

IN THE MATTER OF

CITY OF EVERETT

AND

IAFF LOCAL 46

OPINION OF THE ARBITRATOR

PROCEDURAL MATTERS

In accordance with RCW 41.56.450, an interest arbitration hearing involving certain uniformed personnel of City of Everett, Washington was held on February 23-25, and April 25 and 26, 2016 in Everett, Washington before a Panel of three arbitrators. City of Everett appointed Otto Klein as to serve as Arbitrator on the Panel. IAFF Local 46 appointed Dennis J. Lawson to serve as Arbitrator. Alan R. Krebs was selected jointly by the parties to serve as the Neutral Chair of the Panel and to decide the issues presented after consultation with the party-appointed Arbitrators. City of Everett was represented by Lawrence B. Hannah of Perkins Coie LLP. W. Mitchell Cogdill of Cogdill Nichols Rein Wartelle Andrews represented IAFF Local 46. At the hearing, witnesses testified under oath and the parties presented documentary evidence. A court reporter was present, and, subsequent to the hearing, a copy of the transcript was provided to the Arbitrator. On July 20 and 22, 2016, the Neutral Chair received post-

hearing briefs. The parties agreed that the Neutral Chair would have 60 days to submit a draft of the decision to the other Panel members.

APPLICABLE STATUTORY PROVISIONS

When certain public employers and their uniformed personnel are unable to reach agreement on new contract terms by means of negotiations and mediation, RCW 41.56.450 calls for interest arbitration to resolve their dispute. RCW 41.56.450 is applicable to the firefighter bargaining unit involved here.

RCW 41.56.465 sets forth certain criteria that must be considered in deciding the controversy:

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

- (a) The constitutional and statutory authority of the employer;
- (b) Stipulations of the parties;
- (c) The average consumer prices for goods and services, commonly known as the cost of living;
- (d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and
- (e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment.

(3) For employees listed in RCW 41.56.030(7) (e) through (h), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States.

However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered.

* * *

The statute does not provide guidance as to how much weight should be given to any of these standards or guidelines, but rather leaves that determination to the reasonable discretion of the Panel. RCW 41.56.465 requires the Panel to be mindful of the legislative purpose set forth in 41.56.430, which provides:

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.

Arbitrators generally understand that interest arbitration is an extension of the bargaining process. They recognize those contract provisions upon which the parties could agree and decide the remaining issues in a manner that would approximate the result the parties could have reached in good faith negotiations considering the statutory criteria. Resolving bargaining deadlocks in this manner supports the legislative purpose set forth in the statute. A party proposing new contract language has the burden of proving that there should be a change in the status quo.

ISSUES

The parties' previous collective bargaining agreement was effective from January 1, 2012 through December 31, 2014. On July 16, 2014, the parties commenced negotiations for a successor agreement. They were unable to reach agreement after eight bilateral sessions. A PERC mediator conducted six mediation sessions between January 22, 2015 and April 1, 2015. On July 2 2015, the Executive Director of the State of Washington Public Employment Relations Commission certified that following mediation, the parties were at impasse in negotiations for their successor collective bargaining agreement, and therefore, they should proceed to interest arbitration on those issues. The parties agree that the new agreement would cover the period from January 1, 2015 through December 31, 2017. The issues certified for resolution by interest arbitration are:

Article 9, Salary Schedule

Article 12, Medical Benefits

The salary schedule issue has two components: base wages and deferred compensation.

NATURE OF THE EMPLOYER

The City of Everett is located in Snohomish County, Washington. It has a population of over 105,000. The City's Fire Department provides a full range of services, including fire suppression, emergency medical services (EMS), advanced life support (ALS) and transport, hazardous materials response, fire prevention, and others. It has six fire stations. The Union is

recognized as the exclusive bargaining agent for all employees in the following classifications: Firefighter, Firefighter/EMT, Firefighter Driver/Engineer, Firefighter/Paramedic, Fire Captain, Fire Inspector, Medical Services Officer, Fire Battalion Chief, Asst. Fire Marshall, and Fire Division Chief. Most of the 171 budgeted bargaining unit personnel are in four of these classifications: Firefighter (59), Firefighter/Paramedic (30), Firefighter/Driver (32), and Fire Captain (32). Suppression personnel staff four platoons, working a 42-hour workweek on 24-hour shifts. Non-suppression personnel have a 40-hour workweek of either 4 or 5 days. The average length of service among bargaining unit members is over 17 years. The average years of service of the First Class Firefighter, excluding those newly hired since 2015, is about 12 years.

COMPARABLE EMPLOYERS

RCW 41.56.465(3) requires an arbitration panel to “consider a comparison of the wages, hours, and conditions of employment . . . [with those] of like personnel of public fire departments of similar size on the west coast of the United States.” The parties agreed on a list of eight appropriate comparable jurisdictions:

Cities

Bellevue

Kirkland

Renton

Fire Districts

Shoreline/King 4

Snohomish County Fire District #1 (Sno 1)

South King Fire & Rescue

Regional Fire Authorities

Kent Regional Fire Authority (RFA)

Valley Regional Fire Authority (RFA)

COST OF LIVING

The governing statute requires consideration of “the cost of living.” According to statistics provided by both parties, which are published by the U.S. Department of Labor, Bureau of Labor Statistics, the Consumer Price Index (CPI-U) for the Seattle-Tacoma-Bremerton area rose by an annual average of 2 percent from June 2013 to June 2014, and by 1.6 percent from June 2014 to June 2015. This index rose by 1.8 percent from June 2015 to June 2016. The City presented evidence that top step Firefighter monthly base wages increased by 39.6 percent since 2000, while the CPI-U increased during that period by 37.3 percent.

OTHER CONSIDERATIONS

In addition to the specific criteria set forth in RCW 41.56.465(a)-(d), Subsection (e) of that statute requires consideration of “[s]uch other factors, not confined to the factors under (a) through (d) . . . that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment . . .” Accordingly, the factors discussed below have been considered.

Ability to Pay

A factor frequently advanced in contract negotiations and also considered by interest arbitrators is the ability to pay wage and benefit increases. Clark County (Axon, 1996); King County (Lankford, 2009). Susy Haugen, the City's Finance Manager/Treasurer, testified that the City has been able to maintain a minimum of 20 percent of forecasted revenues in its government general fund balance. In recognition of its good fiscal management it has an AA+ bond rating. In Mayor Stephanson's State of the City address, he noted the City's prefunding of financial obligations and its "healthy reserves," and stated, "I am very optimistic about our economic prospects in 2016, as we build on our 2015 successes." I find that the City has adequate reserves and revenue to pay fair and reasonable compensation and benefits to its firefighting employees.

Recruitment and Retention

Arbitrators often consider difficulty recruiting, and employee turnover, or lack thereof, when determining appropriate compensation rates. A high level of turnover or difficulties in recruitment may signify that the compensation levels are inadequate. The parties agree that there is very little turnover among employees of the Fire Department. For the few vacancies there were hundreds of qualified applicants, including many experienced firefighters. A City witness agreed that there are numerous firefighter applicants on the West Coast seeking firefighter jobs anywhere they can get them. There is no indication that in recent years, the City has had any difficulty recruiting or retaining employees with the existing terms and conditions of employment.

Workload

The Union urges consideration of the workload of the City's firefighters as compared with that of firefighters employed in the comparable jurisdictions. Sebastian Sittig, a City Fire Captain and a member of the Union's bargaining team, testified that he contacted each of the comparable Fire Departments to discover the number of calls each responded to during 2014. According to Captain Sittig, while those Departments averaged 15,214 responses that year, the Everett Fire Department responded to 21,389 calls. According to Captain Sittig, the comparable Departments averaged 109 responses per suppression member during 2014, while that figure for the City was 150.6. The Union argues that its members' heavy workload mitigates any advantage the Everett firefighters have in working fewer hours than the comparable Fire Departments.

The City points out that the difference in the number of responses between the City and the average of the comparable Departments amounts to its members responding, on average, to only two to three more calls per month. The City submitted records of how much time each of its unit vehicles was unavailable while responding to calls during 2014. This out of service time was measured from the time they were dispatched until the incident had been cleared. The out of service time averaged, depending on the unit from about two hours to about five hours per 24-hour shift, with most units out of service between two and a half and three and a half hours total per 24-hour shift. In addition to these calls, the firefighters had daily routine duties, such as training and maintenance.

Overall, it appears that the Everett Fire Department has operated efficiently, in that its firefighters respond, on average, to more calls than firefighters in the comparable Departments.

Internal Equity

The City contracts with a number of unions that represent City bargaining units. As your Neutral Chair has held in other interest arbitration proceedings, the settlements reached by an employer with its other bargaining units are significant. While those settlements are affected by the particular situation of each bargaining unit, still there is an understandable desire by the employer to achieve consistency. From a union's standpoint, it wants to do at least as well for its membership as the employer's other 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.

The other City employee groups received the following wage increases in 2015 and 2016:

	2015	2016
AFSCME	2.5%	3%
ATU (Transit)	2.5%	3%
Crafts	2.5%	3%
EPOA (Police)	3.25%	3.5%
EPMA (Police Mgt.)	3.25%	3.5%
Non-represented	2%	4.5%

The Union points out that in 2014, a top step police officer with ten years of service had an annual base wage of \$81,420, while a top step firefighter with ten years of service had an annual base wage of \$75,840. The City observes that 67 percent of the firefighter bargaining unit are classified higher than a top step firefighter and that, on average, members of the firefighter

bargaining unit earn considerably more than members of the police bargaining unit on an annual basis. Sharon DeHaan, the City's Human Resources Director, testified that non-represented employees received a catch-up wage increase in 2016 because in 2012 they received no wage increase when most other City employees had received a 3 percent increase. She testified that police received a higher wage increase in 2015 and 2016 because there were a number of police position vacancies and the City had a difficult time filling them. Also, she testified, the police unit in July 2015 had newly accepted paying 10 percent of their health insurance premiums, and that was part of the reason for their wage increase. The AFSCME, ATU, and Crafts units each paid 5 percent of their health insurance premiums in 2015 and 10 percent in 2016. Non-represented employees paid 10 percent of medical premiums based on HMA rates, but if they choose the more expensive Group Health option, they additionally paid the difference in rates between the two plans.

SALARY SCHEDULE

The City proposes a 2 percent wage increase in 2015, a 2 percent wage increase in 2016, and a 2 percent wage increase in 2017. The Union proposes an increase in each of these years equal to the CPI-U increase from the previous June-to-June period plus 1 percent. This equates to wage increases of 3 percent in 2015, 2.6 percent in 2016, and 2.8 percent in 2017.

The City argues that its wage proposal is fair based on a comparison with the eight comparable Departments, and the increase in the cost of living. It maintains that the bargaining unit benefits from a unique 42-hour workweek and the requirement of a captain as a supervisor of just two firefighters, at 25 percent greater pay, on each fire suppression company. It points out that bargaining unit employees enjoy handsome annual earnings, with average earnings in

2015 of \$123,900, considering the pay components, including pay for specialties, education, holidays, longevity, and overtime, while in the police unit, average earnings are \$109,237.

The Union argues that its wage proposal is justified because its members are behind the average compensation provided by the comparable jurisdictions. The Union points out that its members respond, on average, to more calls than employees of those Departments. The Union argues that recruitment and retention should not be considered because testimony established that there is an over demand for fire fighter jobs and few job opportunities, and that does not speak to how well a particular department pays its employees. The Union asserts that its proposal is modest and consistent with its position of accepting lower wages in return for a health care plan tailored specifically to its members' needs.

As previously discussed, the governing statute requires consideration of a "a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States." The Union presented evidence of net hourly compensation for a 10-year Firefighter in the City and the comparable jurisdictions, including base wage, longevity, deferred compensation, holiday pay, and medical insurance at the family rate, divided by the net hours worked, having subtracted holidays and vacations. The City presented similar evidence of net hourly compensation for four different classifications with various lengths of service. The parties differed as to whether education pay and college pay should be included in compensation for purposes of comparison. Bargaining unit employees receive college pay of 1.5 percent added to First Class Firefighter pay for an AA Degree and 3 percent added to such pay for a BA Degree. In addition, employees who complete Department-approved classes receive education pay in the form of additional longevity steps of 1.5 percent to

4 percent, depending on the number of class hours completed. The City has proposed to include in compensation comparisons, college pay for an AA Degree and education pay based on the average 1.3 percent in education pay received by employees.

I find that a total compensation comparison, as proposed by the City, is reasonable and shall be utilized. In this regard, I agree generally with Arbitrator Latsch who, in the parties' interest arbitration with regard to their most recent collective bargaining agreement, adopted the City's method of determining compensation comparisons, utilizing both the education incentives and a 12-year benchmark for compensation comparisons. It must be remembered that the average length of service in this bargaining unit is over 17 years. The 12-year benchmark proposed by the City for comparison of First Class Firefighter compensation is not far off their average length of service. Also, it reflects their generous longevity pay benefit that increases at 4-year intervals. College pay and education pay are each received by a majority of the bargaining unit, and more than a third receive both. Therefore, they have been included in the total compensation comparison. In this bargaining unit, Captains, Drivers, and Paramedics comprise a majority of the bargaining unit. Therefore, I have compared their compensation with similar classifications employed by the comparable Departments. Reflecting the longer average service of Paramedics and Captains, I have utilized a 16-year benchmark for paramedics and a 24-year benchmark for Captains.

Arbitrator Latsch indicated in his decision that the wage increases received by the comparable jurisdictions are significant. I agree. They provide some indication of an acceptable negotiated wage increase for firefighters in comparable Departments. The chart below shows the wage increases negotiated for 2015, 2016, and 2017. Seven of the eight comparable

Departments have reached agreement on wages for 2015, three have reached agreement for 2016, and only two for 2017. Their negotiated wage increases are as follows:

<u>Fire Department</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
Bellevue	2.2%	?	?
Kent RFA	3.7%	1.1%	?
Kirkland	?	?	?
Renton	2.25%	?	?
Shoreline	1.37%	3.1%	CPI +1%
Sno 1	2.2%	1.1%	CPI
So. King	2.2%	?	?
Valley Fire RFA	2.2%	?	?
Average	2.3%	?	?

The charts below reflects the net hourly compensation provided by the comparable Departments for 2015 for an employee with an AA Degree and family medical coverage. None of the comparable Departments provide an additional education benefit. These figures are based on evidence provided by the City that was not essentially disputed by the Union. Since Kirkland had not yet settled, it was assumed for comparison purposes that Kirkland would give a 2% wage increase that year. The figures set forth for Everett reflects the 2 percent wage increase offered by the City for 2015 because that is the manner this evidence was submitted into evidence. If the Union's suggested wage increase were utilized instead, the net hourly compensation figure for Everett would be a little higher. The net hourly compensation for Everett includes medical

insurance calculated from the costs for a family medical plan, averaging the costs for Group Health and the City's self-funded plan.

12-Year Firefighter

Fire Department Net Hourly Compensation

Bellevue	\$54.65
Kent RFA	\$56.74
Kirkland	\$59.50
Renton	\$55.75
Shoreline	\$55.62
Sno 1	\$54.47
So. King	\$54.34
Valley RFA	\$56.04
Average	\$55.89
Everett (+2%)	\$56.85

12-Year Driver

Fire Department Net Hourly Compensation

Bellevue	\$56.89
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Kent RFA	\$58.34
Kirkland	\$59.50
Renton	\$55.75
Shoreline	\$57.87
Sno 1	\$54.34
So. King	\$56.18
Valley RFA	\$56.95
Average	\$56.98
Everett (+2%)	\$60.43

16-Year Paramedic

<u>Fire Department</u>	<u>Net Hourly Compensation</u>
Bellevue	\$63.06
Kent RFA	Not Applicable
Kirkland	Not Applicable
Renton	Not Applicable
Shoreline	\$64.59
Sno 1	\$64.98
So. King	Not Applicable
Valley RFA	Not Applicable

Average	\$64.21
Everett (+2%)	\$65.93

24-Year Captain

Fire Department Net Hourly Compensation

Bellevue	\$63.77
Kent RFA	\$66.28
Kirkland	\$69.01
Renton	\$65.37
Shoreline	\$66.13
Sno 1	\$68.10
So. King	\$65.04
Valley RFA	\$66.89
Average	\$66.32
Everett (+2%)	\$68.70

The City has reached agreement with its five other bargaining units for the years 2015 and 2016, and it has provided wage increases to its non-represented employees. Three bargaining units received a 2.5 percent increase in 2015 and a 3 percent increase in 2016. Its two police bargaining units received a 3.25 percent increase in 2015 and a 3.5 percent increase in 2016. The City provided a 2 percent increase to its non-represented employees in 2015 and a 4.5

percent increase in 2016. These increases coincided with significant added employee medical premium contributions.

Considering the statutory criteria, I award base wage increases of 2.3 percent effective January 1, 2015, 2.5 percent effective January 1, 2016, and 2.5 percent effective January 1, 2017. These wages increases are fully retroactive. The awarded wage increases should result in the total hourly compensation of this bargaining unit remaining above the average of the comparable jurisdictions, and they are slightly above the percentage increases in the cost of living. The wage increases awarded here are, in the Arbitrator's opinion, affordable for the City, and provide fair and just compensation, considering the statutory criteria, such as compensation comparisons with the comparable jurisdictions, increases in the cost of living, and other traditionally relied upon factors, including the ability to retain employees and internal equity. Moreover it takes into account the efficiency and good service of the bargaining unit employees and the revision to medical benefits awarded below.

DEFERRED COMPENSATION

Currently, Article 9 of the Agreement provides for the City to contribute \$150 monthly for each bargaining unit member to a City-sponsored Section 457 deferred compensation program. The program is not specified in the Agreement. The City offers its employees a choice of two deferred compensation programs, one administered by MassMutual, a mutual insurance company, and the other administered by ICMA-RC, a non-profit financial services organization. In his 2013 interest arbitration decision, Arbitrator Latsch rejected the Union's request for the City to pay 3 percent of a First Class Firefighter's salary rate into deferred compensation, and

instead raised the monthly contribution from \$130 to \$150 to match the contribution provided to the City's police bargaining unit. That increase was effective January 1, 2014.

The Union now proposes that the City increase its deferred compensation contribution to 5 percent of a First Class Firefighter's wages. It further proposes to provide an additional deferred compensation program choice for its members: the Deferred Compensation Plan administered by the Washington State Department of Retirement Systems. The Union states as the rationale for its proposal that it is needed to keep pace with the comparable jurisdictions, and its proposed plan is preferable to ICMA-RC which is related to a corporate entity that works against firefighters' interests and pays the City up to \$150,000 annually for administration. The Union asserts that the State plan is also preferable to MassMutual in the cost of administration.

The City contends that no change in deferred compensation is justified. It points out that deferred compensation is but one element of total compensation and that the bargaining unit's premier compensation in relation to the comparable Departments validates the Latsch award. The City argues that the two currently used vendors that manage its deferred compensation options have performed fine, and adding the third vendor proposed by the Union would cause administrative problems.

The comparable jurisdictions provide the following for deferred compensation:

<u>Fire Department</u>	<u>Deferred Compensation Contribution</u>
Bellevue	5.58%
Kent RFA	3%
Kirkland	4.65%
Renton	8%

Shoreline	0
Sno 1	5%
So. King	\$250 (3.47%)
Valley RFA	4%
Average	4.21%
Everett (+2%)	\$150 (2.36%)

An increase in deferred compensation to 2.5 percent of First Class Firefighter's base wages shall be awarded effective January 1, 2017. This will be consistent with the predominant practice among the comparable departments of providing deferred compensation as a percentage of wages that will adjust upwards as wages are adjusted upwards. While the percentage awarded is lower than the percentage provided by the comparable Departments, it does provide an increase in the dollar amount of deferred compensation. Moreover, it reflects the fact that deferred compensation is just one element of total compensation, and Everett Firefighter total hourly compensation compares very favorably with the comparable Departments even with the lower amount of deferred compensation received by this bargaining unit.

The Washington State Deferred Compensation Program, which the Union proposes as a new option for its members, is administered by a small State of Washington agency, the Law Enforcement Officers and Firefighters Plan 2 Retirement Board. The Executive Director of that agency, Stephen Nelsen, testified that the participants pay a low administrative fee for the program. He testified that a city participating in that program would transfer money to the

program using the same transmittal process used to transmit the retirement pension data. The program provides participants with a choice of investment fund options. Captain Sittig testified that the Union does not believe that ICMA represents the best interests of its members since ICMA is an organization that advocates for professional management and has even conducted research on contracting out government services. Captain Sittig identified an email the Union received from the City that confirmed that the City has received an annual administrative allowance from ICMA-RC during the past five years that has ranged between \$106,996 and \$149,053. He observed that the Washington State Deferred Compensation website indicates that it charges participants an administrative fee of \$1.29 per \$1,000. He further noted that a MassMutual plan description lists fund fees for various investment options, and most of them are higher than that charged by the State program. However, many of the listed fund fees for MassMutual are below the administrative cost of the State program offerings.

Dean Koutlas, the City's Human Resources Manager, testified that the City has offered the MassMutual plan to City employees since 1979, and the ICMA-RC plan since 1982. He testified that 123 City employees participate in the MassMutual Plan and 712 in the ICMA-RC plan. He testified that the two current plan offerings have been very beneficial to employees and the City sees no need to add an additional plan that would be administratively burdensome for the City. Mr. Koutlas testified that the ICMA-RC is separate and independent from the ICMA organization.

I find insufficient justification to add a third deferred compensation plan for the bargaining unit. A third plan would add to the City's administrative responsibilities. No evidence was presented that any comparable jurisdiction offers a choice of three plans or utilizes the Washington State Deferred Compensation Plan. It was not established that the current choice

of plans is inadequate or that the State plan is clearly superior. While the Union has understandable concerns that the ICMA has a management focus, it appears that the ICMA-RC is a separate entity and there is no evidence that it fails to appropriately represent the interests of the employee participants. While the ICMA-RC pays a substantial administrative fee to the City, there is no evidence that its investment offerings and returns are less advantageous to employees than the State plan. Moreover, employees already may choose another vendor, MassMutual, to administer their individual deferred compensation accounts.

MEDICAL BENEFITS

Currently, this bargaining unit has a choice of three medical plans: 1) HMA (the City's self-funded plan), 2) Group Health, and 3) LEOFF Trust Plan A. The City pays the entire premium cost for the HMA and Group Health plans. Employees electing Plan A pay towards the premium cost the difference between the HMA and Plan A premiums. The City proposes to continue to offer the same three plans, but with increased employee premium sharing. The City proposes that effective January 1, 2017, employees make a 10 percent contribution towards the cost of medical coverage for HMA and Group Health, and LEOFF Trust Plan A participants would make the 10 percent contribution based on HMA rates and additionally would pay the difference between the HMA and Plan A rates. The Union proposes that the City continue to offer the options of HMA and Group Health, but that instead of LOEFF Trust Plan A, it offer a high deductible plan, LOEFF Trust Plan B, to be offered with a Health Reimbursement Arrangement (HRA), HealthBridge, that would be pre-funded by the end of the first pay period in January of each year in the amount of \$2,000 for individuals without dependents and \$4,000 for individuals with dependents. The Union presented evidence that a majority of the

comparable Fire Departments provide an HRA benefit. The Union proposes that the City pay 100 percent of employee medical insurance premiums and 97 percent of the premiums that also cover dependents.

In the prior interest arbitration before Arbitrator Latsch, the Union proposed that LOEFF Trust Plan B coupled with an HRA plan be offered as an option for employees. Arbitrator Latsch rejected this proposal, reasoning that “[t]he creation of a new insurance plan, Plan B does not provide a meaningful resolution to the insurance issue,” and “Firefighters ... must understand that they are part of the Employer’s total workforce and should receive the same kinds of medical insurance generally available [to other City employees].” During the instant hearing, the Union provided more extensive evidence of the medical risks for firefighters in order to attempt to persuade the Panel that the special needs of firefighters justify its proposal for an option of Plan B and an HRA.

While the Union’s written proposals do not identify a specific HRA plan that would be utilized, at hearing the Union revealed that it had selected the HealthBridge plan. An HRA is a tax-favored account that can be used to pay the employee’s out of pocket medical costs, including insurance premiums. Any unspent balance in the account may be carried over to be spent in the employee’s retirement years. According to a document published by HealthBridge, an HRA can be used in conjunction with any medical insurance carrier, and it is not restricted to high deductible plans. Here, the Union proposal would have the HRA benefit available only to employees who opted for LOEFF Trust Plan B. The Union asserts that the cost to the City of its proposal for Plan B and the HealthBridge HRA would, if adopted, result in cost savings for the City. The Union argues that it should have an HRA because its members are older than average, have more illness and injury risks, retire earlier than employees in other City Departments, and

are more apt to be ill as they age after retirement. In this regard, the Union presented evidence from Dr. Drew Brodtkin, a distinguished physician who specializes in occupational and environmental medicine, that firefighters generally have increased risk of acute and chronic health issues associated with their work. Dr. Brodtkin testified that studies have shown that firefighters have increased risk of musculoskeletal injuries, infections, thermal injury, cardiovascular disease, respiratory disease, hearing loss, incident induced stress, and some types of cancer. Captain David Diggdon testified that firefighters responding to medical calls frequently risk exposure to infectious bodily fluids. An accidental prick from contaminated needles is another hazard they face. The Union points out that by statute, RCW 51.32.186, there is a presumption of occupational disease for firefighters who suffer from cancer, infectious disease, or heart problems experienced close in time to firefighting activities.

The City's firefighters currently may opt for LOEFF Trust Plan A. LOEFF Trust Plans A and B offer similar benefits, except that with Plan B there is a lower monthly premium and employees pay higher co-pays, a higher individual deductible, and a higher out of pocket maximum. For instance, for in network care, Plan A provides for an individual deductible of \$200 and a family deductible of \$400, an out of pocket maximum liability for individuals of \$500 and for families of \$1,000, and a \$10 copay for office visits. Plan B provides for a deductible of \$1,500 for individuals and \$3,000 for families, a maximum out of pocket of \$2,000 for individuals and \$4,000 for families, and a \$20 copay for office visits. The City's currently offered HMA plan provides for a deductible of \$300 for individuals and \$600 for families, an out of pocket maximum of \$750 for individuals and \$1,500 for families, and a \$20 office visit copay.

Group Health, which is one of the three plan options offered to firefighters, is in the process of merging with Kaiser Permanente. Union Vice President John Gage identified a large number of complaints about Kaiser Permanente service that he located on the Internet. Keith Robertson is the City's benefits consultant who provides analysis and recommendations regarding health insurance options. Mr. Robertson testified that Kaiser Permanente is one of the most respected medical carriers in the country and it was rated by JD Powers as the top carrier for customer satisfaction.

The City objects to the Union's HRA proposal on the basis that it was untimely and incomplete. The Union's initial proposal on medical benefits was presented to the City in its opening bargaining proposal submitted on July 1, 2014. That Union proposal provided that in addition to the HMA and Group Health plans, the City would provide for an unspecified option:

... a health insurance plan selected by Local 46 (Local 46 Selected Plan) which may at the option of the Local include a City-funded Health Reimbursement Account (HRA) which if included shall be prefunded on January 1st of each year. The City will make appropriate deductions for premiums from employees' paychecks and forward them to the Local 46 plan administrator, but the City will not need to otherwise administer the plan.

That opening proposal called for the City to pay the entire premium cost for the HMA and Group Health plans, and further provided:

If the Local 46 Selected Plan is elected, the employee shall pay the premium difference between the Group Health Alliance plan and the Local 46 selected Plan.

Mr. Gage was on the Union's negotiating team. He testified that the Union indicated to the City during negotiations that it was considering the LOEFF Trust Plan B and the Northwest Firefighter Trust as alternative options. He testified that the Union had representatives of each of these plans make a sales presentation at negotiation sessions during August 2014 and he discussed the premium costs of these plans with the City during February 2015, after mediation had begun. Mr. Gage testified that the HealthBridge plan was not specifically proposed until April 2015, which was after mediation concluded, but that that type of HRA plan was discussed in detail during negotiations. Apparently, the specific proposal that Mr. Gage was referencing was the Union's only on-the-record proposal on medical benefits that followed its opening proposal. That second proposal was made on April 28, 2015, when Mr. Gage sent to the PERC mediator the contract articles that were to be certified to arbitration, which included "Article 12, Medical Benefits (as hereunder revised)." Mr. Gage attached the Union's proposal for a rewritten Article 12. It read, in part:

- a. The City agrees to offer the City's self-insured and Group Health Alliance plans as offered in the 2014 Collective Bargaining Agreement. As an additional option, the City also agrees to allow employees and their dependents to choose the LOEFF Trust Plan B health insurance plan.
 - i. The LOEFF Trust Plan B shall meet all the Patient Protection Affordable Care Act minimal essential benefit requirements.
 1. Premiums shall include a City-funded, fully integrated Health Reimbursement Account (HRA) which shall be pre-funded by the first pay period in January of each year.
 2. For the purpose of deducting employee contributions, payroll deductions are assumed to be for the medical portion of the premium only.

3. The City will make appropriate deductions from employees' paychecks and forward those to the plan administrator, but the City will not need to otherwise administer the plan.

4. The City shall be responsible for premium increases in this plan greater than the percentage increase for the Group Health Alliance plan for the contract year.

* * *

b. The City shall pay 100% of the monthly premium cost toward the purchase of the City's self-insured basic/major medical program, the Group Health Alliance plan, or the LEOFF Trust Plan B for employees, and 97% of the monthly premium for their eligible dependents.

* * *

The medical benefits proposal submitted in writing to this Panel shortly before the hearing is the same one that was submitted to the mediator in April 2015 after the conclusion of mediation.

None of the Union's written proposals mentioned the HealthBridge HRA.

Ms. DeHaan testified it was with the post-mediation letter to the mediator that the City first learned that the Union had chosen to propose Plan B, rather than the Northwest Firefighter Trust, as a medical plan option. While this proposal made no mention of the HealthBridge HRA, the Union contends that documents concerning the HRA were presented to the City and made available for review. However, there is no evidence in the record that during negotiations Union representatives ever proposed utilizing HealthBridge, or that the HealthBridge plan documents were ever provided to the City. Mr. Gage testified that prior to this arbitration proceeding, the Union never provided documentation of the HRA plan it was pursuing because it was never requested. He testified that the City negotiators made it clear that they were unwilling to accept a Union proposal that included an HRA. He testified that during negotiations everyone

understood that the Union was seeking City funding towards an HRA of \$2,000 per employee and \$4,000 per family.

Shawn Sicilia and Jeff Gilson are employed by Maloney O’Neill, a benefit company that assists group clients to procure medical benefits. Mr. Gilson testified that his company operates as a consultant for both the LOEFF Trust and HealthBridge. Mr. Gilson testified that Mr. Sicilia acts for Maloney O’Neill on behalf of the LOEFF Trust, while he supports HealthBridge. Mr. Sicilia was the representative who made a presentation at the Union’s request to City representatives in 2014, which was before the Union had decided on proposing a specific alternative medical plan. Mr. Sicilia’s current slide-assisted presentation describing LOEFF Trust Plan B also provides a general overview of the HealthBridge HRA. Mr. Gilson testified that as he understands the Union’s proposal, HealthBridge could be the HRA program utilized, but that other HRA programs could be used instead. Mr. Sicilia testified that the administrator of LOEFF Trust Plan B is Premera Blue Cross and the administrator of HealthBridge is Peak 1. He testified that some customers of LOEFF Trust Plan B use HealthBridge and some use other HRA programs. He testified that his company is “agnostic in that regard.” Mr. Gilson testified that there are many elements of plan design for an HRA, such that it has a level of complexity. Customers must make choices with regard to eligibility, vesting, forfeiture, and other elements. Mr. Gilson testified that the HRA plan design in a collectively bargained arrangement is usually decided upon by interaction between the union and the employer. Mr. Gage identified a sample Employer Adoption Agreement for the HealthBridge HRA that must be completed and signed by an authorized representative of the City in order to establish the plan. That document requires the City to choose from a number of options regarding the terms of the plan. Mr. Gage testified

that he received the form from Mr. Gilson in February or March of 2016, and he believes that it was not shown to the City before this proceeding.

I find that there shall be no changes or additions to the medical plans offered as options to the bargaining unit. LEOFF Trust Plan B is a high deductible plan, and the Union desires this option only in conjunction with the HealthBridge HRA plan. The City may well have expressed during bargaining that it was not interested in offering different options for medical plans than the ones that had been offered. However, in order for a new medical plan to be adopted by an interest arbitrator over the objection of a party, it must be shown that the plan was fully disclosed during bargaining, including the identity of the plan and its offerings and obligations, and that there was an opportunity for some discussion. Here, the HealthBridge plan is not mentioned in any of the Union's written proposals. There is no evidence that during bargaining, the Union ever revealed to the City that it was proposing the HealthBridge HRA plan. As the Union's own benefits consultant witness testified, there is some level of complexity with an HRA plan involving options that are usually resolved in negotiations between the parties. It must be remembered that interest arbitration is viewed as an extension of the bargaining process, with the interest arbitrator resolving disputes where the parties are at impasse after having a full opportunity to discuss an issue. If the Union wanted an HRA plan to be added to the Agreement as an option as a result of interest arbitration, then before the matter reached the Panel, the Union should have revealed to the City at the bargaining table which HRA plan it wanted with adequate specificity as to its terms. In *City of Vancouver and Vancouver Police Officers Guild*, (2013), at 23, Arbitrator Gary Axon rejected a union's proposal to redesign insurance coverage, relying on the fact that it did not present its new proposal prior to interest arbitration. He reasoned:

As a preliminary matter, I concur with the Employer's argument that the Guild's unique redesign proposal should be given little or no weight in this interest arbitration. I agree with arbitrator Corbett's reasoning in an arbitration involving the Seattle Police Officer Guild where arbitrator Corbett wrote:

Because interest arbitration is nothing more than an extension of the bargaining process, the proponent of change must establish that its proposal was presented at the bargaining table and that it was rejected. Thus, the party making a case in interest arbitration initially must make its case during the bargaining process. Without such a threshold showing, negotiations would lose a considerable amount of their purpose.

City of Seattle, at p. 7 (Corbett, 1995)

* * *

The evidence is undisputed the Guild did not propose its plan redesign during bargaining or mediation. During the bargaining process, the Guild was actively engaged in obtaining insurance through a benefit trust. The Guild admitted that it never placed the proposal in front of the City during face-to-face bargaining sessions or mediation. Therefore, the Arbitrator is unwilling to award the Guild's proposal on health insurance that has not been subject to the back and forth debate during the bargaining process.

Similarly, this Arbitrator is unwilling to require the City to adopt the HealthBridge HRA plan as an option for its firefighters when there is insufficient evidence that that specific HRA plan was proposed to the City prior to interest arbitration. That plan should have been presented at the bargaining table with sufficient detail so that it could have been fully discussed such that the City had the opportunity to fully understand its commitments and express its questions and concerns. That did not occur. In these circumstances, the Union has not met its burden of proving that the HealthBridge HRA should be a new plan option added to the Agreement. Since the Union's

proposal for a change from LOEFF Trust Plan A to the high deductible LOEFF Trust Plan B is dependent on also having an HRA, the Arbitrator will make no change to the current offerings.

As previously indicated, the parties disagree about premium sharing by employees. In the prior interest arbitration, Arbitrator Latsch effectively held that the City would pay 100 percent of the premium costs for the HMA plan. He further held:

... In the event an employee chooses to be covered by Plan 1 [now renamed Plan A], the employee will be responsible to pay the difference in premium rates between Plan 1 and the HMA plan. If the employee elects to be covered by Group Health, the employee will be required to pay the same amount as the Everett Police Officers pay under the terms of their collective bargaining agreement.

It appears that at the time of Arbitrator Latsch's award, which was issued in December 2013, the Everett Police Officers were subject to their 2011-13 collective bargaining agreement, and were likely in negotiations for a successor contract. After Arbitrator Latsch's award was issued, the parties could not agree on implementing language regarding the payment of health insurance premiums of employees who elect the Group Health plan. The Union took the position that it should provide that the employee electing Group Health would "pay the same amount as the Everett Police Officers pay under the terms of their 2011-2013 collective bargaining agreement." The City's position was that the employee would pay the same amount for Group Health coverage "as the Everett Police Officers under the terms of their collective bargaining agreement." The parties arbitrated their dispute. On October 6, 2014, Arbitrator Mark E.

Brennan decided this dispute in favor of the City. During 2015, the City reached agreement on a contract for its police for 2014-2016. That contract newly provided for the police to make “a ten percent contribution toward the cost of medical coverage effective July 1, 2015.” This ten percent contribution applied to both the HMA and Group Health plans. As yet, Everett firefighters have continued to make no contribution to medical premiums for either the HMA or Group Health plans. In accordance with Arbitrator Latsch’s award, employees electing the Plan A option do pay the difference in premiums between the HMA rates and the Plan A rates.

During 2015, firefighters employed by the comparable jurisdictions paid the following monthly amounts for their share of the cost of health benefits:

<u>Fire Department</u>	<u>For Individual Coverage</u>	<u>For Family Coverage</u>
Bellevue	\$0	\$122.54
Kent RFA	\$0	\$105.80
Kirkland	\$0	\$0
Renton	\$46.58	\$160.93
Shoreline	\$0	\$0
Sno 1	\$0	\$0
So. King	\$0	\$0
Valley RFA	\$0	\$0
Average	\$5.82	\$48.66

The City provided the following data regarding the monthly cost to employees if they were to pay either 5% or 10% of medical premiums, based on 2016 premium rates:

<u>Tier</u>	<u>Premium</u>	<u>5%</u>	<u>10%</u>
HMA Single	\$606.81	\$30.34	\$60.68
HMA Single +1	\$1213.64	\$60.68	\$121.36
HMA Single +2 or more	\$1699.09	\$84.95	\$169.91
GH (Group Health) Single	\$705.20	\$35.26	\$70.52
GH Single +1	\$1403.35	\$70.17	\$140.34
GH Single +2 or more	\$2080.35	\$104.02	\$208.04

For the higher cost Plan A, under the City’s proposal, the employee contribution would be the same as for HMA, plus the extra cost above HMA rates.

If no change were made to the existing language regarding premium sharing, employees who opt for the Group Health option would pay the same as police, i.e., 10 percent of the premium, while those opting for the HMA would pay nothing. That is significantly different than the situation that Arbitrator Latsch likely envisioned when he made his award. Current language, if continued, would likely result in Group Health no longer being a viable option for many employees because of the substantial additional cost to them.

Considering the criteria of comparability with similarly sized fire departments, internal equity, and the recent awards of Arbitrators Latsch and Brennan, it shall be awarded that the employees in this bargaining unit opting for the HMA or Group Health plans contribute

5 percent of the premium cost for medical insurance, effective January 1, 2017. Those opting for the LOEFF Plan A would pay 5 percent of the HMA premium plus the premium difference between the two plans. I agree with the City that internal equity is a significant factor for interest arbitrators regarding health insurance benefits. Arbitrator Latsch and other arbitrators have recognized this. City of Bellevue and IAFF Local 1604 (Rosenberry, 2011); Pierce County and Pierce County Deputy Sheriffs Independent Guild (Wilkinson, 2012). However, the statutory criteria of a comparison with the conditions of employment with comparable fire departments must also be considered. The 5 percent premium contribution will result in this bargaining unit paying less than the City's other bargaining units, but more than the practice in the comparable Fire Departments. Even with the premium contribution awarded here, employees total hourly compensation will still compare favorably with the average of the comparable jurisdictions.

AWARD OF THE ARBITRATOR

It is the award of the Arbitrator that:

- I. Article 9 shall be changed to reflect increases in base wages of 2.3 percent effective January 1, 2015, an additional 2.5 percent effective January 1, 2016, and an additional 2.5 percent effective January 1, 2017. These increases shall be retroactive.
- II. Article 9 shall further be changed to reflect that effective January 1, 2017, the City's monthly contribution to the Deferred Compensation Program will be 2.5 percent of a First Class Firefighter's base pay.

- III. There will be no change in the vendors administering the Deferred Compensation Program.
- IV. There shall be no change in Article 12 regarding the medical plan options.
- V. Article 12 shall be modified to reflect that effective January 1, 2017, the Employee will make a 5 percent contribution to the cost of medical coverage. If the LEOFF Trust Plan A is elected, the employee shall pay the premium difference between the City's self-insured HMA plan and the LEOFF Trust Plan A in addition to 5 percent of the HMA premium.

Seattle, Washington

Dated: September 16, 2016

Alan R. Krebs

Neutral Chair