IN THE MATTER OF

CITY OF ANACORTES

AND

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL NO. 1537

PERC No.: **17039-I-02-0390**

Date Issued: **November 18, 2003**

INTEREST ARBITRATION OPINION AND AWARD

OF

ALAN R. KREBS

Appearances:

CITY OF ANACORTES	**Bruce L. Schroeder**
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL NO. 1537	**W. Mitchell Cogdill**

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OPINION OF THE ARBITRATOR

PROCEDURAL MATTERS

In accordance with RCW 41.56.450, an interest arbitration hearing involving certain uniformed personnel of the City of Anacortes was held in Anacortes, Washington on August 13 and 14, 2003. The parties agreed to waive the statutory provision which calls for an arbitration panel consisting of three members. Instead, as authorized by WAC 391-55-200, the parties agreed to have the matter presented before a single arbitrator. The City of Anacortes was represented by Bruce L. Schroeder of the Summit Law Group PLLC. International Association of Firefighters, Local 1537 was represented by W. Mitchell Cogdill of the law firm Cogdill Nichols Rein Wartelle.

At the hearing, the testimony of witnesses was taken under oath and the parties presented documentary evidence. A court reporter was present, and subsequent to the hearing, a transcript and briefs were submitted to the Arbitrator.

APPLICABLE STATUTORY PROVISIONS

Where certain public employers and their uniformed personnel are unable to reach agreement on new contract terms by means of negotiations and mediation, RCW 41.56.450 calls for interest arbitration to resolve their dispute. The parties agree that RCW 41.56.450 is applicable to the bargaining unit of firefighters involved here.

RCW 41.56.465 sets forth certain criteria which must be considered by an arbitrator in deciding the controversy:

> **RCW 41.56.465 Uniformed personnel--Interest arbitration panel--Determinations--Factors to be considered.** (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) ...
> (ii) For employees listed in RW 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....
>
> * * *

RCW 41.56.430, which is referenced in RCW 41.56.465, sets forth a public policy against strikes by uniformed personnel, and recognizes that there should be an effective alternative means of settling labor disputes involving such groups so as to promote "dedicated and uninterrupted public service."

Arbitrators are generally mindful that interest arbitration is an extension of the bargaining process. They recognize those contract provisions upon which the parties could agree and decide the remaining issues in a manner which would approximate the result which the parties would likely have reached in good faith negotiations considering the statutory criteria.

ISSUES

The Association represents 15 firefighters employed by the City of Anacortes, including six lieutenants and nine firefighter/paramedics. The Association and the City are parties to a collective bargaining agreement which had an expiration date of December 31, 2002. They were unable to reach an agreement on a new contract despite their efforts in negotiations and the assistance of a mediator. In accordance with RCW 41.56.450, the Executive Director of the Washington State Public Employment Relations Commission certified that the parties reached an

impasse on a number of issues relating to 11 articles of their collective bargaining agreement. The issues remaining to be resolved in arbitration relate to the following articles of the contract:

Article 4.	Management Rights
Article 8.	Bargaining Unit Rights
Article 11.	Grievance Procedure
Article 13.	Working Out of Classification
Article 16.	Sick Leave
Article 20.	Workweek
Article 21.	Overtime
Article 22.	Union Activities
Article 24.	Longevity
Article 26.	Health Insurance
Article 30.	Wages

The parties agreed that the new contract should cover the calendar years 2003, 2004, and 2005.

NATURE OF THE EMPLOYER

The City of Anacortes is situated in rural Northwest Washington. It has a population of 15,110 and an assessed valuation of about $1,412,486,984. The City provides fire and advanced life support (ALS) services to the residents of Anacortes. In addition, it provides ALS services only to surrounding areas with an additional population of about 10,000. Approximately 85 percent of the Fire Department's service calls are medical responses. The median years of service worked by bargaining unit members for the City is seven. The City has two fire stations. One station is generally staffed with a lieutenant and two firefighters, the other with a lieutenant and

one firefighter. The City maintains a minimum staffing level of four. The Department also utilizes about 15 volunteers.

COMPARABLE JURISDICTIONS

One of the primary standards set forth in RCW 41.56.465 upon which an interest arbitrator must rely in reaching a decision is a "comparison of the wages, hours, and conditions of employment ... [with those of] like personnel of public fire departments of similar size on the west coast of the United States." While the governing statute requires a comparison with public fire departments of similar size, it does not define how "similar size" is to be determined. In making this determination, interest arbitrators have been constrained by the nature of the statistics which the parties have placed into evidence. The most commonly referenced criteria are the population and assessed valuation of the communities served. Here, the parties agree that the primary considerations for selecting comparable jurisdictions are population and assessed valuation. Recognizing that location is also a significant consideration, they have limited their suggested comparables to fire departments situated in Western Washington. The parties agree that Centralia, Tumwater, Port Angeles, Pierce 16-Key Peninsula, Kitsap 10-North Kitsap Fire and Rescue, and Kitsap 18-Paulsbo are appropriately comparable to City of Anacortes. In addition, the Association proposes Pierce 3-University Place as a comparable jurisdiction.

The City proposes consideration of Oak Harbor and Clallum 3-Sequim.

The Association suggests that the comparable jurisdictions should fall within population and assessed valuation bands of between 60% below and 50% above the population and assessed valuation of the City. The City's proposed band for these criteria would be 50% both above and below that of the City, though it has made an exception for several of the jurisdictions agreed upon during bargaining, which fall slightly outside the parameters which it has proposed.

The Association recognizes that Pierce 3 does not fall within its proposed population band, inasmuch as its population is more than twice as large as the City. The Union urges that Pierce 3 be utilized as a comparator anyway because during negotiations for the previous two contracts, Pierce 3 had been recognized by both parties as a comparable jurisdiction. The City argues that Pierce 3 is no longer comparable in terms of size and thus should not be included in the comparable list. It also maintains that as a bedroom community adjacent to the City of Tacoma, Pierce 3 is dissimilar to Anacortes geographically, demographically, and economically.

I conclude that Pierce 3 is not comparable to Anacortes because it is not even close to falling within the population band proposed by the Union for determining comparable jurisdictions based on size. The fact that the parties

recognized Pierce 3 as a comparable jurisdiction in the past does not bind them forever. The size of jurisdictions change over time. Jurisdictions which are of like size during one set of negotiations may no longer be so years later during another set of negotiations. In any event, the governing statute requires a comparison with fire departments of similar size. Anacortes and Pierce 3 are not of similar size and therefore Pierce 3 is not an appropriate comparator.

The City contends that Oak Harbor and Clallum 3 are similarly situated to Anacortes and should be utilized as comparable departments. The Association agrees that both of these employers fall within the bands for population and assessed valuation which it has proposed for determining comparability. With regard to Clallum 3, the Association relies on the testimony of Lieutenant Jack Kennedy, the Association President. Lt. Kennedy testified that during a previous contract cycle, a major mill had closed down in the Clallum 3 area, and the firefighters there agreed to a voluntary reduction in wages and a freeze in future increases during the term of that contract in order to avoid layoffs. The Association argues that Oak Harbor is not comparable for a number of reasons, including that the union there is not affiliated with the International Association of Firefighters, the bargaining unit has only 8 members, they do not work a 24-hour shift, that department does not employ paramedics, and it has just recently brought on paid personnel and negotiated

their first contract. Lt. Kennedy testified that when the parties agreed upon their last list of comparables in 1997, the City insisted that they not use as a comparator any department that did not provide ALS service. Chief Richard Curtis testified that all of the other proposed comparable departments provide ALS service. Lt. Kennedy testified that the Oak Harbor bargaining unit consists of six firefighters and two support lieutenants, one who is responsible for fire inspections and the other for apparatus maintenance. Lt. Kennedy further testified that the Oak Harbor firefighters work 12-hour shifts, except on Mondays when 14-hour shifts are worked to accommodate training of volunteers. The City responds that Oak Harbor should not be excluded because it lacks ALS capability, but rather the Oak Harbor wage rates should be adjusted by a ten percent premium to better compare with other departments where the positions are firefighter/paramedics. Chief Curtis testified that Oak Harbor is situated geographically close to Anacortes. The City asserts that there is no basis for excluding Oak Harbor because it has different union representation. The City also argues that hearsay testimony about supposed economic circumstances affecting Clallum 3 does not counter the fact that it is comparable to Anacortes in terms of size and demographics. The City presented evidence that whatever economic difficulties encountered years ago by Clallum County, its unemployment rate in 2003 is lower than the rate in Cowlitz County, where Anacortes is located.

I find that Clallum 3 is an appropriate comparator, but Oak Harbor is not. It is unreasonable to exclude Clallum 3 because it had economic difficulties some years ago. It is more significant that currently Clallum 3 falls within the parameters for population and assessed valuation proposed by the Association and the City. The Oak Harbor Fire Department is different from Anacortes and the other comparable departments in two ways which make comparisons of wages and hours difficult. While all the other departments employ firefighter/paramedics, Oak Harbor does not. Moreover, Oak Harbor firefighters do not work 24-hour shifts as do those employed by Anacortes and the comparable jurisdictions. Rather, they work mostly 12-hour shifts. In my view, the fundamental differences between Oak Harbor and the comparable jurisdictions in both the services provided and the schedules worked reduces its usefulness as a comparator such that it should not be included.

The jurisdictions with "like personnel" and of "similar size" which shall be used for purposes of comparison are:

Centralia
Clallum 3
Kitsap 10
Kitsap 18
Pierce 16
Port Angeles
Tumwater

COST OF LIVING

RCW 41.56.465(d) requires consideration of "[t]he average consumer prices for goods and services, commonly known as the cost of living." The Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) increased during 2002 by 1.9% for the Seattle-Tacoma-Bremerton area, and by 0.9% for the period from June 2002 through June 2003. The City established that the top step wages for the City's firefighter/paramedics increased by 63.3% from 1991 through 2002, while the CPI-W (All U.S. Cities) increased by 30.8% during that period. Inasmuch as the governing statute requires arbitrators to consider the cost of living, significant weight shall be given to the relatively modest changes in the cost of living, as well as the fact that over a period of years the firefighter/paramedics have received pay increases which have significantly outpaced the cost of living.

OTHER CONSIDERATIONS

In addition to the specific criteria set forth in RCW 41.56.465(a)-(e), RCW 41.56.465(f) directs the Arbitrator to consider "[s]uch other factors ... that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment." Accordingly the factors discussed below, have been considered.

Ability to Pay

A factor frequently considered by arbitrators, and often raised during contract negotiations, is the ability to pay wage and benefit increases.

The Association argues that the City can afford to fund the Union's proposal. It presented evidence that for the last several years the City has had an ending cash balance exceeding a million dollars, and that is in addition to a reserve fund for unexpected expenses in the amount of $500,000. The Association points out that the City has chosen not to levy a tax that could have raised $45,000 for the Fireman's Pension Fund, and chose instead to use its general fund to pay that obligation. The Association submitted a newspaper article from February 2003, in which the City's mayor is quoted as saying that the City "is in pretty good shape" financially. That article also indicated that the City had budgeted for no new hires. Another article submitted by the Association, indicated that the City's 2003 budget did not provide for a spending increase.

The City contends that it is facing budget problems. The City presented evidence that sales tax revenues for the first half of 2003 are below what they were in 2002. Moreover, state law limits property tax growth to one percent per year unless voters approve a higher tax. Jenifer Troxel, the City's assistant finance director, projects a budget deficit by 2006. The City also presented evidence that Skagit County, in which

Anacortes is located, has a 7.9 percent unemployment rate, which is significantly higher than the state or the nation, and higher than the average of the comparable jurisdictions.

While the City may be in "pretty good shape" financially, as the Mayor has said, it appears that that is the case because of the City's budgetary caution. Significant revenue enhancements from two of its principal revenue sources, the sales tax and the property tax, appear unlikely, at least during the first year of their contract term. This Arbitrator has no way of determining whether the million dollar year-end balance that the City has carried forward in recent years is excessive or prudent. Nevertheless, its existence, in addition to a substantial reserve fund for unexpected expenses, indicates that the City is not currently in a dire economic situation. Still the challenging economic circumstances, which include high unemployment in the County and slow revenue growth, must be kept in mind when fashioning an award.

Turnover

Interest arbitrators are likely to consider whether the compensation package provided to employees is sufficient to retain them and to attract qualified applicants. Since 1994, three firefighters have quit the Department. It appears that the current compensation package is sufficient to attract and retain qualified personnel.

Settlements with Other Bargaining Units

The City urges consideration of the wage increases and insurance packages received by City employees who are not in the firefighter bargaining unit. As I have recognized in other interest arbitration proceedings, consideration of compensation settlements achieved by other groups of employees within the subject jurisdiction is appropriate. From the standpoint of both the employer and the union, the settlements reached with other bargaining units are significant. While those settlements are affected by the particular situation of each individual bargaining unit, still there is an understandable desire by the employer to achieve consistency. From the union's standpoint, it wants to do at least as well for its membership as the other unions have already done. At the bargaining table, the settlements reached by the employer with other unions are likely to be brought up by one side or the other. Other interest arbitrators have given some weight to internal parity. Thus, it is a factor which should be considered by the Arbitrator.

The City reached agreement with its Teamster bargaining unit for wage increases of 0.5 percent for 2003, 1.3 percent for 2004, and 1.3 percent for 2005. The City maintains that it will provide wage increases for its non-represented employees of 1.3 percent for each of these years.

The City's 2000-2003 collective bargaining agreement with its Police Guild provides for a 2.5 percent increase on January

1, 2003 and a 1.5 percent increase on July 1, 2003. A successor agreement has not yet been negotiated. A top step firefighter has a higher monthly salary than does a top step police officer. I do not agree with the Association that a comparison of the wages between the firefighters and the police should focus on the hourly wage. Police do not work 24-hour shifts which include time for recreation and sleeping. In these circumstances, a comparison of the hourly wages between firefighters and police officers is not meaningful. Between 1998 and 2002, the monthly wages of police officers and firefighters increased by about the same percentage.

ARTICLE 4 – MANAGEMENT RIGHTS

1. Reserved Rights

Section 4(a) of the expired contract provides:

> The Union recognizes the prerogatives of the City to operate and manage its affairs in all respects in accordance with its responsibilities and powers of authority subject to the provisions of this Agreement, and applicable law.

The City proposes to add the following to Article 4:

> The direction of its working force and operations are vested exclusively in the Employer. This shall include, but not be limited to the right to: (1) direct employees; (b) hire, promote, transfer, assign, retain employees; (c) for just cause to suspend, demote, discipline, and discharge employees; (d) maintain the efficiency of the operation entrusted to the Employer; (e) determine the methods, means, and personnel by which such operations are to be conducted and the hours of operation.

Chief Curtis explained that the City wants this new language added to the contract because other contracts contain similar provisions, and this language would "clarify what is it that we are trying to do." Chief Curtis further testified that he has not had any problems managing the department under the existing contract language. The comparable jurisdictions as well as the City's contracts with its other unions all contain language which spell out certain reserved management rights. All of these provisions differ to some extent with the language proposed by the City, though there are many similarities. The City argues that in addition to bringing its contract in line with the contracts of the comparators and the City's other unions, the City's proposal is consistent with inherent management rights recognized by the Public Employment Relations Commission.

The Union argues that Section 4(a) already provides the City with sweeping powers to operate and manage its affairs, and the City has exercised these rights without problem or question. The Union maintains that the management rights provisions in the comparator contracts are generally not as broad as the City's proposal. The Association fears that the City will rely on the new language to make unilateral changes.

I conclude that there are insufficient reasons to order the changes proposed by the City. There just does not appear to be any need for the additional language in view of Chief Curtis' testimony that during his seven years as head of the department

he has not experienced any problems with the current language. Moreover, he could not offer any convincing justification for adding the new language.

2. Layoff

Section 4(d) of the expired contract provides that "[i]n the case of personnel reduction, the employee with the least seniority shall be laid off first." The City proposes modifying this language to provide that "the employee with the least classification seniority in the classification slated for layoff shall be laid off first."

Chief Curtis testified that the Department wants the ability to lay off based on classification for the operational efficiency of the Department. He further testified that if the City decides in the future to hire firefighters/EMTs, he would want to be able to retain the firefighter/paramedics in order to protect the revenue from the ambulance service.

Lt. Kennedy testified that the current language has been in the contract since 1980. He testified that the effect of the City's proposal is that a very senior employee like himself, who was recently promoted to lieutenant, could be laid off while a firefighter with one year of experience would stay with the department.

The City argues that the current language is ambiguous since it does not define how seniority is applied. The City contends that the language should be clarified to provide that in the

event of a layoff it would be able to make the decisions regarding which classifications to cut and which to retain. The Union responds that there has never been a layoff, and none is anticipated. It argues that any speculative benefit to be gained by the change is greatly outweighed by potential harm to individual employees.

I am not persuaded that a change in Section 4(d) is appropriate. The City has not suggested that a change in the layoff procedures is warranted based on the practice of the comparable departments. The City's proposal could lead to a harsh result where a newly promoted lieutenant is laid off rather than returned to his former firefighter/paramedic position, while a recently hired firefighter/paramedic is retained. In the event that the City decides to create a firefighter/EMT classification in the future, the parties at that time can negotiate the ramifications with regard to layoff.

3. Student Volunteer Program

The City proposes to add the following reserved management right to Article 4:

> The right to establish student volunteer programs.

During 1998, the City implemented a student volunteer program, after denying the Association's request to bargain regarding that decision. Thereafter, the Association filed an unfair labor practice charge with the Public Employment Relations Commission alleging that the City unlawfully refused to bargain.

The Commission decided that the City did commit an unfair labor practice by refusing to bargain regarding a decision which resulted in the transfer of bargaining unit work from firefighters to student volunteers. The City was ordered to terminate the student volunteer program, to reimburse the firefighters for their lost overtime opportunities, and to bargain in good faith prior to implementing any changes regarding mandatory subjects of bargaining.

Chief Curtis testified that the City has never proposed to bargain the decision to implement a student volunteer program. He testified that it would be helpful to have student volunteers so that they could be trained and add some additional helping hands. He testified that the City's proposal would give it the right to establish such a program without bargaining.

The City contends that it should have the prerogative to form a student volunteer program in the future in order to enhance its ability to recruit volunteer firefighters, and thus provide better service. The Association responds that it would be unfair to require a forced waiver of its right to bargain regarding the implementation of a student volunteer program.

I conclude that there is insufficient basis to exempt the student volunteer program from the bargaining requirement. After a lengthy, and presumably costly, legal contest, a state agency determined that the City must bargain regarding the decision to implement a student volunteer program. The City could neither

reasonably expect the Association to thereafter waive the right which it had fought so hard to preserve, nor to have an interest arbitrator effectively negate the state agency determination that the City must bargain the decision.

ARTICLE 8 – BARGAINING RIGHTS

Article 8 of the expired contract provides:

> (a) There shall be no unilateral changes in wages, hours, or working conditions.
>
> (b) Any changes in the aforementioned shall be made pursuant to the collective bargaining laws of the State of Washington as administered by the Public Employment Relations Commission.
>
> (c) This article includes provisions of policies or standard operating procedures which affect wages, hours, and/or working conditions not otherwise addressed in this agreement.

The City has proposed changing Article 8 to read:

> There shall be no unilateral changes in wages, hours, or working conditions, except as provided by RCW 41.56 or provisions of this agreement.

The City asserts that its purpose is to prevent potential confusion by making it clear that, to the extent that another provision in the parties' agreement gives the City the right to take action unilaterally, that provision will not conflict with Article 8. The City also asserts that it wants to make clear that the City can make unilateral changes where the right to make such changes is granted by law. The Union responds that the fact that the language has been in existence for several years, combined with its concern about unilateral adoption of policies

or standard operating procedures militates toward the non-inclusion of the City's proposed language.

No change shall be ordered with regard to Article 8. There is no support in the record for the City's position that the language needs to be clarified. No evidence was presented that Article 8 has adversely affected management of the operations. Thus, the City has not established a need for a change to the previously bargained language.

ARTICLE 11 – GRIEVANCE

Article 11 describes the parties' grievance procedure. Steps 3, 4, and 5 of that procedure read:

> Step 3: If the grievance is not settled in Step #2, the grievant may submit the grievance within ten (10) business days to the Mayor who shall within ten (10) business days render a decision.
>
> Step 4: If the grievance is not settled at this point, by mutual agreement the Parties may request the services of a mediator prior to implementing Step #5. Timelines in the Step procedures shall be modified to allow the mediation process.
>
> Step 5: If the grievance is not settled in Step #3 or #4, the grievant may submit the grievance to Arbitration. The grievant shall within fifteen (15) business days of receipt of the Mayor's decision notify the employer in writing of intent to arbitrate.

The City proposes to change Steps 4 and 5 to read:

> Step 4: If the grievance is not settled at this point, the Parties have five (5) business days to decide whether to submit the grievance to mediation. If the Parties do not mutually agree to use

mediation, the process shall continue to Step #5. Timelines in the Step procedures shall be modified to allow the mediation process.

Step 5: The Union shall within fifteen (15) business days following Step #4 notify the employer in writing of intent to arbitrate.

In addition, the City proposes to correct a grammatical error in the section of Article 11 which deals with arbitration. A sentence begins "Upon the receipt the list of requested arbitrators,..." The City proposes amending that to read "Upon receipt of the list of requested arbitrators."

The City argues that it should be specified that the parties have five business days to decide whether to submit a grievance to mediation in order to prevent a potential stalling point in a procedure that is otherwise designed to move a grievance relatively quickly through the steps. The City asserts that the current language neither places a limit on how long a party may take to decide whether it will agree to mediation, nor does it specify how much time the Union has to communicate an intent to arbitrate after an unsuccessful mediation effort. The Union responds that the City's proposal does not provide enough time for the Union to decide whether it wants to submit the dispute to grievance mediation.

The only changes to Article 11 which shall be ordered is to change in Step 5 the word "grievant" to "union," and to correct the grammatical error in the arbitration section. The Union indicates that it has no objection to these changes. The City

has not demonstrated a need to change the timelines with regard to mediation. There have been no apparent problems in the application of the grievance procedure. Existing contract language requires that the Union request arbitration within 15 business days of the City's step 3 decision. During that period, the parties may agree to mediate the dispute in accordance with step 4. I am not convinced that the process would be improved if, within the 15 working day period, the parties were limited to a 5 working day period to request mediation. If the parties do not mutually agree to mediation, then the 15 working day period for requesting arbitration applies. Thus, I do not agree that the City's proposed language is needed to avoid a potential delay in the grievance procedure.

ARTICLE 13 – WORKING OUT OF CLASSIFICATION

Article 13 of the expired contract provides:

> If an employee is temporarily assigned in writing by the Fire Chief or his designee to a higher-paid classification for a minimum of eight (8) hours, the employee shall receive a three step increase over the employee's existing base pay....

For many years, the City has followed an unwritten practice of filling an absent lieutenant's position with the most senior firefighter/paramedic on shift. The City proposes to change Article 13 by adding a sentence at the beginning and by editing the beginning of the next sentence:

> The highest-ranking employees on a promotional eligibility list for Lieutenant shall be selected for

> upgrade positions first, then senior employees not on the eligibility list last. When an employee is temporarily assigned in writing by the Fire Chief or the Chief's designee ...

The City maintains that it seeks to change the practice in order to use opportunities to work out of classification as on-the-job training for individuals who have successfully passed the City's test for promotion to lieutenant, and thus who someday may be selected to fill a lieutenant position on a regular basis. The Union objects to the change on the basis that there is no training offered to prepare individuals for an upgrade, and therefore the person who has the most experience would be more suited for the upgraded position. Lt. Kennedy testified that there are some employees who have not taken the lieutenant's exam because they were unaware that being on the list would be a requirement for being upgraded. During bargaining, the City offered to meet this concern by delaying implementation of its proposal until a new promotion list was established.

In this instance, the City's argument is more persuasive. In the expired contract, Article 13 merely refers to the Fire Chief making the assignment to a higher-paid classification. There is no indication that the parties have ever specifically negotiated a requirement that the senior employee on shift will receive the temporary upgrade to lieutenant. In the past, the Chief has followed a practice of upgrading the senior firefighter/paramedic on shift as needed. The City would now like to change that practice with a new provision specifically

calling for the assignment of the highest ranking employee on the promotion eligibility list to fill in as lieutenant. It would appear to be more efficient to upgrade to the lieutenant's position someone who has successfully passed the promotion test rather than rely on seniority. The person on the promotion register has two advantages over the senior employee. First, that employee has scored well on the promotion exam, and therefore has demonstrated some level of qualification. Second, it makes sense to provide on the job experience to the employee on the promotion register since that employee is eligible for a permanent promotion if a vacancy arises. The new procedure shall be made effective when the current promotion eligibility list expires and a new list is established. Until then, the past practice of assigning the senior employee will remain in effect. Thus, senior employees who have not before taken that exam based on the assumption that they will still receive upgrade opportunities, will be able to establish their eligibility. Based on this concern, during bargaining, the City offered to delay implementation of the new procedure. Therefore, the City's proposal will be adopted with the addition of the following phrase, at its beginning:

> Beginning when the next promotion test is offered and a new promotion list established following ratification of this Agreement,...

ARTICLE 16 – SICK LEAVE

Article 16(d) of the expired contract provides:

> With the exception of the above, sick leave is intended for actual illness or injury to an employee or dependent child. If there is adequate documentation of an employee abusing sick leave benefits, the City may require verification of an illness/injury from the employee's physician. The Union does not condone abuse of sick leave. Should a concern over perceived sick leave abuse arise, the Union and the Employer agree to meet and confer on the problem and the solution.

The City proposes to amend the first two sentences of Section 16(d) to read:

> With the exception of the above, sick leave is intended for actual illness or injury to an employee or dependent child or for care for a spouse, parent, parent-in-law, or grandparent who has a serious health or emergency condition. If there is reasonable suspicion of an employee abusing sick leave benefits, the City may require verification of an illness/injury from the employee's physician.

The Union agrees with the change to the first sentence, but suggests that the related statute be referenced. The Union objects to the insertion of a "reasonable suspicion" test for requiring verification with a doctor's note.

Chief Curtis testified that he does not understand what "adequate documentation" means, and that a "reasonable suspicion" test would be more customary. He testified that City policy requires firefighters to provide a doctor's note when they are off for three shifts. Chief Curtis testified that he is concerned about the situation where a firefighter is on sick leave, has not been off for three shifts, and is seen out and

about. He testified that he has had problems administering the contract with regard to one employee who he suspected of abusing sick leave, though he did not explain that situation in any more detail. Emily Schuh, the City's human resources director, testified that she is concerned that "adequate documentation" means that "reams of documentation" would be needed before the City could discuss with an employee any concerns it had regarding use of sick leave. However, Ms. Schuh also testified that currently she can determine when to ask a firefighter for documentation concerning an illness. Lt. Kennedy testified that currently, if the Department suspects that firefighters are on sick leave inappropriately, such as when they are seen playing golf or working at another location, then such employees may be requested to provide documentation of their illness. Lt. Kennedy testified that while the Union was initially sympathetic to the City's proposals regarding sick leave abuse, that changed when during bargaining, some firefighters were put in intimidating situations by being questioned about their use of leave.

The City contends that the current contract language and City policy leave a potential gap in situations where the City has reason to suspect sick leave abuse, but individual absences are of short duration. The City questions whether it would be barred from seeking medical verification because its evidence of abuse is not in paper form. The City maintains that the "reasonable suspicion" threshold adequately protects firefighters

from being asked for doctor's verification for short-term absences due to illness or sickness, by ensuring that the City must first have a basis for making the request that an arbitrator would find reasonable. The Union maintains that the City already enjoys under the current language the right to obtain sufficient documentation to make a knowing decision relevant to alleged abuse of sick leave. The Union observes that testimony established that current language allows the City to require a firefighter to provide a doctor's slip for a day off. The Union argues that "[t]here is no reason to change the language to give the City a right they already enjoy under the current language if in giving the City the right, it may also be given the right to unfairly investigate Union members."

The changes to Article 16 requested by the City shall be awarded. There does not appear to be a substantive difference between the parties. The Union considers that the City already has the right to obtain a doctor's slip if it is needed to make an informed decision regarding a possible abuse of sick leave. The current language is ambiguous. The requirement of "adequate documentation" of sick leave abuse could be interpreted to mean that there must be some type of written proof of sick leave abuse, before a doctor's verification is sought. Both sides agree that is not the intent. Substituting the phrase "reasonable suspicion" for "adequate documentation" would reduce confusion and ambiguity, and would better reflect the intent of

the parties. The Union's concern appears to be that its members would be unfairly investigated. The clarification of this contract language should not make any difference in whether or not employees may be unfairly investigated. There is no disagreement about adding to the first sentence of Section 16(d) sick leave coverage "for care for a spouse, parent, parent-in-law, or grandparent who has a serious health or everyday condition." While the Union has suggested a specific reference to a statute in the first sentence of Section 16(d), it offered no evidence or argument why such a change is needed.

ARTICLE 20 – WORKWEEK

Article 20 of the expired contract reads:

> 24-Hour shift employees shall work the modified Detroit 56-hour work schedule, consisting of 53 regular hours/week with three additional hours paid at the overtime rate.

The Union proposes to add the following to the existing language:

> ...The average hours worked shall be reduced by the use of one 24 hour Kelly day off with pay for each 27 day cycle. Kelly days off shall be considered actual hours worked for purposes of FLSA overtime and benefit calculations. An employee scheduled for a Kelly day shall not preclude another employee from taking vacation time off.

The City would modify Article 20 to read:

> 24-Hour shift employees shall work the modified Detroit 56-hour work schedule based on a 27 day, 7k cycle for FLSA purposes, and consisting of an average of 53 regular hours/week with three additional hours paid at the overtime rate.

The Union asserts that the effect of its proposal would be to reduce the workweek from 56 hours to 49.875 hours by the addition of 13 Kelly Days per year.[1] The Union maintains that the Anacortes firefighters work substantially more hours than any of the comparators except Kitsap 10. The Union provided evidence that workweeks of firefighters in the comparable jurisdictions are as follows:

	Gross Hours	Net Hours (Gross hours less vacations)
Centralia	42	39.23
Clallum 3	53	49.54
Kitsap 10	56	51.38
Kitsap 18	49.88	46.45
Pierce 16	49.88	46.65
Port Angeles	53	48.15
Tumwater	49.90	46.21
Average	50.52	46.80
Anacortes	56	51.85

Lt. Kennedy testified that the firefighters frequently respond to calls at night, and it is not safe if they do not get adequate rest. He testified that from January 1 through August 12, 2003, individual bargaining unit members had worked eighteen double shifts, nine triple shifts, and one quadruple shift. He testified that it is dangerous to work such back-to-back shifts because the lack of sleep affects reaction time and the thinking process. He testified that with the addition of Kelly days, employees would not be working as many consecutive shifts. Lt. Kennedy testified that the firefighters call volume

[1] The Union proposal to have "one 24-hour Kelly day off with pay for each 27 day cycle" would actually require 13.5 Kelly days off per year since 365/27=13.5.

has increased by 89% since 1992, and in the last few years, they have assumed the new duty of performing fire inspections. The Union would accept the City's proposed language change provided that the Union's proposed hours reduction is adopted.

The City asserts that its proposed language change is intended to clarify what is meant by "the modified Detroit 56-hour work schedule," and it accurately reflects the City's current practice. The City argues that a reduction in hours is not warranted, given the Fire Department's relatively light call volume and the guaranteed overtime which firefighters receive. The City maintains that in exchange for working more hours than the comparators, the parties agreed that firefighters would receive 12 hours of guaranteed overtime for each 27-day cycle, even when they have received time off such that their actual hours worked do not reach the federally mandated overtime threshold. The City argues that the Union now seeks to vitiate that deal by reducing the hours worked while keeping the guaranteed overtime payments. The City denies that the infrequent back-to-back shifts worked by firefighters compromised safety. The City points out that for the most part, firefighters may rest or sleep during their shift between 5:00 p.m. and 8:00 a.m. It presented evidence that from 2000 through 2002, firefighters in the comparable departments responded to an average of 2399 calls per year, while Anacortes firefighters responded to 1909 calls, 25.7% less. As Lt. Kennedy acknowledged

in his testimony, Anacortes firefighters, on average, respond to 5.42 calls per shift. That is divided between two stations, so each station would average two to three responses per 24-hour shift. The City asserts that in any event, the Union's proposal would not impact safety by reducing the number of back-to-back shifts worked, since the same shifts would likely be worked anyway, but on an overtime basis. Both the City and the Union recognize that the Union's hours proposal would have a significant cost in either overtime or new hires. The City would add to these costs the lost productivity resulting from fewer employees on duty. The City further argues that the Union has failed to meet its burden of providing a fully developed proposal. In this regard, Lt. Kennedy testified that the Union never proposed how Kelly days were to be scheduled, though he indicated that the Union's "impression" was that employees would be allowed to schedule their own Kelly days. The City maintains that it would be inconsistent with the parties' obligation to engage in good faith bargaining to reward a party which has failed to provide the details of its proposals and work them through at the bargaining table.

No change shall be awarded with regard to Article 20. The current language has been in effect for many years, without any indication of any confusion or dispute regarding its application. Therefore, there does not appear to be any need to add additional language to clarify it as the City proposes, over the Union's

objection. The Union has presented an unrealistic proposal. Article 20 of the expired contract contains a guarantee of three hours of overtime pay for bargaining unit members. This is a significant benefit for employees inasmuch as it is payable even when employees take leave during the week and do not actually work overtime. Since this provision is inserted in the workweek provision, it is likely that this benefit was negotiated in the context of employees working a 56-hour workweek. When firefighters actually work a 56-hour week, they are, by law, entitled to three hours of overtime. The Union here is demanding that it retain three hours of overtime at the same time that its workweek is reduced to a level where federal law would not require that any overtime be paid. They have proposed to do this by considering Kelly days off as "actual hours worked." The Union has made no suggestion to the Arbitrator that a reduction in its workweek is such a priority that it would be willing to suffer the reduction in pay which would result from the diminution or elimination of its existing overtime benefit. It would be unreasonable to require the City to continue paying an overtime benefit at the same time that the reason for that overtime no longer exists. It is recognized that this bargaining unit does work a longer workweek than do their counterparts employed by the comparable departments. On the other hand, as will be discussed further in the wage section of this Award, the parties have negotiated a higher annual salary, including the

guaranteed overtime, than the average received by firefighters in those other departments. That higher salary is justified based on the additional hours worked by this bargaining unit. However, the Union cannot expect to retain guaranteed overtime pay at the same time that its hours are reduced to the extent that overtime pay would not otherwise be required. Granting the Union's proposal would give the Union an overtime benefit not provided by any of the comparators. Maintaining that benefit while reducing hours worked would be unreasonably costly to the City.

The evidence presented does not establish that a 56-hour workweek is inherently unsafe. Many fire departments have worked such a schedule. No firefighter testified regarding specific unsafe situations caused by the current schedule, other than that back-to-back shifts were occasionally worked. Based on the evidence presented, I am not convinced that in this department, with its rate of calls, that a 56-hour workweek is inherently unsafe.

In the circumstances presented, neither party has sufficiently established that its proposal to modify Article 20 is justified.

ARTICLE 21 - OVERTIME

The first sentence of Section 21(a) of the expired contract provides:

> (a) Overtime. If an employee is held over from his assigned shift in a crucial situation, he shall be

> paid overtime as defined in Article 23 only if he works sixteen (16) minutes or more beyond his regular shift. If this requirement is met, he shall be paid a one (1) hour minimum at his overtime rate, or for the actual time worked, whichever is greater....

The City proposes to change this language to read:

> (a) Overtime. All overtime assigned shall be paid for each part of an hour at 15 minutes increments....

The City also proposes to make minor editorial changes to Article 21(c), changing "his or her" to "their," and "he or she" to "the employee." The Union has not expressed any objection to these changes to Section 21(c).

The City argues that its proposal is supported by the practices in comparable jurisdictions. Three of the comparable departments provide overtime in 1/4 hour increments, two in 1/2 hour increments, and two provide it in one hour increments. The City maintains that its proposal serves to more closely link the overtime compensation with the actual time worked and strikes a fair balance between compensating employees for the inconvenience of holdover and the City's need to conserve scarce resources.

The Union relies on the testimony of Lt. Kennedy, who testified that the language which the City proposes to remove has been in effect since 1980. Lt. Kennedy further testified that being held over can be a major disruption to the firefighters, who may have family responsibilities. Relying on Chief Curtis' testimony that only four or five employees are held over in a given month, the Union argues that the City has a low cost for

this benefit, when measured against the social cost to the firefighters who are held over.

No change shall be awarded regarding Article 21, except for insignificant editorial changes upon which the parties have agreed. The existing language has been in effect for many years. It has not been a costly benefit for the City. It provides a modest amount of increased compensation for the inconvenience of being required to work beyond the end of a scheduled shift. While two of the comparable jurisdictions offer a similar benefit, the other comparators provide less costly ones. However, since most of the comparators have a shorter average workweek, working overtime may be considered more onerous for this bargaining unit. I conclude that there is insufficient basis for the diminution of the existing overtime benefit.

ARTICLE 22 – UNION ACTIVITIES

Section 22.2 of the expired contract provides:

> SECTION 2 The City agrees to allow time off with pay for employees who are elected Union representatives and who are conducting business vital to the Union members, provided prior notification to the Fire Chief or his designee has been given and minimum staffing levels are maintained, so as not to incur a vacancy requiring overtime staffing. This will apply when a Union representative has the opportunity to attend any conferences, conventions, or seminars sponsored by the International Association of Fire Fighters or the Washington State Council of Fire Fighters. The maximum allowable leave under this section shall be 144 hours per year.

Lt. Kennedy testified that the practice under this provision has been for the Union to request time off from Chief Curtis. Lt. Kennedy agreed in his testimony that the purpose of this request was so that a determination could be made that adequate staffing levels are available and that an overtime situation would not result.

The City proposes that Section 22.2 be amended to read:

> SECTION 2 The City agrees to allow time off with pay for employees who are elected Union representatives and who are conducting business vital to the Union members, provided prior approval to the Fire Chief or his designee has been given and minimum staffing levels are maintained, so as not to incur a vacancy requiring overtime staffing. The maximum allowable leave under this section shall be 144 hours per year for all union officers.

The City proposes eliminating the reference to "conferences, conventions or seminars" because, in its view, this provision is illegal. The City bases this contention on a decision by an examiner of the Washington Public Employment Relations Commission (PERC) in City of Burlington, Decision 5842 (PECB, 1997). The examiner concluded that the union committed an unfair labor practice by proposing an illegal subject of bargaining during negotiations for a collective bargaining agreement. In that case, the contract proposal in dispute would have provided a new benefit of "40 hours of paid leave to the Union president or his designee for Guild business such as attending labor conventions, conferences, or seminars..." The Union responds that the case at hand is different because here the City is proposing a change in

the current language. Lt. Kennedy testified that the same examiner who wrote the Burlington Decision, later served as mediator for the parties' 1997 contract. He testified that during the course of that mediation, the examiner brokered an agreement on the current language of Section 22.2. The Union argues that the Chief's approval for time off incident to Union business, would be an interference with the bargaining unit.

It shall be awarded that the current language of Section 22.2 be retained. In urging modification of the requirements for taking Union leave set forth in Section 22.2, the City relies primarily on one decision by a PERC examiner. There is no evidence that this decision by the examiner was appealed to the Commission. Moreover, shortly after that decision was issued that same examiner served as a mediator for the parties here and assisted them in reaching agreement on the language now at issue. In these circumstances, I am not prepared to find that the existing contract language is illegal. There is a procedure that should have been followed if the City wanted to remove an allegedly illegal provision from the Collective Bargaining Agreement. The City should have insisted during bargaining that the offending language be removed. If the Union resisted, the City could then have filed an unfair labor practice charge for resolution by the Public Employment Relations Commission. In that situation, the Commission would not have certified the Union leave issue for interest arbitration until it resolved whether or

not the Union was illegally insisting upon inclusion of the provision.

There is insufficient reason to change the existing language in order to specifically provide for approval of Union leave by the Fire Chief. The Fire Chief may already disapprove a leave request which does not meet the requirements described in this Section. The fact that the provision contains certain requirements which must be met in order for the City "to allow time off with pay" for Union leave, implies that such leave may be rejected if those requirements are not met.

ARTICLE 24 – LONGEVITY

Article 24 of the expired contract provides:

> The City is favorable towards the principle and approves the longevity as part of the salary schedule and such principle shall be applied in the adoption of the Fire Department budget. Each bargaining unit employee shall be paid at the rate of two dollars ($2.00) per year of service per month. Longevity is to be added to the base pay regardless of rank or position in the Fire Department. Longevity is to start after five (5) years of service and shall run through the twentieth (20th) year. An employee who exceeds twenty (20) years of employment shall receive longevity based upon twenty (20) years.

The City proposes to eliminate the first sentence of Article 24. The City reasons that this introductory sentence adds nothing of substance to the parties' agreement and the City should not be required to agree to an editorial comment about the merits of longevity. The Union recognizes that there is no similar language in comparable contracts and that removing it is

not a money issue. The Union relies on Lt. Kennedy's testimony that the sentence has been in place since at least 1974 and that removing it would be an affront to the firefighters. The Union argues that there is no rational reason for removing it form the contract.

It shall be ordered that the first sentence of Article 24 be deleted. It adds nothing of substance to the agreement, but only is a statement of the City's general view of longevity. Apparently, that was accurate many years ago when it was written, but would present an inaccurate view of the City's position if allowed to remain in the agreement.

ARTICLE 26 – HEALTH INSURANCE

The expired contract provides for the City to pay a maximum of $550 per month for health care for each employee, with employees receiving a dental plan, an orthodontia plan, a vision plan, and a choice of either Group Health or Regence Plan A for their medical plan. The City proposes the following:

> The City shall pay the actual premium cost of the amounts below, whichever is less, for such combined health and welfare insurance coverage for each participating employees and their eligible dependents. [*sic*] Employees are able to choose between two insurance carriers (a PPO Plan and a Group Health Plan), both offering $10 copay plans.
>
> | | |
> |---|---|
> | Upon ratification of the Contract | $575.00 per month |
> | January 1, 2004 | $605.00 per month |
> | January 1, 2005 | $635.00 per month |

The Union proposes the following language:

> The Employer agrees to pay one [*sic*] 100% (one hundred percent) of the premiums for employees, spouse and dependent children to maintain the present level of benefits in the current medical, dental, orthodontia, vision, and chiropractor insurance coverage.
>
> The employer agrees that prior to implementing any changes in the present coverage's or existing levels of benefits they shall meet and negotiate with the Union.
>
> Should any state or federal legislation be adopted affecting health care benefits, the current level of benefits provided by Employer shall be maintained through the term of the agreement provided they meet the minimum statutory requirements.

Premium costs for health insurance have been rising sharply in recent years. The City presented evidence that its insurance premiums have risen over 50% during the past four years. The City's insurance plans are administered by the Association of Washington Cities. Carol Wilmes is that organization's program coordinator for the offered health plans. Ms. Wilmes testified that industry projections are that insurance premiums will increase by between 15% to 20% each year for the next few years. Ms. Wilmes testified that the Association of Washington Cities offers three Regence plans (A, B, and a PPO) and two Group Health Plans. Regence Plan A is the most expensive of the plans. The City's other employee groups, those represented by the Police Guild and the Teamsters as well as its non-represented employees, all are covered by the less expensive Regence PPO Plan.

Ms. Wilmes observed that since 1995, cities participating in Regence Plan A have decreased by about two percent, while the percentage using the PPO plan has increased. City Human Resource Director Schuh testified that currently, the Union proposal for the City to pay the entire cost for health insurance would cost $760 per employee monthly. The current monthly cost to the City for insurance for its other employee groups is $605. Ms. Schuh testified that included in the higher insurance costs for its firefighters are more costly dental, orthodontia, and vision plans than those provided to the City's other employee groups.

For some years, the City's contracts with its firefighter bargaining unit have included a cap on the monthly premium amount that the City must pay. Lt. Kennedy testified that until 2000, the insurance premiums remained under the cap. He testified that by 2002, when the premiums greatly increased, insurance costs became quite a burden on the firefighters. Currently, bargaining unit members pay the difference between the $760.70 monthly premium for their insurance and the $550 paid by the City.

The $760.70 monthly premium allocated for each employee is not the actual cost to the City for a particular employee. Rather, it reflects an average cost for each employee. The City pays a lower premium for a single firefighter than for one with a spouse, and a lower premium for a firefighter with spouse, than for a firefighter with spouse and dependents. In this bargaining unit, 5 out of 15 firefighters have insurance covering a spouse

and two or more dependents, the situation with the highest insurance cost to the City. The cost to the City of health insurance for a family of four or more is almost three times greater than its cost for a single firefighter. The City divides its total insurance bill by the number of firefighters, and all firefighters pay the same amount toward premiums above the City's cap, regardless of whether a firefighter is single or has a family. Thus, a firefighter with no dependent coverage subsidizes the higher premium rates of firefighters with dependents, and those who choose the less expensive Group Health Plan subsidize those who choose the more expensive Regence Plan A.

The Association argues that its proposal is justified based on the comparability data which it presented. It presented evidence that the comparable jurisdictions pay an average of $10,376 per year for firefighters with a spouse and two dependents, compared with $6,600 which is currently paid by the City.

The City argues that its proposal is fair in light of the economic climate, recent and anticipated increases in the costs of health care premiums, and internal and state-wide comparability data. The City maintains that the Union's proposal is out of step with the trends in employer-provided health benefits, incompatible with the budgetary realities facing the City, and inconsistent with the benefits provided to other City

employees. The City asserts that it did not include health care benefits in its comparability analysis because the many possible variations in health care options make it difficult to ensure that one is comparing apples to apples. The City argues that the Union's comparability data is flawed because it compares what it would cost the comparable employer to provide health insurance at the agreed contribution level for an employee, spouse, and two children. Noting that only one-third of the City's firefighters use this most expensive benefit level, the City maintains that the Union's assumption overstates the amounts of the health care contributions by the comparable employers.

I do not agree with the City's position that health care benefits cannot be reasonably compared because different employers offer different health plans with different benefits. This Arbitrator, as well as other arbitrators, have in fact given significant weight to a comparison of the costs of health insurance. However, the City is also correct that the comparability data provided by the Union is flawed. The comparable departments' costs for single firefighters without a spouse or dependents is a fraction of their costs for a firefighter with a spouse and two dependents. None of the comparable jurisdictions average the cost of health insurance in order to calculate the amount of insurance premiums it would cover for an individual employee. Here, the $550 that the City is currently paying out monthly for each employee is

substantially below the amount that the comparable jurisdictions are paying out for a family of four. However, it is most likely more than the cost to the comparable jurisdictions for health insurance for single firefighters. The Union, by making no attempt in the comparability data which it provided to correct this difference, has unreasonably inflated the actual difference in health insurance costs between the City and the comparators.

An increase in the amount of the City's contributions for health insurance premiums shall be awarded to $605 in 2003, $665 in 2004, and $725 in 2005. This award is based on the following considerations. The parties' bargaining history reflects an acceptance of a cap on the City's payment of insurance premiums. Health insurance premiums are increasing rapidly. With the City facing challenging economic circumstances, it is reasonable for employees to share to some extent in the cost of these increases. The increases awarded will elevate the City's level of payment of health insurance premiums for its firefighters to the level of its police bargaining unit in the first year of the new contract. While the increases awarded are quite substantial, at or approaching double digit percentages, still, based on the evidence presented by the City, it appears that insurance premiums will increase at a significantly higher rate. If these projections are accurate, bargaining unit members will suffer a significant increase in their cost for health insurance premiums in the second and third years of the Agreement. There shall be

no change awarded in the nature of the health plans provided. The City has not contended that these health plans are out of line with those provided by the comparable departments. While these health plans are more costly than those provided to other employee groups working for the City, there is insufficient reason for changing the firefighter's existing plans, particularly in view of the cost sharing required of the firefighters. The substantial increased cost for health insurance which will result from this award, shall be a significant consideration in the determination of an appropriate wage increase.

The Union has offered no evidence or argument in support of its proposal to add to Article 26 new paragraphs relating to negotiating benefit changes and to new legislation. Those proposals shall not be adopted.

ARTICLE 30 – WAGES

The City proposes to amend Section 30.1 of the expired contract by providing for a new classification of "Firefighter/EMT" to be paid at "91% of paramedic wages" In Section 30.2, the City proposes the following wage increases:

> Effective 1/1/03 there shall be an across the board wage increase of 1.5%
>
> Effective 1/1/04 there shall be an across the board wage increase of 1.5%
>
> Effective 1/1/05 there shall be an across the board wage increase of 1.5%

The Union proposes to amend Section 30.2 by providing for a wage increase of 5% effective January 1, 2003, a 1.5% increase for 2004, and a 2.5% increase for 2005.

The Union contends that Anacortes firefighters are grossly underpaid compared to their peers in comparable departments. The Union asserts that not only is the total net hourly compensation disparate between Anacortes firefighters and those working in comparable departments, it is equally disparate when compared internally with Anacortes police. The Union argues that the City presented an incomplete and false picture of the compensation comparison by not presenting information concerning the amount comparable departments pay for health care costs and many other economic components of compensation such as life insurance, EAP disability insurance/retirement trust, and deferred compensation, and also by not considering the difference between the annual net hours worked in Anacortes and in the comparable departments. The Union claims that the City can afford the Union's proposal. The Union maintains that in order for the Anacortes firefighters to catch up with the comparable departments, they must receive a substantial pay increase which, combined with a workweek reduction and increased contribution toward health care, exceeds the CPI.

The City contends that its wage proposal is fair based on comparable data, cost-of-living information, general labor market conditions, City fiscal resources, internal parity, and turnover

statistics. The City argues that a comparison of wages with comparable departments should be based on top-step base compensation, adding in premiums that are shared by all bargaining unit members. For Anacortes, that includes the $60 monthly inspection premium, the guaranteed overtime, and holiday pay. The City urges rejection of the Union's basis for comparison, which include benefits which vary from firefighter to firefighter (such as longevity pay, life insurance, and deferred compensation) or between employers (such as health care benefits). The City reasons that the demographics of a comparator may be significantly different than the target employer making the value of those individualized premiums vastly different. The City argues against a wage comparison based on hourly wages, since the Union's analysis does not fully take into account all the benefits that affect hours worked such as time off for holidays and sick leave. The City maintains that its wage proposal is fair in light of recent cost of living data, as well as the fact that firefighters' wages have significantly exceeded the cost of living over the last decade. The City asserts that internal comparisons with other City employees as well as the City's turnover experience also support its wage proposal. The City suggests that the Arbitrator consider the relatively lighter call volume experienced by Anacortes firefighters when compared with the comparable departments. The City maintains that its proffered wage increases are also fair

and reasonable in light of the City's budgetary problems, particularly in the context of local and state economies that are suffering economically. The City claims that the cost of the Union's proposal is astronomical and does not reflect the economic realities.

The compensation provided by the comparable departments during 2003 is reflected below. Port Angeles and Tumwater have not yet reached agreement on their 2003 contract. In order to make a more meaningful comparison, I have increased the base wages for those two departments by 2.5 percent in order to estimate a wage increase for 2003. The figure representing base wages for Centralia reflects an averaging of the classifications of firefighter and driver/engineer. Lt. Kennedy testified that all Anacortes firefighters are expected to be driver/engineers. On the other hand, there is no evidence that there are employees in Anacortes who are exclusively driver/engineers. Since both of the Centralia classifications have similarities to the Anacortes firefighter classification, both have been given consideration here. I have utilized a total compensation comparison to the extent that compensation can be reasonably determined for the benchmark of a top-step firefighter with seven years of experience. I have not considered health insurance, because for the reasons previously explained, Anacortes' contributions for insurance benefits cannot be reasonably compared with the figures which have been provided for the comparable departments. I have

also not considered deferred compensation, where it involves employer matching of employee contributions up to a certain amount. No evidence was provided which would suggest the actual cost to the employers of such a benefit. Neither party has suggested consideration of pay premiums for higher education. Consideration has been given both to total compensation and hourly compensation. Contrary to the argument of the City, it is by now well established among interest arbitrators that a comparison of hourly compensation between comparable fire departments is significant.

Centralia	
Annual Base Wage	$51,834
Employee Benefit Trust	900
Holiday Pay	3,429
Annual Compensation	$56,163
Annual Net Hours	2,040
Net Hourly Compensation	$ 27.53
Clallum 3	
Annual Base Wage	$67,619[2]
Holiday Pay	3,385
Annual Compensation	$71,004
Annual Net Hours	2,576
Net Hourly Compensation	$ 27.56
Kitsap 10	
Annual Base Wage	$64,683[2]
Longevity Pay	646
Holiday Pay	2,132
Annual Compensation	$67,461
Annual Net Hours	2,672
Net Hourly Compensation	$ 25.25

[2] Includes guaranteed overtime

Kitsap 18	
Annual Base Wage	$61,210
Longevity Pay	612
Holiday Pay	1,836
Annual Compensation	$63,658
Annual Net Hours	2,343[3]
Net Hourly Compensation	$ 27.17
Pierce 16	
Annual Base Wage	$57,776
Longevity Pay	1,156
Holiday Pay	1,905
Annual Compensation	$60,837
Annual Net Hours	2,426
Net Hourly Compensation	$ 25.08
Port Angeles	
Annual Base Wage	$60,012
Holiday Pay	2,308
Annual Compensation	$62,320[4]
Annual Net Hours	2,504
Net Hourly Compensation	$ 24.89
Tumwater	
Annual Base Wage	$56,260
Supplemental Retirement	1,800
Employee Benefit Trust	900
Holiday Pay	2,862
Annual Compensation	$61,822[4]
Annual Net Hours	2,403
Net Hourly Compensation	$ 25.73
Average Annual Compensation of Comparators (2003)	$63,324
Average Net Hourly Compensation of Comparators (2003)	$ 26.17
Anacortes (2002)	
Annual Base Wage	$60,815[5]
Longevity Pay	168
Holiday Pay	3,250
Annual Compensation	$64,233
Annual Net Hours	2,696
Net Hourly Compensation	$ 23.83

[3] Includes a reduction for holiday time off which may not be converted to extra pay
[4] This figure is based on the 2002 annual base wage, adjusted upward by 2.5%
[5] Includes guaranteed overtime

Weighing the governing factors which are set forth in the statute, wage increases of 3.5% will be awarded each year for 2003, 2004, and 2005. With the significant increases in the health insurance cap awarded for each of these years, the City's compensation costs will increase annually by about an additional 0.7%. Considering the wage increases awarded, the annual net compensation of the City's firefighters will be about 5% higher than the average of the comparable departments. However, considering that the Anacortes firefighters work a longer workweek than do the firefighters in the comparable departments on average, they will be receiving net hourly compensation which will be about 6.2% less. The statutory factor of comparability justifies a substantial wage increase. Other statutory criteria, militate towards a more moderate increase. The statute specifically requires consideration of the increase in the cost of living. Such increases have been particularly low during 2002 and the first half of 2003, much lower than the increases awarded here for 2003 and 2004. The statute requires consideration of other factors traditionally taken into account by arbitrators. Such other factors including ability to pay, treatment of other City bargaining units, and turnover, also have a moderating effect on the wages awarded. The increases awarded are significantly higher than the increases negotiated by the City's Teamster bargaining unit. While the City has not yet negotiated a contract with its police bargaining unit for 2004 and 2005, the

wage increase awarded to the firefighters for 2003, is reasonably close to the increase negotiated with its police officers for that year. Also of significance is the low rate of turnover in the bargaining unit, which indicates that the City's compensation package is sufficient to retain its personnel. The challenging economic circumstances confronting the City is reflected in high local unemployment, and generally flat or slow revenue growth. In sum, the awarded wage levels are appropriate considering the compensation provided by the comparable departments, the cost of living, and other factors normally taken into consideration in the determination of wages, such as the City's economic circumstances, the wage increases provided by the City to other employee groups, and employee turnover. Neither party presented evidence or argument regarding the City's proposal to establish a new classification and pay level for firefighter/EMT. Therefore, in that regard, no change to existing language will be awarded.

AWARD OF THE ARBITRATOR

It is the award of your Arbitrator that the Collective Bargaining Agreement between City of Anacortes and International Association of Fire Fighters, Local 1537 shall include the following:

I. Article 4 - Management Rights

1. Section 4(a) - Reserved Rights - No change
2. Section 4(d) - Layoff - No change
3. Student Volunteer Program - No change

II. Article 8 - Bargaining Rights - No change

III. Article 11 - Grievance

1. Step 4 - No change
2. Step 5 - In second sentence, substitute "Union" for "grievant"
3. Arbitration - In third sentence, begin with: "Upon receipt of..."

IV. Article 13 - Working Out of Classification

The first sentence and the beginning of the next sentence shall read:

Beginning when the next promotion test is offered and a new promotion list established following ratification of this Agreement, the highest-ranking employees on a promotional eligibility list for Lieutenant shall be selected for upgrade positions first, then senior employees not on the eligibility list last. When an employee is temporarily assigned in writing by the Fire Chief or the Chief's designee to a higher-paid classification...

V. Article 16 - Sick Leave

The first two sentences of Section 16(d) shall read:

(d) With the exception of the above, sick leave is intended for actual illness or injury to an employee or dependent child or for care for a spouse, parent, parent-in-law, or grandparent who has a serious health or emergency condition. If there is reasonable suspicion of an employee abusing sick leave benefits, the City may require verification of an illness/injury from the employee's physician.

VI. Article 20 - Workweek

No change

VII. Article 21 - Overtime

1. Section 21(a) - No change
2. Section 21(c) - Change "his or her" to "their"
   Change "he or she" to "the employee"

VIII. Article 22 - Union Activities

Section 2 - No change

IX. Article 24 - Longevity

Delete first sentence

X. Article 26 - Health Insurance

Amend to read:

Effective January 1, 2003, the City shall pay a maximum premium amount for health care for each bargaining unit member of $605 per month. Effective January 1, 2004, the City shall pay a maximum premium amount for health care for each bargaining unit member of $665 per month. Effective January 1, 2005, the City shall pay a maximum premium amount for health care for each bargaining unit member of $725 per month. Premium costs above the maximum premium amount to be paid by the City shall be borne by the employee. The employee may choose from the Group Health Cooperative or Regence Plan 1 with WDS Plan A (Orthodontia plan V) and VSP with no copay.

XI. Article 30 - Wages

Section 1 - No change
Section 2 - Change to read:

Effective 1/1/03 there shall be an across the board wage increase of 3.5%.

Effective 1/1/04 there shall be an across the board wage increase of 3.5%.

Effective 1/1/05 there shall be an across the board wage increase of 3.5%.

Sammamish, Washington
November 18, 2003

/s/ Alan R. Krebs
Alan R. Krebs, Arbitrator