IN THE MATTER OF INTEREST ARBITRATION BETWEEN THE CITY OF ANACORTES, WASHINGTON AND THE ANACORTES POLICE OFFICERS GUILD Re: NEGOTIATIONS OF THE 2003-2005 COLLECTIVE BARGAINING AGREEMENT	**WA PERC** **CASE No. 18656-I-04-434** OPINION AND DECISION OF ARBITRATOR GUY M. PARENT

The Anacortes Police Services Guild (the "Guild") and the City of Anacortes, Washington (the "City") are parties to a collective bargaining agreement (the "Agreement" or "CBA") which expired on December 31, 2003. The parties began negotiating a successor agreement in the summer of 2003. In spite of their efforts, the parties were unable to reach agreement, even with the assistance of a mediator, on all of the issues in contention. The mediator eventually submitted thirteen (13) issues to the Executive Director of the Washington state Public Employment Relations Commission (PERC) who then certified the following issues as ripe for interest arbitration:

1.	Article 4.4	Municipal Court Overtime
2.	Article 4.9	Shift Bidding
3.	New Article 7.5	Nonessential Personnel on Holidays
4.	Article 9.4	Sick Leave buy back
5.	Article 12	Health & Welfare Coverage
6.	Article 17.4	Wages - Inc. Sergeant Pay Differential
7.	Article 17.3	Payroll Lag
8.	Article 17.3	Deferred compensation (*eventually dropped as an issue*)
9.	Article 18.2	Longevity Pay
10.	Article 18.3	Shift Differential
11.	Article 18.4	Specialty pay (Detective Clothing)

12. Article 18.5 Education Incentive
13. Article 18.6.2 Detective Clothing Allowance (V. premium pay)

The parties agreed to waive the statutory provision which calls for an interest arbitration panel consisting of three members. Instead, as authorized by WAC 391-55-205(1), the parties agreed to present the matter to a single arbitrator.

A hearing on this matter of interest arbitration was held on August 16, 17 and 18, 2005 in the City of Anacortes, Washington pursuant to the Washington Public Employees Collective Bargaining Act (the "Act"). The parties were afforded full opportunity for the examination of witnesses, the introduction of relevant exhibits[1] and for argument. At the hearing, some four hundred seventy-two (472) exhibits were offered by the parties and entered in the record. An official transcript was taken of the proceedings. Both parties elected to file post-hearing briefs which were received by the arbitrator on November 5, 2005.

Foreword:

Along with its post-hearing brief, the Guild's counsel advised the Arbitrator that it was also filing several replacement exhibits and prior arbitration awards. He moved to reopen the record for submission of several supplemental exhibits that were provided along with the brief. The City objected to the Guild's presentation of new and additional information contending that it was untimely and prejudicial to the City.

The Arbitrator urged the parties to resolve the matter informally. He also advised them that if their efforts failed and a request to reopen the record was made by either party for the purpose of clarifying and arguing certain issues, the Arbitrator would take the request under advisement.

The arbitrator was subsequently advised the matter had been discussed and there would be no need to reopen the record. The

[1] Reference to exhibits will be CX, GX, or JX signifying City, Guild or Joint Exhibits. Reference to the transcript will be Tr. followed by the page number.(Att.) will refer to an attachment to an Exhibit.

record was therefore close on December 10, 2005.

In light of the voluminous evidentiary record and the number of issues to be addressed, the parties stipulated to a waiver of the statutory requirement that the arbitrator render a decision within thirty (30) days of the conclusion of the hearing.

Both parties are proposing a three-year term for the successor agreement.

APPEARANCES:

For the Guild:

James M. Cline
James M. Cline & Associates
Attorneys At Law
1001 Fourth Avenue, Suite 2301
Seattle, WA 9815

For the City

Bruce L. Schroeder
Summit Law Group
315 Fifth Ave. So.
Suite 1000
Seattle, WA 98104-2682

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APPLICABLE STATUTORY PROVISIONS:

RCW § 41.56.430 Uniformed personnel-Legislative Declaration. The intent and purpose of chapter 131, Laws of 1973 is to recognize that there exists a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employes 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. (1973 c 131 § 1.)

RCW § 41.56.465(1) 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) For employees listed in RCW 41.56.030(7)(a) through (d), comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;

(ii) For employees listed in RCW 41.56.030(7)(e) through (h), comparison of the wages, hours, and conditions of employment of like personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington,

other west coast employers may not be considered;

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

(e) Changes in any of the circumstances under (a) through (d) of this subsection during the pendency of the proceedings; and

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

BACKGROUND:

The city of Anacortes lies in Skagit county some eighty miles north of Seattle on the western (seaboard) side of I-5, the main north-south interstate highway that winds through the state of Washington. It is a thriving medium-sized city with a population of approximately 15,7000 and an assessed valuation of $1,412,486,984.00. Among its many assets, such as nice location and a mild climate, is that it is also a seaport that provides ferry service to the popular San Juan Islands and to Vancouver Island in British Columbia.

The city has four bargaining units: the commissioned police officers unit, which is a party in this arbitration, the noncommissioned police unit, also represented by the Guild, the Firefighters who are represented by IAFF and the non-uniformed personnel, represented by the Teamsters. The City also has some 200 non-represented employees.

The City of Anacortes has a mayoral form of government comprised of a Mayor and seven elected Council members. The Police Department is led by Chief Michael King who has held that position for eleven years. The bargaining unit covers everyone

below the rank of captain and includes four (4) sergeants and eighteen (18) commissioned police officers.

In arriving at his decisions and formulating his awards, the arbitrator has carefully studied and evaluated all of the evidence and arguments presented in this case, within the context of the criteria established by WAC 41.56.465.

COMPARABLES:

THE CITY'S POSITION:

The City asserts that arbitrators have regularly accepted cities that both parties have proposed as the functional equivalent of a stipulation (City of Burlington, Axon, 2000 at 6-7)(Att. G). In the instant case, the parties have stipulated to the following nine (9) cities as initial comparables:

Mukilteo
Lake Forest Park
Mountlake Terrace
Mill Creek
Tumwater
Arlington
Port Angeles
Monroe
Sumner

As to the remaining cities advanced by either party as comparables, the City proposes adding Oak Harbor and Port Townsend to the above list of agreed-upon comparables using two widely accepted factors, i.e., the population of a city served by the police department and, second, the assessed valuation of the particular locale. The city's views on these two factors are as follows:

Factor "A" - Population:

The City suggests a bracket with a minimum low end of %50 of Anacortes' population and assessed valuation, and a high end of %50 larger than Anacortes' population. This formula, it argues, has been widely accepted by arbitrators as an appropriate

measure to determine like employers of "similar size" (Whitman County, Gaunt, 2004)(Att.D);(Walla Walla County, Krebs, 2003)(Att. J); (Intercity Transit, Krebs, 1995) (Att. K); (City of Vancouver, Beck, 1997)(Att. L)., and produces the following eleven (11) cities, some larger and some smaller than Anacortes, that, when taken as a whole, reflect a fair set of jurisdictions to use as comparables:

Using this 50%/150% band (at least 7,850 but no more than 23,500) of Anacortes' 2005 population of 15,700, the City comes up with the following set of eleven comparables that produces an average population very close to that of Anacortes(Cx,B.5):

Oak Harbor	21,720
Mountlake Terrace	20,390
Mukilteo	19,360
Port Angeles	18,640
Monroe	15,920
Anacortes	**15,700**
Average	**15,336**
Arlington	14,980
Mill Creek	14,320
Tumwater	12,950
Lake Forest Park	12,730
Sumner	8,940
Port Townsend	8,745

The City contends that the Guild ignores the criteria of RCW 41.56 when it proposes the much larger, more urban and geographically dissimilar jurisdiction of Camas, Mount Vernon, Des Moines, Issaquah and Marysville as additional comparables. The Guild's only justification for this approach, it contends, is that it feels a 50% down and 100% up band should be used; by definition, the City adds, such a band would include jurisdictions that are as much as twice the size of Anacortes. For this reason, it argues further, the 50% down and 50% up band adopted by the City is the traditional model as was explained by Arbitrator Abernathy as follows:

> The majority of the panel finds that the City's range of plus or minus 50 percent to be more reasonable and logical, while the Guild's plus 100 percent overstates the influence of larger jurisdictions. The majority of

> the panel finds the Guild's range to be more results-orientated and beyond a common sense meaning of comparing jurisdictions.

City of Camas at 27-28 (Abernathy, 1996)(Att. M)

The City urges the arbitrator to follow this approach toward measuring "similar sized" jurisdictions.

FACTOR "B" - ASSESSED VALUATION:

The City's proposed list of comparables also incorporates the "like employer" factor in relying on an even band of assessed valuation using the same 50% up and 50% down rule. Other than population, assessed valuation is the most commonly used factor to determine comparability status. *City of Sea-Tac*, at 7-8 (Krebs, 2002)(Att.H).

When negotiations began in mid-2003, Anacortes' most recent reported assessed valuation was $1,412,486,984. (Cx B.3) The City relied upon the 2003 data because this was the last year of the expiring Agreement and that data had been relied upon during negotiations. Using the 50% up and 50% down formula results in a lower limit of $706,243,496 and an upper limit of $2,118,730,476 (Cx B.1). The City's proposed list of eleven (11) comparables fall within this band. The list includes the nine jurisdictions agreed to by the parties, as well as Oak Harbor and Port Townsend.

The City contends further that the Guild's list of comparables ignores the "like employer" factor by including jurisdictions such as Issaquah which has an assessed valuation of $3,026,104,987, almost double that of Anacortes. As noted by arbitrator Lankford, " [c]ertainly any proposed comparable which is strikingly dissimilar in respect to assessed valuation...is not likely to be given much weight." *City of Mukilteo,*(Lankford, 2002, at 4(Att.N), cited in *Whitman County*, at 8 (Gaunt, 2004) (Att. I). Arbitrator Gaunt also rejected a union's proposals to use jurisdictions with more than doubled the assessed valuation, noting that "I have no interest in arbitrations that use comparators with so large a disparity." *City of Port Angeles*, at

9 (Gaunt, 2004) (Att. O). The Guild, the City asserts, compounds the problem created by its results-oriented approach to defining comparability by including a third factor: assessed valuation per capita. There is no arbitral support for adding this criteria. As noted by Arbitrator Wilkinson, the assessed valuation and population model adopted by the City is well-established:

> There are so many arbitration awards that considered only population and assessed valuation as a measure of size that no citation is needed. These citations have spanned decades without correction by the Legislature or the courts. Thus, I emphasize that it is both usual and appropriate to confine one's inquiry to the population and assessed valuation indicators (with consideration also given to geographic proximity), as is seen from many interest arbitration adjudications.

City of Camas, (Wilkinson,2003) (Att.P)

The City also contends that the Guild's proposal to add Issaquah and Des Moines also inappropriately favors more urban areas. Both cities are in the heart of the Central Puget Sound metropolitan area. Anacortes is located in Skagit County, a predominantly rural area.(Cx.B.14). Skagit County, like most Washington rural communities, has not experienced the same rate and degree of growth as the more urban areas. Issaquah and Des moines are large urban growth areas due to their location in the Central Puget Sound region.(Cx. B.14). As noted in the City's exhibits, the difference between the rural areas like Anacortes and more urban areas like Issaquah and Des Moines is staggering. (Cxs, B.14-B.18).

The Central Puget Sound metropolitan area has experienced substantial growth in the last several years, particularly due to Microsoft and other high tech companies. This growth translates into lower unemployment rates for urban areas compared to more rural areas. (Cx.B.14). It also translates into higher wages, personal income and per capita income in urban as compared to rural areas. *Id.* For instance, the average wage for rural Washington areas for the last two decades has remained substantially less than the average wage in the urban areas.

(Cxs. B.15-B.16). Per capita income has also followed this trend with the per capita income for rural Washington counties being significantly less (almost $10,000) than urban counties. (Bx.B.17). Given these significant differences, the attempted inclusion of Issaquah and Des Moines is not appropriate.

For all of these reasons, the City requests that the Arbitrator reject the Guild's result-oriented approach and adopt the City's following proposed list of comparables *which include the nine (9) jurisdictions agreed to by the parties* (emphasis. by City) and the "like employer of similar size" jurisdictions of Oak Harbor and Port Townsend:

Mukilteo
Lake Forest Park
Mountlake Terrace
Mill Creek
Tumwater
Arlington
Port Angeles
Monroe
Sumner
Port Townsend
Oak Harbor

THE GUILD'S POSITION:

There is no dispute between the parties that comparability is of overriding importance. The parties should not through posturing be able to achieve a compromise result not supported by the statutory interest arbitration factors. The statute and prior arbitration decisions provide guidance in the task of defining comparability. It asserts that there is no dispute between the parties that population and assessed valuation should be used to determine comparability. Nevertheless, the Guild contends that assessed valuation per capita should also be considered as it is an excellent measure of the City's resources to pay for officer compensation.

The selection range proposed by the Guild is more reasonable and better supported by sound arbitration precedent which indicates that the 2 to 1 range in both directions better

captures comparability. The Guild contends that its wage proposal is well supported by comparables and evidences a large wage gap between those comparables and those of the City. The City, it further contends, attempts to minimize the extent of this gap by artificially comparing 4-year officers instead of the generally recognized point of comparison - the 5-year "top step" officer. The City's proposal would drop the officers even further behind the comparables.

The City's "internal equity"-based argument should be rejected. The relevant internal equity factor concerns the other bargaining unit with similar collective bargaining rights and that bargaining unit - the firefighters - received a raise equal to the Guild proposal; besides, it adds, the internal equity has been a minimal or non-factor in arbitration cases, where, as here, the employer has a healthy capacity. The state and regional economy are strong, creating an influx of tax revenues. The City budget indicates very healthy reserves.

In sum, the arbitrator's award should be based on a principled application of the statute rather than a compromise between each party's position. In this case, the Guild's proposed comparables should be adopted by the arbitrator based upon a reasoned assessment of the evidence with an application of the statutory criteria set out in RCW 41.56.465(1), supra.

As was noted by Arbitrator Smith-Gangle in *Whatcom County*:

> The Act does not give guidance to the arbitrator as to the relative weight that should be given to the factors. Therefore, the arbitrator has discretion as to how to weight the various factors and the evidence supporting them. This not an exact science. However, it is incumbent on the arbitrator to use principled reasoning in drawing conclusions.

Whatcom County (Deputy Sheriffs)(Smith-Gangle, 2001)

Toward that end, prior arbitration decisions, especially under the Washington statute, are considered persuasive, yet non binding, precedent in applying these statutory factors. As Arbitrator Smith-Gangle then went on to note in the same Whatcom

County decision:

> There has been considerable case authority in Washington, by which various distinguished labor arbitrators have analyzed and applied the statutory criteria. Each of the parties referenced some of of those earlier awards in their briefs. To the extent that the reasoning of those arbitrators is relevant to facts of this matter, the arbitrator will refer to those cases. *Id.*

In this case as well, the Guild cites prior arbitral precedent as an aid to developing a reasonable application of the statutory factors to the issues presented.

Comparability, the Guild asserts, is of overriding importance in an interest arbitration proceeding. One explanation for the overwhelming reliance on comparability data is that such a comparison allows a "presumptive test to the fairness of a wage."[2]

As Arbitrator Snow noted: "The purpose of comparisons is to provide a rational standard and not to create a method for splitting the difference in interest arbitration. The parties do not seek the weighted average of an arbitrator's notion of equity, but, rather, a principled basis for resolving their impasse."[3] Because these comparisons carry an aura of fairness, they are more likely to produce a result acceptable to those affected."[4]

The Guild contends that its method for selecting comparables is superior to the method advocated by the City, and demographic factors justify the Guild's list of comparables. The collective bargaining statute specifically mandates that comparisons be based on "like personnel of like employers of similar size."[5] Both the Guild and the City agree that population and assessed valuation should be considered in determining an appropriate list of comparators based in this statutory mandate. On key

[2] City of Moses lake (Fire) (Snow, 1991) at 5 (quoting Fies, Principles of Wage Settlement, 339)(1924) (Appendix 7)
[3] City Of Moses Lake, supra at 6.
[4] Whatcom County (Police) (Snow, 1986) at 6-8
[5] RCW 41.56.465(1)(c)(i)

difference between the parties is over whether or not to use assessed valuation on a per capita basis.

The Guild contends assessed valuation per capita should be applied as an excellent measure of tax base. The analysis conducted by the Guild measuring wages against assessed valuation per capita indicates that this measurement criterion is highly predictive of police wage rates. On this point, the Guild draws the arbitrator's attention to Gx. 19. The City of Anacortes has wonderful parks and the city amenities make it a great place to live. But city subsidies of these amenities should not be made, in the Guild's view, at the expense of a fair and competitive package for the City's public safety personnel.

As to the "range" factor, the Guild argues that the one to two range it advocates should be adopted because it is a better measure of what constitutes "similarity in size". The key to assessing the value of this range is an understanding what is being utilized is a *ratio* of two to one in *both* directions. The notion of ratio was found useful by Arbitrator Janet Gaunt when she approved of this approach when establishing a range:

> In this regard, the Chair finds the reasoning of Union expert David Knowles regarding the law of large numbers, i.e., that a decrease in numeric amount has a much larger impact than an increase in the same numeric amount (Tr. 1369). It stand to reason that if a department 50% the size of Bellevue is deemed similar, then a department to which Bellevue stands in the same ratio should also be deemed similar on the upper end.[6]

The same range has also been approved by other arbitrators.[7] Perhaps the best statement discussing this issue is set forth in Arbitrator Wilkinson's decision in the *City of Pasco* police arbitration:

> In my view, the screen utilized is the one needed to produce an adequate number of (usually instate or local labor market) comparators. The objective, in

[6] *City of Bellevue*(Fire)(Gaunt 1988) at 15

[7] See e.g.,*City of Yakima*(Police) (Abernathy 1980) at 14; *City of Pullman*(Police)(Lumley 1981) at 10; *City of Pasco*(Police)(Wilkinson 1994) at 15-16

> addition to a sufficient number, is balance. One does not 'fine tune' the screen for the sole purpose of adding or omitting a desirable or undesirable (in terms of pay) jurisdiction. In questionable cases, one should err on the side of inclusion. The final list should be balanced in terms of population, wealth, degree of rural isolation and the like. The best argument for using the Association-preferred approach (minus 50% to plus 100%) for the population screen is that in almost all cases, there are fewer large jurisdictions from which to obtain population balance. On the other hand, the debate is academic when the balance can be obtained without that approach.[8]

The Guild further contends that the City's own comparability charts evidence a flaw in their methodology given Anacortes' stance as contrasted against the City-proposed jurisdictions. Under the assessed valuation screen, the second of only two screens used by the City to select comparables, Anacortes finds itself second from the top in size; only the city of Mukilteo is larger (Cx B.6). In its brief, the Guild proposed the following jurisdictions, based on its own screens, as proper comparables for consideration by the arbitrator (Note: the following list includes both the previously agreed-to nine (9) common comparables plus the Guild's proposed addition of six (6) for a total of fifteen (15)):

ARLINGTON
BONNEY LAKE
CAMAS
DES MOINES
ISSAQUAH
LAKE FOREST PARK
MARYSVILLE
MILL CREEK
MONROE
MOUNT VERNON
MOUNTLAKE TERRACE
MUKILTEO
PORT ANGELES
SUMNER

[8] *City of Pasco*, Supra at 16 (emphasis added by Guild)

TUMWATER

DISCUSSION and FINDINGS

Comparables:

At the outset, the arbitrator must state that the size of the record in this case is so voluminous as to make it impractical to address each and every piece of evidence submitted by the parties, but, on every one of the issues, careful consideration was given to the evidence and argument presented. In developing his award , the arbitrator will keep in mind the applicable statutory factors, i.e., AWC 41.56.465.

My study of prior arbitral decisions cited by both parties reveals that the nine (9) City and Guild common comparables can reasonably be accepted as an adequate number of jurisdictions for the arbitrator to consider as comparators in meeting his obligation to abide by applicable statutory criteria.[9] The population figures of these jurisdictions produce an average of 15,359 as compared to Anacortes' population of 15,700. In addition, the geographical location of those common proposed comparators is well within the bounds of the intent of the applicable statute.[10]

The Guild's proposal of six (6) additional jurisdictions to the common nine (9) would, if adopted by the arbitrator, create an unnecessarily large list of comparables. The goal here is to develop a balanced and manageable set of comparators that a) are reasonably close in size to Anacortes, b) are in acceptable geographic proximity and c) show some parity in wealth. The original nine (9) common jurisdictions cited, supra, meet all of these goals and the arbitrator, after considering the assertions and arguments of both parties, determines that the following common jurisdictions should be used as comparators:

	Population	ASSESSED VALUATION (MILLIONS)
Mountlake Terrace	20,390	$1,520,597,111
Mukilteo	19,360	$2,192,201,240

[9] RCW 41. 56.465
[10] *Id.*

Port Angeles	18,640	$1,064,490,502
Monroe	15,920	$ 957,406,490
Anacortes	**15,700**	**$1,661,054,153**
Average	**15,359**	**$1,448,948,433**
Arlington	14,980	$1,161,206,928
Mill Creek	14,320	$1,421,358,442
Tumwater	12,950	$1,166,331,973
Lake Forest Park	12,730	$1,618,292,987
Sumner	8,940	$ 938,650,230

ISSUES:

At the outset, the arbitrator will state that he heartily embraces the proposition, expressed by many other interest arbitrators, that the party proposing a change bears the burden of justifying it.

The amount of evidence submitted by the parties in this case was nothing less than overwhelming. This is not to infer that all was found to be particularly novel or relevant, but every issue, while elaborately presented, was appropriately addressed by each party in their respective post-hearing brief. In addressing each issue, the arbitrator has given due consideration to the assertions, contentions, arguments and evidence submitted by both parties within the context of applicable statutory criteria.

ISSUE 1. - Municipal Court Overtime

Article 4.4 of the Agreement states the following:

> 4.4 Any Employee called to work after completing their regularly assigned shift, or attending court on their off-duty time, shall be paid a minimum of three hours at one and one-half time their regular rate of pay.

The City is proposing to amend that language as follows:

> 4.4 any employee called to work after completing their regularly assigned shift, or attending court *as assigned* on their off-duty time, shall be paid a minimum of three hours at one and one half times their regular rate of pay, *with the exception of municipal court infraction*

cases which shall be paid one and one-half hours at one and one-half times their regular rate of pay for those times when an officer's presence is not required by the department or the court. (CX 1.1) (emphasis added).

The City proposes, basically, to modify the callback provisions of the Agreement for municipal court infraction cases where a simple affidavit can be submitted in lieu of live testimony. Where an officer is not requested to be present by the citizen challenging the infraction or requested by an attorney prosecuting the case, the bC City contends that it would be sufficient for the officer to submit an affidavit rather than provide live testimony. It bases this contention on the following provision of RCW 46.63.090 which reads as follows:

Statute Governing Affidavits in lieu of In-Court Appearances

...(2) **The court may consider the notice of traffic infraction and any other written report made under oath submitted by the officer who issued the notice or whose written statement was the basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing.** The person named in the notice may subpoena witnesses, including the officer, and has the right to present evidence and examine witness present in court.[11]
(emphasis added)

The City explains that this proposal is designed to provide an alternative for officers to do this rather than to incur overtime by unnecessarily attending municipal court. It further points out that the proposal provides that unless the officer's presence is required, the officer will not be eligible for this call back premium.[12] All other forms of call back pay are not affected by this proposal.[13]

[11] Cx 1.3
[12] CX 1.2
[13] Tr. III King 119-120

The City asserts the Guild did not introduce any evidence or testimony regarding their opposition to this proposal. Nor is there any basis it adds, for opposing it. Officers who are required to appear in court will continue to receive the guaranteed three hour minimum. On the other hand, the City should not be required to continue to pay this three hour minimum where an officer's testimony is not required. As the City faces increasing costs, paying overtime unnecessarily obviously begs for correction.

The Guild maintains that the City is attempting to modify the court overtime section in two ways: first, it seeks to cut the guaranteed minimum for court time pay from current amount of three hours at the overtime rate to just one and one-half hours. The City is also proposing new language designed to encourage officers to submit affidavits in lieu of live testimony in municipal court cases. The Guild argues that the proposed language modification is in no way necessary to meet the the stated goal of encouraging the submissions of affidavits, and the attempt to cut the guaranteed minimum pay at the overtime rate is not supported by comparability data. It points to the fact that twelve of its suggested fifteen comparables provide for a guarantee of three (3) hours at overtime rates for mandated court appearances.

DISCUSSION:

The arbitrator finds unpersuasive the City's argument that its proposed language change is necessary. First, this issue does not apply to the first provision of this article which addresses a callback instance of an officer who has completed his/her shift. Secondly, as the City contends, the new language would not affect the current three-hour minimum guarantee to officers who are required to appear in any court, including municipal court, which could occur, given the language of RCW 46.63.090, supra. The Guild's contention that the proposed language change is unnecessary is a valid one. From the City's argument, assertions and contentions, the arbitrator must conclude that the purpose of its proposal is to avoid the payment of a three-hour minimum pay guarantee at overtime rates to an officer who is not on duty and who may be required to provide an affidavit. This sort of situation is not clearly

addressed in the current language of Article 4.4. If the arbitrator's conclusion is in error, then the City's position is somewhat baffling given the fact that, if an off-duty officer's affidavit is required, the City could *direct* (emphasis added) the officer, as the Guild contends the City has a right to do, to provide the affidavit while the officer is on duty thereby eliminating instances of payments of unnecessary overtime.[14]

Based on the evidence and the arguments presented, the arbitrator finds that the City has failed to provide a compelling reason to change the existing language of Article 4.4 and therefor it failed to carry its burden of proof on this issue.

AWARD:

The language of Article 4.4 shall remain unchanged.

ISSUE NO.2 - SHIFT BIDDING

BACKGROUND:

Prior to the 2001-2003 Agreement, police officers did not have the right to bid on shifts. As a result of negotiations over the 2001-2003 successor agreement, the concept of shift bidding being driven primarily by seniority was agreed to and, subsequently, language in Article 4.9, which addresses that issue was tentatively agreed to and was *meant*(emphasis added) to read as follows:

> Each shift rotation shall be of two months in duration. No employee may bid for more than two rotations on the same shift in one calendar year. *The first rotation of a new calendar year may not be the third rotation*

The intent of that new language, agreed to in draft form by Police Chief Mike King, negotiating for the City, and Sgt. Lou D'Amelio and Officer Hansen negotiating for the Guild, was to a) establish shift rotations of two calendar months in duration,

[14] Guild Brief, 87)

b) to allow each police officer three rotations in the same year *providing all three selected rotations are not on the same shift* (emphasis added) and, c) the first rotation in a year may not be the third consecutive rotation on the same shift. A problem occurred when the Guild negotiators presented the entire tentative agreement to its membership for ratification. It was accepted. Then, an error in the proposed Shift Bidding language was discovered: instead of the language previously agreed to in clause 4.9(supra), the language presented to the Guild membership, and accepted, read as follows:

> Each shift rotation will be two months in duration. No employee may bid for more than two *consecutive* (emphasis by the arbitrator) rotations on the same shift. The first rotation of a new calendar year may not be the third consecutive rotation on the same shift.

This language, voted on and accepted by the Guild's membership, obviously permits an officer to bid on three rotations on the same shift in the same year providing no more than two of them are consecutive. This language only served to perpetuate the very situation the parties had attempted to correct through their negotiations. Following the ratification of the tentative agreement, Chief King and Sgt. D'Amelio recognized that an error had occurred in the typing up of the Shift Bidding proposal and also that it was too late correct it. Chief King testified that he understood the precarious situation in which both he and Sgt. D'Amelio had been thrust: either correct the language of clause 4.9 and present it to the Guild membership for another vote and risk a rejection of the entire tentative agreement, or, as Capt. King suggested, leave the mistake alone for the length of the new agreement with an understanding that it would be corrected during the next round of negotiations in 2003.[15] Sgt. D'Amelio testified that he initially did not have a problem with that solution, but by the time negotiations began in 2003, the Guild members had become more than slightly enamored with the 4.9 Shift Bidding clause, and, according to Sgt. D'Amelio, the membership was not willing to give it up.[16]

In its brief, the Guild vigorously defends its position by

[15] Tr. 142-150,(King)
[16] Tr. 151-160, D'Amelio)

arguing that, although clerical and editing errors were made the City cannot now rely on those errors in its attempt to convince the arbitrator that he should overlook the Guild membership's ratification of the agreement.

The City urges The Arbitrator to adopt its proposal for two reasons. First it is undisputed that the relevant language was a "mistake" and it should have expressly limited an officer's ability to bid all three of his/her rotations on the same shift. For the Guild to now renege on the agreement reached at the bargaining table and to request that the Arbitrator condone its conduct by rejecting the City's proposal is inappropriate and runs afoul of the good faith bargaining criteria of RCW 41.56.

As a collateral issue to the shift bidding clause addressed, supra, the Guild has proposed the following additional language to that clause:

> Officers may switch a two month rotation with each other, with approval of the City.[17]

The Guild contends that, although shift trades have been granted in the past, some have also been denied for what was perceived by the requesting officers as unfounded reasons.

In its brief the Guild asserts that shift trades are not a foreign concept to the Anacortes Police Department and they have been allowed in the past. It further asserts that the purpose of its proposal is "...to build into the contract a more formal and grievable recognition that officers have the right to seek such trades."(Gx. Brief, p.81).

In its brief, the City contends that the Guild, as the moving party on this issue, bears the burden of persuasion. *City of Bellevue*, (Gaunt,1988)(Att.Q). The Guild has not sustained its burden by demonstrating a compelling need to change the status quo by inserting new language into the parties' Agreement.

In support of its contentions, the City cites the testimony of Guild witness D'Amelio who testified as follows under direct examination: "...he (Chief King) has always been approachable."

[17] Cx A.6, p.3

(Tr.III, 163). Under cross-examination, witness D'Amelio further testified as follows:

> "Q. ...And I'm just trying to get a sense of what he (King) is giving up if your language were to come in, if(sic) he doesn't have the power to deny?
>
> A. I'm in agreement with you that he does have that power to do that now, I'm just asking that he formally write it down."(Tr.III, 166)

DISCUSSION AND FINDINGS

The suggestion of Chief Mike King to table the issue until the next round of bargaining, and Sgt. D'Amelio's concurrence with that idea, certainly appears to have been a good compromise at the time. Obviously, what was not anticipated was the membership's apparent total acceptance of the new shift bidding provisions, as written, which led to a stalemate on the issue during the 2003 negotiations.

It is truly unfortunate that incidents of the sort that led to this controversy sometimes occur, more often than not as a result of the trying and pressure-laden final moments of a collective bargaining endeavor. In the instant case, it is all the more unfortunate because it involves representatives of both sides(King and D'Amelio) who, judging from the record, had developed a bargaining relationship built on trust and professionalism.

A thorough review of record evidence regarding this issue causes the arbitrator to conclude that it would be improper for him to disturb the status quo of the 4.9 clause language. To do so would amount to an usurpation of Guild members' collective bargaining rights and, in addition, would severely conflict with the "good faith bargaining" spirit of WRC 41.56. This issue, in my opinion, is best left to the parties' next round of negotiations for another attempt at reaching a mutually-acceptable resolution.

The city argues persuasively that the Guild has failed to demonstrate a compelling need to add its proposed language to

clause 4.9 in an effort to formalize the process of requesting shift trades. No specific instance was put forward by the Guild that would indicate bias or some form of discrimination on the part of Chief King in denying any shift trade request. No allegation has been made that problems with the existing procedure exist other than some officers feeling disappointed by the City's occasional denial of a shift trade request, a quite natural reaction. In its brief, the Guild appears to infer that there has been some question, some uncertainty, on the part of the City as to whether or not police officers have the right to request a shift trade. If that is, in fact, the the Guild's concern, it is without basis. I find no evidence of the City contending that police officers do not have the right to make a *request* (emphasis added) of anything. As was stated, supra, the Guild's asserted purpose of adding its proposed language is "to build into the contract a more formal and grievable recognition that officers have the right to seek such trades." (Guild Brief at 81). I find the Agreement devoid of any inference that police officers do not have such a right. The Guild's proposal obviously implies that it is seeks the right to grieve the denial of a requested shift trade. Such a right is guaranteed by the provisions of Article 8 - Grievance of the Agreement. I therefore find that Guild's proposed language to be without proven purpose.

AWARD:

The City's proposal to change the current language of clause 4.9 is rejected, as is the Guild's proposed language.

ISSUE NO.3 - ARTICLE 7 - NONESSENTIAL PERSONNEL

Under Article 7 - of the Agreement, the City proposes a new clause,i.e., **7.5 - Nonessential Personnel Assignment on Holidays**. It would read as follows:

> **7.5** Management maintains the right to determine the number of nonessential personnel assigned to

work on holidays.

According to the City, the new language is intended to provide the Police Department with the authority to determine the number of nonessential personnel to work on a holiday. It would give the Department more flexibility to staff its operations on holidays based on actual need and productivity. The proposal would affect only the crime prevention officers, detectives and DARE officers. Patrol officers are considered "essential personnel" and, according to the City, would not be affected by the City's proposal. Holidays for nonessential personnel, such as DARE officers, detectives and crime prevention officers, are not productive work days because administrations and offices with which this type of personnel must interact, such as schools and the judicial system, are not open on holidays. In addition, detectives cannot function efficiently on recognized holidays because members of the public with whom they must interact are not available. The City asserts that it needs the flexibility to have nonessential employees take the holiday off with pay instead of working on that day.

In support of its proposal and contentions, the City draws the arbitrator's attention to Cx. 3.3 which is a graph depicting the City's salary expenditures during the years 2002,2003 and 2004 for nonessential personnel working on holidays. The graph shows the following:

Year:	2002	2003	204
Expenditures:	$1,375.	$4,899.	$8,729.

By allowing the City to schedule nonessential personnel to observe the holiday rather than report for work, the City would stand to save over $8,000.00 a year on overtime costs. The affected employees would still receive holiday pay and the proposal would not affect the majority of the bargaining unit, such as patrol officers, which constitutes essential personnel.

The Guild contends the City proposal should not be implemented for three reasons. First, the proposal fails to define the meaning of "nonessential" personnel; second, it attempts to insert into the Agreement language that is found in

few other comparable agencies and third, it is unnecessary language because it is redundant to the inherent right management already has to determine the level of nonessential staffing on holidays.

Due to the manner in which the proposal was drafted by the City, the Guild contends further that it is patently ambiguous as to the meaning of "nonessential personnel". On its face, the proposal makes it appear that City management has the right to determine who qualifies as nonessential personnel for a holiday. This could then include a patrol officer who may be regularly scheduled to work on the holiday. If the officer is sent home because the City determines that it only needs two patrol officers on a given holiday instead of three, then that officer loses out his/her holiday premium for that day because of the City's designation of the officer's status. That, the Guild asserts, is not acceptable.

The City bases its assertion that the proposed language would only apply to detectives on the testimony of Chief King and the City's exhibits, but, regardless of the alleged intent, that is not how the language reads. As drafted, the proposed language could be interpreted to mean that any bargaining unit member could be deemed "nonessential" by the City and sent home on a holiday. That possibility is simply not justifiable according to the Guild.

Such vague Agreement language also lacks support from comparable agreements. Of the nineteen comparables originally proposed by the parties, only two have any type of language regarding scheduling on holidays: Mountlake Terrace and Skagit.[18] The lack of language, in the other suggested comparables agreements, analogous to that which the City is proposing, supports the Guild's other contention which is that the determination of staffing needs of nonessential personnel on holidays is an inherent management right that does not require explicit language in the Agreement.

The Guild requests that the City's proposed language be rejected.

DISCUSSION:

[18] Gx .241

Based on the figures shown in Cx 3.3, the potential salary costs savings to the City by a closer monitoring of holiday staffing is rather impressive. From the testimony of witness King, the Guild's expressed concern that "nonessential" personnel might somehow encompass uniformed patrol officers appears to be without factual basis. First, witness King clearly stated under both direct and cross examination that "nonessential" personnel means detectives, DARE and crime investigation personnel.[19] He further testified that "nonessential" means non-patrol personnel.[20]

The arbitrator is of the opinion that the Guild's concerns are not well founded.

AWARD:

Based on the evidence of record, I find that the City's proposal has merit from both cost savings and more effective personnel management points of view. But I am of the opinion that the proposed new language would be more precise if it accurately reflected the view of the City as expressed by witness King in his testimony. Therefore, the Arbitrator awards that the following new Section 7.5 language be made part of the Agreement:

> **7.5** Management maintains the right to determine the number of nonessential personnel to work on holidays. Nonessential personnel is hereby defined as detectives, DARE and crime investigation personnel.

ISSUE NO.4 - Article 9 - SICK LEAVE BUY BACK

While Article 9 of the current Agreement provides for the accumulation of sick leave, Section 9.4 states:

> "Sick leave cannot be taken before it is actually accrued and there shall be no sick leave buy back."

The Guild's proposed change to the 9.4 clause reads as follows:

[19] TR III, 136-138
[20] TR III 140-141

> "Sick leave cannot be taken before it is actually accrued and sick leave buy back will be instituted. Upon retirement, each LEOFF II bargaining unit employee shall receive up to 360 hours of their sick leave as pay at their full hourly rate calculated as follows:(years of employment X 12) divided by (percentage of their existing sick leave bank as compared to 1440 hours.)

The Guild first asserts that a well-crafted sick leave incentive programs can be of help in reducing a jurisdiction's long-term costs. A high incident rate of sick leave can be quite expensive for police departments due to their 24-7 schedule of operations because they not only must pay for an unscheduled absence, it must also back fill the absent employee, oftentimes on an overtime basis. On the other hand, if an employee has an incentive to take as little sick leave as possible in order to build up a bank that could be cashed out at some point in time, it would reduce the number of sick days for most employees, and, in turn, greatly reduce the associated costs to the employer.

A strong majority (84%) of comparable jurisdictions originally offered by the Guild and the City support some sort of sick leave incentive programs and of those, ten (10) have programs in place that provide some form of cash compensation for unused sick leave upon retirement, similar to the one proposed by the Guild.

The Guild's proposal of a 360-hour cap on the amount of sick leave that can be cashed out at retirement is far below the average of those jurisdictions that allow a cash-out upon retirement. Three of the ten jurisdictions have no explicit capped amount within the buy back program itself. The average amount for the other seven of the cities is approximately 600 hours, far above the 360 hours proposed by the Guild.

The importance of comparability in determining the appropriateness of a sick leave buy back program has been validated by past arbitrators. For example, a new sick leave Payson program was awarded by Arbitrator Axon in *City of Everett* based on his findings that "the City's comparables provide

evidence that some form of cash out is a benefit enjoyed by police officers employed in the comparable west coast city."[21] Thus, the overriding importance of comparability has been recognized by previous arbitrators even in the area of sick leave buy back programs.

Considering internal factors of comparison here, the Guild asserts that it is also important to note that the Anacortes firefighters actually have a sick leave buy back program. The City's attempt to downplay this fact by arguing the firefighters have different leave accrual rates than do Guild members is nonsensical. The Guild argues that there is no logical nexus in the City's argument that, because the firefighters accrue sick leave at a different rate, the Guild members should not, therefor, have a sick leave buy back program. Whatever the differences between the firefighters and the Guild may be, the fact of the matter is that they have a buy back program and most of the Guild's comparables have such a program. In that light, there is strong basis for awarding the Guild's proposed program in this case.

The City argues that the Guild's sick leave buy back proposal would destroy internal parity; it bases this argument on the fact that, with the single exception the firefighters unit, no other employee group of the City has a sick leave buy back benefit. (Cx4.3). Put another way, 93.4% of the City' employees do not have a sick leave buy back. *Id.*; Schuh, II, 121. The Guild has provided no persuasive reasons why the officers should be treated any differently than the vast majority of city employees for purposes of a sick leave buy back program.

The Guild, it asserts, relies on the sick leave buy back programs purportedly offered in other jurisdictions to suggest one should be added here. However, as numerous arbitrators have noted, internal parity is often more important than comparability with other jurisdiction when it comes to benefits

as compared to wages. See, e.g., Clark County, at 84 (Axon,1996) (Att. R) In that case, Arbitrator Axon concurred with the County that all County employees should be given identical treatment when it comes to health care benefits. Here, maintaining the status quo places the Guild in the same position as the

[21] *City of Everett* (Police) (Axon, 1997)

majority of the City's 200 employees who do not have a sick leave buyback program.

Rather than be substantially treated like all of the other City employees with respect to this benefit, the Guild argues that it should receive the same benefit provided to the firefighter unit. The guild's effort to place itself in this minority group is misplaced due to the very different and unique situation of the firefighters. For example, the firefighters work more than any other city group, with 2912 hours a year compared to the 2080 hours for the other City employees, including police officers. In recognition of their significant number of scheduled work hours, the firefighters receive twelve (12) hours of sick leave each month as compared to the agreed-upon eight (8) hours for Guild members, as well as for all other City employees.[22]

The Guild bargaining unit is also different from the firefighter unit in that the Guild members receive a social security benefit that the firefighters do not receive. This translates into an additional 6.2% of this bargaining unit's base wages that is being paid by the City.[23] The Guild's proposal ignores this benefit, and it would amount to an additional $35,000.00 over this three year contract on top of social security benefits this bargaining unit receives.[24] For all of these reasons, the City requests that the Arbitrator reject the Guild's proposal and maintain the status quo.

DISCUSSION:

The basis for the City arguing against granting a sick leave buyback benefit is that no other group of city employees, other than the Firefighters, have such a benefit and the only reasons the Firefighters have it is that a) they work more than any other group of city employees and their schedule causes them to work some 2912 hours a year compared to 2080 hours a years and in recognition of that schedule they accumulate twelve (12) hours of sick leave per month instead the eight (8) hours earned by Guild members and b) Firefighters do not receive a social security benefit. The City contends the Guild's proposal, if

[22] Tr. II, 98;Schuh, II,121.
[23] Tr. II, 98.
[24] CX.6.6.5.

accepted, would serve to destroy internal parity.

The arbitrator attempted, but in vain, to locate the cases of "numerous arbitrators who have stated that internal parity is often more important than comparability with other jurisdictions" as asserted by the City. In support of that statement, the City refers the arbitrator only to one prior arbitration, i.e., the Clark County decision, at 84 (Axon,1996). The City accurately states that in that decision, Arbitrator Axon concurred with the County that all County employees should be given identical treatment when it comes to health care benefits.

My reading of Arbitrator Axon's decision indicates that it is important here to put his findings in the proper context. In that case, Arbitrator Axon was addressing an issue involving "Benefits/Insurance". It appears that all county employee groups and non-represented employees were participating in the Blue Cross Indemnity Plan 100/80 coverage with standard "buy-up" rates for every participant.

The County's proposal was to keep in force the then-current "buy-up" costs for the third year of the contract. The Guild proposed a reopener on the "buy-up" rates for the third year.

Arbitrator Axon rejected the Guilds proposal and in his "Discussion and Findings" stated:

> "The Arbitrator concurs with the County that the formula which is applicable to all other employee groups and non-represented employees who are still participating in the Blue Cross 100/80 plan should be identical."

In his Clark County case, Arbitrator Axon was dealing with a controversy involving a health benefit plan in which participation was voluntary, and with "buy-up" rates that applied equally to all those enrolled. His finding on that issue was appropriate as was his award.

In the instant case, the City's contention that the Guild's proposal would "destroy the internal parity" is without merit. No internal parity exists to begin with. For its own reasons,

the City saw fit to negotiate a sick leave buy back provision in its negotiations with the Firefighters. Since it does not have to negotiate with its non-represented employees, it obviously has felt that such a benefit is not called for, even if doing so would have, in fact, created some sort of internal parity. The Firefighters were able to negotiate a sick leave buy out plan for themselves. The City's claim that the Guild should not be permitted to reach for same benefit borders on the incomprehensible. Because the issue before us deals with a demand for some sort of cash pay out and not the basic issue of how many sick leave hours may be accumulated, it is clearly not the type of controversy disposed of by Arbitrator Axon in Clark County, supra. Here, we have a proposed monetary benefit at stake.

In support of its position, the Guild refers the arbitrator to a prior arbitration also involving Arbitrator Axon. *City of Everett* (Police)(Axon, 1997). Therein, the Arbitrator addresses an issue similar to the one before us. In Everett, the Association proposed a flat cash Payson equal to 50% of the value of the existing sick leave balance upon separation or retirement.

In his discussion of that issue, Arbitrator Axon opined as follows:

> "The Arbitrator is convinced that there is merit to a program which provides an incentive for employees to avoid using their sick leave. The sick leave accrual incentive should only be payable at the death or retirement of the employee. The Arbitrator views this as a long-term program which should not be available when an employee leaves City employment prior to retirement or death. The City's comparables provide evidence that some form of cachet is a benefit enjoyed by police officers employed in the comparable west coast cities."

My review of the sick leave provisions of the nine comparables in this case provides the following:

COMPARABLE	ACCRUAL MAX.	WHEN PAY OUT OCCURS & PAY OUT
Arlington:	240(inc.vac.)	8 hrs for each 24 hrs of sick leave. Upon quit or retirement.
Lake Forest Park:	All	Layoff or separation: 25% Disability Retirement: 100% Death: 100% Retirement: 50%
Mill Creek:	8 hrs/mo max of 1040 hrs.	Ret. after 10 yrs 25% Death off duty: 25% Death on duty: 100%
Monroe:	3 hrs for each 4 hrs of Sick Leave. Max. of 700 hours.	Upon termination 100%
Mountlake Terr.	8 hrs for each month.Those on 4/12 shifts get 8.395 hrs. Max. of 960hrs.	At termination 25%
Mukilteo:	8 hrs per mo. 480 hrs cachet at 16.7% (5)or at 33.0% (10)	At honorable term.: after 5 years: 80 hrs after 10 years: 160 hrs
Port Angeles:	3.69 hrs. per pay period. Max. unlimt.	After 1o yrs. upon ret. or disabil. 20% Max pay-out of 1200 hrs
Sumner:	One shift/mo Max of 120 Shifts.	Max. of 90 shifts Resign. or Term. 25% LEOFF 25% Dis. Ret. 50% Death 100% Retirement 100%

Tumwater: No Sick Leave buy back program.

The City calculates that if the Guild's proposal were to be accepted, its total cost over the three years of this new agreement would amount to $35,113.00, based on an assumption of one retirement per year.(Cx.6.6.5)

After reviewing the record evidence on this issue, the Arbitrator finds himself in agreement with the opinion expressed by arbitrator Axon in his Everett arbitration. *Id.* That is, there is much merit in providing an incentive for employees to avoid abusing their sick leave. I also am of the opinion that an accrued sick leave pay out should occur only upon the death or retirement of the employee. As in the Everett arbitration, the comparables in the instant case also evince a near-total (89%) acceptance of the principle of a sick leave buy out of some sort. Keeping in mind the potential cost to the City, I will modify the Guild's proposal to better reflect some aspects of the provisions of the comparables. In addition, in order to avoid potential accounting and payroll nightmares, the new buyout provision of Article 9.4 will take affect in the third year of the new Agreement; specifically, some sixty days after the issuance of this award.

AWARD

The Arbitrator awards as follows:

1. The Guild's proposal on sick leave buy out is rejected and the current language shall remain unchanged for the 2004 and 2005 years of the Agreement.

2. The current language of Article 9.4 shall be modified as follows:

9.4 Sick leave cannot be taken before it is actually accrued. There shall be no sick leave buy back from the period of January 1, 2004 to February 28, 2006.

The Arbitrator awards that the following new language be added to the Agreement:

9.4.1. Effective March 1, 2006 employees will be allowed, upon retirement or death, to receive a cash buy out in an amount equal to 50% of their then existing sick leave accrual balance up to a maximum of 500 hours.

ISSUE NO 5. HEALTH & WELFARE

BACKGROUND:

As stated, supra, the City has a collective bargaining relationship with four units: The Police Guild, IAFF, noncommissioned Police and Teamsters. The City's Exhibit No. 5.3 is a graph showing which group of employees have been paying on a monthly basis towards the health insurance. The graph indicates that only the Firefighters have been contributing towards the health insurance premium and have been doing so at least since 2001 when their cost was $17.00 per month. The cost rose to $186.00 per month in 2003. In 2004, the IAFF changed premium payment from an composite rate to a tiered rate. The monthly cost then rose to $422.00 for 2004 and then went to $392.00 for 2005. The collective bargaining agreement between the IAFF and the City for 2006 and beyond had not been settled at the time of the close of the hearing in the instant case.

CX 5.3 also indicates that for 2006, the Teamsters and the City agreed to $40.00 per month cost to the union members. It also shows that the noncommissioned police bargaining unit has reached agreement with the City on the City's proposed $35/$45/ $55 monthly contribution towards the premium cost for years 2004, 2005 and 2006. The City offers its employees the choice of a Group Health Plan (Regence Plan through Regence Blue Shield or a Preferred Provider Plan (PPO)(Cx 11.) The PPO Plan provides higher reimbursement rates for preferred providers than those not on the preferred list. *Id.* In Skagit County, there are very few specialists who are not on the preferred provider list so substantially all services are reimbursed at the higher preferred provider rate. In recognition of this, 20 of the 22 employees in the Guild's bargaining unit have chosen the PPO Plan. (Cx 5.7).

The City first asserts that, like most employers, it is

grappling with skyrocketing health insurance costs. In order to mitigate this substantial cost, it is proposing to introduce what it terms a modest cost sharing plan whereby employees would contribute $35.00 towards the cost cost of health insurance for year 2004, $45.00 for year 2005 and $55.00 for year 2006, regardless of the number of dependents might be covered.(Cx 5.1, 5.2). It adds that the City would continue to pay 100% of the cost dental, life, vision and orthodontia coverage.

Nationally, premium rates have dramatically increased in the last several years. (Cx5.14) A nationally-respected survey company, the Segal Company, issued its 9th annual Health Plan Cross Trends Survey on August 15, 2005. Id. A trend, as explained by the Segal Company, is the forecast change in health plans' per-capita claims cost determined by insurance carriers, MCOs (Managed Care Organizations) and TPAs (Third party Administrators). In its report, the Segal Company's report shows a health care industry trend for AWC (Association of Washington Cities) of 14.3% for 2006 and 14.0% for 2007. The AWC's actual projected adjustment is 12.0% for 2006 and 12.0% for 2007. The City points to the fact that AWC's premium rates increased by more than 20% in 2002 and and again in 2004. It also draws the Arbitrator's attention to the City's own rate increase experience since year 2000 by offering the following chart:

Year	Family of 4 Medical Monthly Premium	Medical Insurance Increase	CPI W - First Half of Each Year
2005	$929.45	8.00%	3.10%
2004	$860.61	26.00%	2.20%
2003	$683.00	15.50%	2.50%
2002	$591.35	6.30%	1.00%
2001	$556.28	3.00%	3.30%
2000	$540.08	27.04%	3.50%

According to the City, these figures translate to an increase in the City's health care costs from $547,894 in 1999 to $2,106,763 in 2004. This reflects a 285% increase in just the last few years. Using the national data, which projects a 14% increase, and attempting to err on the conservative side, the

City has projected an additional 12% increase in these costs in 2005 and 2006.

Almost universally, employees are being asked to share in the cost of health care coverage to some degree. As noted by Arbitrator Wilkinson, this was true four years ago. *King County Fire District #44* (Wilkinson, 2001)(City Att. S)("more represented employees are sharing in the costs of health care insurance to some degree" *Id.* at 53).

Further support is found in the survey of government entities performed by MARSH USA, a national brokerage firm. Cx5.12; Wilmes, II, 11. It found that an average employee paid $43.00 per month or 13.0% of the premium cost for employee coverage in 2003. Employees seeking full-family coverage were paying $225.00 per month or 32.0% of the premium cost. *Id.* at 7-8. The City's proposal is well within this range, as its $35/$45/$55 per month sharing of health care premiums sought from Guild members translates to no more than 3.40% to 4.40% of the total cost their medical coverage. Under its plan, the City avers that it would continue to pay more than 95.0% of the cost of medical coverage if its proposal is accepted.

Based on this new health care reality, arbitrators have not hesitated to fashion awards that include employee health care cost contributions. As stated by arbitrator Wilkinson:

> "Arbitration awards from the past several years also have shown willingness on the part of arbitrators to to frame an award that includes some sort of employee contribution to the cost health care insurance. Appendix A to this award lists all the awards about which the neutral Arbitrator has knowledge from the past four years that have addressed the issue, and the arbitrator's disposition. In most of those cases the employees either were, or ended up, making a contribution to the cost of insurance."[25]

In another case, Arbitrator Axon concluded as follows:

> The days of 100% employer payment for insurance benefits are coming to an end. This award on the

[25] *King County Fire District #44*, 54-55 (Wilkinson,2001) (Att. S)

insurance issue should be taken by Union members as a warning that on expiration of the 1999-2001 contract the time will be right to expect employee contribution to insurance programs based on what the comparators are paying..."[26]

The City maintains that true "apples-to-apples" comparison regarding the comparable jurisdictions' employer and employee health care costs is impossible because of the number of variables that affect those costs, including the type of benefits offered by each employer, the percentage of employees who chose a particular benefit, and the employer's cost experience. The City's plan is also reasonable because it follows the trend internally as well as nationally.

As a threshold matter, it is important to note that the Guild's data is misleading and simply wrong in several important aspects. For example, the Guild stated that Anacortes did not provide a separate orthodontia benefit. Gx 213. This is false. The City does provide such a benefit. Tr III 89; Cx A.3. Similarly, the Guild showed the City's cost for full family coverage at $826. per month when it is as high as $1,112. Gxs 214-215. Finally, as the Guild acknowledged at the hearing, it is inappropriate to compare plans with a tiered rate to those with a composite rate. The Guild, however, did just this comparison in an attempt to justify its refusal to contribute toward the cost of their coverage. For example, it compares the composite rates for cities like Bonney Lake, Monroe and Mount Vernon with the tiered rates for other jurisdictions. GXs. 209-210.

As the Guild could not rebut the City's evidence on this issue, it argues that their agreement to move from Plan A to the PPO Plan during the last contract justifies their refusal to contribute toward their premium costs because the PPO Plan costs approximately 16% less than the cost of Plan A. The Guild claims this translates into a 16.% reduction in benefits.

The City contends that the Guild's argument is nothing but a "red herring" for at least three reasons. First, even the Guild's witness acknowledged that there are some benefits provided under the PPO Plan that are more favorable than those

[26] City of Burlington, 49 (Axon, 2000) (Att.F)

provided under Plan A.[27] Second, the fact that this bargaining unit is now covered by the PPO Plan does not justify a zero contribution by employees. This is perhaps best illustrated by the fact that the Firefighters are now on the PPO Plan and they pay $392. per month for full family coverage as compared to the $45.00 the City is asking of this unit. Third, the Guild cannot cite any arbitral authority for the proposition that they are somehow immune from the skyrocketing costs of health care coverage and the need for employee contribution because they agreed to move from an arguably premium plan to the the PPO Plan over five years ago. For example, the city of Mill Creek officers are also on the PPO Plan and they contribute between $16.00 and $46.00 each month towards the cost of their coverage. Gxs 209,222.

The Guild also relies on the pending unfair labor practice charge as justification for their opposition to any cost sharing. The collective bargaining agreement which expired at the end of 2003 required the City to pay 100% of the cost of the PPO Plan for the term of the agreement. Thus the City has continued to pay the cost of coverage as it existed at the time the agreement expired in order to maintain the terms and conditions then in effect. Cx 5.15. Without arguing the merits of the Pending ULP, a full analysis of which is contained in the City's brief submitted in the ULP proceeding and a copy of which is contained in the City's exhibits submitted in the instant case (Cx 5.15), the city believes that in doing so it fully complied with its duty to maintain the status quo. The Guild, on the other hand, claims the City is required to continue to pay all increases in the cost of medical coverage since the agreement expired in order to maintain the status quo. The issue is pending before the Public employment Relations Board. Cx 5.15.

The Guild suggests that the arbitrator's authority to rule on this issue is usurped by the ULP charge. Even the Guild's counsel acknowledged at the hearing, this is false. The PERC has not dismissed this issue from interest arbitration, leaving the matter squarely within the arbitrator's authority to resolve in this interest arbitration proceeding. Under the city's proposal, the employees would not have to contribute any new money toward the cost of their coverage. Rather, if the Arbitrator accepts

[27] TR III D'Amelio, 72,73

the City's proposal, the City will refund to the employees the cost they paid toward their coverage in 2004 less the employee's monthly contribution rate of $35.00 and the City would make the same refund calculations for 2005. Thus, awarding the City's proposal would not result in any additional out-of-pocket costs for the employees at this time.

For all these reasons, the City requests that the arbitrator award the limited employee contribution the City has proposed.

The Guild takes the position that Arbitrators have generally addressed health insurance coverage as an economic issue to be decided predominantly by the same type of consideration that guide the wage award. Many arbitrators have rejected arguments that law enforcement health insurance awards should be controlled by internal equity factors. For example, in *Kitsap County*, arbitrator Roger Buchanan rejected the employer's argument that the Deputies should be placed in the single plan coverage assigned to other bargaining units:

> "It is the conclusion of the arbitrator that employees, who are in high risk employment such as Sheriffs Deputies should be in a health insurance plan that presents top quality, easily available medical care."[28]

Similarly, and very recently, in *Kittitas County*, arbitrator George Lehleitner rejected the employer's argument that the union's proposal was too expensive for the county. The employer's proposal provided employee benefits but was weak in full family coverage. The arbitrator rejected that proposal as being "fatally flawed". He indicated:

> The neutral Arbitrator concurs with the Union's characterization of the current situation with respect to health benefits as "intolerable" and I would add the words "troubling". To be blunt, while I recognize that sharply escalating health insurance premium costs are making it difficult for employers to provide fully paid, quality health coverage for their employees, I am shocked by the out-of-pocket premium costs paid by Kittitas County

[28] Kitsap County (Deputy Sheriffs) (Buchanan, 1998).

officers (and some others) for full family coverage.[29]

In the present case, the Guild has put forward compelling data that demonstrates that its members are already paying more than the average of comparables when a total analysis is done that looks at both monthly premium contributions, and more importantly, the imputed contribution that employees make through health plan reductions. In contrast, the City only focuses on part of the story, arguing that the "trend" is for employees to pay a portion of their premiums and that other City groups have agreed to pay what it would characterize as a "small" amount. The Guild acknowledges that, generally, police employees are paying more for their health insurance than they were ten or fifteen years ago. In fact, the Guild put this acknowledgment into action by recently assuming some of this financial burden. In just the last contract the Guild made a major concession of moving to the City's AWC PPO plan, its third level plan with lower monthly premiums and increased access costs when employees use the service. This change resulted in major financial contributions from the Guild members.

The City's proposal will only add to the financial hardships for police employees and set this group further back behind their comparables. The Guild and its members are entitled to credit for the concessions already made.

An comparison of agencies show how substantial these contributions are. The best explanation of how much the Guild members are already paying for their health insurance and the disadvantage that this puts them at in comparison to like agencies is the following table, which can be found in Guild exhibit 236:

City	Plan Coverage* (Premium Cost)	Employee Premium Contribution- Full Family Tier	Employee Plan Contribution- Diminished Benefits from Plan A	Total generated (imputed) Employee Contribution

[29] Kittitas County (Deputy Sheriffs) (Lehleitner 2003)

Arlington	AWC Plan A ($1,097.40)	$70.40	$ 0	$70.40
Burlington	AWC Plan A ($1,097.40)	$50.40	$ 0	$50.40
Camas	AWC Plan B ($1002.00)	$41.00	$ 0	$136.40
Des Moines	AWC Plan A (1,097.40)	$ 0.00	$ 0	$ 0
Issaquah	AWC Plan A (1,097.40)	$141.00	$ 0	141.00
Lake Forest Park	AWC PPO Plan ($929.45)	$0	$167.95	167.95
Marysville	AWC Plan A ($1,097.40)	$70.40	$ 0	$70.40
Mill Creek	AWC PPO Plan (929.45)	$46.45	$167.95	$214.40
Monroe	AWC Plan A ($1,097.40)	$140.80	$ 0	$140.80
Mountlake Terrace	AWC Plan B ($1002.00)	$ 65.00	$95.40	$160.40
Sumner	AWC Plan A (1,097.40)	$ 55.00	$ 0	$ 55.00
Tumwater	AWC Plan A ($1,097.40)	$ 32.12	$ 0	$ 32.12
Average Average Imputed Employee Contribution		$ 54.84	$40.52	$ 95.33
Anacortes	AWC PPO Plan (929.45)	$ 0.00	$167.95	$167.95

* Excludes Composite Rate Plans.

According to the Guild, this exhibit looks at three points of measurement: (1) how much employees in these various jurisdictions pay toward monthly premiums;(2) how much employees implicitly contribute through diminished plan benefits (generally resulting in some out of pocket costs); and (3), the total contribution ascribed (imputed, according to the Guild) to employees for their health insurance costs. The second two columns may not be intuitive, according to the Guild, and require some further explanation, but with this understanding in hand, it becomes clear that Anacortes Guild members are already

contributing more for their health insurance than these other agencies.

First this exhibit only looks at those agencies with tiered rate plans, as composite rate plans cannot be analyzed on an apples-to-apples basis. Fortunately, all the jurisdiction with tiered rate plans use one of the AWC products. AWC currently has enrollment in three different plans, ranging from its most comprehensive plan called A and its comprehensive plan being the PPO Plan. AWC also decreases the cost of the monthly premiums. What the Guild has done in Exhibit 236, though, is translated the cost differential from one plan to the next into an imputed employee contribution for those plans on a one-to-one basis. For example, the cost of AWC Plan A is $1,097.40 per month and the cost of AWC Plan B is $1,002.00 per month, with the difference being $95.40(Gx 216,217). Thus the total imputed contributions for going down to Plan B is $95.40

The logic behind this is that actuaries at AWC and Premera have already assigned a dollar figure associated with the reduction in benefits from one plan to the next. The population covered by these services and the cost of the services themselves, however, do not substantially change depending on what plan the employees have coverage. So, the reduction in plan benefits now means that the employees must pick up the difference in those costs when they use the services. The actuaries at the insurance companies have determined those costs to be the difference in the monthly premiums for the plans. So, it is reasonable then to use those same figures to determine how much employees are paying for being on one of the lower level plans.

The health benefits plan comparison table compiled by the Guild also demonstrates, on a much broader basis, the scope of diminished benefits Guild members must surrender to be under the PPO plan as compared to the health plans made available in most of the comparable jurisdictions. For example, the maximum annual out-of-pocket costs that someone covered by AWC Plan A or B, the Teamsters Trust Plan A or the UEBT (United Employee Benefit Trust) Plan A, is almost universally lower than that which exists for the PPO plan. Also, unlike the ASWC PPO plan, many of the other plans do not have any meaningful physician access

restrictions, a highly valuable feature for most consumers. Thus the shortcomings in the PPO plan are not strictly limited to the imputed dollar costs, but they can also be seen through the diminished level of benefits made available to those individuals covered by the PPO plan.

With that understanding in mind, it becomes clear how much Guild members are already paying for their health insurance by having agreed to move down to the PPO plan in just the last contract. The average total generated employee contribution for full family benefits for those groups with a tiered rate plan is $95.33 per month. Gx 236. This includes an average of $54.83 in direct employee contributions to monthly premiums and an average of $40.52 in generated contributions through diminished plan benefits. In comparison, the Guild members are already paying a total generated contribution of $167.95 per month for full family benefits. The Guild members are paying approximately $72.62 per month, or $871.44 on an annualized basis, more than the average of these departments with tiered rate plans. This contribution amount is equal to nearly 1.75% of an officer's base wage.

The City, on the contrary, focuses only on the dollar level that employees are contributing to the various medical plans only in the form of premium contributions. This methodology is flawed because it fails to consider the difference of immediate out-of-pocket costs required by the plans. All but two of the agencies with tiered rate plans require employees to pay something toward the monthly premium. However, of these departments, eight of them offer Plan A to their employees. Under the Guild's analysis, even a contribution of $70.00 or $80.00 under Plan A is still vastly superior to being under the PPO plan, and even better than Plan B. It is an apples to oranges comparison for the city to claim that most jurisdictions require an employee contribution to premiums, so Anacortes should also, because it fails to take in consideration the difference in plans. Conceivably, the employees in those jurisdictions chose to pay something for monthly premiums in order to stay with Plan A. Most employers would be indifferent to a decision by employees to pay, for example, $95.00 per month to stay on Plan A as opposed to making no monthly contributions to premiums but moving to Plan B. Under that scenario, the

employer's costs are the same. In this case, the Guild chose to take a diminished plan instead of paying toward monthly premiums. Having recently made significant concessions, the Guild members should not now be required to pay twice.

For the reasons stated above, the Guild urges the Arbitrator to reject the City's proposal.

DISCUSSION AND FINDINGS:

Record evidence clearly establishes that the often claimed meteoric rise in the last four to five years in health care costs is now a fact (Cx 5.5). From 2001 to 2006 the cost to the City of Anacortes of health care insurance premiums for a family of four has risen from $646.00 per month to $1,244.00. or more than 92%. *Id.*

My review of the health care benefit coverage and accompanying premiums contained in the collective bargaining agreements of the accepted comparable jurisdictions confirms the data provided in the City's Exhibit 5.4 regarding employee contributions to the various health care plan coverage which reveals that *all* (emphasis added) of the nine (9) comparables require <u>some</u> amount of *payroll* (emphasis added) contribution by a covered employee towards the premiums, at least for dependents. City Exhibit 5.4 shows the following:

Agency	Plan	Employee Contribution
Arlington	AWC Regence Plan A	10% for dependents
Lake Forest Park	Group Health or WA Physicians Service PPO	7.5% for dependents
Mill Creek	doesn't identify	10% for dependents
Monroe	Teamster Plan JC28XL	$135.58
Mountlake Terrace	doesn't identify	10% for dependents
Mukilteo	AWC Regence Plan A	$73.57 (Comp. Rate)
Sumner	AWC Regence Plan A	$50./mo./04; $55./mo/05; $60./mo./06 for Emp. and Dependents.
Tumwater	AWC Regency Plan A	$32.51 for dependents

As stated by both parties in their brief, it is almost impossible to make "apples-to-apples" comparisons of various benefits and rates among the comparables because of the variances in benefits, types of plans, the number of employees participating therein or rate structures, i.e., composite or tiered and the employers' cost experience.

In the instant case, this Arbitrator need not delve into comparisons of plans or rates. Contrary to the Guild's contentions, those points are not what is rather obviously at the heart of the issue before him. What is to be determined is whether or not the Guild members should, from their pay, contribute a portion of the monthly health care premium and whether or not the City's proposed amount is reasonable. The Guild's contention that its members' previous move to the PPO plan constitutes a de facto individual cash contribution to the monthly health care cost premium is found to be without merit. Record evidence establishes that Guild members had, and still have a choice of health care plans,i.e., Regence Plan A or the PPO plan. Witness Emily Schuh, the City's Human Resources Director, testified as follows on this issue under direct examination:

> Q. looking at exhibit 5.11 in that section, do the employees in this bargaining unit as well as other employees in the city have a choice between the plans they can go under?
>
> A. That is correct, we offer two plans, a Group Health plan which has a ten-dollar ($10.00) co-pay and Regence Preferred Provider plan also with a ten dollar ($10.00) co-pay.[30]

Witness Schuh's testimony is supported by the following language of Article 12.1 of the Agreement:

> 12.1 Insurance benefits will continue to be purchased through the Association of Washington Cities. Effective January 2002, employees are able to choose between the Group Health $10.00 co-pay plan and the Regence Preferred Provider $10.00 co-pay plan. The Health and Welfare package includes medical,dental, orthodontia, vision,

[30] TR III, Schuh, 8,9,

short-term disability, life insurance, and an employee assistance plan. For the duration of the Contract, (beginning in 2002) the City will pay 100% of the health and welfare premiums. Cx.A.3.

Depending on circumstances, and for personal reasons, an employee may find one plan's benefits to be more attractive than the other. Here, the Guild implies that the twenty (20) of the twenty-two (22) members who are now in the PPO plan were somehow *compelled* (emphasis added) to switch plans to the PPO plan which provides lower benefits than Plan A; the Guild therefore argues that by being put in that position, the reduced benefits of the PPO plan somehow should be considered as the equivalent of an imposed ("imputed", to cite the Guild's often used term in its brief) cash contribution towards the monthly premiums. I find the Guild's argument to be less than persuasive. An application of the Guild's logic in the instant case was also unsuccessfully attempted by the IAFF in a recent City of Port Angeles interest arbitration, wherein Arbitrator Gaunt determined that, effective July 1, 2004, bargaining unit members are to begin paying 7% of their dependent health insurance premium cost.[31]

My reading of the following recently adjudicated interest arbitration cases establishes that, during the past five years, arbitral authority has shown a marked disposition, based on case evidence, towards ordering employees to make some contribution to the escalating costs of health care premiums. For example,from Arbitrator Gaunt:

> "...Across the United states, employers are increasingly seeking some form of cost sharing... premium increases have been so large that they do provide compelling reason to initiate an employee contribution towards the cost of dependent medical insurance. *City of Port Angeles*(IAFF)(Gaunt, 2004).

From Arbitrator Axon:

> "This award on the insurance issue should be taken by Union members as a warning that on expiration of the 1999-2001 contract, the time will be right to expect employee contribution to insurance

[31] Port Angeles (IAFF)(Gaunt, 2004)

programs based on what the comparators are paying." *City of Burlington*(SEIU)(Axon, 2000).

From Arbitrator Greer:

"Upon consideration of all the statutory factors, I conclude that the City shall pay 50% of the premium to cover each employee's spouse and children, under the current insurance policies, beginning January 1, 2001. "Walla *Walla* County(Sheriffs Assoc.) (Greer, 2000).

From Arbitrator Axon:

"The $43.00 difference is not excessively higher than the amount the County is paying its other employees. On the other hand, the members will have an approximate $57.00 per month out-of-pocket expense for the last five months of 2001. This is not an unreasonable amount which will impose undue burden on the members to purchase the comprehensive insurance benefit package." *Mason County*(Woodworkers) (Axon,2001).

From Arbitrator Krebs:

"With the City facing challenging economic circumstances, it is reasonable for employees to share to some extent in the cost of these increases." *City of Anacortes* (IAFF)(Krebs, 2003).

From Arbitrator Levak:

"Any monthly premium contribution required above the County's contribution shall be paid by a reduction of the necessary amount from each employee's salary." *Mason County*(IAFF)(Axon, 2005).

The Guild also alludes to a pending Unfair Labor Practice charge brought against the City by PERC. It is my understanding that PERC's decision has been appealed. I am of the opinion that there is no nexus between this interest arbitration and the pending ULP matter. I will therefor refrain from addressing the

Guild's comments and contentions on that matter.

AWARD

Keeping in mind the provisions of RCW 41.56 and having thoroughly studied the arguments and evidence presented, I find that a contribution by Guild members to the premium of their chosen health care plan is appropriate. In view of the contributions currently being made by other City employee groups, I also find that the City's proposal of a contribution of $35.00 for 2004, $45.00 for 2005 and $55.00 for 2006 is not an unreasonable sharing of health care costs to ask of employees, given the fact the City's Firefighters are currently contributing more than those amounts, the noncommissioned Officers have agreed to a $55.00 per month contribution beginning in year 2006 and the Teamsters have agreed to pay $40.00 per month for dependents starting in 2006. In striving to arrive at a proper and fair wage decision the arbitrator has remained focused on the statutory criteria and has kept in mind other changes has The Arbitrator hereby orders that the members of the Anacortes Police Services Guild contribute $55.00 per month in year 2006 towards the premium of the health care plan in which an employee is enrolled. In order to permit Guild members to effectively plan their budget, it is also ordered that this contribution be effective March 1, 2006.

ISSUE NO. 6 WAGES

The Guild proposes a wage increase of 3.5% effective January 1, 2004, 3.5.% Effective January 1, 2005 and 3.5% effective January 1, 2006.

The Guild's position is that wage comparisons should be made using reasonable methodology which allows for a fair "apples-to-apples" comparison. Various points in a pay plan need to be considered to determine whether there is a true wage gap. Arbitrators have been fairly consistent in considering both education and longevity premiums in measuring relative wage inequities.[32] Disregarding those incentives could lead one to overlook a true wage inequity.

[32] See, e.g., City of Pasco (Police) (Krebs 1990) at 52-53 (App. 10); City of Richmond (Police)(Beck 1987) at 21-22 (App.16)

To the extent arbitrators do attempt to compare the base wage without any premiums, they generally do so at the "top step" wage. The Guild is unaware of any arbitration decision where the arbitrator has compared a target jurisdiction, whose top step might occur at only three, or as in this case, four years, only to comparables on the three or four-year step. At times here can be comparison problems if a particular jurisdiction does not have a top step at the generally recognized industry journey level standard of five (5) years or less. But that is not an issue here, as virtually all the jurisdiction top out within five (5) years. The comparison methodology applied by the Guild here is consistent with that standard, i.e., comparing five (5) year officers to five (5) officers and by defining five (5) years to mean sixty (60) complete months of service.

Another consideration in methodology concerns "lagging" wage data. In other words, where the collective bargaining agreement of comparables have expired, it is more difficult to make a true "apples-to-apples" comparison. While some arbitrators have indicated that where wage data is stale, that is a basis for precluding such a jurisdiction from being considered as a comparable, the difficulty with such an approach is that it does not enable the parties to develop a long term, stable list of comparables. In the Guild's view, the more sound approach was that suggested by an arbitrator who indicated that such wage data could be "projected" considering local area settlement trends.[33] In short, when addressing the wage gap, our Arbitrator should carefully consider the year of comparator data and apply a reasonable projected wage increase to fashion an "apples-to-apples" comparison.

The wage data of record indicates that the Anacortes officers are far behind the market at almost every possible point of comparison. The Guild's proposal reflects the need to close the gap in a number of areas. Before addressing the specifics of the current and significant wage gap, the Guild draws the Arbitrator's attention to the fact that most of the wage figures offered by the Guild and the City are at odds. The City's analysis contained several errors, repeated time and time again and from jurisdiction to jurisdiction, and account for many discrepancies in the wage numbers, in particular at the 5-year

[33] See City of Canton, 96, LA, 264(1990)

level. A fundamental flaw in the City's analysis is that it fails to engage in a true "top step" wage analysis. It purports to compare "5 year officer's" wage, yet in asserting this wage the City mistakenly cites the wage at the 48th month of service, or, in other words, what an officer makes the day after completing four years of service. By attempting to pass off an officer "in his/her fifth year" as a 5-year officer, the City offers data which are misleading and ultimately useless.

A true apples-to-apples comparison cannot be made where it ignores the reality that a number of jurisdictions offer an additional step upon the completion of five years of service, a step left out of the City's wage charts. The more appropriate wage to use at the 5-year service level is the wage applicable at the 61st month of service.

An example of how labeling the 48-month wage as the 5-year wage can lead to seriously misleading results is demonstrated by the following table which compares the 2005 figures for several different jurisdictions as represented on the City's wage charts versus the Guild's wage chart. The figures in both of the City's charts purport to represent the "5-year" wage, but by using the 48-month wage instead of the more appropriate 61-month wage, the City seriously under reports the wage in these jurisdictions.

Jurisdiction	**City 5-year AA 2005 wage (48+ months)**	**Guild 5-year AA 2005 wage (60+ months)**
Arlington	$4,690	$4,910
Lake Forest Park	$4,720	$4,812
Mill Creek	$4,611	$4,840

The other error in the City's wage figures is that they stack the longevity and education premium on top of one another, resulting in a compounding effect that leads to incorrect wage numbers. The Guild appropriately calculates the longevity and education premiums separately as a percentage of the base wage. For example, the Marysville 2005 4-year base is $4,543 per month, and they receive an additional 1% longevity premium and a 6% AA premium.(Gx 45). The proper calculation here, and the one used by the Guild, is to take 1% of $4,543 and then add that to

6% of $4,543 for a total of $4,861. Under the City's methodology, however, it would take 1% of $4,543 to get a new figure of $4,589 and then take 6% of this new number to come to a final wage of $4,864.00, The discrepancy is only slight and actually is one in favor of the Guild, but the calculation is nonetheless inaccurate. These two issues account for most of the discrepancies between the Guild's figures and those of the City. For the remaining inconsistencies, the Guild went back and carefully reviewed all of its wage charts and checked for errors. While a handful of errors were discovered in the Guild's calculations, they were relatively small. Nevertheless, the Guild has attached to its brief a series of replacement wage exhibits to account for those minor errors in an effort to provide the most accurate exhibits as is possible. References to the wage figures in this brief will be to these replacement exhibits which reflect a correction of all discrepancies identified during the hearing.

When performing a wage comparison it is only fair to consider the various premiums afforded to officers in order to determine their actual take home pay. The guild's wage analysis incorporated the actual education and longevity premiums within the various comparables in making these matches.

Based on the most recent settlements, Anacortes' police officers currently find themselves 5.45% behind at the 5-year no-degree level when contrasted with the Guild's proposed comparables, translating to a dollar difference of $261.45 per month.(Gx 61) This wage discrepancy is not a phenomenon that can simply be attributed to the fact that the City and the Guild were unable to agree to a new collective bargaining agreement and had to proceed to interest arbitration. In 2004, the Guild officers were already 3.31% behind the comparables at the same 5-year no-degree level.

Failure to keep pace with the comparables will have a negative impact on employee morale. Arbitrators in general have addressed this danger. For instance Arbitrator Gaunt:

> Arbitrators recognize that an award of wages falling below those in the labor market will cause turnover and low morale. Such awards are generally avoided,

so long as a subject jurisdiction has the ability to pay a greater amount.[34]

Arbitrator Levak has stated:

> The Arbitrator has also considered the traditional factor of the "interest and welfare of the public." The arbitrator has determined that it will serve those interests to pay a wage that is at least the average of the comparators. Payment of a lesser wage, in the face of a demonstrated ability to pay, can only have significant effect on morale and a resultant decrease in the quality of police service."[35]

Increases in the Cost of Living Index should be given less consideration in light of the settlement trends and other factors. A mere CPI adjustment would never permit a lagging jurisdiction to catch up unless wage settlements were reduced below the rate of the CPI increases, a condition not seen in the Washington law enforcement labor market for many years.

The parties' recent settlements have allowed Anacortes officers to keep pace with the settlements but have not been enough to close the gap. To now reverse course and move in a direction of making wage proposals that are simply based on cost of living increases-and then not even at the rate of a 100% adjustment- does not make sense. In short, because the cost of living numbers during what will be the first two years of this successor agreement were clearly out of line with the average settlement among the proposed comparables, those particular figures should be heavily discounted or entirely disregarded by our Arbitrator in crafting an appropriate award for 2004 and 2005.

Internal comparison to firefighters should be considered and serve as base line for the wage award. For interest arbitration groups, true comparison with other employee groups not eligible for arbitration, is inappropriate given the statutory scheme that governs. What can reasonably be given some weight is the wage increase extended to the only other interest arbitration eligible group. The arbitrator in the recent arbitration award

[34] City of Pullman(Police)(Gaunt 1997).
[35] City of Walla Walla(Police)(Levak 1986).

covering the City of Anacortes and the Anacortes Firefighters felt it important to take into consideration the previous police settlements and where the firefighters found themselves in relation to the wages of police officers. In that award, which covered the period of 2003 through 2005, Arbitrator Krebs noted in his discussion of an appropriate wage award, that his decision to award the fire fighters a 3.5% increase in 2003 was "reasonable close to the increase negotiated with its police officers for that year."[36] Arbitrator Krebs ultimately awarded a 3.5% wage increase for each year of the agreement.

Given the latest arbitration award settlement of 3.5% for each year of the 2003-2005 agreement for the firefighters, anything less than what the Guild has proposed for that same time period, which also happens to be 3.5%, would only further exacerbate the wage gap that already exists. While the comparison of wages between firefighters and police does not constitute a true apples-to-apples comparison because of the differing work schedules, being the only other interest arbitration eligible group in the City of Anacortes, the awards they receive, including wage awards, have an important bearing on these proceedings.

In spite of the changing tides of the economy, the City's fiscal situation has improved dramatically over the past several years and will provide more than an ample base from which to pay the proposed increases. Thus far over the course of 2005, tax receipts among the City's main sources of revenue have been above projections and well beyond what was received in 2004. By June of 2005, the City had already collected 52.2% of its projected amounts for property taxes and 56.2% of the projected sales tax amount. The City began the year with a $1.9 million unrestricted reserve, and appears likely to add to that number.

The City of Anacortes cannot now claim to be overwhelmed by the Guild's proposals. For the reasons stated above, the Guild requests that the Arbitrator award its proposed wages increases.

The City:

The City proposes a wage increase of 2.% effective January 1, 2004, 2.5% effective January 1, 2005 and 3.5% effective January

[36] City of Anacortes(Fire)(Krebs,2003)

1, 2006. It points out that the 2006 wage increase includes a 1.% increase towards a buy-out of the existing shift differentials. It asserts that Anacortes is one of the few police departments that continue to pay shift differential. Thus, the City emphasizes, its wage proposal on this issue is contingent on the buy-out of the shift differential and that if that proposal is not granted, the City's general wage proposal for 2006 is then 2.25%.

The City contends that the Guild seeks to increase officers' wages by 3.5% in each year of the agreement. In addition to advocating for substantial wage increases to base wages, the Guild also seeks to increase longevity, education and specialty premiums. It is important to keep in mind the Guild is proposing an increase on virtually every aspect of the officers' total compensation. As set forth below, the City's proposal on wages is supported by RCW 41.56 and other factors traditionally considered by arbitrators., including comparable employer data, cost of living information, internal parity, work load statistics, the City's fiscal resources, the local labor market and the absence of significant turnover.

The City's proposed wages exceed the comparables. The analysis begins in 2003 because that is the last year there was a collective bargaining agreement. The 2003 wages for the City are compared to the 2003 wages of the comparables. The City's current wage proposal is then applied to the 2003 wages to formulate 2004, 2005 and 2006 wages which are subsequently matched against what the comparables wages for the same years.

For comparison purposes, the City used the top step for an officer. Of the various combinations of length of service and degrees, it believes the most appropriate combination is an AA degree and five years of service because this reflects the entry level qualifications with the level of experience the parties agree is necessary to become proficient in the profession.[37]

After factoring in the City's 2004 wage proposal and comparing it to the wages provided by the comparables in the same year, Anacortes is within nine(9) dollars of the average of the comparables.(Cx.6.2.2.). The track continues in 2005, with Anacortes coming within 3.% of the average of its comparables.

[37] Tr., II, 100-101

(Cx.6.2.3).

The guild's comparability data is seriously flawed. For example, the Guild compares 2003 wages for the bargaining unit with the wages provided in 2004 and 2005 for the comparable employers to suggest that the City's wages are below the average of the comparable jurisdictions. GX 60,61. The Guild's failure to compare wages using the same year resulted in and "apples-to-oranges" comparison.[38] It is more appropriate to compare wages of the City with wages awarded in the same year by the comparables, as the City has done. The Guild incorrectly argued that the wage increases agreed to in other jurisdictions suggested that the City's proposal was below the average. Gx. 75,76. Any particular wage increase standing alone does not tell the Arbitrator anything about what would constitute a reasonable wage increase for the Anacortes police officers. A five percent increase does not provide meaningful information unless it is analyzed in the context of comparability of the current wages, increase in the cost of living, department turnover, labor market conditions and other terms of the parties' agreement. As mentioned below, Anacortes is already in line with its comparables. Thus, while a wage increase may seem high in one jurisdiction, it may be warranted due to a perceived need to catch up to that city's comparables. On the other hand, a one percent increase may be entirely appropriate give the fact the employer has historically been above the comparables and there is no need to "catch up". Indeed, even the Guild acknowledged at the hearing that some of these settlements may be due to turnover and recruitment issues that are not faced here in Anacortes. Tr.,I, 125. In summary, Anacortes is offering a wage package that is above the average of its comparables.

The cost of living factor supports the City's proposal. RCW 41.56 also requires the Arbitrator to consider the cost of living in fashioning an appropriate award. This factor clearly supports the City's proposal here whether measured by an historical comparison between the CPI and wage increases or the current rate of inflation. The first subset of cost of living focuses on the past. The City furnished an analysis of what has happened to the actual wages for Anacortes' officers from 1993 through 2005 compared with what would have happened to the same wage if the officers had received raises equal to 100% of the

[38] Tr. I, 76-77, 80

CPI-U. Cx.3.5. Since 1993, an officer's actual pay increased from a monthly salary of $2,945 to $4,739, an increase of 61 percent. Cx 6.3.5. If officers had received increases equal to 100% the cost of living during the same period, their wage would have grown to $3,956, an increase of only 34 percent. This is not a bargaining unit that deserves an above-market adjustment in order to make for historical losses to inflation. Rather, the officers' base wage increases have exceeded the rate of inflation over the last decade. Cx 6.3.5.

The City's proposal is fair in light of current measures of of the cost of living. The second subset of the cost of living factor involves current measures of the cost of living. For the current contract years, the Seattle-Tacoma CPI has remain at low levels with annual averages of 1.6% in 2003; 1.2% in 2004, and a current rate of 2.3% as of June, 2005. Cx. 6.3.1. These rates are significantly lower than the All Cities CPI for the same time period. Cx 6.3.3. Thus, the local inflationary rates do not justify a significant wage increase.

The Guild's request to exceed the cost of living is without merit. There is no justification for the Guild's desire to exceed the cost of living. Even the Guild's own exhibits demonstrate that the wage trends are far closer to 2.7% than the 3.5% they are requesting .Gx 85 at 4. Perhaps recognizing this, the Guild devoted a significant amount of time at the hearing trying to paint a picture of Anacortes as an affluent city that somehow justified higher wage increases. The Guild then compared the percentage wage increases to increases in the City's assessed valuation to suggest the City's wages have not increased proportionately. Gxs. 152-53. The same argument was rejected by Arbitrator Wilkinson in the City of Redmond case. There, the Guild argued that the police officers could not afford to buy a house in Redmond due to the affluence of the community. The Guild then argued, as it does here, that Redmond's affluence justifies a higher wage award. Arbitrator Wilkinson unequivocally rejected this argument, noting that there is no evidence showing that police wages and the community's affluence have any correlation:

> "If one were to take this argument to its logical extreme, then the police officers in tiny, but

wealthy Medina or Clyde Hill should be the highest paid in the State. Moreover, I am unaware of any arbitration award that has taken the correlation between wages and affluence (whether measured by assessed valuation, median family income or other measurements) into consideration."[39]

Indeed, RCW 41.56 is devoid of any suggestion that such an analysis is acceptable - let alone appropriate. The reason is obvious; there are several factors that contribute to assessed valuation in any give year that make it an inappropriate benchmark for determining wages. In addition, the attenuated nature of the Guild's analysis is perhaps best illustrated by what it suggests is an appropriate wage increase. According to the Guild's data, the wages would have to increase by more than 57% to meet increases in assessed valuation. Gx. 153-53. The Guild's analysis should be rejected.

Internal comparisons with other City employees support the City's proposal. As noted, above, one issue considered under the catch-all factor is internal parity with other City employees. A number of Arbitrators have brought up the issue of internal parity when addressing the "other factors" provision of RCW 41.56. 465 (f), e.g.,: Arbitrator Axon (Spokane County, 2000; City of Burlington, 2000 and City of Mount Vernon, 1993); Arbitrator Krebs (City of Kennewick, 1997).

Cx.6.4.1 demonstrates that Guild members have fared better than all of the City's other employee groups:

Salary Increases Effective 1/1

	Commissioned Police Guild	Non Commissioned Police	Fire	Non Union	Teamsters
1998	6.	3.5	4.375	3.	3.
1999	6.5	4.	4.5	3.	3.
2000	3.5	3.5	3.4	3.3	3.3
2001	4.	4.	3.3	3.	3.
2002	4.	4.	3.3	3.	3.
2003	3.25	3.25	1.5	1.3	.5

[39] City of Redmond, 17,(Wilkinson, 2004)(Attachment V)

2004	2.	2.5	3.5	2.5	1.3
2005	2.25	3.	3.5	2.7	1.3
Totals:	**31.5**	**27.75**	**27.375**	**21.8**	**18.4**

Since 1998, the officers' base hourly wage increased by 31.5% as compared with an increase of only 27.75% for next closest bargaining unit , the noncommissioned police unit. Thus there can be no question that the officers have been treated fairly based on the available data.

Ignoring this, the Guild argues that a comparison to the City firefighters unit justifies its request for a substantial wage increase. The Guild's data is fundamentally flawed. First, as with the Guild's other "comparability" endeavors, it compares 2003 wages for officers with 2005 wages for the firefighters to suggest that the officers are underpaid. as set forth in Cx 6.4.1., there can be no question that the officers have been fairly paid when compared to other City employees, including the firefighters. Arbitrator Gaunt commented as follows on the subject of internal parity:

> One unit may give higher priority to achieving step adjustments in a wage schedule than to gaining a higher across the board increase. For another unit, the reverse may be true. One unit may accept a lower wage increase because that increase maintains the bargaining unit's wages at a level competitive with the wages in other jurisdictions for similar jobs. Another unit may find the same percentage increase unacceptable because it does not result in a competitive wage for their job classifications. Consequently, internal parity is important, but 'not determinative in an interest arbitration under the Washington statute'."[40]

The fiscal resource factor does not support the Guild's wage demand. The City's proposed wage increases are fair in light of of the City's decreasing revenues and increasing medical costs.

Over the last several years, a number of initiatives(referred to as the Eyman initiatives) have significantly limited Washington state municipalities' tax revenues. Cities, like Anacortes, pay the wages and benefits of its emergency personnel

[40] Whitman County, at 17-18 (Gaunt, 2004)

through their general fund. Prior to 2000, the general fund was supported by a motor vehicle excise tax in addition to property, sales and utility taxes. On this point, the City emphasizes that the Guild's data regarding the City's revenue resources describes the situation that existed before the Eyman initiative and does not accurately reflect the limited sources of revenue available to the City today. Se e.g., GX 15.

The local labor data does not support the Guild's wage proposal. Over the last decade, Washington's unemployment rate has been higher than the national average. Cx. 6.7.1. Locally, Skagit County's unemployment rate is even higher than the state and national rate 5.8%. Cx 6.7.2. This is a full 1.2% higher than the King County rate. Id. This higher unemployment rate translates into lower wages and per capita income than the national and state average. Cxs. 6.7.3., 6.7.4. Part of the reason for this is the difference between Skagit's more rural environment and the more urbanized areas in Washington, such as the Central Puget Sound region. Thus the Guild's reliance on the strong economy in King County and other parts of the Central Puget Sound area (where Microsoft is located) is irrelevant.

The City's turnover experience does not support the Guild's wage proposal. Another aspect of the catch-all factor is turnover experience. As Arbitrator Axon stated in *Clark County*:

> "The lack of turnover also reflects a compensation package that is sufficiently competitive to attract and retain qualified deputies."[41]

The City's turnover rate does not reflect a problem with attracting or retaining qualified officers. Since 1994, only six officers have left the City- two of whom have since returned to work for Anacortes. Cx. 6.8.1.; King, II, 162-64. Of the other four one left the law enforcement altogether and one moved to Maine to be close to family. *Id.* None ever indicated that they were leaving the City because of wages or benefits. Id. Nor is there evidence the Department is having difficulty attracting a sufficient number of qualified officers. King, II,164. Rather, as the Guild acknowledged, the City has never hired someone who is unqualified. Tr. I, D'Amelio, 122. And, in fact the City's four most recent hires all had bachelor's degrees, indicating

[41] Clark County(Axon,1996)(Att. R)

that the City is not having difficulty recruiting qualified police officers.

In summary, the City requests the arbitrator award its wage proposal as a fair and reasonable offer in light of the multi-factored analysis advocated by RCW 41.56

DISCUSSION AND FINDINGS

A threshold matter surfaced in the parties' brief as a result of a difference of opinion as to what constitutes a "five-year" officer for purposes of wage comparisons. The City maintains that once an officer has passed the 48-month milestone of employment he/she is to be considered a "five-year" officer, that is, an officer "in the fifth year of employment". It contends that the Guild's data for an officer with five years of service is markedly different from the City's data. The Guild asserts that an officer reaches the "five-year officer" level only after he/she has reached the 60-month level of employment,i.e., on the first day of the 60th month of employment.

In their briefs, the parties expended much time and effort defending their views on this point. The fallout from this disagreement is that most of the numbers developed by the parties to illustrate certain points in support of contentions and argument could not be reconciled by the arbitrator because of the varying results obtained when calculating averages, for example, or comparing the position of Anacortes' basic five-year salary to that of the comparables. From the record and for the purpose of establishing a statutorily acceptable basis for comparisons, the arbitrator finds that a police officer who has completed a minimum of sixty (60) months of employment in that capacity is to be considered a "five year" officer.

This finding is based on two facts: first, Article 19-(Proficiency) of the Agreement states, at Level 6 of the relevant scale, that Level 6 is attained "*after* (emphasis added) five year's service". This clearly establishes that an officer with more than forty-eight months (48) of service but less than sixty (60) is not a "five year" officer but, rather, an officer *in* (emphasis added) his/her fifth year of employment, in

accordance with the provision of Level 5 in Article 19, which states "*after* (emphasis added) four year's service". In further support of his determination, the Arbitrator submits, from his personal experience, that when a child is born she/he is not normally referred to as a one-year old at birth; but on the first birthday, twelve months *after* (emphasis added) his/her birth, the infant is, from the arbitrator's further experience, deemed to be a one-year old. And based on that compelling example, the arbitrator must agree with the Guild's position on this issue. Therefore, I accept as valid the Guild's argument that an Anacortes Police Officer, in order to be deemed a "five year" officer, must have sixty (60) - plus months of service, and I will therefore use the contractual monthly Level 6 basic rate of Pay for Anacortes Police Officers when comparing that rate with the top step rate of the comparables.

The following table shows where the monthly salary of an Anacortes police officer with an AA degree at the 60+ month step with both the City and the Guild's proposed increases would fit within the 2004,2005 and 2006 wage settlement data of the comparables.

In two instances where a comparable's last collective bargaining agreement did not reach to year 2005 or 2006,i.e., Mukilteo and Tumwater, the Arbitrator has used the average percentage of wage settlements of the other seven comparables to provide workable figures for years 2005 and 2006. All salary figures include an educational incentive adjustment for an AA degree wherever applicable:

Comparables:		**2004**			**2005**
Mountlake Terrace	:	$ 5046	Mountlake Terrace	:	5160
Monroe	:	4894	Monroe	:	5041
Arlington	:	4756	Arlington	:	4997
Mill Creek	:	4743	Average	:	4883
Average	:	4737	Tumwater (1)	:	4857
Mukilteo	:	4714	**Ana.(+3.5% by Guild)**	:	**4856**
Lake Forest Park	:	4708	Sumner	:	4845
Ana.(+3.5% by Guild)	:	**4691**	Mill Creek	:	4840
Sumner	:	4690	Lake Forest Park	:	4814

Tumwater	:	4668	Mukilteo (2)	:	4808
Anacor.(+2% by City):		**4623**	**Anacor.(+2.25 by City):**		**4727**
Port Angeles	:	4410	Port Angeles	:	4586
Anacortes variance from average (by City increases)		**- 2.45%**			**-3.3%**
Anacortes variance from average (by Guild increases)		**- .01%**			**-.0055%**

Comparables:		**2006**
Mountlake Terrace	:	$ 5276
Arlington	:	5250
Monroe	:	5192
Port Angeles	:	5135
Average	:	5087
Tumwater (3)	:	5068
Sumner	:	5053
Ana.(3.5% By Guild)	:	**5025**
Mill Creek	:	4985
Lake Forest Park	:	4923
Mukilteo (4)	:	4904
Ana.(+2.25 by City)	:	**4881** (5)

Anacortes variance from Average (City)	:	**- 4.2%**
Anacortes variance from average (Guild)	:	**- 1.25%**

(1) Not Settled - Assumes a CPI-W-based minimum increase of 2%
(2) Not Settled - Assumes a CPI-W-based minimum increase of 2%
(3) Not settled - Assumes a CPI-W-based minimum increase of 2%
(4) Not settled - Assumes a CPI-W-Based minimum increase of 2%
(5) This increase does not include the City's proposed additional 1% increase as a buy-out of the existing shift differentials.

The following shows the total wage increases granted by the comparables for years 2004, 2005 and 2006. As noted above, estimates were made for the Mukilteo and Tumwater 2005 and 2006

increases:

City	2004	2005	2006	Total 3-year CBA increases
Arlington	11.00%(1)	2.70%	3.07%	: 16.77%
Port Angeles	3.50%	4.00%	3.00%	: 10.50%
Sumner	2.40%	3.30%	4.30%	: 10.00%
Monroe	3.00%	3.00%	3.00%	: 9.00%
Tumwater	2.10%	2.00%	2.00%	: 6.00%
Mill Creek	2.00%	2.00%	3.19%	: 7.19%
Mountlake Terrace	2.75%	2.25%	2.00%	: 7.00%
Lake Forest Park	2.25%	2.25%	2.25%	: 6.75%
Mukilteo	1.20%	2.00%	2.00%	: 5.20%
Average increases by all comparables per year:	**3.05**	**2.36**	**2.53**	

(1) Unexplained front-end loading.

From the above data, two facts become evident: First, the Guild members need a catch-up increase to put them at or close to the average of the comparables; secondly, the Guild's proposed increases are not found to be excessive in light of the City's current position within the list of the comparables and, if implemented, would serve to bring the members' monthly wage, by January 1, 2006, to within $52.00 per month of the average. To award the City's proposed increases, or any lesser increase would, in my estimation, exacerbate the City's already tenuous position when matched to the comparables. In making this award I have kept in mind the Cost Of Living criteria set forth in the statute. Rather than burden the parties with accounting problems associated with calculations of retroactive CPI applications, I deem it appropriate to issue an award of simple percentage wage increases.

From record evidence, and keeping in mind the governing factors set forth in the statute, the Arbitrator accepts as appropriate the wage increase proposed by the Guild of 3.5% effective January 1, 2004 and 3.5% effective January 1, 2005. Effective January 1, 2006, the wage increase shall be 4.5%. It is to be understood that 2% of the january 1, 2006 wage increase is

generated by the City's buy out of shift premiums.

My reasoning for this wage award is based on the following: First, from a comparability factor, the increases are appropriate. With the 2006 wage increase, the top step officer's wage will have been moved to within $13.00 of the average of the comparables; second, any increase which would not significantly improve the City's position on the list of comparables could eventually result in a serious morale problem. Lastly, the amount of increase is similar to the one accorded the City of Anacortes Firefighters in their last collective bargaining agreement. In making this award I also kept in mind the previously addressed health care premiums issue which resulted in Guild members now having to contribute $55.00 per month toward dependent coverage.

I find the Guild's contention that a substantial wage increase is paramount to the reduction of the City's problem with qualified personnel recruitment to be without factual basis. While the City does not make an outright claim of inability to pay wage increases such as proposed by the Guild, it does nevertheless present evidence that paints a potentially grim fiscal picture. The Arbitrator's awards on the Court Appearance issue and Health Care premium cost participation will help alleviate some of the claimed financial burdens of the City.

ISSUE 6 - SECTION 17.3 - SERGEANT WAGE DIFFERENTIAL

The Guild:

The Guild asserts that an examination of the current wages of Police Sergeants show they are almost 13% behind other sergeants under the Guild's comparables at the ten-year AA level. It contends that its proposal to increase the sergeant differential to 10% is not awarded, even with a base increase of 3.5%, they would still be left 7% behind the market. The situation is not much better even with the City's own comparables, as the sergeants find themselves about 9.3.% behind at the 10-year AA level when matched against those jurisdictions. As the situation stands now, using the City's figures, the difference between the top step of an officer's salary and the sergeant's first step

salary stands at 8.54%. Granting a 10% differential between those two salaries would increase the sergeant's base by 1.5%. This would help erode some of the remaining 7% market differential between the City and the comparables, after factoring in the 3.5% proposed overall base wage increase.

The City:

The sole justification for the Guild's proposal is to "restore" a 10% differential between the top step officer base wage and the entry level sergeant base wage that the Guild claims has historically existed. Cx A.6. The undisputed facts demonstrate that there never has been such a differential, and therefore, there is nothing to "restore" with an additional bump in wages. Moreover, there is no need to further increase the sergeant wages as the difference between the top step officer wage and the entry level sergeant wage is currently higher than it has been historically.

Contrary to the Guild's suggestion, there has been no reduction in the differential between the top step officer wage and the entry level sergeant wage. In fact, the City asserts, from 1993 through 1996, the top sergeant wage was lower than the top step police officer wage. Over time, this has changed and since 2000, the sergeant wage has been 8.54% higher than the officer wage. Cx,.9.;Schuh, II, 118. Thus, there is simply no differential that was lost and needs to be "restored" as the Guild urges the arbitrator to do here. Ignoring this, the Guild relies upon a bookkeeping error that occurred in 1999 to argue that the differential was somehow reduced. This is false. Prior to 1999, the difference between the top step officer and entry level sergeant pay ranged from a low of 2.27% to a high of 6.51%. In 1999, the City inadvertently gave the top step patrol officers two COLA increases, reducing the difference to 4.87%. CX 6.9.1. The error was not discovered until 2000. Schuh,II,119. The difference, however, was restored in that same year and has continued at the 8.54% rate from 2000 to present. Cx. 6.9.1. Thus, there is no need to further increase the sergeant pay to "restore" this difference.

Recognizing that its proposal to "restore" a differential is dead on arrival, the Guild *changed* (emphasis by City) its

proposal at the hearing from a request to increase the difference between the top step police officer wage to the entry level sergeant wage on the one hand, to the difference between the top step of both classifications, on the other hand. During bargaining, mediation and their proposal for interest arbitration, the Guild focused exclusively on restoring the alleged historical spread between the police officer top step and the entry level sergeant wages. CX A.6 at 8. The Guild changed its position during the interest arbitration and argued for the first time to increase the difference between the top step officer wage and the top step sergeant wage. Gx198; TR., III,6-7.

The Guild's new proposal should be rejected for a number of reasons. First the Guild's proposal contravenes the good faith bargaining obligation of RCW 41.56. To dramatically change positions and offer a new proposal as they have done here not only prejudices the City but is an affront to the duty to bargain in good faith. Recognizing that interest arbitration is designed to be an extension of the collective bargaining process, the City urges the arbitrator to denounce the Guild's tactics and reject its untimely and belated proposal.

The Guild's proposal should also be rejected because the evidence submitted to support it is based on a comparison between the top officer and sergeant wages when this was not the proposal submitted to the City during negotiations. The Guild's last proposal to the City clearly requested a 10% differential between the top step officer wage and entry level sergeant wage. Cx. A.6. Unable to defend this proposal at the hearing, the Guild submitted new data comparing the top steps in both classifications. That this data is meaningless in light of the Guild's proposal is perhaps best illustrated by the fact that it shows that the City is paying more than a 14% difference between the sergeant's top step wage and an officer's top step wage - an amount that bears no correlation to the proposal submitted during negotiations and relied upon by the City. Gx. 198.

For all these reasons, the City requests that the Arbitrator deny the Guild's proposal to ignore the parties' bargaining history and to add yet another increase to the sergeant's pay scale.

DISCUSSION AND FINDINGS

On August 5, 2005, the Arbitrator received a thirteen-page document from the Guild entitled:

Final proposal by Anacortes Police Guild Services
on open contract issues.
August 3, 2005.

On page eight(8) of that document, the Guild addresses Section 17.4 of the Agreement (Wages). The last two paragraphs of that proposal read as follows:

The Sergeant's wage scale shall be increased to restore a 10% step from the top of the police Officer's wage to the first step of the Sergeant's wage scale. Whatever adjustment is made to the first step of the Sergeant's wage scale will also be made to the second step.(emphasis by Guild).

At the hearing, the Guild explained its proposal on Section 17.4 as follows (from the transcript):

The Arbitrator: Proceed. What is the next number?

Mr. Cline: 198

The Arbitrator: This in volume 6, 198.[42]

Mr. Cline: Ok, these are actually two separate charts but both go on 198 and I'll explain each of them. These are two charts that compare what we are calling the sergeant differential to the guild(sic) set of comparables and the city's(sic) set on comparables. The first one says guild(sic) compares the Anacortes differential to the guild(sic) comps. And the City one compares it to to the city(sic) comps. Now when we are talking about the differential in this case what we are talking about is the top differential and we will probably address in our brief the issue of the bottom differential because the wage proposal for sergeants is sort of keyed off of that so to bring that bottom step up and then tie the top into

[42] Gx. 198

it. What we think normally of the differential is to say when a sergeant gets to that top sergeant pay, when they are at that top sergeant pay how much of that top sergeant pay is above the top patrol officer pay and that is what we are thinking of as the differential and in Anacortes the differential is 14 percent. Among the guild(sic) comparables the differential on average is 20.2 percent and the differential on average amongst the city's comparables is 18.2 percent and this is basically our chief differential for a bump in that sergeants differential to put it a little more in line with the market increase. In fact I think under our proposal it doesn't need to be brought up to these averages, just bump it part way up.

Mr. Schroeder: To make sure I follow the language of your proposal on these exhibits, looking at the language you propose differentials keyed off the first step of the sergeants wage scale and not the top step is that right?

Mr. Cline: Correct, the way the proposal is written and I think when we present our actual- the Arbitrator asked us to put together what we would like to see as far as our actual wage grid and when we do that we will present that so you can actually see the number and Chris you did a map on it at one point didn't you.(sic) I think we are proposing to bring that bottom rate up to like 10 percent and then as it says, maintain the existing spread between the entry level sergeant and top sergeant which will bring it up to about 15 percent.

Mr. Casillas: Somewhere in there.

The Arbitrator: Where is your initial proposal on that?

Mr. Cline: Volume II I think, volume I exhibit 2. I understand Mr. Schroeder's question because the way the opening proposal was originally written, with out(sic) seeing the number it wouldn't be clear. Page eight of exhibit 2 and that chart said 8 point something at the entry level. Anyway this would bump the first sergeant step up to 10 percent, I think it's about 8 point something.

The Arbitrator: For the top patrol wage?

Mr. Cline: Yeah, the top patrol wage. So you bump that up and then accordingly I think there was only one other sergeant step. When we present the grid to you it will make it a little more clear.

.....

The Arbitrator: That's it for wages?

Mr. Cline: yes.[43]

My review of counsel Cline's elaboration on the the Guild's proposal on this issue leads me to conclude that the explanation given at the hearing describes a much different, and rather confusing proposal compared to the one originally presented to the City by the Guild prior to the hearing. First, as the City points out, the original proposal involved the *top step (*emphasis added*)* wage of a Police Officer as compared to the *first step* (emphasis added) of a Sergeant's wage scale. At the hearing, the Guild explained that what its original proposal really meant was an attempt to close the gap between the *top wages (*emphasis added*))* of a Police Officer and the *top wages (*emphasis added*)* of a Sergeant using data compiled by the Guild and which shows the average differential between those two classifications to be around 18.2%.(Gx. 198) The somewhat confusing aspect of the Guild's exhibit, supra, is that it shows comparison data between a Sergeant's 10-year *base* (emphasis added)wage and a Police Officer's 10-year *base* (emphasis added) wage . At the hearing the Guild offered that the 10% differential it was seeking between the Police Officer's top step wage and the Sergeant's base wage would require only an extra 1.5% increase to the Sergeant's wages since an 8.45% differential already exists. By now stating that what it really wants is to establish a differential between the top wages of both classifications, it would appear that the Guild's latest proposal would require a 6.2% increase to the Sergeant's top wages to get up to average based on the fact that the City's differential between the two classifications' is currently 14% and the average differential of the nine accepted comparables amounts to 20.2% - but the results of such calculations would be erroneous because the data in Gx. 198 is based, as noted, supra, on comparisons of base wages, not top wages.

[43] Tr. III, 5-8.

My interpretation of the Guild's initial proposal is meant to apply to the Sergeant's top step whatever increase is agreed upon to bring the differential between the Police Officer's top step and the Sergeant base wage to 10%.

Record evidence compels the Arbitrator to conclude that there is factual support in the record of the City's allegations that the Guild unexpectedly changed its position at the hearing on issue No. 6, Wages, involving, specifically, it's proposal to increase sergeants' wages. Further, I accept as valid the City's contention that the Guild's last-minute attempt, at the hearing, to revise its proposal on the the issue of Sergeant's pay prejudices the City. I find persuasive the City's argument that the record does not support the Guild's inference that a 10% differential needs to be restored. My award in this issue is that the Guild's proposal is to be rejected.

ISSUE 7 - PAYROLL LAG TIME.

BACKGROUND

The current language of Section 17.3 of the Agreement reads as follows:

> 17.3 Wages shall be paid by the Employer on a bimonthly basis. Pay dates are on the 15th day of each month and the last working day of each month.

The City proposes the following changes to that language (the new language is highlighted):

> 17.3 Wages shall be paid by the Employer on a bimonthly basis. Pay dates are on the 15th day of each month and the last *business* day of each month. *Should the City of Anacortes implement a lag pay system, the Guild agrees with 60 days prior notice to agree to a five-day lag. If this were to happen, pay dates would be on the 5th and the 20th of each month.*

The City:

Adopting the proposed payroll lag will eliminate unnecessary operational and legal issues. The City currently pays on the 15th and the last working day of each month. The City's proposal would authorize it to implement a payroll lag system with 60 days prior notice so that it could pay for time worked from the 1st through the 15th on the 20th day of the month, and time worked on the 16th to the end of the month on the 5th of the following month. Cx7.1; Schuh, II,122. The City's proposal should be adopted because it would provide more certainty in calculating the employee's pay for hours worked and would promote internal consistency.

The current payroll system is flawed. Under the current contract language, employees must submit their time sheets three to six days before the end of each payroll period in order to allow for sufficient time for payroll to process the time sheets. Cx 7.2. As a result, employees must guess the amount of time they will work in the last few days of the payroll period. This creates both operational and legal concerns for the City. First, the current system requires the employees to submit time sheets recording time as worked before they have actually worked those hours. Second, employees cannot always accurately guess the amount of hours they will be required to work before the end of the payroll period due to illness or overtime needs. Chief King explained the situation as follows:

> With regard to how we process time sheets, it currently mean that we have to call for the time sheets several days ahead of that pay period and employees have to project out that they are going to be working their days off and assign them some overtime. We are unable to put the actual overtime that may be worked at the end of the pay period because you don't know at the end of the shift if you are going to have to work late or not. If an employee is sick, if an employee decided they(sic) wanted to take a day off after they turned in their time sheet but before the end of the time period, we have to play a little bit of catch-up accounting on the next time sheet and so there is always a pile of slips you the you have to work

> through to get into the next one and so it needs adjusting and sometimes it means a lot of white out.

King, II, 166-167. *See also* Schuh, II, 122.

The City's current system also creates numerous reporting problems. The City is required to report to the Department of Retirement Systems the hours worked during any payroll period. As a result of unanticipated overtime or illness, the hours reported may not be accurate. Cx.7.2; Schuh, II, 125. The City's proposal would remedy these problems by allowing sufficient time before payroll is processed to ensure all hours are accurately recorded.

In addition, the City asserts, the vast majority of the City's employee groups have approved this or a similar proposal to adopt a payroll lag system. This includes the non-represented employees, the Teamsters bargaining unit, the IAFF and the noncommissioned police officers unit. This is the *only* (emphasis added) group to not adopt the City's proposal. Schuh, II, 124.

The Guild's only apparent concern regarding the City's proposal is that it wants to reopen negotiations to negotiate the impact of implementing a payroll lag system, thus holding off the implementation of the system for all involved during such negotiations. Rather than reopening negotiations on this issue, the City drafted a proposal to address its impact by including a 60-day grace period for onto the new payroll system. This would allow employees time to notify their lenders and make whatever adjustments are needed to the timing of their bills. Along the same lines, the Teamsters approve a plan that would introduce the payroll lag system over a period of ten (10) months with a day being added every two months. The City would make that same accommodation in this case if the Arbitrator deemed it more appropriate. Tr., II, 124-125.

For the reasons set forth above, the City of Anacortes requests that the Arbitrator grant this proposal.

The Guild:

The City's proposal on pay dates and implementation of a lag payroll system is disingenuous and should be rejected. At the hearing, and likely in their post-hearing brief, the City extolls the virtue of the lag payroll system, much of which the Guild does not necessarily dispute, and then argues that their proposed language is necessary to implement such a system. This is yet another diversionary charade offered by the City.

A close reading of the current contract language and the City's proposed language reveals two important defects in the City's arguments. One is that the current language *already allows the City to implement a lag payroll system when desired.*(emphasis added). In reality, the City's proposal is merely a power grab to eliminate the Guild's right to engage in impact bargaining if the City chose to implement a lag payroll system. For these reasons, the City's proposal should be rejected. The minimal protection that the Guild retains, however, with the present language is a right to bargain impacts of a decision by the City to change paydays. The thrust of the City's proposal would eliminate the minimal right the Guild has retained and give the City unfettered discretion to make changes, compounded by no obligation to discuss the impacts of the change. Forcing the Guild to accept such a broad waiver would be contrary to clearly established PERC case law which always recognizes impact bargaining rights even when management retains the right to implement the decision to change.

Ironically, a City of Anacortes PERC case from over twenty years ago established the principle that the timing of when a worker is paid is an issue directly impacting wages and is to be considered as mandatory subject of bargaining.[44] In that case, the hearing examiner noted that "the Commission determined that the time when a worker is to receive his pay is so closely related to how much he is paid that it reasonably falls within the term "wages", and is therefore a mandatory subject for collective bargaining under RCW 41.56030(4)."[45]

Apparently in the wake of that decision, the Guild made a concession to the City actually allowing it to change its payroll system upon notice, but did not waive its right to engage in minimal after-the-fact impact bargaining. In the

[44] *City of Anacortes*, Decision 1493 (PECB, 1982)
[45] *Id.* at 6 (emphasis supplied)

present matter, likely recognizing the mandatory nature of this issue, the City seeks, through arbitration, access to a broad waiver in the agreement to implement this new system without having to negotiate any aspect of the decision. In contrast, all the Guild seeks is to maintain the miniscule right it has now under the current agreement to negotiate the impact of a decision by the City to implement a payroll lag system. The current language allows the City to change the system but also ensures that any impact on the employees, such as adjustments in bills or bridge loans during the adjustment period, will be negotiated.

The current language seems to be the bare minimum required by PERC as expressed in the previous PERC pay lag decision. There is no need for this previous agreement to be disturbed by our arbitrator. To undo that agreement would wipe out what little remains of the Guild's impact bargaining rights.

DISCUSSION AND FINDINGS

The City of Anacortes's current payroll system, as it applies to the Police Services Guild, appears to be rather archaic, even if all available computer technology is incorporated in its design. The City's contention that its proposal would cure many of the problems inherent in the existing system has merit. From the record, I conclude that there is some agreement between the parties as to the potential impact of changing payroll dates, i.e., rental obligations, loan payment due dates, direct deposit agreements, etc.

In its post-hearing brief, the City alludes to the fact that it had proposed a specific change to the existing language of Section 17.3 of the Agreement, specifically, that it would agree to a 60-day prior notice of a five-day lag implementation. The Guild, in its post-hearing brief, asserts that it does not necessarily dispute the administrative value of a payroll lag, but the potential residual effects of a different payroll date on the personal life of its members is an issue it would wish to address by exercising its perceived right to engage in impact bargaining.

From my analysis of the record on this issue, I find that

the City's stated purposes for proposing a payroll lag system are valid. Once the new system is in place, both the employees and the City stand to benefit from the change. I am not of the opinion that the City's proposal provides the best lead-in to the new system, although the 60-day notice would serve to alleviate some the possible financial problems that could be encountered by the employees. The proposal accepted by the City's Teamsters unit and as described by witness Schuh in her testimony,[46] appears to provide a better, although slower, method of transitioning to the new system. I therefore award that the language of the current Section 17.3 of the Agreement be replaced with that which was accepted by the Teamsters unit and which provides, inter alia, a 60-day notice and a 10-month implementation period with the pay periods moved one day every two months in order to facilitate the adjustment.

ISSUE 9 - LONGEVITY PAY

The Guild seeks to modify the longevity Pay section of the Agreement (18.2) as follows:

> For employees, longevity pay shall start after five years of employment in accordance with the following schedule:
>
> | Complete Months of Service | Longevity Percentage |
> |---|---|
> | 60 | 1% |
> | 90 | 2% |
> | 120 | 3% |

In assessing whether to add new premiums or enhance existing ones, arbitrators will certainly look at the overall wage, including all available premiums. On the question of whether premiums should be maintained on a flat dollar amount or a percentage amount, arbitrators have repeatedly ruled in favor of unions, holding that they rise automatically as the base wage rises. As a rationale for this position, arbitrators have offered is that it will prevent the issue from having to be constantly renegotiated in the future.[47]

[46] Schuh, II, 124-125

[47] *City of Bremerton* (Police)(Axon 1998); *City of Bothel* (Fire) at 15-17 (Krebs 1987)

The Guild asserts that arbitrators have granted or increased longevity premiums where evidence supported that. In this instance there are two chief reasons supporting the Guild's proposal for an increase in the longevity premium:(1) the comparability data strongly supports an increase;(2) the senior officers who have remained with the department provide a demonstrated value to the City. Additionally, for reasons articulated by other arbitrators, this premium should be instituted as a percentage of the base monthly wage, as opposed to a flat dollar amount.

Beyond the problem that the current longevity program is available only to officers hired before 1983, the fact that this premium is expressed as dollar amount instead of a percentage provides an good example of the problems generated by expressing premiums as a flat dollar amount. In 1984, the value of the current premium as a percentage of the officer's total monthly wage was around 2.1%. In 2003, with the dollar amount remaining the same, the premium is now worth only 0.9%.

The City contends that the Guild seeks to reintroduce longevity into the contract despite the parties' agreement several years ago to buy it out, and to dramatically increase the cost of this premium pay by basing it on a percentage of pay rather than a flat dollar amount. The Guild's proposal should be rejected because it ignores the parties' bargaining history and creates an uncontrollable expense for the City.

Initially, the parties' agreement provided for a longevity premium of two dollars a month per month of service up to a maximum of $40.00 a month. D'Amelio, II, 56. Other City employees who were eligible for longevity were also given the fixed rate, with a maximum of $40.00 per month. Schuh, II, 126. During negotiations for the 1983-85 agreement, The City agreed to buy out the longevity premium with an increase to the base wages for all officers hired after 1983. O'Leary, II, 64. Officers hired prior to 1983 would continue to be eligible for the longevity pay as it was then in effect. *Id*; Cx.9.2. Five of the bargaining unit members remain eligible for longevity pay under the parties' agreement because they were hired by the City prior to 1983. The guild's proposal to reinsert longevity into the parties' contract ignores the parties' agreement to

eliminate longevity altogether on a prospective basis.

In an analogous case, Arbitrator Nelson held that it was inappropriate to use interest arbitration to reintroduce longevity where the parties had previously agreed to its removal at the bargaining table. According to Arbitrator Nelson:

> while (the parties) are free to negotiate (longevity) back in if experience has taught them that its removal was unwise, it would be inappropriate to use the interest arbitration process to acquire this result.[48]

As set forth in more detail below, the record is devoid of of evidence that the parties' agreement to remove longevity was unwise, as demonstrated by the fact that the City has had no difficulty attracting and retaining qualified officers. In fact, evidence shows just the opposite. Since 1994, only six officers have left the City--two of whom have since returned to work for Anacortes.[49] Of the other four, one left the law enforcement profession altogether and one moved to Maine to be close to his family. *Id.* As noted by Arbitrator Axon, increasing longevity pay is not warranted where the record indicates that the employer has had no difficulty in attracting or retaining employees.[50]

The Guild's proposal to tie the longevity premium to a percentage of their wage would place the officers far above their counterparts throughout the City. All other City employees who receive a longevity pay have the same longevity pay of a flat dollar amount to a maximum of $40 a month that was bought out of the Guild contract in 1983. Schuh, II, 126. No employee group receives a longevity premium based on a percentage of their wages as the Guild is requesting here. *Id.* Thus, the Guild's proposal to reintroduce longevity into the parties contract and increase it to three percent of their wages cannot be justified in light of what the other groups are receiving.

Perhaps more importantly, however, this interest arbitration proceeding should not be used to upset the agreement reached by the parties on this issue. Arbitrators have rejected similar proposals such as the one asserted here by the Guild, and have

[48] *City of longview,)* (Nelson, 2001) (Attachment EE) at 20,
[49] Cx. 6.8.1.; King, II, 162-164
[50] Payne Field Airport, at 32 (Axon,2005) (Att, Y)

left the issue of longevity to be resolved by the parties at the bargaining table as the parties did here in 1983. As Arbitrator Wilkinson observed, longevity is better left to the parties' negotiations:

> As to how to value other skills, duties, and contributions, those are determinations best made by those with knowledge of how valuable they are to the service provided by the employer. In other words, it is something better left to negotiation.[51]

In contrast to the Guild's contentions, Arbitrator Axon aptly recognized that basing premium pay and specialty pay on a fixed dollar amount rather than a percentage of base pay is more appropriate because it allows the parties to negotiate the value of that premium or specialty.[52]

For all of these reasons, the City requests the Arbitrator reject the Guild's proposal and maintain the current contract language.

DISCUSSION AND FINDINGS

The ample record of arbitral opinion espousing the concept of longevity as a viable and useful premium establishes, with a high degree of certainty, that under different circumstances, the Guild's proposal, or some modification of it, would be given serious consideration. But having analyzed all of the contentions and arguments presented and from my study of the cited awards, I am in total agreement with the holding of Arbitrator Nelson in the City of Longview case. *Id.* While RCW 42.56 makes it abundantly clear that interest arbitration must be regarded as an extension of the collective bargaining process, it also expects from triers of fact consideration of relevant stipulations of the parties.[53] Although many agreements are reached during the process of collective bargaining that are subsequently renewed or modified in later negotiations, it is significant here that no evidence was presented indicating that some attempt was made at the bargaining table, since 1983, to

[51] *City of Redmond*, (Wilkinson, 2004) (Att.V)
[52] *Payne Field Airport*, at 32 (Axon, 2005) (Att. Y)
[53] RCW 41.56.465 (1) (b)

revive the issue of longevity. I find it significant also that the City's argument that the agreement reached between the parties during the 1983 negotiations on the issue of longevity should not be disturbed by interest arbitration was not rebutted or even referenced by the Guild in its brief.

The buy-out type of settlement reached on longevity may, at a later date, be modified by the parties, but based on my thorough analysis of prior arbitral opinions on this issue, I conclude that it would be inappropriate to use the interest arbitration process to disturb that settlement. I must therefore reject the Guild's proposal. The language of Section 18.2 shall remain as is in the Agreement.

ISSUE 10 - FRINGE BENEFITS

SECTION 18.3 - FRINGE BENEFITS

Background:

The current language of Section 18.3 reads as follows:

> Shift differential shall be added to the basic monthly wages of any Employee working during Swing Shift or Graveyard Shift as follows: 60 cents per hour for Swing Shift and 75 cents per hour for Graveyard Shift.

The City proposes to eliminate the Swing and Graveyard shift premiums and replace them with an additional 1% increase to wages.

The Guild proposes three percent (3%) of top-step hourly patrol wage for each hour of swing shift work and four (4%) of top-step hourly patrol wage for each hour of graveyard shift worked.

The City:

The City contends that the payment of shift differential in a work environment such as law enforcement where employees work 24/7 is not supported by the comparable employer factor. The City's proposal would not allow the City to reap the savings

from the elimination of this practice, but, rather, it would funnel the money into all of the bargaining unit employee's paychecks.

The City asserts that none of its eleven comparables provide shift differentials and removing them would bring the City in line with them. CX. 10.3. Of the Guild's comparables, only Mount Vernon offers shift differentials and it is significantly less than the premium paid by Anacortes. Gx.74. This amounts to only one (1) of the fifteen (15) Guild comparables that have any sort of shift premium. As Chief King testified, Anacortes is the first department that he has been associated with in his thirty years of experience in law enforcement that has a shift differential.[54]

Police work is by definition work that will require twenty-four hour service. *Id.* Thus, this is not a situation where an employer has voluntarily established shift work to serve its own benefit, therefor justifying a premium for that work. Moreover, the City's unique practice of providing a shift differential makes wage comparisons among its comparables more difficult. Although shift differential is clearly an increased cost, it is not reflected in the officers' base wage. Thus, in comparing the officers' wages to the wages of the City's comparables, the City does not get any credit for this additional cost.

Ignoring the above comparability data, the Guild tries to justify its proposal to stand alone and continue to collect shift premium by relying upon allegedly adverse effects of shift work. The Guild's argument, however, continues to ignore the fact that police departments in general do not pay shift premiums in recognition of the fact that they are bound to provide 24-hour service. In addition, the Guild's argument ignores the fact that many employees, including members of the Anacortes unit, choose swing or graveyard shifts to better accommodate their personal schedules.[55] Thus, the City is not facing problems attracting officers to serve on swing or graveyard shifts.

The City's offer equates to $12,751 being added to the Guild members' base wage and will compound with future wage increases.

[54] King, II, 126-128

[55] Cx. 2.5; King, III, 148.

The City's proposal would result in a significant bump in the wages of all officers, including the detectives, and DARE officers, who previously never were assigned shift work.

For all of these reasons, the City requests the Arbitrator adopt its proposal on the shift differential.

The Guild:

The Guild is in agreement with the City on the fact that shift work is a necessary creature of any 24/7 operation and is a reality understood by all persons entering this profession. But, it contends, regardless of the necessity, it still creates substantial hardships for patrol officers, both on an individual level and on their families. Working nontraditional hours of the day is a major disruption, and as such, deserves an additional form of compensation. The City's proposal to eliminate this premium should be rejected.

The need for a revamped shift differential is demonstrated by the many academic and medical articles outlining the safety hazards and the general health effects associated with shift work.[56] Studies of shift-workers have found that the number one reason individuals leave a particular profession is due to the rotating shifts.[57] The adverse effects on police officers for filling shifts with nonstandard hours are not debatable. While additional compensation for these shifts does not lessen their adverse impact, it reflects a recognition on the part of the City as to the drawback of this important work and rewards the individual officer for making that sort of sacrifice.

The Guild's proposal at issue here to raise the premium is similar to the issue as it was raised in a recent Wenachee arbitration decision presented by the same counsel.[58]

Although in that case the arbitrator declined to set the premium on a percentage basis, she did raise the premium and rejected the employer proposal to eliminate the premium.

DISCUSSION AND FINDINGS

[56] Gx. 2; 191;196.
[57] *Id.*
[58] City of Wenatchee(Police)(Savage, 2003).

I find persuasive the City's argument that none of its comparables and only a few (Mt. Vernon and Skagit Co.) of the Guild's fifteen (15) comparables provide a shift differential. I note also that none of the accepted nine comparables offer shift differentials. I find valid the City's contention that converting the hourly differential to a percentage of wages will, by compounding, increase by whatever general wage increase is negotiated from year to year and that such an increase, as small as it might be, would benefit all employees.

I find no factual basis for the Guild's implicit notion that Anacortes Police Department shift work has caused police officer recruiting hardships to the City or that a police officer might have left the Department for health reasons due to shift work. There is no controversy over the proposed conversion from a per-hour stipend for swing and graveyard shifts to a percentage payment approach, since the Guild is proposing its own percentage increases.

My review of the evidence and arguments on this issue and especially of the provisions, or lack thereof, on the issue of shift differential in the collective bargaining agreements of the nine accepted comparables, cause me to find that the Guild's proposed percentage increase as a shift differential is excessive, and, conversely, I find the City's proposed 1% shift differential buy-out to be inadequate. I have no intention of considering a "split-the-difference" approach to the settlement of this issue. I therefore award that the buy-out amount of the existing shift differential should be a 2% increase to the general wage schedule, effective January 1, 2004.

ISSUE 11 - SECTION 18.4 -PREMIUM PAY

BACKGROUND:

Section 18.4 of the Agreement reads as follows:

> Premium pay of $130.00 per month shall be given to employees assigned as Detective, DARE Officer, or Patrol Field Training Officer, however, a Field Training Officer must serve as a FTO for at least

ten days in a calendar month in order to qualify for premium pay for that month. An individual may collect only one premium pay upgrade at any one time.

The City proposes to increase the Detective's premium pay from $130.00 per month to $180.00 per month. This proposal is tied to the City's proposed elimination of the current Detective Clothing Allowance provided for under Section 18.6.2 of the Agreement. The proposed elimination of the Detective's Clothing Allowance was certified by PERC as issue No. 13 for the purpose of this interest arbitration.

Article 18.6.2. reads as follows:

> Detectives shall receive a clothing allowance of three hundred twenty-five dollars ($325.00) each six months and shall be provided with holster, cuff case and shell case while on duty. A detective assigned to a non-uniformed unit for the first time shall receive two clothing allowance payments in advance at the commencement of the assignment which shall be a credit against the first two clothing allowance payments which would otherwise be paid to the employee. As a condition of receiving each allowance payment, employees may be required to provide receipts for purchase of appropriate detective clothing. Such receipts may be used in the year the clothing was purchased with any excess receipts over the annual clothing allowance usable in the two years following the purchase of the clothing.

The City:

Under the City's proposal, the $130.00 per month specialty pay to employees assigned as DARE Officers and FTO Officers would be maintained since the amount was just increased by 30% in the previous collective bargaining agreement, from $100.00 per month to $130.00 per month. The increase of the Detective's premium to $180.00 per month is linked to the elimination of the Detective Clothing Allowance in Section 18.6.2. of the

Agreement. The City's proposal of the $50 monthly specialty pay increase for Detectives is motivated, first, by the fact the IRS has recently clarified that clothing allowances such as those for detectives constitute taxable earnings to employees and, second, the Department would rather not be in the "clothes police" business.

The City's current practice of paying a separate clothing allowance requires the Police Chief to review officers' clothing purchase receipts and determine whether they should be reimbursed as detective clothing or not.[59] The City would rather simply pay the increased Detective premium in recognition that detectives will have to purchase clothing for work.[60] This would avoid the need for officers to submit receipts in order to obtain reimbursement, and the Chief from having to review and approve or reject those receipts.

Historically, the City and the Guild have been able to negotiate an agreement on increases to the specialty premiums, but it has always been from a flat dollar amount. In fact, as recently as in the last negotiations, the City agreed to increase the specialty premiums from $100.00 to $130.00 per month.

The City resists the Guild's proposal to significantly increase the specialty premiums and convert them to percentages of base pay. The Guild's proposals reflect significant roll-up costs to the City. Transitioning to a percentage increase from a flat rate compounds the impact to the Police budget. Any time the base wage increases, the specialty pay would also have a corresponding increase. Arbitrator Axon correctly rejected a union's proposal to move from a $90 EMT premium to 2% of the firefighter's wage in the *Paine Field Airport* arbitration, noting that "by using a fixed dollar amount, the parties can easily determine the value of possessing an EMT certificate."[61]

For the same reason, the City requests the arbitrator reject the Guild's proposal and allow the parties the opportunity to negotiate the value of these premiums at the bargaining table.

[59] Schuh, II,1 29
[60] Cx. 11.2. King, II, 168-169.
[61] Paine Field Airport, at 32-33 (Axon, 2005) (Att. Y)

The Guild's proposal to expand specialty premiums to apply to Emergency Vehicle Operations Force (EVOC), range officer, evidence technician, and marine and bike officers should also be rejected because these positions do not include the broad range of responsibilities that typically warrant a specialty pay. For example, the EVOC officer trains other officers on driving police cars in police pursuits for about two weeks a year.[62] The time commitment of an EVOC officer is in stark contrast to the time commitment of other positions which the City believes warrant a premium pay, such as the DARE officer.
The DARE position is a full time forty-hours a week position, which warrants a premium pay. *Id.*

The same is true of a range officer. Two days every quarter the officers' firearm qualifications are tested. The testing is performed by the range officer. Because the City has three range officers who rotate this responsibility, each officer is only spending two days every nine months performing this assignment. Again, the City contends this position does not warrant a premium pay due to its minimal commitment above the position's regular duties. [63] In addition, the City has had no difficulty attracting officers to work at the range during these testing exercises. Thus, there is no argument that a premium is necessary to attract and retain volunteers for this assignment.

The Guild's request for premium pay for a marine officer is also not justified by the time commitment and responsibilities of this position. The City has eight officers who patrol the water about two hours a month, unless there is a special event.[64] This time commitment is simply not comparable to the full-time responsibilities of DARE officers and detectives.

The Guild's proposal ignores the reality of these positions and it simply casts a broad net, hoping to catch some additional pay. This perhaps is best illustrated by its request for premium pay for an evidence technician. There is no evidence technician in the bargaining unit. While some officers are trained to perform bike patrol, where and when circumstances warrant it, this is not a regular position or need.[65]

[62] King, II, 170-171
[63] King, II, 172-173
[64] King, II, 173-174
[65] Id.

The Guild's proposal should be rejected in light of the comparability data. With isolated exceptions, the City's comparables do not include premium pays for EVOC, range officer, evidence technician, marine or bike officers. Cx. 11.5

The Guild:

The Guild asserts that its review of relevant comparable data indicates an increase in the premium pay amount to 3% per month and a conversion to a percentage basis are justified. Its rationale for the requested conversion from a flat dollar to a percentage basis is that such a basis would avoid having the Anacortes officers fall further behind the market.

Along with the need to raise the amount of premium based on the comparables is the need to convert this to a percentage system. Looking again at these same premiums, of the six agencies that have a premium for the DARE officer, all six of them define the premium as a percentage of the base wage. Similarly, of the 14 agencies that provide a premium for detectives, 12 of them do so under a percentage based system, which is the same number of agencies that provide for a Field Training Officer premium. This data overwhelmingly supports a move with respect to Anacortes from a flat dollar amount to a percentage system.

The 3% proposed by the Guild in this case is still less than the average of the comparables, but it will allow for a slight catch-up. The City has implicitly recognized that this Guild has fallen behind its comparables under the existing premiums by proposing to increase the amount of the premium by $50, but in failing to propose this as a percentage based system, that proposal will only carry forward the underlying condition that has created the present disparity.

The Guild has also put forward a proposal to add several new specialty that would be eligible for the premium pay. The reason for this proposal is that among the 15 Guild proposed jurisdictions, the average number of specialty assignments that receive a premium in these various departments equal 4.3 assignments. This is an important figure because it means that,

on average, these other jurisdictions provide for one more assignment for which officers can become eligible, which equates to an additional opportunity for extra compensation.

DISCUSSION AND FINDINGS:

The City's current premium pay system of $130.00 per month amounts to slightly under 3% (2.8%) of the top step officer's monthly wage. Of the nine comparables used by the Arbitrator in this case, eight of them provide a percentage based premium pay system for FTO Officers. One has a flat dollar system. The premium pay under those systems averages 4%. For Detectives, seven of the nine comparables provide an average premium pay of 4.4%. The Lake Forest Park comparable allows a 10% premium pay to Detectives. The average without that comparable is 3.52%. Of the nine comparables, only two provide premium pay for DARE Officers and only three provide such premium pay to Range officers. [66]

The City's stated reason for proposing to buy-out the Detective's clothing allowance is a valid one for it would be of benefit to both the City and, from a tax standpoint, to the Detectives. The reason may be valid, but the proposed buy-out amount is not. Under the current provision of the Agreement, Detectives receive two $325.00 payments per year for a total of $650 as a clothing allowance. The City's offer of $50 a month amounts to $600 a year.

The Guild offers nothing of probative value in support of its proposal to add several new specialty assignments other than the fact some of its comparables may be providing other assignments with some form of premium pay. In addition, its proposal to add the assignment of evidence technician borders on the ludicrous for the Guild's bargaining unit does not have an evidence technician. I therefore reject that aspect of the Guild's proposal.

As to the buy-out of the detective's clothing allowance, the Guild offers two reasons for its opposition to the City's proposal: First, it contends that at least half of its comparables have a yearly plainclothes premium that averages $600 per annum which is approximately as generous as that of Anacortes' $650 amount.

[66] Cx. 11.5

From the evidence before me, I find as follows:

1. Issue # 11 - Specialty Pay. The resolution of the controversy as to whether the current flat dollar premium pay system should be left in place or be replaced by a percentage based system is best left to the parties to resolve at the bargaining table because of the inevitable compounding that would result from a change to a percentage based system.

2. Issue # 13 - Detective Clothing Allowance. The City makes a persuasive argument that, in light of the IRS' determination that allowances for detectives' clothing are now subject to federal tax, it would be in the officer's interest to purchase whatever clothing is deemed appropriate to the job from his own pocket and not have to depend on the Chief as to whether or not the clothing purchased and the receipts are acceptable. I accept the City's proposal except for the buy-out amount offered. The current yearly detective clothing allowance amounts to $650. I therefore find that an additional $55 added to the monthly premium pay of $130 would be more appropriate as a clothing allowance because the yearly amount would and would better approximate the current $650 allowable to detectives.

Therefore, I award that the language of Section 18.4 shall be as follows:

18.4 Premium pay of $185.00 per month shall be given to employees assigned as Detective. Premium pay of $130.00 per month shall be given to employees assigned as DARE officer, or Patrol Field Training Officer, however, a Field Training Officer must serve as a FTO for at least ten days in a calendar month in order to qualify for premium pay for that month. An individual may collect only one premium pay upgrade at any one time.

I further award that the language of Section 18.6.2 - Detective Clothing Allowance be stricken from the Agreement because the clothing allowance provision contained therein has now been incorporated into the Detective's premium pay in Section 18.4.

ISSUE # 12 - SECTION 18.5 - EDUCATION INCENTIVE

BACKGROUND:

SECTION 18.5 Reads as follows:

18.5 Education incentive pay shall be provided to sworn police personnel holding either a Bachelor's or a Master's Degree. Those holding a Bachelor's degree will receive $60.00 per month and those holding a Master's degree will receive $80.00 per month. Employees may only collect the incentive pay for their most advanced degree, not for a combination of degrees.

The Guild:

The Guild proposes to change Sec. 18.5 to read:

18.5 Education incentive pay shall be provided to sworn police personnel holding either a Bachelor's or Master's degree. Those holding an AA degree shall receive 2%, a Bachelor's degree will receive 4% per month and those with a Master's degree will receive 6% per month. Employees may only collect the incentive pay for their most advanced degree, not for a combination for a combination of degrees.

The Guild asserts that of the 19 Guild and City comparables, 17 of them offer some type of education premium, and within that number, every single one of them offers a premium at the AA degree level, and a handful even offer a premium for just 45 or 90 credits of course work.[67] Anacortes is the only exception to those jurisdictions offering an education premium by not doing so at the AA level. Id.

In terms of value of these premiums in other jurisdiction, within the Guild's list of comparables, the average at the AA level is approximately 2.3% The current Anacortes $60 per month premium at the BA level translates into some 1.3% of the base monthly wage, which is about 1% below the average of the comparables at the AA level and almost 3% behind the BA level. The disparity is not that much less even when compared to the City's proposed comparables, with Anacortes behind by over 2% at the AA level and over 2.5% at the BA level.

[67] Gx. 190

It is expected that the City will argue that because an AA degree is a requirement of the job for entry level candidates that a special premium for it would be inappropriate. Nevertheless, the City's own Civil Service rules prove that this is not correct. For those officers with out an AA degree or higher, they can still meet the minimum qualifications with just a high school diploma and one thousand hours of reserve police service.[68] Not all officers have an AA degree, nor is it necessary to earn one in order to get hired in Anacortes.[69] An incentive to reach, and then reward, this level of education is appropriate.

The City:

The City contends that the Guild's proposal is unreasonable because it attempts to provide a premium pay for simply meeting the minimum qualifications, exponentially increases the cost of the education incentive. Currently, all entry level officers are required to have an AA degree. Therefore, the City opposes this significant change to the contract because it does not believe paying a premium for having a AA degree is appropriate given that this is a long standing minimum requirement for all entry level officers.

The reality is that the world is a far different place than it was twenty years ago in terms of officers' educational requirements. The guild introduced articles from the 1960 and early 1980s for the proposition that extra compensation should be paid as the profession becomes educated. However, from 1960 through the 1980s, when those reports were written, officers were not required to have an AA degree to meet the minimum qualifications. Over the last few decades, this has changed. The Department now requires all entry level officers to have an AA degree. There is no support for the Guild's argument that premium pay is justified by simply by meeting the minimum qualifications.

The Guild's proposal exponentially increase the current premium by basing it on two to six percent of the officer's base wage depending on the educational level obtained. In this contract year alone, officers would receive a 240 percent

[68] CX. 12.3
[69] CX. 12.5

increase in the education premium incentive for holding a Bachelor's degree and 283 percent for holding a Master's degree. The cost of such an exorbitant increase in this premium alone would be substantial as more than 50 percent of the current police officers receive an educational premium. In fact, the Guild's proposal would cost more than $71,000 during this contract alone. This significant impact on the budget would only continue to grow as the premium is tied to all future wage increases.

The Guild alleges that a substantial majority of the comparable jurisdictions provide for an education premium for officers with AA degrees - the Guild's analysis, however is misleading because it does not account for two important distinguishing factors. First, unlike Anacortes, a number of the comparable jurisdictions do not require AA degrees. Thus, paying an education premium for holding an AA degree in those jurisdiction would not be inherently inconsistent. Second, a number of the jurisdictions the Guild relied upon as "evidence" that the comparable jurisdictions supported a premium pay for AA degrees actually limit the premium to degrees in the area of criminal science. Finally, the Guild's data is misleading at best as it again compares Anacortes 2003 wages and education premium to the wages and premium offered by the comparables in 2005.

For these reasons, the City requests the Arbitrator reject the Guild's proposal and maintain the status quo on the education premium.

DISCUSSION AND FINDINGS

The Guild provides compelling evidence that the majority of Guild and City comparables have a premium pay benefit for holders of an AA degree. In fact, Guild Exhibit 190 shows that all nine of the accepted comparables provide such a benefit, most under a percentage system, two (Munroe and Port Angeles) under a flat dollar system.

I accept the City's assertion that, for its own purposes, it might simply have chosen to require an AA degree as a minimum entry education requirement, although one wonders how three officers (Farrel, Alves and Perkins) were hired since the City's

jurisdictions found to be like employers of like personnel, the Arbitrator made the following awards:

ISSUE #1:

Article 4.4. Municipal Court Overtime

The language of Section 4.4 shall remain unchanged.

ISSUE #2

Article 4.9 - Shift Bidding

The city's proposal on shift bidding is rejected.
The Guild's proposed language on shift trades is rejected.
There shall be no change to the language of Article 4.9.

ISSUE #3

Article 7.5 (new) NONESSENTIAL PERSONNEL ASSIGNMENT ON HOLIDAYS

The language of the new Section 7.5 of the Agreement shall read as follows:

7.5 Management maintains the right to determine the number of nonessential personnel to work on Holidays. Nonessential personnel is hereby defined as detectives, DARE and crime investigation personnel.

ISSUE #4

Article 9 - SICK LEAVE BUY BACK

1. The Guild's proposal on sick leave buy back is rejected and the current language shall remain unchanged for the 2004 and 2005 years of the Agreement.

2. The existing language of Article 9.4 shall be modified as follows:

9.4 Sick leave cannot be taken before it is actually accrued. There shall be no sick leave buy back from the period of January 1, 2004 to February 28, 2006.

The arbitrator awards the following new Article **9.4.1.:**

Effective March 1, 2006 employees will be allowed upon retirement or death, to receive a cash buy out in an amount equal to 50% of their then existing sick leave accrual balance up to a maximum of 500 hours.

ISSUE #5

ARTICLE 12 - HEALTH AND WELFARE COVERAGE

The Guild's proposal is rejected. The City's proposal is accepted in part. Article 12 shall now read as follows:

12.1 Insurance benefits will continue to be purchased through the Association of Washington Cities.
12.2 In 2004, the City will pay all insurance premiums.
12.3 In 2005, the City will pay all insurance premiums.
12.4 In 2006, the City will pay all insurance premiums minus $55.00 per month that will be deducted from the employee's paycheck.

ISSUE #6

ARTICLE 17 - WAGES

The following changes to be made to the provisions of Article 17:

17.4 Effective January 1, 2004, the wages shall be those set forth in Appendix A.

A salary schedule shall be prepared showing the hourly, monthly, overtime and annual salaries for each classification through the term of this agreement. The salary schedule will reflect the following wage increases from the 2003 wage schedule:

Effective January 1, 2004: 3.5%
Effective January 1, 2005: 3.5%
Effective January 1, 2006: 4.5%

It is to be noted that the year 2006 increase includes the City's 2% buy out of shift differentials in Issue #10.

ISSUE #7

ARTICLE 17.3 - PAYROLL LAG

It is awarded that the existing language of Article 17.3 be replaced with that which was recently ratified by the Anacortes Teamsters unit which basically provides for a payroll lag with a 60-day advance notice that will allow implementation over a 10-month period during which the City will move the pay period one day every two months.

ISSUE #8 - WITHDRAWN

ISSUE #9

ARTICLE 18.2 - LONGEVITY

The guild's proposal is rejected. The language of Article 18.2 shall remain as is in the Agreement.

ISSUE #10

of Article 18.2 shall remain as is in the Agreement.

ISSUE #10

ARTICLE 18.3 - SHIFT DIFFERENTIAL

The City's proposal to buy out the shift differentials in exchange for an additional 1% wage increase across the board in 2006, accepted in principle. The arbitrator found the City's offer of a 1% wage increase to be inadequate and increases it to 2% which is incorporated in to the 2006 wage increase.

ISSUE #11

ARTICLE 18.4 - SPECIALTY PAY

The City's proposal is accepted and the language of Article 18.4 is modified as follows:

18.4 Premium pay of $185 per month shall be provided to employees assigned as Detectives. Premium pay of $130 per month shall be given to employees assigned as DARE or Patrol Field Training Officer; however, a Field Training Officer must serve as FTO for at least ten days in a calendar month in order to qualify for premium pay for that month. An individual may collect only one premium pay upgrade at any one time.

ISSUE #12

ARTICLE 18.5 - EDUCATIONAL INCENTIVE

The Guild's proposal of providing an incentive for holding an A.A. degree is accepted with a modification to the amount of incentive proposed by the Guild. The language of Article

18.5 Education incentive pay shall be provided to sworn police personnel holding an AA, Bachelor's or Master's degree. Those holding an AA degree will receive $40 per month; those holding a Bachelor's degree will receive $60 per month and those holding a Master's degree will receive $80.00 per month. Employees may only collect the incentive pay for the most advanced degree, not for combinations of degrees.

ISSUE #13

ARTICLE 18.6.2 - FRINGE BENEFITS

This Article dealt with premium pay to Detectives as a clothing allowance. The Article has been deleted from the Agreement as a result of the City's buy out of the clothing allowance in exchange for an increase in premium pay for Detectives.

Submitted this 30th day of January, 2006

Guy M. Parent
Arbitrator