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PUBLIC EMPLOYMENT
RELATIONS COMMISSION

IN THE MATTER OF THE ARBITRATION

BETWEEN

INTERNATIONAL ASSOCIATION OF)
FIREFIGHTERS, LOCAL 1433)
)
and)
)
CITY OF PASCO)
_____)

INTEREST ARBITRATION
OPINION AND AWARD

PERC Case No. 18872-I-04-0439

ARBITRATION PANEL

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January 20, 2006

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I. BACKGROUND

Located in close proximity to the cities of Kennewick and Richland, the City of Pasco ("City") is located in an area of southcentral Washington State known as the Tri-Cities. The Pasco Fire Department provides fire prevention and suppression services, paramedic ambulance services, hazardous materials response, and aircraft rescue services within the City's geographic boundaries, as well as to some geographic areas surrounding the City and to the Tri-Cities Airport. The City operates three (3) fire stations. The Department headquarters is located at Station 81, Station 82 is located out at the airport, and Station 83 is located in western Pasco.

The City Fire Chief is Ray Garcia. Other department personnel include an Assistant Fire Chief, three shift captains, nine lieutenants, twenty-one firefighter/EMTs,¹ and fifteen firefighter/paramedics. Ex. U-10.² Except for the Chief and Assistant Chief, all of these classifications are included in a bargaining unit of uniformed firefighting personnel represented by the International Association of Firefighters, Local 1433 ("Union" or "Local 1433") As of the end of 2005, total bargaining unit size was forty-eight (48) positions.

¹ This number includes three fire fighters hired in the Fall of 2005 but not yet working regular shifts at the time of the arbitration hearing.

² Exhibits are referenced by number as Union ("Ex. U-___") or City ("Ex. C-___"). References to exhibits or testimony are intended to be illustrative, not all-inclusive, of evidence in the record that supports a particular statement. When the parties' data conflicted, I have selected the figure judged to be the most reliable.

The City and Union have a long history of collective bargaining. The parties' most recent collective bargaining agreement ("CBA") expired on December 31, 2003. Commencing that year, the City and Local 1433 began bargaining over the terms of a successor contract. They bargained to impasse regarding a number of issues that were then certified for interest arbitration by the Executive Director of the Washington Public Employment Relations Commission (PERC). This interest arbitration was initiated in accord with RCW 41.56.450 to settle those unresolved issues.

Initially, seven issues were certified by PERC for interest arbitration: (1) Article 10.4 (Time Off Approvals), (2) Article 11.2 (Holiday scheduling), (3) Article 13.2 (Holiday cash out), (4) Article 18.8 (On the job injury from outside employer), (5) Article 26 (Wages and Deferred Compensation), (6) Article 29.2 (Medical and dental insurance); and (7) Article 29.4 (Wellness care). After the Union filed an unfair labor practice complaint (Case No. 19556-U-05-4961), the Executive Director of PERC suspended interest arbitration proceedings for the Article 18.8 issue.

By mutual consent, Janet L. Gaunt was selected to serve as the neutral Chairperson (hereinafter "Arbitrator"), and has statutory authority to issue a final ruling. As its partisan arbitrator on the arbitration panel, Local 1433 designated Kelly J. Fox, President of the Washington State Council of Fire Fighters. The City designated Richard Bisnett, Human Resource Manager for the City of Moses Lake. Prior to the hearing, the City requested a continuance of the interest arbitration

until PERC issued a ruling in Case No. 19556-U-05-4961. That request was denied by this Arbitrator on July 21, 2005, and the parties were directed to proceed to hearing on the remaining unresolved issues.

After the hearing, when the parties filed their post-hearing briefs, the City again asked the Arbitrator to delay any ruling on the presented issues until PERC issued a ruling in Case No. 19556-U-05-4961. The hearing in that ULP case was held in December 2005, and a decision by the PERC Hearing Examiner is not expected before late Spring, 2006 at the earliest. Members of the bargaining unit have not had any across the board wage increases since July 2003. Waiting for a ruling by PERC in the ULP case would delay base wages increases far too long. The City's renewed request for a delay has therefore been denied.

On August 10, 2005, an arbitration hearing was conducted in Pasco, Washington. The Union was represented by Alex Skalbania of Emmal, Skalbania & Vinnedge. The City was represented by Kevin Wesley of The Wesley Group. Neither party requested a court reporter, so the hearing was tape recorded by the Arbitrator. During the hearing, each party had an opportunity to make opening statements, submit documentary evidence, examine and cross-examine witnesses (who testified under oath), and argue the issues in dispute. The parties elected to make closing arguments in the form of posthearing briefs. Having now had a chance to consult with the other arbitration panel members, the Arbitrator has reached the determinations described herein.

II. APPLICABLE STATUTORY PROVISIONS

The Panel's authority arises out of RCW 41.56, which prescribes binding arbitration for public employers and uniformed personnel upon declaration by the PERC that an impasse in bargaining exists. Relevant provisions of the Washington statutes read as follows:

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

RCW 41.56.465. Uniformed personnel--Interest arbitration panel--Determinations--Factors to be considered.

(1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

.....

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

.....

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

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

(f) Such other factors, not confined to the factors under (a) through (e) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. . . .

(2) Subsection (1)(c) of this section may not be construed to authorize the panel to require the employer to pay, directly or indirectly, the increased employee contributions resulting from chapter 502, Laws of 1993 or chapter 517, Laws of 1993 as required under chapter 41.26 RCW. [1995 c 273 § 2; 1993 c 398 § 3.]

A. THE CONSTITUTIONAL/STATUTORY AUTHORITY OF THE EMPLOYER

Neither party has made any allegation that the proposals of the other party exceed or are otherwise affected by the constitutional and statutory authority of the City.

B. STIPULATIONS OF THE PARTIES

Because of the timing of post-hearing briefs, conflicts in the schedules of the panel members that delayed our ability to meet in executive session, and to accommodate the kind of consultative process the panel decided to follow, the parties agreed to waive the statutory time limit for this Arbitrator's Opinion and Award. Prior to this ruling, however, the parties were given notice of the proposed Award and an opportunity to respond. Further stipulations that relate to particular proposals are discussed in the sections of this decision that deal with those proposals.

C. COMPARABLE EMPLOYERS

One of the statutory criteria which this Panel must consider is the comparison of wages, hours and conditions of *“like personnel of public fire departments of similar size on the west coast of the United States.”* The statute requires the use of comparable employers within the state of Washington if an adequate number of in-state comparable employers exists. Each side has proposed using comparators from both Eastern and Western Washington State.

1. Agreed Comparators. The parties initially agreed that the following Washington cities are properly used as comparables for the purpose of RCW 45.56.465(c)(1):

Richland
Kennewick
Wenatchee
Walla Walla

The Union initially objected to the City’s proposed addition of Longview, but now concedes it can be an appropriate comparator.

2. Disputed Comparators. The parties disagree over other Washington jurisdictions that each side believes should be added to the foregoing list.

Union Proposal: Local 1433 proposes four other jurisdictions (Bremerton, Lynnwood, Puyallup and Spokane Fire District No. 9 (“Spokane FD 9”)) be added to the list of comparable employers. In selecting its list of proposed comparators, the Union relied primarily on the criteria of: (1) population, and (2) assessed valuation served. The Union used a comparative range of 140% above the City of Pasco to 70% below Pasco. Local 1433 included all Eastern Washington jurisdictions that fell within that range for *both* population served and assessed valuation. In order to get to what it feels is a reasonable number of comparators

(8), the Union chose an additional number of jurisdictions in Western Washington that also fell within the comparative range for both criteria. Local 1433 objects to Pullman and Mount Vernon as being too small in relation to Pasco. The Union also notes that Pullman has a significantly smaller fire department, has the lowest shift staffing level of any comparator, and has only one supervisory level between its line fire fighters and upper management.

City Proposal: Additional jurisdictions the City would have added to the list of agreed comparables are Mount Vernon and Pullman, Washington. In selecting its additional comparators, the City used the screening criteria of: (1) population served; (2) assessed valuation; and (3) taxable retail sales. The City's comparative range was 50% above the City of Pasco to 50% below Pasco for these screening criteria. The City objects to the inclusion of a fire district because that is a single purpose entity able to devote its revenues exclusively to firefighting. In the City's view, fire district are more typically compared to other fire districts, and cities compared to cities. The City also objects because Spokane FD 9 is not in Pasco's local labor market, and its salaries will tend to be higher because of its proximity to the Spokane metropolitan area. The Union's proposed inclusion of Bremerton, Lynnwood and Puyallup is objected to because of their size relative to Pasco and their proximity to the Seattle-Tacoma metropolitan area. The economies of these jurisdictions are driven by major industries; whereas Pasco's economy is largely agricultural. Housing costs are much lower for Pasco employees. In the City's view, adding these much larger jurisdictions would result in a flawed comparison.

DISCUSSION AND FINDINGS: The selection of comparable jurisdictions is a process fraught with imprecision. As one of my colleagues has accurately observed: "The interest arbitrator faces the problem of making 'apples to apples' comparisons on the basis of imperfect choices and sometimes incomplete data." City of Pasco and Pasco Police Officers Association, PERC Case. #10526-I-93-00225 (Wilkinson, 1994). Five comparable jurisdictions are generally considered the minimum number necessary to make valid comparisons. Having at least seven is preferable in this Arbitrator's view.

The governing statute does not define how “similar size” is to be determined. The most traditional range used by interest arbitrators for determining “similar size” has been the one used by the City, *i.e.*, minus 50% to 150% of Pasco’s size (also referred to as +/- 50%). As typically applied, this results in jurisdictions no less than half the size of Pasco, and no more than 50% larger. Although this screening parameter is the most prevalent one, arbitrators do broaden the range when necessary to obtain a sufficient number of comparables. *See, e.g., City of Pullman*, PERC No. 12399-I-96-296 (Gaunt, 1997)(upper limit of just under 200% used because of lack of options); *Thurston County and WSCCCE Council 2*, PERC No. 14083-I-98-00312 (Axon, 1999)(used range of -53% to 164% to find more than four comparables).

The most commonly utilized screening criteria are population and assessed valuation of the communities served. Additional criteria are sometimes included in the size analysis, but I believe principal use of population and assessed valuation of property protected is the better approach in this case.

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 many interest arbitration adjudications.

City of Camas and International Association of Firefighters Local 2444, PERC #16303-I-02-0380 (Wilkinson, 2003)(emphasis added in italics). In accord with

this prevailing practice, I have given primary weight to jurisdictions that fall within 50% to 150% of Pasco's 2005 Population and 2004 Assessed Valuation. The City offered data regarding property tax levies and sales tax revenue, which I did review, but did not find those comparisons to be persuasive reason to exclude any of the jurisdictions ultimately found appropriate.

In the instant case, the relative size of the agreed and proposed comparable jurisdictions is as follows:³

	Population (2005)	% of Pasco	Assessed Value (2004)	% of Pasco
Bremerton	34,580	78%	1,713,798,770	119%
Kennewick	60,410	137%	2,999,765,784	209%
Longview	35,430	80%	1,963,167,938	137%
Lynnwood	34,830	79%	3,254,305,328	226%
Mt. Vernon	28,210	64%	1,549,925,546	108%
Pullman	26,590	60%	787,985,172	55%
Puyallup	35,830	81%	2,700,951,680	188%
Richland	43,520	98%	2,915,838,063	203%
Spokane FD 9	40,000	91%	2,016,368,011	140%
Walla Walla	30,630	69%	1,204,977,978	84%
Wenatchee	29,320	66%	1,458,556,964	101%
Pasco	44,190		1,437,069,638	

³ With the exception of Spokane Fire District 9, for which only 2004 population data was provided, I have used the 2005 population data provided by the Union. Ex. U-29. Only 2004 data was available for assessed valuation. Exs. U-29, U-30, U-32 and C-4. For Spokane FD 9, two different figures for assessed valuation appear in the exhibits. I have used the larger number shown in U-31.

As can be seen from the foregoing chart, only Longview, Mount Vernon, Pullman, Spokane Fire District 9, Walla Walla and Wenatchee fall within the +/- 50% parameter for both population and assessed valuation. Because they are part of the Tri-Cities and Pasco's labor market, the parties have agreed that Kennewick and Richland should be used as comparators, even though the assessed valuation of property within those jurisdictions is more than double that of Pasco.

a. Lynnwood and Puyallup Are Too Much Larger To Be Appropriate Comparators.

Lynnwood and Puyallup have smaller populations than Pasco, but both exceed by a considerable amount the 150% screening range for assessed valuation. They are also located in western Washington and part of the Seattle-Tacoma major metropolitan area. Since the assessed valuation of these jurisdictions is so disproportionate; there are enough other jurisdictions that make better comparators; and the inclusion of Lynnwood and Puyallup would result in an undue number of western Washington comparators for a distinctly different locale; they have not been found appropriate comparator jurisdictions.

b. Bremerton, Mount Vernon, Spokane Fire District 9 and Pullman Are Appropriate Comparators.

The four remaining jurisdictions at issue are Bremerton, Mount Vernon, Spokane FD 9, and Pullman. Bremerton (proposed by the Union) and Mount Vernon (proposed by the City) are both located in western Washington. It seems

inappropriate to exclude Mount Vernon because that jurisdiction it is so close in population and assessed valuation to Wenatchee (an agreed comparator). Mount Vernon is also a jurisdiction that has historically been used by Pasco as a comparator for other City departments, including police and public, works, non-represented employees, the Mayor and City Council members.

Longview is now an agreed comparator, and Bremerton is very close to Longview in population size. The City objects to Bremerton because it falls within Seattle's metropolitan area, but Bremerton's assessed valuation is even closer to Pasco than Longview's. At a time when Pasco's population is growing, Bremerton has declined from 2004 to 2005. Compare Ex. C-3 with U-29. There is a recognized effect on wages and benefits that comes from falling within the labor market of a major metropolitan area like Seattle. The closer one gets to Seattle, the higher firefighter wages tend to become. Central Puget Sound jurisdictions should not be too numerous on a list of comparators for Pasco, but including Bremerton would not have that result. I have kept Bremerton's location in mind when judging where the salaries of Pasco fire fighters should be placed in relation to that jurisdiction, but am also mindful that the Tri-Cities is itself becoming an area of significant metropolitan size.

The City was likewise unpersuasive regarding the exclusion of Spokane FD 9. The City objects to comparison with a fire district, but that comparison is allowed by the governing statute and has been frequently made in interest arbitrations within this state. RCW 41.56.465.(c) used to mandate comparison

to “like employers.” It was amended in 1987 to allow comparison to “public fire departments.” Since then fire districts have frequently been included as comparators for Washington cities. *See, e.g., City of Bellevue and International Association of Firefighters, Local 1604*, PERC Case #6811-I-87-162 (Gaunt, 1988)(Fire districts used as proposed comparators by both sides); *City of Redmond and International Association of Firefighters, Local 2829*, PERC Case #17577-I-03-0406 (Krebs, 2004)(City’s proposed comparables included fire districts). The argument that comparison is inappropriate because fire districts are funded from a dedicated source, whereas cities with fire departments must allocate their funds among competing priorities has not generally proven a persuasive basis for exclusion.

The Employer also objects to the use or over-use of fire districts as comparators because they are funded from a single dedicated source, whereas cities with fire departments must allocate their funds among their various competing services. *I know of only one Washington fire department award that refused to consider fire districts: City of Centralia* , PERC No. 11866-I-95-253 (Lumbley, 1997). Eliminating fire districts from consideration in this case is not a realistic option. It would eliminate around half the viable comparators for a reason that is no better than one could advance for eliminating the other half.

City of Camas and International Association of Firefighters Local 2444, PERC #16303-I-02-0380 (Wilkinson, 2003)(emphasis added in italics).

The Spokane FD 9 encompasses single family and multi-family residential dwellings, agricultural areas, several schools, a college campus, commercial property, and major State highways. Within that area, the District provides fire

prevention, fire suppression, and emergency medical services. The District uses volunteer personnel in this endeavor, but it has forty-four (44) career personnel so the size of its bargaining unit is pretty close to Pasco's. Ex. U-48. Having a population 98% that of Pasco and assessed valuation 140% of Pasco, this proposed comparator clearly falls within the +/- 50% screening parameter. I have therefore included Spokane FD 9 on the list of appropriate comparators.

Pullman is located in Eastern Washington, close enough to Pasco to be considered part of Pasco's local labor market. For that reason, Pullman is a jurisdiction used by the City as a comparator for other City departments, including police and public, works, non-represented employees, the Mayor and City Council members. Pullman certainly falls at the low end of the screening range, but still comes within 50% of Pasco's population and assessed valuation. Its inclusion helps to balance out the considerable larger assessed valuation of Kennewick and Richland, and results in a list of comparators that are more predominantly Eastern Washington jurisdictions. With all these considerations in mind, I find its inclusion appropriate.

3. The Selected Comparator Jurisdictions.

For the foregoing reasons, all of the City's proposed additions to the agreed comparators, and two of those proposed by the Union are found appropriate pursuant to RCW 41.56.465(c)(ii) and form a sufficient group of nine comparable jurisdictions. In alphabetical order, those jurisdictions are:

Bremerton
 Kennewick
 Longview
 Mount Vernon
 Pullman
 Richland
 Spokane FD 9
 Walla Walla
 Wenatchee

As demonstrated by the chart below, Pasco ranks second in population, and the population average for the other comparables falls within 80% of Pasco.

	2005 Population	% of Pasco	Rank
Bremerton	34,580	78%	6
Kennewick	60,410	137%	1
Longview	35,430	80%	5
Mount Vernon	28,210	64%	9
Pullman	26,590	60%	10
Richland	43,520	98%	3
Spokane FD 9	40,000	91%	4
Walla Walla	30,630	69%	7
Wenatchee	29,320	66%	8
Average	36,521		
Pasco	44,190		2

Pasco ranks 8th in assessed valuation, and the average for the other comparables falls within 130% of Pasco's valuation.

	Assessed Valuation	% of Pasco	Rank
Bremerton	1,713,798,770	119%	5
Kennewick	2,999,765,784	209%	1
Longview	1,963,167,938	137%	4
Mt. Vernon	1,549,925,546	108%	6
Pullman	787,985,172	55%	10
Richland	2,915,838,063	203%	2
Spokane FD 9	2,016,368,011	140%	3
Walla Walla	1,204,977,978	84%	9
Wenatchee	1,458,556,964	101%	7
Average	1,845,598,358		
Pasco	1,437,069,638		8

The fire fighter bargaining units size at these other jurisdictions are also within a reasonable range of comparable size. None exceeds +/- 50% of Pasco.

	Bargaining Unit	% of Pasco	Rank
Bremerton	52	108%	3
Kennewick	72	150%	1
Longview	41	85%	6
Mt. Vernon	32	67%	8
Pullman	29	60%	10
Richland	53	110%	2

Spokane FD 9	40	83%	7
Walla Walla	47	98%	5
Wenatchee	31	65%	9
Pasco	48		4

Three of the jurisdictions have a larger fire department bargaining unit, and six have smaller units. Exs. C-18, U-33, U-48 and U-49. A final consideration in favor of this list is the fact that it provides a 2:1 ratio of Eastern Washington comparators (Kennewick, Richland, Pullman, Walla Walla, Wenatchee and Spokane FD 9) versus Western Washington (Longview, Mount Vernon and Bremerton).

D. COST OF LIVING CHANGES

RCW 41.56.465(d) requires consideration of “the average consumer prices for goods and services, commonly known as the cost of living.” This consumer price index is published by the United States Department of Labor, Bureau of Labor Statistics (BLS). The cost of living index used by both parties in their proposals has been the B/C Western Cities CPI-U, October to October. There has been no contention that the CPI should be determined by reference to any other index.

The percentage increase in the CPI-U in recent years has been as follows:

<u>Year Ending (October)</u>	<u>CPI-U Increase</u>
2000	3.3
2001	2.8
2002	1.1
2003	1.9
2004	3.2
2005	3.7

Wage increases received by member of the bargaining unit during the years 2000 through 2003 exceeded changes in the cost of living. Exs. U-14, U-15.

E. INTERIM CHANGES

Another specified statutory consideration is interim changes during the pendency of this proceeding. One that impacted staffing was the hiring of three new firefighters in the Fall of 2005. At the time of the arbitration hearing, these new hires had not yet completed their initial training at the fire academy, but were expected to have done so and be available to work regular shifts by the time of this decision.

F. TRADITIONAL FACTORS

RCW 41.56.465(f) directs the Panel to consider "such other factors . . . which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment." A variety of factors are typically considered by interest arbitrators. Among these are the fiscal condition of an

employer, changes in workload, bargaining unit turnover, internal parity with other city bargaining units, and conditions in the local labor market.

1. Ability to Pay. The City does not claim an inability to pay the wage increases sought by Local 1433. It argues instead that available general funds have to be allocated among competing priorities. The City has been growing. In fact, its rank among Washington cities has risen from 26th to 19th in the last five years. Pasco's population recently surpassed that of Richland for the first time since the 1940's. Recent annexations, new businesses and private investments have increased the City's revenue sources and tax base. As demonstrated by an A3 bond rating assigned by Moody's Investors Service in 2002, the City's financial position is quite sound.

2. Workload Changes. The Union does not claim that the bargaining unit's workload surpasses that of the comparables in any significant respect. Data provided by the City for just *its* proposed comparables indicates that for the years 2001 through 2004, total calls for service in Pasco fell below the average for those jurisdictions. Exs. C-12 thru C-16.

3. Bargaining Unit Turnover. The extent to which bargaining unit employees are leaving to take other jobs is another factor routinely considered by interest arbitrators. Lack of turnover can be indicative of a compensation package that is sufficiently competitive to attract and retain qualified employees. In the last ten years only five fire fighters have left the Department. One of those departures was a retirement. Ex. U-10, p.2. Human Resource Director Lynne

Jackson testified that the City has had no trouble recruiting for entry level positions.

4. Internal Parity. Settlements reached by an employer with its other bargaining units is another a factor commonly considered under RCW 41.56.465(-f). The reasons for this have been well described by Arbitrator Alan Krebs:

From the standpoint of both the employer and the union, the settlements reached by the employer with other bargaining units are significant. While those settlements are affected by the peculiar situation of each individual bargaining unit, still there is an understandable desire by the employer to achieve consistency. From the union's standpoint, it wants to do at least as well for its membership as the other employer's unions have already done. At the bargaining table, the settlements reached by the employer with the other unions are likely to be brought up by one side or the other. Thus, it is a factor which should be considered by the arbitrator.

City of Kennewick and IAFF Local 1296, AAA No. 75 300 00225 96 (Krebs, 1997).

The weight given to internal parity will vary depending on the issue involved and the economic situation. During difficult economic times when it becomes necessary to ask all employees to make sacrifices, internal parity will often be given more weight. "Obviously, it does nothing for the morale of one employee segment to accept, for instance, a wage freeze, and then see another group receive a whopping increase, no matter how deserving the latter group is of that increase."

City of Redmond and Redmond Police Association, PERC #16791-5-02-00387 (Wilkinson 2004).

At times like the present one, when an employer is financially able to pay for wage and benefit increases, internal parity considerations become more

problematic because settlements are often affected by concerns unique to each bargaining unit. One unit may give a higher priority to achieving step adjustments in a wage schedule than to gaining a higher across the board increase. For another unit, the reverse may be true. One unit may accept a lower wage increase because that increase maintains the bargaining unit's wages at a level competitive with the wages in other jurisdictions for similar jobs. Another unit may find the same percentage increase unacceptable because it does not result in a competitive wage for their particular job classifications. Different bargaining units will make different choices regarding the extent to which they will accept smaller wage increases in return for lower insurance co-payments. Whether a bargaining unit is eligible for interest arbitration also plays a role in the decisions that occur at the bargaining table.

The City of Pasco has three other represented bargaining units. A unit of commissioned police officers Department is represented by the Pasco Police Officers Association (PPOA). A unit of non-uniformed personnel in the Pasco Police Department is also represented by the PPOA. A unit of employees in the Public Works Department and Parks and Recreation Department is represented by the International Union of Operating Engineers Local 280 (IUOE). Only the unit of sworn police officers is eligible for interest arbitration like the fire fighters.

5. Local Labor Market. Anyone who has negotiated collective bargaining agreements - as this Arbitrator has in my prior life as an advocate - is well aware of the impact that local labor markets can have on the setting of wage rates and

benefits. The consideration of a subject jurisdiction's local labor market is thus fully sanctioned by RCW 41.56.465(f). The City of Pasco regards Richland, Kennewick, Walla Walla and Pullman as included within its local labor market. All of these jurisdictions have been included on the list of appropriate comparators.

III. THE RESOLUTION OF OUTSTANDING ISSUES

The interpretation and weighing of the various factors set forth in RCW 41.56.465 is left to the discretion of the selected interest arbitrator. In exercising that discretion, I am mindful of the fact that interest arbitration is an extension of the collective bargaining process. City of Bellevue, Decision 3085-A (PECB, 1989); City of Bellevue v. International Association of Fire Fighters, Local 1604, 119 Wn. 2d 373 (1992). With the reality of the bargaining table in mind, this Arbitrator tries to frame the type of award it seems likely the parties would have ultimately reached through good faith negotiations if the Union's right to strike had been unfettered. I adopt as well the general principle that the party seeking to change an existing contract provision or status quo should bear the burden of persuasion.

My basic approach is to first identify current practice. A proposed change is then evaluated in terms of how significant a departure it represents from the status quo and to what extent it is supported by the practice of comparable jurisdictions. The more significant the change and the less support for it in the

practice of comparables, the more compelling the reasons must be for adopting that proposal. While I recognize that during collective bargaining, parties often seek to improve existing procedures, benefits, etc., if the arguments offered in support of a change do not clearly outweigh arguments in favor of the status quo, the status quo should be maintained.

A. TIME OFF APPROVALS (ARTICLE 10.4)

The City utilizes three shifts of firefighters to man its three fire stations. Firefighters work twenty-four hour shifts, and fifteen fire fighters have been scheduled to work each shift. If no absences occur, six of the shift personnel are assigned to work at Station 81 (Headquarters); five are assigned to Station 82 (the Airport Station) and the remaining four work at Station 83, which is located in western Pasco. The City has decided it can operate sufficiently if the number of bargaining unit members drops no lower than eleven (11) on any one shift. When staffing falls to this “minimum manning” level, Station 81 is reduced to four fire fighters, five remain at Station 82, and Station 83 is left with only two fire fighters. If the staffing falls below eleven, the City calls back fire fighters to work on overtime. To better ensure that each shift has at least four fire fighters on duty at each station, the City hired three (3) new fire fighters in the Fall of 2005..

Each year firefighters accrue time off through vacation leave, holiday leave and Kelly days. The scheduling of this time off is subject to what is known as the "Rule of Three." The rule arises from Article 10.4 of the current CBA which reads:

Approval of any requests for time off from a scheduled work shift is subject to the discretion of the Fire Chief or his designee. Up to three (3) men will be given time off at any given time from any shift for Kelly Day, Vacation Leave, Holiday Leave or any combination thereof; provided, this "three men off rule" shall not include any employee on sudden Sick Leave, Disability Leave, Bereavement Leave, Civil Leave, Jury Service or required appearance at legal proceedings due to a work related incident, or an approved leave of absence without pay.

Article 10.4 allows up to three fire fighters to be scheduled off per shift, so the City has a cushion of just one more absence (of the type excluded from the Rule of Three) before it incurs overtime costs to ensure sufficient manning for a shift.

1. The Rule of Three.

Union Proposal: The Union seeks to change the Rule of Three to a Rule of Four, and thus allow up to four fire fighters per shift to take scheduled Kelly Days, vacation or holiday leave. The Union points out that the Rule of Three has not changed in twenty-five years while the number of bargaining unit members assigned to each shift has more than doubled, rising from seven to fifteen. Since new hires will increase shift staffing to sixteen by the end of 2005, allowing up to four bargaining unit members to use their Kelly Days, vacation or holiday leave per shift will still leave the same cushion of one that currently exists. With additional personnel, there are more accrued leave hours that need to be accommodated or will be lost by bargaining unit members. Allowing up to four fire fighters to schedule time off per shift will serve that purpose, and is consistent with the practice of those proposed comparators that staff shifts with fifteen or more bargaining unit members.

City Proposal: The City seeks to maintain the status quo, contending that the Union's proposal is not justified. The current contract language allows up to

20% of the Department's shift strength to be scheduled off under the Rule of Three. If the Union's proposal is adopted, that percentage would rise to 25%. The proposed change would also undermine the purpose of hiring three new fire fighters in 2005. The City would have to hire an additional three fire fighters to maintain the current level of shift strength. The City's \$150,000 investment in these three new positions represents the cost of the Union's proposal, for which there is no real justification.

DISCUSSION AND FINDINGS: As the party seeking a change to the status quo, the burden of persuasion rests upon the Union. That burden was satisfied for a number of reasons. There is no dispute that the maximum number of firefighters allowed to take scheduled time off per shift has not changed for at least twenty years. During that time, the Department's staffing has increased dramatically and is now more than double what it was when the Rule of Three was first instituted. With the addition three new firefighters, the Department will be increasing the number of firefighters scheduled each shift from fifteen to sixteen. That increased shift staffing means the Department will still have a cushion of one, even if the Rule of Three is changed to a Rule of Four.

As Chief Garcia acknowledged during his testimony, a larger bargaining unit means more firefighters with accrued leave to schedule off. The Chief expressed his opinion that the three new hires in 2005 would not make scheduling time off more difficult, but common sense suggests that it will. The leave hours being accrued by those new hires will add to the total leave that members of the bargaining unit have the right to elect as time off each year. Having enough

opportunities to schedule accrued leave is a very legitimate concern for the bargaining unit because some accrued leave does not carry over to the next year or keep accruing once a specified maximum is reached. Testimony of Jeff Eliason.

A Rule of Four is supported by the practice of comparator jurisdictions. A majority of the comparables (Bremerton, Kennewick, Mount Vernon, Richland and Wenatchee) allow up to four firefighters per shift to be off at the same time on Kelly Days, vacation leave and compensatory time. Ex. U-94. All the comparators with a bargaining unit as large as Pasco's do so, as well as all the departments with shift manning of at least fifteen firefighters. Exs. C-18, U-94.

I have considered the City's concern about the impact a Rule of Four would have on its desire to ensure at least four firefighters are present at each of the stations per shift. If only twelve firefighters end up working a shift, the Department feels a minimum of four firefighters must be kept at Station 81 and five firefighters kept out at the Tri-Cities Airport (Station 82). That leaves only three left to work at Station 83, assuming no other firefighter happens to be ill or on disability leave that same shift.

If the Union's proposal were adopted, the City contends it would need to hire another three firefighters at a cost of roughly \$150,000 to ensure at least four firefighters were working at each station. I am not convinced that would be the only possible course of action. The Rule of Four sets a maximum number possible, it does not represent the reality of how many firefighters are actually off

each shift. Chief Garcia testified, for example, that 50% of the time, only one or two firefighters were absent from a shift. On occasions when shift strength falls below thirteen, the City always has the option of calling other firefighters in to work. Whether through overtime or new hires, I have assumed that going to a Rule of Four will cause some increased cost, but that cost is merited. The extent to which the Department has grown during so many years when the Rule of Three has been in effect, plus the practice of comparables with departments at least as large as Pasco convinces me the Union's proposal should be adopted.

2. Fire Chief Discretion.

The first sentence of Article 10.4 states: "Approval of any request for time off from a scheduled work shift is subject to the discretion of the Fire Chief or his designee." The second sentence then reads: "Up to three (3) employees *will* be given time off at any given time from any shift for Kelly day, vacation leave, holiday leave or any combination thereof, (Emphasis added by italics.)

City Proposal/Argument: The City proposes to change the word "will" in the second sentence to "may." The City argues this is just a grammatical change to render the second sentence consistent with the description of the Chief's discretion set forth in the first sentence.

Union Proposal: Local 1433 seeks retention of the work "will." The Union fears the proposed "grammatical" change could undermine the absolute right its members have had to schedule time off under the Rule of Three so long as three firefighters are not already scheduled off on the same shift.

DISCUSSION AND FINDINGS: At the hearing, Lynne Jackson testified that the City's proposal was not intended to change the established practice pursuant to which time off requests are always approved so long as three firefighters are not already scheduled off on the same shift. The change the City seeks might have become acceptable to the Union if it had been accompanied by a Letter of Agreement documenting Ms. Jackson's assertion. The City did not offer any such written assurance, and without it I find that granting the proposed wording change in conjunction with the change to a Rule of Four could provide room for later disagreement. I have heard far too many contract interpretation disputes over language that once had an established meaning and is then read differently by individuals who later arrive on the scene and were not involved in prior negotiations. The City's proposed change, although purportedly grammatical, could later be used to claim the Chief has discretion to deny time off even when the Rule of Four is satisfied. The proposed wording change is therefore not adopted.

B. VACATION/HOLIDAY SCHEDULING(ARTICLE 11.2)

The City was the only party to propose a change to Article 11.2. That proposed change was a housekeeping change only necessary should the City's proposed change to Article 10.4 be adopted. Since that Article 10.4 proposal was

not adopted, the proposed change to Article 11.2 becomes unnecessary and is not awarded.

C. HOLIDAY CASH OUT (ARTICLE 13.2)

Pasco fire fighters currently earn 132 hours of holiday pay each year. None of these hours carry-over to the next year. Pursuant to Article 13.2 of the CBA, sixty-six (66) of the holiday pay hours are cashed out by the City at the employee's adjusted hourly rate of pay. Fire fighters have the option of either cashing out the remaining sixty-six (66) hours or scheduling those hours as time off.

City Proposal: The City seeks a change to Article 13.2 that would provide holiday pay only in the form of cash, not as time off. The City contends its firefighters already receive a generous amount of time off, given the scheduling practice of 24 hour shifts, generous vacation leave, Kelly days and the available holiday hours. The more the available time off, the greater the likelihood that the City will incur overtime expenses because of the need to call back firefighters when too many absences occur on a particular shift. All but two members of the bargaining unit opt on a consistent basis to cash out all of their holiday hours. The City's proposal would thus simply codify existing practice while helping to reduce the City's overtime liability for callbacks.

Union Proposal: The Union objects to any change that would further restrict their members flexibility regarding the use of holiday hours. Instead, Local 1433 seeks a change that would allow its members to cash out or take as time off the *full* 132 hours of holiday pay earned each year. With only three firefighters allowed to schedule time off per shift, the Union contends its members need the flexibility sought by its proposal.

DISCUSSION AND FINDINGS: Both sides are seeking changes to Article 13.2, but neither has established a compelling reason for doing so. The City

contends it just seeks to mandate the prevailing practice evidenced in the fact that most bargaining unit members elect to cash in all their holiday hours. However, a significant part of the established practice is the fact that bargaining unit members have some discretion. In most instances they may prefer to get additional pay rather than time off, but having sixty-six (66) holiday hours that can be taken as time off provides firefighters with additional flexibility they would lose under the City's proposal. As noted by Jeff Eliason, some of the bargaining unit members are LEOFF II and do not get as large a sick leave benefit as the LEOFF I members. After sick leave is exhausted, the availability of some holiday hours that can be taken as time off provides a way to help cover absences if a catastrophic illness occurs. The fact that so few firefighters *usually* take their holiday hours off shows that maintaining the status quo will have a minimal impact on Department operations. The City's proposal is therefore rejected.

The Union has also failed to make a compelling case for its proposed change, which would clearly have a detrimental impact on Department scheduling. The Union wants firefighters to have the option of taking all their 132 annual holiday hours off. Each firefighter would therefore be eligible to take off an additional sixty-six (66) hours a year. The more hours that can potentially be taken off, the more risk the City will have to incur overtime costs to ensure minimum manning. That is especially true now that the Union's proposal for a Rule of Four is being adopted. The Union's proposal is therefore rejected.

D. WAGES AND DEFERRED COMPENSATION (ARTICLE 26)

The parties' last labor contract expired at the end of 2003. That was a two year contract (2002-2003) that provided the City's firefighters with 2% base wage increases on January 1st and July 1st each of those years. The predecessor contract was also for a two year period (2000-2001) which also provided wage increases twice a year. Firefighters received a 3% increase on January 1st and 2% on July 1st each of those contract years. The bargaining unit has not had any across the board wage increases since July 1, 2003. This interest arbitration did not proceed to hearing until the Fall of 2005, so the parties are now in agreement that the successor contract should cover three years, 2004 through 2006.

1. BASE WAGE INCREASES (2004-2006)

Union Proposal: Effective January 1, 2004, the Union proposes the wage rates for firefighters be increased by five percent (5%). It seeks another five percent (5%) increase effective January 1, 2005. For 2006, the Union proposes wage rates be increased by 100% of the increase in the CPI-U (B/C Western Cities), October 2004 to October 2005, with a minimum increase of three percent (3%). The Union believes all increases in compensation should be applied to all bargaining unit members who were employed by the City on the effective date of each particular increase.

The Union seeks an award that will help the overall compensation of firefighters catch up with that at comparator jurisdictions. As its benchmark firefighter, the Local has used a top step firefighter who is in the 11th year of service, has an AA degree and fully participates in any available matching deferred compensation program. Local 1433 has also used a total hourly compensation analysis in order to take into account the number of hours that an individual must work each year in order to earn his/her annual compensation. For purposes of comparison, the Union has calculated net annual hours worked by taking the number of hours that the benchmark firefighter is scheduled to work in a year, and subtracting the number of annual vacation and holiday hours the

firefighter is allowed to take off with pay. To arrive at total annual compensation, the Union has added longevity, holiday pay, education pay for an AA degree, an EMT premium, annual matching deferred compensation and annual base salary. A net hourly wage has been derived by dividing total annual compensation by annual hours worked.

The Union contends comparative data shows members of its bargaining unit are significantly behind their comparators in terms of total compensation received. That is true for almost every type of compensation, particularly base wages and deferred compensation. In order to catch up to the average amount of total hourly compensation received by the Union's proposed comparators in 2004, Pasco firefighters would need to receive a 13.2% increase effective January 1, 2004. Even if the City's proposed comparators are factored into the analysis, a 10.7% would be needed to reach the comparator average.

The proposals being made by the parties with respect to the 2004 base wage increase are not that far apart. If all of the 2004 base wage increases being proposed by the City were moved forward to January 1, 2004 instead of being spread between January 1st and July 1st, the City's proposal is only 1% less than that of the Union. The City is growing at a rapid rate and is doing very well financially. It acknowledges sufficient funds are available to cover the Union's proposed increases. The City can afford to provide its firefighters with the increase in compensation necessary to bring them in line with their peers at the comparable jurisdictions. The Union's proposal should therefore be awarded.

City Proposal: Effective January 1, 2004, the City proposes firefighter wage rates be increased by three percent (3%), and increased by another one percent (1%) on July 1, 2004. For 2005, the City proposed a CPI increase of 100% of the October CPI (B/C Western Cities) with a minimum of three percent (3%). Because it was originally proposing just a two year contract, the City initially had no proposal for 2006. Recognizing the reality that a three year contract will be awarded, in its post-hearing brief, the City has proposed the same CPI formula used in 2005 be applied to establish the applicable wage increase for 2006.

The City contends its proposed increase would exceed the CPI increase for the relevant time frame and place Pasco firefighters at a very comparable level when grouped with appropriate comparators. For its comparison, the City utilized only the firefighter base wage inclusive of longevity. It did not factor in other types of compensation, believing that results in an apples to oranges comparison. The City contends its 2004 proposal would place top step firefighters 3.4% above the comparator average; 3.08% above the average for a firefighter with five years experience, and 2.8% above the comparator average for a ten year firefighter. For 2005, the City's proposal would place a top step firefighter 4.19% above the

comparator average; 3.2% above the average for a firefighter with five years experience, and 3.58% above the comparator average for a ten year firefighter. Even if all the comparables proposed by either side are used, the City believes its 2005 proposal would exceed the comparator average by 1% and Pasco would rank 5th highest among all the comparators.

The City does not claim an inability to pay, but Pasco is the poorest of the Tri-Cities. It does not have the high tech employers that Kennewick and Richland do; Pasco's economy is more agricultural. The City needs to catch up with infrastructure demands, and that requires the City Council be prudent and prioritize its resources. There is a considerable cost difference between the Union's wage proposal and the City's offered increase. The Union's failure to even cost out its proposals shows its complete failure to consider the impact of those proposals on the City. Interest arbitration is an extension of the bargaining process, and the Union is seeking increases it could never have obtained through bi-lateral negotiations. The City's wage proposals should therefore be found appropriate and adopted.

DISCUSSION AND FINDINGS:

2004 Fire Fighter Wage Increase

Before any meaningful comparisons can be made for purposes of determining an appropriate wage increase, a reasonable methodology must be decided upon. The parties have chosen quite different approaches. When a particular methodology has historically used by the parties in prior negotiations or is adopted by mutual agreement, I have no problem utilizing that methodology to formulate an award. The comparison interest arbitrators end up making in individual cases is highly dependent on these types of agreements, as well as the available data presented at a hearing. Where, like here, there is a disagreement, I agree with the Union that a net hourly compensation analysis is likely to provide a more reasonable comparison. A net hourly wage comparison factors in

consideration of the amount of paid leave received by a bargaining unit, which is a valued form of compensation..

RCW 41.56.465 mandates a comparison of not just wages, but rather “wages, *hours*, and conditions of employment.” (Emphasis added in italics.) It is a bargaining table reality that wage/benefit packages are routinely evaluated in terms of how many hours must be worked to gain them. Washington interest arbitrators recognize the interrelationship between hours worked and compensation and therefore often utilize a hourly wage analysis. See, e.g., City of Redmond and International Association of Fire Fighters, Local 2829, PERC Case #17577-I-03-0406 (Krebs, 2004); City of Kelso and Kelso Police Officers Association, PERC Case #15664-I-01-00357 (Lankford, 2001). “Given identical compensation levels, most people would rather have the job with fewer hours and more time off.” City of Redmond and Redmond Police Association, PERC Case #16791-I-02-00387 (Wilkinson 2004).

The average tenure for the bargaining unit is over fourteen (14) years, and a majority of bargaining unit members have tenure in excess of ten years, so I have adopted the Union’s proposed benchmark firefighter in the 11th year of service. Ex. U-10. Focusing just on monthly base wage with longevity, as the City does, ignores the fact that a significant amount of compensation may also be provided through other types of payments, such as EMT pay, holiday pay, education incentive, and matching deferred compensation.

All members of the bargaining unit are required to have an EMT certification so clearly that is a form of compensation Pasco firefighters would receive if

working in another jurisdiction that provides an EMT premium. The Union wants any education premium for having an AA degree factored into the analysis. Not every Pasco firefighter would qualify for this premium, but I have chosen to include it so the City will also get credit for a significant form of compensation that the Union has overlooked. Pasco does not offer an AA degree premium, but to any bargaining unit member “who demonstrates fluency in the Spanish language,” the City pays a bilingual incentive premium of 2% computed on the individual employee’s base hourly rate of pay. Ex. U-14, Article 44. Just as with pay for an AA degree, qualifying for this wage premium is solely within the control of an individual firefighter. If the Union want to include AA degree pay in the net hourly compensation analysis, then the bilingual pay offered by Pasco should be included as well.

For reasons that will be discussed later in this decision, the Union’s proposal to institute a matching deferred compensation program is being rejected. That does not mean deferred compensation provided by other jurisdictions should be excluded when comparing the total compensation package available to comparator firefighters. When a jurisdiction matches voluntary contributions up to a specified percentage, the dollar amount of matching funds has a real economic value and supplements a firefighters annual compensation, just as longevity pay does. I have therefore included the amount of any deferred matching compensation provided by comparators.

The following chart illustrates the total annual compensation available for the benchmark firefighter in comparable jurisdictions for 2004 versus that for the

Pasco benchmark firefighter as of the end of 2003. The chart also shows how the Pasco total annual wage would change if either the City or Union's proposals were adopted. Because 3% of the City's proposal would be retroactive to January 1, 2004 and another 1% is delayed until July 1, 2004, an average increase of 3.5% has been used for the City's 2004 offer. Pasco's bilingual pay is included in the "education incentive" column as is pay in the comparator jurisdictions for having an AA degree. The numbers shown are drawn primarily from Ex. U-67, but an addition error for Kennewick in that document has been corrected.

2004 Firefighter Total Annual Wage							
City	Base Wage	Longevity Pay	Holiday Pay	EMT	Education Incentive	Deferred Comp	Annual Wage
Bremerton	61,246.62	1531.17	1126.43	0	0	2143.63	66047.85
Kennewick	56,316.00	0	1912.24	0	1126.32	0	59354.56
Longview	58,608.00	0	0	0	720.00	2051.28	61379.28
Mt. Vernon	53,475.02	1200.00	0	120.00	600.00	0	55395.02
Pullman	49,440.00	0	1901.53	494.00	0	0	51835.53
Richland	54,972.00	0	3073.51	0	2748.60	2198.88	62992.99
Spokane FD 9	54,201.74	2168.07	1674.46	0	1200.00	0	59244.27
Walla Walla	50,400.36	540.00	0	504.00	720.00	1512.01	53676.37
Wenatchee	52,892.88	528.93	2285.30	0	0	1057.86	56764.97
Average	54,616.96						58521.20
Pasco (2003)	53573.85	1071.48	1356.30	0	1071.48	0	57073.10
City (+3.5%)	55448.93	1108.98	1404.04	0	1108.98	0	59070.93
Union (+5%)	56252.54	1125.00	1424.12	0	1125.00	0	59926.76

If the analysis stopped here, the City's 2004 proposal would provide Pasco firefighters with a total annual wage package that falls above the average for the comparables. However, as I have noted earlier the analysis is deceiving when paid leave and work hours are not factored in. After that is done, a comparison of the net hourly wage for 2004 reveals:

2004 FF Net Hourly Wage						
	Annual Wage	Scheduled Annual Hours	Vacation Hours	Holiday Hours	Net Hours	Net Hourly Wage
Bremerton	66047.85	2609.88	246	88	2275.88	29.02
Kennewick	59354.56	2598.60	216	0	2382.60	24.91
Longview	61379.28	2655.00	192	120	2343.00	26.20
Mt. Vernon	55395.02	2503.00	240	144	2119.00	26.14
Pullman	51835.53	2600.00	192	0	2408.00	21.53
Richland	62992.99	2504.00	195	24	2285.00	27.57
Spokane FD9	59244.27	2632.00	174	0	2458.00	24.10
Walla Walla	53676.37	2606.00	228	108	2270.00	23.65
Wenatchee	56764.97	2499.64	192	0	2307.64	24.60
Average	58521.20					25.30
Pasco (2003)	57073.10	2607.00	180	66	2361.00	24.17
" vs Average						-4.46%
City (2004)	59082.08	2607	180	66	2361	25.02
" vs Average						-1.10%
Union (2004)	59926.76	2607	180	66	2361	25.38
" vs Average						+ 0.32%

The City's offer would leave Pasco's benchmark firefighter 1.1% below the comparator average. An award of the Union's requested 5% increase would put the benchmark Pasco firefighter's net hourly wage (\$25.38) just above the average for the other comparables (\$25.30). Four of the comparables (Bremerton, Longview, Mount Vernon, and Richland) would have net hourly wages above Pasco, and five comparables would fall below. All of the Western Washington comparables would have a higher wage rate, but Pasco would rank above five of the six Eastern Washington comparables. A consideration weighing in favor of awarding a 5% increase for 2004 instead of the City's offer is the fact that the bargaining unit has been waiting over two years and a half years to receive any across-the-board increase. During that intervening time, the City has had use of the money it would otherwise have paid out.

2005 Fire Fighter Wage Increase

For 2005, the City has offered a CPI increase with a 3% minimum. The actual increase reported by BLS during the October 2003 to October 2004 time period is now known to have been 3.2%. If that CPI increase is added in 2005 to the 5% wage increase awarded Pasco firefighters for 2004, and is compared to wage increases known to be occurring for the comparables in 2005, the result is as follows:

2005 Firefighter Net Hourly Wage

City	Annual Wage	Scheduled Annual Hrs	Vacation Hours	Holiday Hours	Net Hours	Net Hourly Wage
Bremerton	67368.80	2609.88	246	88	2275.88	29.60
Kennewick	60519.12	2598.60	216	0	2382.60	25.40
Longview	62895.76	2655.00	192	120	2343.00	26.84
Mt. Vernon	56999.27	2503.00	240	144	2119.00	26.90
Pullman	53071.53	2600.00	192	0	2408.00	22.04
Richland	64708.12	2504.00	195	24	2285.00	28.32
Spokane FD9	60766.25	2632.00	174	0	2458.00	22.72
Walla Walla	55493.30	2606.00	228	108	2270.00	24.45
Wenatchee	58235.92	2499.64	192		2307.64	25.24
Average	60006.45					25.95
Pasco (+3.2%)	61844.42	2607.00	180	66	2361.00	26.19
" vs Average						+ .96%

At the time of the hearing, Bremerton and Kennewick were negotiating new labor contracts and their wage rates for 2005 were unsettled. Known across the board increases used for the other comparables were: Longview (+2.5%), Mount Vernon (+3%), Pullman (+2.5%), Richland (+3%),¹ Spokane FD 9 (+2.7%), Walla Walla (+3.5%) and Wenatchee (+2.7%). Ex. U-70. The average increase for the

¹ Richland wages increase 2% on December 9, 2004 and another 2% on June 27, 2005 so an average of 3% has been used.

comparables with known 2005 increases was 2.84%. Given that fact and the extent to which the CPI increased during 2004, the figures used in the chart for Bremerton and Kennewick assumes those bargaining units will receive at least a 2% increase for 2005.

If the Bremerton and Kennewick increases for 2005 are no greater than 2%, an award to Pasco firefighters of 3.2% (which equates to the City's CPI offer) would put the Pasco net hourly wage not quite 1% above the average for the comparables. In reality, the Bremerton and Kennewick increases are likely to be greater than 2% so the average shown for the comparables probably understates what the average will be once the Bremerton and Kennewick contracts are settled.

Since the City's offer would keep the benchmark Pasco wage right around the comparator average, it is the proposal I have adopted for 2005.

2006 Fire Fighter Wage Increase

A CPI adjustment is typically used for the third year of labor contracts, and is mandated here by the fact that there is no good data on which to base any other adjustment. The 2006 wage rates of almost all the comparators had not been settled when this hearing ended. Ex. U-70. As reported by BLS, the CPI-U (B/C Western Cities) increased from October 2004 to October 2005 by 3.7%. The only comparators known to have finalized increases for 2006 are Mount Vernon (3%) and Spokane FD 9 (3.3%). Since the City and Union are both proposing a CPI

adjustment, the wage increase awarded for 2006 will be the equivalent of the change in the CPI, *i.e.* 3.7%.

2. OFFICER DIFFERENTIALS

Pasco lieutenants serve as Station supervisors and currently receive an 11.4% pay differential over the wage of a top step firefighter. Captains serve as Shift Supervisors. The pay differential they receive is 18.7% greater than the top step firefighter wage. Both sides agree that these officer ranks need a greater increase for 2004 than is provided to regular firefighters because of wage compression that has occurred over time. They disagree over how much greater that pay increase should be.

Union Proposal/Arguments: Effective January 1, 2004, the Union proposes the wage rates for lieutenants be increased by six percent (6%). For captains, it seeks a seven percent (7%) increase. The same percentage increases are sought for 2005. For 2006, the Union proposes the same CPI adjustment that firefighters would receive.

The Union contends that lieutenants and captains are particularly underpaid compared to their comparators. The current lieutenant differential of 11.4% is 3% below the 14.4% average differential that exists amongst Local 1433's proposed set of comparators. When the City's proposed comparators are factored in, the average differential for the comparators is still 2.3% higher than at Pasco. The current captain differential of 18.7% in Pasco is 8.4% below the 27.1% average differential that exists amongst Local 1433's proposed set of comparators. When the City's proposed comparators are factored in, the average differential for the comparators is still 4.6% higher than at Pasco. It is clear from the City's own proposal that the City agrees the differential for lieutenants and captains need to be increased.

City Proposal/Arguments: Effective January 1, 2004, the City proposes lieutenants and captains receive the same three percent (3%) base wage increase it proposes for firefighters. Effective July 1, 2004, the City proposes to increase the lieutenant wage rate by two percent (2%), one percent more than the firefighter increase effective that date. At that same midyear point, the City proposes to increase the captain wage rate by three percent (3%), two percent more than the firefighter increase effective that date. For 2005 and 2006, the City proposes the same CPI adjusted base wage increase offered to its firefighters.

DISCUSSION AND FINDINGS: Both sides agree that because of wage compression, the pay differential earned by Pasco lieutenants and captains should be increased. They also used the same method of adjustment. Both sides propose giving lieutenants one percent (1%) more than the 2004 increase that they were proposing for Pasco firefighters. Both sides proposed giving captains two percent (2%) more than the 2004 increase proposed for firefighters. The difference in both instances is the City's proposal would not provide the extra percentage until halfway through 2004. Under the City's proposal, supervising officers would receive only the same increase awarded to firefighters on January 1, 2004. I see little reason not to make an appropriate adjustment retroactive to January 1, 2004 since a wage compression problem clearly existed by then.

1. Lieutenant Wage Increases (2004-2006)

Data from the comparables demonstrates that the pay differential received by Pasco lieutenants falls below most of the officers with a similar level of responsibility in the comparable jurisdictions.

Station Supervisor Differential	
	% over firefighter
Bremerton	15%
Kennewick	14%
Longview	12.5%
Mt. Vernon	10%
Pullman	13%
Richland	12%
Spokane FD9	16%
Walla Walla	18.3%
Wenatchee	10%
Average	13.42%
Pasco (2003)	11.4%

Only two of the comparables (Mount Vernon and Wenatchee) have a wage differential lower than Pasco's. Ex. U-68.

Using the data available from the hearing, which is not perfect for this purpose, I have done a rough calculation of the impact if the 2004 wage increase for Pasco lieutenants was set at six percent (6%), one percent more than I will be awarding to the Pasco firefighters. That would appear to result in a net hourly base wage of \$28.48. When the elements of 2004 compensation that would be impacted by the shift supervisor pay differential are adjusted by the applicable differential for each jurisdiction, I come up with the following net hourly rates for officers with the responsibility of station supervisor:

Station Supervisor	
2004	Net Hourly Wage
Bremerton	\$33.37
Kennewick	\$28.33
Longview	\$29.43
Mt. Vernon	\$28.67
Pullman	\$24.30
Richland	\$30.73
Spokane FD9	\$27.88
Walla Walla	\$27.83
Wenatchee	\$27.06
Average	\$28.62
Pasco (+6%)	\$28.48

A six percent increase for Pasco Lieutenants in 2004 would leave them slightly below the average for the comparable jurisdictions, but would rank above five of the nine comparators, including all comparators in the City's local labor market except Richland. A 6% wage increase for 2004 would also increase the lieutenant differential in Pasco from 11.4% to 12.46% over a top step firefighter.

By my calculation, if Pasco lieutenants receive the same 3.2% base wage increase as firefighters for 2005, their hourly wage would appear to remain close to the comparator average. The following chart makes the same assumptions described earlier regarding the minimum base wage increase likely to be negotiated in Bremerton and Kennewick for 2005.

Station Supervisor	
2005	Net Hourly Wage
Bremerton	\$34.04
Kennewick	\$28.89
Longview	\$30.16
Mt. Vernon	\$29.50
Pullman	\$24.88
Richland	\$31.57
Spokane FD9	\$28.60
Walla Walla	\$28.78
Wenatchee	\$27.76
Average	\$29.35
Pasco (+3.2%)	\$29.39

A 3.2% increase will be awarded for 2005 because it keeps lieutenants in the same relative position vis-a-vis the comparable jurisdictions as after the 2004 increase. They would still rank ahead of all the local labor market comparators except Richland. There is insufficient data upon which to base any reliable comparisons for 2006, so for that year I will also award the same base wage increase that firefighters will be receiving (3.7%).

2. Captain Wage Increases (2004-2006)

Data from the comparables demonstrates that the pay differential received by Pasco captains falls below officers with a similar level of responsibility in all but one (Mount Vernon) of the comparable jurisdictions. The following chart excludes Pullman which does not have a comparable rank. Ex. U-69

Shift Supervisor Differential	
2004	% over firefighter
Bremerton	20%
Kennewick	32%
Longview	19%
Mt. Vernon	15%
Richland	22%
Spokane FD9	27.5%
Walla Walla	24.8%
Wenatchee	20%
Average	22.54%
Pasco (2003)	18.7%

Following a similar process to that previously shown for lieutenants, I have done a rough calculation of the net hourly wage impact if the 2004 wage increase for Pasco captains was set at seven percent (7%), two percent more than Pasco firefighters will be receiving. That is the same additional wage increase both sides utilized in their proposals for captains, although they would have given the increase at different times.

Shift Supervisor	
2004	Net Hourly Wage
Bremerton	\$34.80
Kennewick	\$32.59
Longview	\$31.12
Mt. Vernon	\$29.93
Richland	\$33.23
Spokane FD9	\$30.52
Walla Walla	\$29.32
Wenatchee	\$29.42
Average	\$31.37
Pasco (+7%)	\$30.59

With the seven percent (7%) increase sought by the Union retroactive to January 1, 2004, Pasco captains would receive a net hourly rate that still falls below the average for the comparables, but would rank 5th highest among all those comparables. Only Kennewick and Richland, along with two Western Washington jurisdictions (Bremerton and Longview) would rank higher. A seven percent (7%) increase for 2004 would raise the differential in Pasco to almost 21% (up from 18.7%). I find these to be reasonable adjustments, so a seven percent (7%) wage increase for captains effective January 1, 2004 is awarded.

If Pasco captains receive the same 3.2% base wage increase as firefighters and lieutenants are going to receive for 2005, as best I can calculate their net hourly wage would fall approximately 2% below the comparators average, but

would maintain the differential versus a top step Pasco firefighter at 20.96%. The resulting net hourly wage would still exceed four of the eight comparable jurisdictions that have this level of supervision (Mount Vernon, Spokane FD 9, Walla Walla, and Wenatchee).

Shift Supervisor	
2005	Net Hourly Wage
Bremerton	\$35.52
Kennewick	\$33.38
Longview	\$31.89
Mt. Vernon	\$30.80
Richland	\$34.28
Spokane FD9	\$31.39
Walla Walla	\$30.32
Wenatchee	\$30.28
Average	\$32.23
Pasco (+3.2%)	\$31.57

A 3.2% increase for 2005 places Pasco captains in a reasonable position vis-a-vis the comparable jurisdictions, and will therefore be awarded. As noted in the case of lieutenants, there is insufficient data upon which to base any reliable comparisons for 2006, so for that year I will also award the same base wage increase that firefighters and lieutenants will be awarded (3.7%).

The base wage increases being awarded to all the bargaining unit positions are merited to keep members of the bargaining unit in a reasonable position

versus their peers in the selected comparator jurisdictions and are well within the City's ability to pay. They are applicable to all present and former bargaining unit members who were employed during the period of time the increases cover. While I recognize that the City has many competing priorities, the evidence was persuasive that the awarded increases merit inclusion among the City's financial priorities.

3. DEFERRED COMPENSATION

Regular full and part time City employees are eligible to voluntarily participate in a deferred compensation plan the City maintains: the International City Manager's Association (ICMA) Internal Revenue Code (IRC) Section 457 Plan. The City does not match employee contributions to this Section 457 Plan.

Union Proposal: The Union proposes a new article be added to the labor contract that would read:

In accordance with the City's plan document and limitations of federal law, regular full and part time employees are eligible to voluntarily participate in the International City Manager's Association (ICMA) Internal Revenue Code (IRC) Section 457 Plan. The City shall match employee contributions in deferred compensation to four percent (4%) of the top step Firefighters' base wage.

The Union contends that provision of a matching deferred compensation benefit is one way to achieve enough of an increase in firefighters' overall compensation that will bring them into closer proximity to the comparator wage rates. Six of the Local's proposed comparators and seven of the eleven total proposed comparators provide a matching benefit. The average amount of the matching deferred compensation benefit received by the comparator firefighters exceeds 2% of a firefighter's base wage.

City Proposal/Arguments: The City contends the LEOFF retirement system is the appropriate venue for City contributions towards its firefighters' retirement. The Union has not shown that retirement system is flawed or inadequate to meet the needs of its members. The bargaining unit already has the option of making voluntary non-matching contributions to the existing Section 457 plan. That is available to all City employees, but no other employee classifications receive any deferred compensation match by the City. Adoption of the Union's proposal would thus create a harmful internal inequity. The Union's proposal has been advanced in past negotiations and rejected by the City each time because the City Council is not interested in instituting a matching plan on a preferential basis for firefighters. If the Union's proposal were adopted, the estimated cost is \$341,000 over the term of the CBA. The Arbitrator should reject that request because no compelling reasons support it.

DISCUSSION AND FINDINGS: On this issue, the burden of persuasion rests with the Union, and that burden was not met. The interest arbitration statute entitles the Local's bargaining unit members to competitive wages and benefits but does not give them the right to dictate the form in which monetary compensation is received. Five of the nine comparators (Bremerton, Longview, Richland, Walla Walla and Wenatchee) do provide some kind of matching program. Exs. U-67, U-76, C-39. Those jurisdictions may have chosen to offer a matching program because they were already doing so, or planned to institute one for their other employees. The City is resisting the Union's proposal because other City employees do not receive any matching and the City Council does not want to institute a new preferential benefit for the firefighters. In this instance, I find the City's internal parity argument should prevail as a legitimate reason not to change the status quo. The deferred compensation received by firefighters through a matching program in other jurisdictions has been factored into the net hourly wage analysis that was used to determine across the board increases for Pasco's

firefighters, but their proposal for a matching deferred compensation plan is not adopted.

E. HEALTH INSURANCE (ARTICLE 29)

The City currently provides members of the bargaining unit with medical, dental and vision insurance through a self-insurance program. Bargaining unit members (except LEOFF I employees without dependents) currently pay an amount towards their medical and dental insurance premiums that is equal to one percent (1%) of the top step firefighter base monthly wage. This co-payment was instituted on December 31, 2001, at the very end of the 2000-2001 Collective Bargaining Agreement. The insurance is a composite rate plan whose monthly premium cost is \$613.65. Of that amount, the City currently pays \$569.00 and its firefighters pay \$44.65.

1. Insurance Co-payment (Article 29.2)

City Proposal: The City seeks to change the co-payment formula from a percentage of the top step firefighter base monthly wage to 10% of the monthly premium. Although not stated in its proposal, the City says it intended this contribution would be capped at no more than 2% of an employee's base wage. The primary reason for seeking this change is to achieve internal parity and bring the firefighter contribution rate into line with that of most City employees.

A majority of both represented and non-represented City employees are currently contributing 10% of the monthly health insurance premium. Insurance impacts all City employees in an equal fashion, and the City has an internal business interest in equalizing the amount of each employee's contribution. This issue of internal comparability should be given considerable weight. Internal equity is such a strong goal for the City that in its negotiations with the PPOA and Operating Engineers, the City is proposing the same 10% contribution, even

though that represents a reduction from what those groups are currently paying.

The practice of comparator jurisdictions is quite mixed. Some have cost sharing and/or will be seeking greater cost sharing in the future. In several jurisdictions, firefighters have accepted lower wage increases to avoid insurance cost sharing or have moved to a plan with lesser benefits. The City of Pasco has effectively managed its plan so that it is affordable for the City and its employees. The City seeks an award that could reasonably be expected to be achieved in negotiations.

Union Proposal: Local 1433 is proposing retention of current contract language. Because the bargaining unit's co-payment is based upon a percentage of the base monthly wage, the 2004 contribution will already increase. If the 2004 base wage increases by 5%, the monthly premium contribution by firefighters will become \$46.88, which exceeds the average contribution for all the parties' proposed comparators. Even if one just considers those jurisdictions where firefighters make any co-payment, the contribution of a Pasco benchmark firefighter (\$46.88) would still be close to that comparator average (\$51.46). The City already pays substantially less for health insurance than is the case with most of the selected comparators. In some of those jurisdictions, firefighters still do not pay any part of their health insurance premiums.

The wage-based contribution formula currently adopted in the CBA helps to ensure the applicable co-payment is an amount that cannot be unfairly manipulated by the City. Because the City has chosen to be self-insured, the amount that premiums increase each year is somewhat within the City's control. Pasco does contract with an outside entity to perform some of the work of administering its plan, but the City retains more control over the plan than is the case with an employer that is not self-insured. Under the City's proposal, the bargaining unit's co-payment would be a percentage of whatever insurance premium the City decides to establish. Local 1433 has had trouble in the past getting information regarding the manner in which the City's health insurance plan is being administered, and would find it difficult to accurately monitor the propriety of the City's premium decisions. Another reason why the Local's members should not be required to pay more towards their insurance premiums than they already do is the fact that they do not have the choice of opting for a lower cost insurance plan. Under RCW 41.04.180, the City is arguably required to offer multiple health insurance options but does not do so. The City has not shown any compelling reason to disturb a co-payment formula so recently adopted by the parties. The revised co-payment formula that the City is proposing should be rejected.

DISCUSSION AND FINDINGS: As the party seeking a change in the status quo, the City is the party bearing the burden of persuasion. Internal equity is not a compelling enough reason to adopt the proposed change. The current insurance co-payment was adopted in late 2001, not very many years ago. As the Union correctly points out, the firefighter co-payment is not fixed; it will already increase in 2004 because the bargaining unit's co-payment is based upon a percentage of the base monthly wage. With the 5% wage award firefighters are receiving for 2004, their monthly insurance contribution will become \$46.88.

The following chart shows how medical insurance premium costs are allocated in the selected comparator jurisdictions. Exs. U-79, C-43.

2004 Monthly Medical Insurance Premium Costs			
	Employer Payment	Employee Payment	Employee share as % of total premium
Bremerton	1003.57	10.50	1.00%
Kennewick	698.51	0.00	0%
Longview	578.29	86.45	13.00%
Mt. Vernon	556.80	0.00	0%
Pullman	1035.15	0.00	0%
Richland	654.42	45.81	6.5%
Spokane FD 9	1132.23	0.00	0%
Walla Walla	961.69	0.00	0%
Wenatchee	968.74	66.41	6.4%
Average	843.27	23.24	2.7%
Pasco	569.00	46.88	7.61%

The City's proposal is clearly not supported by the practice in comparable jurisdictions. A majority of those comparators still pay the full monthly insurance premium. Firefighters in only two of the comparators (Longview and Wenatchee) pay a larger monthly dollar amount than the Pasco firefighters. None of the jurisdictions in the City's local labor market pay as much as Pasco firefighters will in 2004. The City has likewise not established that its proposal is necessary to rein in skyrocketing health insurance costs. The City's premium cost is the second lowest of all the comparator jurisdictions.

I have considered the fact that Pasco firefighters pay a smaller amount each month towards the health care premium than any other group of Pasco employees. Ex. C-40. I do not find that a compelling enough reason to adopt the City's proposal. One very important goal served by collective bargaining is to allow individual bargaining units to seek a wage and benefit package that best fits the interests and needs of the bargaining unit members. As noted earlier in this decision, different bargaining units will agree to different tradeoffs. The Police and Operating Engineers bargaining units may well decide to accept a 10% co-payment but that is a far different decision when the City's proposal represents a reduction in one's contribution (as it would be for those bargaining units) rather than an increase as it is for Pasco's firefighters. For all of the foregoing reasons, the City's proposed change to Article 29.2 is not adopted.

2. Emergency Room Visits (Article 29.4)

In Article 29.4, the City has agreed to provide bargaining unit members and their dependents with certain routine and care services up to a maximum of \$200 per enrollee per calendar year. For an Emergency Room (ER) visit, there is currently no cost incurred by bargaining unit members.

City Proposal: The City seeks a change to Article 29.4 that would impose a \$50 co-payment when bargaining unit members or their dependents visit a hospital emergency room. The co-payment would be waived if the individual was admitted to the hospital within seventy-two (72) hours of an emergency room visit for the same diagnosis.

Union Proposal: Local 1433 is proposing retention of current contract language regarding Article 29.4. There is currently no ER visit co-payment required of the only other interest arbitration eligible bargaining unit, i.e., the City's commissioned police officers. The City has not established that the imposition of such a charge is necessary to bring the City's overall health insurance costs in line with what comparators are doing or to make up for any above-average costs that the City is incurring. The City has not shown any compelling reason for its proposed change. Its ER visit proposal should therefore be rejected.

DISCUSSION AND FINDINGS: For essentially the same reasons already discussed in connection with Article 29.2, the City has not made a compelling case to change the status quo. Of the nine comparators, I could find only two (Longview and Mount Vernon) that impose an Emergency Room charge. None of the jurisdictions in the City's local labor market do so. The City has not established that the imposition of such a charge is necessary to bring any Emergency Room over-utilization under control. In the face of the foregoing considerations, the City's desire for internal parity is not a persuasive reason to adopt its proposal.

IV. THE INTEREST ARBITRATION AWARD

With due regard for the applicable statutory factors described in RCW 41.56.465 and the City's financial situation, the Arbitrator makes the following award:

Article 10.4 (Time Off Approvals): Article 10.4 shall be changed to read (changes noted in italics):

Approval of any requests for time off from a scheduled work shift is subject to the discretion of the Fire Chief or his designee. Up to *four (4)* men will be given time off at any given time from any shift for Kelly day, vacation Leave, holiday leave or any combination thereof; provided, this "*four (4) employees off rule*" shall not include any employee on sudden sick leave, disability Leave, bereavement leave, civil Leave, jury service of required appearance at legal proceedings due to a work related incident, or an approved leave of absence without pay.

Article 11.2 (Holiday Scheduling): retain current contract language.

Article 13.2 (Holiday Cash Out): retain current contract language.

Article 18.8 (On The Job Injury From Outside Employer): suspended pending resolution of PERC Case No. 19556-U-05-0461).

Article 26 (Wages): revised to read

Section 26.1 - 2004. The wage rates under this Agreement shall increase retroactive to January 1, 2004 by five percent (5%) for firefighters and paramedics, six percent (6%) for lieutenants, and seven percent (7%) for captains.

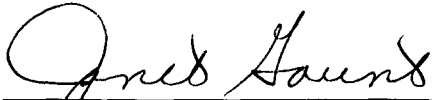
Section 26.2 - 2005. The wage rates under this Agreement shall increase retroactive to January 1, 2005 by 3.2% for all bargaining unit positions.

Section 26.3 - 2006. The wage rates under this Agreement shall increase retroactive to January 1, 2006 by 3.7% for all bargaining unit positions.

Article 29.2 (Medical and Dental Insurance): retain current contract language.

Article 29.4 (Wellness Care): retain current contract language.

Dated this 20th day of January, 2006 by



Janet L. Gaunt, Neutral Chairperson

IN THE MATTER OF THE ARBITRATION
BETWEEN

RECEIVED
OLYMPIA, WA
OCT 24 2006
PUBLIC EMPLOYMENT
RELATIONS COMMISSION

INTERNATIONAL ASSOCIATION OF)
FIREFIGHTERS, LOCAL 1433)
)
and)
)
CITY OF PASCO)
_____)

INTEREST ARBITRATION
SUPPLEMENTAL
AWARD

PERC Case No. 18872-I-04-0439

ARBITRATION PANEL

Janet L. Gaunt, Neutral Chairperson
Kelly L. Fox, IAFF Partisan Member
Richard G. Bisnett, City Partisan Member

October 23, 2006

For the Union:

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WITNESSES

1. Lynne Jackson, Human Resources Manager, City of Pasco
2. William Weber, Firefighter, City of Pasco and Lead Negotiator for Local 1433

EXHIBITS

City

1. City Proposal re Article 18.8 and summary of comparables
2. 2004 Total Sick Leave Hours by Department
3. 2004 Average Sick Leave Hours per Employee by Department
4. 2005 Total Sick Leave Hours by Department
5. 2005 Average Sick Leave Hours per Employee by Department
6. 2006 Total Sick Leave Hours by Department
7. 2006 Average Sick Leave Hours per Employee by Department
8. Total Sick Leave Hours by Department (2004, 2005 & 2006)
9. Average Sick Leave Hours per Employee by Department (2004, 2005 & 2006)
10. 2004 Sick Leave Hours by Pay Period by Department
11. 2005 Sick Leave Hours by Pay Period by Department
12. 2006 Sick Leave Hours by Pay Period by Department
13. Firefighters with Reported Outside Employment

Union

1. Local 1433 Mediation Package Proposal (6/15/04)
2. Local 1433 Offer re Short Term Disability through WSCFF
3. Local 1433 Proposal re Outside Employment (8/18/06)
4. Union Position Statement

I. BACKGROUND

This decision supplements an earlier interest arbitration award issued last January 20, 2006 ("Initial Award"), which resolved six out of seven issues that had been certified for interest arbitration by the Washington Public Employment Relations Commission (PERC). Interest arbitration for the seventh issue involving a sick leave limitation was suspended on July 6, 2005 by ruling of PERC's Executive Director. PERC Case No. 19556-U-05-4961. On June 2, 2006, a PERC Examiner ruled that the City's sick leave proposal involved a mandatory subject of bargaining and could be submitted to interest arbitration. PECB Decision 9337. The Union elected not to appeal that ruling and instead agreed to proceed to hearing before this Arbitration Panel.

On September 6, 2006, an arbitration hearing was conducted in Pasco, Washington. The Union was represented by Alex Skalbania of Emmal, Skalbania & Vinnedge. The City was represented by Kevin Wesley of The Wesley Group. Neither party requested a court reporter. During the hearing, each party had an opportunity to make opening statements, submit documentary evidence, examine and cross-examine witnesses (who testified under oath), and argue the issues in dispute. The parties elected to make closing arguments in the form of posthearing briefs, the last of which was received on September 25, 2006. This decision now completes the interest arbitration proceedings regarding the parties' 2004-2006 Collective Bargaining Agreement.

II. THE COMPARABLE EMPLOYERS

Pursuant to RCW 41.56.465(c)(ii), the prior Award found the following nine jurisdictions were appropriate comparators: (1) Bremerton, (2) Kennewick, (3) Longview, (4) Mount Vernon, (5) Pullman, (6) Richland, (7) Spokane Fire District No. 9, (8) Walla Walla, and (9) Wenatchee.

III. SICK LEAVE UTILIZATION (PROPOSED ARTICLE 18.8)

Local 1433's bargaining unit members are currently able to utilize accrued sick leave regardless of the circumstances that result in illness or injury. Members of the bargaining unit work a twenty-four (24) hour shift and then have forty-eight (48) hours off. The City's firefighters work an average of fifty (50) hours every seven days compared to most other City employees, who work forty (40) hours in the same work period. Because they have more full days off in the course of a normal workweek, the frequency of outside employment is much higher in the Fire Department. Over 31% of the City's firefighters have reported having outside employment. Ex. C-13.¹

Since October 1, 2003, firefighters have been required to give the City prior notice before commencing outside employment. Additional restrictions are set forth in Article 9 of the predecessor labor contract. Ex. U-14.* There is no

¹ Exhibits introduced at the supplemental arbitration hearing are referenced by number as Union ("Ex. U-___") or City ("Ex. C-___"). Exhibits introduced at the earlier arbitration hearing are designated with an asterisk.

restriction on using sick leave to cover absences due to injury suffered while working for another employer.

The City of Pasco has three other represented bargaining units. A unit of commissioned police officers is represented by the Pasco Police Officers Association (PPOA). A unit of non-uniformed personnel in the Pasco Police Department is also represented by the PPOA. A unit of employees in the Public Works Department and Parks and Recreation Department is represented by the International Union of Operating Engineers Local 280 (IUOE). All of these bargaining unit have accepted a prohibition against using sick leave to cover absences due to injury suffered while working for another employer.

City Proposal: The City proposes the addition of contract language that would be numbered Article 18.8. The text would read as follows:

Use of Sick Leave for On the Job Injury from Outside Employer.

If an employee is injured at/because of/from employment other than the City of Pasco, there shall be no use of accrued sick leave or access to the sick leave buy back program for this injury. Nor will there be accrual of sick leave, vacation or holidays while off injured because of another employer. Benefits and job protections as afforded by FMLA will be extended an additional twelve weeks beyond that which is given by FMLA (total of 24 weeks).

Ex. C-1. The City's proposed restriction would apply to any activity for which a firefighter was paid, no matter how small the task or payment.

The City contends it has a legitimate business interest in controlling access to City granted benefits and a fiduciary responsibility to its taxpayers. In the City's view, it is only reasonable to provide sick leave for injuries arising from City employment or personal circumstances that are unrelated to outside employment.

City firefighters engage in outside employment to a much greater extent than do other City employees. Data collected for 2004, 2005, and YTD 2006 indicates that the sick leave usage of firefighters is also higher than in other City departments. When a firefighter is unable to report to work, there is a greater

likelihood that the City will incur overtime costs to ensure minimum manning requirements are met.

The City's proposal would achieve internal parity with all other City employees. The firefighter bargaining unit is the only one without a restriction on the use of sick leave for injury caused by outside employment. As an inducement for accepting such a restriction, the City has offered a twelve week increase in the FMLA benefits/job protection that a firefighter would receive. That is a benefit not received by the other City bargaining units.

The City's proposed restriction is a modest one that is supported by the practice in a number of comparator jurisdictions. Sick leave would remain available to bargaining unit members even if they injure themselves as the result of engaging in high risk recreational activities. The City incurred significant cost increases as a result of the initial Arbitration Award allowing a fourth firefighter off per shift, and was prejudiced in its case presentation by the Union's untimely and erroneous filing of an Unfair Labor Practice charge regarding the City's sick leave proposal. The Union's conduct prevented the sick leave issue from being resolved in the initial arbitration. The Union should not be rewarded for this conduct. Instead, the City's proposal sick leave restriction should be adopted

Union Proposal: Local 1433 proposes continuation of text appearing in the prior labor contract. Article 9 of the 2002-2003 CBA addresses "Outside Employment" and reads as follows:

Employees holding outside jobs, including self-employment, shall not: (1) advertise on City property; (2) involve the use of City equipment or supplies; (3) infringe on their ability to do their job; (4) result in a conflict of interest. In cases where the City feels a problem exists, then the City must notify the employee and the Union of the perceived conflict in writing within 48 hours of notification. The Local may then file a formal grievance as allowed in Article 22 if this issue could not be resolved prior to the time line allowed in Article 22. The affected employee would be able to continue their outside employment during pendency of the grievance procedure. The parties agree that an expeditious resolution of the grievance is desirable for all parties involved. Therefore, the Local may initiate this type of grievance at the Step 2 level of Article 22.

Beginning on October 1, 2003, employees will notify the City at least 48 hours before commencing new outside employment. Notification will be by means of a form agreed to by the parties and provided by the City.

Ex. U-3.

The Union contends the City's proposal represents a significant change in the "no fault" nature of the current sick leave benefit. It unfairly singles out one particular off duty activity while ignoring other activities that are arguably more undesirable and/or high risk in nature. Bargaining unit members have a justifiable concern about a proposal that infringes upon their privacy rights during off duty time.

The City has provided no evidence of an actual adverse impact on the City's finances. Sick leave usage by Local 1433 bargaining unit members does sometimes cause the City to incur overtime costs, but there is no evidence that those costs have been attributable to injuries arising from outside employment instead of work for the City.

The City's proposal is not supported by the practice of comparable jurisdictions. Seven out of nine of the selected comparators do not impose the sort of restrictions upon sick leave usage that the City seeks. The City's internal parity argument merits little or no weight because the work schedules of other City employees are so different and result in so little outside employment. The City either unilaterally imposed its limitation or did so through bargaining with labor organizations that did not have much incentive to resist the sick leave restriction.

Local 1433 has already agreed to contract provisions that provide the City with reasonable protections against negative consequences from off duty employment. The current contract language is sufficient to protect the City's legitimate concerns, especially since there are occasions when outside employment actually benefits the City financially. The City's proposal should be rejected, and current contract language should be maintained.

DISCUSSION AND FINDINGS: As noted in the initial Award issued last January 2006, the approach of this Arbitrator is to evaluate a proposal in terms of how significant a departure it represents from the status quo and the extent to which it is supported by the practice of comparable jurisdictions. The more significant the change and the less support for it in the practice of comparables, the more compelling the reasons must be for adopting that proposal. As the party

seeking to change current contract language, the burden of persuasion rests in this case on the City.

The City's proposal represents a significant change in a benefit that firefighters have been accruing each year. Until now, accrued sick leave has provided income replacement when City firefighters have become ill or injured no matter how that occurred. That broad availability of sick leave is consistent with the prevailing practice of those jurisdictions found to be appropriate comparables for purposes of the analysis that RCW 41.56.465 requires. Of the nine selected comparables, only two (Kennewick and Pullman) have been shown to have the type of sick leave restriction for outside employment that the City seeks in this case. Testimony of Lynne Jackson; Exs. U-38*, U-65.* The vast majority do not.² Given the significance of the change the City seeks, and its inconsistency with the practice of the comparable jurisdictions, the City needed to provide a compelling reason to adopt its proposed change. The evidence presented fell far short of satisfying that burden.

The City contends the frequency with which its firefighters engage in outside employment creates a financial liability the City reasonably seeks to reduce. It is undisputed that members of the Local's bargaining unit do engage in outside

² The City of Wenatchee has restrictive language in an employee handbook, but the parties disagree over whether that restriction would apply to the Wenatchee firefighters, whose collective bargaining agreement is silent regarding any restriction. Even if one credits the City's claim that the restriction is applicable to Wenatchee firefighters, only one-third of the comparator jurisdictions preclude the use of sick leave for injuries incurred during outside employment.

employment to a greater extent than generally occurs with the City's other personnel. That reality creates the possibility, but not necessarily the actuality, that injuries incurred during the course of outside employment could cause City firefighters to miss one or more of their scheduled shifts. The City's proposal would not change that possibility; it would simply cause the injured firefighter to incur a wage reduction. There is no evidence this potential penalty would cause members of the bargaining unit to forego outside employment. It would only serve to offset somewhat any cost the City incurs for a firefighter's replacement.

The City introduced numerous exhibits showing that for the years 2004, 2005 and much of 2006, City firefighters as a group used more leave than Pasco employees in other departments. Exs. C-2 through C-12. Because firefighters have greater outside employment and greater sick leave usage, the City believes it can be presumed that increased sick leave usage is necessarily resulting from the occurrence of outside employment. That assumption is not automatically justified. With the exception of firefighter William Weber, who testified at the hearing, there is no evidence of the nature of outside jobs that City firefighters are working. Some outside employment may be very incidental in nature and/or pose less risk of injury than if a firefighter were spending the time instead on physically dangerous recreational activities, which sick leave would still cover. The testimony of Weber, the Union's lead negotiator, evidenced that very fact. Weber missed three months of work after suffering an injury while riding his motorcycle recreationally. The hours that Weber works as a paramedic instructor at a local

community college would seem to pose less risk of injury than if Weber were spending those hours instead back on his motorcycle. This example demonstrates why one cannot assume that the time firefighters are spending on second jobs is necessarily increasing the risk they will become injured and miss their scheduled shifts for the City.

What is striking in this case is the lack of evidence that the City has actually incurred any increased cost from firefighter injuries incurred during outside employment. During her testimony, Human Resources Manager Lynne Jackson acknowledged that she knew of no instance when an injury incurred during outside employment had caused a City firefighter to use accrued sick leave. The City's proposal only covers "injuries" from employment elsewhere. The City did not establish that evidence of the impact of such injuries on the City of Pasco could never be obtained. Ms. Jackson testified that the City receives reports from the Washington Department of Labor & Industries (L&I) that would evidence if a Pasco firefighter suffered a reportable injury while working for another employer. There would thus be situations where the City could accumulate cause and effect evidence to support its proposal. To date, the financial burden potentially incurred by the City is entirely speculative and unsupported by any known examples.

The only known reality is the fact that the City has financially benefitted, in at least one instance and perhaps more, from the fact that a firefighter had outside employment. The City has an Administrative Order No. 37 which requires City

employees to turn over all time loss payments they receive from the State of Washington when they miss work because of on-the-job injuries while working for the City. Most members of the Union's bargaining unit are LEOFF II employees, who have a disability benefit provided by statute when on-the-job injuries occur. Firefighters receive a time loss benefit from the L&I, which varies by firefighter but amounts to roughly 60% of a firefighter's normal income. The City pays 20% of the remaining lost income, and the firefighter can use accrued leave to cover the remaining 20%.

When calculating the amount of L&I payment, the State of Washington utilizes an employee's income from all jobs where the same social security number is used, regardless of which job an employee was performing when he/she was injured. The L&I check a Pasco firefighter turns over to the City can thus be larger sometimes because of that individual's outside employment. A larger check from the State reduces the amount of money the City then pays its injured firefighter. Ms. Jackson acknowledged that during the period of 2004-2006, the fact that an employee had an outside job benefitted the City in this fashion when an injury occurred while performing work for the City. A negotiated sick leave benefit should not be diminished on the basis of sheer speculation that the City might someday incur some financial detriment; not when the only known reality to date has been a reduction in costs the City would have otherwise incurred.

I have considered the City's argument that its proposal should be adopted to achieve internal parity. Settlements reached by an employer with its other

bargaining units is a factor commonly considered under RCW 41.56.465(f). As noted in the Initial Award, however, considerations of internal parity carry more weight during periods of economic hardship when all of a city's workforce is being asked to make financial sacrifices. In a situation like the present one, where the City does not claim an inability to pay, internal parity becomes a less compelling justification to diminish an existing benefit, especially when the change sought would have a more detrimental impact on the firefighters bargaining unit.

All unrepresented City employees are prohibited from using sick leave to cover absences caused by injuries resulting from outside employment. So are employees in the City's other collective bargaining units. These other employees work eight or ten hour shifts, four or five days each week. Firefighters work more hours per shift but fewer shifts per week, which leaves them better able to work second jobs. Because the incidence of outside employment is very low in other departments, the City's sick leave restriction has little impact on those employees.³

Different bargaining units make different concessions depending upon concerns unique to each unit and the inducement an employer might offer to accept a particular concession. When few members of a bargaining units will be detrimentally impacted, the unit will more readily accept a sick leave restriction for outside employment, especially if an inducement is offered that the bargaining unit

³ The City did not establish that there was a higher incidence of outside employment by other City employees until it precluded the use of sick leave for injuries suffered while working elsewhere.

perceives as outweighing any negative impact. The City believes its offer to extend the duration of FMLA benefits should be enough of an inducement in this case, but the firefighter bargaining unit has disagreed. It is hard to find a compelling reason to force the City's proposal upon that bargaining unit when less restrictive measures have not yet been tried.

Many Local 1433 members pay the premium for a disability insurance plan offered by the Washington State Council of Firefighters (WSCFF). After an absence of thirty (30) days duration, that insurance provides a benefit that Pasco firefighters could use to buy back sick leave previously used for absences caused by outside employment. During the parties' negotiations, the Union expressed a willingness to adopt contract language that would require bargaining unit members, who receive the WSCFF disability benefit, to use it to buy back sick leave used after injury on a second job. The parties actually reached tentative agreement at one point as part of a mediated package proposal. That package proposal was ultimately rejected by the bargaining unit, so the tentative agreement regarding WSCFF disability benefits did not become final. It is an approach, however, that the City was free to adopt as a proposal for this interest arbitration. Instead, the City chose a more punitive restriction, one that I find insufficient justification to adopt. A more reasonable approach at this point is continuation of the current contract language in Article 9 regarding outside employment.

In arriving at this ruling, I have been mindful of the delay caused by the Union's belated filing of an unfair labor practice charge that prevented resolution

of the sick leave issue during the initial interest arbitration process. The City contends it was prejudiced in its case presentation by having a separate hearing on just one issue. I have therefore considered whether the outcome of this issue would have been any different if it had been resolved at the same time as all the other certified issues. Because the evidence is so weak as to any actual detrimental impact from the outside employment of City firefighters, I am quite convinced that the outcome would have been the same last January as it is now.

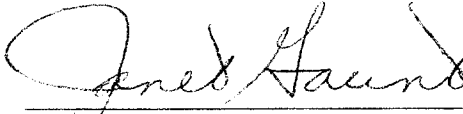
IV. SUPPLEMENTAL INTEREST ARBITRATION AWARD

With due regard for the applicable statutory factors described in RCW 41.56.465, the Arbitrator makes the following award:

Article 9 (Outside Employment): retain current contract language pursuant to the Union's proposal.

Article 18.8 (Sick Leave Utilization): The City's proposed restriction is rejected.

Dated this 23rd day of October, 2006 by



Janet L. Gaunt, Neutral Chairperson

Janet L. Gaunt

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Arbitration / Mediation / Factfinding

October 23, 2006

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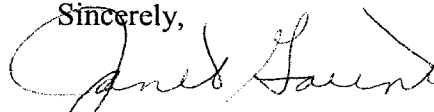
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**Re: IAFF Local 1433 and City of Pasco
Interest Arbitration (Case 18827-I-04-439)**

Gentlemen:

I am enclosing a Supplemental Award, along with a bill for my services since issuance of the initial Award last January, 2006. This now completes the interest arbitration proceedings. As always, it was a pleasure to work with you.

Sincerely,



Janet L. Gaunt

JLG/ag
Enclosures (2)

cc: Kelly Fox
Richard Bisnett
PERC

