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IN THE MATTER OF THE INTEREST )  
ARBITRATION BETWEEN )  
CITY OF KENT, WASHINGTON )  
and )  
INTERNATIONAL ASSOCIATION )  
OF FIREFIGHTERS, LOCAL 1747 )  
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INTEREST ARBITRATION  
OPINION AND AWARD

PERC NO. 17804-I-03-0417

Date Issued: June 28, 2004

**OPINION AND AWARD OF THE INTEREST ARBITRATOR**

**Interest Arbitrator**  
Michael H. Beck

**Appearances**  
City of Kent, Washington  
Otto G. Klein, III  
International Association of Firefighters  
Local 1747  
Alex J. Skalbania

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## **OPINION OF THE NEUTRAL CHAIRMAN**

### **PROCEDURAL MATTERS**

The Neutral Chairman selected by the parties is Michael H. Beck. The Arbitrator appointed by the City of Kent is Becky Fowler. The Arbitrator appointed by the International Association of Firefighters, Local 1747 is Kelly Fox. The Employer, City of Kent, was represented by Otto G. Klein, III of the Summit Law Group, PLLC. The Union, International Association of Firefighters, Local 1747 was represented by Alex J. Skalbania of the law firm of Emmal Skalbania & Vinnedge.

A hearing in this matter was held at Kent, Washington on February 11 and 12, 2004. At the hearing the testimony of witnesses was taken under oath and the parties presented documentary evidence. The parties agreed upon the submission of posthearing briefs which were timely filed and received by the Neutral Chairman on March 31, 2004. At the request of the Neutral Chairman the parties waived the requirement contained in

RCW 41.56.450 that the Neutral Chairman issue his written determination of the issues within 30 days following the conclusion of the hearing. The Arbitration Panel met and considered the issues on June 11, 2004.

## **BACKGROUND**

On August 27, 2003 Executive Director Marvin L. Schurke of the Public Employment Relations Commission certified eight issues for interest arbitration pursuant to RCW 41.56.450. The parties were able to settle five of these issues and three remain to be determined by the Arbitration Panel. These three are medical, wages, and longevity. The parties have agreed on a three year contract term from January 1, 2003 through December 31, 2005.

The unit represented by the Union here consists of two members, both employed by the City as an Assistant Chief. One Assistant Chief is in charge of fire suppression while the other is in charge of fire prevention and both report directly to the Chief. The first collective bargaining agreement signed by the City and the Union covering the Assistant Chiefs was executed in 1994. The instant interest arbitration is the first one between the parties regarding the Assistant Chief unit.

In addition to the Assistant Chief unit, the Employer has collective bargaining agreements covering five other units. Three of these other units; namely the rank and file firefighters, the police officers and sergeants, and the police lieutenants and captains, are subject to the State of Washington interest arbitration law. There are approximately 145 employees in the firefighter unit, approximately 100 employees in the officers and sergeants unit, and 9 employees in the lieutenant and captains unit. Additionally, the

American Federation of State, County and Municipal Employees (AFSCME) represents a unit of approximately 130 clerical employees while the Teamsters Union represents a unit of about 140 warehouse and maintenance employees. There is also an unrepresented group of employees.

**ISSUE I: MEDICAL**

The Employer maintains two health plans, an indemnity plan, referred to as the Blue Cross Enhanced Prudent Buyer (PPO) Plan (Blue Cross PPO plan), and the Group Health/Blue Cross Dental/VSP Vision Plan (Group Health plan). Both bargaining unit members subscribe to the PPO plan. Presently, under the PPO plan, employees contribute the following amounts:

Employee Only:	\$0.00 per month
Employee & Spouse	\$15 per month
Employee & Child(ren)	\$10 per month
Employee & Family	\$25 per month

The parties agree that for the first year of the contract, commencing January 1, 2003 and ending December 31, 2003, the employee contribution shall be as follows:

Employee Only:	\$0.00 per month
Employee & Spouse:	\$27 per month
Employee & Child(ren):	\$23 per month
Employee & Family:	\$44 per month

The Union proposes to continue the rates paid in 2003 through the remainder of the contract which will expire December 31, 2005.

The Employer, on the other hand, proposes that for the year 2004, employees pay 7% of the applicable premium in all four categories and that for the year 2005, employees pay 10% of the applicable premium in all four categories.

With respect to the Group Health plan, presently employees contribute the following amounts:

Employee Only:	\$0 per month
Employee/Spouse:	\$25 per month
Employee/Child(ren):	\$15 per month
Employee Family:	\$65 per month

The Union proposes no change in premium amount during the term of the contract and the City also did not propose any change in its proposed submission to me dated February 4, 2004. However at City Exhibit No. 31.A the City proposes that for the first year of the contract commencing January 1, 2003 and ending December 31, 2003, the employee contribution shall be as follow:

Employee Only:	\$0 per month
Employee/Spouse:	\$30 per month
Employee/Child(ren):	\$29 per month
Employee Family:	\$65 per month.

The Employer proposes the same percentage increase in premium for 2004 and 2005 with respect to the Group Health plan as it does with respect to the Blue Cross PPO plan, namely a 7% increase in employee paid premium effective January 1, 2004 and a 10% increase in employee premium effective January 1, 2005.

My notes indicate that the parties did not specifically address the Group Health plan during the hearing and there is no mention of it in their briefs. In this regard, I note that the two Assistant Chiefs both have chosen medical insurance coverage under the Blue Cross PPO plan. Since I lack information regarding the Group Health plan, it would not be appropriate to order the premium increase proposed in City Exhibit No. 31.A. Instead, I shall accept the Union's position which is that employee premiums remain the same during the term of the 2003-2005 Agreement as they were under the 2000-2002 Agreement.

With respect to the Blue Cross PPO plan premium increases for employees of 7% in 2004 and 10% in 2005 constitutes, as the Union points out, a significant increase in employee premium contributions. The Employer justifies its proposal by contending that insurance premiums have "skyrocketed at the City of Kent." (City brief, pg. 13.) The Employer also points out that the City has a self-insured health care plan and, therefore, unlike certain third-party insured plans, the annual utilization rate will significantly impact the premium at the City of Kent. In this regard, the City points to the fact that total premiums for the Blue Cross PPO plan between 1999 and 2004 increased as follows:

**BLUE CROSS PPO TOTAL PREMIUMS**

	1999	2004
Employee Only	\$220	\$465.30
Employee & Spouse	\$491	\$949.06
Employee & Child(ren)	\$384	\$896.12
Employee & Family	\$595.00	\$1,370.02

(City Exhibit No. 31.B)

As the above chart demonstrates, total premiums, that is the Employer and employee share of the premiums in each category under the Blue Cross PPO plan, have more than doubled in five years. Thus, the Employer believes that its' 7% employee contribution in 2004 and 10% employee contribution in 2005 is reasonable as it is seeking only "a modest contribution for both employee and dependant care." (City brief, pgs. 19-20.)

Additionally, the Employer points out that in view of a significant number of large claims it received from its employees it determined to add an additional \$1 million to its medical fund in 2002.

In connection with an increase in the utility tax and the budgetary requirement to layoff 32 employees, the City Council of the City of Kent passed a resolution dated June 3, 2003 in which the City committed itself to achieving an increase in employee contributions to health care benefit premiums to 20% of each employee's total premium cost by the year 2006. The City points out that both the AFSCME Union and the Teamsters Union have agreed in their collective bargaining agreements to a 7% increase in 2004 and a 10% increase in 2005 with respect to both dependant and employee only premiums.

The Union takes the position that it would be inappropriate for the Neutral Chairman to order such a significant change in employee health care contributions as is contemplated by the Employer's proposal in a two member unit. In this regard, the Union points to the fact that the rank and file firefighter agreement has generally served as the basis for negotiating the Assistant Chief Agreement. Furthermore, the Union points out, that of the four bargaining units at the City of Kent subject to interest

arbitration, the Assistant Chief unit is the smallest and, therefore, bargaining and any eventual interest arbitration award regarding employee health care premium contributions should not emanate from the Assistant Chief unit.

While it is true, as discussed above, that the Employer has faced significant increases in health care premiums the Employer proposal would also result in significant increases in employee health care premium contributions. In this regard, I have prepared a similar chart to the "Blue Cross PPO Total Premium" chart appearing at page 5 showing employee increases between 1999 and 2004 if the Employer proposal were adopted.

**BLUE CROSS PPO EMPLOYEE PREMIUMS**

	1999	2004
Employee Only	\$00.	\$32.57
Employee & Spouse	\$15.	\$66.43
Employee & Child(ren)	\$10.	\$62.73
Employee & Family	\$25.	\$95.90

(City Exhibit No. 31.B)

I agree with the Union that it would be inappropriate to order a significant increase in employee and dependant coverage health care premium contributions in the two member Assistant Chief unit when the Employer intends to make a similar proposal to the much larger units subject to interest arbitration. In this regard, I note the agreement between the rank and file firefighters and the City covers approximately 145 unit members and is effective through the end of 2004. Furthermore, the agreement between the police sergeants and police officers and the City covers approximately 100 employees and also is effective through the end of 2004. Thus, bargaining in these two units has either begun or will begin shortly. Also, I note the Union's position that whatever



increases may be appropriate in employee premium contributions, such increases should not be in terms of an open ended percentage but based on a fixed amount. This sort of major issue certainly should not be negotiated first in the two member Assistant Chief unit.

Union President, Lieutenant Greg Markley testified that one bargaining unit member is married without children and one is married with children. According to City Exhibit No. 31.B the employee contributions would be as follows:

	<b>2003 As Agreed</b>	<b>2004 Proposed 7%</b>	<b>Increased Premium Contribution</b>
Assistant Chief Married w/o Children	\$27.00	\$66.43	\$39.43
Assistant Chief Married with Children	\$44.00	\$95.90	\$51.90
<b>TOTAL</b>	<b>\$71.00</b>	<b>\$162.33</b>	<b>\$91.33</b>

Thus, if the Employer 7% proposal was accepted for 2004, the Employer would receive only an additional \$91.33. Clearly this amount is insignificant when compared with overall premium costs for the three other bargaining units subject to interest arbitration. This fact further supports a finding of not acting on the Employer proposal at this time.

It should be understood that my ruling in this case should not be taken by either party as an expression of support for or lack of support for the Employer 7% and 10% proposal. Rather, I have determined not to act on the Employer proposal for the reasons stated above. Further, it is appropriate to require the Assistant Chiefs to accept the same terms negotiated by the City and rank and file firefighters in their next collective

bargaining agreement regarding employee premium contributions. The City shall give the Assistant Chiefs at least 30 days notice prior to implementation of any such change.

## **ISSUE II: WAGES**

### **A. Comparators**

It is my conclusion that the appropriate comparators are Bellevue, Everett, Kirkland, Federal Way, Snohomish County Fire District No. 1, Redmond, Tacoma, and Eastside Fire and Rescue. The City proposal to add Auburn and Renton to the eight comparators listed above is rejected. In reaching my conclusion in this regard, I rely on the testimony of Union President, Lieutenant Greg Markley and City Labor Relations Manager Anh Hoang, each of whom were chief spokesperson during the bargaining which eventually led to mediation and then this interest arbitration. Both of these individuals testified that both parties collaborated in securing the relevant data from each of these eight comparators and from no others. Again, both witnesses testified that these comparators were the only ones discussed during negotiations and that no other comparators were raised prior to this interest arbitration. Therefore, the proposals made by the parties during bargaining were based on these eight comparators.

### **B. Assistant Chief (AC) v. Deputy Chief (DC)**

During the negotiation for the 2003-2005 Agreement the parties engaged in a joint effort to collect data regarding the applicable comparators. City Exhibit No. 32 represents their final and most accurate compilation. Three of the eight comparators

listed on City Exhibit No. 32, namely Everett, Snohomish Fire District No. 1 and Tacoma employ one or more individuals in both the AC and DC classifications.<sup>1</sup>

Both the AC and DC classification at Everett, Snohomish Fire District No. 1 and Tacoma contain a minimum and maximum base rate. The parties are in agreement that whether the AC or DC rate is selected for purposes of comparison, the maximum rather than the minimum rate should be used for the position selected in these three comparators. Additionally, Bellevue, Kirkland and Redmond provide a minimum and maximum rate for the one classification they employ, namely the DC. Both parties agree that the maximum rate in these three jurisdictions should be employed in comparing these three comparators. Kent and Eastside Fire and Rescue provide only one rate of pay.

The Union takes the position that the employee in the classification, whether it be an AC or DC, that reports directly to the Fire Chief should be the classification compared to the ACs at Kent since the ACs report directly to the Fire Chief and not through an intermediary Deputy Chief who then reports to the Fire Chief.

The City, on the other hand, contends that the Neutral Chairman should rely on the clear bargaining history regarding the negotiation of the 2000-2002 Collective Bargaining Agreement where it is not disputed that the parties used the lower classification with respect to Snohomish Fire District No. 1, Tacoma and Everett. Additionally, the City points out that a more appropriate test than the one suggested by the Union is what it calls the "span of control" test. In this regard, the City points out that the two ACs in Kent do not have responsibility for the whole fire department, but instead

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<sup>1</sup> Ms. Hoang testified that at the time the Employer and Union officials collected the data appearing on City Exhibit No. 32 they did not know that Federal Way had in addition to a Deputy Chief classification a lower paid Assistant Chief classification and that the maximum base rate received by employees in that classification was \$7,484.00. The maximum base rate listed on City Exhibit No. 32 is \$8,118.00 for the Deputy Chief classification.

one has responsibility for suppression and other for prevention. The job descriptions placed in evidence for Snohomish Fire District No. 1 and Everett indicate that the span of control of the lower paid DCs in those departments would be the appropriate classification to compare with Kent since they do not have responsibility for the whole fire department. In Snohomish Fire District No. 1, the DC reports to an AC who reports to the Fire Chief and the AC is the higher paid classification. In Everett, the AC has authority over the entire department and reports to the Fire Chief. The DC classification is in charge of managing the day-to-day operations of a major division of the fire department and is under the direction of the Fire Chief or the AC. The AC receives a higher rate of pay than the DC.

With respect to Tacoma, the position descriptions for the AC and DC are almost identical and both report directly to the Fire Chief. The AC is in charge of the "Fire Suppression or Administrative Division of the Tacoma Fire Department" (Union Exhibit No. 15) while the DC is charge of "a Division of the Tacoma Fire Department." (Union Exhibit No. 16.) It is not clear from the record how many ACs or DCs are employed in Tacoma. However, the DC is the higher paid classification. With respect to Federal Way, there is no job description in the record. Thus, we have a situation with respect to two of the four comparators who have both an AC and DC classification where there is insufficient information to resolve the matter based on either the Union's method or the Employer's method. Furthermore, the manner in which the various comparator fire departments are organized, certainly would be affected by the size of those fire departments. I note that of the four comparators with two classifications the number of total uniformed personnel varies greatly. Kent has 145 uniformed personnel while

Tacoma is more than twice as large with 399 uniformed personnel. Federal Way and Snohomish Fire District No. 1 are considerably smaller than Kent as the number of total uniformed personnel is 101 and 106 respectively. Only Everett with a total uniformed personnel of 169 is anywhere close in size to the Kent Fire Department.

Based on all of the foregoing, I have determined that it is appropriate to use the maximum rate of the lower classification in comparing Kent with the comparators.

**C. Basis of Comparison: Years of Service and Pay Factors**

With respect to years of service, I find that five years of service as proposed by the Union is the appropriate basis for comparing the comparators. In this regard, I note that Markley testified that one AC had six to seven years of service while the other had four years of service. In these circumstances, it is inappropriate to also use 20 years of service as a basis of comparison as proposed by the Employer.

Assistant Chiefs at Kent work a 40 hour work week and do not work shifts as do rank and file firefighters. On this basis it would seem appropriate to consider total monthly compensation. On the other hand, since the Assistant Chiefs do work in the fire department where most employees do perform shift work it also seems appropriate to consider total hourly compensation.

Page 4 of City Exhibit No. 32 shows that with respect to total monthly compensation as of July 31, 2002, Kent was at \$8,729 while the average of the comparators was \$8,684, a difference of \$45 or 0.52%. With respect to total hourly compensation as of July 31, 2002, page 5 of City Exhibit No. 32 shows that the average of the comparators was \$56.11 while Kent received \$55.95, a difference of \$.16 or

0.29%. Thus, at the time the parties were negotiating the 2003-2005 Agreement, average total monthly compensation in Kent was approximately on half of one percent higher than the average of the comparators. On the other hand, the comparator average total hourly compensation was approximately three tenths of one percent higher than in Kent.

**D. Wage Increase**

The Union proposes that effective January 1, 2003 the bargaining unit members receive the 1.5% cost of living increase given to the rank and file firefighter unit plus an additional 2%. In this regard, it is the Union's proposal that effective January 1, 2003 the AC will be paid at the rate of 151% above the first class firefighter base pay.

Furthermore, it is the Union's proposal that this percentage above first class firefighter base pay should remain in effect for the entire contract. Therefore, the Union proposes that the ACs be awarded the cost of living increase of 0.9% effective January 1, 2004 that was awarded to the rank and file firefighters, and that for 2005, the ACs receive the same percentage increase as will be received by the rank and file firefighters.

The City is in agreement that the ACs should receive the 1.5% cost of living increase effective January 1, 2003, the 0.9% cost of living increase effective January 1, 2004, and effective January 1, 2005 whatever percent increase is awarded to the rank and file firefighters. Further, the City proposed that in 2004 the AC receive an additional .5% in order to raise their differential to 149.5% of a top step firefighters wage. The City proposal states that the wage increase is not to be retroactive. The City also states in its proposal, a letter to me from Otto Klein dated February 5, 2004 (Union Exhibit No. 3 and City Exhibit No. 5) that:

The City's willingness to pay an additional wage increase over a COLA is expressly conditioned upon the acceptance of the City proposal on medical.

Since I have concluded not to award the City's medical proposal, it is appropriate to consider the City's proposal as only offering the COLA increases, and therefore this City proposal should be compared to the Union's proposal for an additional 2% above the COLA effective January 1, 2003.

As described above, the survey data for the comparators for 2002 do not support the Union's proposal. Furthermore, a comparison of increases in annual base pay received by bargaining unit employees since the first contract in 1994 through 2002, the last year of the last contract, to the increase in the CPI between 1994 and 2002 indicates that the ACs have received an increase of approximately 50% while the CPI has risen only about 30%. (City Exhibit No. 14.)

The City has put into evidence exhibits providing wage and benefit information for Kent and the eight comparators with respect to the year 2003. As I understand it, these exhibits were not jointly prepared. The relevant two exhibits are City Exhibit Nos. 18 and 20. Exhibit No. 18 provides the total monthly compensation for a five year AC with an AA degree while Exhibit No. 20 provides the total hourly compensation for a five year AC with an AA degree.

With respect to the four comparators for 2003 that have both the AC and DC classification, it is clear that with respect to Everett and Federal Way, City Exhibit Nos. 18 and 20 contain the maximum rate for the lower classification. With respect to the Snohomish Fire District No. 1, the same base pay figure of \$6,780 for 2002 is also set forth for 2003. It seems unlikely there was no increase in pay in Snohomish Fire District

No. 1 and thus what apparently occurred is that at the time City Exhibits Nos. 18 and 20 were prepared, the contract for 2003 had not been concluded. Finally, with respect to Tacoma the figure listed for the 2003 base salary is \$10,487 which is 8.2% higher than the maximum rate of the lower classification which was \$9,696 for the AC in 2002. This seems like an unusually high raise vis-à-vis the other comparators and it may be that the Employer inserted here the maximum rate for the higher DC classification rather than the maximum rate for the lower AC classification.

The figures for Kent on City Exhibit Nos. 18 and 20 include the 1.5% CPI rise for that year but do not include the parties' agreement made shortly before the hearing to provide an additional contribution of 1% of an employee's base pay toward deferred compensation since that provision is to be effective January 1, 2004. With respect to the parties' agreement to add a personal holiday which the parties agree amounts to a 0.4% increase in hourly compensation, that provision apparently is not retroactive to 2003. In this regard, I note that the same number of holiday hours, 88, appears on both the holiday hour figure for 2003 (City Exhibit No. 20) and as the holiday hour figure for 2002 (City Exhibit No. 32).

With respect to total monthly compensation for 2003, the figure for Kent is \$8,868 while the figure for the average of the eight comparators is \$8,779, a difference of \$89 or approximately 1%.

With respect to total hourly compensation, the figures are almost identical with Kent at \$56.85 and the average of the comparators at \$56.84.

The Union points to the fact that the police captains receive 151.5% above the top step police officer base pay and contends, therefore, that the 151% proposed by the Union



with respect to the AC unit is more than fair. However, I note that the top step police officer in 2002 received base pay of \$4,889 while the top step fire fighter base pay as of July 1, 2002 was \$5,384. Furthermore, 151.5% of \$4,889 is \$7,407, while 149% of \$5,384 is \$8,022. Thus, at the end of the year 2002 ACs were receiving \$615 more than captains in the police department. While I realize that a differential between employees and supervisors is a different matter than merely comparing base salaries, there is no evidence in the record to indicate whether in the past the differential has always been maintained equally in the fire department and in the police department.

A review of the comparators, as well as the fact that AC salaries have gone up significantly above the cost of living since the implementation of collective bargaining for the ACs, supports the Employer's position regarding wages.

In view of all of the foregoing, the Union's request for an additional 2% above the COLA increase commencing January 1, 2003 is not warranted.

### **III: LONGEVITY**

Presently Section 4.2 of the AC 2000-2002 Agreement provides the following longevity schedule:

Longevity pay shall be applied to the base salary rate, on a monthly basis, for employees who have completed the following continuous service requirements:

Completion of 5 years.....	2%
Completion of 10 years.....	4%
Completion of 15 years.....	5%
Completion of 20 years.....	6%

These percentages are based on firefighter base pay.

Prior to January 1, 2003 rank and file firefighters had the same longevity schedule. However, effective January 1, 2003 the City and the rank and file firefighters agreed to change the 5% longevity rate upon completion of 15 years to 6%. Secondly, they agreed to change the longevity rate upon completion of 20 years from 6% to 7.5%. Thirdly, they agreed to add a new longevity category, completion of 25 years, with a longevity rate of 8.5%.

The Union proposes that the same changes be made in the AC contract while the Employer proposes that no change be made.

It is true as the Employer points out that five of the eight comparators have no provision for longevity. However, the Union points out that generally speaking the parties have negotiated similar benefits for the ACs as for the firefighters where such benefits are applicable to both units. Longevity is such a benefit.

Neither of the two ACs employed at the time of the hearing in this matter would receive any additional longevity benefit under the Union's proposal. However, I learned at the Executive Session of the Arbitration Panel that one of the two ACs has retired and it is entirely possible that a promotion to this position may be made from an in-house fire department employee with substantial seniority. Ms. Hoang testified that the low seniority of the ACs at the time of the hearing was unusual and occurred because both ACs were hired from outside the City. If a replacement for the AC who has retired comes from within the rank and file firefighter unit, it seems appropriate that any such promotion should include the same longevity benefit he or she received as a firefighter

just as would have been the case if the promotion had been made prior to January 1, 2003. Therefore, I find that the Union's proposal regarding longevity is warranted.

### **AWARD OF THE NEUTRAL ARBITRATOR**

The Award of your Neutral Arbitrator is as follows:

Issue I, Medical. The Union's position on medical is accepted. Therefore, with respect to the Blue Cross PPO plan, the 7% medical insurance employee premium increase for the year 2004 and the 10% medical premium increase for the year 2005 proposed by the Employer are rejected. With respect to the Group Health plan there shall be no change in employee premium contributions during the term of the 2003-2005 Agreement. However, if the negotiations between the City and the rank and file firefighters result in a change in employee premium contributions, any such change effective on or after January 1, 2005 shall apply to the Assistant Chief unit. The City shall give the Assistant Chiefs at least 30 days notice prior to the implementation of any such change.

Issue II, Wages. The Employer proposal on wages is accepted. Therefore, commencing January 1, 2003 unit employees will receive a 1.5% cost-of-living increase. Effective January 1, 2004 unit members will receive a 0.9% cost of living increase and effective January 1, 2005 the unit members will receive the same percentage increase as will be received by the rank and file firefighters effective January 1, 2005.

Issue III, Longevity. The Union proposal on longevity is accepted. Therefore, the new Agreement effective January 1, 2003 will contain the following changes; (1) completion of 15 years will be changed from 5% to 6%, (2) completion of 20 years will be changed from 6% to 7.5%, and (3) completion of 25 years will be added at 8.5%.

Dated: June 28, 2004

Seattle, Washington

S/MICHAEL H. BECK  
Michael H. Beck, Neutral Arbitrator