BEFORE THE ARBITRATION PANEL

In the matter of the Interest Arbitration between: CITY OF EVERETT and INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 46	)	**INTEREST ARBITRATION AWARD** PERC Case No. 25228-I-12-612

Perkins Coie by **Lawrence B. Hannah**, Attorney at Law, appeared on behalf of t he City of Everett.

Emmal, Skalbania and Vinnedge, by **Alex J. Skalbania**, Attorney at Law, appeared on behalf of International Association of Fire Fighters, Local 46.

By mutual consent, the City of Everett (Employer) and International Association of Firefighters, Local 46 (Union) selected the undersigned Arbitrator to serve as the Neutral Chairperson of an interest arbitration panel convened to determine the terms of a successor collective bargaining agreement to follow the contract in effect from January 1, 2009 through December 31, 2011. The interest arbitration panel consisted of Neutral Chairperson Kenneth James Latsch, Union Partisan Arbitrator Ricky Walsh and Employer Partisan Arbitrator Rick Robinson. The interest arbitration panel conducted a hearing on April 25-26 and April 29-May 3, 2013 in Everett, Washington. During the course of the hearing, both parties presented testimony and exhibits and had the opportunity to examine and cross-examine witnesses.

The proceedings were recorded, and a copy of the hearing transcript was made available to the Neutral Chairperson for use in writing the instant award. At the close of the hearing, the

parties agreed to submit closing briefs by July 26, 2013. The Neutral Chairperson received the briefs in a timely manner. At the request of the Neutral Chairperson, the parties agreed to waive the requirement found in RCW 41.56.450 that the written determination of the issues must be issued within 30 days following the conclusion of the hearing.

APPLICABLE STATUTORY PROVISIONS

When certain public employers and their uniformed personnel cannot reach agreement on new contract terms through negotiations and mediation, RCW 41.56.450 calls for interest arbitration to resolve their dispute. The parties stipulate that RCW 41.56.450 applies to the instant dispute.

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

Pacific County, PERC Case 24235-I-11-572 (Siegel, 2012).

RCW 41.56.465 sets forth criteria which must be considered by the Arbitrator in deciding the issues in dispute:

> (1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, the panel shall consider:
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> (a) The constitutional and statutory authority of the employer;
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> (b) Stipulations of the parties;
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> (c) The average consumer prices for goods and services, commonly known as the cost of living;
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> (d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and
>
> (e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. . . .
>
> . . . .

> For employees listed in RCW 41.56.030(7) (e) through (h), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered.

The statute does not provide guidance as to how much weight should be given to any of these standards or guidelines but leaves that determination to the Arbitrator's reasonable discretion.

PRINICIPLES OF THE INTEREST ARBITRATION PROCESS

Before discussing the issues that must be decided, it is appropriate to set forth general principles that have been applied in interest arbitration cases. In its closing brief, the Union appropriately noted that Arbitrator Carlton Snow set forth the controlling principle for interest arbitration decisions in *City of Seattle*, PERC Case No. 6502-I-86-148 (Snow, 1988):

> [A] goal of interest arbitration is to induce a final decision that will, as nearly as possible, approximate what the parties themselves would have reached had they continued to bargain with determination and good faith.

A number of other arbitrators have expressed the same goal for interest arbitration. See: *Kitsap County Fire Protection District No. 7*, PERC Case No. 15012-I-00-333 (Krebs, 2000); and *City of Centralia*, PERC Case No. 11866-I-95-253 (Lumbley, 1997). Arbitrator Snow's observation serves to provide a general framework for analyzing specific language and wage proposals. However, other legal principles have developed for interest arbitration litigation.

Interest arbitration is conducted in the context of past negotiations and future contractual terms. The arbitrator must be mindful of the parties' bargaining history to provide an appropriate context for an award that will set their future rights and obligations. *See City of Seattle*, PERC Case No. 6576-I-86-150 (Beck, 1988). As noted in Elkouri and Elkouri, *How Arbitration Works*, Sixth Edition (BNA, 2003):

> interest arbitration is more nearly legislative than judicial... our task here is to search for what would be, in the light of all the relevant factors and circumstances, a fair and equitable answer to a problem which the parties have not been able to resolve by themselves.

In crafting the award, the arbitrator has broad discretion in setting terms and conditions. *Pierce County*, PERC Case No. 22679-I-09-539 (Krebs, 2010). However, an arbitrator must consider the parties' bargaining history as expressed in their most recent collective bargaining agreement. As Arbitrator George Lehleitner reasoned in *City of Yakima*, PERC Case No. 15379-I-00-346 (Lehleitner, 2000):

> When a party seeks to change existing contract language, it is incumbent upon them to come forward with compelling reasons to justify the proposed language. This is particularly true where the language has been in the contract for many years and there has been no showing of problems with its application.

The reluctance to change existing contract language is particularly strong when it comes to recently modified contractual terms. Typically, an arbitrator will change recently modified contract language only if the moving party can prove that the language at issue did not achieve its objective or if it had unintended consequences. *City of Camas*, PERC Case No. 6303-I-02-380 (Wilkinson, 2003).

GENERAL BACKGROUND INFORMATION

The City of Everett provides a number of municipal services to local residents. The city operates through a Mayor-Council form of government, with an elected Mayor and seven elected City Council members. In addition to its general services, the city operates five "enterprises": water and sewer utility, a solid waste and recycling utility, two golf courses, a transit system and a parking garage.

The City of Everett has collective bargaining relationships with six employee organizations: Amalgamated Transit Union; Division No. 883, Everett Municipal Employees Union, Local 113, WSCCCE; Snohomish County Construction Crafts; Everett Police Officers Association, Everett Police Management Association, and International Association of Firefighters, Local 46. Approximately 80% of the city's workforce is unionized.

The Everett Fire Department is a city department responsible for fire suppression, fire prevention, fire investigation, disaster planning, technical rescue, emergency medical services, advanced life support services, and public education for approximately 103,000 residents in a 29 square mile area. The Fire Department's jurisdiction also includes approximately 15 miles of shoreline along Puget Sound and the Snohomish River.

Emergency service dispatch is handled by SNOPAC, a separate agency operating under the terms of an intergovernmental agreement. SNOPAC serves as a "911 dispatch center" for 24 fire departments and 12 police departments in the Snohomish County area. The record reflects that the departments use "mutual aid" to provide necessary emergency services to the jurisdiction most at need. For example, if one fire department is faced with a large fire that has drained its available emergency resources, the affected department may request neighboring agencies to provide assistance. The Everett Fire Department regularly provides mutual aid assistance to neighboring jurisdictions.

The Everett Fire Department is under the general supervision of a Fire Chief who is appointed by the Mayor of Everett. Ultimately, the Fire Chief answers to the Mayor and the Everett City Council concerning the department's operation and budget. Four Assistant Chiefs report to the Fire Chief and are responsible for supervising the department's operational divisions. Of particular interest to this matter, the Assistant Chief of Operations is responsible for the department's emergency medical services (EMS) and fire suppression divisions.

The department provides EMS and fire suppression services through six fire stations which are staffed 24 hours a day, seven days a week. Department administration works in a separate building.

The Everett Fire Department budget is divided into two funds. The City of Everett's general fund supports all of the department's divisions. A separate revenue fund supports the department's emergency medical services (EMS) division with funds collected from transport fees and an EMS levy. For 2012, the Everett Fire Department's expenditures amounted to $25,441,473, with 92% of that amount going to labor costs. For 2013, the

Everett Fire Department was appropriated $27,511,962. Of the budgeted amount, 91.75% was directed to labor costs.

The recent economic downturn has had an effect on the Everett Fire Department. While the department is budgeted for 186 full time equivalent (FTE) positions, city administrators have directed the department to maintain ten vacancies. At the time of hearing, nine vacancies existed, all resulting from attrition. There have been no layoffs in the department.

As of January 1, 2013, the Everett Fire Department employed 177 personnel. International Association of Firefighters, Local 46 represents a bargaining unit of 162 employees working in the following classifications:

50 Firefighters

30 Firefighter/Paramedics

32 Firefighter/Drivers

32 Fire Captains

4 Battalion Chiefs

6 Division Chiefs

3 Medical Services Officers

3 Fire Inspectors

2 Assistant Fire Marshals

Fire suppression personnel staff four platoons, A, B, C and D, on an alternating schedule: work one shift, then two days off; work one shift, then four days off; and then repeat the sequence. The Everett Fire Department's fire suppression staff works a 42-hour workweek. The 42-hour workweek resulted from the passage of a citizens' initiative passed by vote of local residents in 1964. The initiative called for the creation of the 42-hour workweek, with work to be performed on 10-hour day shifts and 14-hour night shifts. In 1990, the parties abandoned the "10/14" shift model in favor of 24-hour shifts for EMS and fire suppression personnel. Non-suppression personnel work a 40-hour workweek.

The fire department administers the 42-hour work week as follows: A standard (non-leap) year has 365 days @ 24 hours per day, or a total of 8,760 hours. The total number of hours (8,760) is divided among the four platoons, with each responsible for 2, 190 hours. The year (365 days) is divided by 7 days a week, resulting in 52.14 weeks. The 2,190 hours per platoon is divided by 52.14, resulting in a 42-hour work week.

ISSUES

On October 18, 2012, Executive Director Michael Sellars certified 23 issues for interest arbitration. WAC 391-55-200 sets forth the steps to initiate interest arbitration in the following terms:

> (1) If a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.030(7), 41.56.475, 41.56.492, 41.56.496, 41.56.510, 47.64.300, or 74.39A.270 (2)(c) has not been settled after a reasonable period of mediation, and the mediator is of the opinion that his or her further efforts will not result in an agreement, the following procedure shall be implemented:
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> (a) The mediator shall notify the parties of his or her intention to recommend that the remaining issues in dispute be submitted to interest arbitration.
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> (b) Within seven days after being notified by the mediator, each party shall submit to the mediator and serve on the other party a written list (including article and section references to parties' latest collective bargaining agreement, if any) of the issues that the party believes should be advanced to interest arbitration.
>
> (2) The mediator shall review the lists of issues submitted by the parties.
>
> (a) The mediator shall exclude from certification any issues that have not been mediated.
>
> (b) The mediator shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" in interest arbitration under RCW 41.56.465 (1)(b), 41.56.475 (2)(b), or 41.56.492 (2)(b).
>
> (c) The mediator may convene further mediation sessions and take other steps to resolve the dispute.
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> (3) If the dispute remains unresolved after the completion of the procedures in subsections (1) and (2) of this section, interest arbitration shall be initiated, as follows:
>
> (a) Except as provided in (b) of this subsection, the mediator shall forward his or her recommendation and a list of unresolved issues to the executive director, who shall consider the recommendation of the mediator. The executive director may remand the matter for further mediation. If the

executive director finds that the parties remain at impasse, the executive director shall certify the unresolved issues for interest arbitration.

(b) For a bargaining unit covered by RCW 41.56.492, the mediator shall certify the unresolved issues for interest arbitration.

By the time of hearing, the parties reduced the number of open issues to 16. Those 16 issues were submitted to the Arbitrator in the list of "14-day" proposals called for in WAC 391-55-220:

> At least fourteen days before the date of the hearing, each party shall submit to the members of the panel and to the other party written proposals on all of the issues it intends to submit to arbitration. Parties shall not be entitled to submit issues which were not among the issues certified under WAC 391-55-200.

At the beginning of the hearing, the Union proposed withdrawing several issues contained in the "14 day proposal" list. Specifically, the Union sought to withdraw proposals dealing with Longevity (Article 11); Division Chiefs (Article 35), and the assignment of an extra Station Captain (contained in Article 9).

The Employer resisted the Union's proposed withdrawals. The Employer noted that the Union had already included the disputed articles in the list of "14 day proposals" that had already been submitted, and the Employer was concerned that the Union was attempting to make a tactical withdrawal of proposals only to raise them again in the next round of collective bargaining. In addition, the Employer argued that its interest arbitration case was based, in part, on factoring in the elements contained in the three disputed provisions, and that withdrawal of the three articles would lead to an incomplete and inaccurate interest arbitration award.

The Union argued that it was not interfering with the interest arbitration process by withdrawing three articles from the panel's consideration. The Union maintained that it was simply attempting to limit the number of issues to be decided, and that its future bargaining interests had no bearing on the case at hand. In its closing brief, the Union noted Arbitrator Michael Beck's reasoning in *City of Yakima* (PERC No. 20624-I-06-477), wherein he

allowed the police union to modify its "14 day" proposal, since it did not escalate bargaining demands and was, in fact, closer to the positions argued by the City of Yakima.

The Neutral Chairperson has carefully considered the parties' arguments concerning the number of issues to be resolved and must reject the Union's attempted withdrawal of the three disputed articles from consideration in the interest arbitration process. WAC 391-55-220 exists to provide certainty to the arbitration process and to avoid the possibility of "ambush" tactics at hearing. Parties are certainly free to stipulate that issues can be removed from the "14 day list", but neither party is obligated to accept a stipulation.

In this case, the Employer raised serious issues about the consequences of allowing the proposed withdrawal, and testimony and documentary evidence were accepted on each of the three articles. While I agree with the Union that it should not have its future bargaining strategies somehow set by this arbitration procedure, I must conclude that the three disputed issues are intimately connected with several other issues to be decided, and I must consider them to render a complete decision.

Apart from the three disputed articles discussed above, the parties stipulated that Article 33, Rotation to Cover Off-Duty Hours for Fire Inspectors and Assistant Fire Marshals, could be eliminated from the list of issues for determination. The Neutral Chairperson accepted the stipulation withdrawing Article 33 from further consideration.

With the elimination of Article 33, 15 contract articles remained for decision:

Article 6 – Grievances

Article 9 / Appendix A - Wages; Station Captains; Deferred Compensation

Article 10 – Holidays/ Holiday Pay

Article 11 – Longevity Pay

Article 12 – Medical Benefits/Insurance

Article 15 – Vacations

Article 23 – Line of Progression

Article 26 – Shift Changes

Article 30 – Union Officials' Time Off

Article 32 – Instructor Pay and Project Pay

Article 35 – Division Chiefs

Article 36 – Specialties

New Article – AVL

New Article – Drug/Alcohol Testing

New Article – Event Pay

COMPARABLE JURISDICTIONS

RCW 41.56.465 specifies that the Arbitration Panel must compare the wages, hours and conditions of employment of the Everett Firefighters with the wages, hours and conditions of employment "of like personnel of like employers of similar size on the west coast of the United States", unless there are sufficient comparators to be found in Washington State.

In this case, the parties agreed to six comparable jurisdictions:

- Federal Way (South King County Fire District)
- Kent
- Kirkland
- Renton
- Shoreline
- Auburn (Valley Regional Fire Authority)

In addition, the Union proposed Bellevue and Snohomish County Fire District 1 as comparable jurisdictions. Conversely, the Employer rejected the Union's additional

jurisdictions and proposed Bellingham, Central Kitsap Fire District and South Kitsap Fire District as comparable.

The Neutral Chairman accepts the parties' stipulation concerning the six jurisdictions that are agreed to be comparable. The record reflects that the parties used those jurisdictions during negotiations, and have bargained with those comparators in mind. Given those factors, it is appropriate to use the six agreed comparables as a starting point for fashioning an award.

Analysis must now shift to the disputed jurisdictions to determine which, if any, should be included in the list of comparables in this case. In their closing briefs, the parties took different approaches to the number of comparables to be used and how each comparable should be analyzed.

In its closing brief, the Employer asks the Arbitration Panel to consider comparability in light of a "complete" set of comparable jurisdictions. In other words, the Employer urges the Panel to resist applying only those jurisdictions that the parties agree upon as comparable and to consider the additional comparables set forth by the City of Everett. Arbitrators have routinely used mutually agreed upon comparators as the basis for comparability analysis. *City of Lynnwood*, PERC Case No. 24694-I-12-588 (Beck, 2013). However, arbitrators do not feel constrained to rely only on stipulated comparables if other comparables are available and apply to the case at hand.

The Union argued that its proposed list of comparables is better suited to the situation presented in this case, but in the event that the Arbitration Panel could not find sufficient comparability in the additional jurisdictions, an appropriate award could be made using only the six stipulated jurisdictions. The Union maintained that the six stipulated jurisdictions provided sufficient information for the Panel's work.

The Neutral Chairman is faced with two substantive issues concerning comparability:

- first determine which factors should be applied to determine comparability.
- then determine which of the disputed jurisdictions should be used as comparable.

With those issues in mind, it is necessary to detail the parties' positions on the comparability issue.

Comparability Methodology

The Employer

The Employer urges the Arbitration Panel to use the "50% below to 50% above" model of comparability. In other words, from the subject fire department, a range downward by 50% and upward by 50% is applied. As the Employer notes in its Position Paper (Employer Exhibit #4), the concept of "size" used to be limited to population. As parties became more sophisticated, "size" was re-defined to include analysis of assessed valuation in the respective jurisdictions. The Employer contends that the "50/50" model is appropriate here, particularly in the context of comparable assessed valuation among the City's proposed comparables. The Employer maintains that reliance on assessed valuation as a primary comparator is appropriate since the fire department's primary duty is to protect property within its jurisdiction. As such, it would only be logical to use an assessed valuation to determine whether a particular jurisdiction compares to the Everett Fire Department.

Arbitrator Jane Wilkinson explained the use of population and assessed valuation as primary comparability factors in *City of Camas* PERC Case No. 16303-I-02-380 (Wilkinson, 2003):

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

Arbitrator Howell Lankford noted that it is common to relate population size to assessed valuation in comparability analysis. Arbitrator Lankford explained his reliance on "per capita assessed valuation" as follows:

> It can be argued that assessed value per capita is at least as significant as simple assessed value in determining the 'economic size' of a potential comparable.

Clark County, PERC Case No. 23615-I-10-559 (Lankford, 2012)

While the Employer presented credible arguments for its position, the Union's argument on comparability must be analyzed before a determination on the appropriate methodology can be established.

The Union

The Union did not adopt the "per capita assessed valuation" model, and relied upon other factors in determining what jurisdictions should be considered to be comparable. The Union focused its comparability analysis using the factors of:

- Population of approximately 50% the size to 200% the size of Everett
- Geographic proximity
- Like labor market
- Like cost of living
- Like services

Clearly, the Union believes that the "per capita assessed valuation" analysis does not adequately address the employment relationship in the Everett Fire Department. It must be noted that all of the Union's proposed comparables are found within King or Snohomish County. The Union's proposed comparability "universe" has been recognized by arbitrators in a number of interest arbitration cases. In *City of Lynnwood*, Arbitrator Beck agreed with a union proposing King and Snohomish County as the primary source of comparable jurisdictions. Arbitrator Beck went on to say "I also agree with the Union that the King/Snohomish County labor market has long been recognized as a specific labor market".

As the Union noted in its closing brief, the use of comparator data from the King/Snohomish County area reflects the urban nature of the locale. As Arbitrator Gary Axon noted in *Spokane County*, PERC Case 14916-I-99-329 (Axon, 2000):

> [C]omparator wage data, as well as Bureau of Labor Statistics (BLS) wage data, suggest that the closer one gets to Seattle, the higher the firefighter wages, and the difference becomes significant. This information suggests a different wage market for firefighters in the Central Puget Sound area.

Several other arbitrators have noted the effect of a metropolitan area on comparability. In *City of College Place*, PERC Case 21899-I-08-515 (Williams, 2009), Arbitrator Timothy Williams reasoned "when a comparator has a relationship to a metro complex, it tends to have higher wages". In *City of Bellevue*, PERC Case 14037-I-98-309 (Beck, 1999), Arbitrator Michael Beck noted that negotiating parties must be aware of the local labor market during the course of collective bargaining, particularly if there is a nearby metropolitan complex influencing wages and benefits.

The Union refined its labor market analysis by focusing on a "50%/200%"size analysis to describe the scope of the labor market advanced as comparable. This analytical tool has been used by several other arbitrators. *See City of Pullman*, PERC Case 6811-I-87-162 (Gaunt, 1988); *City of Seattle*, PERC Case 4369-I-82-98 (Beck, 1983) and *Thurston County*, PERC Case 14083-I-98-312 (Axon, 1999).

The Union further refined its approach by analyzing the type of services being provided and the size of the respective fire departments, arguing that such factors provide a more complete picture of which jurisdictions truly compare to the Everett Fire Department in size and scope of mission.

Conclusion on Comparability Methodology

In interest arbitration, the parties seek to persuade the Arbitration Panel that their respective positions should be adopted. Those arguments are made in the context of comparable jurisdictions which do (or do not) have similar wages, hours and conditions. The parties

have used their own set of comparables to shape their bargaining positions and now ask the Arbitration Panel to agree with the analysis presented at hearing. In a sense, selection of comparables allows the parties an opportunity to gain an advantage in the proceeding. Both parties present their positions on open issues with support from jurisdictions deemed comparable. It is the moment in the proceedings where the parties' relative positions are most focused and refined.

In this case, the Employer asserted that a per capita assessed valuation model was appropriate while the Union maintained that a labor market analysis should be used. Both are valid and proven methods to find comparable jurisdictions.

Using the Union's labor market model is most appropriate for this case. This includes geographic proximity to Everett, the size of the respective departments, the cost of living in the comparator jurisdictions, and the nature of the services provided. The parties must recognize that they perform their duties in a labor market. The local labor market determines what prevailing wages and benefits are being paid and, conversely what funding limitations may be in effect because of local economic conditions.

An assessed valuation model is a good analytical tool in determining the extent of the local labor market, but it is not complete. Comparison of assessed valuations between jurisdictions does not take into account the personnel factors that the parties to a collective bargaining relationship must consider as they negotiate contracts. In essence, an assessed valuation model, used alone, focuses only on how much money may be available to a particular jurisdiction because of tax assessments. It ignores the practical application of tax resources on the wages, hours and conditions of employment that exist through collective bargaining.

The parties must know and appreciate what nearby jurisdictions offer in the way of wages, hours and conditions of employment to recruit and retain qualified personnel. Assessed valuation may be referred to in such an analysis, but it is very unlikely that parties would rely solely on a valuation model in determining where they stand in a labor market. It is

reasonable to assume that Everett Firefighters consider themselves adequately (or inadequately) paid based on the quantifiable labor market factors set forth above.

The labor market analysis must be made within the context of the limitations set forth in RCW 41.56.465, particularly the direction set forth in RCW 41.56.465 (3) specifying that "like employers" must be considered. As Arbitrator Howell Lankford reasoned in *Kitsap County*, PERC Case 24341-I-11-580 (Lankford, 2013):

> But once again, the statutory scheme requiring comparison with employers of similar size severely limits the usefulness of a labor market analysis. A small shop of half a dozen mechanists located in Everett, for example, might compare its wages with other employers of similar size—which *would not* include Boeing—or it might look at the local labor market— which would nearly be defined by Boeing. Similarly, if we were really looking at local labor market here, King County would almost certainly be significant; but the statutory language does not allow us to ignore the difference in "size." That does not mean that labor market analysis is entirely insignificant under this statute, but it means that we can look at the local labor market only within the statutory limitation of employers of similar size.

(Emphasis in original.)

Arbitrator Lankford correctly linked labor market principles to the relative size of the jurisdictions to be used for analysis. In this case, the parties presented two different size factors. While the Employer asked for a "50%/150%" range, the Union believed that a "50%/200%" range is appropriate. It must be remembered what these size limitations would mean. If the Employer's proposal is adopted, the size "range" at issue would be set at 50% below to 50% higher than Everett. If the Union's analysis is adopted, the size "range" would be 50% below to 100% higher than Everett. This difference in approach has a serious impact on the scope of comparators that the parties seek to use.

The Employer is concerned that the Union's proposed list would automatically lead to inclusion of Snohomish County Fire District 1, a neighboring fire district that often works in conjunction with the Everett Fire Department, and could lead to bringing Seattle and King County into comparison arguments simply because they are

geographically close to the City of Everett. The Union is concerned that adoption of the Employer's size analysis would artificially limit the number of jurisdictions that should be used to create an appropriate set of comparators.

The Neutral Chairperson must disagree with the Employer's arguments concerning the potential use of Seattle and/or King County in comparator analysis. The Union is not using either jurisdiction for comparator purposes here, and the panel must limit the award to those arguments that apply to the facts at hand. The "Seattle" factor does exist for interest arbitration cases arising in the Puget Sound labor market, but it has not been argued in this case and will not be addressed.

Keeping in mind Arbitrator Lankford's admonition about limiting the labor market analysis by analyzing the relative size of the proposed comparators, the Union's proposed size range should be adopted. A labor market analysis must be realistic, and given the factors to be considered here and the geographic scope of the labor market involved, a size range of "50%/200% will provide necessary information to make reasonable comparisons.

In a related matter, in its closing brief, the Employer argued that the Union's reliance on "geographic proximity" was misplaced, and that proximity did not take into account the Everett workforce's mobility around the state. While geographic proximity cannot be the sole determination when analyzing a labor market, it cannot be ignored. As Arbitrator Lankford noted, the focus must be on "like employers". As long as a neighboring jurisdiction can be determined to be a "like employer", it would be incorrect to exclude that employer simply because of its geographic proximity to the jurisdiction at issue.

Having determined that a labor market analysis is appropriate in a labor market determined by a "50%/200%" size range, attention must be turned to the jurisdictions

in dispute between the parties to see which should be considered "comparable" for this matter.

The Disputed Jurisdictions

Application of the "50% - 200%" size standard would indicate that all of the jurisdictions proposed by both parties could be considered as "comparable" in this case. However, population base alone is not a sufficient indicator of comparability and it is necessary to analyze each of the other factors discussed above: labor market, geographic proximity, cost of living, and services provided.

Snohomish County Fire District 1

The Union proposed that Snohomish County Fire District 1 be used as a comparable jurisdiction. Snohomish County Fire District 1 is located immediately next to the City of Everett. The fire district serves a population of 195,000, as compared to the 103,019 served by the City of Everett. The City of Everett and the fire district both experience the same general volume of emergency calls. For 2012, the City of Everett responded to 18,751 calls while Snohomish County Fire District 1 responded to 19,562 calls.

Geographic proximity would indicate that Snohomish County Fire District 1 would be a comparable jurisdiction because it borders the City of Everett. However, there are a number of other factors leading to a conclusion that the fire district should be considered comparable. The city and the fire district have mutual aid agreements and participate in joint training in fire response, hazardous materials and technical rescues. Moreover, the fire district shares the same King/Snohomish County labor market, with similar costs of living and general living conditions. It should be noted that the collective bargaining agreement in effect between Snohomish County Fire District 1 and the International Association of Firefighters, Local 1997 lists the City of Everett as one of its comparable jurisdictions. The two jurisdictions have similar wage rates and rank structure within their respective departments. While no two jurisdictions can be identical, Snohomish Fire District 1 shares a substantial number of similarities with the City of Everett and should be considered to be comparable.

City of Bellevue

The Union proposed to include the City of Bellevue as a comparator. The City of Bellevue is located in King County, and while it does not border the City of Everett, it is considered to be part of the King/Snohomish County labor market. The City of Bellevue falls within the "50% - 200%" population range. The City of Bellevue is listed as the fourth largest city in the State of Washington while the City of Everett is listed as the fifth largest. Everett and Bellevue have similarly sized fire departments, and operate within the same general geographic limits. In addition, the two cities provide similar fire and emergency service, including advanced life support, hazardous material disposition, and technical rescue. It must also be noted that both jurisdictions provide their firefighting and emergency services in an urban setting. Both jurisdictions need to deal with multiple story buildings in central core areas as well as the diversity of services needed in suburban business and residential settings.

It should be noted that Arbitrator Fred Rosenberry used the City of Everett as a comparable in an interest arbitration decision involving the City of Bellevue Firefighters as recently as 2011. *City of Bellevue*, PERC Case 23780-I-11-563 (Rosenberry, 2011). The City of Bellevue has a collective bargaining relationship with International Association of Firefighters Local 1604 for a bargaining unit that represents firefighting employees in the same general classifications as those found in Everett, and the Bellevue firefighters answer approximately the same number of calls each year. Conversely, the City of Everett used the City of Bellevue as a comparable in an interest arbitration case involving a police contract. *City of Everett*, PERC Case 12476-96-272 (Axon, 1997). While the police and fire operations are separate, the fact that the Employer could agree to use the City of Bellevue in one instance and not in the other diminishes its arguments in the instant case.

There are significant similarities to be found when Bellevue and Everett firefighting operations are compared. It appears that the Employer's primary objection to including Bellevue as a comparable rests with cost concerns. While the Employer has legitimate concerns about the cost of any proposed interest arbitration award, this Panel must analyze

the situation in light of the best fit possible for comparability. In this case, the City of Bellevue will be used as a comparable jurisdiction.

City of Bellingham

The Employer proposed including the City of Bellingham as a comparable jurisdiction. Bellingham presents a number of differences as well as a number of similarities with Everett, and those factors must be set forth here. As to similarities, Bellingham clearly fits within the "50% - 200%" population range. Bellingham firefighters provided the same core services, including hazardous material mitigation and technical rescue. It is instructive to note that Bellingham and Everett both have significant port facilities within their jurisdictions, and while Everett must deal with the complexities caused by having an active U.S. Naval base within its jurisdiction, Bellingham deals with a diverse waterfront including ferries to Alaska and an active fishing fleet. In addition, Bellingham has a well-defined urban core and a state university within its coverage boundaries.

All of these factors just listed would indicate that Bellingham shares comparability with Everett. It must be noted, however, that Bellingham has important differences from Everett that must be explored. Given that Bellingham is smaller than Everett, Bellingham Fire Department personnel respond to fewer fire and emergency service calls each year. In 2012, Bellingham Firefighters responded to 14,037 calls (as compared to the 18,751 calls responded to by Everett Firefighters), and Bellingham covers more rural areas as part of its regular work. In addition, Bellingham, located in Whatcom County, is over 60 miles from Everett, very near the Canadian border. Rather than being part of a larger urban area, Bellingham is rather isolated as a population center along the "I-5 corridor".

Median income for Whatcom County is $49, 775 compared to Snohomish County's $62, 687 and the median home value in Whatcom County is $254,500 while it is $273,800 in Snohomish County. The cost of living is also lower in Bellingham, and information for 2012 indicates that the Bellingham cost of living was 4.9% lower than that found in Everett.

In *City of Bellingham,* PERC Case 8420-I-09-191 (Beck, 1991), Arbitrator Mike Beck noted that the labor market for Bellingham and Whatcom County is lower than that found in Everett and Snohomish County. Arbitrator Beck went on to rule that Everett should not be used as a comparable jurisdiction for the City of Bellingham.

The City of Bellingham, while sharing certain operational similarities to the City of Everett, does not present sufficient similarity to be included as a comparable. While Bellingham falls within the range for population, it is removed from the core King/Snohomish County labor market that is most descriptive of the economic and operational realities faced by the Everett Fire Department. Accordingly, the City of Bellingham shall not be used as a comparable jurisdiction in this matter.

South Kitsap Fire District

The Employer proposed the South Kitsap Fire District and the Central Kitsap Fire District as comparable jurisdictions. This discussion will set forth the structure of each fire district, and will then present a single analysis for both.

The South Kitsap Fire District provides fire suppression and emergency medical services in and around Port Orchard, Washington for a population of approximately 72, 000 residents in a 118 square mile area. Port Orchard is located in Kitsap County, and is approximately 100 miles from the City of Everett. South Kitsap Fire District is under the policy direction of an elected five member fire commission. Working in a generally rural area, the fire district provides its services through the work of 84professional firefighters and over 60 volunteer firefighters. Seven of the fire district's stations are staffed on a 24-hour basis while nine of the district's stations are staffed solely by volunteers on a "on call" basis. For 2012, South Kitsap Fire District emergency personnel responded to 8,139 calls.

South Kitsap Fire District volunteer firefighters perform firefighting and emergency medical duties and also perform fire inspection and community outreach functions. Volunteers also work on fire district equipment and provide other support as needed to address the specific situation.

Central Kitsap Fire District

Central Kitsap Fire District provides emergency response services to approximately 72,000 citizens over an area of 115 square miles, including the communities of Silverdale, Olympic View, Seabeck, Holly, Crosby, Lake Symington, Lake Tahuyeh, Brownsville, Illahee, Meadowdale, Tracyton, North Perry, Chico and Wildcat Lake in Kitsap County. The Central Kitsap Fire is under the policy direction of an elected five member fire commission and operates from 12 stations that are staffed through a combination of 76 career and 83 volunteer firefighters. The district responds to 7,000 incidents annually, including emergency medical services, fire suppression, fire prevention, rescue, and hazardous materials.

The Central Kitsap Fire District is located approximately 100 miles from the City of Everett and is in close proximity to the South Kitsap Fire District. As in the case of South Kitsap Fire District, the Central Kitsap Fire District provides its services in a primarily rural setting, so firefighters do not routinely train in certain aspects of technical rescues that would be associated with multi-story buildings.

Both Kitsap fire districts are remote to the City of Everett (as compared with the other jurisdictions examined above), and both are primarily rural in nature. In addition, both Kitsap fire districts provide their services through a mix of professional and volunteer firefighters. While that model works well for the fire districts, it does not relate to the instant case where the firefighters are all professionals who are fully employed by the City of Everett. The difference between smaller rural volunteer-based fire districts and a larger urban professionally-based city is simply too much to overcome. As Arbitrator Alan Krebs reasoned in *City of Mukilteo*, PERC Case 24438-I-11-584 (Krebs, 2013), the rural nature of a proposed comparable in comparison to the urban nature of the subject jurisdiction is a valid reason to exclude the rural jurisdiction for purposes of applying RCW 41.56.465. Given the fundamental differences in the South Kitsap Fire District and the Central Kitsap Fire District

as compared with the Everett Fire Department's operation, those two jurisdictions cannot be used as comparable in this matter.

Conclusion on Comparability

Comparability in this matter will be established by using a model consisting of a "50% - 200%" population range in a labor market setting, emphasizing the respective sizes of the jurisdictions, the nature of duties performed, the number of calls answered and similar cost of living.

The comparable jurisdictions for this matter are:

- Federal Way (South King County Fire District)
- Kent
- Kirkland
- Renton
- Shoreline
- Auburn (Valley Regional Fire Authority)
- Snohomish County Fire District 1
- Bellevue

THE ISSUES FOR DETERMINATION

In analyzing proposed changes to existing contract language, the panel must consider the admonition made by Arbitrator Jane Wilkinson in *Pierce County Fire District 2*, AAA Case No. 75-390-0172-87 (Wilkinson, 1988):

> As the Employer points out, arbitrators in "interests" disputes normally allow a presumption favoring the status quo when considering a proposal that has not found status quo when considering a proposal that has not found prior acceptance in the parties' collective bargaining agreement or in other comparable settings.

In the same decision, Arbitrator Wilkinson noted that the status quo, while favored, is not considered an absolute, and that there may be instances requiring a change in the existing state of affairs:

> I would caution against casting too heavy a burden on the party seeking change. If that were to occur, the status quo would be perpetuated indefinitely and interest arbitration would cease to be a viable means for resolving differences regarding employment.

The Neutral Chairperson agrees with the Employer's proposed order for discussing the issues. Generally, the issues for determination shall be presented in sequential order as found in the collective bargaining agreement, with the moving party's position presented first. However, the issue of "Event Pay" will be discussed following Article 32 – Instructor Pay and Project Pay, since both parties have proposals on the Event Pay issue and I believe it is logical to address it in the context of Article 32. In addition, the issues concerning wages (both salary scale and longevity) and medical insurance shall be moved to the bottom of the list, given the complex nature of each issue.

Article 6 – Grievances

The Employer, as moving party, seeks to make three changes to the existing collective bargaining agreement – two dealing with arbitrator selection and one dealing with arbitrator payment. As to arbitrator selection, the Employer seeks to change the selection process, from lists provided by the American Arbitration Association (AAA) to lists provided by the Federal Mediation and Conciliation Service (FMCS). The Employer further refines its proposed selection process by limiting arbitrator selection to those FMCS panel members who live in Oregon and Washington and are members of the National Academy of Arbitrators (NAA). The Employer argues that the existing language must be changed because the FMCS list, as qualified by requiring NAA members in the Oregon and Washington areas, provides a much more meaningful selection of arbitrators to decide cases involving firefighting issues. The Employer notes that the parties have not used AAA as a source of arbitrators for several years, and maintains that the FMCS list is considerably less expensive than the AAA alternative. The Employer further notes that regardless of any

specific language in the contract, the parties are always free to agree on an arbitrator, regardless of source.

Turning to the issue of arbitrator payment, the Employer proposes a change in existing contract language concerning the payment of attorneys' fees in certain arbitration cases. The existing language does not specify that each party is responsible for the payment of its own attorney's fees. The underlying issue has been the subject of court litigation. In a Washington State Supreme Court decision, *IAFF Local 46 v. City of Everett*, 146 Wash. 2d 29 (2002), the Court ruled that absent specific contract language, the Employer was responsible for paying the Union's attorneys' fees in an arbitration involving a wage claim dispute. The Court reasoned that RCW 49.48.030 provided an award of attorneys' fees to an employee who recovers wages or salary in an "action". The Court went on to reason that arbitration can be considered an "action" for purposes of the statute, and since the Union represented the affected employee, the Union should be entitled to attorneys' fees. The Employer maintains that the existing language has created an inherent imbalance in the grievance procedure, since the Union knows that it can recover attorneys' fees. This economic imbalance has inhibited the Employer's ability to enforce the agreement.

In its closing brief, the Employer notes that the "attorneys' fees" issue has been addressed in all of the other city contracts, with the other city unions accepting language that would require that each party should pay for the expenses of its own attorneys. The Employer also notes that eight of the Employer's proposed comparators indicate each side bears its respective legal costs, while the ninth, Renton, does not have any language in the contract, but has a practice of each party paying its own legal expenses.

The Union argues that the existing language of Article 6 should be left alone. The Union maintains that the existing arbitrator selection procedure has worked well for the parties, and that the Employer's proposed modifications would only add cost and delay to the arbitration process. By artificially limiting the number of available arbitrators, the parties would almost guarantee that it would take longer to get arbitration hearings held and awards issued. The Union contends that the Employer's proposed language would not necessarily lead to better

qualified arbitrators, and that that existing procedure has allowed the parties to find arbitrators who have done their work in a timely and professional manner. The Union notes that the parties have used alternative selection procedures in the past, and that the existing contract language would not prohibit that kind of agreement in the future, so the Employer's arguments about a lack of qualified arbitrators is diminished since the parties can always decide to use a specific arbitrator to decide a specific case, regardless of panel membership.

Turning to the issue of attorneys' fees, the Union contends that the existing language has served as a deterrent to unnecessary arbitration cases. The Union notes that the language at issue only causes the Employer any concern in the limited circumstance where the Union has successfully recovered lost wages for one or more of its bargaining unit members through the grievance procedure. The Union further notes that this circumstance has not come up in a number of years, and that changing the language now could lead to a number of wage disputes that could have otherwise been resolved without the need for arbitration.

Decision Concerning Article 6

The Employer seeks a significant change in the manner in which arbitrators are selected. The selection of an arbitrator for a particular issue is one of the most important functions that an employer and a union can undertake in a collective bargaining relationship. The parties must know that the arbitrator selected is qualified to deal with the issue presented, and must be available in a timely manner. The Employer would limit the available pool of arbitrators that could be used to hear a dispute. The Employer's proposal would change the underlying source of arbitrators (from AAA to FMCS lists), would limit the geographic area that arbitrators could be from (Oregon and Washington only) and require that any arbitrator selected must be a member of the NAA. Taken together, it appears that the Employer is actually seeking the creation of a permanent panel of arbitrators that would provide the exclusive list of arbitrators for resolving grievance disputes. While recognizing that the National Academy of Arbitrators is composed of experienced arbitrators who have earned a reputation for quality work, limiting the parties' arbitrator selection process to NAA members only would not be constructive.

The parties have already made an adjustment to the existing contract language by instituting a practice of using FMCS lists rather than AAA lists for a number of years. Apart from the specific members found on the FMCS and AAA lists, the general cost for AAA lists has become an impediment for the parties that they have been able to resolve by using the FMCS list. The parties have found a way to agree on arbitrators that has worked for them, and that spirit of cooperation should be acknowledged. To encourage that kind of cooperation, the grievance procedure should be modified to refer to FMCS lists, rather than AAA as the exclusive source of arbitrators.

Turning to the issue of payment of legal fees, this is a unique situation because the existing situation was brought about because of a court decision. The Employer presents a compelling argument concerning the payment of attorneys' fees, and it is clear that none of the comparables has language compelling an employer to pay the union in a wage action. The Employer can then conclude that the accepted rule is that each side pays its own legal fee expenses. As Arbitrator Howell Lankford stated in *Kitsap County*, PERC Case 24341-I-11-580 (Lankford, 2013):

> The second part of this issue is the Guild's proposal to eliminate from the Arbitration article the provision that "Each party shall pay any compensation and expenses relating to its own witnesses or representatives." There is no dispute that the proposed elimination would probably make the County liable for the Guild's attorney fees in any grievance which successfully recovers any element of pay or salary under a Washington salary recovery statute as interpreted by the *International Association of Firefighters, Local 46 v. City of Everett*, 146 Wn.2d 29 (2002). Put another way, the Guild proposes a one-sided 'loser pays' if the Guild successfully recovered any pay for a Deputy but which would never require the Guild to pay the County's attorney fees under any circumstances. I have never heard of an interest arbitrator awarding such language – or, for that matter, of a union proposing it—and I decline to award it here.

This is a different circumstance than that addressed by Arbitrator Lankford. While the underlying principle is the same, it must be noted that the existing language would, in fact, continue a requirement that the Employer must pay the Union's attorney fees in wage recovery cases. The Union is not asking to change the existing language to impose that requirement. Rather, the Union is requesting that the existing practice be kept in place.

The parties' existing attorneys' fee language has been litigated to the Washington State Supreme Court. That court has determined that the language requires the Employer to pay attorneys' fees in wage-related arbitration cases. The Employer properly notes that the Court ruled that this issue was a matter of negotiation for the parties, and that the parties could change the payment method as part of a total labor agreement. However, it is not for this panel to substitute its judgment for the parties on this issue. The ruling of the Washington State Supreme Court still stands, and puts the focus on the parties to correct issues through negotiation. There is no reason to create an award that would be at odds with the Court's decision. For that reason, the existing language concerning the payment of attorneys' fees must remain status quo.

Article 10 – Holidays/Holiday Pay

The Employer is the moving party on this issue. The issue concerns the timing of holiday pay for bargaining unit employees. Under existing language, the Employer pre-pays firefighters for holidays worked throughout the year. As noted in the Employer's Exhibit 7, the payments are made in the following manner:

> For suppression personnel, the sum is 1/18th of the employee's annual base salary. Under the contract, the full year's holiday pay is "paid on the payday immediately prior to the employee's vacation, upon receipt of an application for said monies at least one week prior to said payday". Article 10, Section 4. This is typically early in the year. For the years 2011-13, roughly half the bargaining unit received their holiday pay no later than the third payday of the year. For the other half, payment was scattered over the ensuing 10-plus months of the year.
>
> For non-suppression personnel (40-hour day workers), holiday pay is 1/30th of the employee's annual base salary. Such personnel are required to work two of the 10 contractual holidays at straight time. Article 10, Section 3. The practice is to make the holidays payment after the two holidays have been worked. This commonly is early in the year, because these personnel typically work the earliest holidays in the year and request their holiday pay immediately thereafter.

The Employer proposes a change in the language to pay for holidays in two segments: one in July for 40% of the holiday pay and the second in January of the ensuing year for the remaining 60%. The record reflects that the Employer has been pre-paying for holidays for over 20 years. A question arose as to the manner of payments because of an audit conducted by the State Auditor's Office (SAO). During the course of a routine audit of city finances, the SAO determined that the holiday pre-payment was inappropriate because the system in place was based on the concept of future earnings rather than on amounts actually earned by bargaining unit employees. The Employer recognizes that the "premature payment" issue has existed for some time, but once uncovered, the collective bargaining agreement must be changed to avoid difficulties with upcoming audits.

The Union proposes continuation of the status quo. The Union argues that the disputed practice is long-standing, and the Union questions the seriousness of an auditor's report about the payment scheme. In addition, the Union questions the auditor's method of analysis, contending that the parties negotiated the existing system and that such agreements have been recognized by the State Office of the Attorney General as valid and enforceable. The Union contends that its members have grown accustomed to the early payment procedure, and that changes in the procedure would create financial difficulties that are unnecessary. The Union notes that the Employer's proposal would seriously delay payment for holidays worked. Instead of having 100% of the holiday pay available early in the calendar year, bargaining unit employees would have access to only 40% of holiday pay in July at the earliest, and the remaining 60% in January of the next year.

The Union notes that comparable jurisdictions have similar language to that currently in effect in Everett. For example, the City of Renton's holiday pay scheme allows bargaining unit members to "sell back" as many as five holidays per year and are entitled to be paid for those they choose to sell back by the end of February each year. Snohomish Fire District No. 1 also has similar language on the holiday pay issue. In Valley Regional Fire Authority, the City of Kent and South King County Fire District, holiday hours are treated like vacation time, and bargaining unit employees in those jurisdictions schedule their holiday time off at the same time that they schedule vacation leave. In the City of Shoreline, firefighters have

annual scheduled hours reduced by 144 hours at the beginning of each calendar year in lieu of holiday pay. In this manner, the Shoreline Firefighters enjoy the benefit of holiday pay before any of the holidays take place.

Decision Concerning Article 10

There is a fundamental clash of authorities concerning the issue of holiday pay. The Union notes that comparable jurisdictions employ several methods of holiday payment that are similar to that in effect in Everett. Conversely, the Employer refers to an audit finding that questions the validity of the existing holiday pay formula. The use of holiday pay must be viewed as more than a salary convenience. There is a real issue as to whether the existing provision would stand legal scrutiny.

The Union argues that an auditor's report does not carry a great deal of legal significance, and is not, by itself, evidence of some kind of illegality. The Union notes that an Attorney General's Opinion from 1955 indicates that the holiday pay plan in effect could continue without challenge, since the parties agreed to make that plan part of their overall compensation package. It should be noted that the auditor report was made in 2009, well after the opinion was issued. For that reason, the auditor's report should be given more weight in this matter.

A refusal to deal with a payment issue like this is more than a technical problem to be addressed by auditors. If the Employer does not take affirmative steps to correct the situation, its stewardship of its budget could well be questioned, and public perception of the Employer as a good manager could be irreparably harmed.

To correct the situation, the Employer's holiday pay proposal should be adopted as part of a final contract with one modification. Rather than using a "40/60%" split, it would be better to use a "50/50%" split on holiday payment. Such a payment schedule shows that that Employer has taken affirmative steps to control holiday pay while allowing bargaining unit members to receive payment for holidays in a more reasonable manner. While recognizing that the Employer's language is a dramatic departure from the existing practice, it is the most

logical way to address the issue framed by the auditor and will, in the long run, help the parties avoid litigation that could very well take place if changes to the existing holiday pay language do not take place.

Article 15 – Vacations

The Union is the moving party on the issue of vacations, so the Union's position on the issue will be detailed first. Before the parties' positions are set forth, it is appropriate to explain existing vacation leave accruals and procedures.

Bargaining unit members current accrue vacation leave at different rates, depending on their years of service:

> Bargaining unit members with less than eight years of service: 168 hours
> Bargaining unit members between eight and twelve years of service: 180 hours
> Bargaining unit members with more than twelve years of service: 192 hours

At the time of hearing, approximately 70% of the bargaining unit had twelve or more years of service.

From the 1990s when employees were required to choose eight consecutive shifts, the practice, as set forth in contract language, now allows several selection "rounds". Employees may choose between two to eight shifts in the first selection round. This allowed the most sought after vacation slots to be filled, and then picking other vacation slots in the next round. The second round picks do not have to be made consecutively. Vacation selections are made on a seniority basis.

The Union seeks three major changes to the existing language of Article 15. First, the Union would change annual vacation accrual rates starting in 2014 as follows:

> Bargaining unit members with less than eight years of service: 144 hours (reduced from the current 168 hours)
>
> Bargaining unit members between eight and twelve years of service: 156 hours (reduced from the current 180 hours)

Bargaining unit members with more than twelve years of service: 240 hours (increased from the current 192 hours)

The second change proposed by the Union would allow vacation carryover to increase from 384 hours to 480 hours. Vacation leave carryover affects that amount of cash out that would occur when an employee leaves service with the Everett Fire Department.

Finally, the Union proposed to change the existing vacation bidding procedure to allow an employee to bid on an available vacation slot that has been cancelled by another employee.

The Union believes that the proposed changes to vacation practice reflect the realities of the workforce found in the Everett Fire Department. The Union notes that a majority of the bargaining unit has more than twelve years of service, and the existing vacation schedule does not adequately meet the needs of a senior work force.

The Union argues that its proposal is in line with comparable jurisdictions for vacation accruals of 15 years of service or more, as follows:

Kent - 336 hours per year maximum accrual, 288 hours per year accrual after 12th year of service.

Kirkland - 288 hours per year maximum accrual, 246 hours accrual starting in 14th year of service.

Renton - 336 hours per year maximum accrual, 264 hours accrual per year starting in 11th year of service.

Shoreline - 312 hours per year maximum accrual, 240 hours accrual after 14th year of service.

South King County Fire and Rescue -300 hours per year maximum accrual after 15th year of service.

Valley Regional Fire Authority - 288 hours per year maximum accrual, 240 hours per year accrual after 10th year of service.

Bellevue - 264 hours per year maximum accrual, 240 hours per year accrual after 15th year of service.

Snohomish County Fire District 1- 384 hours per year maximum accrual, 240 hours per year accrual after 15th year of service.

The lowest maximum annual vacation accrual of any comparable is 264 hours (Bellevue). That is still 72 hours more per year than the current maximum annual vacation accrual available to the Union's bargaining unit members, and it is 24 hours per year more than the Union is seeking. The Union argues that its requests for changes in vacation leave still would not place the Everett Fire Department anywhere near the top of the vacation leave available to the comparable jurisdictions, and would not cause any appreciable difficulties in administration for the Employer.

The Union believes that its vacation carryover proposal is a reasonable attempt to allow bargaining unit employees the opportunity to cash out a meaningful amount of money if vacation leave is not used, but is carried over from one year to the next. Finally, the Union argues that its vacation selection proposal would not cause the Employer any operational difficulties and would liberalize the existing vacation selection process.

The Employer resists making the changes in vacation leave sought by the Union. The Employer argues that the bargaining unit employees already enjoy a great deal of time away from work, thanks in large part to the 42-hour workweek. The Employer notes that the existing accrual rates are high enough in the context of the 42-hour workweek. As to vacation carryover, the Employer maintains that inflating the amount of vacation cash out is not warranted, particularly in light of recent budgetary constraints that the City of Everett is still working through. Turning to the issue of vacation scheduling, the Employer argues that last-minute vacation selection would create a number of operational issues that would have a detrimental impact on the fire department's operation.

Decision on Article 15

The issue of vacation leave was one of the most contentious issues addressed by the parties. The Union seeks to make a number of significant changes in the distribution of vacation

leave among bargaining unit members, the amount of vacation carryover that could be used in cash out situations and the way in which bargaining unit members can schedule vacation leave. The Employer resists all of these changes, arguing that the status quo already provides a meaningful benefit for the Everett Firefighters.

Arbitrator Jane Wilkinson addressed the issue of time off in *King County Fire District 44*, PERC Case 15764-I-01-360 (Wilkinson, 2002) in the following terms:

> To the neutral Arbitrator, given the same fixed salary, she would prefer fewer hours of work rather than more, and believes that would be the case for most people, even though one might have to exert more effort during those fewer hours.

The central issue in this matter revolves around the amount of time that Everett Firefighters spend away from work. As explained above, the citizens of the City of Everett decided that firefighters should work a 42-hour workweek and passed a local ordinance to that effect in 1964. While the parties have changed from a 10/14 schedule to a 24-hour work schedule, the 42-hour workweek has never changed and is still in place today.

Analysis of the comparable jurisdictions discloses that none has a lower workweek expectation. The Everett Firefighters work a 2,190 hour work year. This means that Everett Firefighters work 91 shifts a year, or an average of 7.6 shifts per month. In addition, bargaining unit employees are eligible for twelve holiday hours off each year, as well as the amount of time currently allowed for vacation leave.

An average of the comparable jurisdictions shows that the comparables work over 2,400 hour work years. The Union appropriately notes that the comparable jurisdictions have higher accrual rates, but those rates are being applied to higher total work years, so as a percentage of time, the City of Everett still has an advantage in the amount of time that employees are allowed to take off.

Turning to the issue of allowing more senior employees higher accrual while diminishing the amount of accrual for junior employees, it appears that this proposal is driven by the demographics of the bargaining unit at this moment, rather than the overall need to make

fundamental changes in the way that vacation time is accrued. It appears that 70% of the bargaining unit has twelve years of service or more, thus putting them into the higher accrual rate proposed by the Union. The Union's proposal would shift a great deal of financial resources to this group, and would create an inherent imbalance in the bargaining unit as far as how time off would be made available.

Turning to the issue of annual carryover and vacation cash out, it must be remembered that the existing carryover is 384 hours which is paid out at time of termination of employment, regardless of reason for the termination. The carryover is paid at the appropriate hourly rate, to include any specialty pay, educational pay and longevity that would apply. Everett allows a carryover rate that is higher than the average of all comparables. The comparables have differing approaches to the number of years of leave that can be carried over, with a high of 600 hours in South King County Fire District to "0" hours in Renton. Some comparables allow one year of carryover, others allow two years of carryover. Given the variety of approaches to carryover among the comparables, there is no compelling evidence that the existing carryover amount must be changed. The existing carryover will continue.

Finally, there is a disagreement about the existing vacation bidding procedure. A review of the comparable jurisdictions demonstrates that there is no uniform approach as to bidding procedures. Lacking clear guidance from the comparables, the panel must consider how the Union's proposed change could affect existing operations.

The Union's proposed bidding procedure would create real operational problems in the Everett Fire Department. Everything in the vacation bidding process is built on the concepts of advanced planning. Once plans are put in place, some changes may, in fact, take place but for the most part it appears that the existing procedure provides stability and predictability for the parties. The proposed change would allow more senior personnel the first opportunity for available leave, at the expense of the rest of the bargaining unit. There is no doubt that the issue of vacation leave will be raised again in future bargaining. In this award, the Employer's position on vacation accrual, carryover and bidding will be adopted, and the status quo will be maintained.

Article 23 – Line of Progression

The Employer is the moving party concerning Article 23, Line of Progression. The Line of Progression article sets forth the steps necessary for bargaining unit employees to progress to positions of higher rank, whether on a permanent or temporary basis. The parties' most recent collective bargaining agreement specifies that promotional opportunities are based on time in service, along with some training requirements. For example, the contract specifies that employees interested in promotion to Captain, Battalion Chief, Inspector, Medical Services Officer, Assistant Fire Marshal and Division Chief must have served for specified periods, and must also complete "workbook requirements" for the particular position. The workbooks were created by a labor-management committee, and were being phased in throughout the department for promotional positions.

The Employer proposes three major changes to the existing contract language: First, the Employer would create a new appendix to the agreement (labeled as "Appendix C") that would identify specific courses that would be necessary for higher-level or leadership positions. The Employer proposes use of the existing workbooks as the basis for study along with the specific fire command leadership courses set out in Appendix C. Second, the course work listed in Appendix C must be completed before an applicant could take the required Civil Service examination. Third, the Employer seeks to enforce the same standards for progression for acting status and seniority move-up.

The Employer reasons that the Everett Fire Department must have the best candidates available for leadership positions. The current progression system recognizes length of service as the primary factor in making promotions. The Employer contends that training and education must be recognized, and without making allowance for an individual's training status, the fire department is effective deprived of the applicants it needs.

The Employer contends that the existing "workbook" approach has not been successful by itself. According to the current practice, promotional applicants are supposed to complete the

coursework and practical exercises found in "workbooks" for each promotional position. In one instance, five of twelve applicants for promotion to captain were disqualified because they had not completed the "workbooks" before taking the promotional exam. The Employer maintains that formalizing a real curriculum for each promotional position is the best way to proceed and will set an identifiable standard that will apply for all bargaining unit employees.

The Union proposes retention of the status quo on this issue. The Union notes that the parties successfully created workbooks for the positions of Captain and Battalion Chief, and that the Employer has not pushed the creation of other workbooks for the remaining promotional positions. The Union argues that the Employer's proposal would create a new layer of bureaucracy for promotions, causing more expense and delay for the city and the bargaining unit members interested in progression in the department. The Employer's proposal is significantly more complicated than those requirements agreed for the Captain and Battalion Chief positions, and the proposed training would be difficult for bargaining unit members to achieve. Finally, the Union contends that the Employer's proposal would undo the existing practice of allowing applicants to take promotional tests several times, with a certain number of points made available from one test to the other. The existing system allows firefighters to understand where they need additional work and gives them credit for interest in advancing through the ranks.

Decision Concerning Article 23

It is reasonable for the Employer to expect the best qualified personnel for leadership positions within the Everett Fire Department's chain of command. In like manner, it is reasonable for the Union to expect a clear and predictable path for firefighter promotions. It appears that that parties have actually started down that path through the use of workbooks. At this time, the workbooks only apply to two positions: Captain and Battalion Chief. It must be anticipated that the parties will continue to create workbooks for all of the other promotional positions

In the final order, the parties will be directed to continue to work in the labor-management setting to develop workbooks on the remaining promotional positions. During the course of those discussions, the Employer's concept of a "curriculum" for each position could be raised, as long as it is in the context of finishing workbooks first. It only makes sense to have a complete workbook approach as a starting point before the parties attempt to make standards more stringent again. Accordingly, the parties should re-submit the progression issue to labor-management. The committee should complete its work on the workbooks by December 31, 2014. This work is important to the development of a clear set of standards for progression in the department. I will retain jurisdiction over this issue until December 31, 2014. In the event that the parties are unable to complete their work by that date, they are to submit remaining issues for determination through arbitration.

Article 26 – Shift Changes

The Employer is the moving party concerning Article 26. The existing collective bargaining agreement contains the following language concerning shift changes:

> Each member of the bargaining unit shall have the right to exchange shifts without extra pay, with the approval of the Fire Chief or his designee, when trading with other bargaining unit members, when the change does not interfere with the best interests of the Fire Department.

The Employer would modify the existing language by limiting the number of shift exchanges to six per year. In addition, the Employer would specify that there would be no more than four "flip-flop" shift trades per year, as long as each firefighter involved in the "flip-flop" would receive scheduled training on the "flip-flop" day. "Flip-flop" trades are identified as reciprocal trades on adjacent days.

The Employer would add further qualifications for shift changes. First, the Employer proposes that shift trades be made between employees of equal classification, or where the "trade-on" employee is qualified to act for the "trade-off" employee. Second, in the event that the "trade-on" employee is unable to work a shift exchange that has already been arranged, the "trade-on" employee must attempt to find a shift trade replacement employee. In the event the "trade-on" employee cannot find a replacement, the "trade-on" employee

will pay the time back by working where available overtime opportunities arise. The absent "trade on" employee would not be eligible for overtime payment until (s)he has worked an equivalent amount of time for the shift that was originally missed. The record reflects that these provisions are generally derived from the existing Administrative Policy Manual dealing with shift trade procedures.

The Employer notes that Fire Chief Gordon has determined that the number of shift trades has created difficulties for the department. While the contract language states that shift trades take place with the approval "of the Fire Chief or his designee", a departmental practice has evolved where subordinate supervisors routinely approve shift trades without getting the Chief's approval. In its closing brief, the Employer notes that shift trades have allowed bargaining unit members to be gone from work for extended periods of time, and such absences have caused difficulties in providing the level of service that the Everett Fire Department expects from its firefighting staff.

The Employer presented evidence that training has been adversely affected by the number of shift trades, with as much as 21% of all missed training classes and drills associated to a shift trade. In many cases, the training would have to be rescheduled, resulting in additional costs to the department. The Employer concludes by asserting that unlimited shift trades can no longer be tolerated in the fire department.

The Union argues that the collective bargaining agreement should be kept as status quo on the shift trade issue. The Union contends that shift trades are a long-standing feature of the collective bargaining agreement, and that the Employer cannot point to serious difficulties caused by maintaining the existing language and practice. The Union notes that the existing language gives the Employer the right to exercise oversight and flexibility in allowing shift trades. Specifically, the existing language allows the Employer to deny a shift trade if it would "interfere with the best interests of the Fire Department". The Union contends that application of the existing language has allowed the Employer to deny shift trades when essential training would be impacted, and where the "trade-on" employee was not qualified to serve in the position of the "trade-off" employee. The Union contends that the Employer's

proposed language changes would only create difficulties for bargaining unit employees that could be avoided by simply enforcing the language that is already in the collective bargaining agreement.

Decision Concerning Article 26

The Employer's proposals concerning shift trades must be addressed in the context of the Employer's earlier arguments concerning vacation leave. The Employer has made it very clear that the Everett Firefighters have a generous work schedule, and that the department is genuinely concerned about the amount of time that the firefighters are available for duty. Any proposal that would allow more time away from the workplace will be resisted, and the Employer's primary interest is to control time off whenever possible.

Analysis of comparable jurisdictions is very instructive. Eight of the comparables do not restrict shift trades in the same manner as proposed by the Employer:

> Kirkland – no restriction in the number of shift trades with prior Battalion Chief approval (Article 13)
>
> Renton – no restriction in the number of shift trades, with prior approval of company supervisor (Article 4, Section E)
>
> Shoreline – no restriction in the number of shift trades, with prior Battalion Chief approval (SOP, p. 4 "Scheduling Optional Time Off and Trades)
>
> South King County Fire District – limited to 20 shift trades with exemptions for Union time and trades of 6 hours or less (Article 10)
>
> Valley Regional Fire Authority – no restriction in the number of shift trades with prior Battalion Chief approval
>
> Kent – no restriction in the number of shift trades with the prior approval of the Shift Commander (Article 28 and Shift Trade Policy)
>
> Bellevue – No restrictions in the number of shift trades (Article 13, with reference to Shift Trade SOP)
>
> Snohomish County Fire District 1 – No restrictions in the number of shift trades with the prior approval of the Battalion Chief

It must be concluded that the Employer's proposal on shift trades is not supported by any of the comparables and is too broad for the problems that the proposal is supposed to fix. The

existing language gives the Employer rights in the scheduling of shift trades, and it appears that the exercise of that right has been diminished through the course of time. The Employer can control shift trades by granting approval through the Fire Chief "or his designee". It appears that "designees" have not been clearly named, and the responsibility for granting or denying shift trades as fallen to company supervisors.

As far as the other limitation language proposed by the Employer, it appears that the language at issue is generally found in the Everett Fire Department's Administrative Policy Manual, and is available for the Employer's use in determining how shift trades should be conducted. Since it already exists in the policy manual, it is unnecessary to repeat it in the collective bargaining agreement.

The existing contract language allows the Employer to name a designee who would be responsible for allowing shift trades, and centralization of that function could very well overcome the difficulties that that Employer has brought forth at hearing. The existing contract language, if fully enforced, allows the Employer meaningful control over shift trades, and the final award will direct that Article 26 should remain status quo.

Article 30 – Union Officials' Time Off

Both parties have presented new language concerning union officials' time off. Currently, the collective bargaining agreement allows a Union official or a "duly appointed representative" to attend specific Union meetings such as state or national union conferences, seminars or retirement system meetings. A "bank" of 240 hours exists for all union officials' time off, and unused time cannot be carried over to ensuing years. If the Employer asks a Union official to attend a meeting normally covered by this contract section, such time would not count against the 240 hour limit, and the Union official's time would be considered as a regular work day. Notice for union meetings must be given at least five days before the event to the Fire Chief or the Assistant Chief of Operations.

The collective bargaining agreement recognizes the need for time to negotiate during the course of a regular business day. The contract also allows three Union members to attend bargaining sessions, and additional members may attend with five days notice to the

employer as long as their attendance does not incur overtime costs. The existing article concludes the section concerning negotiations by stating:

> If Union officials' time off does not affect minimum manning and does not create an overtime situation then the time off shall not count toward the 240 hour aggregate of allowable time.

While both parties recognize that the existing language must be changed, their respective contract proposals are different and must be addressed separately. For purposes of analysis, the Employer's position will be detailed first.

The Employer proposes creation of two union business leave banks: One bank of hours would be funded by mandatory vacation donations from each bargaining team member at the rate of two hours per employee per year. In the event this bank of time was not fully used at the end of the year, the amount of contribution for the next year would be reduced accordingly. This bank of time would be used for Union officials' attendance at state and national meetings, seminars and conventions without cost to the Employer.

The second bank of hours would be funded by the City. Time drawn from this bank of hours could only be available for union officials to conduct business "directly involving the administration of the Agreement", such as labor management meetings, grievance processing and contract negotiations. Time spent in any of these activities would not count against the overall hour bank created by the vacation leave donations. In the event the Union official wants other union members to attend a negotiation or labor management meeting, those individuals could use leave time from the "vacation donation" leave fund.

The Employer caps the amount of union business leave at 240 hours, the rate currently in effect. The Employer further specifies that the Union must notify the Fire Chief or Assistant Fire Chief of Operations at least five days prior to the event (as per the existing agreement), but further specifies that the request for union business leave be accompanied with identification of the event and explanation of whether the time would be charged against the "vacation donation" bank or the city leave bank. In the event that the time off would cause overtime, time would be charged against the applicable leave bank at the time and one half

rate. If the Union official asks to take union business time off without pay, such leave would be granted as long as minimum staffing would be retained during the time that the official would be gone.

The Union also proposes a union business leave bank created through the donation of two hours of leave time each year. The Union argues that there are 161 bargaining unit employees, so if each donated two hours of leave, the union business bank should be 322 hours. The Union further objects to the Employer's proposed notice requirements, and argues that the parties should address leave requests on a "case-by-case" basis. Finally, the Union's proposal anticipates that the Union would monitor the use of union business leave separately and without input from the Employer.

Decision Concerning Article 30

The parties both recognize the need for change in Article 30 because of a decision issued by the Public Employment Relations Commission dealing with the legality of employer-paid union business leave. In *Yakima County*, Decision 10204-A (PECB, 2011), the Commission attempted to clarify the state of the law as it pertains to union business leave:

> The common tenet that can be extrapolated from the precedents regarding paid union release time is that the only kinds of paid release time that are mandatory subjects of bargaining are those limited to matters that directly involve the administration of the agreement between the employer and the particular union, such as labor management meetings, the processing and adjustment of grievances, and negotiations regarding changes to the existing agreement. Paid release time for other union matters not directly related to the administration of the agreement between the employer and bargaining representative are permissive in nature, and it is an unfair labor practice to attempt to bargain those matters to impasse.
>
> This list is not exclusive and is only meant to provide parties with guidance. This list may expand or contract through subsequent litigation regarding similar subject matter.

The Court of Appeals modified the Commission's decision, but upheld the proposition that matters directly concerning the administration of the collective bargaining agreement are mandatory subjects of bargaining while time for the attending conferences and conventions is

permissive. *Yakima County v. Public Employment Relations Commission*, 174 Wash. App. 163 (2012).

It is also instructive to note, as explained by the Employer in its closing brief, that comparables are not of great use here since the comparable contracts were negotiated before the *Yakima County* decisions were issued and the language contained in those agreements will have to be subjected to the same kind of scrutiny that is applied here.

Two union business leave banks should be established in line with the general outline found in the Employer's proposal: one bank funded through vacation leave deductions for attendance at conferences, conventions, seminars and union-sponsored training, and a second bank for union business immediately associated with collective bargaining matters such as labor-management meetings, contract negotiations and grievance processing. The amount of time should remain at 240 hours, and the guidelines set out in the Employer's proposal should be adopted.

The parties already have notice requirements for the use of union business leave, and the existing practice allows the Union some flexibility, within limits, to ask for additional personnel releases to attend negotiations or other meetings. It is interesting that the Union would not only seek to increase the amount of time devoted to union business leave but would also remove existing notice requirements. In addition, the Union's proposal concerning union business leave accounting could lead to conflicts that can be avoided by leaving the notice and reporting provisions as proposed by the Employer.

Article 32 – Instructor Pay and Project Pay

Both parties have presented proposals concerning Project Pay. For the purposes of this analysis, the Employer's position will be presented first. The Employer seeks to take language in several existing Letters of Understanding (LOUs) and place them in the collective bargaining agreement, in Article 32 - Instructor Pay. The Union has responded to the Employer's proposal concerning Project Pay by requiring payment at overtime rates for projects.

Fire Chief Gordon testified that project pay and instructor pay have been set at the same salary level since 2001. Traditionally, both have been set at the Captain's wage rate. The Employer notes that the parties have encountered difficulties in dealing with the issue of "projects". These difficulties have led to the creation of two LOU's creating "project pay guidelines". The first LOU, dated November 30, 2010, deals with different "projects" within the department's operation: fit testing, site planning, labor/management committees, FDM or RMS auditing, PCR review, "paper or electronic", recruiting, equipment and PPE testing. The first LOU specifies that participation in any project is voluntary, and sets the pay rate for project work at the hourly rate of a Captain. This LOU terminated on December30, 2011, and project work was discontinued.

The parties negotiated a successor LOU that went into effect on April 2, 2012. The second LOU covered the same project work, specified that project work is voluntary, and used the Captain's pay rate as the basis of payment. The second LOU expired on May 31, 2012, when the Union refused to extend it further because the Union wanted to use overtime rates for project work. Since May 31, 2012, project work has ceased.

The Employer asks to memorialize the existing list of "projects" in contract language and to add three more events to the project list: 1) "bike medic", used to send firefighters into parades and other civic gatherings for immediate emergency medical response; 2) technology implementation, particularly aimed at quality assurance review of patient care reports; and 3) first-aid station assignments at the Comcast Arena, where firefighters staff a first-aid facility during shows and concerts at the Comcast Arena. The Employer notes that the first-aid station and bike medic projects have actually existed for some time, and have always been paid at the Captain's rate of pay. The Employer would add the new language concerning projects to Article 32, Instructor Pay, because the pay rate would be the same for all issues covered in the article.

The Employer argues that the comparables are not instructive on this issue. The Employer contends that bargaining unit employees already enjoy a considerable amount of time away

from work because of their favorable work schedule, and that the City of Everett must avoid overtime payments where the work at issue is considered to be voluntary in the first place.

The Employer notes that the Union has no issue with the use of the Captain's rate of pay for instructor work, but seeks a substantial increase in other project activities by demanding payment at the overtime rate of time and one half. The Employer concludes by stating that projects are useful, but are not part of the department's core work, and could be eliminated if they are too costly.

The Union maintains that status quo is to pay project work at time and one half rates and use the Captain's rate of pay only in instances where the employee is working as an instructor. The Union maintains that the long-standing practice was to pay at time and one half for project work. The Employer asked the Union to reduce project pay to the Captain's rate because of economic difficulties, and the Union complied, but the Union never intended to reduce the rates permanently. That conclusion is supported by the Union's refusal to extend the "Captain's rate" standard beyond the last LOU that expired in May 31, 2012. The Union argues that the comparables support the time and one half rate for project work, so there is no real justification for the Employer's position. The Union asks that time and one half should be paid for project work.

Decision Concerning Article 32

The parties have very different opinions on what "status quo" means as it applies to project work pay. The Employer believes that status quo started in 2001, when all project work was paid at the Captain's salary rate. The Union argues that status quo existed prior to 2001, when project work was routinely paid at the overtime rate of time and one half.

The parties generally agree on the subjects to be covered by project pay. They have significant differences as to how that work should be compensated. Examination of the comparable jurisdictions supports the Union's contention that the comparables use overtime for project work. The Employer's arguments about project work focus on the voluntary nature of work to be performed. The Employer would differentiate between "call back"

events where employees are required to work extra time (at overtime rates) and the project work at issue here, since project work is voluntary. It must be noted that the project work is compensated at a higher rate of pay than that available for most bargaining unit employees. The Captain's rate of pay is approximately 125% of a top step firefighter's rate of pay, while the Union asks for 150% of the pay rate through the use of overtime.

It must be acknowledged that the most recent project pay practice does not line up with the comparable jurisdictions as far as establishing a rate of pay. The parties to this arbitration decided to use the Captain's rate of pay for project work, and such an agreement should provide the basis for future project pay compensation. While acknowledging that the Employer's proposed salary payment for project work is lower than the amount sought by the Union, it is still substantially higher than that of the top step firefighter, and the project work is done on a voluntary basis. In addition, the specific listing of work to be performed through projects will limit the number of instances where the issue will arise, and will prevent misunderstanding about what instances should or should not be covered by project pay provisions. Placing the new language in Article 32 is reasonable because the same wage rate (Captain) will be applied to events covered in that article. If the bargaining unit employees feel that the rate of pay for project work is not acceptable to them, they are not compelled to volunteer. If such events occur, the parties may well have to revisit this issue to determine whether wage adjustments are necessary. The Employer's proposal on Project Pay will be incorporated into the final award.

New Article – Event Pay

The Union has proposed the creation of a new article to be called "Event Pay" to deal with some of the same work covered in Article 32 above. The Union asks to have bargaining unit members be paid at the rate of time and one half for time spent working at the Comcast Arena outside their normal work hours. Such events include concerts, hockey games or other shows or events. The Union's proposed Event Pay article would also cover events such as parades or other civic gatherings where emergency medical personnel should be available. The Union notes that a comparable jurisdiction, the City of Kent, has specific language

directing the payment of time and one half for similar duties being performed in the Showare Center Arena in Kent.

The Employer resists the creation of a new contract article just for event work, and contends that this matter is properly covered by the Project Pay (Article 32) discussed above. The Employer notes that the Union's proposed language is phrased in terms of bargaining unit members being "called to work" at the Comcast Arena or other event, making this entire section sound more like compelled overtime work than voluntary work that would still be compensated at the Captain's rate of pay, just like the other project pay categories.

Decision Concerning the New Article "Event Pay"

The Employer's argument is persuasive. The fundamental difference between overtime work and the type of work anticipated here is that work at the Comcast Center or at a parade is voluntary. While it may well be beyond a firefighter's normal work schedule, individual firefighters have the choice as to whether they wish to work or not. If a firefighter decides to work at a particular event, (s)he is compensated at a higher rate of pay than his/her normal wage, and while it is not an overtime rate, it is a reasonable rate of pay for the work to be performed. In the event that the Employer requires firefighters to work at any event, that would be covered by existing contract language concerning "call back to duty" and covered by the appropriate rate of time and one half. The voluntary nature of event work leads to the conclusion that the Employer's proposed rate of pay is appropriate as long as the work is voluntary for bargaining unit employees. Accordingly, the Employer's proposal on Event Pay shall be made part of the final order in this case.

Article 35 – Division Chiefs

The Union originally advanced a series of proposals concerning Division Chiefs, and included those proposals in its "fourteen day" proposal. However, as noted above, the Union attempted to withdraw its proposals at the beginning of the hearing. The Employer resisted the Union's attempted withdrawal of its proposals and presented evidence and testimony concerning its position on the issue. At hearing, the Union did not advance any proposals, nor did it actively question the Employer's witnesses.

The Union sought to change non-emergency overtime accrual worked by Division Chiefs from straight time to time and one half for purposes of compensatory time. The Union further sought to allow the Division Chiefs to cash out the compensatory time earned at time and one half. The Union would further modify existing language by removing an 80-hour "maximum bank" for accrued non-emergency compensatory time, and would require the Employer to pay time and one half for any non-emergency overtime worked beyond 80 hours.

The Employer resisted all of the Union's proposals concerning Division Chiefs, seeking to retain status quo. The Employer argued that the Union's attempt to withdraw this proposal at a late date was only a bargaining ploy designed to set up the reintroduction of this article in the next round of bargaining.

Decision on Article 35

The panel cannot prevent either party from advancing any proposals to arbitration in the next round of collective bargaining. If either party commits an unfair labor practice, either by conduct or by attempting to insist upon a non-mandatory subject of bargaining to the point of impasse, unfair labor practice litigation awaits.

In the case of Article 35, the only substantial information available was provided by the Employer, who detailed a number of issues concerning the Union's proposal and the validity of maintaining the status quo.

Having no reason to dispute the Employer's information, the final award will address Article 35 by maintaining status quo.

Article 36 – Specialties

The Employer proposed changes in the existing language on Article 36. This article of the collective bargaining agreement deals with the fire department's technical rescue and hazardous materials teams. The Employer seeks to set the size of each team, to consist of eight Captains, eight Drivers, eight Firefighters and eight Paramedics. In other words, the Employer seeks to have two teams of 32 members each. This would reduce the number of

employees working on the hazardous materials team, which currently has 41 members, including an Assistant Fire Marshal and two Battalion Chiefs. The Employer further seeks to modify existing language by limiting team membership to one team, rather than the "overlap" that currently exists which allows membership on both teams. At the time of hearing, ten bargaining unit employees participated on both teams. The Employer notes that this proposal does not affect the other specialties covered by the contract such as Station Captain or Senior Paramedic, and members of either team could hold those other specialties at the same time.

The Union argues that the status quo should be maintained. The Union notes that the parties just modified the collective bargaining agreement in the2009-2011 negotiation cycle to create the existing team structure, and the Employer's proposal is attempting to undo a provision that was just enacted. The Union further contends that the Employer's proposal would have a significant negative impact on bargaining unit employees and would inhibit firefighters from wanting to work in the specialty areas.

Decision on Article 36

The Employer's proposals seek to make several meaningful changes to the existing technical rescue and hazardous material teams. Evidence presented at hearing indicates that the two specialties perform two very different functions.

The technical rescue team specializes in four disciplines: rope rescue, confined space rescue, trench rescue and urban search and rescue. Team members are stationed throughout the city and respond with other team members if a technical rescue incident arises. Technical rescue team members participate in mandatory training and can be compensated for up to 40 hours of training at overtime rates. Technical rescue team members receive a 3% specialty pay, and in 2012, responded to eight calls.

The hazardous materials team works on isolating, mitigating and disposing of environmentally dangerous substances, including chemical, biological, radiological and environmental threats. Hazardous materials team members are also stationed throughout the

city and respond to hazardous materials incidents as needed. Team members also participate in mandatory training and are eligible for up to 40 hours of overtime pay for training periods. Hazardous material team members receive 3% specialty pay and in 2012, responded to 61 calls.

The Employer notes that the hazardous materials team grew to 48 members because the city was the primary source of hazardous materials expertise and often supplied team members for cities and fire districts that did not have the same resources. The record indicates that a regional hazardous materials effort has been undertaken, so the Everett Fire Department would no longer have to be the primary source of hazardous material personnel.

Analysis of comparable jurisdictions is not particularly instructive in this matter. Four other jurisdictions (Kent, Kirkland, South King Fire and Rescue and Valley Regional Fire Authority) have hazardous materials specialties, and only South King Fire and Rescue deals with team size. It should be noted that the Everett specialty pay of 3% is the highest of all comparable jurisdictions.

The Employer's proposals on specialty pay would have two major effects: limiting the number of employees who would be eligible for the work, particularly on the hazardous material team, and eliminating the possibility of "pyramiding" two specialty pays. The Employer would have team members assigned to one team only. This new assignment policy would eliminate the possibility of a single bargaining unit member being paid for two separate premiums.

While recognizing that the Employer's position is a dramatic departure from the existing agreement, the Employer's proposal should be adopted as to the size of the respective teams. The Employer has presented credible evidence that there is now a regional approach on hazardous materials work, and it appears that the Employer no longer needs a team of 40 to 48 members. Moreover, the Employer has the right to determine staffing levels for the team, and has made a management decision to adjust the size of the team for the circumstances presented. However, it makes little sense to cut the size of the team from 40+ to 32 in a short

period of time. For the sake of continuity of service, it would be best to allow the team to be reduced by attrition, and that will be directed in this award.

As to the second major portion of the Employer's proposal, the Union's concerns are well-founded, and it would be patently unfair for the Employer to remove bargaining unit employees from one team or the other if those individuals are motivated to perform both tasks. While the ten current employees working on both teams receive specialty pay for both assignments, they are also performing extra duties beyond their regular work, and they should not be penalized for providing those services to the Employer.

The final award will allow the Employer to create two teams of 32 members and will continue the availability of working on both teams and receiving specialty pay for both. The hazardous materials team will be reduced to 32 members by attrition. As members of the team leave, their positions will not be filled until the team reaches the 32 member limit.

New Article – AVL

Both parties have submitted proposals concerning the use of Automatic Vehicle Locators (AVLs). For purposes of this analysis, the Employer's position will be addressed first. Automatic Vehicle Locators have been acquired by SNOPAC, the regional multi-agency emergency dispatch agency that covers a number of jurisdictions in Snohomish County. SNOPAC provides dispatch services for 24 fire departments and 12 police departments, as well as providing dispatch services for two private ambulance services. SNOPAC has started using AVL technology to assist in a "computer aided dispatch" program that will be fully implemented some time in 2014. Through interface with AVL-equipped emergency vehicles, dispatching can be done in a more efficient manner.

The AVL system uses electronic transponders that are placed in each emergency vehicle. The transponders are linked to satellites and allow a review of emergency vehicle locations and movements. The Everett Fire Department anticipates the use of AVL information in situations where department vehicles are involved in motor vehicle accidents, when reports are received about excessive speed, or when response to a call is delayed.

The Employer, therefore, proposes that new contract language be added to state that AVL information may be used for disciplinary actions in appropriate circumstances. The Employer's language will not be used to "monitor employee performance" without cause, and identifies the different instances where AVL information may be used. Finally, the Employer's language states that AVL information will not be used "for disciplinary investigations or actions without cause".

The Union recognizes that AVL technology is being implemented, but has a different way of dealing with the issue. The Union proposes language that would prohibit the Employer from using AVL information "in any manner . . . in connection with disciplinary investigations or actions against bargaining unit members, either directly or indirectly. AVL equipment also will not be used to monitor employee performance in any way." The Union argues that the Employer's proposals are too invasive given that the AVL system is not fully functional, and the Employer seeks to avoid negotiations about the impacts concerning implementation of the new system. The Union recognizes that its proposal would prohibit the Employer from using AVL information for disciplinary reasons, but argues that the system is not fully developed and there may well be areas that have to be negotiated further before this issue can be completely addressed.

Decision on the New Article "AVL"

Both parties recognize that new technology is coming and will have a real impact on how emergency personnel will be dispatched. The question is how to express that reality in contract language. As the Employer argued, the issue of new technology has been addressed in other interest arbitration awards.

In *King County*, PERC Case 21957-I-08-519 (Lankford, 2009), King County sought to allow taping of video from a number of cameras located in the King County Jail. The county presented language that allowed video taping of "specific incidents" involving corrections officers and gave affected officers the right to review the tapes privately with a union representative before any interview took place concerning events depicted in the tape. The King County Corrections Officers Guild opposed the immediate use of videotaping during

the term of agreement and to meet with the county to discuss the issue. The guild specified that the Employer could raise the issue of videotaping in negotiations for a successor collective bargaining agreement.

Arbitrator Lankford decided that the county should be allowed to use videotapes for disciplinary matters, subject to the just cause standard. Arbitrator Lankford's decision is sound, and a similar decision will be made in this case. The comparable jurisdictions do not give guidance for this issue, and it appears that the use of AVL technology is in its infancy. However, the issue is here and must be addressed. The Employer's language does not create a "fishing expedition" for possible disciplinary actions. Rather, it acknowledges the use of a new tool that can be used to determine whether employees have acted appropriately in particular circumstances. There must be something more than an AVL report for discipline, and the Employer's stated use of AVL information in a "just cause" setting provides meaningful protection for bargaining unit employees. While this is a new function and must be carefully explained to the bargaining unit so they understand their rights and responsibilities, the Employer's proposal provides clear guidance on the use of AVL information as it relates to disciplinary matters.

New Article – Drug/Alcohol Testing

Both parties have presented proposals concerning the new article, "Drug/Alcohol Testing". As the Employer notes in its closing brief, the parties should be commended for their diligence in creating a new testing protocol that would apply for bargaining unit members. Issues remain as to how the new testing plan would be applied and what effect the new plan would have on bargaining unit employees. For purposes of this analysis, the Employer's proposal will be presented first.

The City of Everett already has two drug and alcohol testing programs in place for unionized personnel. Members of the Amalgamated Transit Union (ATU) and Washington Council of County and City Employees (WSCCCE) have been subject to testing since the early 1990s. The Employer now seeks to extend drug and alcohol testing to the Everett Fire Department.

The Employer focuses on mandatory drug and/or alcohol testing for on-duty incidents and post-accident investigation where there is reasonable suspicion that bargaining unit employees may have been under the influence of drugs or alcohol. The Employer also proposes moving policy statements concerning off-duty DUI convictions to the contract. The Employer's proposed program is limited to post-accident and "reasonable suspicion" situations. The Program will be administered by the City Safety Official, an individual with experience in coordinating and administering the City of Everett's two existing drug and alcohol testing programs.

The Employer's proposal seeks to use the same testing facilities that are currently used for the two existing testing programs in place, and the proposal further details employee and supervisor training that would take place for implementation of the drug/alcohol testing program for the Everett Fire Department. Finally, the Employer's proposal would use the same test confidentiality standards now being used for the ATU and WSCCCE programs.

The Union's proposal largely mirrors the Employer's proposal, but there are some important differences still at issue. The Union proposes that it participate in the selection of a testing laboratory, while the Employer wants to use the same laboratory that is currently used for the other two bargaining units being tested. The Union asks to have either legal or union representation present at the test. The Employer agrees that union representation should be present if the employee requests it, but believes that the possibility of requesting legal assistance will only delay testing and cause more difficulties with the process. The Union further proposes to remove all documents related to testing from personnel files after one year, and the Union wants to participate in the selection of Medical Review Officer (MRO), the medical official who reviews and interprets the test results.

Decision on New Article "Drug and Alcohol Testing"

The parties should be commended for working toward a solution on a contentious issue like drug/alcohol testing. While some differences in approach remain, the parties have made important progress on establishing a durable and well-balanced testing program. The

question is what should be done to deal with the remaining issues that prevented the parties from completing their negotiations on this matter.

Analysis of comparable jurisdictions presents a mixed result. Kent, Kirkland and Valley Regional Fire Authority have alcohol and drug testing similar to that proposed here, while the other jurisdictions either have more limited programs or none at all. Given that the comparables do not give a clear picture of what kinds of testing take place, it is appropriate to study what the Employer has adopted for the two other bargaining units that currently have alcohol and drug testing.

The two existing drug testing programs are fair and well-managed. It is understandable that the Union would have reservations about the program, but it has the advantage of the other units' experience in guiding its actions. The existing programs are well defined, and use professionally competent testing facilities. There is no evidence presented that either the ATU or WSCCCE has ever questioned the testing facility's competency, and the Employer seeks to use the same general program for the firefighters.

The proposed drug/alcohol testing program is narrowly focused on those incidents where it must be applied, and is not a general "fishing expedition" aimed at uncalled for intrusion into employees' lives. It must be noted that the success of any program like the one at issue can be achieved only after a thorough educational process has been completed. With that in mind, it is clear that some of the testing will be done during "off-shift" periods. If such testing takes place, the Employer must compensate firefighters for their time and travel expenses. The firefighters will be required to provide mileage and times for their test, and the Employer shall pay them at straight time rates for time spent in testing.

The Employer must train the firefighters in the bargaining unit about the new program, how it is to be administered, what their rights and obligations are under the program, and consequences if drug or alcohol use is detected. However, I must conclude that keeping the results of positive drug tests in a personnel file forever is not effective or fair. It would be more reasonable to keep the tests for two years after they are taken. If a positive test has been taken, the Employer is on notice that further actions could be necessary. If an

employee does not have further issues with drugs or alcohol, the test results should be removed after two years. If further drug or alcohol issues arise within that two year period, the test results should be kept so that appropriate disciplinary or treatment options can be used. After careful consideration, the Employer's proposal on drug/alcohol testing should be adopted, with the modifications concerning payment for off-duty testing and a two year limit on keeping drug tests on file as long as there are no repeat episodes, as part of the collective bargaining agreement.

Wage and Wage Related Articles

Article 9 / Appendix A - Wages; Station Captains; Deferred Compensation

Both parties have made proposals concerning salary adjustments for 2012, 2013 and 2014:

The Union's Wage Proposal

Base Wages

For 2012, the Union asks that the existing salary schedule be increased by 100% of the Seattle Consumer Price Index, (CPI-U), June 2010 to June 2011, plus 2%

For 2013, the Union asks that the salary schedule be increased by 100% of the Seattle Consumer Price Index, (CPI-U), June 2011 to June 2012, plus 1%

For 2014, the Union asks that the salary schedule be increased by 100% of the Seattle Consumer Price Index, (CPI-U), June 2012 to June 2013

Deferred Compensation

The Union proposes that deferred compensation, currently set at a flat dollar amount of $130 be changed to be 3% of a first class firefighter's base salary.

Station Captain

The Union proposes the addition of a new Station Captain position to match current practice in the department.

The Employer's Wage Proposal

Base Wages

For 2012, the Employer asks that the existing salary schedule be increased by 2% over 2011 rates.

For 2013, the Employer asks that the salary schedule be increased by 2% over 2012 rates.

For 2014, the Employer asks that the salary schedule be increased by 1% over 2013 rates.

Deferred Compensation

The Employer proposes maintaining deferred compensation at the $130 dollar amount for the term of the agreement.

Station Captain

The Employer resists the creation of a new Station Captain position.

For the sake of this analysis, the Employer's position will be presented before the Union's arguments. Before either party's position is addressed, background information about the City of Everett's economic condition and existing wage structure will be presented.

The City of Everett has experienced economic difficulties associated with the recession that began in 2008. The extent of that difficulty is at issue between the parties. The Union maintains that the City of Everett is in good economic condition, with a favorable bond rating and a good credit rating. In addition, the Union notes that the Mayor has made public statements about the strength of the city's overall economic condition and the city would be able to afford any proposed increases in firefighter salaries that could be ordered in this award.

The city receives most of its revenue through taxes. The four largest sources of tax revenue are property tax, sales tax, business and occupation tax and utility tax. The record indicates that these four tax sources make up 78% of the city's general government revenue. The City of Everett has suffered a downturn in revenue. In 2013, the city's General Government forecast was $112 million, down nearly $7.4 million from total 2008 receipts.

The City of Everett's largest revenue source is property tax. The second largest source, sales tax, has been affected by the overall economic downturn, with a large drop in sales tax revenue in 2009. Since that time, there have been gradual increases in sales tax revenues, but the city anticipates slow overall sales tax growth for several years to come. The city's third largest revenue source is the business and occupation tax, which is very dependent on the activity that Boeing undertakes at its aircraft assembly facility. The city's fourth largest revenue source comes from utility taxes, and this source of income has been affected consumer concern about the economy and the loss of a major industrial facility within city limits.

The City believes that its general economic condition is not as healthy as the Union represents, noting that the city's five year budget outlook indicates that there will be a $10.4 million deficit heading into the 2014 budget development process. The Employer contends that police and fire personnel have, for the most part, been shielded from the impact of difficult economic times, and layoffs were not required in either department. While layoffs have occurred in general government maintenance and operations bargaining units, police and fire department bargaining units have been affected only to the extent of not filling certain open positions. Accordingly, the overall size of the law enforcement and firefighting bargaining units may have been reduced, but only to the extent that attrition caused the vacancies which the Employer chose not to fill for budgetary reasons.

Base Wage Increase

The Everett Firefighters have not received a wage increase since 2009. Both parties agree that a wage increase is in order, but the parties disagree over the amount of increase that should be considered for bargaining unit employees. In addition, there are significant differences in the methodology to be used. The Employer seeks to adjust wage rates in each year of the collective bargaining agreement. The Union seeks to have CPI adjustments made in all three years of the contract, with wage increases over the CPI amounts in 2012 and 2013.

It is instructive to see what comparable jurisdictions have granted as wage increases for 2012-2014. In its closing brief, the Employer appropriately notes that before such analysis can take place, it is necessary to determine how the comparison between the comparators and the Everett Fire Department takes place. In other words, comparison must be made on the basis of "like positions" as much as possible.

The Employer seeks to use a "net hourly compensation" model to be applied to an Everett Firefighter with twelve years of experience. The Union uses the "top step" firefighter wage rate for its proposals, but does not include certain elements in the net hourly approach that the Employer would, such as educational pay. The Employer's methodology is sound and is well-supported in other arbitration awards. The "net hourly compensation" approach includes those elements of compensation that are required of an employer in Washington State. It would be artificial to avoid discussion of compensation factors such as educational pay, longevity or specialty pays available to the bargaining unit employees.

Looking at the annual salaries provided to employees in comparable jurisdictions, it appears that Everett is at the bottom of the comparator group. However, if the analysis turns to a net hourly compensation model, Everett moves up the list dramatically. It must be remembered that Everett's net hours of work amount to 1,986, where the other comparables range from 2,088 hours (Shoreline) to as many as 2,277 hours (Kirkland). This is a significant factor, and there is no comparable jurisdiction that has a work year that matches up to that found in Everett.

The parties provided pages of materials supporting their own positions and questioning the approach and/or fairness of the wage proposals made by the opposition. Each party provided detailed arguments as to why their methodology and proposed salary increase should be adopted as part of the final arbitration award. However, no matter what arguments can be made as to methodology, I must start my consideration of this matter in terms of the hourly rate of pay that the Everett Firefighters is paid as compared to the other comparable jurisdictions.

Decision on Wage Issues

The Neutral Chairperson has been asked to make similar wage adjustments in other interest arbitration settings. *Lewis County*, PERC Case 23418-I-10-544 (Latsch, 2011) ruled that the award must be "in the range of increases found in the comparable jurisdictions". Such an award would not make significant changes in where the employer would be situated as compared to the comparable jurisdictions. Using those guidelines, the panel must determine what kind of increases have been made in the comparable jurisdictions, and how should a wage increase in this case be made in light of those increases.

It must be acknowledged that the comparable jurisdictions do not have wage increases in place for 2012, 2013 and 2014, with most jurisdictions lacking any information about 2014. Therefore, the comparables do not provide the kind of guidance that could be used as the sole basis for an award. Without that information, the panel must consider the wage proposals set forth by the parties here, in light of the internal factors that make up the terms of the collective bargaining agreement. Most importantly, the panel must consider the net hourly rate of pay that the Everett Firefighters enjoy. By ordinance, the Everett Firefighters have worked a 42-hour workweek for over 25 years. The 42-hour workweek is a real benefit that must be considered in making a salary award, because the Everett firefighters earn their salaries based on a shorter work year than any other jurisdiction the panel is aware of.

Having asserted that Everett Firefighters enjoy a unique work year situation is not, by itself, dispositive of the salary issue. It merely sets the stage for contemplating the appropriate level of salary that should be paid.

After review of all of the information provided by the parties, and careful consideration of the arguments set forth on the issue of base wage increase, the Everett Firefighters should be granted the following wage increases:

- 3% increase for 2012, effective January 1, 2012;
- 2.6% increase for 2013, effective January 1, 2013;
- 1.4% increase for 2014, effective January 1, 2014.

The salary increases for 2012 and 2013 match the salary increases given by the City of Everett to the Everett Police Officers' Association. Increases of an equal amount for the Everett Firefighters not only address "internal equity" issues that often arise between uniformed employees, but also put the Firefighters in a relatively equal position with the police officers in light of the changes in medical insurance coverage discussed below. At the same time, these increases are reasonable for the firefighter bargaining unit and keep the Everett Fire Department well within the range of the comparable jurisdictions used in this matter. Such increases will be applied to the base for all positions in the bargaining unit. The 1.4% increase match the Everett Firefighters' proposed increase, reflecting 100% of the Seattle area CPI-U, June, 2012 – June 2013.

This award provides appropriate compensation for the firefighters in light of the information available from the comparable jurisdictions, and, given the work year involved in this case, keeps the Everett Firefighters in an appropriate position within the King/Snohomish County labor market.

Deferred Compensation

The parties disagree over the appropriate amount to be paid for deferred compensation. The Employer seeks to retain the existing "flat rate" of $130 per month, while the Union seeks to eliminate the "flat rate" payment and have the Employer pay 3% of a first class firefighter's salary rate into deferred compensation. In Everett, the deferred compensation plan is not a "match" system where a public employer matches the amounts that are put into a deferred compensation account by public employees. In this case, the Employer provides the funding for deferred compensation. Currently, the $130 deferred compensation translates to approximately 2.2% in wages. The Union's proposed increase from the flat rate to 3% would amount to $176, if expressed as a flat rate.

The current $130 is below a number of comparable jurisdictions, although most jurisdictions "match" contributions. In Shoreline, there is no employer contribution, but employees are expected to contribute 3% toward deferred compensation. Kent, Renton and South King County Fire District do not require matches for deferred compensation.

The Union notes that its proposal on deferred compensation is an attempt to make the benefit easier to index and to maintain relative value versus other forms of compensation that bargaining unit members receive. The Union concludes by arguing that the existing deferred compensation article is less than what is received by Everett Police Officers, who receive $150 monthly for deferred compensation from the City. (See the Police Officers' Association 2011-2013 collective bargaining agreement, Article 11.4)

Deferred compensation is a meaningful benefit to bargaining unit members, and it appears that the comparables, while generally showing that the amount do not conclude on a single amount or percentage that can be applied in this case. An increase is not unreasonable, and matching the amount that is paid to Everett Police Officers is a logical and reasonable standard. Accordingly, the final order will increase the deferred compensation amount paid by the Employer from $130 to $150.

Station Captain

The Union presented a proposal to create a new "Station Captain" position as part of its "14 day proposal", but then attempted to withdraw the issue from consideration, along with the Division Chief and Longevity Pay proposals. The Employer resisted the proposed withdrawal, and I ruled that the Station Captain issue should be heard. The Union did not present evidence or testimony supporting its position, and the Employer presented testimony and evidence supporting the retention of the status quo, which, in this case would mean that the new "Station Captain" position would not be created.

During the course of its presentation, the Employer expressed a concern that the "Station Captain" issue, like Article 35 – Division Chiefs, and Article 11 – Longevity may be raised again in the next round of negotiations if it is not addressed in this award. As noted above, the panel cannot prevent either party from advancing any proposals to arbitration in the next round of collective bargaining. If either party commits an unfair labor practice, either by conduct or by attempting to insist upon a non-mandatory subject of bargaining to the point of impasse, unfair labor practice litigation awaits.

In the case of the creation of a new "Station Captain" position, the only substantial information available was provided by the Employer, who detailed a number of issues concerning the Union's proposal and the validity of maintaining the status quo.

There is no reason to dispute the Employer's information, so the final award will maintain the status quo concerning "Station Captains", and a new "Station Captain" position will not be created.

Article 11 – Longevity Pay

The Union originally advanced a proposal that would significantly increase longevity pay for members of the bargaining unit. The existing longevity schedule calls for the following adjustments:

After 4 years service – base wage plus 2% per month

After 8 years service – base wage plus 3.5% per month

After 12 years service – base wage plus 5.5% per month

After 16 years service – base wage plus 7% per month

After 20 years service – base wage plus 9% per month

After 24 years service – base wage plus 11% per month

After 28 years service – base wage plus 13% per month

The Union's proposal would modify the existing longevity pay structure and longevity amounts as follows:

After 8 years service – base wage plus 14% per month

After 12 years service – base wage plus 9% per month

After 16 years service – base wage plus 14% per month

After 20 years service – base wage plus 11% per month

After 24 years service – base wage plus 9% per month

After 28 years service – base wage plus 7.7% per month

After 32 years service – base wage plus 23% per month

The Union presented the new longevity proposal as part of its "14 day proposal", but then attempted to withdraw the issue from consideration. The Employer resisted the proposed withdrawal, and the Neutral Chairperson ruled that the longevity issue should proceed. The Union did not present evidence or testimony supporting its position, and the Employer presented testimony and evidence supporting the retention of the status quo. During the course of its presentation, the Employer expressed a concern that the longevity issue, like Article 35 – Division Chiefs, may be raised again in the next round of negotiations if it is not addressed in this award. As noted above, the panel cannot prevent either party from advancing any proposals to arbitration in the next round of collective bargaining. If either party commits an unfair labor practice, either by conduct or by attempting to insist upon a non-mandatory subject of bargaining to the point of impasse, unfair labor practice litigation awaits.

In the case of Article 11, the only substantial information available to the panel was provided by the Employer, who detailed a number of issues concerning the Union's proposal and the validity of maintaining the status quo.

There is no reason to dispute the Employer's information, so the final award will maintain the status quo for Article 11 – Longevity Pay.

Article 12 – Medical Benefits/Insurance

The issue of medical benefits is undoubtedly the most contentious matter presented by the parties. It is necessary to present a bit of history about the genesis of the issue to understand the complexities faced by the parties today.

In 2006, the Employer agreed with the Union to offer "Plan 1" from the LEOFF Health and Welfare Trust, headquartered in Spokane, Washington. At that time, premiums for Plan 1 were roughly equal to the premium costs of two health care plans traditionally offered by the Employer: HMA, the City of Everett's self-funded insurance plan; and Group Health. The

HMA plan was used as a "baseline" for Employer contributions to premiums. The record reflects that most of the City of Everett's employees were on the HMA or Group Health plan.

Since 2006, Plan 1 premiums have risen dramatically, going up over 50% from the premiums in place when the parties first signed up for Plan 1. The parties' last collective bargaining agreement, in effect from 2009-2011, required the Employer to pay all of the employee premiums and a portion of the dependent premium costs. Since the parties have not been able to resolve the contract, that status quo has been maintained through 2012 and 2013. At the same time, Plan 1 has continued to go up in price, meaning that employees are required to pay more out of pocket expenses to provide insurance benefits for their dependents. Plan 1 costs have also gone up at a much quicker rate than HMA or Group Health premiums over that same time period.

During the course of negotiations, the parties exchanged proposals but could not come to a final agreement on how to deal with the insurance issue. Pressure arose because bargaining unit members were paying continually increasing premium costs while a new agreement was not reached.

In its "14 day proposal", the Union made a multi-part proposal concerning medical insurance:

> For 2012 and 2013, the Union asks that the Employer pay for all employee costs incurred for premium payments on Plan 1 in 2012 and 2013. The proposal requests a 6% increase in Employer contributions for dependent coverage in 2012, and a 6% increase for 2013.
>
> Starting in 2014, the Union asks that Plan 1 continue, with the addition of a newer plan, known as Plan 6B, as well as creation of a new VEBA plan offered by HRA (hereinafter referred to as HRA).
>
> If a bargaining unit employee chooses to stay on Plan 1 in 2014, the Employer's contribution levels would match those necessary to fund the new Plan 6B and HRA.
>
> If a bargaining unit employee chooses Plan 6B plus HRA, the Employer would be obligated to pay 100% of the employee's medical premium and 95% of dependent premiums, provided that the employee's monthly 5% share on dependent coverage does not exceed $100.

In the event that Plan 6B is not offered in 2014, the Employer will pay a 6% increase for Plan 1 dependent coverage over that amount paid by the Employer in 2013.

The Employer proposes that bargaining unit employees would be covered either by the city's HMA plan, the Group Health plan or would continue to be covered by Plan 1. In the event an employee chooses to be covered by Plan 1, the employee would be responsible to pay the difference in premium rates between Plan 1 and the HMA plan. If the employee elects to be covered by Group Health, the employee would be responsible to pay the difference in premium rates between Group Health and HMA. The Employer opposes any pay for 2012 and 2013 premium costs absorbed by bargaining unit members.

The issue concerning medical insurance benefits really deals with two fundamental concerns: cost of providing the benefit and administration of multiple insurance plans. Currently, over 70% of the Employer's total workforce is covered by the HMA insurance plan, with another 12% of the workforce covered by Group Health.

It must be noted that comparable jurisdictions appear to be moving the self-insured model preferred by the Employer, but such movement is not universal:

- Kent – Self-insured PPO plan
- Kirkland – Self-insured PPO plan
- South King County Fire District – Self-insured using an HRA/HMO
- Valley Regional Fire Authority – Plan 6B with HRA
- Renton – Self-insured PPO
- Shoreline – K12 PEBB Package – Uniformed Medical Classic, HMO
- Snohomish Fire District 1 – Self-insured PPO plan designed to be similar to Plan 6B coverage
- Bellevue – Self-insured PPO plan

Similarly, comparable jurisdictions experience different premium costs, with a high of $2,512 in Renton to a low of $1,626 in Shoreline. The existing premium for Everett is $2,261. Not surprisingly, comparable jurisdictions deal with differing amounts of employee contribution toward dependent premium costs:

> Kent - Employer pays 88% of dependent premium increases each year and employees pay 12%. Employee premium payments are capped at $115 per month, so that the employee's responsibility with respect to premium increases will actually be less than 12% once the cap is reached.
>
> Kirkland - Employer pays 100% of dependent premium increases each year.
>
> Renton - Employer pays 95% of dependent premium increases in 2012 and employee pays 5%; in 2013, employer pays 94% of dependent premium increases and employee pays 6%; in 2014, employer pays 93% of dependent premium increases and employee pays 7%.
>
> Shoreline - Employer pays 100% of dependent premium increases each year.
>
> South King Fire District - Employer pays 100% of dependent premium increases each year.
>
> Valley Regional Fire Authority - Employer pays 90% of dependent premium increases and employees pay 10%.
>
> Bellevue - Employer pays 90% of dependent premium increases each year and employees pay 10%.
>
> Snohomish County Fire District 1 - Employer pays 100% of all premium increases unless increase is between 11% and 21% in a particular year, in which case the amount of the increase between 11% and 21% is split equally between the employer and the employee.

The Union notes that the current plan (Plan 1) is very popular with bargaining unit employees, and the union membership is very satisfied with the level of coverage that it provides. Accordingly, the Union would prefer to continue coverage under Plan 1, with the Employer assuming more of the dependent medical costs now being borne by firefighters. The Union reasons that if the Employer was truly interested in containing costs, it would agree to the Union's proposal to substitute Plan 6B along with the HRA plan. The Union

believes that if the parties had been able to complete bargaining to completion on this matter, they would have reached a result similar to that achieved in 2011 when the parties agreed that the Employer would increase its contribution to dependent medical premiums by 6%.

With that in mind, the Union seeks an award that would increase Employer contributions by 6% for the 2012 and 2013 dependent medical premiums, while maintaining 100% coverage for employee premiums for both years. The Union adamantly states that its primary goal in this arbitration is to avoid being put into the Employer's self-insured medical plan. The Union argues that the city's self-insured plan has absorbed high premium rates in the past three years, and the overall medical coverage offered under the city's plan is inferior to that offered in Plan 1, or in Plan 6B. The Union further argues that it is concerned that the Employer may have to make plan design changes to maintain cost containment within the city's plan to the detriment of bargaining unit employees. The Union believes that the existing Plan 1 is designed for firefighters and is a much better fit for the Everett Firefighters.

The Employer believes that it must make changes in the existing medical insurance because costs have become prohibitive and do not appear to be going down. The Employer maintains that the city plan compares favorably to coverage provided in Plan 1 or Plan 6B, and is better suited for the situation presented in this case. The Employer notes that the vast majority of its workforce is covered by the city's plan, including the other major public safety organization, the Everett Police Department. Just as the Union has stated its strong desire to remain on Plan 1, or Plan 6B with an HRA component, the Employer states that it must find a way to control health care costs, and it has made proposals that are reasonable for the bargaining unit.

Decision on Medical Insurance

The parties have devoted more time and energy to the issue of medical insurance than any other issue before the panel. It is clear that their disagreement about medical insurance was a prime cause for their difficulties in reaching a successor collective bargaining agreement. Now the issue is presented for decision. The time for compromise on the matter is over.

There are two general areas of concern addressed in the parties' presentation: what insurance plan is to be offered and how much will it cost (either from the Employer or from bargaining unit members) for the coverage that will be in effect. The award will first address the insurance plan to be adopted.

The Employer has presented a compelling argument that the city's HMA plan provides a solid foundation for medical benefits. Over 70% of the city's workforce is already covered by the HMA plan, and another 12% of the workforce is covered by Group Health. It appears that a large majority of the Employer's workforce has found reasonable insurance coverage at general coverage rates that are reasonable for all parties involved. I must concur with Arbitrator Fred Rosenberry who ruled:

> Many arbitrators, including this one, find the disparity troublesome and do not desire to see the interest arbitration process become a divisive wedge between employees. Arbitrator Howard S. Block shared this concern and commented in his June 30, 1982 Bellevue decision, stating "Deviations from a uniform benefit pattern can be disruptive to employee morale. In short, comparisons among employee groups of the same employer are no less important than comparisons with other employers."

City of Bellevue, PERC Case 23780-I-11-563 (Rosenberry, 2011)

Arbitrator Rosenberry's analysis is sound and applies to this matter. The City is attempting to provide reasonable and consistent insurance coverage in an effort to control overall medical costs. Firefighters provide a unique service for the City of Everett, but they must understand that they are part of the Employer's total workforce and should receive the same kinds of medical insurance generally available.

With that in mind, the Employer's proposal concerning insurance coverage should be part of this final award. The Employer's proposal calls for bargaining unit employees to be covered by the city's HMA plan, the Group Health plan, or to continue coverage on Plan 1, with the understanding that the Employer will provide medical premiums at the HMA rate, and the individual employees will be required to pay any differences in premium costs.

The creation of a new insurance plan, Plan 6B does not provide a meaningful resolution to the insurance issue. At best, it delays the issue to a later time, and only creates the possibility

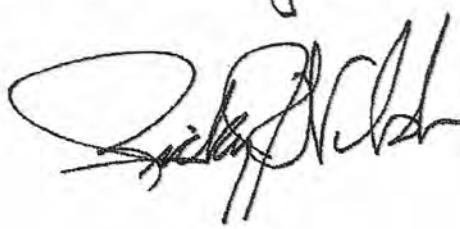
of more difficult decisions concerning insurance rates and the appropriate payment for premiums. If bargaining unit members truly believe that their existing Plan 1 coverage is superior, then they can stay on that plan. Otherwise, they can take advantage of one of the other insurance plans available to them.

Effective January 1, 2014, bargaining unit employees will be covered either by the city's HMA plan, the Group Health plan or will continue to be covered by Plan 1. In the event an employee chooses to be covered by Plan 1, the employee will be responsible to pay the difference in premium rates between Plan 1 and the HMA plan. If the employee elects to be covered by Group Health, the employee will be required to pay the same amount as the Everett Police Officers pay under terms of their collective bargaining agreement.

The last issue for determination deals with the 2012 and 2013 premiums. The Union believes that its members should be compensated for the premium payments they had to make while this matter was pending, and the Employer argues that the "past is the past", and it is inappropriate to provide such payment. It must be noted that the Union is not attempting to seek compensation for medical plan use. That would be impossible to reconstruct, and would not be something that should be addressed. The Union is seeking a real dollar amount for employees who had to wait until this time to have their medical insurance premium rates established.

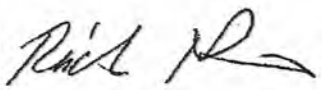
Those employees should not be economically disadvantaged because the negotiating parties could not reach an agreement on medical premiums. Accordingly, bargaining unit members will be reimbursed for the amounts they had to pay out of pocket for dependent medical insurance premiums for 2012 and 2013. That paragraph of the Union's proposal will be incorporated in the final award.

DATED at Benton City, Washington this 18th day of December, 2013



RICKY WALSH
Union Partisan Arbitrator

DATED at Everett, Washington this 18TH day of December, 2013



RICK ROBINSON
Employer Partisan Arbitrator

DATED at Lacey, Washington, this 18th day of December, 2013

KENNETH JAMES LATSCH
Arbitrator, Neutral Chairperson