

In the Matter of Arbitration Between)
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IAFF Local 3256,)
(Union),)
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and)
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City of Hood River,)
(City))
)
_____)

OPINION AND AWARD

Interest Arbitration

BEFORE: David W. Stiteler, Arbitrator

HEARING LOCATION: Hood River, Oregon

HEARING DATE: April 14, 2014

APPEARANCES: For the Union:
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OPINION

I. INTRODUCTION

The Union and the City were unable to reach an agreement on a successor contract. The dispute went through the statutory process and ended in this interest arbitration proceeding. The parties selected David W. Stiteler to serve as the Arbitrator.

At a hearing before the Arbitrator on April 14, 2014, in Hood River, the parties had the full opportunity to present evidence and arguments in support of their last best offers (LBO). After their presentations, they agreed to submit post-hearing briefs. The Arbitrator received their briefs by June 11, and closed the hearing record.

II. BACKGROUND

The City is a full-service city located in the Columbia Gorge, about 65 miles east of Portland and 20 miles west of The Dalles. It has about 53 employees. The current population is approximately 6,700.

The Union's bargaining unit includes 13 firefighters, including seven engineers, three lieutenants, and three captains. All bargaining unit members are paramedics.

The City's Fire Department (Department) provides ambulance services, not only for the City, but for most of the County population as well. There is no other ambulance company in the City. In addition to transporting patients to the local hospital in Hood River, the Department also transfers patients to Portland area hospitals three to five times a week; such transfers average around four hours.

About 76% of the Department's calls are for rescue or emergency response. Fire response accounts for about 3% of the Department's calls.

III. LAST BEST OFFERS

The issues in dispute are wages and the length of the contract. Both parties propose continuation of existing contract language.

A. Union

Term: 3 years (July 1, 2013 – June 30, 2016)
2.25% wage increase, effective July 1, 2013
2.25% wage increase, effective January 1, 2014
2.25% wage increase, effective July 1, 2014
2.25% wage increase, effective January 1, 2015
2.25% wage increase, effective July 1, 2015
2.25% wage increase, effective January 2, 2016

B. City

Term: 2 years (July 1, 2013 – June 30, 2015)
4% wage increase, effective January 1, 2014
1.5% wage increase, effective July 1, 2014
1.5% wage increase, effective January 1, 2015

IV. DISCUSSION AND ANALYSIS

Oregon's interest arbitration statute, ORS 243.746, sets out the criteria that arbitrators must apply in selecting one or the other of the parties' LBOs. In listing the factors, the statute requires arbitrators to give first priority to "the interest and welfare of the public" and second priority to the remaining factors.

The parties (at least in their briefs) focused their arguments on ability to pay and comparability. They offered limited arguments on the recruitment and retention and CPI factors, which are addressed briefly below. They did not offer any stipulations (ORS 243.746(4)(g)) and neither directly argued that I should consider unlisted other factors (ORS 243.746(4)(h)) so neither is discussed in this analysis.¹ In addition, they addressed overall compensation presently received (ORS 243.746(4)(d)) only in the context of comparability arguments, so that factor is likewise not addressed specifically.

¹ In its hearing presentation, the City talked about using The Dalles as a comparator under this factor. In its brief, the City made its arguments about The Dalles only in the context of discussing the comparability factor, and I will address it there.

A. ORS 243.746(4)(a): The interest and welfare of the public.

The legislature did not define those terms. Since that language was added to the statute in 1995, arbitrators generally have concluded that the best way to determine the interest and welfare of the public is by analyzing the remaining factors.

The City offers several arguments to support its claim that this factor favors its LBO. According to the City, the Arbitrator has previously observed that the interest and welfare of the public may be best served by balancing the employee's right to fair compensation and the employer's ability to operate and provide other vital services. In striking that balance here, the record shows that the City is struggling to maintain police services. The amount of general fund money going to police is shrinking each year and the amount going to fire services increasing, which is an unsustainable trend. The fire department takes up 42% of the general fund, compared to only 29% for the police department. The fire department recently moved into a new state-of-the art building, while the police department continues to operate out of an antiquated structure. Finally, the City notes that police services, unlike fire services, cannot be performed by volunteers.

The Union contends that the interest and welfare of the public cannot be determined without reference to or consideration of the other statutory factors. The Union also argues that arbitrators generally agree that unspecified "other factors" (ORS 243.746(4)(h)) should not be considered if the listed secondary factors provide a sufficient basis to select between the competing LBOs.²

Though the City argues that this first priority factor favors its LBO, its arguments are based largely on issues that relate to the secondary factors. And the City offers further argument specifically addressing those factors. I do not find a basis on this factor alone to award either party's LBO. I will consider the secondary factors next.

² The Union nonetheless raised some unlisted factors (e.g., the claim that the fire department is the most popular City service). That information did not influence my decision.

- B. ORS 243.746(4)(c): The ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided.

The Union contends that this factor favors its LBO because there is no evidence that the City's LBO will aid in recruitment and retention. The Union also argues that the better economic terms of its LBO will be more effective in retaining current employees and allowing the City to recruit better applicants.

The City counters that this factor favors its LBO because the department has not had any issues retaining existing employees or recruiting new employees. The City points out that only one bargaining unit member has left the department voluntarily and had to be replaced over the past seven years. (The City's figures do not count two retirements in September 2013; those employees will not be replaced.)

During its presentation at hearing, the Union asserted that various bargaining unit members either are actively looking for jobs elsewhere, or have applied for positions in other departments. The City contends that such information is irrelevant in considering this factor.

I agree with the City on this point. The Union offered no evidence about why unit members are looking or have looked for work. People look for new jobs for many reasons; financial considerations are only one.

The Union also asserted that seven bargaining unit members currently work at part-time jobs. Again, the City contends this is irrelevant to the recruitment and retention factor, pointing out that firefighters' work schedules allows them about 20 days a month in which to work at other jobs or run a business.

I am not persuaded that the limited information about firefighters holding other jobs has meaningful bearing on the recruitment and retention issue. It is not clear that those who do so are primarily motivated by economic concerns.

In sum, the evidence establishes that the City does not have a problem retaining qualified fire personnel. There has been so little turnover that there is also

no evidence to show that there is an issue recruiting qualified personnel. I find that this factor favors the City, but it is not a significant element in determining which LBO best serves the interest and welfare of the public.

- C. ORS 243.746(4)(f): The CPI-All Cities Index, commonly known as the cost of living.

The City argues that this factor favors its LBO because the City's proposed wage increase exceeds the CPI. The City introduced a chart showing that the CPI increased 10.3% from 2008 through 2013. The chart also shows that during the same period, bargaining unit members have received wage increases of 8%, including the increase in the City's LBO. The City's offer for 2013 and 2014 is 7% and the 2013 – 2014 actual and projected CPI increases total 3%.

The Union argues that this factor is irrelevant for two reasons. First, both parties' proposed wage increases exceed the actual and projected CPI increases. Second, the wages paid to bargaining unit members lag behind the City's comparators. The CPI is less important where a catch-up raise is warranted.

As a starting point, I do not agree with the City's characterization of its proposal. The City has proposed a contract term running from July 1, 2013 through June 30, 2015. It proposes a 4% wage increase retroactive to January 1, 2014, followed by 1.5% increases on July 1, 2014 and January 1, 2015. Since a contract year runs from July 1 of one year through June 30 of the next year, it is not accurate to describe the City's proposal for a 4% increase on January 1, 2014 as being a 4% increase for the 2013–2014 contract year. The proposed increase only covers the second six months of that year. Likewise, its proposed 1.5% increases do not amount to a 3% increase for 2014 because they are staggered.

That issue aside, I find that this factor is of little assistance in selecting an LBO. Both parties have proposed raises that exceed the actual and projected CPI. The City's figures show that wage increases for the bargaining unit have lagged increases in

the CPI over the past seven years. However, either proposal would put the unit ahead of projected CPI increases. I do not rely on this factor in reaching a decision.

- D. ORS 243.746(4)(b): The reasonable financial ability of the unit of government to meet the costs of the proposed contract giving due consideration and weight to the other services, provided by, and other priorities of, the unit of government as determined by the governing body. A reasonable operating reserve against future contingencies, which does not include funds in contemplation of settlement of the labor dispute, shall not be considered as available toward a settlement.

The Union contends that the ability to pay factor is the one that has the most impact on this dispute. The City offered its arguments about ability to pay in the context of the overall dispute and the interest and welfare of the public.

The Union points out that the City is not claiming an inability to pay and argues that the City's unwillingness to pay is not enough. According to the Union, the evidence establishes that the City has the money to pay for the Union's LBO, with the cost difference between the two LBOs being just \$44,000 over the first two contract years. The Union asserts that its LBO would actually cost less than the City is paying now in compensation, if unfilled positions are factored in.

In addition, the Union contends that the City's revenues and ending fund balances have increased each of the past two years. The Union's LBO is less than 0.1% of the City's June 30, 2013 ending fund balance. The City routinely spends less than it has budgeted. The PERS changes are saving the City 4.4%, which amounts to about \$50,000 a year. A 1% increase for bargaining unit members is approximately \$12,000, so the PERS savings alone would pay for the Union's LBO.

The City counters that it must provide other services, in particular law enforcement. Continued growth of the fire department budget has come at the expense of other City services, such as police. The number of City employees measured by FTE has decreased from 67 to 52 over the past few years due to decreasing funds.

The Union's figures show the current payroll cost for members of the bargaining unit, based on salaries as of June 30, 2013, as a little under \$1.2 million per year. Its cost summary shows the payroll cost at \$1,080,498 on January 1, 2014 after its first two proposed raises, at \$1,133,766 on January 1, 2015 after its third and fourth proposed raises, and at \$1,185,359 after its fifth and sixth proposed raises. By the Union's calculation, the City's payroll costs would be around 1% less after the final raise in its proposal than the City's June 30, 2013 payroll cost.

Using the same methodology, the Union's figures show that under the City's LBO, the City's payroll cost would be \$1,061,920 on January 1, 2014, and \$1,108,301 on January 1, 2015. That would mean that the City's payroll costs on January 1, 2015, would be about 7% less than the June 30, 2013 amount.

Based on the above figures, the Union claims that the total difference between the parties' proposals for the first two contract years is \$44,043. Assuming that the Union's calculations are correct, those calculations do not reflect the cost increase in the Union's proposed third year, about \$77,058 using its methodology.

The City's numbers, not surprisingly, are higher. For example, the City shows that total payroll costs following its proposed 4% increase on January 1, 2014, would be \$1,469,267, almost \$420,000 more than the Union's calculation. Likewise, the City shows a total payroll cost on January 1, 2015 of \$1,505,279, or about \$397,000 more than the Union's calculations.³

Despite the disparity in the parties' numbers, the City's calculations actually show a smaller difference—about \$30,000—between the amount of new money required to fund the parties' proposals for the first two contract years.⁴ Again,

³ Comparing the parties' exhibits, there is no obvious explanation for the discrepancy. Their salary numbers are mostly the same. The difference seems to be in what other figures are included. The Union's chart includes a number for "roll ups" that it puts at 40% of salary, but there is no explanation of what other personnel expenses it considered in arriving at that number or if it is merely an estimate. The City's chart shows the following additional costs: cell phone; premium pay; FLSA; holidays; PERS; FICA; various insurances; and 7(k) exemption.

⁴ These numbers are based on C-16.

however, additional money would be necessary to fund the Union's proposed raises in the third year.

The financial reports summarizing the state of the City's finances for the four fiscal years ending June 30, 2013, show a continued improvement. The City's revenues increased each of the four years, and its ending fund balance likewise increased. After several years of deficit spending, the City's reserves have been growing for the past few years.

I find the Union's overall argument on this factor somewhat simplistic. Reduced to its essence, the Union's contention is that if an employer can pay for a union's LBO, then the arbitrator should award it. The law is more nuanced than that.

The Union argument ignores the language of the statute, which requires the arbitrator to consider the employer's "reasonable financial ability * * * to meet the costs of the proposed contract giving due consideration and weight to the other services provided by, and other priorities" of the employer. The statute further recognizes an employer's need for a reasonable operating reserve.

The Union also bases its argument on assumptions that are far from certain. For example, in claiming that the City's savings from PERS reform would pay for the cost of the Union's LBO, the Union ignores the very real possibility that such savings may be ephemeral. There are court challenges pending to the PERS reform legislation—including one filed by the PERS Coalition, a member of which is the Union's parent labor organization, the International Association of Fire Fighters.

It is somewhat disingenuous for the Union to claim on one hand that the City's PERS savings from SB 822 would cover the costs of the Union's proposed wage increase while participating, albeit perhaps indirectly, in a legal effort to have SB 822 declared void. It is not appropriate to consider the speculative possibility of PERS savings in analyzing the City's ability to pay for a wage increase.

The Union notes that the City regularly spends less than it has budgeted, implying that this is "hidden" money. The evidence does suggest that the City, at least

in the past four years or so, has budgeted and spent conservatively. The fact that it has done so, however, does not alone make the Union's proposal for a higher wage increase more compelling. There is no guarantee that the City will be able to continue this trend in the future. In addition, the City's frugality has come with a reduction in the number of City employees.

In addition, I believe that the structure of the Union's proposal, calling for raises every six months, has a compounding effect that the Union's cost figures do not fully recognize.⁵ I will address this issue below.

In sum, the undisputed evidence about the City's finances indicates that it has the reasonable financial ability to meet the costs of either LBO. This is so whichever party's cost estimates are considered. I note, however, that part of that reasonable financial ability is serendipitous because two bargaining unit members retired and were not—and apparently will not be—replaced. I also note that, as the City points out, the relative balance between expenditures for this unit and police, another service and priority of the City, is becoming skewed. For these reasons, I find this factor favors selection of the City's LBO.

- D. ORS 243.746(4)(e): Comparison of the overall compensation of other employees performing similar services with the same or other employees in comparable communities. As used in this paragraph, "comparable" is limited to communities of the same or nearest population range within Oregon. * * * * *

The City identifies six cities—three larger, three smaller—that it believes meet the statutory criteria as having "the same or nearest population range:" Lincoln City, Sutherlin, Stayton, Milton-Freewater, Umatilla, and Scappoose. The City provided no comparability data on the identified cities, however.

It is the City's position that it is not possible to make comparisons for several reasons. The three cities closest in population have volunteer fire departments and

⁵ See Arbitrator Michael Cavanaugh's discussion of this issue in *City of Roseburg and IAFF Local 1110* at 9-10 (2007).

have either no paid firefighters or at least no comparable paid positions. Extending the population range does not make a difference. Of the 11 cities nearest in population—five larger, six smaller—two contract with districts and only one has its own department. In the City's view, the limited sample size makes comparability inappropriate, especially considering the many variables between fire agencies (e.g., job titles, premium pay).⁶

The Union identifies a list of eight comparables within about 1,500 of the City's population, with five larger and three smaller: Sweet Home, Eagle Point, Independence, Molalla, Sutherlin, Talent, Scappoose, and Winston.⁷

According to the Union, its list of comparables complies with the statutory criteria. In its view, that criteria is limited to consideration of population. The Union contends that it is inappropriate to consider other issues, such as geographic location or labor market in selecting comparables. The Union particularly stresses that the statute requires comparison of "communities," so that issues about whether a city has its own department or gets fire services from a district are irrelevant.

This latter point is an important element of this dispute. The Union, like most other fire employee unions in prior cases, includes cities served by fire districts in its list of comparables. The City, like many other cities in prior cases, contends that fire districts are not appropriate comparables for a city.

Interest arbitrators routinely have confronted this issue over the nearly 20 years since the statute was amended in 1995. The near unanimous conclusion is that fire districts are an appropriate comparator for a city under the statute. Thus, even

⁶ The City also faults the Union's data as incomplete based on the information the Union's consultant used in preparing it.

⁷ In its brief, the Union claims that its list includes four larger and four smaller communities. U-13, which sets out population numbers, shows Sutherlin (7,930), Molalla (8,110), Eagle Point (8,575), Independence (8,585), and Sweet Home (9,065) as larger than the City (7,460).

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though cities continue to raise the issue, it has become the accepted interpretation of the statute.⁸

The question of appropriate comparables is complicated somewhat here by the City's small size. Other cities in Oregon of similar population typically either receive fire protection/ambulance services from a fire district or they rely on volunteer firefighters and do not have comparable paid positions. Even in those cities served by a fire district, the district may operate mainly with volunteers and have few or no paid firefighters.

Another issue in selecting comparables is whether, as the Union contends, population is the only criterion that an arbitrator may consider. Interest arbitrators who have addressed this issue seem to fall into one of two camps. They may agree with the Union that population is the required focus and other facts, such as geographic location or labor market, are not appropriately considered. Or they may agree with Arbitrator Norm Brand, who found that geographic and other differences among communities near in population may warrant consideration: "Thus, while the statute requires arbitrators to choose comparable jurisdictions only from entities 'with the same or nearest population range within Oregon,' it does not require the inquiry into comparability to end with population."⁹ Put another way, some communities within the appropriate population range may be more comparable than others. I favor this latter reading.

With these principles in mind, I reviewed the population charts with consideration given to the location of the community and in particular to the structure of the fire agency. On that basis, I find the three most appropriate comparables to be Sutherlin, Molalla, and Scappoose. Molalla is a little larger, Scappoose is a little smaller, and Sutherlin is about the same size. Sutherlin and

⁸ That said, if I were considering this question unfettered by the weight of all those preceding cases, I am not sure I would come to the same conclusion. Comparing a city fire department with a component of an often much larger fire district is a somewhat artificial comparison. A city exists for many purposes and must provide a variety of services, of which a fire department is only one.

⁹ *IAFF Local 2091 and Winston Dillard Fire District (2005)*.

Molalla have fewer paid firefighters than the City; Scappoose has about the same number. All three communities are rural, but all are within reasonable distance of more urban areas.

The City is approximately 8% behind the average compensation of those comparables for an entry-level firefighter position, about 21% behind for an entry-level lieutenant, and about 25% behind for an entry-level captain. For mid-career positions (15 years), the City is roughly 33% behind for a firefighter, 32% behind for a lieutenant, and 27% behind for a captain. For senior level positions (25 or more years), the City is about 33% behind for a firefighter, 32% behind for a lieutenant, and 28% behind for a captain.

In considering specific benefits, such as insurance and various leaves, the City fares a little better when measured against the comparables. For example, the City contributes about 8% less than the comparables for health insurance premiums. That number is somewhat misleading because the City contributes more than either Molalla or Scappoose, but far less than Sutherlin.

Health insurance contributions may not be a good measure of comparability here, however, because there is no information in the record on which to compare the health plans—the City and the comparables are all on different plans with different companies. It may be that a less expensive plan actually provides better benefits to employees, since the cost of plans is determined by a variety of factors.

In both the number of holiday/vacation hours and the value of those leave hours at retirement, the City is substantially ahead of Molalla and Scappoose, and a little ahead of Sutherlin at all three positions. For sick leave, the City is slightly ahead of the comparables at all three position levels for sick leave accrual and the monthly value of that leave; it slightly trails the average on the value at retirement.

Neither party presented data showing how its respective LBO would impact the comparisons. It is not possible to make an accurate or detailed calculation using their cost exhibits for that purpose because they each took a different approach to

calculating costs and because none of the costing exhibits uses the same approach and numbers as the Union's comparability exhibits. It is also difficult to project the impact of the respective LBOs into a second or third contract year.

A rough estimate of the impact can be made, however, using the Union's comparability exhibits, U-15, U-16, and U-17. Those exhibits are based on the compensation amounts that will be in effect in those jurisdictions as of June 30, 2014. Applying each LBO's respective 2013-2014 increase to the City's current compensation amount provides an estimate of the City's compensation levels as of June 30, 2014.

The City would be 4% behind the average of the comparables for an entry-level firefighter using its LBO figure, and 3.5% behind using the Union's. The numbers are less favorable for lieutenants and captains at 14% v. 13.9% and 16.8% v. 16.9%. The same calculations yield similar results at the mid-career and senior levels of all three positions. As against the three comparators, the City would rank third of four at the entry firefighter level under either LBO, and last at the lieutenant and captain levels.

The City would rank no more favorably even using a larger pool of comparables. Looking at the Union's list (minus Eagle Point and Winston-Dillard, which are outside the reasonable population range), the City would be fourth of seven at the entry firefighter level, fifth of seven at the entry lieutenant level, and third of three at the entry captain level under the Union's LBO.¹⁰ Again, this calculation results in similar rankings at the higher experience levels.

In sum, neither LBO significantly improves the City's comparability to similar communities. I understand the City's point that not every city can be in the top half of the comparables. Interest arbitration is not Lake Wobegon where everyone is above average. Nonetheless, the City is well below the average of comparable departments, whichever group of comparables is considered. Thus, this factor favors the Union's LBO.

¹⁰ If Eagle Point and Winston-Dillard were considered, the City's relative rank would not change.

As a final point regarding comparables, I note that the City suggested that I consider Mid-Columbia Fire and Rescue District in The Dalles. While an arbitrator may give more weight to some comparables under appropriate circumstances, the comparables being considered must still meet the statutory standard of being in the "same or nearest population range."

At a population of almost 14,000, The Dalles is about twice as large as the City, and much larger than any of the comparators offered by the Union. The City is correct that the two communities are proximate and connected economically and socially. Nevertheless, the population difference is simply too large to conclude that The Dalles is in the same or nearest population range. It is for that reason that I reject the City's suggestion.

The City initially made this suggestion in the context of ORS 243.746(4)(h)– other factors traditionally considered. In so doing, the City likely recognized that The Dalles was too large to be an appropriate comparable under ORS 243.746(4)(e). But subsection (4)(h) limits an arbitrator's consideration of "other factors" to those situations where the primary and listed secondary factors do not provide a sufficient basis for selecting an LBO. That is not the case here.

E. Conclusion

In analyzing the secondary factors, I found that one factor–ability to pay– favored the City and one factor–comparability to other communities–favored the Union. The remaining secondary factors are unimportant in this dispute.

In considering the impact of these secondary factors and other issues that relate to the interest and welfare of the public, there are two points in particular that give me pause. The first is the length of the contract.

As the City pointed out, it is or soon will be under the direction of its fourth city manager in the last couple of years. The City contends that the incoming city manager should not be tied to a three-year wage increase deal in order to be in a

better position to address compensation issues for all City employees and determine City priorities.

I have some sympathy for the City's argument. It would be unfortunate if selection of the Union's LBO hampered efforts to bring stability to City government.

At the same time, however, it is likely that members of the bargaining unit have been hampered in getting a new contract by the turnover at the top of City government. Moreover, if I chose the City's LBO with its two-year duration, the first year is essentially over. That means the parties would have at most a few months' respite from bargaining before having to start on the next contract. That also means the new city manager would have little time to become fully acquainted with City finances and priorities before jumping into bargaining with the Union. Consigning the parties to continuing negotiations, with all the attendant instabilities and uncertainties, is not in the public's interest, nor in the parties' interests.

Another concern is the structure of the Union's wage proposal, with a 2.25% increase each six months. That approach results in backloading, compounds the overall increase, and creates a greater financial obligation for the City going forward in 2016.

The City, however, used a similar structure, albeit with smaller numbers (after the initial raise) and for a shorter period. Moreover, while the ability to pay factor favors the City, the overall cost difference between the two LBOs is not substantial.

The City is in relatively good shape economically. There is no reason to expect it to suffer revenue shortfalls over the length of this contract, whether the term is two or three years. (This is true even if one discounts the Union's potentially illusory savings from PERS reform.) Adoption of the Union's LBO—at least on the data available in this record—will not bring the bargaining unit members to the average compensation levels of comparable communities. Adoption of the City's LBO would put the City farther behind the average of comparables.

I conclude that the Union's LBO strikes a better balance between fair compensation for employees and the City's operational needs and priorities. It thus is in the interest and welfare of the public to award the Union's LBO.

AWARD

Pursuant to ORS 243.746(4), and for the reasons explained in the Opinion, I award the Union's last best offer, and order that the parties adopt it.

Respectfully issued this 7th day of July, 2014.

David W. Stiteler
Arbitrator