

David E. Pesonen

Arbitrator

FEDERATION OF OREGON PAROLE &)
 PROBATION OFFICERS ("FOPPO"))
) and)
 DESCHUTES COUNTY, OREGON) AMENDMENT TO
) INTEREST ARBITRATION DECISION
)
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)

This amendment addresses the last paragraph of the Conclusion of the Arbitration Decision in this matter, dated September 26, 2013.

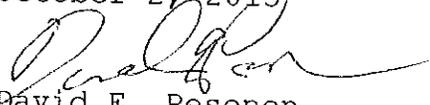
That segment of the Decision concerning the parties' responsibility for this arbitrator's fees and expenses, imposing them on the "losing party," FOPPO, was wrong.

Accordingly, the September 26, 2013 decision in this interest arbitration is corrected at the final paragraph on page 9 to read:

Pursuant to ORS 243.746 each party to this interest arbitration is responsible for one-half of the arbitration fees and expenses, to be submitted by itemized invoice.

Respectfully submitted,

October 2, 2013


 David E. Pesonen
 Arbitrator

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I. The Issue

This dispute arises from a proposed change in the health care provisions of the contract between FOPPO and the County in the new Contract beginning July 1, 2013. The County proposes to change the manner in which the parties contribute premiums for this benefit. The County's last best offer would delete language in Section 7 of the former Contract to remove the specific dollar amounts the County and each employee would contribute toward health care premiums. Instead, the County proposes a flexible formula for the employee's participation in health care coverage based on a percentage of the employee's salary.

FOPPO's last best offer accepts the County's proposal. However, it proposes to amend the Contract to provide for a paid one-half hour lunch break to be taken during the mid-day when the Parole and Probation Offices are closed for the lunch hour. Previous contracts had historically provided for a one-hour unpaid lunch period. The theory behind FOPPO's proposal is that payment for this one-half hour will offset the economic effects on its members from the presumably increased deduction for health care premiums under the County's proposal.

FOPPO argues that this arbitration does not involve a single issue dispute. Rather, its proposal for a paid one-half hour lunch period is an integral *quid pro quo* for its acceptance

of the County's proposed change in the manner of calculating health care contributions. The County contends, to the contrary, that FOPPO's acceptance of its health care proposal stands alone and reduces the issue in this arbitration to whether the proposed compensation for the lunch period meets the statutory tests to be applied by the arbitrator in selecting between the parties' last best offers.

The evidence introduced by FOPPO and the County both focused on the lunch period proposal as a *quid pro quo* for FOPPO's acceptance of the County's health care proposal. As Vernon Yeager, President of the Deschutes County chapter of FOPPO, and a full time parole and probation officer, testified on cross-examination by Mr. Bischof:

Q. . . . [If] the County had not changed the health insurance program, if we had retained the one that we had, this . . . paid lunch issue would not be on the table. Is that correct?

A. I think that's fair to say. You know, . . . [I]f you can recall from prior negotiations, one of the things that we were very steadfast about was not wanting to go to the percentage in the healthcare. (sic)

The County asserts in its closing brief that the five other Unions, representing approximately 1,000 employees, including the Sheriff's Association, have accepted the proposed change in the health care provision. FOPPO, with 21 members, would be overshadowed if it stood alone in opposition to that provision.

On balance on this record this is a one-issue arbitration: whether the FOPPO paid half-hour lunch proposal sufficiently meets the statutory test for the arbitrator to adopt it over the County's proposal which does not contain that provision.

II. The Arguments

The County advances a two-prong case: One, that the historic pattern of informal flex time, and the resulting effect on employee morale, would be jeopardized by the need to "clock" the one-half hour paid lunch break. The analytical leap was that a decline in the high level of morale among FOPPO members under the historic flex-time arrangement--and a one-hour unpaid lunch period--would be eroded by adherence to a more rigid employment atmosphere fostered by a mandatory half-hour, non-working, paid lunch period. This is a highly speculative argument. It was clear during the hearing in this matter that the parole and probation officers are diligent and honest about use of their time, including use of flex-time if they have been called out during lunch hours or other break periods.

FOPPO introduced testimony from several of its members that their unpaid lunch hour is subject to their being called out to deal with law enforcement circumstances. As adjuncts to law enforcement, they carry pagers and cell phones for the purpose of being available to assist law enforcement personnel

in circumstances involving persons who are on court imposed probation or parole. This testimony was episodic and was not backed up with any statistical data regarding the amount of time FOPPO members were actually called out during non-shift times for these purposes.

More to the point, however, the underlying effect of FOPPO's proposal is that the employees would be "allowed to work a straight shift . . . and cut their workday by 30 minutes." Opening statement by Ms. Fenrich (R.T. p. 16.)

The County presented evidence that FOPPO's proposal would have a significant effect on the County's budget, both directly for payment of the additional one-half hour paid lunch break and indirectly by causing the County to hire increased personnel to make up for altering the work day from eight hours¹ with an hour unpaid lunch break to eight hours plus a one-half hour paid lunch break.

The County offered evidence that was not contradicted by FOPPO, that the net effect, if the Department were fully staffed, would be \$3,192.94 per year per employee, the equivalent of \$266 per month benefit to each employee, and about \$67,000 total additional appropriation to the Department if

¹ Several of the parole and probation officer staff have elected the option of a four day 9 + 4 schedule, but the budget effect is not affected by this variation of the work schedule.

fully staffed at twenty-one positions.² This is independent of the direct payroll effect of the additional one-half hour salary. These figures are undoubtedly inflated; but they still suggest that FOPPO's proposed *quid pro quo* is not trivial.

FOPPO introduced, by exhibit, evidence that three other Oregon counties, Benton, Jackson and Marion, provide flex time and lunch hour rest periods. I do not find this evidence helpful without exploring other, potentially controlling factors that the Commissioners of those jurisdictions confronted in adopting such contractual provisions.

Finally, there was no evidence on this record that any of the five other unions representing Deschutes County employees that had accepted the County's revision of the payment terms for health care benefits had sought or received a *quid pro quo* for accepting the change. If FOPPO's position were adopted as a result of this arbitration, there would inevitably be pressure on the County in subsequent negotiations with the other unions to grant some form of additional compensation, as a matter of equity.

III. Statutory Analysis

By statute, ORS § 243.746, the arbitrator's authority in an interest arbitration is limited to selecting one or the other of

² County Exhibit 9.

the parties' respective "last best offers," without modification. Further, the statute outlines the criteria an arbitrator is to apply in deciding which of the offers to select. It provides that the arbitrator is to give: (a) "first priority" to "The interest and welfare of the public."

Obviously this broad test is subject to equally broad application. The following seven subsections, (b) through (h), rather awkwardly in my opinion, seek to flesh out subsection (a).

Subsection (b) addresses the fiscal effect of the parties' proposals on the County's budget; (c) addresses the effect on recruitment of qualified personnel; (d) the total compensation package of the affected employees; (e) comparison with employees performing "similar services" in comparable communities; (f) the cost of living in the community; (g) any stipulation of the parties; and, finally, (h) "Such other factors consistent with [the above sections] that are "traditionally taken into consideration . . ." unless [the criteria listed above] provide sufficient evidence of an award." I do not find it necessary to go much beyond subsections (a) and (b) to resolve this arbitration.

First, under (a), FOPPO does not contend with any vigor that a fixed half-hour lunch period would jeopardize the public interest in its members responsibility for the public welfare in

dealing with probationers and parolees. Its members could still be called out during lunch period if circumstances called for them to respond to emergencies such as an arrest or search by a sheriff deputy. Flex time could then be applied, as it is under the lunch hour conditions of the previous contract.

With respect to subsection (b), the County introduced evidence of a significant fiscal effect if FOPPO's proposal is instituted. That evidence was not contradicted by FOPPO. This is not to suggest that the additional effect on the County's budget would be crippling; but it should not be ignored in light of presumed other demands on the County budget. Respecting subsection (c), no evidence was introduced regarding the effect FOPPO's proposal would have on the County's ability to recruit parole and probation officers to any vacancy in that office.³

The parties introduced no evidence applicable to the remaining criteria listed in the statute.

IV. Conclusion.

On balance, applying the Legislature's criteria set forth in ORS § 243.746, Deschutes County's last best offer comes closer to the statutory test than FOPPO's proposal.

³ The County's post-hearing brief asserts that--

"The County has no problem recruiting or retaining qualified parole and probation officers given the wage and benefit package, favorable working conditions, and not least, the sought after Central Oregon lifestyle." Neither party introduced evidence on this issue.

Accordingly, that is my ruling in this arbitration: the County of Deschutes' last best offer to the Deschutes Chapter of the Oregon Federation of Parole And Probation Officers, identical to the Last Best Offer submitted as its Final Offer with the State Mediator on March 29, 2013, is adopted.

Pursuant to Article 7, Step IV.c. of the Contract, the Deschutes Chapter of the Oregon Federation of Parole and Probation Officers is the "losing party" and is responsible for the arbitrator's fees and expenses, to be documented by separate, itemized invoice.

Respectfully submitted,

September 26, 2013



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