In the Matter of the Interest Arbitration

between the Longview Police Guild ("Guild")

and

the City of Longview, Washington ("City")

Findings, Discussion and Award.

Case Numbers:	Arbitrator's case No. HC2.
Representing the Guild:	Daryl S. Garrettson, Esq., and Garrettson Gallagher Fenrich & Makler, P.C., 5530 SW Kelly Avenue, Portland, OR 97239.
Representing the City:	Bruce L. Schroeder, Esq., and Summit Law Group, PLC, 315 Fifth Avenue S, Suite 1000, Seattle, WA 98104.
Party-appointed Arbitrators:	Mark J. Makler, Esq., Garrettson Gallagher Fenrich & Makler, P.C., 5530 SW Kelly Avenue, Portland, OR 97239, appointed by the Guild; and Chief Mike King, Anacortes Police Department, 1218 24th Street, Anacortes, WA 98221, appointed by the City.
Neutral Arbitrator:	Howell L. Lankford, P.O. Box 22331, Milwaukie, OR 97269-0331.
Hearing held:	In the City's offices in Longview, Washington, on November 7 & 8, 2007.
Witnesses for the Guild:	Ed Jones, Dana Bennett, and Sean Close.
Witness for the City:	Alex Perez, Robbie Berg, Linda Swanson, and Don Barnd.
Post-hearing argument received:	From the Guild on Jan.16, and from the City on Jan. 17, 2008, both timely postmarked on January 15.
Date of this award:	February 19, 2008.

#	Article #	Article	Moving party	Disposition / Page below	
1	1.12	Police Reserves	City	Open.	8
2	3.04 new	Law Enforcement Code of Conduct.	City	Withdrawn.	
3	5.04 C, D, E	Discipline and Discharge	City	Open.	9
4	5.06 D4	Internal Affairs Complaints	City	Open.	11
5	6.01	Wages	Both	Open	11
6	6.01D	Training Wage	City	Open	16
7	6.02	Education Premium	City	Open. (Parties agree on BA/BS premium.)	16
8	6.03	Instructor's Pay	Guild	Withdrawn.	
9	6.04	OIC	City	Open	17
10	7.01 - 7.06	Clothing and Equipment	City	Withdrawn. To be covered by MOU adopting City's proposal.	
11	8.02	Hours of Work	City	Withdrawn.	
12	8.03	Meal and Rest Periods	Both	Withdrawn by the Guild. City proposal is open.	18
13	8.04D	Maximum Compensatory Time Accrual	Guild	Withdrawn.	
14	8.05	Callback	City	The Guild accepts the City's proposal.	
15	11.01	Annual Leave	City	City withdrew its §11.1 proposal; the parties will draft a MOU covering §11.2.	
16	11.02	Holidays	City	Open.	18
17	11.05	Vacation Time	City	Guild accepts the City's proposal. MOU to be incorporated into contract.	
18	11.06	Vacation Leave Requests	City	Withdrawn.	
19	11.07	Maximum Vacation Accrual	City	Open.	18
20	11.11	Vacation Leave Cashout	City	Open.	18
21	14.01C	Orthodontic Coverage	Guild	Withdrawn.	
22	14.02	Insurance Premiums	City		
23	16.02	Length of Agreement	Both	Parties agree on three years.	

This is an interest arbitration under the authority of RCW 41.56.465. Each of the parties appointed its own arbitrator; and the parties jointly selected the neutral arbitrator. Neither party objected to the other's choice of party-appointed arbitrator or raised substantive or procedural objections to interest arbitration. The hearing was orderly. Each party had the opportunity to present evidence, to call and to cross examine witnesses, and to argue the case. The parties filed timely post-hearing briefs.

PERC certified 23 issues to interest arbitration for this 56 FTE bargaining unit; and the parties resolved several of those issues in the course of the two-day arbitration hearing. The previous page of this discussion is a summary of the disposition of all 23 issues (and a table of content for this discussion and award).

Comparability. The first step in resolving an interest arbitration pay dispute is the identification of comparable jurisdictions. The City proposes a long list: *Bremerton*, *Lacey*, *Mt. Vernon*, *Port Angeles*, *Pasco*, *Richland*, *Wenatchee*, *Des Moines* (proposed by the Guild in 2001), and *Puyallup* (also proposed by the Guild in 2001). The Guild proposes Bremerton, Lacey, Olympia, Redmond and Renton.

The parties' dispute over comparability has a significant history. They resorted to interest arbitration in 2001 and presented a similar comparability dispute to arbitrator Luella Nelson (NAA). Then, as now, the parties agreed that Bremerton and Lacey were appropriate comparables. In 2001 they also agreed on Olympia, which the City now rejects, on the basis of dissimilarity in population, assessed valuation, and sales tax receipts. On the other hand, the parties now agree that Puyallup and Mount Vernon are appropriate comparables.

The City's proposed first criteria for choosing comparables are population (±50% of Longview's 2006 population of 35,570) and assessed valuation (again, ±50% of Longview's 2006 assessed valuation of 1,919,495,278). The City also points out that it is geographically quite separate from any major population/economic center; and the City argues that its proper comparables—or, at least, most of them—should share that characteristic. The Guild, on the other hand, argues that Longview is, in many respects, part of the extended *Portland* metropolitan area; and therefore, because Washington interest arbitrators traditionally focus on Washington comparables if possible, the Guild concludes that Puget Sound comparables are entirely appropriate. The Guild proposes three selection criteria: similarity of population, geographic proximity, and bargaining continuity. The last of these three—continuity—would recognize Arbitrator Nelson's resolution of the comparability issue in 2001 and the parties' use of other jurisdictions as comparables both in the 2001 proceeding and in negotiations before that 2001 award.

Factors for determining comparability. Neither party's approach to comparability is entirely within the mainstream for Washington interest arbitrations. I agree with the City that most parties, and most interest arbitrators, begin by *screening* potential comparators for similarity in size in two respects: population and assessed valuation. The parties agree on the importance of similarity in population, but the Guild rejects assessed valuation as a screen. There are situations in which it is inappropriate to screen on the basis of assessed valuation; but nothing in the record suggests that this is one of them. Assessed valuation data is easily available; and that data provides at least a rough picture of the economic magnitude of the various potential comparables.[1]

As the Guild proposes to ignore assessed valuation, so the City proposes to ignore geographic proximity. The Guild points to my discussion of this same dispute in a 2001 interest arbitration involving Kelso, just next door to Longview. (Similar discussions can be found in cases that I and other interest arbitrators have written over the last 20+ years, and there is no good reason to reinvent this particular wheel.)

> 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 what 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.)

In Washington (and in Oregon, too) geographic proximity frequently blends into a dispute over what interest arbitrator Jane Wilkinson (NAA) commonly refers to as "the Cascades curtain," i.e. whether it is appropriate to combine comparators from east and

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1. The Guild points out that only a third of the City's revenue comes from property tax. But assessed valuation is significant not only as part of an "ability to afford" analysis, but as a general measure of the economic sizes of the subject jurisdiction and the proposed comparables.

west of the Cascades. While unions often argue for proximity and employers usually argue for assessed valuation, the Cascade curtain factor seems to be a tool of convenience which may be offered by either side in a particular case depending on how the data stacks up. In *City of Kelso* for example, both parties agreed to recognize the curtain. It is usually proposed by unions in cases arising west of the Cascades and by employers in cases arising east of the cascades.

After similarity of size (by population and assessed valuation) and geographic proximity, bargaining parties and interest arbitrators sometimes consider other factors which may provide useful perspectives on similarity. Those factors include sales tax revenue, assessed valuation per capita, sales tax per capita—all offered by the City in this case—crime characteristics—offered by the Guild—and proximity to a metropolitan area, which is sharply disputed here. None of those factors is traditionally accepted as a *screen* for statutory similarity; but any of them may provide a useful prospective in a particular case.

Finally we come to considerations of continuity. When two parties have repeatedly used a particular jurisdiction as a comparable in past negotiations, neither party should be allowed to abandon that comparable in interest arbitration without good cause. Similarly, when two parties have recently submitted the issue of comparability to an interest arbitrator, the decision in that prior case should be given great weight unless the record shows a substantial change in circumstances. These principles necessarily follow, it seems to me, from the legislature's statement of the general purpose of public sector corrective bargaining, set out in RCW 41.56.010: "...to promote the continued improvement of the relationship between public employers and their employees..." That purpose is not well served by an interest arbitration award that encourages bargainers to abandon their prior settled agreements about comparables and to relitigate the comparability issue which was recently resolved through interest arbitration.

Comparables in the case at hand. These parties litigated the issue of comparability in 2001 before arbitrator Luella Nelson (NAA). In 2001 they agreed on the comparability of Olympia, Bremerton, and Lacey. The Guild proposed to include Renton, Redmond, Auburn, Edmunds, Puyallup, Lynnwood, and Des Moines. The City proposed to include Pasco, Richland, Wenatchee, and Mt. Vernon. The chart on page 7, below, summarizes the various proposed comparables by population, assessed valuation, driving distance, and bargaining continuity.[2]

The bottom line with respect to comparability is that each party has compelling reasons for rejecting the contested comparables offered by the other. In many instances, those reasons are the same as they were when the parties argued the same issue to arbitrator Nelson in 2001. Beginning with the contested comparables proposed by the

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2. The population and assessed valuation data is for 2006, which is roughly in the middle of the three years at issue in this case.

Union, Renton, Redmond, Auburn, Olympia and Edmonds are all massively different from Longview in terms of economic size as shown by assessed valuation. There is respectable authority and precedent for a "÷2 or x2" basis (i.e. 50% or 200% of the subject jurisdiction). See, e.g., Kaplan, "Interest Arbitration and Fact-finding, Some Principles and Perspectives," Oregon Labor Education Research Center Monograph No 13 (Univ. Of Oregon, 1994, Lankford, ed.). There is precious little precedent for exceeding twice the size of the subject jurisdiction unless forced to do so by unusual circumstances. That is true even where, as here, Auburn, Olympia and Edmunds were used by these parties before the 2001 interest arbitration and were found comparable by arbitrator Nelson, and even though Olympia was actually stipulated as a comparable in that case. As the City points out, demographics change over time, and when a record shows that similarity has been lost, a previous comparable may reasonably be abandoned. On the City side, Pasco, Richland and Port Angeles are all too distant, and Port Angeles is remote from any metropolitan area. Without Port Angeles and Mt. Vernon, the average distance of the comparables is just over 100 miles. Even though the parties agree to Mt. Vernon (at 184 miles), I will not add Port Angeles (at 188 miles) over the Guild's objection.

(The City also points to considerations of reflexivity. For example, arbitrator Jean Savage used Longview as a comparable in a Wenatchee police interest arbitration in 2003; the City of Pasco and IAFF agreed on Longview as a comparable in a 2006 interest arbitration before arbitrator Janet Gaunt (NAA); but arbitrator Gaunt rejected Puyallup—an agreed comparable here—and Lynnwood, which was found comparable by Arbitrator Nelson—on the basis of distance, the east/west divide, and difference in assessed valuation;[3] meanwhile, arbitrator Mike Beck (NAA) used Longview as a comparable in a 2002 interest arbitration award involving the City of Richland and IAFF, but the record does not show whether Longview was an agreed comparator or was resisted by one of the parties. In *administrative* pay determinations—apart from the collective bargaining context—it is particularly significant to compare with employers which compare with you: Reflexivity acts as a consensus check on the coherence of a community of comparable employers. In the collective bargaining and interest arbitration context, where arbitrators are required to select comparables from a particular list proposed by the parties in each particular case, reflexivity has traditionally been a substantially less significant consideration.)

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3. Besides the Cascades curtain, the other geographical oddity of interest arbitration cases in Washington is traditionally—and very roughly—referred to as the Puget Sound issue. (I have not seen a label as catchy as "Cascades curtain" for this one.) The City points out that the average weekly wage in all the counties containing proposed comparables is about $753 while the average weekly wage in the Puget Sound counties (King, Kitsap, Snohomish, Thurston, and Pierce) is about $813, a difference of about 8%. Unions outside the Puget Sound area traditionally hope for comparison with Puget Sound employers; and Puget Sound employers traditionally hope for comparison almost anywhere else.

City	Population (% of Longview)	Driving distance	Assessed Valuation (% of Longview)	Used before 2001	Offered in 2001	2001 Award	Offered in this case	Used here
Renton	58,360 (164%)	120	$7.3 (380%)	✔	✔		✔	
Redmond	49,890 (140%)	137	$10.3 (536%)	✔ ✓	✔		✔	
Auburn	48,955 (138%)	108	$5.1 (268%)	✔ ✓	✔	✗	✔	
Pasco	47,610 (134%)	258	$2.0 (104%)		✓		✓	
Richland	44,230 (124%)	267	$3.3 (174%)		✓		✓	
Olympia	43,740 (123%)	68	$4.2 (212%)	✔ ✓	✔ ✓	✗	✔	
Edmonds	40,360 (113%)	144	$5.4 (283%)	✔ ✓	✔	✗	✔	
Puyallup	36,360 (102%)	99	$3.4 (176%)	✔ ✓	✔	✗	✔ ✓	✗
Bremerton	35,910 (100%)	126	$2.2 (116%)	✔ ✓	✔ ✓	✗	✔ ✓	✗
Longview	**35,570**		**$1.9**					
Lynnwood	35,230 (99%)	143	$4 (207%)		✔	✗	✔	✗
Lacey	34,060 (96%)	71	$2.9 (150%)	✔ ✓	✔ ✓	✗	✔ ✓	✗
Wenatchee	29,920 (84%)	255	$1.6 (82%)		✓		✓	
Des Moines	29,020 (82%)	113	$2.4 (123%)	✔	✔	✗	✔ ✓	✗
Mount Vernon	28,710 (81%)	188	$2.2 (113%)		✓	✗	✔ ✓	✗
Port Angeles	18,970 (52%)	184	$1.3 (67%)		✓		✓	

✔: proposed by the Guild. ✓: proposed by the City. ✗: used by the arbitrator.
*: In negotiations in 1995 and in 1998-1999 the City also used the Clark and Cowlitz County Sheriffs' offices, and the Guild also used the City of Kent. (See arbitrator Nelson's Award at 3.)

This leaves only the five jurisdictions which the parties stipulate to be appropriate comparables. Of course, I would like to have a larger set; but this set offers some substantial attractions. Every one is reasonably close to Longview, and most are within reasonable commuting distance. Two are larger than Longview in population and three are smaller; and even though all are larger in assessed valuation, the average difference is within about 50% over Longview. Finally, three of these five were used by the parties

even before 2001, and all of them were found comparable by arbitrator Nelson in the parties' prior interest arbitration. The appropriate comparables in this case are: Puyallup, Bremerton, Lacey, Des Moines and Mt. Vernon.

ISSUE #1: Article 2.12 – Police Reserves

The City has a Reserve Officer program. At the time of hearing, it was down to three participants while comparables Bremerton, Des Moines and Lacey all have more. There were nine to ten participants in the City's Reserve Officer program as recently as 2004; and two of those later filled openings for regular Officers. The City proposes to relax the contractual restriction on the use of Reserves. Here is the language of the prior agreement:

> The City shall not employ Reserve Officers to perform bargaining unit work without bargaining with representatives of the Guild. The Chief of Police retains the right to utilize Reserve officers in any capacity during an emergency situation as defined in Article 8.01 (a) of this Agreement as well as the following events: Fourth of July; Cruise Night; New Year's Eve.

Bremerton, Lacey and Puyallup all allow wider use of Reserve Officers. The City would replace the prior contract's language with this:

> The City maintains a Reserve Police Officer Program to support and assist sworn officers within the Department. The City Reserve Officers are specially commissioned Washington peace officers, part-time or full-time, who are commissioned by the City to enforce some or all of the criminal laws of the state of Washington, who are not regular officers for the City and are not compensated for services to the City. Reserve Officers are not compensated and serve their community solely as volunteers. Reserve Officers do not perform primary patrol, traffic or investigation duties. The duties of a Reserve Police Officer may include:
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> (a) Response to priority 3, and 4 calls at the discretion of the supervisor.
> (b) Response to priority 1 or 2 calls in a support capacity at the request of the supervisor except when exigent circumstances require immediate interim police action.
> ©) Barricade/traffic control.
> (d) Fireworks enforcement.
> (e) Crime scene protection.
> (f) Prisoner transportation/security.

Priority 4 calls are now taken by Civilian Support Officers, who are not in this bargaining unit; but the Priority 3 category includes, e.g., rape not in progress and child abuse not in progress. The proposed language is modeled on the City of Vancouver contract. (The Guild points out that the City has added the "exigent circumstances" language to subsection (b).) The City proposes to use Reserve Officers for, e.g, extra visibility foot patrol downtown during the Christmas shopping season.

Washington requires Reserve Officers to attend a Reserve Academy, which lasts for six months part-time, and to serve a minimum of twelve hours per month, including meetings and training. Those requirements contrast starkly with the education, training and experience requirements of a regular, sworn Police Officer. Modern police work is a team activity. Whenever there is a Reserve Officer on the street—with a badge and a gun, looking very much like a regular Officer—there are potential safety issues for any regular Officer working with or around that reservist. I agree with the City that there are probably opportunities for the safe use of Reserve Officers beyond those set out in the prior agreement. But the language of that Agreement *requires* the Guild to give serious consideration to any specific proposals from the City over how to safely expand the use of Reserve Officers. The record before me does not show that the City has initiated that discussion. I agree with the City that the existing language is probably too restrictive; and I suspect that serious discussion between the parties should result in agreement about the safe expansion of the Reserve Officer program.[4] But on the current record I cannot award the City's proposed change.

ISSUE 3: Article 5—Discipline and Discharge

The City proposes two changes here. First, it would require the Chief's approval for the removal of a written reprimand from an Officer's file. The purge period for a written reprimand would remain unchanged at two years; but the current automatic removal provision would be changed to a request and approval procedure requiring the Officer to submit "justification for consideration of removal" and leaving the removal decision up to the Chief. Second, the City would change the purge period for unpaid suspensions from its current four years up to ten years and would completely eliminate the purging of a record of demotion, which is now purged automatically after five years.

Of the five comparable cities, only Puyallup provides for purging discipline files at all. Among all the proposed comparables, Edmonds removes short (less than ten day) suspensions after three years and removes more lengthy suspensions after seven, and Renton removes written warnings after two years and more serious discipline after five.[5]

The Guild points out that the burden of persuasion in non-economic issues falls on the party proposing the change. I agree. When it comes to the "language" portions of a collective bargaining agreement, the party proposing to "fix it" should have to show just

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4. It is always risky to comment on what another interest arbitrator might do in the future, but if the record here showed the City's attempt to engage in serious discussions with the Guild on this issue, along with the City's careful evaluation of the safety issues arising from specific uses of Reserve Officers, I would probably award an expansion of the program. On the other hand, there is no reason to assume that such serious discussions with the Guild would not resolve the issue.

5. The Guild points out that the comparable jurisdictions might have record aging provisions in city policies; but the Guild did not offer evidence of any such policies.

why it is "broke."[6] In this case, the City points to the "start all over" consequences for the discipline process if the records of prior discipline continually age out of existence. The general issue of records of police officer discipline is not quite like other issues of employee discipline due to *Brady v. Maryland*, 373 U.S., 83 (1963). (See also, *Deputy Sheriffs v. Kitsap County*, 140 Wn. App. 516 (2008), published after the hearing in this case.) That legal context of the issue may explain why so very few comparable jurisdictions purge police officer discipline records and, apparently, no comparable jurisdiction purges them as aggressively as the language of the prior contract here. On the other hand, I agree with the Guild that the City's proposed language has the unhappy consequence of potentially leaving written reprimand record in the active file forever, if the Chief declines its removal, and has that same consequence for the record of even a voluntary demotion. I therefore award the following language for Sections C, D, and E of Article 5.04:

C. A *Written Reprimand* will remain in the employee's personnel file for no more than five years, in the absence of similar misconduct during that period, if the Officer requests its removal. At any time after two years, the Officer may petition the Chief for the removal of a written reprimand. A Written Reprimand can be issued by a Sergeant with the approval of a Police Captain or the Police Chief.

D. A *Suspension Without Pay* is discipline which is administered by the Police Chief. A record of Suspension Without Pay of five days or less will be removed from an Officer's personnel file after five years, in the absence of similar misconduct during that period, if the Officer requests its removal; and the record of a Suspension Without Pay for more than five days will be removed from an Officer's personnel file after seven years, in the absence of similar misconduct during that period, if the Officer requests its removal. At any time after three years, the Officer may petition the Chief for the removal of the record of Suspension Without Pay.

E. A *Demotion* is discipline administered by the Police Chief. The record of an involuntary, disciplinary demotion will be removed from the Officer's personnel file after seven years, in the absence of similar misconduct during that period, if the Officer requests its removal. At any time after three years, the Officer may petition the Chief for the removal of the record of demotion.

ISSUE 4: Article 5.06D4—Internal Affairs File.

The City proposes to delete the indicated language from this subsection:

Access to the internal affairs file shall be controlled by the Chief of Police, and access shall not be granted without good cause or lawful court order. The internal affairs file

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6. This principle has limits. It is not necessary to be run down in order to justify stepping out of the way of an oncoming train.

shall not normally be assessable to supervisory personnel ~~and complaints, other than sustained complaints, shall not be referenced in performance evaluations.~~

No other proposed comparable includes such a restriction in its police contract nor do any of the City's other bargaining units.

I agree with the City that this is a very strange restriction. There is a fundamental difference between the evaluation process and the discipline process. Evaluation is not discipline (although the contents of a formal evaluation certainly may show that the employee had a performance concern brought to his or her attention). Evaluation is an inherent function of supervision: it is not possible to assign and supervise an employee without a sense of his or her strong points and weak points. Virtually every public sector collective bargaining agreement requires that evaluations be set out in writing and shared with the employee; but that does not change the underlying function of an evaluation, which is simply the supervisor's sense of the highs and lows of each employee's performance and potential.

Some police officers draw more IA complaints than others; but some assignments are likely to occasion more IA complaints than others. Even though an officer may draw complaints that are found "not sustained" (i.e., the Department cannot tell whether the complaint is sound) or "within policy" (i.e., the Officer acted as departmental rules allowed or required him or her to act), the mere volume of complaints can hardly fail to be noticed by the supervisor. The Guild argues that a supervisor may address such a perception with the Officer without memorializing it in a written evaluation. But it distorts the employee's right to an accurate written evaluation if the supervisor is prohibited from mentioning a significant part of his or her opinion about that employee's strengths and weaknesses. On the other hand, the City's proposed deletion might offer the prospect of current evaluations being based on records of far-from-current complaints; and I therefore award the following language of Article 6.05D4:

> Access to the internal affairs file shall be controlled by the Chief of Police, and access shall not be granted without good cause or lawful court order. The internal affairs file shall not normally be assessable to supervisory personnel; but an evaluator may refer to a perceived pattern in the complaints filed within the 24 months preceding the evaluation.

ISSUE 5: Article 6—Wages

For each year of this three-year contract the City proposes a COLA equal to 85% of the Portland CPI, and for calendar 2006, the City proposed an additional one percent. Because we know the CPI numbers at this point, the City's proposal comes out at 3.04% for 2006, 3.4% for 2007, and 2.8% for 2008. The Guild proposes 6% in each of the first two years of the contract and the full CPI increase in the third.

What to compare. The City proposes to compare only top step wages while the Guild offers data which calculates net wages adjusted for longevity pay, insurance costs to the employer and to the employee, differences in leave accrual, and educational incentives.

It is rare for an arbitrator to pay much attention to top step comparisons if the record also includes all-things-considered data. As arbitrator Wilkinson put it in *City of Pullman and IAFF* in 2004:

> The City makes the novel argument that "total compensation analysis is inappropriate because the other elements of the bargaining unit's compensation are not in dispute." Whether or not those elements of compensation are disputed is irrelevant; instead it is the "big picture," which includes all elements of compensation, that is important for an economic analysis, further, the legislature in RCW 41.56.465 had in mind a total compensation analysis when it required in RCW 41.56.465(c)(I), a comparison of "wages, hours and conditions of employment." I am not aware of a single arbitration award that eschews a total compensation analysis in favor of an unadjusted base wage analysis when presented with adequate information to perform a satisfactory compensation analysis.

I am not aware of one, either.[7] A comparison of base wages is simply not what the statutory term—"wages, hours and conditions of employment"—requires an interest arbitrator to do.

Comparison of wages, hours and conditions of employment. The Guild offers a comparison in terms of current compensation,[8] adjusted for longevity pay, employee and employer insurance costs, and leave values.[9] Dividing the unit by educational attainment and years of service with the City, the Guild offers these numbers for comparability. That

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7. The City points with particular approval to the 2004 interest arbitration award by arbitrator Wilkinson between the *City of Redmond and the Redmond Police Association.* (Exhibit B.27.) That award works through the various appropriate adjustments to base wages which are necessary for a proper comparison of compensation and (at 23) cites a string of cases for the necessity of analysis on a total compensation basis. I will not reproduce that string, but the arbitrators represented include Zane Lumley, Mike Beck (NAA), Carlton Snow (NAA), Janet Gaunt (NAA) and Phil Kienast (NAA) in addition to myself and arbitrator Wilkinson.

8. The Guild uses pay rates as of January 1, 2007 for the comparators and the current—i.e., 2005 contractual—rate for Longview.

9. The Guild's computations are in the record and need not be reproduced here. For purposes of comparison, the Guild assumed full family medical BCBS. It also adjusts for total value of monthly vacation and holiday leave accrual. There is no difference in retirement benefits among the City and the comparables since all pay LEOF and Social Security. (Possible differences in LEOF rates are not shown.)

total compensation analysis is not defective in any respect on its face (except for one omission which is addressed below) and it is certainly the best available analysis in this record. Although I will not reproduce the Guild's complete total compensation analysis, here is a sample of the data and methodology:

5 years of service with AA Degree.								
City	Base	Longevity	Insurance		Total Leave	AA	Misc.	Total
			EE	ER				
Bremerton	5,452	69	(60)	1,171	547	110	0	7,322
Des Moines	5,034	0	(71)	1,187	523	126	0	6,798
Lacey	5,451	0	(86)	1,258	559	109	0	7,291
Puyallup	5,561	0	0	1,515	642	111	0	7,829
Mt. Vernon	5,312	0	(66)	764	531	106	0	6,647
Average	5,450	14	(57)	1,179	560	112	0	7,177
Longview	4,997		(53)	957	541	0	0	6,442
% Behind / (Ahead)								11.4%

The Guild provides data at the 5, 10, 15 and 20 year points for both AA and BA Officers; and here is a summary of that data:

City	AA Degree and				BA Degree and			
	5 years	10 years	15 years	20 years	5 years	10 years	15 years	20 years
Bremerton	7,322	7,496	7,669	7,759	7,432	7,605	7,779	7,869
Des Moines	6,798	7,205	7,266	7,266	6,874	7,284	7,345	7,345
Lacey	7,291	7,484	7,601	7,698	7,400	7,593	7,710	7,807
Puyallup	7,829	7,970	8,133	8,188	7,884	7,970	8,133	8,188
Mt. Vernon	6,647	6,856	6,950	7,064	6,700	8,759	7,003	9,221
Average	**7,177**	**7,402**	**7,524**	**7,595**	**7,258**	**7,842**	**7,594**	**8,086**
Longview	6,442	6,542	6,650	6,815	6,567	6,667	6,775	6,940
% behind / (Ahead)	11.4%	13.1%	13.1%	11.4%	10.5%	17.6%	12.1%	16.5%
Average difference								13.2%

The City points out that the Guild's total compensation analysis is not quite total: it does not reflect differing lengths of workyear. Here is that data. All but five or six of Longview's 53 FTE Officers are in patrol. Correcting the overall 13.2 lag for the 0.5% shorter workyear results in a 12.5% overall average shortfall in total compensation for the City's police force.

City	Patrol	Detective
Bremerton	2080	2080
Des Moines	2080	2080
Lacey	2068	2080
Lynnwood	2008	2080
Puyallup	2080	2080
Mt. Vernon	2068	2068
Average	2064	2078
Longview	2053	2080
% difference	-0.5%	0.1%

It is important to keep in mind that the 12.5% shortfall is based on a comparison of the City's current pay rate—the rate established in the prior contract, which expired at the end of 2005—against the 2007 pay rate for Officers in comparable jurisdictions.

Cost of Living. The parties agree that the most accurate CPI index for this employer is the Portland Area CPI-W. The City notes that over the period from 1996 to 2006—assuming the City's current proposal—top step Officer pay has increased by 39.4% while the CPI has increased by only 30.7%. When insurance benefit costs are added in, that ten year increase for top step Officer becomes 49.6%. Looking at internal parity with the City's firefighter unit, after leading the firefighters by 2% to 3% over most of the decade, the police unit lost most of the lead in 2004 and fell 0.2% behind in 2005, the last year of the prior contract.[10] Thus, the cost of living data does not show that these Officers are either notably under or over compensated.

Recruitment and retention. The City has lost fourteen Police Officers over the last eleven years. Neither party claims that that is a particularly significant rate of turnover; and there is no reason to believe that overall compensation was a substantial reason for any of those resignations. Five of those eleven left Longview to return to their home states other than Washington (and one returned to Eastern Washington); two left after their first, brief taste of law enforcement, and four took promotions into policing or other lines or work. Three of the fourteen moved to the Vancouver Police Department.

There is no dispute that the City is having trouble filling five existing vacancies in its authorized force, including three new positions added at the beginning of 2007 and

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10. This is "best perspective" data from the City's point of view. The only analysis in the record is in terms of top step, without adjustments for insurance, hours, etc.; and it does not actually reflect the top step of the new firefighter contract ("Master Firefighter" for anyone with five years experience who can also drive the fire truck).

five positions that were vacant as of the date of hearing. On the other hand, the record does not show that any of the comparable jurisdictions are having a substantially easier time in filling police officer positions in the current economic and demographic climate. In short, considerations of recruitment and retention do not weigh heavily for either side in this dispute. The record does not show that the City has lost a substantial number of Officers to higher-paying jurisdictions; but neither does it suggest that the City can afford to fall substantially behind the overall compensation of comparable jurisdictions and still maintain its authorized complement of Officers.

Cost and ability to pay. The City does not claim to be unable to provide comparable compensation for its Police Officers, but it argues that the additional costs would be burdensome. The Guild costed the parties' proposals only very roughly; and the City's cost data is clearly the best available. The City costs its own (3.04%, 3.4%, 2.8%) proposal at about $200 thousand for the first year, with an additional $235 thousand for the second year and $187 thousand for the third. The City costs the Guild's (6%, 6%, 3.3%) proposal at about $346 thousand for the first year, with an additional $368 thousand for the second year and $216 thousand for the third. That brings the cumulative, three-year total cost of the City's proposal to a bit over $1.25 million and the cumulative, three-year total cost of the Guild's proposal to just about $2 million.

Despite the Guild's dismissal of the "ability to afford" issue, it is clear that Cowlitz County in general has not participated in the relatively steady economic health of Washington State. For 2005, 2006, and 2007, Cowlitz County was listed by the State as a "Distressed Area" based on an unemployment rate of 6.2%, which is about 129% of the statewide average of 4.8%. Longview lost its aluminum smelter during the recession of 2001, with more than 800 relatively high-wage jobs; and the County did not quite get back to pre-recession employment levels until quite late in 2006. The City's data on assessed value per capita, sales tax receipts and receipts per capita show that the City lags behind the comparator employers in economic resources:

City	Assessed Value		Sales Tax (x $1,000)			
	per capita	%	Receipts	%	per cap.	%
Bremerton	61,902	114.7%	6,654	96%	185	95%
Des Moines	81,254	150.6%	1,866	27%	230	118%
Lacey	84,755	157.1%	7,838	113%	230	118%
Puyallup	92,992	172.3%	15,604	225%	429	220%
Mt. Vernon	75,844	140.5%	5,973	86%	208	107%
Average	80,226	149%	7,991	115%	269	138%
Longview	**53,964**		**6,928**		**195**	

Conclusion and Award. Although nothing in the record justifies placing Longview behind comparable jurisdictions in overall Police Officer compensation, the City's fiscal condition requires that the award in this case be somewhat backloaded to moderate its overall cost. The 12.5% that separates the current, 2005 pay rate from the average, 2007 pay rate should be divided approximately in proportion to the CPI increases over those years (using the first half numbers, 2.4, 2.8, and 3.3). Dividing the 12.5% shortfall in those proportions yields the award in this case: I award increases of 3.53% in the first year; 4.12% in the second year; and 4.36% in the final year.[11] Those increases shall have their traditional, January 1, effective dates.

ISSUE 6: Article 6.01D—Training Wage.

The prior contract recognized a "training step," 5% below the "A" step of the salary schedule. That initial step lasted for six months; and there is no dispute that it was designed to cover the initial training period that a brand new Officer must spend at the Law Enforcement Training Academy. The Academy lasts 5.5 months, and there are now two classes beginning every month. But a new recruit must pass the Academy physical to get into a class, and it is not uncommon for a new recruit to take longer than six months to complete the Academy. After the Academy, a new recruit spends an average of 3.5 months with a Field Training Officer.

There is not a lot of dispute in the record that the backlog in Academy classes justifies extending the training wage. But the language proposed by the City would extend the training step from its current "first six months" to six months *after completion* of the Academy. The record does not justify that much of an extension. Moreover, the City's proposed new language makes subsequent steps dependent on "documented satisfactory performance" in addition to 12 months of service; and that proposed change was not addressed in the record. I therefore award the following revised Section 6.01D:

> A new Police Officer shall begin employment at the "training step" in the Police Officer salary schedule, set at 5% below the "A" step. A new Officer shall be paid at this training step until successful completion and his or her graduation from the Washington State Law Enforcement Training Academy and six months from date of hire (whichever occurs last). Officers shall then move to the "A" step and then to the "B" step six months after that. The new period for the training step will not apply to Officers who are hired before March 1, 2008.

ISSUE 7: Article 6.02—Education Premiums.

The parties agree that the current bachelor's degree premium should be set out as 4% rather than the prior $125 per month. They disagree about whether the contract

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11. These percentages do not add up to 12%, of course, because the increases are cumulative: 1.0353 x 1.0412 x 1.0436 = 1.125.

should add a premium for an associates degree. The Guild proposes a 2% premium, which the City contests.

In their 1993-1995 contract, these parties agreed (in section 6.01), "Effective January 1, 1993, the Fully Qualified Salary (A.A. Degree or its equivalent, ninety [90] quarter hours) becomes the base salary." (That section went on to detail how the then-current Officers without an AA would be treated.) The City points out that it would be peculiar—to say the least—to pay a premium for what is a minimum requirement for the position. The Guild points out that every comparable employer offers an AA incentive. But the Guild's average comparable compensation numbers already reflect those different incentives; and nothing in the record justifies duplicating what was already reflected in the basic compensation comparison. The total cost of the additional AA incentive would come to about $31,000 over the three years of this contract; and those additional costs are simply not justified. Therefore, because the parties already bargained for the inclusion of an AA degree in base salary, and because the Guild already reflected AA incentives in its overall compensation analysis, I award the City its proposed language for this article.

ISSUE 9: Article 6.04—Officer in Charge Premium.

The prior contract provides OIC pay for either half a shift or a whole shift for an Officer functioning as shift Sergeant. The City proposes to fine tune that provision as follows:

> Effective upon a signed contract - Employees who are assigned by a supervisor or command personnel as Officer in Charge (OIC) to perform the duties of a Shift Supervisor and/or serve in an acting capacity in the absence of the Shift Sergeant shall be compensated as if they had been promoted to the position of Sergeant. Acting pay shall be paid hour for hour, to the nearest quarter hour for all hours worked in the higher classification.

Under the language of the prior contract—1.5 hours at the Police Officer "E" step for a full shift as OIC—the OIC premium exceeded regular Sergeant's pay; and the Guild does not vigorously oppose this modest change. The City's language as drafted contemplates a possible complication in effective date, and that possibility has been eliminated by the lateness of these proceedings. There seems to be no good reason to add this as new language on top of the prior provision, and I therefore award the following language as the entirety of Article 6.04.

> Employees who are assigned by a supervisor or command personnel as Officer in Charge (OIC) to perform the duties of a Shift Supervisor and/or serve in an acting capacity in the absence of the Shift Sergeant shall be compensated the additional hourly rate as if they had been promoted to the position of Sergeant. Acting pay shall be paid hour for hour, to the nearest quarter hour for all hours worked in the higher classification.

ISSUE 12Article 8.03—Meal and Rest Period/Hold Over Time.

The City proposes this change:

> Employees shall ~~be expected to~~ monitor their radio and respond to calls as **expected or when directed to by a supervisor** ~~directed by the appropriate supervisor~~.

The City explains that it "seeks to clarify the language to require response when directed by any supervisor." The City does not explain why the altered language should not simply say that, and it does not explain the proposed deletion of "be expected to." The Guild argues that the prior language already said what the City proposes to say; and I therefore award the following change to Article 8.03 (deleting the "appropriate supervisor" qualifier):

> Employees shall be expected to monitor their radio and respond to calls as directed.

ISSUE 16: Article 11.02—Use of Holiday Hours and
ISSUE 19: Article 11.7—Maximum Vacation Accrual and
ISSUE 20: Article 11.11—Vacation Leave Cashout.

These three issues are substantially interrelated. Overall, the City seeks to reduce its very substantial fiscal liability for Officers' accumulated hours of holiday and vacation time. To that end, the City would change Article 11.02 as follows:

> Employees shall accrue four (4) hours of holiday leave each pay period <u>for a total of 96 annual hours</u>. Such holiday leave shall be included in the employee's annual <u>vacation</u> leave balance in accordance with Section 11.05, paragraph (A).
>
> <u>Effective January 1, 2008,- Employees may cash out forty (40) hours of holiday leave at the end of November to be paid on the November 16-30 pay period. Employees must use the additional fifty-six (56) hours of holiday leave by the end of the calendar year in which the holidays are earned. Cash-out of holidays shall be at the employee's straight hourly rate of pay.</u>

Under Section 11.07, the City would add the following accrual cap language:

> <u>Effective 12/31/08 an employee's maximum vacation leave balance shall be as follows (two years vacation accrual plus the current year's holiday hours):</u>
>
> | <u>Years of Continuous Employment</u> | <u>Maximum Balance</u> |
> |---|---|
> | <u>0 through 4th year</u> | <u>288 hours</u> |
> | <u>5th through 9th year</u> | <u>360 hours</u> |
> | <u>10th through 14th year</u> | <u>408 hours</u> |
> | <u>15th through 19th year</u> | <u>456 hours</u> |
> | <u>20+ years</u> | <u>504 hours</u> |

Employees who are unable to reduce vacation leave balances to the maximum by December 31, 2008 shall have excess hours above the maximum cashed out at the employee's straight hourly rate of pay on the December 16-31 pay period.

Employees are responsible for monitoring vacation balances to ensure that vacation leave does not exceed the maximum and that they preserve their ability to accrue vacation. An employee who fails to monitor vacation balances and request scheduled vacation time on an ongoing basis to avoid exceeding the maximum balance shall stop accruing vacation until balances are below the maximum allowed.

Under Article 11.11, the City proposes to replace the prior contract's optional cashout of up to 40 hours of vacation/holiday leave per year with a detailed provision allowing cashout of 40 hours of vacation leave in addition to the proposed cashout of 40 hours of holiday leave. The proposed language makes this additional cashout provisional on the Officer's having taken 80 hours of vacation leave in the prior year and on the City's agreement to buy the offered leave.

All five of the comparable jurisdictions cap annual leave accumulation, and the Guild does not contest the City's data. That data compares Longview's *combined* vacation and holiday caps with the vacation-only caps of most of the comparators;[12] but even after adjusting the data for that difference, there is no doubt that the City's proposal would leave it far ahead of the average comparable, and would leave it ahead of every comparable except Des Moines and Lacey in an Officer's early years.

The City points out that 20% of its Officers could retire within the next five years; and those senior Officers are allowed the highest annual leave cap under the language of the prior contract. Leave costs are budgeted, of course, in the year the leave is earned. But no budgetary system I have ever encountered has been nimble enough to carry the long-ago-budgeted leave bank costs as segregated funds which are ready to pay at the time of an employee's eventual retirement. Instead, the department usually has to absorb those costs just as it does the costs of any other absent officer; and that can easily delay the replacement of a retiree and effectively reduce the size of the force over that period.

On the other hand, the Guild points out that existing Officers have amassed up to 711 hours in their combined vacation/holiday bank and have done so in reliance on the language of the prior agreement. The City replies that it proposes to grandfather existing employees, allowing them to use or sell hours down to the new caps. But that feature of the proposed language does not appear on its face. Nor, as the Guild points out, does the record show any extensive bargaining over the mechanics of the City's proposal. For that reason, I therefore award the City its proposed language under Article 11.02, which will

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12. Only Bremerton seems to set out a cap for vacation and holiday hours combined.

go a small step toward easing the City's concern, but I cannot award the rest of the City's proposed language changes.[13]

SUMMARY OF THE AWARD

Issue #1: Article 2.12—Police Reserves: No change in the existing language.
Issue #3: Article 5—Discipline and Discharge: The following becomes the language of Sections C, D, and E of Article 5.04:

C. A *Written Reprimand* will remain in the employee's personnel file for no more than five years, in the absence of similar misconduct during that period, if the Officer requests its removal. At any time after two years, the Officer may petition the Chief for the removal of a written reprimand. A Written Reprimand can be issued by a Sergeant with the approval of a Police Captain or the Police Chief.

D. A *Suspension Without Pay* is discipline which is administered by the Police Chief. A record of Suspension Without Pay of five days or less will be removed from an Officer's personnel file after five years, in the absence of similar misconduct during that period, if the Officer requests its removal; and the record of a Suspension Without Pay for more than five days will be removed from an Officer's personnel file after seven years, in the absence of similar misconduct during that period, if the Officer requests its removal. At any time after three years, the Officer may petition the Chief for the removal of the record of Suspension Without Pay.

E. A *Demotion* is discipline administered by the Police Chief. The record of an involuntary, disciplinary demotion will be removed from the Officer's personnel file after seven years, in the absence of similar misconduct during that period, if the Officer requests its removal. At any time after three years, the Officer may petition the Chief for the removal of the record of demotion.

Issue #4: Article 5.06D4—Internal Affairs File: The following becomes the language of Article 5.06D4:

> Access to the internal affairs file shall be controlled by the Chief of Police, and access shall not be granted without good cause or lawful court order. The internal affairs file shall not normally be accessable to supervisory personnel; but an evaluator may refer to a perceived pattern in the complaints filed within the 24 months preceding the evaluation.

Issue #5: Article 6—Wages: The wage schedule shall be increased by 3.53% for the first year of this contract and by 4.12% for the second year, and by 4.36% for the third year.

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13. The Guild argues that there may be administrative difficulties with the timing of the City's proposed language of Article 11.02. But the system proposed by the City seems to be nearly identical to that set out in the Des Moines contract (at Article 11).

Issue #6: Article 6.01D—Training Wages. The following becomes Article 6.01D:

> A new Police Officer shall begin employment at the "training step" in the Police Officer salary schedule, set at 5% below the "A" step. A new Officer shall be paid at this training step until successful completion and his or her graduation from the Washington State Law Enforcement Training Academy and six months from date of hire (whichever occurs last). Officers shall then move to the "A" step and then to the "B" step six months after that. The new period for the training step will not apply to Officers who are hired before March 1, 2008.

Issue 7: Article 6.02—Education Premiums. The City's proposed language becomes Article 6.02.

Issue 9: Article 6.04—Officer in Charge Premium. The following becomes the language of Article 6.04:

> Employees who are assigned by a supervisor or command personnel as Officer in Charge (OIC) to perform the duties of a Shift Supervisor and/or serve in an acting capacity in the absence of the Shift Sergeant shall be compensated the additional hourly rate as if they had been promoted to the position of Sergeant. Acting pay shall be paid hour for hour, to the nearest quarter hour for all hours worked in the higher classification.

Issue 12: Article 8.03—Meal and Rest Period/Hold Over Time. The following becomes the final sentence of this subsection:

> Employees shall be expected to monitor their radio and respond to calls as directed.

Issues 16, 19, and 20: Articles 11.02, 11.7 and 11.11 (Holiday hours and vacation accrual and cashout). The City's proposed language under section 11.02 becomes the language of the contract; and there are no further changes in these sections.

Respectfully submitted by the arbitrators unanimously on February 19, 2008.

2/19/08

Howell L. Lankford, neutral member

_____/_____

Mark J. Makler, Guild-appointed member.

_____/_____

Chief Mike King, City-appointed member

Arbitration Services, Inc.
Howell L. Lankford
Arbitration & Mediation for Management & Labor

February 19, 2008

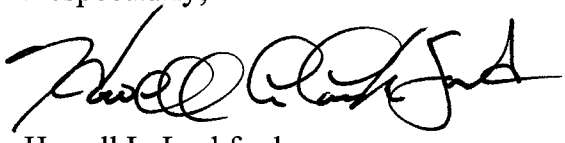
PERC
P.O. Box 40919
Olympia, WA 98504-0919

Re: Longview Police Guild and City of Longview, 2007 Interest Arbitration. PERC case Nos. 20558-I-06-0475 and 20035-M-05-6417.

Dear friends:

Here is a copy of the Award issued in this case today. The decision was unanimous; and the party-appointed arbitrators will be signing it as soon as the mail gets hard copies to them.

Respectfully,



Howell L. Lankford
Arbitrator

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