IN THE MATTER OF

CITY OF REDMOND

AND

INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 2829, AFL-CIO, CLC

PERC No.: 17577-I-03-0406

Date Issued: July 12, 2004

INTEREST ARBITRATION OPINION AND AWARD

OF

ALAN R. KREBS

Appearances:

CITY OF REDMOND	**Bruce L. Schroeder**
INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 2829, AFL-CIO, CLC	**James H. Webster**

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OPINION OF THE NEUTRAL CHAIR

PROCEDURAL MATTERS

In accordance with RCW 41.56.450, an interest arbitration hearing involving certain uniformed personnel of the City of Redmond was held before an Arbitration Panel consisting of three persons. City of Redmond appointed Nancy Buonanno Grennan as its designee on the Panel. International Association of Fire Fighters, Local 2829, AFL-CIO, CLC appointed Paul S. Harvey as its designee. Alan R. Krebs was jointly selected by the parties as the Neutral Chair of the Arbitration Panel. WAC 391-55-245 provides that the determination of the Neutral Chair "shall be controlling." The hearing was held in Redmond, Washington from December 2 through 5 and on December 11, 2003. The Employer was represented by Bruce L. Schroeder of the Summit Law Group PLLC. The Union was represented by James H. Webster of the law firm Webster, Mrak and Blumberg.

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 copy of the transcript was submitted to the Neutral Chair. The parties agreed upon the submission of post-hearing briefs. The Neutral

Chair received the briefs on April 26, 2004. In view of the lengthy record, the parties agreed to waive the statutory requirement that the interest arbitration award be issued within 30 days following the conclusion of the hearing. It was agreed that the Neutral Chair, within 60 days of his receipt of briefs, would present a draft of his Award to the other Panel members and then would issue his decision after they had an opportunity to provide input. On June 22, 2004 the Neutral Chair mailed a copy of his initial draft decision to the other Panel members for review and comment before the final decision was provided to the parties. On July 7, 2004, the Panel discussed and revised the draft decision.

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. In interest arbitration, an arbitrator or arbitration panel adjudicates a resolution to contract issues regarding terms and conditions of employment which are at impasse following collective bargaining negotiations. 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 the parties

would likely have reached in good faith negotiations considering the statutory criteria.

RCW 41.56.465 sets forth certain criteria which must be considered by an arbitration panel 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 RCW 41.56.030(7)(e) through (h), comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered;
>
> (d) The average consumer prices for goods and services, commonly known as the cost of living;
>
> (e) Changes in any of the circumstances under (a) through (d) of this subsection during the pendency of the proceedings; and
>
> (f) Such other factors, not confined to the factors under (a) through (e) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment....
>
> * * *

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."

> **RCW 41.56.430 Uniformed personnel -- Legislative declaration.** The intent and purpose of this 1973 amendatory act is to recognize that there exists a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

NATURE OF THE EMPLOYER

City of Redmond's Fire Department provides fire protection services for both the City and King County Fire District No. 34, which lies just to the east of the City. The City operates six fire stations. One of these stations is located in the City of Bellevue, just across the street from Redmond's border. Captain Thomas Norton testified that this station's first alarm responsibilities include a portion of the City of Bellevue. On January 1, 2003, the Redmond Fire Department assumed responsibility for the provision of Advanced Life Support (ALS) services for a large portion of East King County, including not only Redmond and Fire District No. 34, but also Carnation, Duvall, Fall City, Kirkland, Woodinville, a portion of Bellevue, and King County Fire District No. 36. The City's paramedic personnel operate from a fire station in Redmond, a fire station

in Woodinville, and Evergreen Hospital, which is located in Kirkland.

The Union represents about 125 uniformed employees below the rank of deputy chief. This includes employees holding the positions of firefighter, firefighter-paramedic, driver/operator, fire inspector, lieutenant, captain, battalion chief, assistant fire marshall, and fire marshall. Employees in the bargaining unit, on average, have about eleven years of service.

ISSUES

The Union and the Employer are parties to a collective bargaining agreement which expired on December 31, 2001. They were unable to reach 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 were at impasse on a number of issues. The statutory interest arbitration procedures were invoked. The parties agree that the issues remaining to be resolved in arbitration are:

1. Salary Schedules
2. Longevity Pay
3. Promotions and Vacancies

Another issue which had been certified for interest arbitration, health care insurance, was subsequently removed by the Commission's Executive Director, for the time being, in response to an unfair labor practice charge filed by the Union. The

parties have reached settlement on eight other issues which had been certified for interest arbitration. They further agreed that the new agreement should be for three years: 2002, 2003, and 2004.

COMPARABLE JURISDICTIONS

One of the primary standards or guidelines enumerated in RCW 41.56.465 upon which an arbitrator must rely in reaching a decision is a "comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of like employers of public fire departments of similar size on the west coast of the United States." The statute requires the use of comparable employers within the state of Washington if an adequate number of in-state comparable employers exists.

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. Consideration is also frequently given to the proximity of the jurisdiction to be compared and whether it is in a similar economic environment, such as in a rural area or part of a large metropolitan area.

The parties could not agree upon the figure which represents the combined population of Redmond and Fire District No. 34. They agree that Redmond's population is 46,040. The Employer maintains that the population served by Fire District No. 34 is 10,000, and that therefore, its total service population is 56,040. The Union maintains that the population served by Fire District No. 34 is 23,000. It claims that Redmond's total fire service population is 69,040. The Union justifies its figure by relying on the City's web page and its advertisement for a new fire chief, both of which stated that the population of District No. 34 is 23,000. Deputy Chief Andy Hail testified that in 1999, the service population of Fire District No. 34 was approximately 21,000. He testified that Fire District No. 34 then lost a portion of its population when the City of Sammamish incorporated. A portion of the new City of Sammamish had previously been part of the service area of Fire District No. 34. The City of Sammamish contracted with Fire District No. 10 to provide its fire service. Deputy Chief Hail testified that he examined the census tracts for the portion of Fire District No. 34 that had been incorporated into Sammamish. He determined that the remaining service population of Fire District No. 34 was 7500. The service population for Fire District No. 34 reported in the 2003 Washington State Fire Service Directory is 10,000. Deputy Chief Hail testified that he was the source of this number, which included his estimate of population growth in the District between 1999 and 2002. The Employer represented that

the population for Fire District No. 34 which was reported on its website and in the job announcement was incorrect, and that the job announcement has since been corrected.

I find that the evidence presented supports the Employer's representation of a service population of 56,040. That was the population reported in the Washington State Fire Service Directory. Both parties rely on that publication to provide the population figures for comparable departments. The Employer's figures are also supported by the testimony of Deputy Chief Hail. The Union has relied on documents which appear to contain inaccuracies inasmuch as they do not take into account the loss of service population by District 34 as a result of the incorporation of the City of Sammamish.

The City proposes the following as comparable fire departments (comparables):

Department	Population
Auburn	45,355
Bothell	39,403
Edmonds	44,038
Kirkland	75,000
Lynnwood	34,500
Puyallup	35,490
Renton	54,900
King Co. No. 4.	56,000
King Co. No. 11	40,000
King Co. No. 36	50,000
Pierce Co. No. 2	65,000
Pierce Co. No. 5	42,000
Pierce Co. No. 21	55,000
Snohomish Co. No. 7	47,500

The Employer asserts that it selected comparables that fall within a band of 50 percent to 150 percent of its service

population. The Employer notes that many arbitrators have used this methodology. The Employer observes that interest arbitrators regularly look to geographical proximity in fashioning a list of comparables. Therefore, the Employer limited its comparables to the Central Puget Sound Counties of King, Pierce, and Snohomish. The Employer did not use assessed valuation as a basis for comparison. It reasons that applying a 50 percent to 150 percent band in terms of both assessed valuation and population would have resulted in only two comparable jurisdictions, which is too small a list. The Employer explains that by relying on population and geographic proximity, it obtained a list of seven cities and fourteen fire districts. In order to include an equal number of cities and fire districts, it utilized only the seven largest fire districts which met the comparability criteria.

The Union urges the Panel to adopt as comparables the following fire departments:

Department	Population
Auburn	45,355
Bellevue	234,000
Everett	95,470
Kent	150,000
Kirkland	75,000
Renton	54,900

The Union contends that during bargaining, the parties stipulated to the use of these departments as comparables, and the Panel should honor and enforce that agreement. The Union argues that the Employer's repudiation of this agreement, and its proposal to utilize a whole new set of comparables, undermines the

effectiveness of the collective bargaining process and the goals the legislature sought to obtain through the interest arbitration process. The Union further argues that the Panel should adopt its proposed comparables independent of the parties' agreement, because their use is justified by the criteria set forth in RCW 41.56.465 (1)(c)(ii) and (f). The Union reasons that these comparables are not only of similar size to Redmond, they also are the product of the parties' dealings over an extended period and were utilized in the contract negotiations for the contract at issue here. The Union maintains that their adoption by the Panel would promote stability in the collective bargaining relationship. The Employer denies that there was any stipulation to use these departments as comparables, and contends that it communicated throughout bargaining that it was reserving the right to re-examine the question of comparables. The Employer argues that the fact that a particular set of cities has been used in the past does not set the list in stone, irrespective of changes that may mean certain cities are no longer of similar size.

As the City concedes, for a number of years, Redmond has used the six cities proposed by the Union for salary and compensation surveys for the various City bargaining units and for its non-union employees. In the parties' 1996-98 contract, the Employer and the Union agreed to the following regarding a third year wage reopener.

> **1998 SALARY ADJUSTMENTS**. Adjustments to Appendix A, and to net hours worked, to be effective January 1, 1998, shall be open for negotiation by the parties. In preparation for such negotiations the parties agree to convene a task force with representatives of each party to attempt to agree regarding the jurisdictions which should be considered as comparable to Redmond for the purpose of RCW 41.56. If the parties are unable to agree regarding the identity of the comparable jurisdictions, the parties agree to use as comparable jurisdictions the fire department jurisdictions within Region 4 with service areas which have both an assessed valuation and a population within a range of fifty percent (50%) to two hundred percent (200%) of Redmond service area.

During 1997, the parties' representatives agreed to use Auburn, Bellevue, Everett, Kent, Kirkland, and Renton as comparables. Captain Norton, who represented the Union in those discussions, testified that in accordance with the wage reopener provision, the parties agreed to use comparables falling within a band of 50 percent to 200 percent when compared to Redmond in both population and assessed valuation. Captain Norton testified that even though Bellevue's population did not fit that model, they agreed to use it because the Employer used it as a comparable for its other employee groups. Captain Norton testified that the Union agreed with the Employer's request that fire districts not be used as comparables. Captain Norton testified that the parties agreed at that time to work together to collect the comparative data. They agreed to perform the data collection for a benchmark position of a firefighter employed for ten years, married with two children, with an A.A. degree, and certified as an EMT and to use a defibrillator. Captain Norton worked to collect that data in a collaborative manner with a

representative of a consulting firm which had been retained by the Employer. Captain Norton testified that spreadsheets were jointly developed, and the parties utilized that data to agree upon wages for 1998 which were very close to the average of the comparables.

During negotiations for their 1999-2001 contract, the parties again agreed to utilize the consulting firm and Captain Norton to collect the same type of data from the same group of comparables, with certain additions. Those additions related to lieutenants and to health care costs. Captain Norton testified that after the data was collected and examined, the Employer took the position that health care costs should not be included in a comparison of total compensation. The Employer is self-insured for its employees' health insurance. Captain Norton testified that the Employer explained that the Union should not benefit if the Employer was able to provide health care at a lower cost. The Union agreed not to include health insurance in a comparison of total compensation. Captain Norton testified that the parties agreed to settle the 1999-2001 contract by setting wages at the average of the comparables, based on the data jointly collected.

In negotiations with its police bargaining unit for a 2002-2004 contract, the Employer relied on the same six comparables plus the City of Federal Way. Captain Norton explained that in negotiations with the firefighters, Federal Way was not utilized as a comparable because that city contracted with a fire district to provide its fire service. The police negotiations also ended

in interest arbitration. During those proceedings, the Employer stipulated to the arbitrator's use of the six comparables proposed by the Union here plus Federal Way. Doug Albright, the Employer's negotiator for both the police and fire bargaining units, testified that in the police negotiations, the Employer did not propose an alternative list of comparables because the data from the traditional comparables supported "a hold-the-line type of contract" for that bargaining unit.

For the firefighter bargaining unit, the first negotiation session relating to the 2002-2004 contract occurred on October 31, 2001. At that time, the parties agreed to utilize Captain Norton and the same consulting firm which the Employer used in past negotiations to collect data from comparables. Captain Norton testified that at this meeting, Mr. Albright asked him if using the same formula of 50 percent to 200 percent for population and assessed valuation would result in the same comparables as had been used in the past. Captain Norton testified that earlier in the year, another Union member had done such an analysis based on 2000 data. Captain Norton advised Mr. Albright that the data collected supported utilizing the same comparables as they used in the past, except for Bellevue which had been "grandfathered" in. Captain Norton testified that it was agreed that the same comparables would be surveyed using the same benchmarks as had been used before. They agreed upon a separate joint subcommittee to collect data from the comparables on health insurance. In Mr. Albright's bargaining notes for that

session, is the notation "Same comparables?" Mr. Albright testified that this indicated that he questioned whether they would use the same comparables. Mr. Albright testified that he "expressed that we were not stipulating to the comparables and reserved the right." John Ryan, who is chief of the Department, served on the Employer's negotiations team. Chief Ryan testified that at one of the first meetings, Mr. Albright said with regard to use of the six historical comparables that "we're going to leave that window open or we're going to be researching or, you know, something to that effect." Captain Norton testified that Mr. Albright never said that the Employer was reserving the right to change comparables. Frank Glaser was also at this meeting representing the Union. Captain Glaser testified that there was no discussion concerning restrictions placed on use of the traditional comparables.

The parties reached an understanding that wages would be negotiated last. Contract negotiations continued through the fall and winter of 2001 and the spring and summer of 2002 without reaching the subject of wages. Mr. Albright testified that at a bargaining session during the spring, he reminded the Union negotiators that the Employer was not stipulating to the traditional comparables and reserved the right to produce other comparables. Captain Norton denies that such a statement was made. Chief Ryan testified that he did not hear Mr. Albright question the use of the traditional comparables after doing so during one of the first negotiation sessions. Mr. Albright

testified that during a bargaining session held on July 24, 2002, a Union negotiator stated that if the Employer sought a change in the comparables, then the Union would make medical more of an issue. Mr. Albright's bargaining notes reveal that during this session, they were discussing cost sharing of medical premiums, and that the Union negotiator had stated that if the Union were asked to pay a percentage of the premium, it would have to examine the validity of the premium numbers set by the Employer. His bargaining notes further indicate that the Union negotiator questioned whether, since the Employer was self-insured, it would create "nominal premiums" and foist those on the employees. Mr. Albright then recorded in his bargaining notes the following:

> Concerns re premium #, cost sharing & how fits <u>into</u> <u>compensation</u> -
>
> i.e. if city seeks to change comps, then medical is an issue that must be addressed.

Mr. Albright testified that he used "comps" as shorthand for comparables, and so this demonstrated that the Union understood that the Employer could seek to introduce new comparables. Captain Norton testified that the City never indicated that it might change comparables until November 2002. He testified that Mr. Albright's notes do not reference comparables, but rather compensation, inasmuch as the Employer was, for the first time, seeking to include health care premiums in an analysis of total compensation, and the Union was questioning whether they could trust the Employer's premium numbers.

Both parties utilized the traditional comparables to support some of their non-wage proposals. The Union negotiators provided their Employer counterparts with charts showing how the traditional comparables treated "pay steps upon promotion" and "acting pay." Similarly, the Employer provided charts to the Union showing how the traditional comparables treated "rate of acting pay" and the "% employee pays for family medical per month."[1]

Captain Norton began research for the joint compensation survey of the traditional comparables during the latter part of 2001. He worked closely with the consulting firm's representative, Charles Murry. Mr. Murry had filled the same role during the parties' 1999 contract negotiations. They met numerous times over the next nine months at Mr. Murry's office, at Captain Norton's home, and at restaurants. They examined labor contracts and contacted individuals at the traditional comparables in order to clarify compensation practices. They each maintained a database of collected information and they shared that data. They each reported to Mr. Albright their progress in gathering the data. Mr. Albright testified that he was not advised of the specific information collected until their report was completed on September 26, 2002. The report contained the collected compensation data from the Employer and from each of the traditional comparables, and set out separate spreadsheets for firefighter and lieutenant which compared compensation.

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[1] This chart included not only the six traditional comparables, but Federal Way as well. The chart was labeled "Fire and Police Medical." It seems likely that it was utilized by the Employer in its negotiations with both of its uniformed bargaining units.

Above the signatures of Captain Norton and Mr. Murry on their report was the following statement:

> The report distributed today is a joint one and contains the results of that analysis. We believe that it correctly represents the compensation practices of the jurisdictions named above. However, nothing in the report is meant to suggest that all the compensable elements listed are appropriate to the final calculations. Similarly it is not meant to exclude the raising of additional pay issues in the collective bargaining process.

Captain Norton testified that the next-to-last sentence meant that either party could dispute whether it would be appropriate to consider a particular element of compensation. He testified that the last sentence meant that the parties could re-examine the information collected if better information became available and they could consider the 2004 contracts of the traditional comparables when they became available. Mr. Murry did not testify. Mr. Albright testified that his understanding from reading this language was that data provided was not all the compensation data that should be considered, not did it contain data that necessarily should be considered.

Captain Norton testified that the joint compensation survey report was submitted to the Employer on September 26, 2002. He testified that at that time, he discussed it with Employer representatives and both parties accepted and agreed to it. The report reflected that the Employer's hourly firefighter compensation was 92.1 percent of the average firefighter compensation paid by the traditional comparables for 2002. The

same report indicated that the Employer's lieutenants received 93.3 percent of the average paid by the traditional comparables for 2002. Mr. Albright asked Captain Norton to go over the numbers with a deputy chief and representatives from the Employer's Human Resources Department. At a meeting on October 15, 2002, Julie Howe, a compensation specialist in the Employer's Human Resources Department, raised eleven items in the compensation report that needed correction. According to Captain Norton after a discussion, three of the questioned items in the report were determined to be correct as reported. Captain Norton agreed to seven of the suggested changes, six of which benefited the Union, and one benefited the Employer. He testified that he did not agree with one suggested change, though it would have benefited the Union. Captain Norton corrected the data sheets and spreadsheets of the compensation report accordingly. Captain Norton testified that as a result of these changes, the Union was even further behind the traditional comparables.

On October 24, 2002, the Union made its first economic proposal. After receiving the compensation survey report in September, the Employer had begun work on finding different comparables. Before the Employer either disclosed to the Union that it was researching new comparables or had made its first economic proposal, the negotiators refocused their efforts to reaching an agreement to cover the 26 paramedic employees who were to be added to the bargaining unit. During 2002, Evergreen Hospital elected to stop providing ALS services, effective

January 1, 2003. Redmond and Shoreline divided these ALS services. The paramedics working at Evergreen chose, by seniority, whether they would work for Redmond or for Shoreline. During October 2002, the parties began discussing compensation for the paramedics. At first, the Union took the position that it wanted to use the traditional comparables to set the paramedics' wages. Mr. Albright questioned whether new comparables should be used for the paramedics inasmuch as only two of the traditional comparables employed paramedics. During late October or early November 2002, the parties agreed that the paramedics would receive a 14 percent differential based on firefighter wages. Captain Norton testified that during the meeting when this agreement was reached, he referred to the compensation survey report and stated that by using a differential they could use the data from the comparables that they already had. Mr. Albright testified that he has no recollection of the compensation survey being referenced during bargaining for the paramedics.

In mid-November 2002, the Shoreline fire chief sent an e-mail to the Evergreen paramedics, advising them of what they could earn if they chose to work for Shoreline. On November 18, 2002, Deputy Chief Hail of the Redmond Fire Department sent the following e-mail to the Evergreen paramedics:

> Attached is an Excel document that contains a spreadsheet of total cost of compensation for a ten year FF - Paramedic with longevity and other benefits (additional retirement...). Additionally, there is a chart (tab to the left) that shows where we are at comparatively with some other comparable departments. While we are in negotiations for 2002/2003 + we have

> made some conservative assumptions; ie., 4% increase for 2002. The liklihood [*sic*] is that we may be paying above 4% due to where we line up with comparables and the City's historical track record of paying at or slightly above average, however there are no guarantees. We wanted to use 4% to avoid over projecting. The spreadsheet also reflects a 14% spread between top step FF and FF - Paramedic. This amount was tentatively agreed to during our last negotiations session and should stand w/o any challenge.

Deputy Chief Hail attached a spreadsheet which indicated the compensation paramedics could receive if they worked for Redmond, with the negotiated 14 percent differential and with a general wage increase of 4 percent, 6 percent, 8 percent, or 9 percent. Firefighter-Paramedic Dana Yost testified that Redmond's Mayor spoke to the Evergreen paramedics and told them that Redmond had a collaborative relationship with the Union and they had always settled for the middle of their comparables. Firefighter-Paramedic Yost testified that he had all but made up his mind to go to Shoreline, but that after hearing the Mayor and reading Deputy Chief Hail's e-mail, he chose to work for Redmond. He testified that he had to make his decision by late November or early December. Another Evergreen paramedic, Mark Brownell, testified that the decision had to be made in November. Firefighter-Paramedic Brownell testified that he decided to choose Redmond based on his understanding from Deputy Chief Hail's e-mail of the compensation he would receive.

On November 21, 2002, Mr. Albright sent to the Union an e-mail, advising that the Employer would be relying upon 13 departments as comparables.[2] The Employer attached spreadsheets

[2] The Employer later added a fourteenth comparable department.

showing the compensation provided by these comparables for firefighters and lieutenants. Captain Norton testified that he was very disappointed to receive this since in his view they had already agreed on comparables, he had not been advised that the Employer was considering new comparables, and the Employer departed from the criteria traditionally used to select comparables. On November 26, 2002, the Employer presented its first economic proposal to the Union.

Firefighter-Paramedic Brownell testified that when he learned of the Employer's positions on comparables and compensation, he tried to change his decision so that he could work for Shoreline, but it was too late. Firefighter-Paramedic Yost testified that he also learned of the new bargaining situation after he had committed to go to Redmond.

I have selected four fire departments which are similar in size to Redmond as comparable jurisdictions: Auburn, Everett, Kirkland, and Renton. In addition, consideration will also be given to Bellevue and Kent, but not as similarly sized departments, because they are not. Both serve populations well in excess of twice that of the Employer here and arbitrators generally do not consider departments with such a disparity as similar in size. Rather, they will be considered pursuant to RCW 41.56.465(f) because of the role they played in the parties' bargaining history, including, most importantly, in these collective bargaining negotiations, and also in concurrent negotiations with another Employer bargaining unit.

There are a number of reasons why these departments have been chosen for purposes of comparison. All are situated reasonably close to Redmond. Both parties agree that geographic proximity is significant for comparables. The Auburn, Everett, Kirkland, and Renton Fire Departments each service a population falling within a band of between 50 percent and 200 percent that of Redmond. The Employer correctly points out that many arbitrators select comparables by utilizing a population range of 50 percent to 150 percent when compared with the subject jurisdiction. However, it is also true that a band of 50 percent to 200 percent has been used by arbitrators. Indeed, this Neutral Chair has had occasion in other interest arbitration proceedings to use each, and other bands as well, depending on the circumstances presented. The determining factor here is that the parties agreed to use a 50 percent to 200 percent comparative band in their past two negotiations, and even specifically included such a band in a wage reopener provision of a previous contract. Moreover, it was apparently referenced approvingly at the beginning of these negotiations when there was discussion regarding whether the traditional comparables still fell within the 50 percent to 200 percent band. In the past, the parties also compared assessed valuation. Indeed, this is a factor frequently utilized by arbitrators when selecting comparables. However, here, neither party takes the position that assessed

valuation should be a factor in determining appropriate comparables.[3]

The parties' bargaining history supports the use of the six traditional comparables. The Employer correctly points out that the fact that comparables have been used in the past does not mean that they are forever appropriate. The governing statute requires comparison of departments of similar size. Demographics do change over time. One department may grow faster than another, such that departments once of similar size are no longer so. Nevertheless, here, it is undisputed that in past contract negotiations the parties utilized Bellevue as a comparable despite a recognized significant disparity in size. More importantly, the parties both utilized the six traditional comparables in contract negotiations preceding this interest arbitration for more than a year. It may well be that the Employer intended all along to reserve the right to introduce new comparables. However, such an intent is only significant here if it has been conveyed to the Union such that it should reasonably have been aware of the Employer's intended reservation. There was conflicting testimony regarding whether this intent was conveyed to the Union. It appears that Mr. Albright sincerely believes that it was conveyed. I find that the intent was not

[3] The Union has offered alternative comparable jurisdictions for consideration by the Panel in the event that it rejects its position that the six traditional comparables be utilized. In selecting those alternative comparables, the Union relied on both population and assessed valuation. It is unnecessary to consider this alternative proposal inasmuch as I have decided to utilize the six traditional comparables that the Union prefers.

sufficiently conveyed such that the Union reasonably should have understood that the Employer had reserved the right to introduce new comparables, even after a year of bargaining. There does appear to have been some questioning of the comparables to be used during the initial bargaining session in October 2001, but not thereafter. I am not persuaded that the Employer clearly raised the right to introduce new comparables in the spring of 2002. No bargaining notes were presented which would support this. It is contradicted by the Union negotiator, Captain Norton, and could not be verified by Chief Ryan, who was on the Employer's bargaining team. I am also not persuaded that Mr. Albright's bargaining notes of the July 24, 2002 bargaining session reflects Union recognition that the Employer may seek to change comparables. Rather, I credit Captain Norton's testimony that those negotiations related to how medical premiums would be treated with regard to comparisons of total compensation. Mr. Albright's bargaining notes, when viewed as a whole, supports this, particularly his use of "i.e." to preface his note "if city seeks to change comps, then medical is an issue that must be addressed." The "i.e." suggests that this statement is meant to clarify the previous note: "Concerns re premium #, cost sharing + how fits into compensation." By underlining compensation and then immediately writing "i.e.," it appears that Mr. Albright was recording the Union's position that if the Employer changed the

manner in which compensation is totaled so as to include medical premium costs, then those premium costs would be an issue.

The Employer's actions indicated that it had adopted the six traditional comparables. They were utilized by the Employer during bargaining to support its positions. The Employer paid for a consultant to work with the Union to determine the total compensation paid by those six departments. That consultant and Captain Norton worked separately and together on that report from late 2001 until late September 2002. It is undisputed that they spent a great deal of time on it. Mr. Albright received periodic reports of progress being made in obtaining this information. I do not view the statement contained at the end of the final joint report as indicating that other comparables could be introduced. Rather, it suggests that the parties could disagree about the appropriate elements of total compensation, and they could raise additional pay issues. The fact that the parties placed so much effort into researching and preparing this report indicates that they intended it to have some significance. It reflects an understanding as to the comparables which would be utilized by the parties during negotiations. Indeed, as previously stated, both parties did justify proposals based on comparisons with the comparable departments. That there was such an understanding was buttressed by the communication made by the deputy chief to the Evergreen Hospital paramedics. His e-mail to them in November 2002, more than a year after the start of collective bargaining negotiations, conveyed that he still understood that the

traditional comparables were being utilized to determine compensation levels.

Moreover, the Employer stipulated to these same comparables during concurrent negotiations with its police union and the following interest arbitration. This lends support to the Union's contention that the Employer had accepted and adopted these comparables. Moreover, as discussed in more detail in a later section of this Opinion, interest arbitrators often considers "internal parity" as one of the criteria considered in the determination of wages, hours, and conditions of employment pursuant to RCW 41.56.465(f). From the standpoint of the Union, it would understandably seem unfair for the Employer to stipulate to the use of the traditional comparables in the context of its other uniformed employee group, but argue against their use here.

Both the Washington Public Employment Relations Commission and the Washington Supreme Court have stated that interest arbitration should be considered a continuation of the collective bargaining process. City of Bellevue, Dec. 3085-A (PECB, 1989); City of Bellevue v. International Association of Fire Fighters, Local 1604, 119 Wn. 2d 373 (1992). This was also recognized by Arbitrator Beck in City of Bellevue, PERC No. 14037-I-98-309 (1999). In that interest arbitration decision, Arbitrator Beck utilized as comparables the departments which the parties utilized during negotiations, even though the populations of the

comparables varied widely in size and one party would not stipulate to their use in the interest arbitration. Arbitrator Beck, relying on the parties' bargaining history and on subsections (1)(c) and (1)(f) of RCW 41.56.465 determined to select the comparables utilized during negotiations as the appropriate comparables in that case.

Similarly, here, I have selected the parties' traditional comparables as appropriate based on a combination of factors, including relative population, proximity, past bargaining history, contract negotiations preceding this interest arbitration, particularly their joint preparation of a comparative compensation analysis, and internal parity. Thus, the departments which will be utilized as comparables in this proceeding are: Auburn, Bellevue, Everett, Kent, Kirkland, and Renton.

COMPENSATION COMPARISONS

The parties agree that a total hourly compensation analysis is appropriate. They both would compare compensation for a firefighter with ten years of service, including add-ons such as longevity pay, holiday pay, etc., determining hourly total compensation by dividing by the adjusted hours, taking into account vacation and holiday hours. However, there are some differences in the proposed analysis. The Union's proposed

benchmark position assumes that the firefighter has an A.A. degree. The City opposes inclusion of the pay premium for an A.A. degree in the total compensation comparison because most firefighters do not have an A.A. degree. The Employer would include health insurance costs in the total compensation comparison. The Union opposes inclusion of health insurance premiums in the total compensation comparisons, but did submit data concerning the average co-payment for dependent insurance by employees in the comparable departments. The Union points out that its proposal is to pay the average of these co-payments in the comparable departments.

I shall include the premium for an A.A. degree in the compensation comparison. The parties themselves have included an A.A. degree in compensation comparisons in prior years and it is sometimes considered by interest arbitrators in compensation comparisons. The evidence presented establishes that a majority of bargaining unit employees have some significant level of higher education. The Union presented evidence that 43 bargaining unit members have either an A.A. or a B.A. degree, and of those without degrees, 39 have at least 45 college credits. I shall also include the employers' contributions for medical, dental, and vision insurance during 2002 inasmuch as they are a significant element of total compensation. Most arbitrators, including Arbitrator Wilkinson who decided the recent Employer's interest arbitration with its police union, recognize employee

insurance costs as an element of total compensation. The cost of disability and life insurance will not be considered as part of the total compensation comparison because the evidence presented in this regard is incomplete with regard to the comparables selected here.

For the most part, I have utilized the data which was jointly collected by Captain Norton and the Employer's consultant, as subsequently modified following the meeting between Captain Norton and representatives of the Employer's Human Resources Department. Given the joint and careful collection of the data, it is likely to be reliable. The monthly compensation figures below reflect benchmarks for a firefighter and a lieutenant, with ten years of experience, an A.A. degree, certified as an EMT and to use a defibrillator, and married with two children:

Auburn	Firefighter	Lieutenant
Base Wage	$4,778	$5,653
Longevity Pay	167	198
Education Pay	200	200
Holiday Pay	156	185
Health Insurance	832	832
Total Monthly Compensation	$6,133	$7,068
Annual Hours	2,442	2,442
Vacation Hours	240	240
Holiday Hours	48	48
Net Annual Hours	2,154	2,154
Net Monthly Hours	179.5	179.5
Net Hourly Compensation	$34.17	$39.38

Bellevue	Firefighter	Lieutenant
Base Wage	$5,057	$5,740
Longevity Pay	101	115
Education Pay	177	201
Holiday Pay	27	31
MEBT	332	377
Health Insurance	570	570
Total Monthly Compensation	$6,264	$7,034
Annual Hours	2,560	2,560
Vacation Hours	216	216
Holiday Hours	120	120
Net Annual Hours	2,224	2,224
Net Monthly Hours	185.33	185.33
Net Hourly Compensation	$33.80	$37.95

Everett	Firefighter	Lieutenant
Base Wage	$5,336	$6,063
Longevity Pay	187	212
Holiday Pay	267	303
Deferred Compensation	110	110
Health Insurance	693	693
Total Monthly Compensation	$6,593	$7,381
Annual Hours	2,190	2,190
Vacation Hours	180	180
Holiday Hours	24	24
Net Annual Hours	1,986	1,986
Net Monthly Hours	165.5	165.5
Net Hourly Compensation	$39.84	$44.60

Kent	Firefighter	Lieutenant
Base Wage	$5,384[4]	$6,030[4]
Longevity Pay	215	241
De-fibrillation Pay	54	60
Holiday Pay	28	28
Deferred Compensation	108	121
Health Insurance	819	819
Total Monthly Compensation	$6,608	$7,299
Annual Hours	2,632	2,632
Vacation Hours	264	264
Holiday Hours	120	120
Net Annual Hours	2,248	2,248
Net Monthly Hours	187.33	187.33
Net Hourly Compensation	$35.27	$38.96

Kirkland	Firefighter	Lieutenant
Base Wage	$5,164	$5,887
Longevity Pay	103	118
MEBT	248	283
Health Insurance	825	825
Total Monthly Compensation	$6,340[5]	$7,113[5]
Annual Hours	2,554	2,554
Vacation Hours	228	228
Holiday Hours	120	120
Net Annual Hours	2,206	2,206
Net Monthly Hours	183.83	183.83
Net Hourly Compensation	$34.49	$38.69

[4] This figure includes a one percent raise implemented on July 1, 2002. The parties joint compensation survey committee utilized this figure which includes the mid-year raise. Reducing this figure to reflect that the base wage was lower by one percent during the first half of the year would not significantly change the overall analysis.

[5] I have not included the sick leave incentive which the Union argues should be included. Receipt of that incentive is dependent on the amount of sick leave usage by the employee. Moreover, the Union, without explanation, did not include in its prepared figures for the City of Redmond the sick leave incentive provided in that Agreement.

Renton	Firefighter	Lieutenant
Base Wage	$4,800	$5,520
Longevity Pay	192	221
Education Pay	192	221
Holiday Pay	41	47
Deferred Compensation	264	304
Health Insurance	918	918
Total Monthly Compensation	$6,407	$7,231
Annual Hours	2,430	2,430
Vacation Hours	264	264
Holiday Hours	120	120
Net Annual Hours	2,046	2,046
Net Monthly Hours	170.5	170.5
Net Hourly Compensation	$37.58	$42.41

The average total hourly compensation for benchmark firefighters in the six comparable departments for 2002 is $35.86. The average among the comparables for lieutenants is $40.33. The compensation currently received by benchmark Redmond firefighters and lieutenants, modified to reflect the Employer's 2002 health costs, is reflected below:

Redmond	Firefighter	Lieutenant
Base Wage	$4,777	$5,528
Longevity Pay	191	221
MEBT	246	285
Health Insurance	837	837
Total Monthly Compensation	$6,051	$6,871
Annual Hours	2,528	2,528
Vacation Hours	216	216
Holiday Hours	132	132
Net Annual Hours	2,180	2,180
Net Monthly Hours	181.67	181.67
Net Hourly Compensation	$33.31	$37.82

Benchmark firefighters in Redmond earn 7.66% less than the average received by similarly situated firefighters employed by the comparable departments in 2002. Lieutenants in Redmond earn 6.66% less.[6]

The comparable departments provided the following percentage wage increases to its firefighters in 2003 and 2004:

	2003	2004
Auburn	4%	4%
Bellevue	2.5%	Unavailable
Everett	1.5%	1.2%
Kent	1.5%	0.9% (+24 hours holiday)
Kirkland	3.5%	4%
Renton	3%	3%

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 Employer presented evidence that its firefighter wages have exceeded the cost of living in recent years. In this regard, a firefighter's pay has increased by 47 percent since 1992, while the cost of living during that period increased by 42 percent. The Employer also presented evidence regarding the low increases generally in the cost of living during recent years. The Consumer Price Index for All Urban Consumers (CPI-U), published by the United States Department of

[6] If Bellevue and Kent were removed from the compensation comparison, as the Employer proposes because they are much larger in serviced population than Redmond, the compensation disparity between Redmond and the average of the remaining comparables would increase.

Labor, indicates consumer price increases of 1.6 percent in 2001, 2.4 percent in 2002, and 1.9 percent in 2003. The Employer argues that during this time of low inflation, it is entirely appropriate to hold down wage increases for public-sector employees.

Inasmuch as the governing statute requires the Panel to consider the cost of living, significant weight shall be given to the low increases in the cost of living during recent years.

OTHER CONSIDERATIONS

In addition to the specific criteria set forth in RCW 41.56.465(a)-(e), RCW 41.56.465(f) directs the Panel 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 raised in contract negotiations and also considered by arbitrators is the ability to pay wage and benefit increases. City of Port Angeles, AAA No. 753000021598 (Wilkinson, 1999), p.25; Clark County, PERC No. 11845-I-92-252 (Axon, 1996), p.36.

The Employer presented evidence that the state and local area are experiencing hard economic times, and that this has

negatively affected its financial condition. Washington's jobless rate was 7.3 percent in May 2003, one of the highest in the nation. In June 2003, the state's chief economist reported to legislators that the state economy, particularly in the Seattle area, was extremely weak. Redmond is situated about 20 miles east of Seattle. Jane Christenson, the Employer's assistant to the mayor, testified that in recent years the Employer has experienced "a slowing" in sales tax revenues. The other major source of revenue, property tax, has been limited by state Initiative 776 to a one percent increase per year, unless voter approval for a larger increase is obtained. Initiatives 695 and 776 have, in recent years, reduced the Employer's revenues by eliminating income derived from the motor vehicle excise tax. Additionally, a 1995 law exempts from the sales tax, expenditures for high-tech research and development. This has cost the Employer millions of dollars in revenue from high-tech companies located within its borders, particularly Microsoft. Ms. Christenson further testified that the fiscal crisis suffered by the State and the County have resulted in their transferring responsibility for services which they had previously provided to the various municipalities. This has already involved funding for parks, pools, and jail services, and may affect court services as well. The Employer has not received additional resources to pay for these additional expenses. In order to

balance the Employer's 2003-2004 biennial budget, the Employer has eliminated 11.7 F.T.E. positions which were vacant and put a freeze on certain discretionary items, such as travel. Ms. Christenson testified that the Employer reduced budgeted reserves for 2003-2004 by $537,000. Ms. Christenson further testified that the Employer has had to budget for double-digit increases in medical insurance costs which it has experienced in recent years and which it has been advised will likely continue.

On the other hand, the Union points to the Employer's Comprehensive Annual Financial Report for 2002, which states that "Redmond has a strong, diversified economic environment," with "high tech and light manufacturing, business parks, and an expanding retail core." It contains the headquarters for Microsoft, which "was largely insulated from the downtown in this industry." Other well known companies have a significant presence in Redmond, including Honeywell, AT&T Wireless, Eddie Bauer, Genie Industries, Safeco Insurance, and UPS. The report indicated that a decline in sales tax revenue was largely offset by an increase in property tax revenue from new construction. In this regard, the Union pointed out that the Employer is benefiting from the recent opening of several large retail establishments, and other construction which is in progress. The report further indicated that at the end of 2002, the ending general fund balance was 11.5 percent of the fund's 2002

expenditures. Ms. Christenson testified that the Employer has not exhausted its taxing capacity.

I conclude that the Employer can afford a reasonable pay increase for its employees. It does have a strong economic base with impressive corporate and retail presence. However, consideration must be given to the weak regional economy, which has negatively affected the Employer's revenue. The Employer has so far been able to deal with these challenging times by adjusting staffing and other cost-cutting measures. The difficult economic climate confronting the Employer during the last few years predictably should have a moderating effect on the compensation increases that can be expected.

Turnover

The City argues that an employer's turnover experience is routinely considered by interest arbitrators. It maintains that its turnover experience does not reveal an agency that is having difficulty retaining qualified firefighters because its wages are too low. The Union argues that turnover evidence is irrelevant to the legislative criteria because firefighters are strongly inhibited from moving to another department inasmuch as there are few opportunities for lateral movement, and such a move would result in loss of seniority, longevity, and vacation accrual benefits.

Arbitrators have given consideration to whether an employer's wages and benefits have been sufficient to attract and

retain qualified applicants. City of Port Angeles, AAA No. 753000021598 (Wilkinson, 1999), P.29; City of Mount Vernon, PERC No. 10183-I-92-218 (Axon, 1993), p.59. One would expect that if wages and benefits were unreasonably low, there would be movement to other departments or careers. In the last five years, seven firefighters have left the Fire Department voluntarily. According to Deputy Chief Loren Charlston, each of these firefighters gave a reason for leaving other than a dissatisfaction with compensation. The Employer's turnover experience does indicate that with the current compensation, it is able to retain qualified personnel.

Settlements With Other Bargaining Units

Another factor routinely considered by interest arbitrators is the settlements the employer has reached with its other bargaining units. Arbitrators Axon and Wilkinson referred to this factor as "internal equity" in Spokane County, PERC No. 14916-I-99-239 (Axon, 2000), p.30 and City of Camas, PERC No. 16303-I-0380 (Wilkinson, 2003), p.7. As the Neutral Chair has 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, such settlements 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. Thus, it is a factor which should be considered by the Panel.

Other Redmond employee groups have received the following wage increases in the 2002-2004 period.

	2002	2003	2004
AFSCME	3.51%	1.5%	0.81%
RCHEA	3%	2.49%	1.7%
Police	3.51%	1.35%	0.81%
Nonrepresented	3%	2.49%	1.7%

The Employer also presented evidence that since 1992, its firefighters have had their wages increased by a higher total percentage than any other employee group.

WAGES

The Union proposes the following wage increases:

	Firefighter	Lieutenant Fire Inspector
January 1, 2002	9.75%	8.5%
January 1, 2003	2.7%	2.7%
January 1, 2004	2.6%	2.6%

The Union's justification for its wage proposal is that it will result in its members being paid at the average paid by the comparable departments.

The Employer proposes the following wage increases to be applied to the entire bargaining unit:

January 1, 2002	2%
January 1, 2003	1.71%
January 1, 2004	1.53%

The Employer's proposed wage increases for 2003 and 2004 are equal to 90 percent of the CPI-W for the June to June period ending the prior year. The Employer contends that its proposal will ensure that bargaining unit members will keep pace with their comparables, while also taking into consideration cost-of-living information, the Employer's fiscal resources, internal parity, and turnover statistics.

Weighing the governing factors which are set forth in the statute, wage increases will be awarded in the amount of 4 percent in 2002, 3 percent in 2003, and 3 percent in 2004. These wage increases will move the total compensation received by bargaining unit members significantly closer to the average received in comparable departments. However, it will not entirely close the gap. The governing statute requires that the Panel consider a variety of factors, not just comparability as the Union urges. These other factors all have a moderating

effect on the wage level to be awarded. In this regard, the Panel has considered the low cost of living increases which have occurred just prior to and during the three year term of the contract in dispute. The wage increases awarded are significantly above the cost of living increase in each year of the contract. Other factors normally considered in the determination of wages also have a moderating effect, such as the difficult economic conditions prevalent during 2002 and 2003, the low rate of employee turnover, and the wage increases received by the Employer's other employee groups. While the wage increases awarded here will not bring the wage level up to the average of the comparable departments, still bargaining unit members will receive a larger overall percentage increase than the average received by employees in the comparable departments and by the Employer's other employees. Thus, the wage increases awarded here take into account the variety of criteria referenced in RCW 41.56.465, such as comparability, the increase in the cost of living, and other relevant factors such as ability to pay, internal parity, and turnover.

LONGEVITY PAY

In Appendix A, Section A.4 of their 1999-2001 contract, the parties agreed to improve longevity pay. The Union now proposes to further improve longevity pay, by increasing the longevity

premium after 15, 20, 25, and 30 years of service. The following chart sets forth the longevity pay which is provided in the expired contract and the Union's proposal for an enhanced longevity benefit.

Service Time	Current Benefit	Union Proposal
5 years	2%	2%
10 years	4%	4%
15 years	5%	6%
20 years	6%	8%
25 years	7%	10%
30 years	7%	12%

The Union reasons that its proposal rewards increased productivity that derives from experience. The Union asserts that its proposal bears a reasonable relationship to the average benefit provided by the comparable departments.

The Employer maintains that the existing longevity pay benefit should be maintained without change. It argues that the Union proposal for increased longevity pay is not supported by the comparables, and is also unsupported when considered in light of total compensation. The Employer presented evidence that firefighters already receive higher longevity premiums than any of the Employer's other employee groups, and those premiums exceed the longevity benefit available to police officers at every experience level.

The comparable departments provided the following longevity pay premiums:

	5 yrs	10 yrs	15 yrs	20 yrs	25 yrs	30 yrs
Auburn	2%	3.5%	6.5%	8%	8%	8%
Bellevue	1%	2%	3%	4%	5%	5%
Everett	2%	2%	5.5%	9%	11%	13%
Kent - 2002	2%	4%	5%	6%	6%	6%
Kent - 2003	2%	4%	6%	7.5%	8.5%	8.5%
Kirkland - 2002	0	2%	3%	5%	5%	5%
Kirkland 2003	0	3%	4%	6%	7%	7%
Renton	2%	4%	6%	10%	12%	12%
Average - 2002	1.5%	2.92%	4.83%	7%	7.83%	8.17%
Average - 2003	1.5%	3.08%	5.17%	7.42%	8.58%	8.92%
Redmond current	2%	4%	5%	6%	7%	7%

No enhanced longevity benefit shall be awarded. The existing benefit is not out of line with the comparables. Redmond firefighters have a slight advantage in longevity pay over the average received by their counterparts in the comparable departments during their fifth to tenth year of employment, are very close to average for the next ten years, and after 20 years, are at a slight disadvantage. Overall, the difference is not particularly significant. Moreover, according to figures provided by the Employer, their longevity pay benefit is superior to that received by every other employee group employed by the City of Redmond.

PROMOTIONS AND VACANCIES

Article XI of the expired contract reads, in relevant part, as follows:

Section 11.1 - Civil Service. All promotions and the filling of positions in the Bargaining Unit shall be made in accordance with the City of Redmond Civil Service Ordinances, Rules and Regulations, and the Washington State Civil Service Law (RCW 41.08) as they may hereafter be amended.

Section 11.2 - Job Descriptions and Position Qualifications. Copies or facsimiles of current job descriptions, position qualifications and testing requirements adopted by the City and/or Civil Service Commission shall be contained in SOG, Personnel - 021.

Section 11.3 - Promotions. The promotional process shall be as described in SOG Personnel - 021.

The Union proposes to delete Section 11.3 and to amend Section 11.1 to read as follows:

Section 11.1. Filling of Vacancies - Competitive Examinations. All vacancies in the ranks of Driver/Operator, Lieutenant, Captain, Battalion Chief, Assistant Fire Marshall, and Fire Marshall shall be filled by promotion made solely on merit, efficiency, and fitness ascertained by competitive examination among eligible candidates.

Section 11.1.1. Nature of Examinations and Certification of Results. Examinations shall fairly test for qualifications for the position, and results shall be certified to produce a rank ordering of those candidates pursuant to examination scores.

Section 11.1.2. Impartial Administration of Examinations. Examinations shall be impartially administered. Candidates shall be permitted to review their examination scores, including scoring keys and oral board interview notes, if any.

Section 11.1.3. Filling of Vacancies. The Employer shall promote the highest scoring candidate on the promotional list that was current at the time the vacancy first occurred, except that an employee may be passed over for legitimate reasons, in which case the Employer shall promote the next-highest scoring candidate and contemporaneously provide a written statement to the passed-over candidate and the Secretary of the Union setting forth all reasons and supporting facts. In the event two or more candidates have identical scores, the candidate with the greatest seniority shall be deemed highest scoring.

The Union contends that employees lack confidence in appealing promotional actions to the Redmond Civil Service Commission because important career development opportunities are administered by commissioners and a chief examiner who are

dominated by the Employer's management. Civil Service Commission members are appointed by the mayor and are dependent on the Employer's Human Resources Department for staff support. The Union notes that RCW 41.080.040 requires that chief examiners be appointed by competitive examination, and places limitations on how they may be discharged. The Union maintains that the Employer's Municipal Code violates this law by providing that a designee of the City's Human Resources Department shall serve as the chief examiner, and by excluding that position from civil service protection. Ken Irons has been chief examiner for the Redmond Civil Service Commission since February 2002. He is an employee of the Employer's Human Resources Department. Mr. Irons was appointed to his position by the mayor, without taking a competitive examination, and he serves at the pleasure of the mayor. The Union argues that the current situation has led repeatedly to rule violations to the detriment of bargaining unit morale. These alleged abuses of the civil service process are described below.

First, the Union contends that on several occasions, the civil service commissioners have consulted in secret with Employer representatives when making decisions affecting the promotional opportunities of employees. At the Commission meeting of May 15, 2002, Deputy Chief Loren Charlston advised the Commission that another fire administrative assistant would have

to be hired since the last one had not successfully completed probation. Deputy Chief Charlston requested that three employees on the eligibility list for the position be removed for lack of qualifications. At the time, the fire administrative assistant position was not in the bargaining unit. The Union president protested that names should not be removed from the eligibility list. Captain Norton testified that Chief Examiner Irons passed a note to a commissioner and the Civil Service Commission then went into an executive session. Captain Norton testified that Mr. Irons and Deputy Chief Charlston, who was then a battalion chief, participated in that executive session, but the Union was excluded. When the Commission reemerged from the executive session, it announced that it granted the request to amend the eligibility list. Firefighter Gary Anderson testified that in 1999 he presented an appeal to the Commission. He testified that before voting to deny his appeal, the Commission went into an executive session with the chief examiner and the test facilitator, who was Deputy Chief Charlston. Captain Norton testified that at a Commission meeting on July 17, 2002, the Commission again met in executive session to speak in private with the Employer's labor attorney about potential litigation and labor relations issues. The Union argues that the Commission's actions violate the appearance of fairness and the State's Open Meeting Act, RCW 42.30.110. The Union maintains that it should

not have to bring suit every time the Commission violates the law in its dealings with bargaining unit personnel.

The Union raises other problems it has had with the Commission. Union President Ken Weisenbach testified that for years, the Commission began meetings at 5:30 p.m. at City Hall, when the doors to that building lock at 5:00 p.m. He testified that he complained to the Commission about this in July 2001, and again in March 2002, before the Commission moved the meetings to an accessible place.

The Union complains the Commission called a special meeting in 2001 without sufficient notice.

Captain Norton testified that in December 2000, the Department proposed to postpone a promotional test by a few days so that three additional candidates would have sufficient experience to qualify. After the Union protested, the employer agreed not to postpone the test.

Union President Weisenbach testified that in October 2001, the Employer posted an opening for deputy chief, which indicated that the rating process would include an interview by the mayor and the fire chief. Deputy chiefs are not in the bargaining unit. The Union protested that this politicizes the appointment. Chief Ryan testified that as a result of the Union protest, they decided to not conduct the interviews, even though they had the right to do so.

Captain Norton testified that he was upset by the way he was treated when he was promoted to the rank of captain. Captain Norton had been the top-ranked candidate on the certified eligibility list for captain. Captain Norton testified that a lower ranking candidate was interviewed before him because one of the assessors on Captain Norton's oral board had raised concerns about him. Captain Norton testified that this was relayed to him by another candidate, and when he learned of this, he asked to see the assessor's notes. He testified that a deputy chief would not show him the notes, but did relate what the assessor had said. Captain Norton did receive the promotion.

Captain Norton testified that in June 2002, he served on an oral board for entry level firefighters. He testified that Mr. Irons was present during the first four interviews, and afterwards, advised the interview team how he would have scored each candidate. Captain Norton testified that he thought Mr. Irons was trying to influence the ratings of the interview team. Neither Captain Norton, nor another participant, Firefighter Gary Anderson, changed their scores, and there was no indication whether or not the third team member did so. At that time, the Employer was hiring three firefighters. The Employer hired the top rated candidate and two candidates who were tied for the fifth spot on the list. Deputy Chief Andy Hail admitted that he violated the civil service rules when he bypassed the candidates

ranked second, third and fourth. Those rules required the first selection from the three highest rated candidates, and then a selection from the remaining top three, etc. Deputy Chief Hail testified that he knew that he could reach the fifth ranked candidate, but he failed to take into account that there was a tie for the fifth spot. He testified that he made an honest mistake when he violated the Commission's "rule of three," by failing to select from the three highest ranking candidates for each selection.

Captain Norton testified that when significant revisions to the civil service rules were proposed, the cover sheet was titled, "Now For Something Really Dull."

The Union contends that its proposal remedies the abuses that result from the Commission's dependence on the Employer's administration by incorporating the basic standards and procedures of civil service into the collective bargaining agreement, thereby encouraging those involved to follow the rules by the prospect of enforcement by a neutral arbitrator. The Union asserts that its proposal would permit candidates to review their test materials. It argues that there is no credible need to maintain confidentiality of test materials. It reasons that candidates should be entitled to understand why they have done poorly so that they could learn from the experience or evaluate whether a credible challenge to the scoring could be raised. The

Union points out that its modified "rule of one" proposal is less restrictive than the rule in the State Civil Service Statute, RCW 41.08.040(9) which requires certification of the name highest on the eligibility list. The Union recognizes that the law permits local civil service commissions to utilize a "rule of three," citing Local 404 v. City of Walla Walla, 90 Wn. 2d 828 (1978). The Union points out that Chief Ryan testified that he has no objection to providing an explanation to a top-rated candidate who had been passed over for promotion. Chief Ryan testified that he would have a problem if the "rule of three" was changed, since that would restrict his ability to select the best candidate.

The Union asserts that the Employer's refusal to bargain over its promotional standards proposal prevented the Union from accommodating the Employer's interests and led to revisions of the Union's proposal at the outset of the hearing and at the outset of the Union's rebuttal case. The Union agrees that after the first three or four bargaining sessions, new contract proposals cannot be advanced. The Union asserts that this practice has not required the presentation of a final proposal, but rather a brief explanation of the issue. The Union points out that at the outset of the negotiations, it raised two general issues concerning the civil service process: modification of the "rule of three" and the conflict of interest inherent in hiring a

Human Resources employee as the chief examiner. Captain Norton testified that the Employer's response to the Union's concern was to suggest that it be discussed in another forum. Captain Norton testified that Chief Ryan questioned whether the current system was broken and whether it could be fixed in collective bargaining. The Union's first written proposal on promotions was made on July 24, 2002. The Union maintains that it addressed the issues initially raised at the start of negotiations by proposing to incorporate basic statutory standards into the contract so as to provide an alternative enforcement mechanism.

Finally, the Union contends that there is broad support for its promotion proposal among the comparables.

The Employer urges rejection of the Union's proposal to change the civil service system for promotions. The Employer argues that the Union should not be allowed to expand beyond the issues it identified as possible proposals early in the bargaining. The Employer points out that from October 2001 through July 2002, there were no proposals regarding promotions other than the rule of three and the independence of the chief examiner. The proposal that the Union made on July 24, 2002 was even more extensive than the modified proposal which it offered at hearing. The Employer advised the Union by letter dated August 19, 2002, that the new proposal was contrary to the parties' ground rules. The Employer argues that the Union's

presentation of revised promotion proposals at the hearing demonstrates its failure to adequately develop the proposal in bargaining. The Employer maintains that it did not have the opportunity to fairly evaluate that proposal, and its late distribution violates the admonition that interest arbitration is not a substitute for the bargaining process.

The Employer contends that the problem situations raised by the Union reveals that many were resolved under the current system, or else do not involve promotion issues or bargaining unit members. The Employer asserts that it has demonstrated its willingness to work with the Union to refine the promotion procedures. Chief Ryan testified that he agreed with the Union several years ago to initiate a Peer Review Board. This three-person board is tasked with reviewing all promotion protests and making recommendations. Bargaining unit members comprise the Peer Review Board for promotion protests made by bargaining unit members. Recommendations of the Peer Review Board can be appealed to the Civil Service Commission. Captain Norton testified that in October 2003, the Commission certified a promotion list at the request of senior staff, despite a recommendation from a Peer Review Board that a portion of the test should be regiven.

The Employer argues that allowing promotion candidates unfettered access to all selection materials, including

assessors' notes, would harm the selection process. The Department's Standard Operating Guidelines provides candidates with the opportunity to review, after the test, the "candidate's written test," the "written test answer key," "a blank copy of assessment criteria," and the "candidate's exercise scores." Also, the candidate has "the opportunity to receive a synopsis of assessors' comments from the Training Division." Chief Ryan testified that he does have concerns about candidates having access to the assessors' notes. Chief Ryan explained that assessors are volunteers from other departments and they expect anonymity so that they could respond frankly about a candidate's performance, and that it would be difficult to obtain such volunteer service if their identity is revealed to the candidate.

The Employer argues that requiring the promotion of the highest scoring candidate would deprive a chief of needed discretion in filling command positions.

The Employer contends that the Union's proposal defining the nature of examinations is vague and could lead to frequent appeals. Chief Ryan testified that this could lead to a quagmire as the promotional process is slowed while employee appeals proceed to arbitration. The Employer argues that this not only has the potential for great inefficiency, but also a loss of the institutional consistency which the Civil Service Commission provides.

Finally, the Employer argues that a review of the comparables does not demonstrate support for the Union's promotion proposals.

A review of the contracts of the comparable departments reveals the following: Bellevue's contract provides for vacancies and promotions to be governed by the Bellevue Civil Service Commission. Its contract does provide for a written explanation if the candidate with the highest score is not selected. Everett's contract does not contain a promotion provision. Its promotions are governed by the Everett Civil Service Commission. Renton's contract also does not contain a promotion provision. Its promotions are governed by the Renton Civil Service Commission. Kent's contract provides for promotions to be governed the Kent Civil Service Commission. Its contract also provides for its chief, in filling vacancies, to select from the top three eligible candidates on the register. It also provides the following:

> If the Chief elects to pass over a higher-ranking candidate from among the top three candidates, then, if requested, the Chief shall provide a written statement to the passed-over candidate(s) stating, in general, the Chief's reasons for not choosing the higher-ranking candidate(s).

Kirkland's contract specifies the matters to be tested on a promotional exam. It calls for selection from the top three names on the register and provides that "[i]n the event a leading

candidate is bypassed, the determining factors for the bypass will be provided, in writing, to the candidate." Kirkland's contract provides for that employer and its union to establish a committee which would develop a promotional process by the end of 2002. The Auburn contract specifically provides for the grievance-arbitration process to resolve appeals alleging violation of the promotion process. It contains language similar to the Union's proposed Sections 11.1 and 11.1.1. The Auburn contract permits employees to inspect their summary score sheets and a "Qualitative Evaluation Form" which will be mutually agreed upon by that city and the union and would provide candidates with information related to their performance in all phases of the testing process. The Auburn contract contains a rule of three provision, but does not require a written explanation to a passed-over candidate.

The Award will amend Section 11.1 by providing that a candidate for a promotion who is by-passed in favor of a candidate lower ranked on the eligibility list is entitled, upon request, to a written explanation of the reasons. Three of the six comparable departments have a provision calling for an explanation to passed-over candidates. It is reasonable and fair for employees who have worked very hard preparing for a promotional exam to expect a response to an inquiry regarding why they were by-passed for the promotion. Obviously, such

information could be useful to the employee with regard to future promotion opportunities. Moreover, Chief Ryan testified that he has no objection to providing such information to a passed-over candidate.

No other changes to Article XI shall be awarded. None of the Union's proposals are supported by a prevailing practice among a majority of the comparable departments. Further, the Union's argument that the current civil service system has been unfair to bargaining unit members is not persuasive. Most of the alleged abuses by the Redmond Civil Service Commission raised by the Union either do not involve bargaining unit members, or would have been unaffected had the Union's proposal been in effect. Thus, the Union's proposal would have had no bearing on the situations involving the selection of the administrative assistant, the deputy chief, or the newly hired firefighters. There was also insufficient nexus between bargaining unit members right to a fair process for promotion appeals and the allegations made by the Union regarding the Commission holding an executive session to discuss labor relations issues, or providing insufficient notice of one Commission meeting, or regarding the wording of a cover sheet accompanying a rule revision. Also, some of the alleged problems raised by the Union have already been mutually resolved, such as by moving Commission meetings to an accessible location, not postponing a lieutenant's test, and

canceling interviews for the deputy chief position. The implementation of a Peer Review Board several years ago appears to have been an effective means of fairly resolving most appeals by a review by fellow bargaining unit members. In the one example given by the Union where an employee was denied a request to see their assessor's notes, the employee did receive the promotion. Moreover, the Employer's practice of providing to candidates a summary of the assessor's notes provides a fair and reasonable balance between the employee's need to understand his assessment and the need for the Employer to maintain confidentiality for assessors from other departments. There is insufficient evidence that the rule of three is inherently unfair or had been applied unfairly. The rule of three is the predominant practice of the comparable departments. The example of the 1999 appeal where an employee felt that he was treated unfairly by the Commission is insufficient to establish general unfairness in the current civil service system. Questions raised by the Union regarding whether the Redmond Civil Service Commission is structured in accordance with statute is a matter for the courts to resolve. Overall, the evidence presented does not establish a pattern of arbitrary and unfair treatment by the

Redmond Civil Service Commission regarding promotion appeals by bargaining unit members.[7]

AWARD OF THE NEUTRAL CHAIR

It is the determination of your Neutral Chair that the Collective Bargaining Agreement between City of Redmond and International Association of Fire Fighters, Local 2829, shall be amended to include the following:

I. Base wages shall be increased as follows:

Effective January 1, 2002	4%
Effective January 1, 2003	3%
Effective January 1, 2004	3%

II. There shall be no change to Appendix A, Section A.4 - Longevity Pay.

III. Article XI - Promotions and Vacancies, Section 11.3, shall be amended to add the following:

> If a higher-ranking candidate on the civil service eligibility list is passed over, then, upon the request of that candidate, a written explanation shall be provided of the basis for that decision.

Sammamish, Washington

Dated: July 12, 2004

/s/ Alan R. Krebs
Alan R. Krebs, Neutral Chair

[7] It would unnecessarily lengthen this opinion to resolve the Employer's contention that the Union acted improperly when it revised its promotion proposals to include matters not previously discussed during negotiations, inasmuch as that proposal, for the most part, has not been adopted by the Panel. The one aspect of the Union's promotion proposal which has been adopted relates to its rule of three proposal which, it is clear, was raised in a timely manner during negotiations.