

BEFORE THE ARBITRATOR

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PUBLIC EMPLOYMENT
RELATIONS COMMISSION

PERC Case 21294-1-07-500

In the Matter of the Arbitration
of a Dispute Between

FIRCREST POLICE OFFICERS GUILD

and

CITY OF FIRCREST

Appearances:

Garrettson, Gallagher, Fenrich & Makler, P.C., by Mr. Sean Lemoine, on behalf of the Guild.

Summit Law Group PLLC, by Mr. Bruce L. Schroeder and Ms. Shannon E. Phillips, on behalf of the City.

ARBITRATION AWARD

The above-captioned parties, herein "Guild" and "City," selected the undersigned to serve as the interest arbitrator for the parties' successor agreement. Hearing was held in Fircrest, Washington, on April 3 and 4, 2008. The hearing was not transcribed and the parties subsequently filed briefs which were received by June 3, 2008. The parties at the undersigned's request waived the requirement in RCW 41.56.450 that this decision issue within thirty days.

BACKGROUND

The Guild represents for collective bargaining purposes a unit of law enforcement personnel up through the rank of Sergeant employed by the City consisting of nine budgeted positions. The parties engaged in negotiations for a successor collective bargaining agreement, herein "agreement," to replace the prior agreement which expired on December 31, 2006. They subsequently reached an impasse in their negotiations after an investigation was conducted by the Public Employment Relations Commission, herein "PERC," which certified the issues listed below on October 10, 2007, for interest arbitration as provided for in RCW 41.56.450.

Thereafter, the Guild and the City on March 21, 2008, presented their Final Proposals.

The Guild at the hearing dropped certain proposed changes to Article 9 dealing with Hours of Work and Overtime and Articles 16 and 17 dealing with Disability Insurance and Deferred Compensation, along with Appendix A dealing with Premium Pay. The parties also agreed at the hearing on certain language revisions for Article 9.

The following six certified issues thus remain in dispute:

Article 8.3	Acting Pay
Article 9.1.1	Workweek and Overtime (Compensatory Time)
Article 15.2	Education Incentive
Article 16.1	Employee Premium Contribution
Appendix A	Longevity Pay
Appendix A	Wages and Premium Pay

DISCUSSION

Turning to the statutory criteria in RCW 41.56.465, there are no issues relating to the constitutional and statutory authority of the City or to the stipulations of the parties.

As for the criterion relating to the conditions of “employment of like personnel of like employers of similar size,” both parties have agreed to the cities of Buckley, DuPont, Milton, and Pacific as external comparables.

The Guild also proposes the cities of Gig Harbor and Sumner,¹ while the City wants to add the cities of Brier, Duval, Lake Stevens, Orting, Port Orchard, and Yelm.

¹ The Guild by letter dated May 2, 2008, stated that it has chosen to use the six comparables it submitted in mediation in response to the City’s statement at the hearing that it might file an unfair labor practice charge with PERC over whether the Guild in this proceeding could propose comparables it did not earlier present in mediation, a charge the Guild disputed at the hearing. The Guild explained in its letter that it was doing so in order to avoid “a delay in receiving an arbitration decision” and that it did “not, in any way, shape or form, admit that an unfair labor practice was committed by the Guild nor should the City infer that the Guild is conceding that there is any merit to the City’s claim of unfair labor practice.”

The Guild primarily has utilized population and geographic proximity as the basis for proposing Gig Harbor and Sumner and states that with the exception of the City of Pacific (which is 18 miles from Fircrest), all of its proposed comparables are within Pierce County and are located no more than 26 miles from the City, thereby establishing that they are in the same labor market. The Guild argues that all of its comparables are within 50% above or below the City's population; that the City improperly has chosen some of its proposed comparables because they are from four different counties and because some of them are as far as 72 miles from the City; that the City has improperly tried to distinguish itself from Gig Harbor and Sumner; and that the State of Washington's "new sales taxes receipts law is a huge change in circumstances that the City cannot ignore when looking at neighboring cities of similar size."

The City counters that its "proposed comparables are similarly sized and 'like' in terms of demographics"; that its comparables represent an equal representation "of cities both smaller and larger than Fircrest"; and that "the Guild's attempt to include Sumner and Gig Harbor as comparables should be rejected based on their vastly larger tax bases." The City adds that its proposed comparables are "more faithful to the statute than the Guild's proposed comparables"; that they follow the "50% up-and-down methodology" adopted by many arbitrators as an appropriate measure for determining employers of "similar size"; and that its proposed comparables also take into account assessed valuation, geographic location, and cities with similar police departments.

I agree that geographic proximity is very important, a point made by Arbitrator Howell Langford in Longview Police Guild and the City of Longview, (2008), (Guild Exhibit 23), wherein he stated on p. 4:

...

Just as the Association argues against the use of similarity of wealth as a basis for choosing comparables, so the City argues against geographic proximity. Once again, however, it is quite clear that Washington interest arbitrators have commonly preferred geographically proximate comparators when such were available. The City objects to the introduction of such traditional “labor market” considerations as proximity into the selection of comparables under the statute. But one of the traditional rationales for labor market analysis in collective bargaining fits squarely within the directive of the statute: Employees’ satisfaction-or lack of it-with their wages and working conditions depends, first, on their sense of local comparability. It may be interesting in the abstract to know what police officers make in Cheney; but that a Kelso officer could make by driving to Centralia or Battle Ground is much more personal data. This is true of traditional, two-party collective bargaining as well, of course: no one expects wage data from the far corner of the state to have the same weight as wage data from just next door. The statute directs an arbitrator’s attention, first to the Legislature’s finding that “the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington;” and it is entirely consistent with that directive to give primary attention to wages paid by nearby employers of the same size. (City of Kelso, at 6-7).

...

Furthermore, geographic location meets the test in RCW 41.56.465(f) relating to other factors “normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.” See City of Longview, Washington and International Association of Firefighters, Local 828, PERC No. 18123-1-04-0426 (Beck, 2005), at 5.

Geographic proximity favors the inclusion of Gig Harbor and Sumner because they are eight and fifteen miles from the City respectively, thereby establishing that they all are in the same labor market (Guild Exhibit 14).

In addition, Gig Harbor and Sumner are similar in size to the City. The City in 2006-2007 had a population of about 6,260-6,270 while Gig Harbor in 2006-2007 had a population of about 6,765-6,780 (Guild Exhibit 14; City Exhibit B.5). Sumner in 2006-2007 had a population of about 9,025-9,035, thereby placing it within the 50% up-and-down band (Guild Exhibit 14; City Exhibit B.6).

The City argues that Gig Harbor and Sumner should not be comparables because their assessed valuations in 2006 were 209% and 239% higher than the City's assessed valuation, and because their sales tax receipts were 1,625% and 1,365% higher than the City's (City Exhibits B.8, B.12).

The City's taxing ability thus is not as great as Gig Harbor and Sumner's ability to tax and the record establishes that the City, which is mainly a residential community, has less vacant land for future economic development and far fewer industrial sites than either Gig Harbor or Sumner, thereby limiting the City's ability to expand its tax base.

Nevertheless, I find that such considerations are insufficient to warrant their exclusion as comparables since they are in close geographic proximity to the City and are of "similar size" to the City, which is the chief statutory criterion used to determine external comparables. Furthermore, the City in the future will experience an increase in its tax revenues because of the new state law which now enables cities to collect sales taxes on items which are purchased elsewhere and which are shipped to a City address. According to City Finance Director Colleen Corcoran, this new law should generate about an additional \$42,000 a year in sales taxes for the City starting on July 1, 2008.

I also find that Lake Stevens, which has been proposed by the City, should be excluded as a comparable because its 2007 population of 13,350 was nearly double the City's population, thereby clearly exceeding the 50% up-and-down band. In addition, Lake Stevens is located about 72 miles from the City, thereby placing it outside the geographic proximity of the City.

I further find that Orting, which has been proposed by the City, should be included as a comparable because it fits within the 50% up-and-down band and because it is located 23 miles

from the City. In addition, the Guild at one time proposed Orting as a comparable and it states here that Orting and Pacific “have more relevance to Fircrest’s labor market” than the City’s other proposed comparables.²

Port Orchard, which is located 24 miles from the City, also is within that same labor market and it, too, is in close proximity to the City. Accordingly, and because it is within the 50% up-and-down band, I find that it represents an appropriate comparable.

Brier, Duval and Yelm also are within the 50% up-and-down band, but the Guild asserts that they do not represent appropriate comparables because they “are more distant geographically than the Guild’s comparables and are not part of the same labor market . . .”

Since Yelm is located about 31 miles from the City, it is only a few more miles than Buckley which is located about 26 miles from the City. I therefore find that Yelm constitutes an appropriate comparable because it is within the same labor market as the City and because it is not so far removed as to warrant its exclusion.

The same is not true for Brier and Duval which are located 51 miles and 56 miles from the City (Guild Exhibit 14). Those distances place them outside the geographic proximity of the other established comparables and there thus is a question whether they are in the same labor market. I therefore find that they do not constitute appropriate external comparables.

Based upon the above, I conclude that the external comparables consist of Buckley, Dupont, Gig Harbor, Milton, Orting, Pacific, Port Orchard, Sumner and Yelm.

ACTING PAY

The prior agreement did not require paying acting pay to someone appointed as Acting Sergeant for the time a Sergeant is appointed Acting Chief.

² Guild Brief, at 6.

The Guild proposes to add the underlined new language below to require the payment of acting pay for someone appointed to the position of Acting Sergeant when a Sergeant is filling in as the Acting Chief:

8.3 Acting Pay. Any employee required to work in excess of two (2) hours in a higher job classification shall receive pay for all time worked in the higher classification. Each employee appointed to an acting position shall be compensated in accordance with the current salary wage for the classification, but in no case shall said acting compensation be less than an increase of five percent (5%). If a sergeant is appointed as “acting Chief” then an officer will be appointed to the position of “acting sergeant” for the duration of time that a sergeant is designated as the “acting Chief”. (Emphasis in original).

The City proposes no change to Article 8.3 regarding acting pay.

The Guild asserts that its proposal is “not as much about money,” but rather, is needed to have “a clear chain of command at all times so that there is a first and second command staff for smooth operation of the department” so officers can speak to a Sergeant when the Acting Chief is unavailable.

The City argues that the Union’s proposal requires the appointment of an Acting Sergeant when that is not always necessary and that such a requirement “is incompatible with the department’s size and existing operational procedures.” It also states that the Guild presented “no testimony at the hearing” to demonstrate that the Acting Chief has been unable to properly fulfill the duties of the vacated Sergeant position, and that the Guild’s proposal is “at odds with the practices of comparable jurisdictions.”

The problem with this proposal is that there is no evidence showing that the Acting Chief in the past has been unable to satisfactorily perform a Sergeant’s duties while serving as Acting Chief, and there similarly is no evidence that any officers ever have had any problems with the chain of command or asking questions whenever that has occurred. Chief John Cheesman thus

testified that “We have not needed to back-fill” when a Sergeant is appointed Acting Chief. Moreover, while the Guild states that “most comparable jurisdictions have higher classification pay as Fircrest does . . .”, none of them require the appointment of someone to fill in for whomever is serving as an Acting Chief (City Exhibit 2.3).

When all of this is combined with the small size of the City’s Police Department and the fact that there are not many officers on duty at the same time, I find that the Guild has not proven the need for this proposal and that it should be rejected.³

WORKWEEK AND OVERTIME (COMPENSATORY TIME)

The prior agreement did not provide for compensatory time off.

The Guild proposes to add the underlined new language below regarding compensatory time:

9.1.1 Form of Compensation. The employee may elect to be compensated for any overtime in cash or may elect to accrue compensatory time or may elect to be compensated for overtime through a combination of cash and compensatory time, to the extent such is allowed by Washington State law, to a maximum accrued balance of eighty (80) hours. Compensatory time may be carried over from year to year. (Emphasis in original).

The City opposes the Guild’s proposal to provide compensatory time in lieu of paid overtime which is the current practice.

The Guild states that the majority of comparables provide for some form of compensatory time and it is needed here because that would allow officers “the opportunity to get personal time to provide short term relief from the stresses of police work and shift work.” It

³ The City, of course, retains its discretion to make such a designation whenever it determines that its operational needs require it. In those situations, the City under Section 8.3 of the agreement must pay the higher Sergeant’s rate if lower-ranked employees are required to work more than two hours in such a classification.

also contends that there is no merit to the City's fears that such time off would represent a significant unfunded financial liability because granting such time off "saves the City from paying overtime" and that granting such time off could be managed properly to lessen the overtime incurred whenever it is necessary to fill in for employees who are off on compensatory time.

The City argues that "no other employee groups at the City receive this benefit" and that the external comparables do not establish the need for it because only about half of them have it with significant limitations on its use. The City also claims that the Union's proposal allows employees to take compensatory time whenever they want to without any advance notice requirement, and that the proposal exposes the City to "a significant unfunded liability" by allowing employees to carry over their unused time from year to year.

Six of the external comparables, i.e. DuPont, Gig Harbor, Milton,⁴ Orting, Pacific, and Sumner, provide for some form of compensatory time whereas three of them, i.e. Buckley, Port Orchard, and Yelm, do not (Guild Exhibit 21; City Exhibit 3.3). But for Dupont which allows 200 hours maximum accrual, the external comparables do not allow for anything higher than 80 hours of maximum accrual (Guild Exhibit 21; City Exhibit 3.3).

It is true, as the City points out, that various restrictions exist among these external comparables regarding how much advance notice is needed before compensatory time can be used; regarding the maximum amount of compensatory time that can be accrued; regarding how many of those hours can be carried over into the next year; etc. Nevertheless, those restrictions cannot hide the fact that six of the external comparables have this benefit.

⁴ Milton requires the mayor's approval before such time can be taken.

I find that these external comparables outweigh the City's one internal comparable represented by IBEW Local 483 because police work is such a stressful occupation and because there generally is a greater need for time off for law enforcement personnel than other City employees.

However, that does not mean that officers are entitled to compensatory time whenever they want. The granting of such time off is subject to the City's legitimate operational needs which means that the City can deny specific requests for leave whenever it is not feasible to grant it, a point acknowledged by Sergeant John Fitzgerald Villamor, who now does the actual scheduling of the department. He testified that granting compensatory time would not present any scheduling problems because compensatory time would be treated the same as holiday time and that no compensatory time could be granted if someone is on vacation.

The Guild cites Villamor's testimony to state that "compensatory time could be managed properly in the current scheduling system . . ." ⁵ Hence, even though the Guild's proposal on its face does not provide for any advance notice requirement to the City before taking compensatory time, such leave requests must be made as soon as practicable in order to give the City adequate time to fill in for those officers who want time off. ⁶

Granting compensatory time off may well increase the City's costs because the City sometimes may need to pay overtime to those filling in for those who are taking compensatory time. Such costs, however, at this point are only speculative and there is no reason to withhold this benefit merely because of such speculation.

⁵ Union Brief, at 15.

⁶ In order to avoid disputes over what constitutes adequate notice, the parties may want to discuss how much advance notice must be given.

Furthermore, while the City claims that the Guild's proposal would lead to "a significant bank of comp time to exist with a carry over from year to year," there is no proof that that will occur. Moreover, even if it does occur, that is not enough of a reason to deny this benefit. I therefore find that this proposal should be included in the agreement.

EDUCATION INCENTIVE

The prior agreement did not provide for an education incentive.

The Guild proposes to add the underlined new language below in Article 15.2 regarding an education incentive:

4. Education Incentive

In addition to monthly rates of pay, an officer will receive a monthly premium of \$50.00 for an AA Degree and \$75.00 for a BA/BS Degree in the following approved fields of job related studies: Criminal Justice, Sociology, Psychology, Police Science, Political Science or Public Administration. The City shall recognize existing degrees currently held by those officers employed on the date of approval of this labor agreement by both parties. An employee shall receive only one educational incentive at a time. Payment of the educational incentive shall commence when the employee submits to the City Manager or designee proof of having received such degree from an accredited university or college. Employees as of the date of approval of this agreement who have submitted the required proof of a degree within 60 days of approval of this labor agreement shall receive education incentive pay effective January 1, 2007. (Emphasis in original).

The City proposes current contract language for education incentive (i.e. no premium for education incentive).

The Guild points out that only one current officer would qualify for the AA degree incentive and only one would qualify for the BA/BS degree incentive; that the majority of comparables have an education pay provision (Guild Exhibit 12); and that its proposed incentive is less than all of the comparables except Milton.

The City asserts that this proposal “is another variation of the Guild’s effort to significantly expand overall compensation without any reasonable basis”; that the internal and external comparables do not support the proposal; and that rather than focusing on a benefit which will immediately affect only two officers, it is better to “focus compensation in areas that benefit the whole work group.”

Except for Dupont and Yelm, the Guild’s proposal is supported by all of the external comparables which have some form of educational incentives ranging from \$25 - \$125 a month or fixed percentages pegged to salaries ranging from 1% to 4% (City Exhibit 4.3; Guild Corrected Exhibit G-12). The Guild’s proposal for a \$50 monthly payment for an AA Degree and \$75 monthly payment for a BA/BS degree thus falls within these parameters.

The Guild’s proposal also is limited to those degrees and those “approved fields of job related studies,” i.e. Criminal Justice, Sociology, Psychology, Police Science, Political Science or Public Administration, thereby guaranteeing that all such course work will be job related.⁷

I find that the external comparables outweigh the one internal comparable which does not have this benefit, i.e. IBEW Local 483, because there is a strong public policy reason for increasing the formal knowledge of law enforcement personnel, something which is reflected in six of the external comparables.

I therefore find that the Guild’s proposal should be adopted.

⁷ Although the Guild’s proposal refers to “existing degrees” without specifying that they must be in these fields of study, its proposal must be read as providing for these fields of study because the proposal’s first sentence states that. No premium therefore must be paid if a degree is not supported by such course work.

EMPLOYEE PREMIUM CONTRIBUTION

The prior agreement provided for a 95% - 5% employer-employee contribution for health insurance premiums.

The Guild proposes to add the underlined new language below to Article 16.1 as the new monthly health insurance premium employees should pay for their health insurance:

16.1 Medical Insurance. Effective January 1, 20057, the City shall, as allowed by the State of Washington, pay ninety-five percent (95%), and the employee shall pay five percent (5%) or sixty dollars (\$60) per month, whichever is less, (payroll deduction), of the medical insurance premium for the employees, spouse and dependent children, as determined eligible by plan definition for the following (Emphasis in original):

Association of Washington Cities Employee Benefit Trust/Washington Physicians Service or Group Health Cooperative medical plans. (Plan A, including existing options and any other options added or deleted by the provider during the term of this Agreement.)

The City proposes to maintain the current division of employer/employee paid insurance premiums at 95% - 5%.

The Guild argues that its proposal is supported by the external comparables; that it “provides certainty for employees in budgeting for out of pocket medical expenses”; and that the City’s requested payment is too high.

The City maintains that the current 95%/5% contribution should be maintained to carry forward the “relative share of responsibility” for higher health insurance premiums; that the Guild’s offer ignores “the skyrocketing costs of health coverage” and allows this unit “to insulate its employees from increases that may occur . . .”; and that the internal and external comparables do not support the Union’s proposal.

In this connection, I have previously stated:

One need not be a graduate of the London School of Economics to understand that health care costs are one of the biggest economic issues facing the country today; that health care costs have risen dramatically; that employers are looking for ways to limit their health care costs; and that they are asking employees to pay more for their health care coverage.⁸

Here, the Guild seeks to limit its members' upside health insurance costs by capping their premium contribution at \$60 and by therefore transferring all other upside costs to the City. At a time when health insurance costs are ever escalating, it is unreasonable to transfer all such costs to the City when the City is only seeking to retain the status quo by having employees pay 5% of the health insurance premium. A percentage contribution also should make officers more aware of increasing health care costs since their contribution will be based upon those higher costs, thereby serving as an incentive for trying to keep those costs down.

The external comparables are mixed on this issue and slightly favor the Guild. Buckley, Gig Harbor, Milton, Pacific, Sumner, and Yelm do not require any employee contributions. Buckley and Yelm, however, require contributions for dependents and Orting and Pacific require officers to pay for certain premium increases (Guild Exhibit 22; City Exhibit 5.3) In addition, Dupont requires a \$40 a month employee contribution and Port Orchid requires a 10% employee contribution.

The internal comparable favors the City because employees represented by IBEW Local 483 now pay 5% of their health insurance premiums.

Given the mixed picture for the external comparables, I find that the internal comparable controls because there is a need to maintain internal parity on health insurance unless there is a strong reason to disturb it, which is absent here.

⁸ Kitsap County Sheriff's Guild and Kitsap County, PERC Case 17686-1-03-0411 (Greco, 2005), at 52.

The City's proposal therefore is adopted.

LONGEVITY PAY

The prior agreement did not provide for longevity pay.

The Guild proposes the following longevity pay:

Longevity Pay Longevity pay shall be added to each employee's base monthly pay effective and retroactive to January 1, 2007, as follows:

After 5 years = 2%

After 10 years = 3%

After 15 years = 4%

After 20 years = 5%

(Emphasis in original).

The City proposes to maintain the status quo on longevity pay (i.e. none).

The Guild points out that only four out of the eight officers here will be eligible for longevity pay; that the majority of external comparables provide for longevity pay; and that the City's claim that it does not provide longevity pay to other City employees "is of limited relevance" because the statutory criteria requires comparison with "like personnel."

The City argues that the Guild's proposal is "a departure from the parties' historical compensation focus, inconsistent with the approach used with other City employees, and in excess of that provided in comparable jurisdictions." It adds that the proposal "offers a greater benefit than that enjoyed by the majority of the City's comparables," and that "the level of the longevity premium sought by the Guild is excessive."

All of the external comparables except Gig Harbor⁹ provide for some kind of longevity pay (City Exhibit 8.3; Guild Exhibit 11). Thus, while some of the comparables do not provide for longevity pay at all of the 5, 10, 15 and 20 year steps covered in the Guild's proposal, they all at some point pay something in the form of a longevity payment.

Many of those payments are less than what the Guild is proposing here. Thus, only Dupont and Milton pay 2% at the five year step; only DuPont and Milton pay 3% at the ten year step; only DuPont, Milton, and Port Orchard pay 4% at the 15 year step; and only Dupont pays 5% at the 20 year step (Guild Exhibit 11). The Guild's proposal therefore is somewhat rich.

Nevertheless, longevity pay should be paid because all but one of the comparables pay it, thereby establishing that it is an integral part of a police officer's wages within this labor market. That also is why the external comparables are much more important than the one internal comparable, i.e. IBEW Local 483, which does not have longevity pay. I therefore find that the Guild's proposal should be adopted.

WAGES AND PREMIUM PAY

The Guild proposes to add the following underlined new language to the agreement (Emphasis in original):

APPENDIX A

SALARIES

Effective and retroactive to January 1, ~~2004~~2007

SALARY STEPS

⁹ Gig Harbor has a merit/bonus pay program which includes up to an additional 5% wage increase for employees at the top step.

	A 1Yr	B` 1Yr	C 1Yr	D 1Yr	E 1Yr	F 1Yr
<u>Job Title</u>						
	<u>3590*</u>					
Entry Police Officer	<u>3306*</u>					
	<u>3958</u>	<u>4179</u>	<u>4387</u>	<u>4581</u>	<u>4837</u>	<u>5079**</u>
Police Officer	<u>3665</u>	<u>3848</u>	<u>4040</u>	<u>4242</u>	<u>4454</u>	<u>4677</u>
	<u>4497</u>	<u>4722</u>	<u>4958</u>	<u>5205</u>	<u>5466</u>	<u>5740**</u>
Police Sergeant	<u>4141</u>	<u>4348</u>	<u>4565</u>	<u>4793</u>	<u>5033</u>	<u>5285</u>

The 2007 wage includes a 4.6% percent cost of living adjustment based on the Seattle-Tacoma-Bremerton CPI-W from July 2005 to June 2006 plus a four percent (4%) market adjustment.

Effective and retroactive to January 1, 2008

	A 1Yr	B` 1Yr	C 1Yr	D 1Yr	E 1Yr	F 1Yr
<u>Job Title</u>						
Entry Police Officer	<u>3780*</u>					
Police Officer	<u>4167</u>	<u>4400</u>	<u>4620</u>	<u>4824</u>	<u>5093</u>	<u>5348**</u>
Police Sergeant	<u>4735</u>	<u>4972</u>	<u>5221</u>	<u>5481</u>	<u>5756</u>	<u>6044**</u>

*Entry level wage shall be paid from the date of hire until the employee completes his field training at which time his rate shall increase to the level A rate. This entry level position shall not apply to lateral hires.

**2008 wages include a 3.3% cost of living adjustment based on the Seattle-Tacoma-Bremerton CPI-W from July 2006 to June 2007 plus a two percent (2%) market adjustment.

January 1, 2009 – the 2008 wage scale shall increase by 100% of the Seattle-Tacoma-Bremerton CPI-W for July 2007 to June 2008 plus a two percent (2%) market adjustment.

Premium Pay. In addition to the above salaries, the employee shall receive 3% of his/her base wage rate during the time that they are actually performing the assigned duties of Field Training Officer, Firearms Instructor, Investigator or Crime Prevention Officer.

Employees employed as of October 12, 1995 will advance one step the first pay period in December every year.

Employees hired after October 12, 1995 shall enter the salary step system at Step A, advance to Step B upon successful completion of the probation period and one year continuous service. All other step advances will occur annually. Police Officers promoted to Sergeant shall be placed on the lowest Salary Step for Sergeant which represents a salary increase. Any other provisions of this Agreement notwithstanding, the City may, in its discretion, start lateral hires or the Sergeant at any salary step, other than the entry level step. In addition, the City reserves the right to move any employee to a higher salary step, regardless of years of service with the City.

For payroll purposes and for the computation of hourly rates, the monthly salary of said positions shall be multiplied by twelve (12) and then divided by two thousand eighty (2080) hours to determine the corresponding regular rate of pay.

The City's proposal for wages is as follows:

The City proposes to increase wages for police officers and sergeants by 5.6% effective January 1, 2007 (100% of Seattle-Tacoma-Bremerton CPI-W, June 2005 - June 2006 (4.6%) + 1% market adjustment). The City further proposes to increase wages for police officers and sergeants an additional 4.3% effective January 1, 2008 (100% of Seattle-Tacoma-Bremerton CPI-W, June 2006 – June 2007 (3.3%) + 1% market adjustment). The City further proposes to increase wages for police officers and sergeants an amount equal to 100% of the Seattle-Tacoma-Bremerton CPI-W, June 2007 – June 2008 + 1% market adjustment, effective January 1, 2009.

...

In addition to requesting the Seattle-Tacoma-Bremerton based CPI-W COLA for each year of the agreement, the Guild thus seeks a 4% market adjustment for 2007 and 2% market adjustments for 2008 and 2009 in part on the ground that such adjustments are needed "to compensate for lack of take home vehicles." It states that most of the external comparables provide take home vehicles; that this benefit is worth between 4% - 6%; and that some employees have quit the department in part because the City does not offer this benefit and that other employees are thinking of doing so. While not a proposed comparable, the Guild points to

the city of Bonney Lake which provides for a 3% or 6% wage increase if its assigned car program is eliminated (Guild Exhibit 19), and the Guild also contends that the “number of miles commuted by the current officers” equals about 3.57% - 3.87% of the top wage step if the IRS mileage reimbursement rate is used.

The Guild also argues that a wage catch-up is needed because its total compensation analysis (Guild Exhibit 24) establishes that the City is “12.9% behind the market on average and 15.2% behind market average at the five years of completed service mark,” and it faults the City’s economic data on the ground that it “does not reflect a total compensation analysis.”

The City points out that its wage proposal “offers significant increases” of 5.6% effective January 1, 2007; 4.3% effective January 1, 2008; and an amount equal to 100% of the Seattle–Tacoma–Bremerton CPI-W, plus a 1% market adjustment effective January 1, 2009. It adds that its offer “is fair and reasonable” under RCW 41.56 and in light of the comparability data; that its approach of “measuring wage comparisons is fairer and should be adopted”; that no wage gap existed between the City and the comparables at the end of the parties’ expired contract; that the City’s proposal would allow the City to maintain its competitive position among its comparables; and that the Guild’s comparability data is “flawed.”

The City also contends that the CPI supports its proposal; that the internal comparable supports its proposal; that the local labor market data does not support the Guild’s proposal; and that “The Guild’s proposal to increase wages to reflect the value of a take-home vehicle should be rejected.” The City also maintains that the “overall cost of the Guild’s proposal cannot be justified” because it calls for increased costs which total \$329,845 over three years, whereas the City’s proposal calls for \$211,965 in new costs, (City Exhibits C.2, C.3, and C.4), and that the Guild is seeking an 8.6% wage increase in 2007 and a 5.3% wage increase in 2008 which it claims is excessive (City Exhibit A.6).

Both parties thus have agreed to across-the-board wage increases based upon the Seattle-Tacoma-Bremerton CPI-W COLA for 2007, 2008 and 2009. Their dispute therefore centers upon whether officers also should receive a 4% market adjustment in 2007 and 2% market adjustments in 2008 and 2009 as proposed by the Guild, or 1% market adjustments in 2007, 2008, and 2009 as proposed by the City.

The wage offers therefore are roughly 5% apart excluding compounding, i.e. the difference between the 8% total market adjustments the Guild seeks over the three years of the agreement versus the 3% total market adjustments the City is offering.

Since the City's across-the-board wage offer is directly tied to the CPI and provides for extra 1% increases in addition to those CPI increases over the three years of the agreement, the cost-of-living factor favors the City's proposal.

The Guild asserts that an additional 4% market adjustment is needed in part to compensate employees because they do not have assigned vehicles, as it points out that eight of the external comparables – i.e. Buckley, DuPont, Gig Harbor, Milton, Orting, Pacific, Port Orchard, and Yelm – have assigned cars which are allowed to be taken home with certain limitations (Guild Exhibit 16; City Exhibit 1.9). In addition, Sumner has an assigned vehicle program which only covers sergeants and specialty units.

There was considerable testimony at the hearing regarding this issue.

Robert LaTour, now a Pierce County Deputy Sheriff, formerly was a City Patrol Officer. He stated that he left his City position in part because the City does not have an assigned vehicle program; that if the City had assigned him a vehicle, it would have been an incentive to stay; that it is much more convenient to have an assigned car; and that he now has an assigned vehicle which he can drive 10 miles outside of Pierce County. He currently lives in Pierce County and never has lived in the City because he could not afford to do so.

City Patrol Officer Christopher O. Roberts currently is looking for other employment because he does not have an assigned vehicle and because of “pay issues.”

Patrol Officer David Seeley testified that having an assigned vehicle is a benefit because it then becomes unnecessary to load and unload a squad car every time it is used and because there then is a shorter response time. He added that he does not live in the City because it is too expensive to do so; that the City in the 1990’s once had an assigned vehicle program which it unilaterally discontinued; that it takes about 15-20 minutes of preparation before he is able to use one of the City’s vehicles; and that the City would have to purchase 3-4 additional cars if it had an assigned vehicle program.

James Oetting, now a Pierce County Deputy, formerly was a City Patrol Officer. He left City employment for higher pay and because he did not have an assigned vehicle. He added that a “vehicle is your office”; that he uses his Pierce County car only for official business; and that when he worked for the City, he on a weekly basis used the same vehicle about 90% of the time.

Sergeant Villamor testified that assigned cars would foster greater accountability; increase morale; increase response time to incidents; and cut down on the time officers must now perform their check lists.

Patrol Officer Peter Joyce testified that the City had take-home cars in the 1980’s which ended in 1995, and that there is “No doubt about it” when asked whether assigned cars are good for recruitment and retention.

Chief Cheesman agreed that having assigned cars “couldn’t hurt” for recruitment or retention purposes and that most local police departments in Pierce County have assigned cars. He added that the City now would have to buy three more cars at a cost of about \$37,000 each

under an assigned car program and four cars when the department is fully staffed, and that officers now are usually assigned the same car every day unless it is in for repair or maintenance, thereby making it unnecessary to load and unload their cars on a daily basis.

City Clerk Rich Rosenblatt testified that the City Council has no interest in having assigned cars because no bargaining unit employees live in the City and because there is no interest in having “cars go outside Fircrest.”

Patrol Officer Rob Morrison wants to return to his former position in Tacoma because of its higher wage and benefits package and “primarily” because he then can take an assigned car which will save on the wear and tear of his personal car and result in lower car insurance rates. He added that assigned cars result in a greater police presence and hence provide free law enforcement for the community, and that they also promote personal accountability because one person then is in charge of a vehicle.

This testimony establishes that an assigned vehicle program would be a great benefit to officers. It would enable them to drive to and from work in assigned vehicles, thereby perhaps obviating their need to have an additional personal vehicle and which, in any event, would cut down on the wear and tear of using their own personal vehicles to get to and from work. It also would cut down on the purchase of gas and probably lower their automobile insurance payments for their personal vehicles.

Furthermore, the absence of this benefit was one of the reasons LaTour and Oetting left their employment with the City, and it is one of the reasons Roberts and Morrison are now looking elsewhere for employment.

Assigned vehicles also provide a benefit to the City because they can cut down on the time officers otherwise must spend on loading and unloading their gear whenever they have a different vehicle, and assigned vehicles also can lead to shorter response times which is important.

It therefore is understandable why Chief Cheesman testified that having assigned vehicles “couldn’t hurt” for recruitment and retention purposes, thereby corroborating Joyce’s testimony.

But Chief Cheesman also stated that officers usually are assigned a given car on a weekly basis and that those officers do not have to daily load and unload their vehicles, a point reiterated by Oetting. Chief Cheesman also explained that this is an expensive benefit because the City would have to spend between \$100,000 - \$137,000 to buy the 3 or 4 vehicles needed under such a program. In addition, since no officers currently live in the City, assigned vehicles would not result in a greater police presence in the City when they take those vehicles home, thereby supporting City Clerk Rosenblatt’s testimony that the City Council has no interest in having assigned vehicles “go outside Fircrest.”

Based upon such latter considerations, the City has determined that it is not in the City’s self-interest to have an assigned vehicle program even though such a program may help recruitment and in the retention of personnel.

The situation here thus differs from all of the comparables who have such a program, as they have decided that it is in their own self-interest to have such a program, one which also is of mutual, but incidental, benefit to their employees.

Here, by contrast, there is no such mutuality which is why the situation here materially differs from the situations there. In addition, the Guild has identified only one non-comparable, i.e. Bonney Lake, which offers the kind of added compensation the Guild seeks here. In addition, Rick Sokolowski, the City’s labor negotiator, testified that in his long experience as a

labor negotiator he is unaware of any jurisdiction which pays an added wage premium to make up for the absence of an assigned vehicle program. The fact that only one other jurisdiction offers this compensation shows the rarity of what the Guild is seeking.

When all of these factors are considered together, I conclude that no added compensation should be awarded merely because the City does not have an assigned vehicle program.

Turning now to wages, the Guild asserts that the officers here receive less in overall compensation than their comparables and that the City's contrary data is flawed because it only covers a base wage comparison and does not include education or longevity pay; or the amount of the health care premiums officers must pay; or leave benefits.

The City counters that the Guild's data is incorrect because "comparable jurisdictions offer different health insurance plans" which is why health care premiums should not be included when comparing wages. It adds that the Guild improperly includes education and leave benefits in its wage figures, and that the Guild wrongly has compared the City's 2006 compensation with the 2007 and 2008 compensation offered by the comparables because the City is not contending that wage levels should remain at 2006 levels.

In sorting out this data, it is necessary to first ascertain where the employees here stood regarding wages vis-à-vis the external comparables at the end of 2006 when the prior agreement expired.

In 2006, officers at the 5 year level were paid \$4,454 in base wages which was below the \$4,661, \$4,656 and \$4,515 base wages paid by Dupont, Milton and Port Orchard respectively, and above the \$4,293, \$4,111, \$4,024 and \$3,725 base wages paid by Buckley, Pacific, Yelm, and Orting respectively (City Exhibit 1.3.1(a)).¹⁰

¹⁰ There is no data for Sumner and Gig Harbor for 2006.

In 2006, officers at the 10-year level were paid \$4,677 in base wages which was above the \$4,661, \$4,656, \$4,515, \$4,293, \$4,269, \$4,111 and \$3,952 in base wages paid by Dupont, Milton, Port Orchard, Buckley, Yelm, Pacific, and Orting respectively (City Exhibit 1.3.1b).

These figures establish that the City’s base wages were competitive at the expiration of the prior contract and that, standing alone, they do not establish any strong need for catch-up.

In 2007, officers at the 5 year level under the City’s proposal would earn \$4,703 in base wages, thereby placing them in the following order (City Exhibit 1.3.3a): ¹¹

	<u>2007</u>
Sumner	5,544
Gig Harbor	5,148
Pacific	5,089
Port Orchard	4,968
Dupont	4,857
Milton	4,796
Fircrest	4,703
Buckley	4,646
Yelm	4,270
Orting	3,952

In 2007, officers at the 10 year level under the City’s proposal would earn \$4,939 in base wages, thereby placing them in the following order (City Exhibit 1.3.3b):

Sumner	5,544
Gig Harbor	5,148
Pacific	5,089
Port Orchard	4,968
Fircrest	4,939
Dupont	4,857
Milton	4,796
Buckley	4,646
Yelm	4,530
Orting	4,189

¹¹ The City’s wage data for 2007-2008 has been augmented by the data for Sumner and Gig Harbor.

In 2008, officers at the 5 year level under the City's proposal would earn \$4,906 in base wages, thereby placing them in the following order (City Exhibit 1.3.5a):

Sumner	5,729
Gig Harbor	5,318
Pacific	5,262
Port Orchard	5,141
Dupont	5,027
Milton	4,940
Fircrest	4,906
Buckley	4,836
Yelm	4,530
Orting	4,501

In 2008, officers at the 10 year level under the City's proposal would earn \$5,151 in base wages, thereby placing them in the following order (City Exhibit 1.3.5b):

Sumner	5,729
Gig Harbor	5,318
Pacific	5,262
Fircrest	5,151
Port Orchard	5,141
Dupont	5,027
Milton	4,940
Orting	4,923
Buckley	4,836
Yelm	4,806

The Guild challenges the accuracy of the City's data and relies upon the Market Summary Comparison of its proposed comparables to show that the City's offer for 2008 is 12.9% less than the average comparable, and it relies upon the Market Summary Comparison of the City's proposed comparables to show that the City's offer is 7.7% less than the average comparable (Guild Exhibits 8-9, 24).

The Guild's figures, however, compare the City's 2006 wages to the 2007-2008 wages of the comparables rather than to the City's proposed 2007-2008 wages which is a better

comparison because the City is not contending that wage levels should remain at 2006 levels and because that would show where the City's offer places the City vis-a-vis the external comparables.

The Guild's figures also do not represent a true comparison of base wages, but rather, include such items as longevity pay, education pay, employee contributions for health insurance and leave, etc. The Guild therefore compares the City's 2006 wages when the City did not offer longevity or education pay to what the comparables are paying in 2008 when most of them are offering longevity and education pay. But that is not a true apples-to-apples comparison since I have determined that the City must award longevity pay and education pay retroactive to January 1, 2007, thereby increasing the overall level of compensation.¹²

Given these problems with the Guild's data, I find that the City's data more accurately reflects the City's true standing with the external comparables and that it should be used to determine the merits of the parties' wage offers.

That data establishes that there was no strong need for catch-up at the expiration of the prior agreement; that the City's wage offer maintains the City's relative standing among the external comparables; and that it is supported by the cost-of-living factor. Officers here also will now receive longevity payments which are more generous than the ones offered by most of the external comparables and which will total about \$30,055 for the bargaining unit over the life of the agreement (City Exhibit C.2), along with an education incentive. I therefore conclude that the City's wage offer is more reasonable and that it should be adopted.

¹² This is not to suggest that there is anything wrong in comparing overall levels of total compensation. To the contrary, total compensation is useful and often invaluable in determining where one group of employees stand vis-à-vis another group of employees. Here, though, that has not been done because the Guild's 2006 data for the City is the wrong measurement for comparing where the City's 2008 overall level of compensation stands vis-à-vis the overall compensation for the external comparables.

Based upon all of the above, I issue the following

AWARD

1. The Guild's proposal regarding Acting Pay is rejected and shall not be included in the successor agreement.

2. The Guild's proposal regarding Workweek And Overtime (Compensatory Time) is adopted and shall be included in the successor agreement.

3. The Guild's proposal regarding Educational Incentive is adopted and shall be included in the successor agreement.

4. The City's proposal regarding Employee Premium Contribution is adopted and shall be included in the agreement. The Guild's proposal regarding Employee Premium Contribution is rejected.

5. The Guild's proposal regarding Longevity Pay is adopted and shall be included in the successor agreement.

6. The City's proposal regarding Wages And Premium Pay is adopted and shall be included in the successor agreement. The Guild's proposal regarding Wages And Premium Time is rejected.

Dated this 15th day of July, 2008.

Amedeo Greco /s/

Amedeo Greco, Arbitrator