

IN THE MATTER OF ARBITRATION BETWEEN

**Eugene Police Employees' Association
[EPEA]**

And

**OPINION AND AWARD
INTEREST /CONTRACT ARBITRATION**

City of Eugene, Oregon

ARBITRATOR

Joseph L. Daly

APPEARANCES

On behalf of EPEA

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On behalf of City of Eugene

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JURISDICTION

In accordance with the ORS 243.746(4); and under the jurisdiction of the State of Oregon Employment Relations Board, the above Contract/Interest Arbitration was submitted to Joseph L. Daly, Arbitrator, on November 13 and 14, 2014, in Eugene, Oregon. Post hearing briefs were submitted to the arbitrator on December 18, 2014. The decision was rendered on January 26, 2015.

ISSUES AT IMPASSE

The following unresolved issues were certified for Last Best Offer Interest/Contract Arbitration:

A. Association's Last Best Offer

The Association proposes adjusting the Agreement by:

1. All tentative agreements to date.

2. Article 16 – Salaries

16.1 Effective July 1, 2013, the wage scale shall remain unchanged. Effective January 1, 2014 the wage rates for all employees shall be increased two (2) percent.

16.2 Effective July 1, 2014 the wage rates for all employees shall be increased by two (2) percent.

16.3 Effective July 1, 2015 the wage rates for all employees shall be increased by two (2) percent.

B. The City's Last Best Offer

1. Article 16 – Salaries

16.1 Effective July 1, 2012, wages covered by the Agreement shall be in accordance with Appendix A EPEA Salary Schedule.

16.2 Effective July 1, 2013, wages shall remain unchanged from the wages shown in Appendix A., with no Cost of Living Adjustment (COLA).

16.3 Effective July 1, 2014, increase the wages for all bargaining unit members by two percent (2%).

16.4 Effective July 1, 2015, increase the wages for all bargaining unit members by three percent (3%).

2. Article 17 – Hours – Overtime

17.18 The following terms are agreed to for all Patrol Officers:

b. Certain shifts of Patrol Officers will participate in a trial program implementing the following schedule for the calendar year 2016:

1) Participants in the trial will work a schedule of four (4) days on, followed by three (3) days off; three (3) days on, followed by four (4) days off. All regular workdays will be 11 hours and 30 minutes with the following days in the work cycle being 11 hours and 25 minutes. The 14-

day work period for uniformed officers under the provisions of FLSA 207(k) will only be utilized for the 11 hour and 30 minutes shifts.

2) The trial period will apply exclusively to Patrol Officers on a shift or shifts to be selected by the Employer with input from the Association. The schedule for all other Patrol Officers will not be impacted by this trial.

3) During the trial, the parties will share information gathered concerning the financial impact; the safety and welfare of the Patrol Officers participating in the trial; and responsiveness in meeting calls for service.

17.19 Safety Release. Those patrol Officers participating in the trial schedule, who are required by the City to work sixteen (16) or more hours in a twenty-four (24) hour period shall be guaranteed at least eight (8) hours of Safety Release time off before being required to work that regularly scheduled shift or portion thereof. When practicable, prior to working sixteen (16) or more hours in any twenty-four hour period, the employee shall make the on-duty supervisor aware that the employee believes his/her current work assignment may result in the employee becoming eligible for Safety Release time off.

3. Article 43 – Training

- e. The Department may schedule mandatory in-service training for all employees and instructors by changing the employee's work schedule with a minimum of 45 days advance notice. If the City fails to provide 45 days advance notice, each employee affected by the change will receive a two (2) hour overtime penalty. This section will not supersede employee's time off that has already been approved in advance of the notice of the mandatory training.

LAW TO BE APPLIED

ORS 243 746(4) governs the matter and guides the arbitrator's findings and opinion. The law states:

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussion looking to a new agreement or amendment of the existing agreement, unresolved mandatory subjects submitted to the arbitrator in the parties' **Last Best Offer packages** shall be decided by the arbitrator. Arbitrators **shall** base their findings and opinions on these criteria giving **first priority to paragraph (a)** of this subsection and **secondary priority to paragraph (b) to (h)** of this section as follow [emphasis added]:

(a) The interest and welfare of the public.

(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.

(c) The ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided.

(d) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance, benefits, and all other direct or indirect monetary benefits received.

(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. Notwithstanding the provisions of this paragraph, the following additional definitions of "comparable" apply in the situations described as follows:

(A) For any city with a population of more than 325,000; “comparable” includes comparison to out-of-state cities of the same or similar size;

(B) For counties with a population of more than 400,000, “comparable” includes comparison to out-of-state counties of the same or similar size, and

(C) For the State of Oregon, “comparable” includes comparison to other states.

(f) The CPI-All Cities Index, commonly known as the cost of living.

(g) The stipulations of the parties.

(h) Such other factors, consistent paragraphs (a) to (g) of this subsection as are traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of employment. However, the arbitrator shall not use such factors, if in the judgment of the arbitrator the factors in paragraphs (a) to (g) of this subsection provide sufficient evidence for an award.

A. The Association’s arguments are summarized as follows:

1. Traditionally, the moving party bears the burden of proof for the issues. The moving party in an interest arbitration proceeding, regarding a successor collective bargaining agreement, is typically considered that party which attempts to modify the status quo. In this case, both parties have proposed wage adjustments, however, the City has claimed an inability to pay and should bear the burden of proof on this contractual issue. In Oregon Last Best Offer interest arbitrations, both parties bear some burden on providing a statutory basis for determining whether their particular offer, when taken as a whole, is in the interest and welfare of the public. The Association has fashioned its proposal to maintain the city’s relative status with its comparables; provide internal equity and fair treatment with the remainder of the strike-prohibited city employees [i.e. firefighters]; keep pace with the cost of living; and, uphold the balance of power in the bargaining relationship between the parties to the greatest extent possible. The Association has met its burden in showing that its offer is in the interest and welfare of the workforce impacted by this Agreement, as well as in the interest and welfare of the public.
2. The City has failed to factor in the true interests and welfare of the public through the drafting of a proposal, which harms historical benefits and undoubtedly negatively

impacts the morale of the Police Department employees. Such a negative impact, without compelling reason for the change, is not in the interest and welfare of the public. The City has not provided a justification for effectively reducing the wages of the Association's members by freezing wages in the first year of the contract and proposing to force employees onto a shift they have rejected each time it was raised with that work group.

3. Neither the budget, nor the city's spending habits during the time it is claiming an inability to pay support the City's claim. The employer has the burden of proof to establish an inability to pay. The burden must be met by more than mere speculation. An unwillingness to pay does not satisfy this burden. The City is unable to meet its burden in this case, as it is simply not true that the City does not have the financial means to pay their estimated \$1.2 million difference in the cost of the offers over three years. The City's witnesses testified as to the budgeting challenges, but did not testify that the City could not afford the offers. In fact, the City's adopted budget evidences a financial ability to absorb the \$1.2 million difference and still put \$9 million into reserves. [Exhibit E-37]. The budget is a spending plan. As such, that plan is revised pursuant to revenue growth and expenditure needs. The mere fact that the City has had to utilize reserves, or has had less to save in reserves is not a true indication of the relative financial health of the unit of government. The City's own witnesses and exhibits actually show that the City has the ability to pay in this matter, and still maintain substantial reserves. The City's budget is healthy and continues to provide for a growth in reserves. The fact that the City is the home for the University of Oregon has resulted in stability in property taxes as the presence of 25,000 students provides a consistent stream of renters and thus property taxes into the City's economy. The property taxes have grown since 2008 and not declined as claimed by the City. According to the City's budget documents, the City expects its growth to continue through FY2015. The City has set aside, in this budget alone, an additional \$5 million into its reserves. This set aside is sufficient to fund all three years of the Agreement proposed by the Association, let alone the two years, which would be required immediately. The City budget witnesses testified that the City had set as a goal mid 20% of the budget requirements in reserves. In fact, this past fiscal year, while the City has claimed an inability to pay, showed a continued growth in these

reserves to 7.12% of the budget, a growth of \$13 million since FY2009. The unrestricted fund balance grew over \$10 million for FY2009 to the last fiscal year as well, belying all City claims of an inability to pay. The City has maintained a very healthy budget reserve of 30.51% over the time period the City claims its budget has suffered economic strain. This reserve is well over the 22% goal the City has set for itself in reserves. A review of Moody's report on the City bond rating further supports a finding that the City is fiscally healthy. Moody's analysis echoes the Association's contention that the City is able to pay for either offer.

The City adjusted the pay of other City employees during the same time frame it has declared an inability to pay for adjustments to the Police Employee's wages. The City adjusted the salaries of the IAFF bargaining unit by 6% January 1, 2013, while offsetting that increase by the employees paying their own PERS. The City claims this is not a wage increase, but in doing so has lost sight of the cost of rollups and benefits which are an employer cost related to basic wage rate. In addition, the City provided a 2% increase on 7/1/13 (the year it would like the Association to take a wage freeze) and 2% July 1, 2014. The City also adjusted the wages for the AFSCME bargaining unit in 2013. The City provided a one-time payout of \$150 for full-time employees on July 1, 2013 and a 1% adjustment that same contract year on January 1, 2014. In addition the City committed to cost of living adjustments of a minimum of 2% and a maximum 4% on July 1, 2014, and July 1, 2015, respectively. The City also provided a wage adjustments to the IATSE bargaining unit of 2% July 1, 2013, and 3% July 1, 2014. It is counter intuitive for the City to claim it has endured fiscal challenges since 2008, yet it has freely adjusted the wages of a majority of its employees during that same time period.

4. The City asserted during the hearing that it had no real recruitment and retention issues, yet the City's own exhibits show otherwise. The City's exhibits show that since 2007 43 police officers have left the City's employment. In addition, the City attempted to downplay the number of communication officers who have left in that same time period, but the Association's exhibits show a chronic and serious issue in recruiting qualified individuals and retaining those same individuals in the communications division. When you are losing 20-30% of your workforce on an annual basis, you suffer the 25% vacancy

rate enjoyed by the City. The City agrees that there are currently 11 vacancies in communications, which is approximately 25% of the budgeted for workforce.

5. One issue the City did not factor in its analysis of recruitment and retention is the impact of its 11.5-hour shift on its ability to retain officers, and female officers at that. A female officer testified that as a parent and a female officer the burdens of shift work are sometimes compounded. She testified that if she were forced to work an 11.5-hour shift, she would probably elect to leave law enforcement. This perspective is not unique to the testifying officer. It is believed that other female officers will be similarly impacted. Karen L. Amendola, PhD., Chief Behavioral Scientist for the National Police Foundation, testified that the issues presented by this specific female officer are born out in studies regarding women in law enforcement and that the longer shifts definitely impact female officers differently than most male officers. The City's proposal may negatively impact its ability to attract and retain qualified female officers, which is not in the interest and welfare of the public.
6. Payer ability is not a significant secondary factor in this arbitration proceeding. What is interesting is the comparison of the hours of work of the comparables in relationship to the City's proposed 11.5-hour "trial" schedule. The City would be the only jurisdiction in its set of comparables, which would work something other than the traditional 5/8 or 4/10 schedule.

With respect to wages, the known increases for the comparable jurisdictions actually show that the gap between the comparables would close and not widen as asserted by the City. All of the jurisdictions received at least a two percent increase in the 2013-2014-contract year, with Beaverton receiving a 3% increase. For the known increases in the 2014-2015-contract year, Beaverton is set to receive a three percent increase and Gresham is set to receive a 2.5% increase. Comparability does not support a wage freeze in the first year of the contract.

7. The known CPI (Consumer Price Index) adjustments for this agreement were 2.1% for the 2012 annual index and 1.5% for the 2013 annual index. The year to date change (as of the arbitration) is 1.8%. The Association's proposal of a 2% increase in each of the contract years most closely approximates the actual cost of living.

8. With respect to Article 16 – Salaries, the City has proposed a one-year freeze. The Association has proposed cost of living adjustments of 2% each year of the Agreement. While the City is slightly ahead of its comparators (less than 1%), given its relative size it should be at the top of its comparators. The fact that the City is .9% ahead of its comparators does not justify a wage freeze in the first year of the Agreement. The City has the ability to pay for the Association’s proposal in this matter. The difference between the parties’ proposals is \$1.2 million over three years. This is not a substantial difference in light of the totality of the City’s budget and in particular in light of the reserves the City has amassed. The City has been able to grow its reserves during the economic recession and during a time when the City cried poverty. The fact that the City made hard financial decisions to postpone some capital projects is not unusual for municipalities nor is it truly an indicator that the City is suffering from an inability to pay. The City’s spending over the last three years evidences fiscal health and a willingness to adjust the wages of all City employees except for the police department employees. The failed to attempt to address why it was able to afford increases for the vast majority of the City employees, but all of a sudden was unable to provide an additional 1% for the police employees. The Association contends that the true issue driving this arbitration process is the City’s desire to gain an 11.5-hour trial schedule. The City understands that the patrol officers who would be subjected to this proposed schedule, even on a trial basis, were overwhelmingly against the switch. The trial is an attempt by the City to gain something it could not obtain through bargaining and the 1% wage difference is the City’s vehicle to secure the schedule.
9. With respect to Article 17 – Hours and Overtime, the Association has proposed maintenance of the status quo on this article. The City has proposed a “trial schedule” for an 11.5-hour patrol schedule which is wrought with problems and which is most definitely not in the interest and welfare of the public. The City has proposed a trial schedule for 11.5-hour shifts to commence in January 2016 and carry forward into the next collective bargaining agreement. This trial is to be with a yet to be determined number of teams and employees, after receiving input from the Association. According to the testimony of Captain James Durr, Eugene Police Department Patrol Operations, if there are insufficient numbers of employees who volunteer for this “trial” schedule,

employees will be ordered to work the 11.5-hour shifts. Captain Durr's testimony is in direct contradiction to the City's own proposal which in Article 17.18b(2) states that no other employee will be impacted by this trial. If an employee does not volunteer, he/she will be impacted by this proposal as well as employees who may be asked to holdover to cover for the vacancies on this shift. In this case the City is bound by its proposal, which does not include any of the promises made during the arbitration. The Association is skeptical that any of those promises will come to fruition should the arbitrator use the City's Last Best Offer. That skepticism is based on over a year of discussions on the schedules, which did not result in any agreement, which the patrol officers could support. In the City's proposal for Article 17.18b(1) the City proposes: "Participants in the trial will work a schedule of four (4) days on, followed by three (3) days off; three (3) days on, followed by four (4) days off. All regular workdays will be 11 hours and 30 minutes with the following days in the work cycle being 11 hours and 25 minutes. The 14-day work period for uniformed officers under the provisions of FLSA 207(k) will only be utilized for the 11 hour and 30 minute shifts." The City proposes that "regular work days" will be 11.5-hour shifts and then would be followed by eleven hour twenty-five minute shifts. This language does not make any sense and seems to conflict with Article 17.1g, which defines a regular workday. In addition, the City has proposed unilateral implementation of a 14-day work period for FLSA purposes which would alter the parties' historic and contractual requirements that an employee be paid overtime for any time they work in excess of their shift or in excess of 40 hours in a work week. If the City is asking the arbitrator to award a 14-day 7k exemption to the City, will all compensable hours be counted during the 86 hours they will now be asking the employees to work at straight time? If the language is awarded as written, and one assumes a 11.5 hour shift for six shifts in the 14-day work period, that would mean that the City would regularly schedule the employees to work 8.5 hours leaving an additional 5.5 hours the City could hold the employee over to work in that same work period without overtime compensation. This change would be a large cultural shift and would result in 156 additional straight time hours for these employees without additional compensation. In reality this modification alone destroys the value of any additional time off an officer would receive for working these shifts as if the employees were scheduled

these additional 5.5 hours at straight time instead of overtime they will receive less in compensation than they would if they had remained on the 4-10 schedule even including the value of the additional days off. 5.5 hours per 14-day work cycle results in 143 straight time hours and 214.5 overtime hours. Eight additional hours off per pay period amounts to 208 straight time hours. These employees would be losing 6 hours of pay on the additional hours alone. Former Association president William Edewaard testified that the Association “bought” the ten-hour shifts through economic sacrifices, namely employee contributions towards their health insurance (which the Association agreed to increase in this agreement) and by taking less of a cost of living. Mr. Edewaard further testified that the City was in support of the 4-10 schedule as it would allow weekly overlap on Wednesday for training and would save overtime over the 5-8 schedule. The City and Association have been parties to agreements, which have historically provided for 10-hour shifts. The City did not offer any quid pro quo to move to 11.5-hour shifts in this contract.

10. The 11.5-hour schedule is not in the interest and welfare of the public. Officer Nate Pieske testified that he was tasked with looking at the timing of crashes in the department and that in reviewing raw data, this data showed an increase in crashes towards the end of an officer’s shift. Officer Pieske, an EVOC Instructor for the City, testified that he personally has witnessed increased errors as the officer’s training day in EVOC progresses, supporting his conclusion that an employee being tired contributes to accidents. One accident where the City is at fault and severely injures a citizen will wipe out the \$1.2 million difference in the proposals. Further, Dr. Amendola testified that in the “macho culture” of law enforcement officers, they are rarely willing to confess to fatigue. She testified that fatigue is a contributing factor to errors in policing, including accidents. Dr. Amendola testified that with the longer shifts and increased fatigue for officers, the impact on the community would be great and that fatigue impairs professionalism and common sense. Dr. Amendola testified that according to her studies, the best shift for overtime savings, employee performance, and morale is the 10-hour shift. She testified that regarding the Department of Justice sponsored study to determine whether various shift plans and police services have an impact on the officer’s effectiveness, safety or morale, results of this study show that the 10-hour shift is the

most prevalent shift in law enforcement. According to Dr. Amendola, a 10-hour shift provided more rest to the officers; enhanced the officers' quality of life; and decreased overtime costs to the employer. Dr. Amendola further testified that the impact of longer shifts on female officers in particular is greater. She pointed to the efforts of hospitals to move nurses to 12-hour shifts and the negative impact of those 12-hour shifts on the nurses' family life. While the City cites the opportunity to reduce overtime costs as the basis for its proposal, according to Dr. Amendola, while agencies thought they would be able to reduce overtime by 25%, long term the 12-hour shifts actually increased that cost by 11%. The City cites a few "studies" in support of its proposal, but as Dr. Amendola pointed out, all but one of these reported studies were actually journal articles subject to peer review. The other studies were not objective studies. The City in its proposal for Article 17.19 guarantees only 8 hours off between shifts. Eight hours between shifts, according to Dr. Amendola, is obviously not eight hours of rest, as an employee must commute, wind down, eat and prepare for his/her next workday.

11. The interest and welfare of the public is through the just and reasonable treatment of its public servants. In this case, the City has no legitimate need to freeze the wages of the Association members. The economic condition of the City of Eugene is strong. The City has been able to consistently grow its reserves despite the claims of budget pressures. The cities own bond rating company tells of the strength of the budget and reserves, citing the stable presence of the University of Oregon as a reason the City has not suffered the decline in property tax revenue experienced by similarly sized cities. The City's budget contains reserves, which are more than sufficient to pay for raises for Association members without a reduction in service to the community. The City has shown a fiscal willingness to absorb the cost of wage and benefit increases for other City employees with a concomitant ability to pay for such increases. The City's offer also attempts to substantially modify the culture of the patrol division through the implementation of a trial for 11.5-hour schedules despite the lack of support by those employees. This culture shift, coupled with a wage freeze in the first year of this agreement, will have a negative impact on the morale of the workforce. Longer shifts increase the risk to the community at large without any reasonable justification for doing so. The Eugene Police Employees' Association Last Best Offer provides for

maintenance of the Collective Bargaining Agreement through cost of living increases reflecting those received by other City employees as well as by comparable jurisdictions. The Association offer is in the interest and welfare of the public. The Association requests that the arbitrator award its offer in this matter.

B) The City of Eugene's arguments are summarized as follows:

1. The City of Eugene is the second largest City in Oregon with a population of approximately 159,580. The City's total current budget, for FY2015, is approximately \$567.5 million. Of that, \$168.6 million constitutes the City's General Fund, which is used to pay for the City's core services, including police services. Personnel services costs 75.6% of the operating budget and the largest use of general fund dollars is for the police department, at \$46.2 million for FY2015. The prior collective bargaining agreement between the City and the EPEA ran from 2008-2011. The parties agreed to a two-year rollover of that agreement, which expired on June 30, 2013. The parties have been engaged in bargaining since April of 2013. During that time, they reached tentative agreement on most contractual issues, including an agreement for the subsequent contract to last for a period of three years. Three issues remain outstanding: 1) Wages; 2) The City's proposal to conduct a trial modification of schedules for some shifts of patrol officers; and 3) Modification to the notice and penalty provisions for changes in officers schedules for in-service training.
2. Arbitrators are to give first priority to "[t]he interest and welfare of the public." However, "arbitrators have almost unanimously concluded that the interests and welfare of the public can only be determined by reviewing the secondary criteria". *AOCE and Oregon Department of Administrative Services, IA-18-01* (Miller, 2002). In this case, each of the statutory factors favors the City's Last Best Offer.
3. The City provides substantially greater overall compensation than what comparable jurisdictions provide to persons performing similar services. Overall compensation represents more than wages. Compensation includes all forms of paid excused time, retirement and insurance benefits and all direct or indirect monetary benefits that the employees receive. The City's numbers provide comprehensive detail regarding all aspects of overall compensation in the area of employee benefits, for example, the City accurately calculates the employee benefits as "paid leave value plus VEBA plus health

insurance premium minus employee portion of the premium. The Union's depiction of overall compensation is inaccurate and inadequate. The Union fails to account for employer's share of health care premiums."

4. The parties agree on the applicable comparator jurisdictions under ORS 243.746(4)(e). Both parties have applied the 50% rule of thumb and agree on the applicable comparators to the Eugene Police Department Sworn Officers. Those comparators are Salem, Gresham, Hillsboro, and Beaverton. The Association agrees that Eugene sworn officers receive more overall compensation than officers in the comparable jurisdictions. Under the City's proposal, in the first year, police officers at every stage of their career are ahead of the average of their comparators-ranging from a low of 1.3% ahead of the average of comparators for officers at the 20-year basic level, to a high of 6.8% of comparators for the 5-year advance level. In years two and three of the City's proposal, that trend will continue. In year two, Eugene will remain ahead of the average of its comparators somewhere between 0.6% (for officers at the 15-year basic level) and 6.6% (for officers at the 5-year advanced level). In year three of the City's proposal, police officers will be ahead of the average comparators between 1.7% (for officers at the 15-year basic level) and 7.6% (for officers at the 5-year advanced level). The Association concedes that Eugene police officers are compensated at higher rates than the average of the comparators.
5. Communications Specialists receive considerably more overall compensation than their applicable comparators. Communications Specialists provide emergency communications services for Central Lane 911, an agency that serves a district much larger in area and population than the City itself. Accordingly, in order to arrive at a meaningful comparison of employees providing similar services, the City looked to Communication Specialists in 911 districts serving a similar population size and handling a similar volume of calls. The City included as appropriate comparators to the communications specialists in the bargaining unit Emergency Communications of Southern Oregon, Deschutes County 911 Service District, Washington County Consolidated Communication Agency, Willamette Valley Communications Center, and Clackamas County 911. The Association, on the other hand, failed to proffer any analysis of the overall compensation received by Communications Specialists or what

jurisdictions should be used as comparators. Under the City's proposal, Communications Specialists will be ahead of all of their comparators at every level of employment in each year of the contract.

6. Other non-sworn members of the bargaining unit also receive more overall compensation than employees providing similar services in comparator jurisdictions.
7. The City's historically generous economic packages insulate the Association members from any CPI effect. Under ORS 243.746(4)(f) arbitrators look to the Consumer Price Index for all urban consumers in considering competing economic proposals. From FY2007 to FY2015, the Association will have enjoyed a compounded wage increase of 25.06% under the Association's proposal or 22.61% under the City's proposal. In either case, the Association will have outperformed the compounded total of 19.18% of the CPI-U during that same period.
8. The City's Last Best Offer is more consistent with settlements with other bargaining units in the City. One of the Association's primary arguments is that its Last Best Offer is required to maintain internal equity with the City's members of the IAFF. However, the Association's argument does not withstand scrutiny. Wages for members of the EPEA far out pace those of other bargaining members, during what has been a period of tremendous financial strain for the City. In this case, during the years of the economic recession members of the EPEA significantly outperformed other City employees on the question of wages. Under the Association's wage proposal, in FY2014, the disparity between EPEA and those units would increase with EPEA garnering a cumulative increase of 22.61%, during the same period that IATSE received 14.22% and AFSCME received 17.06%. In contrast, under the City's Last Best Offer, EPEA begins to move towards parity with other bargaining units.
9. Between FY 2007 and FY2008 wage increases for members of the EPEA and IAFF were more or less in lockstep. The EPEA received a cumulative wage increase of 6.61% while IAFF received 6.92% more. For FY2010 through FY2012, IAFF received no wage increases. Comparing the wages of IAFF members to the EPEA members for FY2007 to FY2012, wages of EPEA members grew by 16.71% compared to 6.92% for members of the IAFF. In exchange for foregoing wage increases for the life of the contract, the parties in the IAFF agreement agreed to the implementation of a "Kelly Day Program" of

every regularly scheduled 18th shift off. Fire Department Officials estimate the value of those Kelly Days at 2% for each of the three years of the contract. Therefore, even if IAFF had received 2% wage increases for each year between FY2009 and FY2012, its cumulative increase would have been 13.46% during the same period that EPEA received 16.71% increases. The Association asserted that IAFF members received a 6% wage increase in FY2013. That assertion is incorrect. While Article 20.1 of the current of the IAFF contract does describe an increase of 6% effective January 1, 2013, Article 21.2(a) states “[e]ffective January 1, 2013 each Association employee’s compensation will be reduced by six-percent (6.0%) to generate the funds needed for the City to make the employee contributions [to PERS] for the employee.” If the arbitrator were to select the Association’s Last Best Offer, the City’s internal inequities that persisted throughout the economic downturn would be aggravated going forward. In FY2015, the cumulative increase for EPEA members would be 25.06% - more than double the 12.04% IAFF members and significantly more than the 16.19% increase for IATSE and 19.41% increase AFSCME members during the same period. In contrast under the City’s proposal, while EPEA members will remain ahead of the wages of other City employees, they will begin to approach parity with others in the City.

10. The City remains able to attract and retain qualified personnel in EPEA bargaining unit positions. Under the statute, arbitrators are to consider an employer’s ability to recruit and retain personnel within bargaining unit positions. In this case, the City has had no trouble recruiting qualified persons to EPEA positions; nor has the City seen evidence of a significant portion of bargaining unit members accepting similar employment elsewhere. For example, in July and August 2013, the City received 349 applications (330 of whom met the minimum qualifications for the position) and hired four officers. Since 2005, the City has hired a total of 81 police officers, for which it received 3,088 applications – a ratio of more than 38 per position filled. Recruitments for Communications Specialists have likewise been robust. In December 2013 – January 2014 recruitment, the City received 320 applications of which 297 met minimum qualifications, and one Communications Specialist was hired. Since September 2004, the City has received 10,139 applications for Communications Specialist positions and 98 were hired. This is a ratio of more than 103 per hire. Regarding retention, the City has

seen little evidence of police officer attrition. From July 1, 2010 through September 30, 2014, the City has seen 22 non-probationary sworn officers depart the force. Of those, 11 departures were due to retirement. Only three officers left the EPED to seek law enforcement work elsewhere, and none of them left to a statutory comparator. The Association introduced no evidence regarding the City's ability to attract or retain police officers.

11. The City's proposal of an 11.5-hour shift on a 12-month trial basis is in the interest and welfare of the public by potentially improving the City's response to calls for service, reducing the City's overtime, and improving officer safety. The trial program would last only for the calendar year of 2016. During the trial program the parties will share information gathered concerning the financial impact; the safety and welfare of the patrol officers participating in the trial; and responsiveness in meeting calls for service. If the parties do not reach some other agreement, as of January 1, 2017, the schedule for patrol officers will revert to the existing 4-10 schedule with overlapping Wednesdays. An 11.5-hour schedule will improve EPD's ability to timely meet calls for service. In 2013, there were nearly 62,000 calls for service. For 2014, it appears that calls for service will approach 65,000. These demands for police service tend to spike at certain times of the day and on certain days of the week. Specifically, demand for police assistance tends to be highest between 2100 and 0200 hours, and on Thursdays, Fridays, and Saturdays. Having adequate staffing levels at the times leading up to and continuing throughout the duration of those spikes in demand will allow EPD to avoid delays caused by a backlog of calls for service. The current 4-10 schedule contains inefficiencies that negatively affect responsiveness to calls for service. Throughout the peak hours of 2100 and 0200 the current schedule does not provide for adequate staffing levels to meet the need. Also, under the current schedule staffing levels are at their highest on Wednesdays, a day in which calls for service are less frequent than the peak period of Thursday through Saturday. In the hours leading up to and extending throughout those periods of peak demand between 2100 and 0200, the 11.5-hour schedule allows for significantly more officers to be available.
12. The uncontroverted evidence is that an 11.5-hour schedule will result in significant reduction of overtime expenses. The department spends approximately \$450,000

annually on overtime for workload shortage. To be sure, much of that overtime is unavoidable and/or would not be affected by a change to an 11.5-hour schedule.

However, the City estimates that with the more efficient allocation of staffing levels in the 11.5-hour schedule, it would be able to refrain from dispatching officers after the 10th hour of their shift. The overtime could be avoided by having officers return to the office after hour 10. On a conservative basis, the City has determined it could save approximately \$204,000 on avoidable holdover overtime by switching to an 11.5-hour shift if the schedule were adopted for all patrol. On top of that, the City could also achieve overtime savings under the Fair Labor Standards Act. By going to the 11.5-hour shift, the City could pay its patrol officers on the basis of a 28-day work cycle rather than the traditional 40-hour workweek. 29 USC §207(k)(7)(k) (exception). Under the 7k exception, the City would only be required to pay overtime for those hours worked in excess of 171 in a 28-day work cycle. 29 CFR 553.230(c). As a result of invoking the 7k exception, the City would save an additional \$86,700 in overtime expenses.

13. The 11.5-hour schedule would improve rather than compromise officer safety. By having more officers available to respond to calls for service when those calls are most prevalent, officer safety is increased rather than decreased. The simple reason for that is greater availability of police backup when an officer is in need. Further, according to the testimony of Captain Durr, in his approximately 25 years of working with and supervising officers working on an 11.5 or 12-hour shift [in Florida], he has not seen that schedule have an adverse impact on officer safety. Captain Durr's experience led him to testify that in light of the added days off, the longer schedule tends to improve rather detract from officer quality of life.
14. Regarding vehicle crashes, the arbitrator should discredit the distorted evidence that the Union offered. Officer Nate Pieske testified that he put together a PowerPoint presentation, which suggested that officer fatigue was a substantial factor in vehicle accidents. What the Union did not mention was that the exhibit represented only a portion of the presentation delivered. Among the slides omitted from the Union's exhibit was a slide indicating that the greatest factor in vehicle crashes was "decision making"; the distant second place was distracted driving. Similarly, the Union's expert Dr. Amendola offered an opinion but no evidence that the City's proposal 11.5-hour schedule

presented safety concerns on the basis of officer fatigue. While Dr. Amendola was the lead author of a seminal study “Exploring the effects of shift length (8- vs. 10- vs. 12- hours) on work performance, safety, health, quality of life, sleep, fatigue, off-duty employment and overtime usage among police officers,” that study did not examine 11.5-hour shift or a 4-3, 3-4 pattern of days off that the City has proposed. In light of the obvious safety benefits that inure to the 11.5-hour shift and the absence of any meaningful evidence that the extended shift would pose safety or fatigue concerns, the arbitrator should conclude that it is in the interest and welfare of the public to test the viability of the 11.5 schedule through the City’s proposed trial schedule.

15. The City’s proposal on the trial schedule meets the interests that the Association articulated throughout the bargaining process. The Association was concerned that a schedule change be bargained; that patrol officers be involved in discussions on the issue; and that an “escape hatch” be available if in practice the schedule was not acceptable to those working it. The City has met each of those interests articulated by the Union. Then President of the Union Det. Patrick Willis assured Capt. Durr that volunteers would not be a problem as a sufficient number of patrol officers would be interested in participating in order to staff two patrol shifts for the trial. The City’s Last Best Offer seeks only a trial schedule for calendar year 2016. If, after the trial, the parties do not agree on a replacement schedule, then all officers will revert to the 4-10 schedule that exists under the current collective bargaining agreement.
16. The Association’s actual objection to a trial of the 11.5-hour schedule is that it believes that the City did not offer enough to “purchase” the trial schedule. Former EPEA President Willis agreed that the City had not offered enough to “purchase” the desired schedule even on a desired schedule. He noted that the Association had “purchased” the 4-10 schedule in prior negotiations. In other words, the Association has determined that the City has not offered enough “goodies” to move off its intransigence.
17. Conflicting testimony regarding the potential impact of a new schedule on different family structures indicates that a trial program is prudent. While a female officer testified that the demands under the current schedule make it very difficult for female officers to meet competing demands of family and career. She testified that if an additional hour were added to those shifts, those difficulties increase significantly. She further testified

that she would likely be required to quit in order to fulfill her family obligations. The arbitrator should give little weight to this anecdotal testimony. Why? Because another officer testified that he is a single parent who struggles with the demands on his time that his work impose, however, from his perspective, a switch to an 11.5-hour shift would improve rather than exacerbate the adverse impacts of the job on his family life. He testified that the additional 26 days off afforded by the 11.5 schedule would improve his family life. He noted that under the 11.5-hour schedule, an employee could take three days of vacation and have a full two weeks off. Moreover, the parties tentatively agreed to address concerns about a possible employee burnout on the longer schedule by adding an additional 20 hours of vacation time per year.

18. The City's proposal to include a notice and penalty provision in Article 43 will save the City in overtime today and in an 11.5-hour schedule. As Capt. Durr testified, the language change would facilitate EPD's transition from conducting its in-service training on Wednesdays (on which all police officers are typically scheduled to work), to conducting an "academy-style training" in which all officers remain in training for a sustained weeklong period. While such an academy-style training would not work under the current 4-10 schedule with overlapping Wednesdays, the Association's argument that the modification to Article 43.1 is evidence that the City's proposed 12-month trial schedule is a "Trojan Horse" for unilateral permanent change to patrol officers schedule is pure supposition and not grounded in evidence.
- 19 The City lacks the reasonable financial ability to meet the Union's wage demands. In determining whether a public employer has "the reasonable financial ability...to meet the costs of the proposed contract," Oregon law requires that arbitrators give "due consideration and weight to the other services, provided by, and other priorities of, the unit of government, as determined by a governing body." ORS 243.746(4)(b). The statute also provides that "[a] reasonable operating reserve against further contingencies, which does not include in contemplation of settlement of the labor dispute, shall not be considered as available toward a settlement." That is, the Oregon legislature recognized that the public interest is best served when the City can adequately provide a full array of municipal services and meet the City's needs as a whole, as well as the importance of having a reasonable contingency fund to be used in case of "rainy days."

20. During the last several years, the City has faced significant ongoing operational deficits and financial challenges. These financial challenges became more severe since 2008. Serious financial difficulties led the City to make more than \$30 million in cuts services, eliminate more than 100 full-time employee positions, fail to adequately fund capital maintenance funds, and dip deeply into the Reserve for Revenue Shortfall and other reserve accounts. Further in 2008, Hynix, the City's largest private employer and property tax payer, closed its Eugene plant. That resulted in the loss of approximately 1,000 jobs in Eugene and about \$2.5 million in lost property taxes and payments from the primary power supplier, the Eugene Water and Electric Board. By February 2009, the loss of Hynix revenue and other effects of the recession caused the City's projected General Fund operating deficit to balloon to \$12 million. To address that budget gap the City embarked on some 30-40 cost saving measures. The next several years were similarly unkind to the City's bottom line. In FY2011 the City had a \$5.7 million deficit; and a \$1.9 million deficit in FY2012. When it began budgeting for FY2013, the City anticipated a \$7 million deficit. Again the City took many steps to close the operating deficit, including reductions to library hours, recreation services and staffing, parks maintenance, municipal court and prosecutor services, animal services and administrative services in Central Services, fire and the public works departments. The City also reduced scores of full-time employee positions. Significantly, however, in FY2012, it did create 11 new positions; ten of which were for new employees to the Eugene Police Department.
21. In 2013, voters rejected City efforts to address ongoing budget shortfalls through increased fees. The voters overwhelmingly rejected the measure with 67% of the votes cast being "no." After the measure failed, the City manager proposed that the City cut \$6.3 million from FY2014 budget by making \$1 million worth of administrative changes and reducing the particular services that would have been funded by the City Services Fee by \$5.3 million. The City's budget committee rejected that proposal and instead proposed that the services be restored by using \$1.1 million in savings from retirement plan changes that resulted from legislation and by using \$4.2 million from the Reserve for Revenue Shortfall.

22. The City's operating budget deficits continue. The resounding defeat of the City Services Fee measure by the voters and the need to continue to look for long-term to satisfy its need for an additional \$6 million for on-going services led the City to undertake a comprehensive study to try and identify ways to cut expenses and raise revenue. One bright spot was that the City's budget gap for FY2015 shrunk from \$5.3 million to \$2.5 million due to several factors including legislative and actuarial methodology changes to the Public Employment Retirement System (PERS) rates, renegotiation of an agreement with EWEB, and slightly better property tax revenues than had been projected. After holding a public hearing to receive comments from the community, the Budget Committee arrived at a list of reductions to recommend to the City Manager for inclusion in the proposed budget. These reductions included reducing the main library's hours by half a day a week; reducing recreation services and increasing fees; reducing parks maintenance; and reducing the equity, human rights, neighborhoods and sustainability programs. Looking beyond FY2015, the budgetary forecast shows projected annual operating deficits as far as the eye can see. From FY2016 to FY2020, those projected deficits range from a high of \$1.6 million for FY2018 to \$250,000 for FY2020.
23. Other City needs and priorities have grown while the police department has been "held harmless." The police department has been a top priority for the City in the last few years, as evidenced by the priority placed on building a new police headquarters in 2012; adding ten police officers in FY2011 when positions in other departments were cut; and funding gang prevention. Public safety in Eugene, Oregon, has essentially been "held harmless" from reductions in the last few years while other departments, services and priorities have not been so lucky. The City has not funded adequately several key areas: facility maintenance has been deferred, an additional \$24 million is needed to fund deferred parks and pools renovation and replacement; \$10 million is needed to replace the regional radio system used by the police and public works departments; \$4.3 million is needed to address deferred maintenance in City parking garages; the Reserve for Revenue Shortfall accounts need to be shored up so that the target 8% is reached (for FY2015 it is \$6.1 million, which is only 4.7%); and a multitude of other unfunded costs and priorities that are identified in the City's Multi-Year Financial Plan for FY 2012-2017.

24. The City is entitled to deference regarding the budgetary priorities that it sets. While the Association may take issue with the City's priorities and argue that the City should spend its money on the Association's proposals, Oregon law and arbitrators give deference to the priorities set by the City and its elected City council. ORS 243.746(4)(b) specifically states that the City's reasonable ability to pay is to be assessed by "giving due consideration and weight to other services, provided by, and other priorities of, the unit of government as determined by the governing body." The Association's expert, CPA Timothy Reilly, identified three internal service funds (non-General Funds) that he believed had large balances that he speculated could be used to pay the Union's proposal, including the Facilities Services Fund, the Fleet Services Fund, and the Information Systems and Services Fund. However, Mr. Reilly admitted that he had no personal knowledge of whether those funds had already been earmarked for other City priorities. In fact, in June of 2014, the City already transferred about three-quarters of the Facilities Services Fund reserves to pay for part of the new City hall capital project. Similarly, the other two internal service funds identified by Mr. Reilly are already spoken for, namely to replace the City's aging vehicles, equipment and radio infrastructure, and the City's information systems.
25. The City's reserve level is reasonable and needs to guard against unforeseen future contingencies. As explained by the City's finance director, the City's Ending Fund Balance, which includes its Reserve for Revenue Shortfall (*i.e.*, its rainy day fund for contingencies); its Unappropriated Ending Fund Balance; and other reserve accounts generally ranges at about 20-30% of expense. The Reserve for Revenue Shortfall is well below the City's 8% target and the Unappropriated Ending Fund Balance needs to hold at least two months of operating expenses so that the City can pay its employees and bills during the first few months of the fiscal year until it receives its property tax revenue in the November. Mr. Reilly failed to address specific conditions in Eugene and what would constitute adequate reserves for the City. The finance director testified that if the City's bond rating were downgraded as a result of deterioration in fund balances, the consequences would be higher borrowing costs for Eugene taxpayers on future bond measures. In light of the City's current and projected financial challenges, and its other needs and priorities, the City is unable to pay the Union's proposal without engaging in

additional cuts to services and/or personnel. The City does not have and is not expected to have an operating surplus over the next six years.

26. For the above foregoing reasons, the City requests the arbitrator select the City's Last Best Offer as best serving the "interest and welfare of the public."

C) Analysis and Decision

1. Introduction

ORS 243.746(4)a-h, as amended, specifically require that interest/contract arbitrators give "first priority" to criterion ORS 243.746(4)(a) "the interest and welfare of the public." Secondary priority is to be given to the remaining statutory criteria, subsections b-h. Because police are essential employees they are not permitted to strike. A work stoppage by police would be dangerous and unacceptable to the public. Since police are not permitted by law to withhold their services, the legislature has mandated that the method to resolve disagreements over interest/contract provisions be by arbitration. The Oregon Legislature has delineated a series of criterion by which an arbitrator is to analyze and decide an interest/contract dispute. Oregon law expressly mandates that the first priority of any arbitrator deciding an interest/contract dispute is to recognize that the public is the most important stakeholder in the interest arbitration process. "The interest and welfare of the public" takes first priority. "Second priority" is to be given to the criteria delineated in paragraphs b-h. The secondary criteria are delineated to help the arbitrator achieve the first priority. In applying each individual criterion, the first priority must be kept in mind. After addressing each secondary criterion, if necessary, the arbitrator must choose between either the Union's Last Best Offer package or the City's Last Best Offer package. There is no picking and choosing of each individual issue. Oregon law [ORS 243.746(4)] requires the arbitrator choose which Last Best Offer best achieves the interest and welfare of the public.

The parties' respective proposals differ in two key areas: 1) a difference in the implementation schedule of the wage adjustments (including a 1% difference in wage adjustments over the three years of the agreement); and 2) the City's proposal for a trial 11.5-hour schedule, which will carry forward after the agreement in dispute has expired.

The Association contends that at face value these differences may seem minor, but in the context of an employee's career, these differences could result in distinct financial loss

and could drive a sector of the workforce to need to leave this City as the schedule will be not conducive to family needs and/or personal lifestyles. The Association has proposed cost of living increases of 2% per year of the agreement. The Association has further proposed a 6-month delay in the implementation of the first year increase in order to provide the City some financial respite from retroactive pay. The Association argues that it has historically maintained its current position relative to its comparables and the Association's Last Best Offer proposal will continue to maintain that position throughout the term of the agreement. Further, the Association contends that the switch from a 10-hour shift (the most prevalent shift in law enforcement) to an 11.5-hour shift would have dramatic impact on the officers' effectiveness, safety and morale.

The City argues that the three issues: 1) wages, 2) trial modifications of the schedules, and 3) modifications to the notice and penalty provisions for changes in officer schedules for in-service training, best achieves the interest and welfare of the public. The City contends that it does not have a reasonable ability to pay the \$1.2 million difference between the parties' positions in money. The City also argues that a yearlong trial of an 11.5-hour schedule for approximately two shifts of patrol officers furthers the public interests in improved response to calls for services and reduction in overtime, without having any adverse effect on officer safety. The City admits that "such benefits are not a certainty", and that the purpose of conducting a "trial on the schedule" rather than implementing 11.5-hour shifts across the entire patrol division is so the parties will have better information about how best to proceed down the road on the issue.

2. Interest and Welfare of the Public

It is in the interest and welfare of the public for the City to act in a fiscally responsible manner, particularly in light of a constrained budget and other pressing public needs. Does the City of Eugene have an inability to pay? Does the change from the previously negotiated 4/10 schedule potentially have a dramatic effect on officer safety, impact on family, and overtime costs? These are some of the questions that must be answered before it can be determined what is in the best "interest and welfare of the public." In other words, the criteria designated in the statute must be analyzed in order to answer priority number one, *i.e.*, the interest and welfare of the public.

3. Ability to Pay

The Union contends that neither the budget, nor the City's spending habits during the time it is claiming an inability to pay support the City's claim. While the City has faced budgeting challenges from 2007 to the present, no one from the City testified that the City could not afford the \$1.2 million difference. There would still be \$9 million in reserves. The Union contends that the City's own witnesses and exhibits "actually show that the City has the ability to pay in this matter, and still maintain substantial reserves." In other words, the Union argues that the City's budget presently is healthy and continues to provide for growth in reserves. There has been a growth of \$13 million in the reserves since FY2009. The unrestricted fund balance grew over \$10 million since FY 2009. The City maintains a very healthy budget reserve of 30.51% over the time period the City claims its budget has suffered economic strain. The Moody's report on the City bond rating supports the finding that the City is fiscally healthy.

The City, on the other hand, contends it "lacks the reasonable financial ability to meet the Union's wage demands." Oregon law requires that arbitrators give "due consideration and weight to the other services, provided by, and other priorities of, the unit of government, as determined by a governing body." ORS 243.746(4)(b). Further the statute provides that "[a] reasonable operating reserve against further contingencies...shall not be considered as available towards a settlement." The public interest is best served when the City can adequately provide the full array of municipal services needs as a whole, as well as retaining a reasonable contingency fund to be used in case of a "rainy day."

The City highlights that in 2013 the voters overwhelmingly rejected a measure to address ongoing budget shortfalls through increased fees. The City argues that the operating budget deficits will continue even into the year 2020. Further the City contends that it has needs and priorities, which have grown since the "Great Recession", while the police department has been "held harmless." The police department has been a top priority for the City in the last few years: evidenced by a new police headquarters in 2012; adding 10 police officers in FY2011; and funding gang prevention. The City contends that public safety in Eugene, Oregon, has been "held harmless" from reductions in the last few years while other departments, services and priorities "have not been so lucky." The City argues that it is entitled to the budgetary priorities that it sets. Even though the Association may take issue

with the City's priorities, Oregon law and arbitrators give deference to the priorities set by the City and its elected City Council.

Ultimately, the City contends that its reserve level is reasonable and needs to be there to guard against unforeseen future contingencies.

The Association and the City basically review the reserve quite differently. The Union focuses on the \$1.2 million differential between the City's offer and the Union's demand, and the Association's expert who argues that the reserve is in excess of what's required to maintain a "rainy day" fund.

Due to the presence of the University of Oregon, the City of Eugene has a steady base of rental units from which the City can collect fees and taxes. The rainy day fund is presently more than sufficient to maintain its Moody's rating and to cover shortfalls and contingencies. A \$1.2 million difference is not likely to change the bond rating nor to place the City in jeopardy should there be a shortfall. The facts show that the City does have the financial means to pay the estimated \$1.2 million difference in the cost of the offers over three years. The fact that the City has had to utilize reserves, or has had less to save in reserves, is not an indication of the relative financial health of the City. The City of Eugene's finances have been husbanded well. The City has the ability to pay and still maintain substantial reserves. The budget is healthy and likely to provide for growth in reserves over the next few years.

The City has the ability to pay. The ability to pay criterion favors the Association.

4. Ability to attract and retain qualified personnel

This factor is in favor of the City. The evidence establishes that the City is able to recruit qualified applicants; its turnover rate is low; and even those police officers who have left the City employment have not done so to take higher paying jobs elsewhere. The City regularly recruits large numbers of qualified applicants. For example, in July and August 2013, the City received 349 applications and hired four officers. Recruitments for Communications Specialists have likewise been robust. In the December 2013-January 2014 recruitment, the City received 320 applications of which one was hired. The ability to attract and retain qualified personnel favors the City.

5. Overall compensation

The parties agree that the applicable comparator jurisdictions under ORS 243.746(4)(e) are Salem, Gresham, Hillsboro, and Beaverton. The Association agrees that Eugene sworn officers receive more overall compensation than officers in each of those comparable jurisdictions. Using the City's proposal, in the first year police officers at every stage of their career are ahead of the average of their comparators -- ranging from a low of 1.3% ahead of the average of comparators for officers at the 20-year basic level to a high of 6.8% on comparators for the 5-year advance level. Even the Association concedes that Eugene police officers are compensated at higher rates than average of the comparators.

The statute asks the arbitrator to examine the employees' overall compensation as compared to "the overall compensation of other employees performing similar services with the same or other employees in comparable communities." "Comparable" is limited to communities of the same or nearest population within Oregon.

With regard to Communication Specialists, they receive more overall compensation than their applicable comparators. Under the City's proposal, communication specialists will be ahead of all their comparators at every level employment in each year of the contract.

The City argues that it has historically provided generous economic packages. The Association contends that all of the other comparable jurisdictions received at least a 2% increase in the 2013-2014 contract year. The City never even attempted to explain why it was able to afford increases for the vast majority of the City employees, but was unable to provide an additional 1% in the first year of the contract for the police employees. The Association argues that its proposal will keep the Association in the same position compared with the other comparable jurisdictions. The Association concedes that Eugene police officers are compensated at higher rates than the average of the comparators. The City points out that accepting its proposal will still keep Eugene police officers compensated at those higher rates. The overall compensation argument is balanced between the Association and the City. Both sides make reasonable arguments.

6. Cost of Living

The City contends that its historically generous economic packages have insulated Association members from any consumer price index effect. From FY2007 to FY 2015, the Association has enjoyed a compounded wage increase of 25.06% under the Association's

proposal or 22.61% under the City's proposal. In either case, contends the City, the Association will have outperformed the compounded total of 19.18% for the CPI-U during the same period.

The Association contends that its proposal of a 2% increase in each of the contract years most closely approximates the actual cost of living. The CPI cost of living criterion favors the City.

7. Other factors

If internal equity is taken into account, the Association's proposal closely matches all other employee groups in the City for this contract period. This criterion favors the Association.

8. 11.5-hour shift

The Association contends that "payer ability is not a significant secondary factor in this arbitration proceeding." The Association contends that this arbitration is really about a comparison of the hours worked by the comparables to the City's proposed 11.5-hour "trial" schedule. The Association highlights that the City of Eugene would be the only jurisdiction in its set of comparables that would work something other than the traditional 5/8 or 4/10 schedule. Consequently, the Association contends that what this arbitration is less about the money and actually about a dramatic change in the work schedule. The Association contends that the proposed "trial schedule" of an 11.5-hour patrol is "wrought with problems and ... [the Association position] is most definitely in the interest and welfare of the public." The Association highlights that during this "trial" schedule if not enough employees volunteer, then some officers would be required to work the 11.5-hour shift. Former Association president William Edewaard testified that the Association "bought" the 10-hour shifts through economic sacrifices in previous negotiations, namely contributions toward their health insurance and by taking less of a cost of living. One female officer testified that the shift would dramatically alter her ability to continue being a police officer due to family obligations. Dr. Karen Amendola, Chief Behavioral Scientist for the National Police Foundation, testifying on behalf of the Association, discussed her research study, Karen L. Amendola, et al, *The shift length experiment: What we know about 8-, 10-, and 12- hour shifts in policing* (Police Foundation, Washington, DC 2011). Dr. Amendola testified that according to her studies, the best shift for overtime savings, employee performance and

morale is the 10-hour shift. According to her, a 10-hour shift provides more rest to officers; enhances the officers' quality of life; and decreases overtime cost to the employer. She testified that the 12-hour shift contributes to fatigue, errors in policing, and accidents. She further pointed out it could have a disparate effect on female officers who act as caregivers for the children in the family.

The City counters these arguments by the testimony of Captain Durr saying that in his experience, the 11.5-hour shift does not have an adverse impact on officer safety. Further Capt. Durr testified that in light of the added days off, the longer schedule tends to improve rather than detract from officer quality of life. The City also highlighted that just because one officer testified that a shift to an 11.5-hour schedule would have an adverse effect on her family life, a male single parent officer testified that the additional 26 days off and the additional 20 hours of vacation time per year would improve his family life. The City also contends that Dr. Amendola did not study an 11.5-hour shift and there is an absence of any meaningful evidence that to extend to 11.5-hour shifts would pose significant safety or fatigue concerns.

The Association counters that a switch to an 11.5-hour shift from a 10-hour shift would give the City in arbitration what it could not obtain in hard bargaining. It would provide a cultural shift of the entire police department. It would further extend the 11.5-hour shift beyond the collective bargaining period of 2013-2015. Finally, it may force people who are not volunteers to work such a shift if enough volunteers could not be found. The fatigue factor in working such shifts would not be in the best "interest and welfare of the public." Finally, a possible disparate impact on female officers who act as caregivers for the children in the family would not be in the interest and welfare of the public. The change to an 11.5-hour shift, even though it is an experiment, favors the Association, particularly in light of Dr. Amondola's seminal study and testimony.

Conclusion

Regarding salaries, both the Association and the City make rational and logical arguments. Some of the criterion favor the City and some the Association. Some of the criterion is equally balanced between the City and the Association. The City has done an excellent job in conserving finances, setting priorities, and planning in light of the "Great Recession" the country and the City of Eugene has faced over the last few years. The

Moody's rating agency has recognized the excellent job the City of Eugene, Oregon has done during very hard economic times. The City officials have carefully and properly set aside a "Reserve for Revenue Shortfall" ["rainy day" fund] and other reserve accounts. The City continues to carefully monitor its potential deficits and look into the future to protect the citizens of Eugene, Oregon. On the other hand, a \$1.2 million difference between the salaries that the City is offering and the salaries the Association is asking will have a negative impact on the police department employees. The City has not provided a justification for effectively reducing the wages of Association members by freezing wages in the first year of the contract. Neither the budget, nor the City's spending habits support an inability to pay. The employer has not met its burden of proof to establish an inability to pay. As the Association argues "[A]n unwillingness to pay does not satisfy this burden." The City does have the financial means to pay the \$1.2 million difference between the respective offers over three years. The City has the ability to maintain substantial reserves, and the skill and expertise (based on past performance) to carefully manage and husband the finances of the City. The fact that the City is the home of the University of Oregon has helped in maintaining stability in property taxes into the City's economy.

With respect to the shift change from a 10-hour shift to an 11.5-hour shift the Association has proven by a preponderance of the evidence that such a shift may have significant impact on the safety, health, quality of life, fatigue, off-duty employment and overtime usage among the police officers. Whether such a shift actually improves performance of the individual police officers and improves performance of the Eugene Police Department is a matter that most definitely needs further study. While the City would like to do that study, wage and hours are traditionally part of the collective bargaining process. The Association has proven that it negotiated and bargained for a 10-hour shift in the past and gave back to the City due consideration for that 10-hour shift. The seminal study by Dr. Amendola and her co-authors concludes that an 11.5-hour shift will likely have negative consequences on the safety and fatigue of the police officers. The fact that anecdotally one officer thinks it may force the end of her career, while another male officer thinks it would be beneficial for his family life, does not answer the effect on officer safety, impact on family, potential disparate impact of female officers and overtime costs. These questions must be further studied, but within the context of a collective bargaining process. The City should

not be able to obtain in arbitration what it could not obtain in the collective bargaining process.

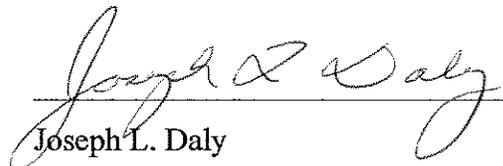
Perhaps everything Capt. Durr says about an 11.5-hour shift is correct, but such a shift should be achieved through the collective bargaining process and not through arbitration. There are too many questions regarding safety, health and fatigue that need to be answered by the experts and the officers affected before the City of Eugene begins to experiment with the lives of the individual police officers. Perhaps within the collective bargaining process the Association will be willing to allow for such an experiment. But such a cultural shift should be collectively bargained for and should not be imposed by an arbitrator. If Dr. Amendola is correct in her conclusions from her seminal study, the interest and welfare of the public could be dramatically affected. On the other hand, if the Association was able to collectively bargain for a carefully controlled experiment with willing volunteers, then perhaps the findings may prove Capt. Durr correct. But an arbitrator should not force such a shift. The interest and welfare of the public are at stake, not to mention the individual police officers. This factor alone leads this arbitrator to hold for the Association.

The package which best satisfies ORS 243.746(4)(a-h) is the Association's Last Best Offer package.

AWARD

Adopt the Association's package.

January 26, 2015
Date



Joseph L. Daly
Arbitrator