

In the Matter of the Arbitration
between
Yamhill County
and
Federation of Oregon Parole and Probation Officers

Arbitrator's Opinion and Award

Arbitrator William Greer
P.O. Box 80847
Portland, Oregon 97280

April 28, 2006

Yamhill County (County) and the Federation of Oregon Parole and Probation Officers (FOPPO) participated in collective bargaining for a contract. They resolved all issues except whether the County will decide or the parole and probation officers (PPOs) in the bargaining unit will decide, individual by individual, whether PPOs will carry firearms on duty.

The parties presented their cases in a hearing on February 24, 2006, in McMinnville, Oregon. The County was represented by John Gray, County Counsel, Courthouse, 535 NE 5th Street, McMinnville, Oregon 97128-4523. FOPPO was represented by Daryl Garrettson, Garrettson Goldberg Fenrich & Makler, 638 NE 5th Street, McMinnville, Oregon 97128.

The advocates fully and fairly represented their respective parties. The hearing was orderly; the parties had a full opportunity to present evidence and examine and cross-examine witnesses. The parties did not retain a court reporter to record the hearing and produce a transcript. The parties submitted post-hearing briefs on March 25, 2006. The hearing closed on March 29, 2006, upon receipt of stipulated post-hearing evidence.

County objection to FOPPO last best offer. The parties stipulated that they complied with the procedures leading to the interest arbitration of this dispute. However, the County contends that it retains the authority to make the arming decision, in part based upon its interpretation of ORS 166.263. That statute provides:

When authorized by the officer's employer, a [PPO] may carry a firearm while engaged in official duties if the officer has completed: (1) A firearms training program recognized by the Board on Police Safety Standards and Training; and (2) A psychological screening.

The County argues that FOPPO's last best offer involves a permissive subject of bargaining and that, even if the subject is not prohibited for bargaining, FOPPO's proposal is prohibited for bargaining. (County brief at 5-7.) FOPPO's brief does not address that County argument. The issue of whether a proposal is mandatory for bargaining is not one to be decided by the parties' interest arbitrator under ORS 243.746(4).¹ That issue may be within the jurisdiction of the Employment Relations Board under other provisions of the Public Employee Collective Bargaining Act, ORS 243.650 *et seq.*

Statement of the issue. The issue is: Does the County last best offer or the FOPPO last best offer better meet the criteria contained in ORS 243.746(4)? As noted by the County, at hearing "the parties acknowledged that neither side was required to carry a burden of proof to establish its case given the nature of the interest arbitration." (Brief at 12.)

Witnesses and exhibits. All witnesses testified under oath. FOPPO offered 23 exhibits. The County offered five exhibits at hearing and, after hearing, one exhibit to which FOPPO objected (which was not received) and one exhibit to which FOPPO stipulated (which was received). The parties presented testimony from 12 witnesses (John Hartner, Joe Shipley, Marty Scales, David Rice, Louis Chandler, Rick McKenna, Richard Sly, Trish Elmer, Randy Settell, Brian Rucker, Daphne Bach, and Lisa Settell). Except for the one exhibit offered by the County after hearing, all of the exhibits were received.

I have thoroughly reviewed all of the evidence that was received, relevant, and material, and I have thoroughly considered the parties' arguments and post-hearing briefs.

Findings of Fact

1. **The parties.** The County is a public employer. FOPPO is the exclusive representative of a bargaining unit of strike-prohibited personnel employed by the County in certain job classifications.

2. **Positions of the parties—last best offers.** FOPPO proposes that a PPO can carry a weapon on duty when "[t]he employee notifies the Director of Community Corrections in writing of his/her intent to carry a firearm while on duty." (Emphasis added.) The County proposes to continue the system provided in the 2002-05 collective bargaining agreement, which provides that such authorization exists when "[t]he Director has authorized the employee to carry a firearm under ORS 166.263." (Emphasis added.) Aside from that central dispute, the parties propose similar conditions

¹See *Labor and Employment Law—Public Sector* (Oregon State Bar CLE 2002) at section 5.51.

and qualifications for a PPO to have the authority to carry a firearm on duty. The parties' complete last best offers are attached in Appendix A.

3. **Collective bargaining agreement.** The parties' 2002-05 collective bargaining agreement includes the following:

16.11. Firearms in the Field.

(a). An employee may carry a firearm while in the field, but not in the office, during working hours if subsections (1), (2) and (3) are satisfied as determined by the Director of Community Corrections ("Director"):

(1) The employee has a valid Concealed Weapons Permit.

(2) The employee demonstrates to the satisfaction of the Director that

(A) There currently exists a verifiable threat or other circumstances arising from supervision of an offender which puts the employee in danger of serious physical injury; and

(B) Carrying a firearm on duty will diminish the likelihood of serious physical injury to the employee.

(3) The employee has been approved by the sheriff's firearms instructor as meeting minimum firearms qualifications applicable to sheriff's deputies.

(b) If the Director permits an employee to carry a firearm during working hours, the Director may revoke permission if subsection (a)(1), (a)(2) or (a)(3) is no longer satisfied as determined by the Director.

(c) Both the Director's determination to deny an employee permission to carry a firearm and the Director's decision to revoke permission to carry a firearm are final and not subject to the grievance process under Article 13.

(d) When the Director is asked to determine whether the employee should be allowed to carry a firearm based on the requirements of subsection (a)(2), the Director will take the following matters into consideration:

(1) The nature of the verifiable threat made by the offender who is alleged by the employee to put the employee in danger of serious physical injury.

(2) If no verifiable threat, the nature of the other circumstance alleged by the employee to put the employee in danger of serious physical injury.

(3) The capacity of the subject offender to cause serious physical injury to the employee.

(4) The history of the use of violence by the subject offender.

(5) Whether the risk of serious physical injury to the employee is outweighed by the risk of harm to the employee or others resulting from the employee carrying a firearm on duty.

4. **Statutory authority for PPOs to carry firearms.** ORS 166.263, enacted in 1995, provides: "When authorized by the officer's employer, a [PPO] may carry a firearm while engaged in official duties if the officer has completed: (1) A firearms training program recognized by the Board on Police Safety Standards and Training; and (2) A psychological screening."

5. **PPOs job duties and work experiences.** The County employs about 13 PPOs in the Community Corrections Department. They supervise about 1500 offenders. ORS 181.610(13) defines “Parole and probation officer” as:

- (a) Any officer who is employed full-time by the Department of Corrections, a county or a court and who is charged with and performs the duty of:
 - (A) Community protection by controlling, investigating, supervising and providing or making referrals to reformatory services for adult parolees or probationers or offenders on post-prison supervision; or
 - (B) Investigating adult offenders on parole or probation or being considered for parole or probation.
- (b) Any officer who:
 - (A) Is certified and has been employed as a full-time parole and probation officer for more than one year;
 - (B) Is employed part-time by the Department of Corrections, a county or a court; and
 - (C) Is charged with and performs the duty of:
 - (i) Community protection by controlling, investigating, supervising and providing or making referrals to reformatory services for adult parolees or probationers or offenders on post-prison supervision; or
 - (ii) Investigating adult offenders on parole or probation or being considered for parole or probation.

The County employs the PPOs in its community corrections department. The County’s budget document states:

Community Corrections provides supervision for adult felony and misdemeanor offenders placed on probation by the Court or released from custody to post-prison supervision. Certified and sworn PPOs provide a continuum of supervision, services, and sanctions to hold individuals accountable and restore convicted persons to a positive and productive place in the open community. Officers provide assessment services to determine the level of supervision and monitoring for individuals with an increased potential of risk to re-offend. Officers provide referral to rehabilitation programs to engage those contemplating pro-social change. An index of sanctions ranging from community service to jail provides accountability for continuing criminality.

....

The challenges facing Community Corrections and criminal justice in 2005-06 involve an increasing incidence of drug addiction. . . . Beyond the despair of addiction to the individual and family are crimes spawned by those caught in the iron grip of chemical dependency.

PPOs have many of the authorities and duties of law enforcement officers, as stated in ORS 131.615 (stop and frisk individuals); 133.220 and 137.545(2) (arrest under a warrant or without a

warrant for violations of conditions of probation, parole or post-prison supervision); and 161.235 and 161.239 (peace officers may use physical or deadly force in making an arrest or in preventing an escape, under specified circumstances).

The County, after thoroughly analyzing an offender's history in the criminal justice system, classifies offenders as having a high, medium, low, or limited risk for reoffending. PPOs provide supervision, services, and sanctions primarily to high and medium risk offenders.

PPOs meet high risk offenders in scheduled County office visits (three times per month) and unannounced home visits (one per month). During a home visit, a PPO confirms an offender's reported address; sees the offender's home environment; and meets other residents in the home. During a home visit, a PPO may observe a possible violation that could result in sanctions. A PPO is subject to significantly greater risk during a visit to an offender's home than during a scheduled visit with an offender in a County office.

The County authorizes PPOs, when necessary, to use chemical sprays, Taser shocking devices, and handcuffs. The County issues two-way radios and cell phones to PPOs; those means of communication have not functioned properly in rural areas for some PPOs.

PPOs can request the assistance of local police or County sheriff's deputies for assistance in arresting offenders. Those law enforcement officers may be available, unable to respond in a timely manner, or unavailable.

6. **PPOs' requests for authorization to carry a firearm on duty.** Under current contract Article 16.11, PPOs Brian Rucker, Daphne Bach, Amy Hamilton, Lisa Settell, Walt Pesterfield, and Randy Settell have submitted to the County 12 requests for authorization to carry weapons on duty due to contact with particular offenders. The County granted a few of those requests, based upon offenders' verifiable threats to PPOs and other considerations specified in the contract.

The County denied most requests based on one or more considerations, including: (1) because a PPO has extensive knowledge of an offender's history, the PPO knows how and when to interact with the offender; (2) the primary strategy for dealing with offenders who pose a risk is to request assistance from uniformed law enforcement officers; (3) a PPO may conduct a field visit with another PPO or with a law enforcement officer; and (4) a PPO may withdraw from a field contact if a risk is encountered.

7. **Arming authority for PPOs in other jurisdictions.** Yamhill County is one of Oregon's 36 counties. Of that number, 31 counties require or give the option to PPOs to be armed on duty. Those counties granted that authorization at various times between 1990 and 2004, generally

through county policies. However, the authorization in Clackamas County was the result of a grievance arbitration opinion.² The five remaining Oregon counties (Clatsop, Hood River, Polk, Washington, and Yamhill) prohibit PPOs from being armed.

Oregon's 36 counties employ a total of 534 PPOs. Approximately 85% are *authorized* to be armed on duty, and approximately 56% actually *are* armed on duty.

Other states employ personnel with various classification titles who work in the field and perform duties similar to those of County PPOs. According to the American Probation & Parole Association, State of Washington and State of Florida PPOs have the option to be armed on duty; State of Idaho and State of Nevada PPOs are required to carry firearms when they have offender contact; and State of California PPOs hired after 1988 are required to carry firearms on duty, while those PPOs hired before 1988 have the option to be armed on duty. In addition, U.S. Federal Probation and Pretrial Services PPOs are authorized to carry firearms, with the concurrence of their respective district courts; 85 courts have agreed.

8. **Effect of arming on PPO safety.** FOPPO's position is that arming PPOs with concealed weapons will reduce their risk of injury or death. A PPO's caseload may include offenders convicted of murderer and assault. During home visits when PPOs have decided to arrest offenders, some offenders have resisted arrest and have had at least the opportunity to assault PPOs. An offender's behavior may become aggressive during the course of an otherwise routine home visit.

The County's position is that arming PPOs—some of whom may have had no experience with weapons—will increase their risk of injury or death and may result in liability for the County. The County presented testimony that 21% of police officers killed in the line of duty were killed with their own weapon. In denying one PPO's request to carry a weapon on duty, the County summarized how it manages risk to PPOs:

²In *FOPPO and Clackamas County* (Erickson 1991), the grievance alleged that the employer's failure to authorize the use of firearms for PPOs violated a contract article that provided: "It is the responsibility of the agency and employer to make every reasonable effort to provide and maintain a safe place of employment. . . ." Another article provided that the employer had the responsibility for "[t]he management and direction of the work force including but not limited to the right to determine the methods, processes and manner of performing work; . . . the right to dispose of and assign equipment for [*sic*] supplies. . . ." The employer had a policy that prohibited PPOs from carrying firearms on duty. Arbitrator Erickson stated that the issue required "a balancing of the Union's right to a work environment of a safe place of employment and the County's management interest." Arbitrator Erickson concluded that the employer, by refusing to allow PPOs to carry firearms on duty, had not made "every reasonable effort to provide and maintain a safe place of employment." He ordered that PPOs be allowed to be armed on duty at their individual discretion.

The policy position of the department, over time, has promoted officer safety with a decided measure of caution. Officers in community corrections program[s] receive training to interact with people under our supervision with verbal skills, risk assessment and an understanding of the potential for risk involved with alcohol or drug addicted behaviors. In addition, an officer in this department has an option to use chemical agents and the Taser weapon, both non-lethal strategies.

(Exhibit 16 at 7.)

9. **Empirical studies.** In 1991, a published study addressed several PPO safety issues, including the effect of PPOs being armed; Parsonage and Miller, *Probation and Parole Officer Safety in the Middle Atlantic Region*, Texas Journal of Corrections (March 1991).³ Analyzing the results of a survey, the authors stated:

[P]robation and parole workers who carry weapons or who have had unarmed self-defense training were more likely to be involved in hazardous incidents. Various explanations are possible: the type of individual who wants to be armed and/or trained in self-defense; the nature of the tasks given to those so armed and trained; the tendency for armed officers to be parole agents who are victimized more often [than probation officers]; or, a combination of these and other factors.

In early 2006, the County conducted a survey of other counties' practices and experiences with the arming of PPOs. One survey question was: "In your experience in your county have there been incidents where the firearm made the difference between the officer being assaulted, injured or fatally shot?" Several counties responded with descriptions of various incidents and statements of opinions about whether PPOs should be armed.⁴

³<http://www.personal.psu.edu/faculty/w/h/whp/TEXASS.TXT>.

⁴Baker County responded that PPOs were able to take into custody an offender with a revolver who refused to leave a building and an offender armed with a large knife. Clackamas County responded that a PPO shot a dog that was attacking him. Deschutes County responded that PPOs had unholstered weapons on several occasions but the individual completing the form "cannot speculate as to what would have happened without the firearm." Douglas County responded "yes" and explained that "back up response can be up to an hour—on several occasions officers have had to extract themselves from dangerous situations." Jackson County responded that PPOs have discussed incidents in which "they were unsure how an offender would respond and that they felt the offender had threatened their life." The Marion County responder stated that "arming has prevented several of our [PPOs] from being assaulted or injured." Tillamook County responded affirmatively and added that "police officers who are assisting [PPOs] have stated appreciation for [the PPOs being] armed and capable of assisting them should the need arise—and it has on two occasions." Union County responded, in part: "In the meth world we live in today, you never know." Wasco County responded with the opinion that "sending a PPO out making arrests unarmed makes about as much sense as sending a deputy out unarmed to make arrests. After all, they are dealing with the same clients." Without elaboration, Coos, Gilliam, Klamath, and Multnomah counties responded "yes." Several counties responded "no." Washington County, which

10. **Cost of proposals.** In its final offer, FOPPO stated that it did not anticipate any additional cost due to its proposal. The County estimated, in its final offer, that FOPPO's final offer would result in \$155,250 of startup costs (including the hiring of a supervisor for \$90,000 and State and quarterly training for all PPOs) and annual costs of about \$117,000. In comparison, the County estimated that its final offer would result in \$18,250 of startup costs and annual costs of about \$6400.

Discussion

Criteria. Regarding interest arbitration, ORS 243.746(4) provides:

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 secondary priority to paragraphs (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 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.

prohibits PPOs from carrying firearms on duty, responded that its PPOs have "never had any serious assault, injury or fatality."

- (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 terms and 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.

In analyzing how to give “first priority” to section (a), interest arbitrators have reasoned:

1. “The interest and welfare of the public” criterion in section (a) is given meaning by the remaining elements of ORS 243.746(4);
2. The evaluation of economic issues is governed by section (a) combined with sections (b) through (f);
3. The evaluation of noneconomic, “language” issues is governed by section (a) combined with section (h);
4. Under ORS 243.746(4), it is appropriate for interest arbitrators to give heavy reliance to comparable jurisdictions.⁵

After independently analyzing the statute, I agree with those conclusions.

Analysis. The issue of arming PPOs on duty involves both economic and noneconomic considerations. If awarded, FOPPO’s proposal would result in some cost to the County, and it involves safety issues.

As a preliminary matter, the legislature identified a distinct public interest in 1995 by enacting ORS 166.263, which provides, in part: “When authorized by the [PPO’s] employer, a [PPO] may carry a firearm while engaged in official duties. . . .” From FOPPO’s perspective, that statute indicates that the legislature agrees that it is appropriate for PPOs to carry weapons on duty. From the County’s perspective, that statute permits *only* the County to make the arming decision. The parties’ arguments about ORS 166.263 relate to the mandatory or non-mandatory nature of the bargaining subject and FOPPO’s last best offer rather than to the criteria of ORS 243.746(a). As noted above, I consider the mandatory or non-mandatory nature of the dispute to be outside of an interest arbitrator’s responsibility. I base my decision on considerations other than the public interest expressed in ORS 166.263.

⁵See interest arbitration excerpts quoted in Appendix B.

1. Economic considerations

Section (b) requires an interest arbitrator to consider: “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.”

The County’s 2005-2006 net budget for Community Corrections is \$3,461,668.⁶ Assuming that the County’s \$117,000 estimate of the annual cost for arming PPOs is accurate, that sum is about three percent of the budget. However, the parties did not focus extensively on the cost of FOPPO’s last best offer, and the County did not argue that it had an inability to fund it. The County did argue generally that, if FOPPO’s last best offer is awarded, “the costs of implementing the proposal will necessarily force reductions in other components of the budget.” (Brief at 10-11.) While I have considered the cost of FOPPO’s last best offer, my decision turns primarily on other considerations.

Section (e) provides that an interest arbitrator is to consider:

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. . . .

Yamhill County has a population of 88,150. For the analysis of this issue, I determine that the following counties are within a population range that is 50% to 150% (44,075 to 132,225) of Yamhill County’s population and are comparable:

Comparable Oregon Counties	Population ⁷	Number of PPOs	Policy Regarding PPO Use of Weapons On Duty
Benton	80,500	10	Mandatory
Columbia	45,000	7	Optional
Coos	63,000	8	Optional

⁶See the County’s budget at <http://www.co.yamhill.or.us/commissioners/yamhill05.pdf>. I take notice of that official document.

⁷See <http://bluebook.state.or.us/local/counties/clickmap.htm>. The parties stipulated that I could take notice of facts in the Oregon Blue Book, published by the Oregon Secretary of State.

Deschutes	130,500	16	Optional
Douglas	101,800	17	Optional
Josephine	78,350	15	Optional
Klamath	64,600	16	Optional
Lincoln	45,000	9	Mandatory
Linn	104,900	18	Optional
Polk	64,000	9	Not armed
Umatilla	71,100	20	Optional
<i>Average</i>	<i>77,159</i>	<i>13.2</i>	—
<i>Yamhill</i>	<i>88,150</i>	<i>13</i>	<i>Not armed</i>

Of the 11 comparable counties, ten either require or permit PPOs to carry weapons on duty. While the record does not include evidence about the cost of arming PPOs in those ten counties, it is reasonable to assume that such costs are similar to those identified by the County. Clearly, to the extent that the County’s practice of not arming its PPOs can be considered an economic or compensation issue, the County’s practice is inconsistent with the practice in comparable counties.

2. Noneconomic considerations

The parties’ last best offers also involve safety. To the extent that FOPPO’s proposal involves a noneconomic “language” issue, ORS 243.746(4)(h) applies. It provides that an interest arbitrator is to take into consideration “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 terms and conditions of employment.”

A touchstone in interest arbitration, based upon principles of equity and fairness, is consideration of the terms and conditions of employment provided by comparable employers. An underlying assumption of the comparability principle is that a consistent approach taken by comparable employers indicates that another employer’s inconsistent (or opposite) approach is open to serious question and challenge.

In examining the parties’ last best offers, I interpret section (h) to require consideration of whether comparable Oregon counties allow PPOs to carry weapons on duty. As determined above, ten of the 11 counties comparable to Yamhill County either require or permit PPOs to carry weapons

on duty. (Also, as noted above, PPOs employed by other states and the federal government have the option or are required to carry firearms when on duty.) The public has a significant interest in authorizing County PPOs to be armed on duty in the same manner that PPOs are armed in those comparable communities.

Within section (h), other considerations also apply. ORS 181.610(13)(a)(A) provides that a PPO's duties include "community protection." Most of the County's PPOs, while protecting the community, want to have the option to be armed on duty for their personal safety and job satisfaction. The public has an interest in the PPOs, *subjectively*, having a sense of personal safety and job satisfaction, because, it is reasonable to assume, the PPOs' dedication and ability to protect the community will be maximized when they feel safe and, as a result, offenders will be less likely to reoffend. In the County's 2006 survey, it asked: "In your experience in your county have there been incidents where the firearm made the difference between the officer being assaulted, injured or fatally shot?" Several counties responded "yes," and several counties responded "no." The record contains no other study that answers whether, *objectively*, PPOs are safer if allowed to carry weapons on duty.

The public interest is served by the arrest and incarceration of offenders who violate terms of parole or probation; such arrests increase the safety and security of the community. Accordingly, the public has an interest in PPOs being armed on duty particularly when: (1) a law enforcement officer is not available to assist a PPO who is arresting a dangerous offender; (2) the PPO is not in a position to be able to withdraw from the situation; and (3) a PPO is able to provide lethal cover for a law enforcement officer who is making such an arrest. When a PPO is *not* armed and a law enforcement officer is not available, the County expects the PPO to withdraw from the scene; that approach allows the offender to remain in the community and possibly reoffend.

Reflecting another public interest, the Oregon Safe Employment Act provides in ORS 654.010:

Every employer shall furnish employment and a place of employment which are safe and healthful for employees therein, and shall furnish and use such devices and safeguards, and shall adopt and use such practices, means, methods, operations and processes as are reasonably necessary to render such employment and place of employment safe and healthful, and shall do every other thing reasonably necessary to protect the life, safety and health of such employees.

The record includes no administrative decision about whether allowing or disallowing PPOs to carry weapons on duty violates ORS 654.010. Reasonable people—including the County, FOPPO, and personnel in other Oregon county PPO offices—may disagree about whether arming PPOs will reduce or increase their risk of injury or death.

Finally, another fundamental consideration in this interest arbitration is how awarding FOPPO's last best offer will affect the public interest of having the County, as the employer, make the decision about whether PPOs can carry weapons on duty. On balance, however, that interest is not as significant as others identified above.

Conclusion

Primarily based upon the public's interest in having County PPOs be armed in the same manner that PPOs are armed in ten of 11 comparable counties, I conclude that the welfare and interest of the public is better served by FOPPO's last best offer.

Respectfully submitted,

William Greer
Arbitrator

April 28, 2006

Portland, Oregon

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between
Yamhill County
and
Federation of Oregon Parole and Probation Officers

Award

Arbitrator William Greer
P.O. Box 80847
Portland, Oregon 97280

I award FOPPO's last best offer.

Respectfully submitted,

William Greer
Arbitrator

April 28, 2006

Portland, Oregon

Appendix A—Last Best Offers

FOPPO

The Federation Of Oregon Parole and Probation Officers proposes the following as its final offer for a successor agreement to that collective bargaining agreement between The Federation and Yamhill County which expired 6/30/05:

1. All Tentative Agreements Reached to Date.
2. Except as proved below for Article 16.11 and except as modified by tentative agreements above current language.
3. Article 16.11 as attached.

16.11 FIREARMS IN THE FIELD

(a) An employee may carry a firearm while in the field, but not in the office during working hours if subsections (1), (2) and (3) are satisfied as determined by the Director of Community Corrections (“Director”);:

(1) The employee has a valid Concealed Weapons Permit **and passes any required psychological testing;**

(2) **The employee notifies the Director of Community Corrections in writing of his/her intent to carry a firearm while on duty, and** The employee demonstrates to the satisfaction of the Director that

(A) ~~There currently exists a verifiable threat or other circumstances arising from supervision of an offender which puts the employee in danger or serious physical injury; and~~

(B) ~~carrying a firearm on duty will diminish the likelihood of serious physical injury to the employee.~~

(3) The employee has **successfully completed a firearms training program recognized by DPSST and continues to meet minimum firearms qualifications applicable to parole and probation officers.** ~~been approved th the Sheriff’s firearms instructor as meeting minimum firearms qualifications applicable to Sheriff’s deputies.~~

(b) ~~If the Director permits an employee to carry a firearm during working hours, the Director~~

~~may revoke permission if subsection (a)(1), (a)(2) or (a)(3) is no longer satisfied as determined by the Director.~~

~~(c) Both the Director's determination to deny an employee permission to carry a firearm and the Director's decision to revoke permission to carry a firearm are final and not subject to the grievance process under Article 13.~~

~~(d) When the Director is asked to determine whether the employee should be allowed to carry a firearm based on the requirements of subsection (a)(2), the Director will take the following matters into consideration:~~

~~(1) The nature of the verifiable threat made by the offender who is alleged by the employee to put the employee in danger of serious physical injury.~~

~~(2) If no verifiable threat, the nature of the other circumstances alleged by the employee to put the employee in danger of serious physical injury.~~

~~(3) The capacity of the subject offender to cause serious physical injury to the employee.~~

~~(4) The history of the use of violence by the subject offender.~~

~~(5) Whether the risk of serious physical injury to the employee is outweighed by the risk of harm to the employee or others resulting from the employee carrying a firearm on duty.~~

County

Yamhill County hereby makes this last best offer under ORS 243.746 to resolve bargaining between the parties to establish a successor agreement to the 2002-05 collective bargaining agreement that expired June 30, 2005: The successor collective bargaining agreement shall consist of all terms and conditions of the 2002-05 collective bargaining agreement except as specifically provided in numbered paragraphs 1 and 2, below.

Paragraph 1. The successor collective bargaining agreement shall include all terms and conditions in the Memorandum of Agreement between the parties memorialized as Board Order 05-613, July 20, 2005.

Paragraph 2. The County has identified and continues to identify the Firearms in the Field

provision in Section 16.11 of the collective bargaining agreement as a permissive subject of bargaining. Whether permissive or mandatory, the County submits the following language as a revised Section 16.11, Firearms in the Field. (Note: The language below is from the 2002-05 collective bargaining agreement, as modified by new **bold, underlined** proposed language and ~~language proposed to be deleted.~~)

16.11. FIREARMS IN THE FIELD.

(a). **Subject to subsection (e) of this section,** ~~[A]~~ an employee may carry a firearm while in the field, but not in the office, during working hours if ~~[subsections (1), (2) and 3]~~ **all of the following criteria** are satisfied as determined by the Director of Community Corrections (“Director”):

(1) The employee has a valid Concealed Weapons Permit.

(2) The employee demonstrates to the satisfaction of the Director that

(A) There currently exists a verifiable threat or other circumstances arising from supervision of an offender which puts the employee in danger of serious physical injury; and

(B) Carrying a firearm on duty will diminish the likelihood of serious physical injury to the employee.

(3) The employee has ~~[been approved by the sheriff’s firearms instructor as meeting minimum firearms qualifications applicable to sheriff’s deputies.]~~ **successfully completed a firearms training program recognized by the Department of Public Safety Standards and Training and continues to meet minimum firearms qualifications applicable to parole and probation officers.**

(4) The employee has successfully completed a psychological screening.

(5) The Director has authorized the employee to carry a firearm under ORS 166.263.

(b) If the Director permits an employee to carry a firearm during working hours, the Director may revoke permission if subsection (a)(1), (a)(2) or (a)(3) is no longer satisfied as determined by the Director.

(c) Both the Director’s determination to deny an employee permission to carry a firearm and the Director’s decision to revoke permission to carry a firearm are final and not subject to the grievance process under Article 13.

(d) When the Director is asked to determine whether the employee should be allowed to carry a firearm based on the requirements of subsection (a)(2), the Director will take the following matters into consideration:

(1) The nature of the verifiable threat made by the offender who is alleged by the employee to put the employee in danger of serious physical injury.

(2) If no verifiable threat, the nature of the other circumstance alleged by the employee to

put the employee in danger of serious physical injury.

(3) The capacity of the subject offender to cause serious physical injury to the employee.

(4) The history of the use of violence by the subject offender.

(5) Whether the risk of serious physical injury to the employee is outweighed by the risk of harm to the employee or others resulting from the employee carrying a firearm on duty.

(e) Prior to making a preliminary determination on an employee's request to carry a firearm while in the field, the Director shall seek input from two of the following persons, one of whom shall be named by Federation: (a) police chief from an agency within Yamhill County; (b) Yamhill County Sheriff; (c) city manager of city within Yamhill County with population greater than 10,000; (d) shop steward of law enforcement bargaining unit within Yamhill County; (e) director of community corrections from another Oregon county; (f) chair of Yamhill County Local Public Safety Coordinating Council. After the Director has made a preliminary decision, the Director will consult with county legal counsel before making a final decision.

Appendix B - Interest Arbitration Opinion Excerpts

Oregon Public Employees Union, Local 503 and State of Oregon (OSCI Security Staff), ERB Case No. IA-11-95 (Arbitrator Carlton J. Snow 1996) (emphasis added):

[T]here is no basis in S.B. 750 [1995] nor judicial decisions nor arbitral literature for concluding that “the interest and welfare of the public” criterion provides a determinative factor standing alone for resolving a dispute pursuant to S.B. 750. It is to be given first priority in conjunction with secondary criteria.

One Oregon arbitrator has concluded that “giving first priority” to the “interest and welfare of the public” can be accomplished by making any interest arbitration decision consistent with dominant, well-defined public policy in Oregon [as reflected, for example, in initiatives, budgets, and court decisions]. As he stated: “The Arbitrator is required to recognize and accept the legitimacy of public enactment[s] on non-labor, relations issues and render an award which is consistent with such expressions of ‘the public interest and welfare.’ But the Arbitrator is also charged with preserving the integrity of the interest arbitration process itself; for this process is one more way in which Oregon has chosen to operationalize ‘the public interest and welfare.’” (See, *Association of Oregon Corrections Employees and State of Oregon*, 13-14 ([Arbitrator William Bethke]1996)).

While “the interest and welfare of the public” criterion has been given first priority in this case, it has not provided a determinative means of resolving the dispute; and other statutory criteria have been evaluated in reaching a decision. *In the abstract, it is impossible to find meaning in the phrase “the interest and welfare of the public.” The meaning of this criterion must be found as it is applied within the context of other criteria and the facts of a given case. [The] level of abstraction in language of the first criterion is quite different from other statutory factors.*

Empirical data can be used to test the financial ability of an employer to meet the costs of a proposed contract. Charts and graphs can be used to show concretely an employer’s ability to attract and retain qualified personnel. Overall compensation can be measured with reasonable precision, as can the CPI-All Cities Index. The process is customarily awash in comparative data. *But the “interest and welfare of the public” is a distinctly different factor that is set apart by its being rooted in ideals and not rooted in objectively measurable data. It is not a “stand alone” criterion.*

Deschutes County Sheriff Association and Deschutes County, ERB Case No. IA-18-95 (Arbitrator Howell Lankford 1996) (emphasis added):

“[T]he interest and welfare of the public” can hardly be discussed at all except in terms of the factors listed in (b) through (f). It is hard to imagine what an argument about the interest and welfare of the public would look like—in the context of a dispute over employee compensation—without any reference to the factors which the legislature specifies are to be given “secondary priority.”

Faced with these characteristics of the statutory factors, what did the legislature have in mind when it specified that interest and welfare of the public be the “primary” factor and that the others be “secondary?” It seems to me that that specification has two necessary consequences: First, it makes explicit for the parties and the arbitrator how the “secondary” factors are to be analyzed, how the arguments should be couched, and what the final goal of the whole process should be. Second, it makes clear that none of the “secondary” factors is to be exalted over the overall-arguments in terms of interest and welfare of the public: even if the employer is dead broke, the interest and welfare of the public might require an arbitrator to award the wage increase proposed by a union, and even

if the employees are far, far behind their proper comparables, the interest and welfare of the public might require an arbitrator to award the wage freeze proposed by an employer.

The second most significant revision made by SB 750 [1995], in the case at hand (and perhaps generally) is the introduction of a threshold determination which an interest arbitrator must make in order [under ORS 243.746(4)(h)] to “use ... other factors.” That required determination is that the specifically listed factors do not “provide sufficient evidence for an award.” *There is one class of disputes which will ordinarily meet this requirement almost without discussion: i.e. disputes over language issues which have no obvious direct economic impact.* The factors specifically set out in the section are relevant primarily to economic disputes. An interest arbitrator who tries to analyze a language issue (a “zipper” clause, e.g., or a proposal for vacation scheduling language) with no tools but these will often find no basis for an award because these tools yield nothing useful.

Within the compass of economic issues, on the other hand, it is the rare dispute that lacks “sufficient evidence for an award” in the listed factors. It is significant that the statutory language does not require that the evidence from listed factors alone support “the best” award. (That would be a very strange legislative directive, i.e. not to consider “other factors” unless they would make a difference in the outcome of the case.) *The clear language of the statute requires an interest arbitrator to restrict his or her consideration to the factors specifically set out unless—as in the case of language issues—those factors do not provide sufficient evidence for any award at all.*

Oregon State Police Officers Association and Oregon Department of State Police, ERB Case No. IA-18-99 (Arbitrator Howell Lankford 2000) (emphasis added):

[T]he “secondary” factors all apply to costs or to costable benefits; and none of them apply to “pure” contract language disputes which have no apparent cost or costable benefit. For pure language disputes, then, the listed “secondary” factors [other than (h)] are inapplicable and an arbitrator could reasonably conclude that consideration of only those factors is inadequate to justify an award. . . .

City of Portland, Oregon and Portland Police Association, ERB Case No. IA-06-03 (Arbitrator Carlton J. Snow 2004) (emphasis added):

There follows in [ORS 243.746(4)] after the “public interest” mandate a list of standard criteria customarily used by interest arbitrators to evaluate contract proposals, such as, ability to pay, an assessment of overall compensation, and a comparison of overall compensation with the same or other employees in comparable communities. The “interest and welfare of the public” is labeled in the law as a “first priority,” and the list of traditional criteria is labeled as a “secondary priority.”

While it is clear that the Last Best Offer selected by an arbitrator must be based on “the interest and welfare of the public,” the legislature offered no explanatory statements about implementing this guideline. The legislation does not define what it means to “base” findings and opinions on any of the criteria, nor, for that matter, what it means to give “first priority” or “secondary priority” to a particular criterion. Did the legislature intend the “public interest” standard to control all others? Should needs and interests of a party be ignored in order to serve the public interest?

It is reasonable to conclude that the absence of an express statement of legislative intent, when Oregon lawmakers well understand how specifically to describe the way a policy should be applied,

suggests that interest arbitrators are authorized to use reasonable flexibility in fulfilling their “public interest” mandate. *The “public interest” standard allows an arbitrator to use a balancing process that weighs elements related to the impact of a proposal on the parties. Those related elements are codified in the secondary criteria set forth in paragraphs (b) to (h) of the legislation. Economic issues and departures from prior policies merit heightened scrutiny and an application by an arbitrator of what courts sometimes refer to as the “hard look” doctrine. (See Office of Comm. of the U.C. of C., 707 F.2d. 1413, 1425 (D.C. Cir. 1983).)*

Use of the “public interest” standard as the first priority requires an arbitrator to balance all relevant factors the legislation instructs an interest arbitrator to consider. Using a balancing process to evaluate relevant statutory criteria, an interest arbitrator must determine whether one Last Best Offer package has been guided by more reasonable considerations than the other. In balancing all the relevant statutory criteria, an interest arbitrator must attempt to resolve questions of fact, evaluate the effectiveness of proposals, test the reasoning of the parties, and study comparability data. These implicit factors help give substance to an otherwise elusive “public interest” determination. Otherwise, the decision-making process is unduly subjective, and it is more sensible to conclude the legislature designed a process that is reasonably objective. *The law supports a conclusion that the legislature intended the statutory standard it labeled “public interest” to leave reasonable discretion with an interest arbitrator to apply secondary criteria flexibly.* Had the legislature intended otherwise, it clearly understood how to express a more inflexible guideline and to define with specificity its view of “the interest and welfare of the public.”

A key test in the “public interest” balancing process is that any factor used by an interest arbitrator to evaluate Last Best Offers must advance one of the purposes the Oregon Legislature had in mind when it enacted SB 750. *A pivotal purpose of collective bargaining legislation is to maintain the high morale of public safety employees as well as the efficient operation of governmental services.* [See ORS 243.742(1).] Moreover, the legislature stated that requirements of interest arbitration procedures are to be liberally construed. [See ORS 243.742(1).]

Use of comparability data as a valuable source of guidance advances the public interest because the Oregon Legislature contemplated encouraging the goal of peaceful labor-management relations, and comparability data help define equitable solutions, thereby advancing this legislative goal. Thus, it is consistent with the “public interest” mandate to make use of such information to the extent it is drawn from comparable jurisdictions. Moreover, a reasonable relationship exists between a close scrutiny of comparability data or similar information and aims of the Oregon design of interest arbitration. *The Oregon design is intended to discourage an arbitrator from relying too much on his or her own discretion. A heavy reliance on comparability data and such traditional information is consistent with this legislative intent.* Use of such traditional information helps bring balance to the bargaining relationship between the parties and helps bring or restore relationships to a normal condition. These are legislative goals of the Oregon public sector collective bargaining law.

While comparability data and similar information do not provide a definitive guideline in selecting the most reasonable package of offers, they do offer a principled way of making equitable comparisons. *Accurate comparisons long have been viewed by interest arbitrators as one method of testing the fair treatment of employees.* Such treatment is a goal the legislation is designed to advance.