three-platoon system has the benefit of better consistency on the rotation because employees will work 24 hours, followed by 48 hours off, with an additional day off after every sixth shift. Under the four-platoon system firefighters work 24 hours on, 48 hours off, 24 hours on, followed by 96 hours off. This significant period away from work is inefficient and reinforces a philosophy that firefighting is not the primary occupation.

6. The fundamental choice of a three-platoon system is recognized under state law as a management right. Under the City's proposal, there would be no transfer of bargaining unit work to any other employees, nor would any employees be laid off or suffer financially in this change. The full changeover would take place through attrition.

7. The comparables overwhelmingly support the City's three-platoon proposal. Wenatchee is unique amongst the comparators with a four-platoon system. Although Mountlake Terrace is converting to a four-platoon system, it is doing so in order to align with the system in place at Snohomish Fire District No. 1. Union witness Paul Harvey indicated that of departments similarly sized to Wenatchee, he was aware of only one other in the state, Centralia, that has a four-platoon system. The call load for Wenatchee firefighters is nowhere close to the four-platoon systems that are in place among the larger fire departments in the state of Washington.

The City's three-platoon proposal still provides ample opportunity for firefighters to decompress. After every 24-hour shift, they receive two days off. After every sixth shift, they receive an additional paid day off through a Kelly Day.

8. Returning Wenatchee to a three-platoon system would align the Department with the adjoining fire districts.

9. Return to a three-platoon system has been recommended by numerous outside experts and consultants.

10. The City's three-platoon proposal has minimal impact on employees. The City is undertaking significant measures to ensure the transition from four platoons to three platoons would have minimal impact on existing personnel. No employees will lose their jobs, nor will they be demoted. No employees will suffer any financial harm in the process. The City faces a unique opportunity in the next four years with a number of officers reaching retirement age. This will allow for promotional opportunities within the bargaining unit. The City's proposal ensures the same number of days off as firefighters currently enjoy. While the vacation bidding will be more difficult, the effects will be minimal on employees since their number of vacation days would be unaffected.

The City next argues that the Union's proposals for Article 6 contained in Issues 1 and 2 should be rejected. First, the proposals relate to the concept of Debit Days, a concept that would go away with conversion to a three-platoon system. Second, the Union offered no independent justification supporting the introduction of significant language into the contract. Third, the Union's proposals would further erode the Department's ability to manage the scheduling of Debit Days. Fourth, if the Union purports to merely be integrating Memoranda of Understanding into the contract, the language proposed does not reflect existing Memoranda of Understanding.

Based on all of the above-stated reasons, the Arbitrator should award the City's proposals found in Issues 1 and 2.

C. The Union

The Union seeks to maintain the status quo by keeping the current four-platoon system intact. Adoption of the City's proposals regarding Issues 1, 2, and 8, to go to a three-platoon system, would negatively impact bargaining unit members in a number of significant ways. The City's proposals would increase the hours of work for members, severely limit future promotional opportunities, permanently reduce the number of higher paying positions in the unit, and change the whole shift structure under which the members work. In addition, adoption of the City's proposals would severely limit vacation selection options, make many other significant negative changes to the working environment

of members, and eliminate a system that has worked well for the parties for the past 11 years.

The Union asserts the City represented to the Union that the three-platoon proposal was "not about money." The City has simply claimed all along that it wants to go to the three-platoon system because that organization would allegedly be more efficient and less administratively troublesome. The Union argues the City's evidence simply does not support the contention that it would be more efficient for the City to operate under a three-platoon system than it would be to continue to operate the Department under a four-platoon system. Since the City is proposing to make a significant change in the status quo, the burden is on the City to establish through "clear and understandable evidence" both the reasonableness and operational necessity of the change in status quo that it is proposing to make in this interest arbitration.

The Union argues one of the beneficial aspects of the four-platoon system that would be lost with a three-platoon system, and would negatively impact upon the efficiency of the Department is when a member of a platoon is assigned to work a Debit Day. When a member works a Debit Day on another platoon, this allows the bargaining unit member to keep in regular contact with other members of the Department and to see how other platoons operate. Thus, each platoon does not become isolated into itself with its own quirky way of operating. The Union submits this would be the case under a three-platoon system.

Moreover, the officers from each platoon also actually work together on the same shift, at the same time, more often than would be the case if the Department went to a three-platoon system. According to the Union, with more officers on duty, they are easily able to coordinate their supervisory activities. The three-platoon system also results in the City not being forced to pay out-of-class pay to a bargaining unit member to replace any officer who was not on the shift.

It is also the position of the Union a three-platoon system would negatively impact on shift continuity and the ability of the shift officers to coordinate their supervisory efforts. Because of Kelly Days, the regularly assigned officers on a particular platoon would work together much less frequently than is now the case with the four-platoon system. Going to a three-platoon system would also cause the City to have to pay out-of-class pay to bargaining unit members on 50% of the total shifts worked, without even taking vacation leave and sick leave into account, because either a battalion chief, a captain or an engineer would be absent from the shift on a Kelly Day 50% of the time. This development would significantly increase the City's cost relating to out-of-class pay.

Under the current four-platoon system, there are two floaters who, rather than being assigned to a regular platoon, are usually assigned to work on a 40-hour per week shift, but are also available for assignment to a platoon shift, as needed, in order to reduce overtime costs to the City. This arrangement is much more

beneficial to the City by giving management increased flexibility in terms of reducing potential overtime costs than would be the case under the three-platoon system.

The Union next argues the three-platoon system would be inefficient in terms of the manner in which management utilizes the relatively limited number of personnel, even if one additional firefighter is hired as contemplated by the City under a three-platoon system. The City will incur overtime costs due to Kelly Day requirements, vacation leave, and/or sick leave issues. This is because the City has simply not hired enough personnel in order to staff its Department without regularly incurring overtime costs. The most efficient way for the City to avoid overtime costs given the current staffing levels would be to assign floaters to work the shifts. The City has admittedly used only one of the floaters to perform shift work.

The Arbitrator should ignore the City's calculations of overtime costs because they are misleading. In the view of the Union, the overtime calculations do not separate out the costs associated with wildfire mobilization which the City began to participate in for the first time in the mid-1990s. Therefore, the Union submits it is impossible to engage in any sort of accurate historical comparison of the overtime costs without first excluding the wildfire mobilization overtime from the data being compared.

Regarding the City's claim the training process would be enhanced under the three-platoon system, the Union believes the evidence that was introduced at the arbitration hearing actually

shows the exact opposite is true. Under the three-platoon system the City is proposing, it would be impossible to have all of the members of a particular platoon present at any one time to participate in a training activity. This is true because of individuals who need to be absent each day because of the requirement to provide Kelly Days to the members. By its very nature, the three-platoon system will prevent all members of a particular platoon from training together, and will require more than one training session per platoon in order to ensure all unit members receive any particular type of training. The four-platoon system is simply superior in allowing for more efficient training for the members.

The Arbitrator should reject the three-platoon system proposal because the City's proposal will increase the hours worked by members and thus lower their hourly rate of pay. Further, the City's proposal will negatively impact the ability of members to utilize their vacation benefits because they will be competing with nine other individuals instead of six persons for prime vacation.

A significant reason for rejecting this proposal is the disruption it will cause on the personal lives of members of this bargaining unit. According to the Union, the change in working hours would place them in a worse position than they are now. As a result, morale will suffer greatly among the membership. The Department's low turnover rate can be directly traced to the four-platoon system. A low turnover rate saves the taxpayers money that would otherwise be needed to recruit and train new firefighters.

Bargaining history supports the Union's position in this case. It was the City who initially proposed in 1991 to go to a four-platoon system and now it is the City that is trying to alter that four-platoon system without having any legitimate basis for doing so. The four-platoon system has worked well for the parties and enables the Department to deliver fire protection services to the citizens in an efficient and safe manner.

One of the justifications for the change offered by the City was the difficulty in administering the Debit Day selection process. The parties entered into a Memoranda of Understanding to clarify how this process could be improved. The Union will do whatever it takes regarding the Debit Day selection process in order to ensure the current four-platoon system will otherwise be retained intact.

In sum, the Arbitrator should reject the City's proposal which will adversely impact the members of this bargaining unit by imposing a less efficient work schedule, reduce promotion opportunities, and increase the hours of work for members of this bargaining unit. The Arbitrator should not impose on the members of this bargaining unit a system that will significantly alter the quality of life firefighters currently enjoy.

D. Discussion and Findings

The Arbitrator finds the City made a clear and persuasive case the time has come for a revision in Article 6 - Hours of Work. In the judgment of this Arbitrator, the City's evidence when measured against the statutory criteria demonstrated the four-

platoon system has outlived its usefulness in this small Department. The evidence adduced by the City demonstrated the three-platoon system is consistent with the Wenatchee Fire Department's Mission Statement to provide the highest level of protection of life and property to the citizens. With the three-platoon system, the Fire Department will be better able to meet its future challenges due to greater flexibility and efficiencies found in the three-platoon system.

A primary concern of both parties is firefighter safety. The three-platoon system will enhance firefighter safety. Staffing levels under the three-platoon system will increase from seven to ten firefighters on duty at any given time. The Union offered no evidence to rebut the improved safety benefit of a three-platoon system.

The City's proposal is based on the sound premise that productivity and efficiency will be improved. While the Union sought to minimize the City's evidence concerning improved productivity and efficiency, the Arbitrator holds the weight of the evidence favors the City's position. The cumbersome four-platoon system is difficult to schedule and has resulted in increased overtime costs. The three-platoon system will benefit the City financially. Under the City's proposal firefighter positions and classifications will be protected.

The Arbitrator concurs with the City the four-platoon system is top heavy with officers. A ratio of nearly one to two

officers to a firefighter is in excess of what is demanded to perform the job in a small fire department.

Regarding the Union's claim the firefighter's hourly rate of pay would be reduced by adoption of the City's proposal, the Arbitrator finds this argument to be misplaced. The contract calls for firefighters to work 48 hours per week. Because of a quirk in the scheduling under the four-platoon system, firefighters are not working the contractually-required 48 hours per week. The principle of pay for time worked is fundamental to any collective bargaining agreement. The movement to a three-platoon system will bring the hours of work into conformance with the contractually-mandated 48-hour workweek. The Arbitrator gave consideration to the fact firefighters will have a slight increase in their hours worked when setting the pay for 2003.

It is understandable that Wenatchee firefighters desire to continue to work the four-platoon system where employees work 24 hours on, followed by 48 hours off, 24 hours on, and 96 hours off. However, the significant time away from the job requires an excessive amount of administrative effort to administer this irregular work schedule. The Arbitrator concludes a work schedule which has the employee away from work 96 hours, by itself, argues against retention of the four-platoon system.

Under the three-platoon system, firefighters will work a consistent schedule of 24 hours on, with 48 hours off, with an additional Kelly Day after every sixth shift. The three-platoon system preserves the same number of days off as firefighters

currently enjoy. The only difference is the hours off from duty will be scheduled differently. Further, no employees will lose pay, be laid off, or demoted as a result of going to a three-platoon system.

Vacation scheduling by firefighters will be more difficult because the member will be competing with nine employees rather than six. Given that the number of vacation days remain unchanged, and recognizing the benefits to the City of a three-platoon system, the Arbitrator finds the minimal impact on vacation scheduling is an insufficient reason to reject the three-platoon proposal.

One of the most compelling reasons for adopting the City's proposal is derived from the statutory factor of comparability. Wenatchee stands alone among the ten comparators utilizing a four-platoon system. All of the others have a three-platoon system. Although Mountlake Terrace is moving to a four-platoon system to align with a merger to the larger Snohomish County Fire District 1, the undisputed fact remains Wenatchee's four-platoon system is unique among similarly-sized fire departments in the state of Washington. The Union offered no persuasive evidence why the Wenatchee Fire Department should not be brought into conformance with the agreed-on comparators who utilize a three-platoon system.

AWARD

The Arbitrator awards that Article 6.1 of the Collective Bargaining Agreement be amended to state:

ARTICLE 6 - HOURS OF WORK

6.1 Effective January 1, 2003, the work schedule will be a 48.07 hour work week, three (3) platoon system, operating on a 21 day 7(k) cycle. The Department will operate on a 24 hours on/48 hours off schedule. No one by virtue of changing from a four platoon to a three platoon system shall be demoted or lose classification.

ISSUE 2 - KELLY/DEBIT DAYS

A. Background

This issue is tied directly to the City's proposal for the three-platoon system. For the reasons stated in Issue 1, the Arbitrator will adopt the City's proposed language.

AWARD

The Arbitrator awards that Article 6.2 and 6.3 be amended to state as follows:

6.2 Members will be assigned one (1) adjustment day (Kelly Day) each 21-day cycle. Kelly Day will be used to reduce the hours of work and will be assigned. Kelly Day must be taken within the 21-day work cycle.

6.3 The employer shall ensure that when an employee is transferred from one shift to another, the employee shall work the same number of shifts as originally assigned in an identifiable cycle.

ISSUE 3 - WAGES

A. Background

Both parties are proposing a three-year contract. The parties agree that for 2001, a 3.1% cost-of-living adjustment is appropriate. Based on the agreement of the parties, the Arbitrator will award the 3.1% increase for 2001.

For 2002, the City is offering a 2.5% increase and the Union is proposing a 3.1% adjustment. Each side is proposing a 2003 increase tied to the CPI. The Union seeks a full CPI increase with a minimum of 3%. The City is proposing an adjustment of 90% of the CPI. The City is also proposing to delete the list of cities specified in Article 10.4 to be used as comparators.

The base wage for a firefighter first class for the third year of the 2000 contract was \$3,917 per month. With the agreed-on increase for 2001, of 3.1%, the firefighter first class base wage will rise to \$4,038 per month for the first year of the 2001-2003 contract. Battalion chiefs and lieutenants receive a higher salary calculated on a percentage over the base wage rate for a first class firefighter.

B. The Union

The Union avers its 3.1% proposed increase for 2002 is fair and reasonable. The proposal for the base wage referenced the CPI measurement which turns out to be 3.1%. The Union offered the same logic for its 2003 proposal for a 100% of the CPI measurement to set the base wage.

The Union asserts its wage proposals are consistent with the guidelines set forth in RCW 41.56.465 and should be adopted by the Arbitrator. The Union's arguments are summarized as follows:

1. The Union's proposed base wage increase for 2001 is less than the average base wage that was received by comparators during 2001. Un. Ex. 10.

2. The base wage that the Union is seeking for its members in the amount of 3.1% is also significantly lower than the average base wage increase for 2002 that was received by the ten comparators. The average base wage increase for the comparators in 2002 was 3.9%, which is significantly greater than the 3.1% wage increase the Union is requesting in this instance.

3. Even if the Union's proposed base wage increases for 2001 and 2002 are granted in full by the Arbitrator, the Union will still fall further behind the comparators in 2002. The comparators are on the average receiving larger base increases than the Union is proposing to receive for 2001 and 2002.

4. Union Exhibit 33 specifies what the base wage will be for every member of the bargaining unit if the Arbitrator grants the proposed base wage increases for 2001 and 2002. The Union submits these amounts are reasonable.

5. Turning to the proposed base wage increase for 2003, the Union is simply asking the Arbitrator to provide its members with a wage increase that will roughly keep them abreast of the increased cost of living they will experience in 2003. If 2001 and 2002 are any indication, members will be even further behind the comparators in 2003 with respect to compensation.

6. The limited data available for 2003 reveals Aberdeen firefighters will receive a minimum increase of 3% and that will be equal to the CPI for August 2002. Mountlake Terrace will receive 90% of the CPI as its base wage

in 2003. Mount Vernon will receive a 4% base wage increase for 2003. The wage increases that the parties' other comparators will receive for 2003 are still not known.

7. The City concedes the parties' historical practice since 1992 has been to provide bargaining unit members with base wage increases that have exceeded the cost of living.

8. The Union argues the City's data purporting to show firefighters received base wage increases totaling 25.54% are in error because the figures identified the average base wage increase received by members of this bargaining unit for a period of time by failing to include the two years when the members did not receive any base wage increases at all into the averaging process. Thus, the 3.1% base wage increases the Union is requesting for 2001 and 2002 are below the average annual base wage increases members have been receiving from the City for the last several years.

9. The Union would have needed to receive a 5% increase in the amount of compensation that was received by the bargaining unit members for 2001 in order to catch up to the average amount of compensation for 2001 that was received by the parties' comparators.

10. The City has not made any sort of inability to pay argument in this proceeding.

11. The City has contended the economic health of the Wenatchee area is currently suffering a downturn. Even if this was true, the Union does not believe this is the case to any significant degree. The fact remains the Union is only requesting relatively modest base wage increases from the City which are already lower than the base wage increases that would have been justified by the parties' historical practice and the other facts that are discussed above.

Regarding the City's low turnover argument, the Union asserts the good morale is the product of the four-platoon system

the parties have been using since 1991. Further, even the data provided by the City during the bargaining process showed members were being compensated by the City for the year 2000 at a rate that was behind the average of the comparators the parties agreed to utilize in this instance. Un. Ex. 11. The City's primary exhibit which makes comparisons between the compensation that has been provided members of this unit with the comparators is inaccurate and/or misleading. City Ex. 3.3.1. According to the Union, the City's chart utilizes 2000 data for Richland, excludes data from Mountlake Terrace entirely, excludes consideration of EMT premiums at other departments, and utilizes a five-year benchmark. The City's five-year benchmark is less representative of the Union's veteran-laden bargaining unit than the benchmark that the Union has chosen to utilize in its comparator studies.

Based on all of the above-stated arguments, the Arbitrator should award the Union's position on wages.

C. The City

The City is proposing a flat 2.5% increase for 2002 and a third year increase of 90% of the CPI. The real difference between the parties on the wage issue is the multi-dimensional approach taken by the City versus a single-dimensional approach used by the Union. The City offered numerous factors supporting its three-year proposals. On the other hand, the Union stopped at its comparability analysis. The City respectfully suggests that its multi-dimensional approach is more consistent with the statutory mandate than the Union's reliance on one factor alone.

Although both parties used a net hourly compensation analysis, there were differences between the approaches taken by both sides. According to the City, for comparison purposes, wages paid to a firefighter first class with an A.A. Degree should be used, without inclusion of longevity premiums or premiums for specialty assignments. The City based its analysis on a top-step firefighter at the five-year level with an A.A. Degree. The Union added a longevity premium for employees with 15 years of service and certain premiums paid in other jurisdictions for particular certifications. Un. Ex. 9. The City submits that inclusion of both longevity premiums and certification premiums is inappropriate. There is no proposal modifying the longevity component of the City's current contract and interest arbitrators routinely look to top-step rates for doing comparisons for base wage adjustments.

Regarding the certification premiums, these premiums are unique to an individual and are not awarded to bargaining unit members across-the-board. There was no showing by the Union at the hearing that such premiums were paid to firefighters across-the-board. Thus, the City concludes the use of individualized premiums unique to a particular jurisdiction unfairly skews the comparison with Wenatchee's pay structure.

The City next argues that its net hourly rate exceeds the average of the contract comparables even with Mountlake Terrace included. Wenatchee still exceeds the average of \$22.27 per net hour. In contrast, the comparable analysis furnished by the Union

unfairly compares apples to oranges. Un. Ex. 9. The analysis improperly includes a longevity premium above top step and individualized certification premiums. The wage used for Wenatchee for comparison is for calendar year 2000 whereas for every other agency the rate is for 2001. There is no difference between the parties on the wage proposal for 2001. Thus, the 3.1% increase needs to be added to the amount to fairly compare Wenatchee with the others in 2001.

If the Union's exhibit is corrected for some of these problems, the Union's own analysis supports the City's proposal. The average wage per net hours worked for 2001 is \$23.41 in the ten comparators. The average wage for Wenatchee firefighters is \$23.20. This is an amount only .9 percent under the average of the comparables. When the influence of the central Puget Sound is factored in, Wenatchee's position is even more favorable. Wenatchee is actually 4.6% above the average of the non-Puget Sound comparables. Therefore, the City submits even the Union's own comparability analysis supports the fairness of the City's proposal.

It is critical to note that both parties' analyses ignores one other huge expense associated with firefighters, the health insurance premiums. The premium cost for full family coverage in 2002 is \$811.80 per month, with the employee contributing only \$43.15. City Ex. 3.3.4. Thus, on top of the significant wages and benefits included in the comparable analysis

is another extremely large expense for firefighter health insurance.

The cost-of-living factor supports the City's proposal. Wenatchee firefighter's wage increases have significantly exceeded the cost of living over the last decade. The City estimated that if firefighters had received increases equal to 100% of the cost of living during that decade, their wage would have only grown to \$3,853 per month. Over that decade, a firefighter's actual pay increased from \$3,050 per month to \$4,038 per month.

The second element in the cost-of-living factor is the City's evidence that it costs firefighters significantly less to live in Wenatchee than in the majority of the comparables from the central Puget Sound metropolitan area. This subfactor strongly supports the City's position. There is no dispute from the evidence adduced at the hearing that the economic boom has significantly increased housing prices and rental rates in the central Puget Sound area that have not yet been felt in Wenatchee.

The City argues its proposal of a 2.5% increase in 2002 is fair in relation to the current measures of the cost of living. Further, the City also believes that its CPI formula for the third year of the contract is fair due to the relative stability of the CPI and because of the fact the City has been bearing the significant effects of health insurance increases. Because the health insurance component causes such an overall impact on the cost of living, it is fair to temper the CPI-based award to 90% rather than 100%.

Internal comparisons support the City's position. Firefighters have received cumulative cost-of-living increases greater than other bargaining units in the City. In 2001, the AFSCME and non-represented employees received a 2.66% increase, approximately 1/2 of a percent less than that being proposed for the firefighters. For 2002, management and non-represented employees had a salary freeze and AFSCME members received a 2.56% increase.

The workload of the bargaining unit has not changed significantly during the last few years. The City's call volume is significantly less than in the comparables. City Ex. 1.10. The average calls per year of the comparables is 4,656 compared to Wenatchee at 1,986. With the exception of Pullman's call volume of 1,361 per year, Wenatchee firefighters have the lowest call load to handle. The workload statistics do not justify an above-market wage adjustment.

The fiscal resource factor does not support the Union's wage demand. Although the City is not offering a classic inability to pay case, the City maintains it is critical to analyze an appropriate wage settlement in the context of its overall financial health. The City has seen a decline in the growth of its sales tax revenues. The problem has been magnified by the outflow of retail businesses across the Columbia River to East Wenatchee. The City has recently lost a lucrative auto dealership to East Wenatchee, as well as the loss of retail outlets who have developed in East Wenatchee.

The other major factor clouding the City's future is the uncertainty of the reopening of Alcoa's aluminum smelter. The decision of the company to close the smelter would affect a large number of employees who reside in the City, or spend money in the City. The smelter has been closed for a year with its electrical draw being sold to the local PUD.

The cumulative effect of voter-passed tax limitation measures have decreased the ability of the City to maintain its budget. The Union offered little to counter the City's presentation on its fiscal condition.

The local labor market supports the City's proposal. The comparison of wage rates for adjoining fire districts and information concerning cost-of-living adjustments for major county employers supports the City's position. The wages paid to Wenatchee firefighters exceeds that provided in adjoining fire districts. The average wage increase of the major employers in the area was 2.66%. The surrounding agricultural base to the Wenatchee economy has also been soft. The overall financial conditions in the local labor market directly affect Wenatchee.

The City of Wenatchee's turnover statistics drastically portray the fact the City is having no difficulty attracting qualified candidates based on existing pay and no difficulty in retaining them once they are hired. From 1985 to the present, only five bargaining unit members have left the Wenatchee Fire Department voluntarily. Two of those firefighters returned seeking employment from the Wenatchee Fire Department shortly after their

departure. Thus, the City submits an above-market adjustment is not needed to attract and retain qualified personnel.

Regarding the City's proposal to strike Article 10.4 from the contract, the City maintains the comparables were never developed with criteria applicable to statutory interest arbitration. Since the time these cities were referenced in the contract, a number have grown both in population as well as wealth and are, therefore, no longer comparable to the City of Wenatchee. The City submits the Arbitrator should strike Article 10.4 so the parties can start with a clean slate during the next round of bargaining to fashion a set of comparables that is principled.

D. Discussion and Findings

Based on the agreement of the parties, the Arbitrator will award a 3.1% increase effective January 1, 2001. This will bring the base wage for a firefighter to \$4,038 per month. The 3.1% is equal to the cost-of-living index. The Arbitrator finds after review of the evidence and argument as applied to the statutory criteria an additional cost-of-living adjustment of 3.1% is appropriate for 2002. Implementation of this increase will advance the top-step firefighter to \$4,163 per month. The third year of the contract should be adjusted by an additional 3%. The 3% increase will set the top-step firefighter base wage effective January 1, 2003 at \$4,288 per month.

The Arbitrator will also award the City's proposal to delete Article 10.4 from the successor contract. The reasoning of the Arbitrator is set forth in the discussion which follows.

Due to the fact the major issue between the parties was the City's proposal to change from a four-platoon to a three-platoon system, the wage issue does not carry the significance normally found in an interest arbitration case. This is evidenced by the fact the parties agreed during the hearing to a 3.1% cost-of-living increase for 2001. For 2002, the difference between the parties is minor with the City at 2.5% and the Union at 3.1%. The Arbitrator will award a 3.1% cost-of-living increase for 2002. If the cost-of-living figures projected for 2003 hold, the parties differ only by the City's 90% of the CPI and the Union's proposal for a full 100% increase based on the CPI. The Arbitrator will award a flat 3% increase for 2003 rather than linking the increase to the CPI. The Arbitrator rejected the buy-out proposal of the Union in Issue 8, so that is a cost the City will not have to bear.

Since the parties are extremely close on the wage issue, your Arbitrator will not engage in a detailed analysis and evaluation of the data in this Award. Likewise, the need for a comprehensive, multi-dimensional analysis is substantially diminished. In making this award on the wage issue, the Arbitrator is mindful of the fact the City prevailed on the major issue in this case concerning the three-platoon system. The bottom line is the Arbitrator is essentially awarding cost-of-living increases over the duration of this three-year contract.

Constitutional and Statutory Authority of City

Regarding the constitutional and statutory authority of the City of Wenatchee, no issues were raised with respect to this factor which would place the Award in conflict with Washington law.

Stipulations of the Parties

The parties agree that the Collective Bargaining Agreement should be effective for three years beginning January 1, 2001. The significant stipulation of the parties relevant to this interest arbitration was to use the cities set forth in Article 10.4 as the comparables in this interest arbitration.

Changes During the Pendency of this Proceeding

Regarding the factor of changes in any circumstances during the pendency of this interest arbitration and proceeding, the City updated the CPI data by attachments to its post-hearing brief.

Comparability

The Arbitrator is bound by the stipulation of the parties to use the ten cities listed in Article 10.4 as the comparator group for this interest arbitration. In this case, the City's methodology of using the top-step rate paid for a first class firefighter when performing comparison studies is the preferred method used by interest arbitrators in formulating awards. While individual premium pay should not be ignored, including premium pay with the base pay improperly skews an accurate comparison of wages.

When the 3.1% increase for 2001 is included on the top-step firefighter comparison, Wenatchee firefighters are \$103 behind their counterparts in the ten other jurisdictions at the base wage. The average base monthly wage for a five-year firefighter in the comparables for 2001 was \$4,141. City. Ex. 3.3.5. A cost-of-living increase for 2002 of 3.1% will serve to maintain Wenatchee firefighter pay competitive with the ten comparator jurisdictions. For 2002, wage adjustments for firefighters in six of the ten comparators range from 2.5% to 4%. The two most notable 2002 wage increases are in the east side cities of Walla Walla (3.1%) and Pullman (3.6%). The 3.1% awarded for 2002 will be consistent with the 2002 adjustments for the designated comparators.

Rather than awarding a 2003 adjustment based on a CPI formula, the Arbitrator will award a flat 3% increase. With over 1-1/2 years of the 2001-2003 contract already lapsed, there is no need for additional uncertainty concerning an increase to take effect in approximately four months on January 1, 2003. The CPI data predicts inflation will be running at about 3%. The parties agreed to a cost-of-living increase for 2001 of 3.1% which mirrors the CPI figures. The Arbitrator's award of a 3.1% cost-of-living increase for 2002 also reflects the cost of living as measured by the CPI. The 3% award for 2003 will be consistent with the projected CPI data presented by the City.

Other Traditional Factors

The Union's wage proposals in this case were modest. There was very little difference between the City's proposals for

wage increases and the Union's proposals for wage adjustments over the three-year period of the contract. The Arbitrator's award is consistent with increases awarded other City employees. While the award amounts are somewhat higher than those provided other City employees, the Arbitrator is charged by law to establish the wages for this group of employees pursuant to the statutory criteria.

Article 10.4

Turning to the City's proposal to delete Article 10.4 from the contract, the Arbitrator concurs with the City's position this unique provision needs to be reexamined. The agreed-on jurisdictions have undergone different economic and population changes over time since they were originally established by the parties. Several of the designated cities do not meet the criteria interest arbitrators normally use for developing a list of comparators. The Arbitrator was tempted to make some modifications to the comparator group in order to be of assistance to the parties in future negotiations. However, on the state of the record, the task of establishing a new list of comparators is best left to the parties to develop in future negotiations. The Arbitrator will strike Article 10.4 from the successor contract. This decision by the Arbitrator should not be taken as a finding some of the designated cities would be inappropriate on a future list of comparators.

AWARD

The Arbitrator awards that Article 10 be amended to state:

1. Article 10.1a

Effective January 1, 2001 - 3.1% COLA

Effective January 1, 2002 - 3.1% COLA

Effective January 1, 2003 - 3% increase

2. Article 10.4 shall be stricken from the successor contract.

ISSUE 4 - INDUSTRIAL INSURANCE

A. Background

Article 24 addresses issues concerning employees who suffer an on-the-job injury. The City proposed to make substantial changes and additions to Article 24. The Union proposed to continue current contract language.

B. The City

The City proposes changes to Article 24 to accomplish two goals. First, the City wants to ensure the contract language reflects the current practice of supplementing workers' compensation benefits. Second, the City seeks to develop a mechanism to address medical assessments in long-term disability cases. The proposed changes to Article 24.2, Article 24.3, and Article 24.6 all relate to the first goal. In the view of the City, the Union presented no evidence that the language proposed by the City is anything different than the current practice. Therefore, the Arbitrator should conclude there was no basis to oppose the City's request.

Turning to the City's proposed change to Sections 24.7 through 24.10, the Union offered two primary responses. First, the Union argued there was no history of disabilities lasting six months or longer providing a basis for the proposed language. The Union also argued the automatic requirement that an employee would be terminated at the end of the six-month leave of absence was

overly harsh and not consistent with the Americans With Disabilities Act (ADA).

The City acknowledges that there have been no cases of a disability leave extending six months or longer. However, City witnesses testified the intent of the language was to be proactive and to provide a framework to use when a case of a six-month disability leave arises. The City submits this language does not seek to override the statutory protection of the ADA. Rather, the ADA accords employers the right to receive medical information to assess whether an employee is truly disabled and to evaluate possible accommodations.

The City urges the Arbitrator reject the Union's argument that employees will automatically be terminated after a six-month leave of absence. The City maintains its proposal does not dictate termination after a six-month leave of absence. The proposed language only mentions that an administrative termination "may" occur if it appears the employee is physically incapable of returning to work in the near future. The six-month framework for the supplemental benefits is also consistent with the Washington State disability statute. The parties have developed their own form of disability supplement that is more generous than the statutory framework. The City seeks to have the same six-month limitation for both.

C. The Union

The Union's proposal is to maintain the status quo. According to the Union, since the City is proposing to make

significant changes in the status quo as a result of its proposal, the burden of proof is on the City to establish through clear and understandable evidence both the reasonableness and the operational necessity for the changes in the status quo. The Union submits the City has not met and cannot meet this burden in order to deserve an award in its favor on this issue. The Union portrayed the City's proposal as one which would radically alter the status quo by implementing a complicated proposal that would allow the City to arbitrarily terminate a bargaining unit member who has been off duty for six months as a result of an on-the-job injury. In the view of the Union, this feature potentially provides less protection to someone who has suffered an on-the-job injury than would be the case with someone who had suffered an off-the-job injury. The Union also asserts this proposal would violate state laws providing protection to disabled employees. The Union submits the City's proposal would treat bargaining unit members in a negative manner that is not in any way supported by analysis of the ten comparators.

The Union avers the City's proposal faces a number of insurmountable problems with the way it seeks to handle industrial insurance. The City cannot validly make a proposal in this proceeding that would attempt to supersede the statutory protection for employees. In addition, the City's proposal also violates case law from Washington State's appellate courts interpreting the industrial provisions of the statutes. The Union concludes the

Arbitrator should not award a proposal that would violate statutory law.

Moreover, the Union maintains the proposal should be rejected because it is not supported by the comparators, nor has the City established there is any need for the proposal. The City is seeking to create a complex and illegal solution to a problem that does not even exist. Since the arbitrary deadline and onerous burdens that the City is attempting to place on bargaining unit members as a result of the proposal only apply to on-the-job injuries, the Arbitrator should reject this proposal and continue the current language unchanged.

D. Discussion and Findings

The starting point for review of this proposal is to recognize the revised article would substantially change current language and add several new provisions to Article 24. The Arbitrator concurs with the Union the proposed language is complicated and would place onerous burdens on employees who might suffer serious on-the-job injuries. There is no dispute that one situation which the City seeks to address involving a long-term disability has never occurred in this Department.

While the City argued the proposed language is nothing more than current practice, the evidence produced by the City did not prove the language mirrored any past practice. A review of the proposal by this Arbitrator reveals the language would create new standards and burdens on the employees. The Arbitrator was not convinced by the City's evidence and argument there was a

demonstrable need to add this lengthy and complicated language to the Collective Bargaining Agreement.

Moreover, the type of language proposed by the City was not supported by the contracts from the ten comparators. None of the ten contracts includes a provision on industrial insurance that is anywhere close to the complicated and detailed language proposed by the City. The lack of similar language in the other contracts lends some credence to the Union's claim the proposal would violate state law.

Article 24.10 of the City's proposal states:

The provisions of Article 24 shall be in lieu of any statutory benefits outlined in RCW § 41.04.500 through .550.

Emphasis added.

While the Arbitrator is not attempting to offer an opinion on the legality of the article, a provision which clearly states the contract benefit "shall be in lieu of any statutory benefits outlined in RCW § 41.04.500 through .550" certainly raises a red flag in this Arbitrator's mind about the appropriateness of awarding this type of language through the interest arbitration process.

AWARD

The Arbitrator awards that Article 24 - Industrial Insurance Coverage, shall remain unchanged in the 2001-2003 Collective Bargaining Agreement.

ISSUE 5 - OVERTIME PAY AND COMPENSATORY TIME

A. Background

The City agreed to withdraw its proposal to change Article 15 with one exception. If the Arbitrator awarded the City's three-platoon plan, the City proposed the appropriate FLSA 7(k) threshold should be 21 days. The Union did not contest this addition to Article 15.

AWARD

The Arbitrator awards that Article 15.2 be changed by adding the following provision:

15.2 The following circumstances will give rise to additional pay, and will be paid in accordance with 15.1 and 15.1.1 above:

- a) Employees who are held over beyond their shift shall be paid time rounded to the next half hour.
- b) Employees who are called back to work outside their regularly scheduled shifts, shall be paid a minimum of two (2) hours or given compensatory time at two (2) times the hours(s) worked.
- c) Employees paid for work outside their regular shift, as described above, will be paid their regular hourly rate, or overtime compensation, depending on how the hours impact the employee's 159 hour threshold in a 21-day period.

ISSUE 6 - VACATIONS

A. Background

Both parties presented proposals to make changes to Article 12 - Vacations. During the course of the hearing, the Union agreed to the City's proposed changes to Article 12.1, Article 12.1.1, and Article 12.2.3(b). These sections of the contract are no longer in dispute. The Union agreed to withdraw its proposal to add language identified as Article 12.2.3(c). The sole remaining issue in dispute is the City's proposal to change Article 12.2.5. This proposal was conditioned on the Arbitrator awarding the City's three-platoon proposal. The Arbitrator awarded the three-platoon system so the City's proposed language regarding vacations will be added to the successor agreement.

B. The Union

See arguments in Issues 1, 2, and 8.

C. The City

See arguments in Issues 1, 2, and 8.

D. Discussion and Findings

The thrust of the City's proposal is to prevent all three officers assigned to a platoon from being on vacation at the same time. The proposal is reasonable and justifiable in order to create continuity of the command staff.

AWARD

The Arbitrator awards the City's proposal to amend Article 12.2.5 to read:

12.2.5 All vacations selected after February 15 will be requested and submitted through proper channels for approval. Vacations cannot be scheduled to create a situation where all three (3) officers on a shift, within each platoon, would be on vacation or absent at the same time.

ISSUE 7 - SHIFT CHANGES

A. Background

Article 17 - Shift Changes, provides as follows:

17.1 Employees shall have the right to exchange shifts with the prior approval of the Fire Chief or his designate when the change does not interfere with the efficient operation of the Fire Department.

17.2 All shift trades must be completed within ninety (90) calendar days either side of the initial trade day and must be approved by both respective Battalion Chiefs or their designate(s). Un. Ex. 51.

The City proposed to add new language which would place several restrictions on the ability of firefighters to trade shifts. The Union proposed to continue current contract language.

B. The City

The City proposes to modify the language in Article 17 to place limits on the practice of shift trades. According to the City, this issue has increased in importance because the Union has filed at least six grievances which are headed for arbitration concerning Article 17. The entire practice of shift trades is unique to the public sector and particularly to fire departments.

The extent of shift trading within the Department has grown to major levels. City Ex. 7.5. Currently, there are no limitations on the number of shift trades which can occur in any given calendar year, nor are there limitations that shift trades must be on a rank-for-rank basis. The City cited examples of where

a firefighter third class was approved to trade for a captain. Allowing a firefighter who has not made it to firefighter first class to serve as an officer is incomprehensible. In addition, the problems stemming from the extent of shift trades are also complicated through the use of sick leave. A number of employees who are otherwise scheduled to complete a shift trade would call in sick. Because of minimum staffing concerns, this required the employer to backfill at an overtime premium for shift coverage.

The City's proposal would limit shift trades to six per year for any bargaining unit employee. The employee would also be limited to one outstanding trade at any given time with certain defined exceptions. Limitations on shift trades are commonplace in the contracts of comparable jurisdictions, as well as in the industry as a whole. City Exs. 7.3 and 7.4.

The City points to its Exhibit 7.5 where the compilation shows there were 134 exchanges of time in 2001, involving 23 employees. Thirteen of the 23 employees participated in six or less time exchanges and accounted for 41 of the 134 trades. The other ten employees were involved in the remaining 93 trades. Given the magnitude of the number of shift changes and problems with its administration, the Department must have the right to review shift trades by someone other than fellow bargaining unit members, which includes the battalion chiefs and captains. The City's proposal should be adopted.

C. The Union

The Union argues the City's proposal significantly alters the status quo by implementing a series of changes to the parties' current practice regarding shift trades. Since the City is seeking to alter the status quo in this instance, the burden is on the City to establish the need to do so, and to establish support for its proposals among the parties' comparators. The Union avers none of the City's proposed alterations to the status quo are supported by the parties' comparators. For instance, none of the comparators prohibit a bargaining unit member from being a participant in multiple future shift changes at the same time. No comparator disallows a shift trade simply because the shift trade relates to a bargaining unit member's outside employment. Nine out of ten comparators selected by the parties in this instance allow their bargaining unit members to engage in an unlimited number of shift trades during the calendar year. Nine out of the parties' comparators do not treat probationary employees differently. Un. Ex. 30. Thus, it is clear the City's proposed alterations to the status quo regarding shift trades are not supported by the ten comparators.

Moreover, the City has also not demonstrated any pressing need to alter the parties' current practice regarding shift trades. The current language has been in the contract, unchanged, since at least 1989. The language already provides the City with enough protection against any unjustified usage of shift trades by a member so that no alterations are needed. The City is permitted to

refuse to approve a trade if the trade "interferes with the efficient operation of the Fire Department." The contract also carries forward a provision that an employee working out-of-classification will not receive out-of-classification pay while on a shift trade. The City's Operating Instructions for the Fire Department also provide additional guidance to the parties regarding the manner in which shift trades should be utilized within the Department. Thus, the Union submits the mechanisms are already in place between the parties to safeguard against the possible misuse of the shift trade system.

D. Discussion and Findings

The Arbitrator was persuaded by the City's argument there is a need for management to attain greater control over shift trades. The testimony and evidence revealed that shift trades in this small Department need to be restricted. The record revealed there were 134 shift trades over the previous year which placed an undue burden on management's ability to run the Department efficiently. Further, the fact that six grievances were recently filed regarding the application of Article 17 reveals there is a justification for change. The Arbitrator also concurs with the City that allowing firefighters who have not attained first class firefighter status to serve as an officer is unacceptable. These trades were approved by fellow bargaining unit members.

The Union's evidence regarding shift trades in the comparators argues against the City proposal, as written. The Arbitrator will modify the language proposed by the City to bring

the contract more in line with the comparators. When these changes are combined with the other contract language and the relevant provision of the Operating Instructions for the Fire Department, the City should be able to manage the shift trades efficiently without creating an undue restraint on a member's ability to trade shifts.

AWARD

The Arbitrator awards that Article 17 - Shift Changes, be modified to read:

17.1 Shift personnel will be allowed eight (8) shift trades per calendar year. Four (4) hours or more is considered a shift trade.

17.2 All shift trades must be completed within ninety (90) calendar days either side of the initial trade day and must be approved by both respective Battalion Chiefs or their designate(s).

17.3 Pay backs not accomplished in accordance with item number two (2) shall be considered lost.

17.4 Family emergencies may be considered an exception to the policy. What constitutes an emergency will be determined by the Chief or Assistant Chief or the shift officer in their absence.

17.5 Shift trades may be denied if the trade conflicts with prearranged or required training.

17.6 The modifications to Article 17 shall become effective January 1, 2003.

ISSUE 8 - BUY-OUT FOR LOSS OF PROMOTIONAL OPPORTUNITIES

A. Background

This is a conditional proposal offered by the Union which would only apply if the Arbitrator awarded the three-platoon system. The Union proposed an additional 1.6% be added to the base wage of bargaining unit members in return for loss of promotional opportunities. The provision would become effective with the implementation of the three-platoon system on January 1, 2003. There is no current contract language on this subject. The City opposes the Union's proposal.

B. The Union

The Union argues the City's proposal for a three-platoon system would not achieve any greater administrative efficiency, but is related to the goal of reducing the number of higher-salaried job positions that exist within the bargaining unit. The corresponding impact would be to increase the number of lower-salaried positions which would exist within the bargaining unit. The Union submits such sweeping changes in the salary structure are not warranted and should not be allowed without any sort of "buy-out" in the event the Arbitrator would award the three-platoon system.

C. The City

The City asserts there is no demonstrated basis for the 1.6% additional increase sought by the Union in the event the Arbitrator would award a three-platoon system. The City also

demonstrated that with the number of anticipated retirements in the next four years, there will be promotional opportunities for bargaining unit members. The City has also proposed to implement the transition to a three-platoon system without any negative financial consequences to employees in that it would maintain salary levels for otherwise affected captains and battalion chiefs.

Under the Union's proposal, all bargaining unit members, including those continuing to receive their captain and battalion chief pay, would be rewarded with an additional 1.6%. The Union's proposal provides every bargaining unit member with a premium in perpetuity, even to the bargaining unit members who have no intent to seek promotions within the Fire Department.

Finally, the City notes the fact bargaining unit members have received in excess of \$105,000 over the last 11 years during which they have not worked at the 48-hour per week level contractually committed to by the parties. City Ex. 8.8. This excess payment the City has made has already provided a windfall to bargaining unit members countering against any claim members have or will suffer financial deprivation due to lost promotional opportunities.

D. Discussion and Findings

The Arbitrator holds there is no merit to this proposal. The language offered by the Union is without precedent. Further, the language would yield an additional increase to all bargaining unit members, even though they were not interested in seeking promotions within the Department. The idea of providing

compensation for the loss of potential promotional opportunities is speculative, at best. Therefore, the Arbitrator concludes the Union's proposal should not become a part of the successor contract.

AWARD

The Arbitrator holds the Union's proposal should not become a part of the successor Collective Bargaining Agreement.

ISSUE 9 - ENTIRE AGREEMENT

A. Background

The contract is silent regarding an entire agreement or what is commonly referred to as a zipper clause. The City proposed new language to read:

ARTICLE 30 - ENTIRE AGREEMENT

30.1 This Agreement is the entire agreement of the parties, terminating all prior agreements, arrangements and practices, and concluding all negotiations during the term of this Agreement, except as provided in Article 29, Supplemental Agreement.

The Union rejects the City's proposed contract language which it asserts would change the status quo.

B. The City

The City argued a zipper clause is necessary to counter a common problem in the Wenatchee Fire Department involving alleged past practices. City Ex. 9.3. According to the City, Chief Tibbs has been burdened with a number of loose arrangements which were developed under former administrations that did not find their way into the Collective Bargaining Agreement or by Memoranda of Understanding. This situation made it very difficult for Chief Tibbs when he took over as chief of the Department to know exactly what practices were in place. In order to avoid future conflicts, the City wishes to establish a defined procedure for incorporating Memoranda of Understanding into the contract. The new language would require the parties to document more thoroughly any Memoranda

of Understanding or practices. There will be no ongoing confusion if the City's proposal is adopted.

C. The Union

The Union takes the position the language proposed by the City would result in a significant waiver of the Union's collective bargaining rights. Further, the zipper clause proposed by the City would stand in stark contrast to what the parties' comparators are doing with regard to zipper clauses.

It is the position of the Union the language proposed by the City goes further than necessary to ensure future Memoranda of Understandings between the parties were clear and uniform, but could be interpreted as a waiver of the Union's right to force the City to bargain over mandatory subjects of bargaining that arose during the term of the contract. By terminating the prevailing rights of the employees, the Union asserts the City's proposed language would fly in the face of what the vast majority of the comparators have done in their collective bargaining agreements. The comparators include specific provisions in their contract which make it clear that all rights and practices of the parties that were in effect at the time the contract was entered into and are not specified in the contract will remain in effect.

The Union submits the City's proposal to waive important legal rights is not necessary and not supported by the parties' comparators. Therefore, the Union requests the Arbitrator deny the City's proposal regarding the zipper clause and maintain the status quo.

D. Discussion and Findings

The Arbitrator concurs with the Union that the City has not provided sufficient evidence to justify the inclusion of its proposed entire agreement language. First, the City's proposal finds no support in the comparator contracts. Second, the Arbitrator, on the basis of this record, was not convinced that the imposition of a zipper clause which could easily be interpreted to mean the Union had waived important bargaining rights should be included in the contract. Third, there is no prevailing rights clause in the current contract which would protect the employees where there were established rights and practices in effect at the time the parties entered into the agreement.

Fourth, the City's concern over the loose way in which arrangements and understandings were reached between the parties is primarily historical. The City can stop this type of arrangement by insisting that written Memoranda of Understanding be entered into to address situations not covered by the contract. By exercising his managerial prerogatives, Chief Tibbs can put a stop to these ill-defined arrangements which purportedly have burdened the current administration.

AWARD

The Arbitrator awards that the City's proposed entire agreement clause shall not become a part of the successor agreement.

ISSUE 10 - SAFETY

A. Background

This issue concerns a minimum staffing proposal presented by the Union. There is no minimum staffing language in the current agreement. However, the management rights clause expressly gives the City the right to "determine the number of personnel to be assigned duty at any time." Article 7. The City argues the Union's proposal should be rejected.

B. The Union

The Union proposes to add a new article, Article 30 - Safety, to the Collective Bargaining Agreement which reads as follows:

30.1 The City shall continue to make reasonable provisions for the safety and health of its employees.

30.2 The City, recognizing the importance of Firefighter safety and the safety of the citizens whom they serve, agrees to provide the following minimum staffing levels at all times.

- 1) a minimum of 7 (seven) line personnel on duty per shift, to include:
 - A) a minimum of 1 Battalion Chief on duty per shift;
 - B) a minimum of 3 (three) line personnel assigned to each engine company; 1 Captain, 1 Engineer, and 1 Firefighter; and
 - C) a minimum of 3 (three) line personnel assigned to each truck

company; 1 Captain, 1 Engineer, and
1 Firefighter.

The Union views this proposal as an attempt to formalize the parties' existing practice regarding staffing that has been in place, unchanged, for many years. The parties' longstanding practice regarding minimum staffing is set forth in the Fire Department's Operating Instructions. The Union is not seeking to alter this practice in any way, but is simply seeking to formalize it somewhat by including language that refers to minimum staffing and describes it for the parties in the Collective Bargaining Agreement. The Union is concerned that the City might, at some future point, reduce its minimum staffing levels. The bottom line is that minimum staffing is an important issue for the Union based on safety concerns for its members.

C. The City

The City opposes the mandatory minimum staffing proposal of the Union for several reasons. The City points to the management rights clause which gives the City the right to determine the number of personnel on duty at any one time. The City does not want to weaken this right in the event some unforeseen circumstances, such as funding, would cause the City to review its staffing levels.

The City also takes the position the Union has pointed to no evidence or problems which would justify adding this language to the contract. The parties have a working practice that recognizes

seven personnel on shift that has functioned well by policy and will continue to function well.

The final argument of the City is based on its three-platoon system proposal which will provide for ten personnel on duty at any given time. According to the City, the three-platoon approach will increase the staffing levels and provide a better strategy for safety than the Union's perpetuation of the four-platoon structure. For all of these reasons, the Union's proposal on minimum staffing levels should be rejected.

D. Discussion and Findings

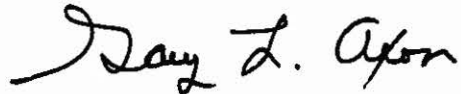
There is no disagreement between the parties about the importance of maintaining safety for firefighters and the citizens they serve. The Union's approach would set the minimum number of personnel on duty by the terms of the Collective Bargaining Agreement. The Arbitrator remains unconvinced the Union has shown a need to fix minimum staffing levels in the Collective Bargaining Agreement.

Moreover, the Arbitrator concurs with the City that determination of minimum staffing levels is a legitimate managerial prerogative to be retained by the City. The management rights article expressly reserves to the City the right to determine staffing levels. Based on the record before this Arbitrator, I am unwilling to change this important management prerogative.

AWARD

The Arbitrator awards that the minimum staffing proposal offered by the Union should not become a part of the successor contract.

Respectfully submitted,



Gary L. Axon
Arbitrator

Dated: August 27, 2002