

No. 38711-5-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

CLARK COUNTY FIREFIGHTERS LOCAL 3674

Plaintiff/Respondent

v.

CLARK COUNTY FIRE DISTRICT NO.11

Defendant/Appellant

On appeal from Clark County Superior Court
Cause No. 08-2-03386-8
The Honorable Robert Harris

STATE OF WASHINGTON
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COURT OF APPEALS
DIVISION II

RESPONDENT'S BRIEF

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1. INTRODUCTION

This case arises out of the refusal of Appellant Clark County Fire District No. 11 (“the Fire District”) to submit the grievance of firefighter Shawn Parrish challenging his termination to binding grievance arbitration under the parties’ collective bargaining agreement. That agreement includes a requirement of just cause for the termination of any employee—with no exceptions or exclusions. The grievance procedure set forth in the agreement is available to any employee. Under long-established Washington law, there is a strong presumption in favor of arbitration of disputes arising under a collective bargaining agreement unless negated expressly or by clear implication.

Moreover, Washington law is clear that the court’s duty is limited to determining whether the parties have agreed to arbitrate a dispute—the court does not decide the merits of the dispute.

The court should reject the Fire District’s attempt to induce it to modify the parties’ collective bargaining agreement under the guise of contract interpretation, reject the Fire District’s attempt to have the court weigh the merits of the dispute between the parties, and affirm the trial court’s grant of summary judgment.

2. STATEMENT OF THE CASE

Respondent Clark County Firefighters Local 3674 (“the Local”) is a labor organization. The Fire District” and the Local are parties to a collective bargaining agreement for the years 2006-2008 (“the CBA”). CP 41-61 (Appendix) Pursuant to that agreement the Fire District has recognized the Local as “the exclusive bargaining representative for the bargaining unit, consisting of all full-time firefighters and captains employed by the Fire District.” CP 44 (Appendix)

Shawn Parrish was employed by the Fire District as a full-time firefighter. CP 37, 122 Parrish was a member of the Local and paid dues to his union. CP 37

Article 12 of the parties’ collective bargaining agreement states their agreement with respect to Grievance Procedure and includes the following definition of grievances: “Grievances are defined as disputes involving the interpretation or application of this Agreement.” CP 51 (Appendix) Step 1 of the parties’ grievance procedure states in part “*Any employee* having a grievance shall first present the grievance in writing to his immediate supervisor.” *Id.* (emphasis added)

The grievance procedure culminates in arbitration before a neutral arbitrator (Step 6). The parties specifically agreed that

“The arbitrator shall render a decision within thirty (30) calendar days of hearing, which shall be final and binding on both parties. The arbitrator shall have no power to alter, amend or change the terms of this Agreement.” CP 52 (Appendix)

The parties’ agreement with respect to discipline is set forth in Article 15 “Rights of Management” and states “This right [to manage and operate the Fire District in all respects] includes but is not limited to: the right to hire, promote, discipline or discharge for just cause . . .” CP 53 (Appendix)

Although the parties’ agreement does not define or even mention probation, the parties have agreed that “Seniority shall be determined by continuous service with the Employer from date of hire.” CP 54 (Appendix)

The collective bargaining agreement contains no “specific exclusion” for disputes concerning termination of probationary employees (or any other class of employees). CP 41-61 (Appendix)

The Fire District terminated the employment of full time firefighter Shawn Parrish on or about January 10, 2008. CP 30

A grievance was timely filed challenging firefighter Parrish’s termination. CP 37, 62-63

The Fire District refuses to proceed to arbitration on this grievance. CP 37-39, 65-85

On May 30, 2008 the Local filed a complaint in Clark County Superior Court seeking a declaratory judgment and specific performance of the Fire District's agreement to arbitrate. CP 3, 5-6 The Fire District answered generally denying that the grievance was subject to arbitration and raising several affirmative defenses. CP 29-35

On December 5, 2008 the trial court granted the Local's motion for summary judgment finding that the CBA is "subject to an interpretation that covers Local 3674's grievance of fire fighter Shawn Parrish's discharge" and ordering the Fire District to submit the dispute to arbitration. CP 229

The Fire District appealed. CP 231

3. ARGUMENT

THIS COURT SHOULD SUMMARILY AFFIRM THE RULING OF THE TRIAL COURT

Both the applicable law and the material facts at issue in this litigation are clear. This Court should affirm the trial court's grant of summary judgment and award the Local its attorneys fees and costs. Before addressing each of the Fire District's Assignments of Error, the

Local will state its argument that the trial court properly entered summary judgment.

Washington law strongly favors arbitration of disputes arising under collective bargaining agreements. In *Mount Adams School District v. Cook*, 151 Wn.2d 716, 723-724, 81 P.3d 111 (2003) the Washington Supreme Court enumerated the following principles governing arbitration of public sector labor disputes:

“(1) Although it is the court’s duty to determine whether the parties have agreed to arbitrate a particular dispute, the court cannot decide the merits of the controversy, but may determine only whether the grievant has made a claim which on its face is governed by the contract. (2) An order to arbitrate should not be denied unless it may be said with positive assurance the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage. (3) There is a strong presumption in favor of arbitrability; all questions upon which the parties disagree are presumed to be within the arbitration provisions unless negated expressly or by clear implication.” *Peninsula Sch. Dist.*, 130 Wn.2d at 413-14 (quoting *Council of County & City Employees v. Spokane County*, 32 Wn. App. 422, 424-25, 647 P.2d 1058 (1982)). Thus, “[a]part from matters that the parties specifically exclude, all of the questions on which the parties disagree must . . . come within the scope of the grievance and arbitration provisions of the collective [bargaining] agreement.” *United Steelworkers v. Warrior & Gulf Navigation Co.*, 363 U.S. 574, 581, 80 S.Ct. 1347, 4 L. Ed. 2d 1409 (1960); *Peninsula Sch. Dist.*, 130 Wn.2d at 414.”

In *Mount Adams School District* the Supreme Court found that the collective bargaining agreement at issue defined a grievance as “an alleged violation, misinterpretation, or misapplication of the Collective Bargaining Agreement” and that the grievance at issue alleged a violation of a specific article of that agreement. *Id.* at 725. The Court reversed the Court of Appeals and remanded the dispute to the trial court with directions to order the parties to arbitrate the grievance. *Id.* at 727.

The rigor of the “strong presumption in favor of arbitrability” is underscored by *Electrical Workers v. PUD 1*, 40 Wn. App. 61, 63, 696 P.2d 1264 (1985) where the Court of Appeals Division II emphasized “However, even frivolous claims are arbitrable, and a court has no business weighing the merits of a grievance or determining whether there is particular language in the labor agreement to support a claim.” The Court declared that notwithstanding its “serious doubts” concerning the union’s position, under the collective bargaining agreement a decision on the merits was for the arbitrator, not the courts. *Id.* at 66.

In *Hanford Guards Local 21 v. General Electric Co.*, 57 Wn. 2d 491, 494, 358 P.2d 307 (1961) the Supreme Court declared that the

party seeking arbitration is not required to convince the court that its interpretation of the contract is the correct interpretation. Obviously an employee is not required to prove a violation of a collective bargaining agreement to obtain arbitration of a dispute. *Council of County and City Employees v. Spokane County*, 32 Wn. App. 422, 426, 647 P.2d 1058 (1982). *Accord Yakima County Law Enforcement Officers Guild v. Yakima County*, 133 Wn. App. 281 (2006).

The Fire District has admitted that it is “generally true that any doubt should be resolved in favor of arbitration.” Appellant’s Brief at 21, CP 113

The trial court correctly applied these principles when it entered summary judgment. In *Mount Adams School District v. Cook, supra* the Washington Supreme Court concluded that “nothing more” was needed to establish that the grievance at issue was subject to arbitration than (1) the definition of a grievance, (2) the grievance alleged a violation of the CBA, and (3) and Cook was a member of the union. *Mount Adams School District v. Cook, supra* 150 Wn. 2d at 725.

The material facts in this dispute are simple and straightforward:

- (1) The provisions of the collective bargaining agreement concerning termination of employees and grievances,
- (2) The Fire District employed Shawn Parrish as a full time firefighter,
- (3) The Fire District fired Parrish, and
- (4) The Fire District refuses to arbitrate a grievance challenging its termination of Parrish.

The parties' agreement in Article 15 of their CBA that just cause is required to discipline or discharge employees has no exceptions. CP 53 (Appendix) There is no exclusion of probationary employees in any other Article of the contract. The Fire District has admitted that the contract "does not specifically address probationary status." CP 64-65. The parties' grievance procedure allows "any employee" to file a grievance. Parrish's status as an employee is undisputed.

Firefighter Parrish's grievance, on its face, is governed by the parties' CBA. It cannot be said with any assurance, let alone "positive assurance", that the arbitration clause of these parties' CBA does not cover this dispute over the termination of firefighter Shawn Parrish's employment. Thus, under well established Washington law the trial court properly entered summary judgment.

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ASSIGNMENT OF ERROR #1

ISSUE 1.1 Did the trial court err when it failed [to] find that the undisputed evidence of the Fire District created at the very least a question of material fact as to whether or not the scope of the CBA included the one year probationary training and evaluation program for new Fire District employees?

ISSUE 1.2 Did the trial court err when it failed to consider the undisputed extrinsic evidence that the scope of the CBA did not include the one year probationary training and evaluation period for new Fire District employees?

The trial court did not err. Under *Mount Adams School District v. Cook, supra* the existence of the probationary training and evaluation program is not a fact material to the issues raised by the Local's motion for summary judgment. Material facts are limited to the parties' agreement regarding, the definition of a grievance, termination of employees—probationary or not—and the grievant's status as a member of the bargaining unit covered by the CBA. *Id.*

The Local accepts the Fire District's statement of the standard of review and the standards for entry of summary judgment as stated on pages 12-14 of Appellant's Brief. However, in light of the specific principles applicable to a dispute concerning the arbitrability or not of a dispute under a collective bargaining agreement as summarized in *Mt. Adams School District v. Cook, supra*, broad principles regarding reliance on extrinsic evidence applicable to the interpretation of

contracts in general are not applicable. Such arguments might be properly considered by an arbitrator.

The Fire District's reliance on parol evidence of employment practices adopted by other employers is misplaced. Parol evidence is not admissible for the purpose of adding to, modifying, or contradicting the terms of a written contract, in the absence of fraud, accident, or mistake. *Berg v. Hudesman*, 115 Wn. 2d 657, 669, 801 P.2d 222 (1990) citing *J.W. Seavey Hop Corp. v. Pollock*, 20 Wn. 2d 337, 348-349, 147 P.2d 310 (1944). Parole evidence "is admitted for the purpose of aiding in the interpretation of what is in the instrument, and not for the purpose of showing intention independent of the instrument. It is the duty of the court to declare the meaning of what is written, and not what was intended to be written." *Id.* at 669.

The Fire District plainly seeks to modify its CBA to reflect what it now apparently has decided it had "intended to be written." The extrinsic evidence relied upon by the Fire District is not persuasive as to the intent of the Fire District and the Local when they signed the CBA. Collective bargaining agreements reached by other public employers such as the City of Vancouver or Fire Districts in Snohomish County regarding the terms of employment of their

probationary employees have no relevance to these parties' intent when they negotiated their 2006-2008 CBA. Under RCW 41.56 public employers and labor organizations representing their employees are required to bargain in good faith, however the terms of their collective bargaining agreements are not dictated by the statute. Thus it is hardly surprising that different contract terms are negotiated.

Similarly, the terms of a collective bargaining agreement signed after Parrish was fired that was negotiated by four parties in 2008 (including the Fire District and the Local as well as another Fire District and another IAFF Local) casts no light on the intent of the parties when they negotiated the 2006-2008 CBA at issue in this litigation. CP 119, 191-194

Finally, Chief Mason's declaration only addresses practices regarding the termination of probationary employees in the fire service generally. CP 120 He makes no assertion regarding practices at the Fire District with regard to the termination of probationary employees (as opposed to two isolated statements in a twelve year period which concerned the equipment to be issued probationary employees and their pay). *Id.*

In summary, given that the parties' 2006-2008 CBA is silent on the subject of the termination of probationary employees, the extrinsic evidence offered by the Fire District cannot be used to contrive intent of these parties contradictory to their written agreement by injecting an exception to the unqualified requirement of just cause for termination.

ASSIGNMENT OF ERROR #2

ISSUE 2.1 Did the trial court err by failing to examine the entire context of the CBA to interpret the meaning and scope of the CBA?

ISSUE 2.2 Did the trial court err by improperly limiting its inquiry to the specific terms of the CBA in order to determine the intent of the parties?

The trial court did not err—it considered the entire record including the evidence of practices at other public agencies offered by the Fire District. It made the necessary interpretation of the meaning and scope of the arbitration provisions of the CBA as required by *Mount Adams School District v. Cook, supra*.

The Fire District's reliance on Article 15 of the CBA is misplaced since the District would simply ignore the initial exception: "Except at expressly limited by the terms of this Agreement". CP 53 (Appendix) The provision of Article 15 that the Fire District's right to manage and operate the Fire District includes the right to "discipline or

discharge for just cause” states an express limitation on the Fire District’s ability to discipline or discharge its employees. It may only take such action “for just cause.” Contrary to the Fire District’s assertion at page 18 of its brief, the CBA is not “entirely silent” with respect to the discipline and discharge of probationary employees. The CBA expressly addresses discipline and discharge of all employees, which necessarily includes both probationary and non-probationary employees.

As argued above, there is no “subsequent conduct” of *these parties*. The interim agreement negotiated in 2008 was executed not only by these two parties, but also by another Fire District and another IAFF Local. CP 119, 191-194

ASSIGNMENT OF ERROR #3

ISSUE 3.1 Did the trial court’s decision granting summary judgment violate an explicit, well established and dominant public policy of the State of Washington in favor of probationary periods for fire fighters?

ISSUE 3.2 Would the State’s public policy favoring probationary employment be violated by requiring a “for cause” standard for termination including grievance arbitration?

The trial court’s decision did not violate public policy. That decision did not affect the Fire District’s ability to train, observe and evaluate the actual performance of Parrish or any other new employee.

The public policies relevant to this dispute are the policies favoring the negotiation of collective bargaining agreements under RCW 41.56 and the policy favoring arbitration of disputes arising under such agreements as described in *Mount Adams School District v. Cook*, *supra*.

While there is no dispute that Parrish was a probationary employee, that fact is of no consequence under the terms of the parties' CBA. An employee's probationary status is not determinative of his wage rate, work schedule, duties, level of job security (at will or protected by a just cause requirement for discharge) or any other aspect of his wages, hours, or working conditions.

Under RCW 41.56, the wages hours and working conditions of Washington's public employees are established through good faith collective bargaining.

In this case, the Fire District and Local 3674 agreed that all employees—with no exceptions—are subject to the just cause standard for discipline and discharge. CP 53 (Appendix) "Just cause" is a term of art in labor law. The Washington Supreme Court has held "Whether there is just cause for discipline entails much more than a valid reason; it involves such elements as procedural fairness, the presence of

mitigating circumstances, and the appropriateness of the penalty.” *Civil Service Commission v. City of Kelso*, 137 Wn.2d 166, 173-174 (1999).

None of these elements of just cause affect, interfere with, or render superficial the Fire District’s ability train and evaluate its newly hired fire fighters.

The Fire District’s reliance on RCW 41.08.100 regarding probationary service is misplaced. It is well established that in light of RCW 41.56.905, the provisions of collective bargaining agreements negotiated under RCW 41.56 prevail over conflicting provisions of the State’s civil service statutes. *Rose v. Erickson*, 106 Wn.2d 420, 424; 721 P.2d 969 (1986). Washington law and public policy favor collective bargaining. Thus the requirement of the parties’ CBA that the employer must have “just cause” to terminate any employee prevails over the deemed unfit standard of RCW 41.08.100. Therefore, Appellant has failed to establish that the parties’ CBA, as interpreted, violates any explicit, well defined and dominant public policy.

ASSIGNMENT OF ERROR #4

ISSUE 4.1 Did the trial court’s order on summary judgment ignore an express condition precedent of the CBA that Parrish execute a written waiver of all administrative or judicial remedies in order to pursue arbitration?

ISSUE 4.2 Should the Fire District be compelled to engage in an arbitration process where Parrish has rejected the arbitration process and elected to pursue judicial and administrative remedies?

Although the parties' CBA requires an election of remedies, it does not state when that election must be made. The Fire District's argument is based on the assertion that the election must be made at the outset of the grievance process. That assertion is unsupported by the terms of the CBA or the facts of this case.

The trial court's order did not ignore an express condition precedent of the CBA. Article 16 "Non-Discrimination" of the parties' CBA states that the grievance procedures of the CBA shall apply to any dispute under Article 16 and requires that "prior to any arbitration, the employee shall have an election of remedies between arbitration and judicial or administrative remedies. If the employee elects arbitration, he or she must provide a written waiver of all other remedies . . ."

CP 54 (Appendix)

Contrary to the Fire District's argument, there is no requirement in the parties' agreement that this election must be made at the inception of, or prior to, the grievance process. CP 54 (Appendix) Since the CBA is silent as to when the employee must make this election, the Local submits that only reasonable interpretation is that the employee

may make this election at some time prior to the arbitration hearing (or prior to trial on a discrimination claim based on federal or state law). If and when a grievance arbitration hearing commences, Parrish has not provided a written waiver of all other remedies, then the Fire District would have a legitimate ground for refusing to proceed with the hearing.

Furthermore, in this case the Fire District has adamantly refused to recognize the grievance filed on behalf of Parrish, let alone schedule an arbitration hearing. If Parrish were to elect arbitration and this Court reversed the trial court, he could be left with no remedy whatsoever. At the same time, given the 180 day limitations period for filing discrimination complaints under Title VII of the Civil Rights Act of 1964 (42 USC §2000e-5b) delay in filing a Title VII complaint would forfeit his remedies under federal law. Parrish's filing of a tort claims notice and a Title VII complaint simply preserved his options. CP 198-199, 119.

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4. REQUEST FOR ATTORNEY FEES

Pursuant to RAP 18.1 the Local requests an award of its reasonable attorney fees and costs incurred in the litigation of this dispute both in the Clark County Superior Court and in this Court of Appeals.

Under Washington law four equitable grounds may support the award of attorney fees: (1) bad faith conduct, (2) preservation of a common fund, (3) protection of constitutional principles, and (4) private attorney general actions. *Noble v. Safe Harbor Family Preservation*, 141 Wn. App. 168; 169 P.3d 45, 51 (2007).

The lack of factual and legal support for the Fire District's unyielding refusal to proceed to arbitration despite the Local's repeated pleas to do so prior to filing suit (CP 79, 81, 84) and the trial court's entry of summary judgment establish that the Fire District has acted in bad faith and supports an award of attorney fees as a matter of equity. Appellant's failure to even address *Mount Adams School District v. Cook* exposes the absence of a good faith legal argument supporting its appeal. Instead of the prompt, economical dispute resolution agreed to by the parties in their CBA, the Local has been unreasonably forced to

commence a civil action and respond to the Fire District's appeal resulting in unreasonable delay and expense.

5. CONCLUSION

Based on the foregoing, the Local respectfully urges that this Court affirm the trial court's entry of summary judgment and award the Local its reasonable attorney fees and costs.

Respectfully submitted,

A handwritten signature in black ink, appearing to be 'D. Snyder', written over a horizontal line.

David A. Snyder WSBA #17849
Snyder and Hoag, LLC

Attorney for Respondent

APPENDIX

2006 – 2008 CONTRACT

CLARK COUNTY FIRE DISTRICT NO. 11

AND

CLARK COUNTY FIREFIGHTERS LOCAL 3674

(CP 41-61)

2006 - 2008 CONTRACT

between

CLARK COUNTY FIRE DISTRICT NO. 11

and

**CLARK COUNTY FIREFIGHTERS LOCAL 3674, INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS**

PREAMBLE

Pursuant to RCW 41.56, this Agreement is between Clark County Fire District #11 (hereinafter called "Fire District") and International Association of Fire Fighters Local #3674 (hereinafter called the "Union") for the purpose of setting forth the mutual understanding of the parties regarding wages, hours and conditions of employment of those employees for whom the Employer has recognized the Union as the exclusive collective bargaining representative.

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ARTICLE 1
Recognition

Clark County Fire Protection District No. 11 (the "Fire District") hereby recognizes the Union as the exclusive bargaining representative for the bargaining unit, consisting of all full-time firefighters and captains employed by the Fire District.

ARTICLE 2
Term of Agreement

This Agreement shall be for a term of three (3) years, commencing January 1, 2006 and ending December 31, 2008.

ARTICLE 3
Union Membership and Dues

Section A: It shall be a condition of employment that all employees of the Employer, covered by this Agreement who are members of the Union in good standing on the execution date of this Agreement shall remain members in good standing. It shall also be a condition of employment that all employees covered by this Agreement and hired on or after its execution date shall, on the thirtieth (30th) day following the beginning of such employment, become and remain members in good standing in the Union, or in lieu thereof pay each month a service charge equivalent to regular union dues to the Union as a contribution toward the administration of the Agreement. Provided: Objections to joining the Union will be observed. Any such employee shall pay an amount of money equivalent to regular union dues and initiation fees to a non religious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the dues and initiation fees. The employee shall furnish written proof to the Union that such payment has been made. If the employee and the bargaining representative do not reach agreement on such matter, the Public Employment Relations Commission shall designate the charitable organization.

Section B: The Union agrees that membership in the Union will not be denied or terminated for any reason other than the failure of the employee covered by this Agreement to tender the periodic dues and initiation fees uniformly required as a condition of acquiring or retaining membership in the Union. The parties also agree that, when an employee fails to fulfill the above obligation, the Union shall provide the employee and its Employer within

thirty (30) days notification of the Union's intent to initiate discharge action, and during this period, the employee may make restitution in the amount which is overdue.

Section C: The Employer agrees to deduct, once each month, dues, initiation fees, and assessments in an amount certified to be current by the Treasurer of the Union from the pay of those employees who individually request in writing that such deductions be made. The total amount of deductions shall be remitted each month by the Employer to the Treasurer of the Union.

ARTICLE 4 Work Schedule

Section A: There shall be three (3) recognized shifts, as follows: 24 hour; 24 hour floating; and 40 hour (5 nine hour periods, each including one unpaid lunch break of one hour.) Assignment and reassignment of employees to and among the recognized shifts shall be determined by the Employer, as shall shift starting and ending times, according to the needs of the District as reasonably determined by the Employer.

Section B: Employees assigned to the 24 hours shift will normally work a 56 hour duty schedule consisting of 24 consecutive hours followed by 48 hours off. Employees assigned to the 24 hour floating shift shall be assigned to work by the Employer as required to fill vacancies or empty shifts created by the use of FLSA days, vacation, holidays, or other absences; provided, however, that employees on the 24 hour floating shift shall be assigned so as not to create undue hardship.

Section C: The Employer shall provide rest breaks and meal periods as required by law, provided that 40 hour shift employees will receive one hour for an unpaid lunch break scheduled near the middle of the shift.

Section D: The Employer reserves the right to determine the assignment and reassignment of employees to particular shifts, and to make and modify the starting and ending times of the recognized shifts. Changes in shift assignments or shift starting and ending times shall be made on fourteen (14) days notice, except emergencies.

ARTICLE 5
Vacations

Section A: VACATION

The annual leave allowance shall accrue monthly based upon the following schedules:

Non-Shift Employees

0 months to 1 year	7.2 days/57.6 hours	(4.8 hr./mo.)
1 - 5 years	12.0 days/96 hours	(8.0 hr./mo.)
6 - 10 years	21.6 days/172.8 hours	(14.4 hr./mo.)
Over 10 years	26.4 days/211.2 hours	(17.6 hr./mo.)

Shift Employees

0 months to 1 year	3 shifts/72 hours	(6 hr./mo.)
1 - 5 years	5 shifts/120 hours	(10 hr./mo.)
Over 5 years	9 shifts/216 hours	(18 hr./mo.)
Over 10 years	11 shifts/264hours	(22 hr./mo.)

Annual leave banks will be converted for forty (40) hour shifts as follows:

From shift to 40 hour	.80
From 40 hour to shift	1.25

Section B: VACATION CARRYOVER, PAYOFF AND USAGE

1. Except as otherwise provided below, vacation leave may be carried over and accumulated. Vacation usage may not exceed three consecutive calendar months in any twelve (12) month period.
2. Upon submittal of resignation, employees may be required to utilize any accrued vacation time prior to the termination date. Properly accrued but unused vacation time otherwise remaining at termination will be paid, provided that the maximum payment shall not exceed the value of vacation time the employee could accrue in one (1) year based on their length of service at the time of departure.

Section C: VACATION SELECTION

Vacation shall be taken as requested by the employee, with the approval of the Fire Chief or his or her designee. Vacation requests should be made at least thirty (30) days in advance.

ARTICLE 6
Holidays

Section A: The following shall be designated as holidays for all employees in the bargaining unit:

New Year's Day	January 1st
Martin Luther King Day	3rd Monday in January
President's Day	3rd Monday in February
Memorial Day	As observed by State of WA
Independence Day	July 4th
Labor Day	1st Monday in September
Veteran's Day	As observed by State of WA
Thanksgiving Day	4th Thursday in November
Day after Thanksgiving	Day following 4th Thursday in Nov.
Christmas Day	December 25

Non-shift employees are granted the same holidays and shall receive the day off in lieu of pay or time credited. A non-shift employee who is required by the Fire District to work on a listed holiday shall receive overtime pay.

Section B: Shift employees shall receive, in lieu of holidays, ninety-six (96) hours per year, which shall be taken in accordance with Article 9, Section B. Request for holiday time off shall be made in accordance with established department policy.

ARTICLE 7
Sick Leave

Section A: Sick leave time will be provided to employees on the following schedule:

1. Non-Shift employees shall be credited with thirty two (32) hours of leave at the date of hire and, after four (4) months, shall accrue sick leave at the rate of eight (8) hours of leave for each month of service completed from the date of hire.
2. Shift employees shall be credited with seventy two (72) hours of leave at the date of hire, and after six (6) months, shall accrue sick leave at the rate of twelve (12) hours per each full month of service completed from the date of hire.
3. Sick leave shall not accrue during leaves of absence without pay or during layoffs.
4. At the discretion of the Board of Commissioners, sick leave may be extended by resolution.
5. The maximum sick leave accrual shall be twelve hundred (1200) hours for shift employees and eight hundred (800) hours for non-shift employees.

Section B: SICK LEAVE USAGE

1. Sick leave shall be utilized in accordance with the Fire District's Family and Medical Leave Act policy and may be utilized for any purposes authorized by that policy. Employees taking family or medical leave must first utilize sick leave until exhausted, then vacation leave until exhausted, then any other earned leave.
2. No payment of unused sick leave will be made upon retirement or termination.
3. One (1) hour sick leave will be charged for each one (1) hour off duty.
4. Absence for part of a day for reasons authorized by the Fire District's FMLA policy shall be charged against sick leave in an amount not less than one (1) hour and in one (1) hour increments.
5. Regularly scheduled hours off duty shall not be charged against sick leave.

**ARTICLE 8
Salaries**

The salaries of the employees governed by this Agreement are set forth in Exhibit "A, " which is attached and incorporated by reference. It is agreed by both parties that Salaries for the third year shall be negotiated prior to the end of the second year of this agreement.

**ARTICLE 9
Overtime Pay**

Section A: GENERAL

1. All overtime, except late calls and emergencies, must be approved in advance.
2. The overtime rate shall be one (1) and one-half (1/2) times the regular rate.
3. Overtime shall be compensated in pay or compensatory time off.

Section B: SCHEDULED SHIFTS OFF TO REDUCE HOURS

Shift employees shall be scheduled eleven (11) shifts off per year for the purpose of avoiding overtime by reducing average hours worked to two hundred four (204) hours per (27) day cycle. This shift shall be known as an "FLSA Shift" and shall be scheduled by a "bid" process in November of the preceeding year based on seniority. Provided that, no two employees may have the same FLSA day; and no employee may take more than one FLSA day in any work cycle. During the same "bid" process, 2 of the employee's floating holiday

shifts shall be scheduled for the remaining two (2) of the thirteen (13) work cycles not covered by the eleven (11) shifts.

Section C: CALL BACK/OVERTIME

1. If an employee is called back for unscheduled duty or held over, he shall be compensated at the rate of time and one-half. A minimum of (2) hours will be paid for call back. The Employer may, at its option, require an employee to hold over for a maximum of (2) hours. 2. Except as provided above, all overtime shall be voluntary. The employee shall be compensated at time and one-half for all overtime. Overtime may be compensated in pay or compensatory time off. Compensation in compensatory time will be mutually agreed upon by the employee and the Fire District.
3. All hours worked in excess of the FLSA maximum for the work cycle will be compensated at the rate of time and one-half.
4. The Employer shall make reasonable efforts to distribute overtime opportunities for bargaining unit members equally.
5. For the purpose of calculating the hourly rate which shall apply to excess hours of work (overtime), the employees' total monthly salary shall be multiplied by 12 then divided by 2648 for shift employees and by 2080 for 40 hour employees, then multiplied by 1.5.

Example: If an employee's total monthly salary is \$3500, then his overtime rate would be $\frac{\$3500 \times 12}{2648} = \$15.86 \times 1.5 = \$23.79$

**ARTICLE 10
Health Insurance**

Section A: The Employer shall pay 100% of all monthly premiums for Medical, Dental, and Vision coverage for employees for the life of the contract. The fire District agrees to pay 100% of all monthly premiums for Medical, Dental and Vision coverage for employee's dependants for all offered plans during 2006. In 2007, District will cover up to a 15% increase over the 2006 dependent premiums for Kaiser and COMP PPO Plan 1. For COMP PPO Plan 2, District will cover 100% of any dependent premium increase. In 2008, District will cover up to a 10% increase over the 2007 dependent premiums for Kaiser and COMP PPO Plan 1. For COMP PPO Plan 2, District will cover 100% of any dependent premium increase.

Section B: The Employer shall offer Voluntary Group Term Life Insurance in the policy amount of \$25,000 and shall pay the monthly premium for the coverage. Employees who

wish to purchase additional amounts of insurance will be responsible for the additional premium.

Section C: Each member of the Union shall contribute to the Retiree Medical Trust through the Washington State Council of Firefighters (WSCFF). This amount will be deducted from the employee's regular monthly pay and forwarded to the WSCFF. This contribution shall be considered mandatory for all members covered under this agreement. The District will pay \$25.00 to the WSCFF towards each member's monthly contribution.

ARTICLE 11 Funeral Leave

Section A: For purpose of administration of this Article, a "close relative" is defined to include spouse, child, parent, step-parent, grandparent, sibling, and grandchildren of the employee and spouse. "Child" shall be defined as every natural born child, step-child, child legally adopted or made a legal ward of the employee.

Section B: Employees shall receive leave under this Article as follows:

24 hour shift employees --	two (2) shifts
40 hour employees --	five (5) days

Employees may also be granted an additional shift (or day) at the discretion of the Chief where circumstances, such as travel distance, warrant.

Section C: Sick leave may be used for bereavement purposes, up to a maximum of forty-eight (48) hours with the express approval of the Fire Chief or his designee.

Section D: Employees notified of a death of a close relative while on duty shall be immediately excused from work for the balance of the shift if it is necessary that the employee be immediately off work to attend to such a situation. Such time off shall be with pay in addition to the benefit applicable. An employee who is working on an overtime basis will be allowed to leave work but will be paid only for hours actually worked.

Section E. The District agrees to allow the remaining portions of an employee's vacation, holidays, or accumulated compensatory time to be used as funeral leave.

ARTICLE 12
Grievance Procedure

Section A: Grievances are defined as disputes involving the interpretation or application of this Agreement. Grievances shall be resolved in the following manner.

Section B: All grievances must be initiated under the grievance procedure within thirty (30) calendar days of when such matter comes to the attention of the employee. Any grievance not timely under this provision is waived.

Step 1: Any employee having a grievance shall first present the grievance in writing to his immediate supervisor. The immediate supervisor shall review the grievance and render a written decision to the grievant within seven (7) calendar days. An alleged violation of the Disciplinary Policy and Procedure shall be submitted at Step 3.

Step 2: If the grievance is not resolved in Step 1, the grievant shall submit in writing to a Union Grievance Committee all relevant facts involving the alleged grievance. The Union Grievance Committee, upon receiving the written and signed petition from the employee, shall respond in writing to the grievant within seven (7) calendar days after receipt of the grievance. If in their opinion, no grievance exists, no further proceedings shall occur. If the grievance proceeds, the employee shall have the right to request representation from the Union at any succeeding stages of the grievance procedure.

Step 3: If the grievance is not resolved at Steps 1 and 2, the grievant shall submit the grievance in writing to the Assistant Chief within fourteen (14) calendar days of receipt of the immediate supervisor's decision. The written grievance shall set forth the relevant facts, including the alleged violation, all contract sections allegedly violated, and the remedy requested. The Assistant Chief shall render a written decision on the grievance within seven (7) calendar days. The Union may bring grievances in its own right with respect to contract provision granting rights to the union as an entity. Such grievances shall commence at Step 3.

Step 4: If the grievance is not resolved at Step 3, the grievant shall present the grievance to the Chief within seven (7) days of receipt of the Assistant Chief's

decision. The Chief or his designee shall render a written decision within seven (7) calendar days.

Step 5: If the grievance is not resolved at Step 4, the grievant shall submit the grievance to the Board of Fire Commissioners within seven (7) calendar days of receipt of the Chief's decision. The Fire Commissioners shall have discretion to determine what testimony or additional evidence, if any, beyond the written grievance and the Chief's decision is necessary to resolve the grievance, and to schedule presentation of such testimony or additional evidence. The Fire Commissioners shall submit their written decision within thirty (30) calendar days.

Step 6: The Union may appeal an adverse decision of the Board of Fire Commissioners to a neutral arbitrator. The Union shall give written notice to the Employer of its intent to submit a grievance to arbitration within fourteen (14) calendar days of the Commissioners' decision. Within ten (10) calendar days of the Union's request to arbitrate, a representative of the Union and of the Employer shall meet and attempt to agree on a neutral arbitrator. If unable to reach agreement, they shall immediately select an arbitrator from the American Arbitration Association (AAA) in accordance with AAA procedures. The arbitrator shall render a decision within (30) calendar days of hearing, which shall be final and binding on both parties. The arbitrator shall have no power to alter, amend, or change the terms of this Agreement.

Each party shall bear the expense of preparing and presenting its own case, including compensating its own representatives and witnesses. The expense of the neutral arbitrator will be shared equally between both parties. Extension of the above time limits may be accomplished through mutual consent of both parties.

ARTICLE 13 Saving Clause

If any Article of this Agreement should be held invalid by operation of law or by tribunal of competent jurisdiction, or if compliance with or enforcement of any Article should be restrained by such tribunal, the remainder of this Agreement shall not be affected thereby, and the parties shall enter into collective bargaining negotiations required by RCW 41.56.

ARTICLE 14
Union Business

Section A: Employees elected or appointed to represent the union shall be allowed to use administrative leave, shift trades, or vacation for the purpose of performing Union functions, provided that time off under this article shall result in no additional cost to the Employer. Employees elected or appointed to represent the Union may be allowed time off with pay to meet with the Employer at mutually agreeable times during normal working hours, provided that such employee remains available for emergency duty that may arise.

Section B: The Employer shall provide space for one Union bulletin board in each fire station for both the supervisory and non-supervisory units where bargaining unit employees are assigned, to be used exclusively by the Union. The Union agrees to limit posting of any Union-related notice to such bulletin board.

Section C: The Union may hold its regular meetings at any District station with prior permission of the Chief or his designee and the officers of the affected station. Employees on duty may attend, provided that such attendance does not interfere with the performance of their normal duties.

ARTICLE 15
Rights of Management

Section A: Except as expressly limited by the terms of this Agreement, the Fire District reserves the right to manage and operate the Fire District in all respects. This right includes, but is not limited to: the right to hire, promote, discipline or discharge for just cause, to assign and transfer employees, to determine the manner and means by which the Fire District's activities shall be undertaken and accomplished, **to establish work schedules within the recognized hours of work and work schedules**, to determine all levels of manning or staffing, to continue to perform work through the utilization of non-bargaining unit staff, including part-time employees and volunteers, to determine the location of District facilities, to enter into agreements with other local government entities concerning the provision of fire suppression, emergency medical, or other services provided by the Fire District, to make and enforce reasonable rules and regulations, and to undertake such other actions as it may deem necessary in the discharging of its obligations to the public.

Section B: With the exception of the rights reserved above, any other changes in mandatory subjects of bargaining shall be made in accordance with RCW 41.56.

ARTICLE 16
Non-Discrimination

The Employer and the Union agree that there shall be no illegal discrimination against employees based on race, gender, color, age, marital status, national origin, disability, or protected union activity. The grievance procedures of this Agreement shall apply to any dispute under this Article, provided, however, that prior to any arbitration, the employee shall have an election of remedies between arbitration and judicial or administrative remedies. If the employee elects arbitration, he or she must provide a written waiver of all other remedies and the arbitral forum shall provide the final determination of the dispute.

ARTICLE 17
Definition of Seniority

Section A: Seniority shall be determined by continuous service with the Employer from date of hire. Continuous service shall be broken by resignation, discharge or retirement.

Section B: During the period that any employee is on an authorized leave-of-absence, without pay or on layoff status, seniority shall not accrue. Upon returning to work after such layoff or leave, the employee shall be granted the level of seniority previously accrued in the rank to which he returns.

Section C: Employees with the same hire date shall be assigned to the seniority list in order of their ranking on the hiring date.

ARTICLE 18
Substance Abuse

The Fire District and the Union jointly recognize that alcohol and drug abuse problems are a serious safety hazard. The Fire District may require screening of an employee where it has reasonable suspicion to believe said employee is under the influence of alcohol or illegal drugs while at work. All drug and alcohol testing and subsequent actions will be administered consistent with Fire District Policy 409.

ARTICLE 19
Vacancies and Promotions

The following procedure shall govern all promotions within the Fire District:

- A. All examinations shall be impartial and shall relate to those matters which will test fairly the candidate's ability to discharge the duties of the position to be filled. The Fire District shall maintain an active promotional list at all times.
- B. Promotional lists for bargaining unit positions ordinarily shall be maintained for one (1) year.
- C. Promotional examinations for bargaining unit positions shall consist of a process established by the District. Resource material used for the examinations will be identified at least one hundred twenty days prior to the examination.
- D. All applicants will be notified of their final score and relative standing on the promotional list within seven (7) days of the end of testing. Promotions shall be made according to the employees' relative standing on the promotional list, in accordance with the Rule of Three.

ARTICLE 20
Reduction in Force

In the event that the District finds it necessary or desirable to reduce the roll of full-time District personnel, the employees with the least seniority shall ordinarily be laid off first unless the remaining employees are not equally or more qualified to accomplish the functions that have been accomplished by employees with lesser seniority. If the employee with the least seniority is retained and a more senior employee is instead laid off, the reason(s) for such action shall be clearly stated in writing and provided to the collective bargaining unit. All laid-off employees shall have first preference for re-employment for a period not to exceed one (1) year from the date of lay off.

ARTICLE 21
Safety Committee

Section A: There shall be a joint Safety Committee consisting of (at least) four (4) representatives. Two (2) representatives shall be appointed by the Union with the remaining members appointed by the Employer, provided that the Committee shall be constituted, and all the appointments shall be made consistent with applicable law.

Section B: The Committee shall meet at least once each calendar quarter and more often as agreed to discuss matters concerning health and safety. The Committee shall make its finding and recommendations to the Employer.

ARTICLE 22
Leave of Absence

Section A: MILITARY LEAVE

Employees enlisting or entering the military or naval service of the United States pursuant to the provisions of the Military Selection Service Act of 1967, as amended, shall be granted all rights and privileges provided by the Act. Employees fulfilling their obligations with respect to the National Guard or reserve status in the armed forces shall be granted a leave of absence for such purpose as provided by law.

Section B: JURY DUTY

An employee summoned for jury duty shall be granted administrative leave for such service and shall be paid by the District, his regular wage, less such remuneration he may receive as compensation for such duty.

ARTICLE 23
Uniforms

Section A: UNIFORMS

All required uniform items shall be furnished to each employee as part of his/her uniform issue and shall include:

<u>24-Hour Shift Employees</u>	<u>40-Hour Week Employees</u>
1 winter lined coat	1 winter lined coat
3 uniform shirts	5 uniform shirts
3 uniform pants	5 uniform pants
1 pair black uniform boots	1 pair black uniform boots
1 belt	1 belt
District patches as required	District patches as required

Each employee shall also receive 1 hat, 3 T-shirts, and 1 sweatshirt. All employees shall receive uniforms on a fair wear-and-tear basis in accordance with the Fire District policy. Uniforms and uniform issue materials shall be worn only on-duty or when otherwise authorized by the Employer.

District will supply Class 'A' coat, shirt badge, hat and name tag for each non-probationary employee. Provided, employee has Local-supplied (and District approved) pants, belt and shoes.

Section B: PROTECTIVE CLOTHING

Protective clothing and equipment as required by the Washington State Department of Labor & Industries shall be supplied and maintained at no cost to the employee.

ARTICLE 24
Duty Out of Rank

Section A: ELIGIBILITY

Any bargaining unit member who is specifically appointed by the District to perform for a minimum of one (1) full shift the responsibilities and duties of a position above that which he or she regularly holds, will be eligible for duty-out-of rank pay for each full shift served in that capacity. Any vacant position shall be filled with a permanent appointment within 12 months. Provided, there is at least 1 qualified candidate for the position.

Section B: COMPENSATION

An employee who is eligible for duty-out-of-rank pay shall be compensated at the rate of fifty percent (50%) of the Captain differential above the employee's regular rate of pay for each full shift served.

ARTICLE 25
Reclassifications

Section A: Any employee who as a condition of employment is certified as a paramedic shall maintain, at the District's expense, such certification for a minimum of three (3) years. After three (3) years, he/she may revert to a minimum of EMT-B only as firefighter positions are filled.

Section B: Any employee who is certified as a Clark County paramedic on a voluntary basis shall receive incentive pay as set forth in Appendix A and shall be responsible for maintaining said certification at his/her own expense. These employees may revert to a minimum of EMT-B at any time.

Section C: Any employee who is certified as a Clark County paramedic will have first choice to fill any Firefighter/Paramedic vacancies.

Section D: Any employee hired for the position of Cadet Instructor shall not be eligible to reclassify to a line Firefighter position until he/she has filled the instructor position for a minimum of three (3) years. After three (3) years, he/she may fill a vacant Firefighter position, provided, the District is successful in filling the Cadet Instructor position with a qualified replacement.

Section E: If more than one employee requests reversion or reclassification as outlined in any of the sections above, the employee with the most seniority shall ordinarily be approved to fill a vacancy unless the remaining employee(s) are more qualified to fill the position.

EXHIBIT A.
Salaries

SALARY SCHEDULE
FIRE FIGHTER

Effective January 1, 2006:

<u>Step A</u>	<u>Step B</u>	<u>Step C</u>	<u>Step D</u>	<u>Step E</u>
3,675	4,165	4,410	4,655	4,900

Effective January 1, 2007 base salaries will increase by 2.5% or Portland Area CPI, whichever is higher.

Effective January 1, 2008 base salaries will increase by 3.0% or Portland Area CPI, whichever is higher.

Captain Differential:	2006	13.5% of base
	2007	15% of base
Clark County Certified Paramedic: (condition of employment)	2006	10% of base
Clark County Certified Paramedic: (voluntary)		\$150/month

SECTION 1: The following amounts will be added to the monthly base salaries of all personnel for the following:

NFPA 1&2 Fire Instructor Certification	\$25.00
Washington State I.V. Technician	25.00
Washington State I.V./Airway Technician	50.00
AA Degree in Fire Science	100.00
BA or BS in Fire Admin., Public Admin., or a related field	200.00

Employees whose job descriptions require a particular certification listed above will not be eligible for the additional monthly salary.

SECTION 2: Matching funds of up to 1% of base salary after an employee's fifth year and 2% of base salary after an employee's eighth year shall be paid monthly into a District-approved deferred compensation plan.

SECTION 3: Longevity Pay of 1% of base salary will be added after an employee's fifth year, 2% of base salary will be added after the employee's 10th year, and 3% of base salary will be added after employee's 15th year.

IN WITNESS THEREOF, the parties have executed this Agreement on this 8th day of
March, 2006.

CLARK COUNTY FIRE PROTECTION
DISTRICT NO. 11
BOARD OF FIRE COMMISSIONERS

LOCAL 3674, INTERNATIONAL
ASSOCIATION OF FIREFIGHTERS

Chairman

President

Commissioner

Negotiating Representative

Commissioner

Negotiating Representative

COUNT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

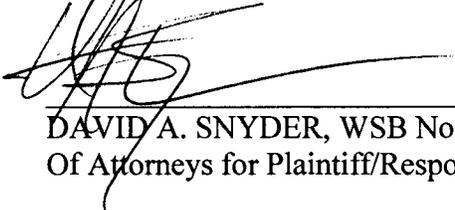
BY _____
DEPUTY

CERTIFICATE OF SERVICE

I certify that I mailed a copy of the foregoing Respondent's Brief to Attorney Thomas G. Burke at the following address, postage prepaid on August 6, 2009:

Thomas G. Burke
612 South 227th Street
Des Moines, Washington 98198

Snyder & Hoag, LLC



DAVID A. SNYDER, WSB No. 17849
Of Attorneys for Plaintiff/Respondent