

**IN THE MATTER OF THE INTEREST ARBITRATION
OF**

KEIZER POLICE ASSOCIATION)	
)	
Grievant,)	BEFORE
)	LEROY J. TORNQUIST
and)	ARBITRATOR
)	
CITY OF KEIZER)	
)	
Employer)	

I. INTRODUCTION

This matter came before me as arbitrator selected by the parties using the procedures of the Oregon Employment Relations Board. This is an interest arbitration designed to resolve a dispute as to a single issue: health insurance. The dispute arose when the Keizer Police Association (Association) and the City of Keizer (City) were unable to reach agreement on the terms of an insurance re-opener for the third year of the current Collective Bargaining Agreement 2005-2006.

The matter is controlled by the Oregon Public Employees Collective Bargaining Act, ORS Sections 243.650 , et. Seq and more particularly ORS 243.746.

A hearing was held on February 3, 2006 in Keizer, Oregon. Each party presented witnesses, testimony, exhibits and arguments. The parties filed post-hearing briefs by mail on March 3, 2006 and the hearing closed on March 6, 2006 when I

received the last brief.

II. OPINION AND AWARD

Last Best Offers

The parties exchanged their last best offer packages in accordance with the statute.

The Relevant portions of the Association's last best offer was as follows:

Final Offer of The Keizer Police Association

Insurance Re-opener

Fiscal Year 2005 (July 1, 2005 to June 30, 2006)

The Keizer Police Association proposes the following as its final offer for the Insurance Re-opener contained in the Collective Bargaining Agreement between The Keizer Police Association and the City of Keizer which expires on June 30, 2006. (Only the relevant portions of the last best offer are included.)

ARTICLE 8 - INSURANCE AND RETIREMENT

SECTION 8.1 HEALTH INSURANCE AND DENTAL INSURANCE

- B. Effective July 1, 2005, the City will contribute 95% of the premium cost for the agreed upon medical, dental and vision insurance for the employee and eligible dependents. The employee shall be responsible**

for the remaining 5%.

FINAL OFFER OF THE CITY OF KEIZER

Insurance Re-Opener

The City of Keizer proposes continuation of the status quo method for splitting health insurance costs for the agreed upon medical, dental and vision insurance program *or* an optional alternative medical, dental and vision insurance program, at the choice of each employee.

4. **For regular full-time employees, effective July 1, 2005, The City will pay up to:**

- **Employee only \$351.36**
- **Employee and Spouse \$662.19**
- **Employee and Children \$581.09**
- **Employee and Family \$810.84**

per month towards the purchase of medical, dental, life and long-term disability insurance.

5. **Effective with the fiscal year ending June 30, 2005, unencumbered funds for the Insurance Benefits line item will be distributed to the bargaining unit as a special addition to the caps and not as a permanent addition to the caps. The City's method of calculating unencumbered funds for Insurance Benefits for the Insurance Benefits line item will not be changed during the period of the**

collective bargaining agreement. This special offset for July 1, 2004-5 through June 30, 2005-6, is as follows:

	<u>Monthly</u>	<u>Per Pay Period</u>
• Employee only	\$13.00	\$ 6.00
• Employee and Spouse	\$24.49	\$11.30
• Employee and Children	\$21.49	\$ 9.92
• Employee and Family	\$29.98	\$13.84

The combined figures for July 1, 2004-5 through June 20, 2005-6, are as follows:

• Employee only	\$364.36
• Employee and Spouse	\$686.68
• Employee and Children	\$602.58
• Employee and Family	\$840.82

Coverage to be provided under the Health Net P101097 90/10 Plan agreed upon by the parties and under Health Net P203V2 with LX Rider 80/20 Plan, at the option of each employee, subject to carrier enrollment restrictions.

It should be noted that the City's Last Best Offer is capped while the Associations Last Best Offer is not capped. This provides the significant difference between the two Last Best Offers.

STATUTORY CRITERIA FOR DECISION, ORS SECTION 243.746(4)

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions 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 second priority to subsections (b) to (h) of this subsection as follows:

- (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 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 [For cities with a population more than 325,000 and counties with a population over 400,000, comparable jurisdictions may include those of similar size which are out-of-state].
- (f) The CPI-All Cities Index, commonly known as the cost of living.
- (g) The stipulations of the parties.
- (h) Such other factors, consistent with paragraphs (a) to (g) of this subsection as are traditionally taken into consideration in the determination of wages, hours and other conditions of employment. However, the arbitrator shall not use such other factors, if in the judgment of the arbitrator, the factors in paragraphs (a) to (g) of this subsection provide sufficient evidence for an award.

III. SUMMARY OF FACTS

The parties are in the process of negotiating a successor agreement for the contract which expires on June 30, 2006. If a successor agreement is not reached by that date the language in the LBO’s will determine how health insurance premiums will be paid during the “status quo” period.

The sole issue in this case relates to the manner in which health insurance premiums partially provided by the employer will be paid..

The Associations Last Best Offer

Effective July 1, 2005, the City will contribute 95% of the premium cost for the agreed upon medical, dental and vision insurance for the employee and eligible dependents. The employee shall be responsible for the remaining 5%.

The City's Last Best Offer

The City's LBO provides that the City will provide funds to pay for the full health insurance premium for the employee, employee plus spouse, employee plus children tiers for the 90-10 plan. However, an employee opting for full family coverage would pay \$77 per month. The City's LBO also provides that if an employee elected to opt for the 80/20 plan the City would pay for the full premium for all employees under that plan. Significantly, however, the city's contribution to health insurance premiums is capped and the City would increase its contribution by the amount of the Medical CPI and the remainder of any premium increase would be paid by the employees.

There is a substantial difference in language between the City's and the Association's LBO. That difference, is between "capped" and "uncapped" benefit language. The City wants to keep its "capped" language and vigorously is fighting against a change to "uncapped" benefit language as proposed in the Association's LBO.. The Association's LBO requires the City to pay 95% of the cost of medical insurance. That amount is uncapped. The City's LBO requires the City to pay a capped amount (X dollars) even though X dollars may be less than the full cost of coverage.

The City's LBO continues the procedure by which health premium increases have been divided since the 2000-2001 fiscal year. At that time the City's obligation was capped at a set amount and the City's contribution to the premiums would be increased by the Medical CPI. The balance of the premium increase would then be paid by the employee.

The evidence established that this procedural formula resulted in a significant increase of health insurance premiums at the full family level to the employee. In fiscal year 2000-2001 the premium costs were paid for by the City. In 2004-2005 however the employee in the full family category was paying \$200 per month, or 25% of the premium cost. This increase is caused by the fact that the Medical CPI has not risen at the same rate as the health insurance premium. This fact caused the City and the Association to seek a new carrier. Much of the Association's argument for its LBO revolves around the process and negotiations between the City and the Association in seeking a new carrier and new plan.

The Association and the City agreed that it was necessary to seek a change in medical insurance plans for the 2005-2006 fiscal year. The previous plan had drastically increased the health insurance premiums. The parties cooperated and searched for a less expensive plan.

The plan change had to be done rapidly and that the parties did not have time to complete their negotiations on how the premium payment split would be made under the new policy. However, the Association argues that the City sent clear signals that they would be willing to consider a premium split in May and June of 2005. The City contends that no change in the manner of premium split was agreed to by the parties before the new insurance plan was adopted. After the change in carriers the City refused to consider a new split in the manner in which premiums were paid..

THE INTEREST AND WELFARE OF THE PUBLIC

An interest arbitrator's task is to make a decision applying the statutory criteria set forth by the Oregon legislature. The Oregon legislature has told interest arbitrators to give first priority to "the interest and welfare of the public". The legislature did not define these terms, but it is clear that other statutory requirements are to be given secondary criteria.

In one sense the language of the statute is clear. The "interest and welfare of the public" requires that an arbitrator examine the case from the viewpoint of the "public" rather than what is in the interest of the City as an entity or the Association as an entity. The "public" consists of citizens, voters, property owners, taxpayers, and those who receive police services. Their interests may be distinct from the interests of the City and the interests of the Association.

Furthermore, the Oregon legislature requires that arbitrators give first priority to the interest and welfare of the public and second priority to subsections (b) to (h) of the statute. Therefore, I must resist the temptation to pick and choose secondary criteria and elevate them to the first priority. Such a procedure would not be consistent with legislative intent.

_____The last best offer package places on both parties a burden of proof to show, using statutory criteria, that their last best offer is the one that should be chosen.

The concept of status quo and the interest and welfare of the public

The City contends that the party proposing a change in the "status quo" bears the burden of proving that such a change is in the interest and welfare of the public. The City argues it is seeking to preserve the status quo and the Association is seeking a significant change in the status quo method by which the costs of insurance benefits are shared between the City and the

bargaining unit members of the City Police.

The term status quo can be used in different contexts and have very different meanings. Without going into the various contexts, I take it the City is using it as applied to non economic contract language benefits. In other words, as a matter of the public interest the old aphorisms apply. First “do no harm” and “if it ain’t broke, don’t fix it.” The burden of proof when dealing with the status quo in this context falls upon the party seeking to “fix it”.

In applying the status quo principle the City cites arbitrator Snow’s oft quoted decision in Bend Firefighters Union and the City of Bend. The City argues that the Association would have the burden of proving each of the following items.

1. The status quo has proven to be unworkable or inequitable,
2. Quid pro quo has been given that would justify taking away a benefit that was gained by the other party in negotiations, and
3. A compelling need exists to change the status quo.

However, what is rarely noted or quoted in Arbitrator Snow’s decision is that all of these factors are not necessary for the Association to prove in order to prevail. As arbitrator Snow said in Bend Firefighters “Inherent in the legislative decision to use a “last best offer package” approach to interest arbitration is a requirement that each party either meet the “compelling need” test or show that a quid pro quo exists to justify taking away a benefit previously obtained through a negotiated settlement.” (Emphasis added). It is true that several arbitrators in citing the Bend Firefighters case have linked all three items listed above. However, that is not what Professor Snow indicated in his opinion. The question is whether there is a “compelling need” or a “quid pro quo” given by the Association.

Setting all of this aside the Association argues that there is no statutory authority in Oregon for the concept of “Status Quo” . Therefore, the status quo concept is outside the statutory authority granted to an arbitrator. Of course, the Association is correct, but arbitrators have for some time given the statute a gloss that contains the status quo concept. Furthermore, the Association contends that even if the arbitrator adopts the status quo concept the Association has met the required burden of proof.

The arbitrator will follow the status quo principle because as several arbitrators have noted there is no sense in setting aside what the parties have voluntarily negotiated unless there has been a “quid pro quo” or there is a “compelling need” not to follow the status quo. Therefore, the Association has the burden of applying the statutory factors and showing that the status quo needs to be changed. In essence then the Association has the burden of showing that there is a compelling need for change and that their last best offer meets the statutory requirements.

IV. DISCUSSION

As mentioned above the Oregon legislature has directed arbitrators to follow the statutory requirements in deciding which last best offer to follow. Arbitrators must give first priority to the interest and welfare of the public and second priority to subsections (b) through (h) of the statute.

SECONDARY CRITERIA

(b) The reasonable financial ability of the unit of government to meet the costs of the proposed contract giving due consideration and weight to 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 City does not argue that it lacks the financial ability to meet the costs of the Association's proposal for a 95/5% insurance contribution split. The difference in cost between the City's LBO and the Association's LBO in 2005-2006 is \$1,035. The difference between the two proposals in future years will be dealt with at the collective bargaining table. The CBA expires on June 30, 2006, and the parties are in negotiations for a successor agreement. Therefore, the City's ability to pay, standing alone, does not compel acceptance of either the City or Association last best offer.

This is an important factor in determining the interest and welfare of the public and in selecting the last best offer that meets the public interest and welfare. Cost to the taxpayers of Keizer is negligible.

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

_____ It is the City's position that the status quo method of splitting insurance costs has not negatively affected the City's ability to attract and retain qualified personnel. During the five year period the current methodology has been in effect, the City has received 398 applications for seven openings. Ten applicants were selected from the 398 applications received. None of these applicants expressed concern about the City's overall compensation or system for splitting insurance costs.

During the period the status quo method of splitting insurance costs has been in effect, not a single employee has left the City's employment because of dissatisfaction with the wage and

benefit levels provided by the City. Those who resigned did so for reasons unrelated to wages and benefits.

The Association agrees that recruitment and retention of qualified employees is not an important issue in this arbitration. It is not a current problem. However, the Association argues that it may be a problem in the future for employees who pay the full-family premium contribution dollars. According to the formula included in the City's last best offer employees who pay the full family premium will bear the brunt of future premium increases. However, it will only be a recruitment and retention problem if medical premium costs continue to rise at a faster rate than the medical CPI.

- (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.**

Both parties stipulated as to the comparable jurisdictions. They are Albany, Lake Oswego, McMinnville, Milwaukie, Newberg, Oregon City, Salem, Tigard, Tualitin, Woodburn, Oregon State Police and Marion County.

The City takes the position that neither acceptance of the City's proposal nor acceptance of the Association's proposal would materially affect the City's position among its wage and benefit comparators. The City bases its conclusion on the fact that my decision is limited to a third year insurance re-opener. That limitation, coupled with the small dollar difference between what

employees would have to pay for health insurance relative to overall compensation under the City's and the Association's Last Best Offers, renders the comparative overall compensation of little value.

The problem with the City's argument is that there may be problem in recruiting members in the family category given the rate of premium increases that may fall on this category of employee.

The CPI

_____The question under the CPI is which proposal best preserves the employees' spending power as measured by the CPI. The Association argues that the City's LBO fails to keep up with the CPI because the new insurance plan has decreased the amount of money the City pays for insurance and the employees will have to pay more for out of pocket medical services.

The City responds by pointing out that the percentage increase the City has paid for health insurance benefits during the period the current method of splitting insurance costs has been in place far exceeds the increase in the CPI-W All Cities Index.

The medical plan has already been selected by the parties. The only difference between the LBO's is the method of payment for the health insurance. The difference in actual dollar costs between the respective Last Best Offers is so small and will last for so short a time the CPI analysis takes on very little meaning in deciding which LBO best meets the interest and welfare of the public..

(g) The stipulations of the parties.

_____Both parties stipulated as to the comparable jurisdictions. They Are Albany, Lake Oswego, McMinnville, Milwaukie, Newberg, Oregon City, Salem, Tigard, Tualitin, Woodburn,

Oregon State Police and Marion County.

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

The arbitrator has no need to consider “other factors”.

The Interest and Welfare of the Public

Having reviewed the secondary criteria the Arbitrator must address the principal consideration - which of the two packages best serves the interest and welfare of the public. The secondary factors discussed above only inform this decision.

Most arbitrators agree that the “interest and welfare of the public” is hard to define. To me it is clear that it is in the best interest and welfare of the public to have an City Police force that is fairly paid. That of course, would include appropriate and reasonable medical insurance benefits. The City must maintain a police force that meets its citizens’ security needs and the City must act with foresight and good judgment regarding the expenditure of the taxpayers money. The City has many competing priorities for every dollar. As one of the secondary factors indicates any proposal must be within the taxpayers ability to pay.

As Arbitrator Stratton wrote, in Multnomah County and Multnomah County Correction Officers Association (Stratton 1988), “The interest and welfare of the public is best served with competent, effective, and well motivated officers. In other words, the costs should be reasonable to the taxpayer and fair to the employee.”

Arbitrator Stratton’s balancing test of “reasonable to the taxpayer” and “fair to the

employee” is an enlightened approach. The last best offer of each party then will be put to that test.

Cost should be reasonable to the taxpayer.

If the interest and welfare of the public is used in deciding between the City’s LBO and the Associations LBO, the cost to the taxpayer must be considered. In this case the difference in cost between the Association’s LBO and the City’s LBO is minimal.

Of course, as a watchdog over the expenditure of taxpayers dollars the City believes its LBO will better control future increases in the cost of health insurance because it gives a greater incentive to the Association and its members to cooperate in keeping costs down. Therefore, I need to address the incentive question in this opinion.

The LBO should be fair to the employee

The Association has raised several question concerning the lack of fairness caused by the City’s LBO. Therefore, I need to address these concerns in deciding which LBO to award.

A. Has the Association given a quid pro quo that justifies a change in the status quo?

Webster’s Dictionary defines a quid pro quo as giving one thing in return for another. Did the Association give up one thing (the old insurance plan) in exchange for another (a different split in the payment of the insurance premiums)?

The Association argues that it agreed to a new insurance plan that has provided less benefit to its members than the old plan. Furthermore, the City received a benefit because the cost to the City was less.

. The Association, in its discussions regarding the change of insurance plans, believed the

City would negotiate a new percentage split. The Association may have believed there would be a quid pro quo, but there is no written or oral evidence the City actually agreed to a change in the percentage split as a result of the change of insurance plans. The City and the Association simply unconditionally agreed to a different carrier and plan.

. There was no quid pro quo.

B. Did the City intentionally discriminate against the family members of the bargaining unit?

The Association argues that the City's LBO is discriminatory because it requires family coverage employees to contribute while other employees pay nothing. For example, an employee with a family must pay \$77.54 a month or 8% of the premium cost while other employees pay nothing..

The City responds by denying any discrimination and pointing out that it is paying \$7,161.72 more pre year for employees who need family coverage than employees who need member only coverage. It pays \$3,905 more per year for employees who need family coverage than employees who need member + children and so on down the steps of coverage. The City simply requires those who receive a far greater benefit to pay more towards the cost of the benefit than those who receive a lesser benefit.

An arbitrator must give scrutiny to a claim of discrimination, but based upon the evidence presented I find no support for a finding of intentional discrimination regarding the method of distributing the cost of payment of insurance premiums. There is a difference between

differentiation and discrimination. In our society we differentiate on a regular basis.

Individuals are often treated differently based upon differences in circumstances. For example, the federal revenue code charges individuals at the top of the pay scale heightened income taxes and it also charges them a higher percentage of income tax. Unequals need not be treated equally. The difference in treatment is not invidious discrimination.

Staying with the income tax analogy, it is clear that under the Association's LBO, members in the family category will pay more in monthly insurance premiums than members in the other categories. That is so because 5% of a larger number is greater than 5% of a smaller number. The percentage is the same for all members but the amount will fall in greater proportion on the family member category. .

There is a compelling need to change the status quo because it has proven to be unworkable and unfair.

The Association argues that the status quo system of paying for insurance premiums is unfair, unworkable and inequitable. In other words, there is a "compelling need" to change the status quo.

The Association presented evidence relating to insurance in all of the comparator jurisdictions.

Process in the comparator jurisdictions.

Both parties stipulated as to the comparable jurisdictions. They Are Albany, Lake Oswego, McMinnville, Milwaukie, Newberg, Oregon City, Salem, Tigard, Tualitin, Woodburn,

Oregon State Police and Marion County. The evidence showed that all of the comparator jurisdictions are either on a 100% paid or a percentage split. In addition, all of the jurisdictions except Milwaukie and Tigard pay at least 95% of the premium costs. Milwaukie pays 85% and Tigard pays 90%.

Significantly, no other comparator uses a capped system of paying health insurance premiums. In addition no comparator uses the Medical CPI as a basis to determine Employer contribution for future premium increases. In addition, although the insurance coverage provided by the City under the Health Net plan is comparable to the insurance coverage received by other jurisdictions, Keizer contributes as an employer to full family, 30% or \$253 less per month than the average.

Human Resources Director Diane Hunt testified that under the previous insurance plan ODS premiums were scheduled to increase by 29% for the 2005-06 plan year. Under the City's LBO method of determining the insurance splits the family members category of the association would have borne the primary responsibility for paying the 29% premium payments scheduled by the ODS. That is because the premiums for insurance coverage rose much faster than the adjusted contribution level of the City. For example, under ODS plan 213 the family coverage employees would have been required to contribute the difference between premiums of \$1397.07 per month and a City contribution of \$840.82. Of course, that event never occurred since the City and the Association agreed to a new Health Net Plan 101097 which benefitted both the City and the Association.

The City argues that its LBO and its methodology for splitting costs creates incentives for employees to be active in seeking cost containment measures. The City points to the change of

the ADS plan as evidence of this incentive. The arbitrator agrees, but at what cost to the police officers. Carrying the City's argument to the extreme, if the employees paid 100% of the premium they would have an even stronger incentive to seek lesser coverage and lesser premiums. I will address the incentive argument under a separate section

The City's LBO places a heavy burden of future increases in the health insurance premium on family member employees. The CPI medical Cap has not kept up with increases in health insurance premiums. This creates an unfair burden on the family coverage employees.

In my view, the lack of predictability of future increases in the health insurance premium and future increases in the medical CPI raise two issues that have great potential for affecting the interest and welfare of the public. The mandatory co-payment under the City's proposal is presently manageable, but it may become so burdensome on full family members of the Police that it will lead to labor unrest that will lead to conflict. In the future it may not be possible to change plans to reduce the costs without drastically affecting the health benefits of the police force. This is more than conjecture since the recent history of premium increases was only avoided by a last minute change in carrier and plan. The evidence at the hearing indicated that the new plan has less benefits for the members of the Association.

This disconnect between the rate in which insurance premiums are rising and the rate of increase of the medical CPI causes the problem. Yet the City argues that if the arbitrator does not adopt the City's LBO the association members will not have an incentive to cooperate with the City in seeking to control the cost of health insurance.

Would the Association have an incentive to cooperate with the City in seeking ways to limit future health insurance costs to the City if the Association's LBO containing 95/5 split was adopted?

The City argues that in today's times of escalating health insurance costs there is no single issue more important to the public interest than the maintenance of procedures for dividing premium costs that create an incentive for employees to work with employers to contain costs and to obtain the best possible insurance benefits for each taxpayer dollar spent. The arbitrator agrees with this general statement.

The question is whether the Association's LBO provides a financial incentive to re-examine the health plan and cooperate with the City if there are future premium increases? The public interest requires that the Association work with the City to obtain quality medical coverage at the lowest cost to the public. That is an weighty public interest factor since neither the City or the Association have effective control over future increases in medical plan costs. Insurance costs have increased by 197% since 1996.

A. Indirect Financial incentive

Of course, Keizer Police officers are not motivated solely by dollars. They along with the City have a public interest that would require acting in the public interest. However, given the reality of the collective bargaining history in Oregon, that good will can not be assumed and can not be relied upon by the City.

Nevertheless, officers have other incentives for helping to keep premiums low. For example, there always will be a motivation for the Officers to reduce plan costs when the City's budget is increasingly devoted to health care costs rather than wages. The evidence indicated the ratio of insurance cost to officer salaries continue to increase. Therefore, the Officers have a self interest and will seek health care cost containment in order to secure wage increases. However, that financial incentive is an indirect incentive rather than direct incentive.

B. Direct Financial Incentive

There is a direct financial incentive that occurs when an individual's out of pocket health care costs (the 5% of premium) goes up. Under the City's LBO the family member category has an interest to cooperate in seeking lower health insurance costs. However, other members of the Association do not have the same interest because the City is presently paying their entire premium.

Under the Association's LBO, all members of the bargaining unit will have an incentive to cooperate in seeking lower costs. The Association's LBO provides a direct financial incentive for all members of the Association to cooperate with the City in seeking cost containment for medical plans.

V. Conclusion

The notion of status quo can be a difficult term to apply. Many arbitrators have tried in other interest arbitrations and I could quote from those decisions but little would be gained by doing so.

This case involves bargaining over health insurance benefits. There is a substantial difference in language between the City's and the Association's LBO. That difference, however, involves a common theme - the difference between "capped" and "uncapped" benefit language. The City wants to keep its "capped" language and vigorously is fighting against a change to "uncapped" benefit language as proposed in the Association's LBO. The Association's LBO requires the City to pay 95% of the cost of medical insurance. That amount is uncapped. The City's LBO requires the City to pay a capped amount (X dollars) even though X dollars may be

less than the full cost of coverage. This amount is capped

It should be noted that there are “capped” benefit programs that do meet the needs of the public. It is the capped program provided in the City’s LBO and its operation in fact that needs to be considered by the arbitrator.

A change in status quo practice is warranted by proof of a compelling need. Proof of a compelling need has been made in this case and it is a factor inherently within the guidance given to arbitrators by the Oregon legislature. It was specifically mentioned as a single determining factor by Professor Snow in his oft quoted decision in his Bend Firefighters Union decision.

It is not the best interest and welfare of the City, nor in the best interest and welfare of the Association, that the arbitrator must keep in mind. It is the best interest and welfare of the public. The work force, and particularly a police force, will best meet the public interest if there is good morale through a fair system of working conditions, including the known and predictable contribution to health insurance needs. Other than cities that pay the entire portion of insurance premiums, Keizer is the only comparator City that does not base its contribution toward health insurance on a split of insurance premiums.

The City’s LBO places a heavy burden of future increases in the health insurance premium on family member employees. The CPI medical Cap has not kept up with increases in health insurance premiums. This creates an unfair burden on the family coverage employees. Of course, the fact that Keizer is the only comparator City that relies upon the medical CPI as a factor in determining the amount of premiums it will pay does not make the City’s LBO unfair. However, the disconnect between the Medical CPI and health insurance premiums is not justified in light of

the burden placed upon the family member group.

According to the capped formula included in the City's last best offer employees who pay the full family premium will bear the brunt of future premium increases. This may lead to a recruitment and retention problem if medical premium costs continue to rise at a faster rate than the medical CPI.

An unfair system may injure employee morale. Tthe City's LBO has the potential to cause anxiety and unnecessary worry over possible serious harm to selected members of the Association. Furthermore, a system that requires certain employees to pay, while others do not have to pay, is disruptive to employee morale.

Public employers such as the City of Keizer have many competing needs for every dollar. Any cost differential may raise serious questions. However, in this case the cost difference between the last best offers of the parties is minimal and adoption of the Associations Last Best Offer will have little economic effect on the public.

Based upon the evidence I find that the Association did prove a compelling need for a different form of contribution toward the premiums for health insurance. I find that the Associations LBO will best meet the public's interest and welfare

VI. AWARD

Having carefully considered all evidence and the arguments submitted by the parties and after complying with the statutory criteria, the last best offer of the Association is hereby selected and ordered adopted.

Dated this 6th day of April 2006

Leroy J Tornquist, Arbitrator
