

IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN

**INTERNATIONAL ASSOCIATION OF)
FIREFIGHTERS, LOCAL 851)
UNION)**

and) **INTEREST ARBITRATION AWARD**

**CITY OF EUGENE AND CITY OF)
SPRINGFIELD)
EMPLOYER)**

ARBITRATOR Paul Gordon

Appearances:

Michael J. Tedesco, Attorney, Tedesco Law Group, 3021 NE Broadway, Portland, OR 97232 appeared on behalf of International Firefighters, Local 851.

Adam S. Collier, Attorney, Bullard Law, 200 SW Market Street, Suite 1900, Portland, OR 97201 appeared on behalf of the City of Eugene and the City of Springfield.

OPINION

This Interest Arbitration was submitted to the Arbitrator pursuant to ORS 243.746. The issues involve wages and contract duration. Hearing on the matter was held in Springfield, OR on February 17, 18, 2016. A briefing schedule was set, extended by agreement of the Parties, and both Parties filed briefs. The record was closed on April 9, 2016.

LAST BEST OFFERS

From The Parties' Last Best Offers, the issues of wages and contract duration remain in dispute.

The Union proposes: Duration. Two year contract from July 1, 2015 through June 30, 2017.

Wages. 5.0% across-the-board increase retroactive to July 1, 2015 and 5.0% increase on July 1, 2016 for a total increase of 10% over two years.

The Cities propose: Duration. Three year agreement.

Wages. 3.5% increase retroactive to July 1, 2015 a 3.5% increase effective July 1, 2016, and a 3.0% increase effective July 1, 2017, for a total increase of 10% over three years.

RELEVANT STATUTORY CRITERIA

ORS 243.746(4), (5), (6).

(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 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.

(D) For the Department of State Police troopers, comparable includes the base pay for city police officers employed by the five most populous cities in the 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 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.

(5) Not more than 30 days after the conclusion of the hearings or such further additional periods to which the parties may agree, the arbitrator shall select only one of the last best offer packages submitted by the parties and shall promulgate written findings along with an opinion and order. The opinion and order shall be served on the parties and the board. Service may be personal or by

registered or certified mail. The findings, opinions and order shall be based on the criteria prescribed in subsection (4) of this section.

(6) The cost of arbitration shall be borne equally by the parties involved in the dispute.

BACKGROUND

The collective bargaining agreement (CBA) here is a new, consolidated CBA that for the first time jointly covers bargaining unit members of both Eugene and Springfield and those Cities. The fire departments of the two Cities have been undergoing a process of consolidation that began a short time before 2010 and is now Eugene Springfield Fire (ESF). At this time ESF is not a separate legal entity or conventional fire district with taxing authority. EFS is funded primarily through each City's general fund, along with ambulance transportation funds. ESF provides fire and emergency medical services and also transports patients to local and regional facilities. Eugene, Oregon's second largest City with an approximate population of 160,000, and Springfield, Oregon's ninth largest City with an approximate population of 60,000, are neighboring Cities. EFS contracts with some smaller adjoining jurisdictions to provide services to a combined population of approximately 238,000.

The two Unions representing the bargaining unit members of the two Cities have also consolidated into the current Lane Professional Firefighters, IAFF, Local 851. The bargaining unit members remained, and still remain, employees of the respective Cities. Employees will remain employees of their respective Cities going forward for now, all covered under the new, joint CBA. In ESF there are approximately 163 (two-thirds) bargaining unit members employed by Eugene, and approximately 75 (one-third) members employed by Springfield. Up to this point in the consolidation they have been operating under mostly identical contracts between the two former Unions and the two Cities through the 2012-2015 period.

The Cities provide different health insurance plans and benefits, and, at least for the time being, the bargaining unit employees will continue to have different insurance plans depending on which City they are employed by. Health Insurance plans and benefits are the subject of an upcoming study which will aim at potentially providing a single health insurance benefit package, among other options, under the joint CBA. Both Parties are contributing to the cost of the study, which may take approximately two months. The Tentative Agreements between the Parties provides at Article 17.4 for there to be a reopener of Article 17 – Health and Accident Insurance upon conclusion of the study should either party ask that it be reopened. The reopener itself is not subject to interest arbitration.

In 2010 under an intergovernmental agreement the Cities began sharing administrative services in both fire departments. In 2014 operations personnel fully merged. Employees from both Cities work side by side in all fire stations and on response apparatus. It is an effective and productive system. There were no layoffs of line personnel during recovery from the recession. Administrative positions were consolidated and redundant resources were eliminated. Service levels have improved. The call volume during a 24-hour shift is higher, in some instances significantly higher, than at other departments in other jurisdictions given ESF's broad range of services provided, including transfer of patients.

Since the end of the recession the local economy has steadily but slowly improved and by May 2015 the Eugene-Springfield area's annual unemployment rate dropped to 5.6%. This is the lowest unemployment rate in seven years, but the Eugene-Springfield area has yet to regain all the jobs lost during the recession. In Eugene, assessed property value growth returned to pre-recession levels in FY 15 at 4.3% and the FY 16 adopted budget includes a moderate growth rate of 4% throughout the forecast period. In Springfield, as of early 2016, the percent change in property tax revenues, all funds, had increased 5% since 2005 and 3% since 2011. This is generally reflected in the percent change in property values and taxable values in Springfield.

POSITIONS OF THE PARTIES

THE UNION

In summary, the Union argues that the primary factor, the interest and welfare of the public under ORS 243.746(4), is best defined by the secondary statutory factors, citing arbitral authorities. The proposals in this case are not complex or remotely similar to any of the rare exceptions where only the primary factor was dispositive. The Union's LBO better satisfies the secondary statutory criteria making it most closely aligned with the interest and welfare of the public.

The Union argues that the Cities have the ability to pay and have never asserted otherwise. The Arbitrator must consider the reasonable financial ability of the employer to pay for the proposed LBO while also considering its other services and priorities. An employer asserting inability to pay bears the burden of proof, and an unwillingness to pay is not enough to satisfy the statute. Here, the Cities do not have an inability to pay and their fiscal positions are strong, having improved markedly over the past few years. The Union considered the Cities' allocation of resources for other services and obligations when it put forth its final wage proposal. The Union wage proposal is exceedingly reasonable and affordable.

The Union asserts that the financial health of the Cities is sound and has trended upwards since the recession. Since FY 2012 Eugene has ended each year with an average asset to liability ratio of 3.46. Its expenditures and transfers out of the general fund were between 4.8% and 6.3% below budget predictions, while revenues and transfers exceeded predictions in FY 14 and fell less than 3% below predictions in the preceding two fiscal years. There has been a positive trend in the general fund balance as a percent of expenditures (GFBPE). The Government Finance Officers Association recommends an adequate unrestricted fund balance of GFBPE of no less than two months, or 16.7% of regular general fund operating revenues or expenditures. Eugene at the end of FY 14 had an unreserved general fund balance of \$41.3 million with GFBPE of 33.0% - four months of operating expenses and twice the recommended minimum. This is similar to 2013 and 2012. Eugene is financially stable and flexible. To its credit, it has not made an argument that there is an inability to pay for the Union's wage proposal.

The Union also asserts that Springfield's financial position is stable and trended upwards over the past few years. Between FY 12 and FY 14 its average asset to liability ratio is \$3.58. Expenditures and transfers out of the general fund were between 4.7% and 3.7% below budget

with revenue exceeding expenditures each year, resulting in a general fund balance increase each of the three years. Springfield's GFBPE has been above the recommended minimum of 16.67%. At FY 14 end the unreserved fund balance was \$8.3 Million, a GFBPE of 25.4% which is roughly three months of operating expenses. Springfield has spent less and brought in more revenue than it has budgeted for since 2012, leaving it in a stable financial position. There is no basis to claim an inability to pay the Union's proposal, and Springfield has not made that claim.

The Union contends that the Union wage proposal is reasonable and financially prudent in light of the Cities' financial health. Its cost is reasonable and financially prudent. Because it spans only two years, the total cost in real dollars is significantly less than the Cities' proposal. The annual cost for the 228 member bargaining unit, including all roll-ups, is \$23,683,535, a cost increase of \$1,184,176 the first year and an increase of \$1,243,385 the second year - \$2,427,562 over two years. The Cities' three-year proposal has a total increase of \$2,447,971. Although the Cities' proposal is over a slightly longer time, that the two proposals are so similar in dollars belies any assertion there is an inability to pay. The Union's wage proposal will in no way limit the Cities' ability to remain financially prudent over the next two years. Thus, the Union LBO better satisfies the criteria.

The Union also contends that the Union LBO better addresses urgent retention and recruitment issues. The ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided is a factor that unquestionably favors the Union. It brings wages to levels closer to similar departments within the local labor market of the Willamette Valley and it does so relatively quickly, over two years, in order to improve recruiting and retard the loss of experienced firefighters to other local departments. The Cities' proposal is over a longer period of time, increasing the probability that experienced firefighters will leave ESF for other departments. There is a recent, urgent retention problem. Nine firefighters have left ESF in the last two years for other departments, with the majority moving within the Willamette Valley. All were off probation. The Union is aware of up to five additional firefighters in the application process at other departments. Losing experienced firefighters deprives ESF of invaluable leadership and experience and replacement is expensive and time consuming. Training costs range between \$70,000 and \$100,000. If a 5.5 per year rate continues the cumulative cost could range from \$385,000 to \$550,000 per year. This cost pales in comparison to incalculable costs associated with the drain on institutional knowledge and leadership. This trend must be reversed to continue to provide the high level of service the community has come to expect.

The Union argues that Firefighters are leaving ESF to receive superior pay and benefits with a significantly lighter workload. Decisions of firefighters to move are not made lightly, and not made without a fairly significant level of risk as lateral hires undergo a yearlong probationary period of at-will employment. The call volume work load during a 24 hour shift at ESF is significantly higher than at other departments because ESF not only provides emergency medical services, but also transports patients to local and regional treatment facilities. The Union LBO brings wages to a level that is more commensurate to the level of work being done within ESF. Equitable compensation and a sense of appreciation will go a long way in raising moral and reversing the negative retention trend. These same issues deprive ESF of the best recruits, who are applying at competing jurisdictions. Of those entry level applicants at ESF, many are not qualified and fewer pass the academy and probationary period. The Department seeks to recruit

hard and manage easy, meaning barriers to entry are high and training standards unyielding. This likely results in a more professional force, but necessitates adequate incentives for the best and brightest to even apply. Present compensation does not provide that incentive. The Cities' argument that nine employees have left ESF over the past five years, rather than within two years, is technically accurate but misleading and intellectually dishonest. It does not rebut the proposition that retention has become a serious issue in the very recent past. The spike has been sudden and correlated to lateral hiring of other local departments. The wages and compensation of ESF employees at all levels are significantly lower than other local departments. The Union two-year proposal, while not a panacea, will move ESF in the right direction more expeditiously than the Cities' LBO. The Union LBO better addresses section 4(c) of the statute.

The Union contends that when compared to bargaining unit members in statutorily comparable communities, the overall compensation paid in Eugene and Springfield favors the Union's LBO. Pursuant to the statute, arbitrators must consider 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. The emphasis should be on benefits received, not the cost of the benefit. The Union's comprehensive compensation analysis better fits the statutory requirements and reveals that the bargaining unit is underpaid relative to its comparable jurisdictions.

ORS 243.746(4)(e) states that "comparable communities" are limited to those communities of "the same or nearest population". The only relevant factor in determining comparable communities is population. The statute does not include only those communities who provide services through similar governmental types, nor does it mention geographic area, proximity to a metropolitan area, tax base or cost of living. The statute clearly requires that population alone determine comparable communities. Legislative history supports this. The prior statute had no criteria. Versions of the revised statute contained population and geographic area, but geographic area was removed before the Bill passed. This is evidence that the legislature ultimately made the affirmative decision to use the narrow criteria of population. The current statute does that. Oregon arbitrators almost invariably recognize that population is the sole statutorily authorized criterion for selecting comparable jurisdictions, citing arbitral authorities. The few decisions that have added criteria are in the minority, should not be given any weight and blatantly disregard the statute's plain language and legislative intent. The Cities' introduction of evidence comparing Eugene/Springfield with Portland Metro area are factors expressly prohibited under the statute. Although introduced under the "other factors" criteria of the statute, the implication was that it be considered with comparators under section 4(e). The statute prohibits such consideration and that data should be disregarded altogether.

The Union argues that the comparable communities selected by the Union follow the statutory directive while the Cities' do not. The Union used current population figures from the Portland State University Population Research Center and chose the seven communities with the closest populations to Eugene/Springfield (238,000 Population). They are: 1) Milwaukie (Clackamas County#1) (179,000); 2) Salem (160,690); 3) Gresham (107,065); 4) Hillsboro (97,480); 5) Beaverton (Tualatin Valley Fire & Rescue) (94,215); 6) Bend (81,310); 7) Medford (77,655).

The Union then compares entry-level, mid-level (15 years) and senior-level (25 years) positions based on duties. Total compensation for each comparator in the Union's methodology includes wages, PERS, incentive pays, premium/certification pays, special duty pays, longevity pays, and paid leaves. It does not include team and assignment pays because they are not generally available to all employees. Insurance premiums paid by employees are subtracted from total compensation. The analysis shows an ESF entry level Firefighters makes 11.5% less than average. Entry level Engineers earn 15.9% less. At mid-level Engineers earn 17.6% less and Captains nearly 20% less. At the senior-level Captains are 20% behind their peers in comparable communities and Fire Marshals nearly 18% behind. This methodology and statutorily sound data demonstrate overall compensation in Eugene/Springfield is significantly lower for every position at every level of service than in comparable communities.

By contrast, the Cities' analysis is statutorily and methodologically flawed. By including communities geographically close to Eugene/Springfield with smaller populations (Albany 51,670 and Corvallis 57,390) and excluding all communities within the Portland Metropolitan Area regardless of population, the Cities use additional criteria prohibited by the statute and expressly rejected by Oregon arbitrators. The Cities' methodology also artificially deflates the overall compensation received in its chosen comparable communities or inflates compensation in Eugene/Springfield. The Cities omit PERS contributions from some forms of compensation, includes an average "ride time" pay for all EFS employees when not every employee actually receives such pay, excluded all other team/assignment pay for comparable communities and, an adjustment for Kelly Days in Eugene/Springfield which is already reflected in the hourly rate. The ride time is especially misleading. It is not an ascertainable level for each employee. The Cities took the total amount paid across the Department and averaged it across all members. In reality, some employees may go weeks or months without the opportunity to receive ride time pay. The Cities' data is convenient, but factually inaccurate. And the Cities' calculation of paid insurance rate is inaccurate because it compares plans with tiered and composite rates. The Cities' analysis of overall compensation is unreliable and should be disregarded.

The Union argues that the Union data demonstrates the bargaining unit members here are far behind their comparators in total compensation at every level and in every position. The Union LBO would hastily narrow this gap, making it the proposal that better addresses sections 4(d) and (e) of the statute.

The Union argues that the pressing need to cure the insurance coverage inequity within the bargaining unit favors the duration of the Union's LBO. The secondary factor in section 4(h) of the statute must be considered, which is "other factors ...traditionally taken into consideration" by arbitrators. This augments the preceding statutory secondary factors that don't necessarily adequately address the analysis of those preceding criteria. It is not a wide open criterion because section (4) (h) also provide that "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 must use discretion to determine whether such factors bear a logical connection to the other secondary factors and consist of elements specifically excluded for the other secondary factors. Here, Section 4(h) provided an appropriate forum to analyze the Union two-year duration.

Besides recruitment and retention, a two-year contract addresses the serious inequitable insurance coverage received by employees of the two Cities. Both Cities have different health plans with vastly different benefit levels. The Eugene plan is more comprehensive and cheaper than the Springfield plan. In 2012 bargaining the Parties were unable to align the plans and more time was needed to complete consolidation of the plans. Since the formation of ESF and the consolidation of the Local Unions the Union has maintained equal insurance is a critical issue. Members working side-by-side are subject to inequitable insurance benefits based on who employs them. Senior members in Springfield had considered requesting lateral transfers which would strip them of seniority within the department in order to receive Eugene's generous benefits. The current situation is unfair and completely illogical.

In bargaining the 2015 CBA the Union made its desire clear to establish one plan for all members. The Cities felt it was cost prohibitive to bring Springfield up to Eugene's level of benefits. The Cities proposed a study and the Union agreed to participate share and its costs. The study will produce a framework for equalization across the bargaining unit, but the parties must reach a mutual agreement following the results of the study in order to alter the status quo. The Union acquiesced knowing its position in interest arbitration regarding duration would be two years – rolling the implementation of the study into contract negotiations that include a statutory dispute resolution mechanism. Outside of negotiations, any disagreement over plan implementation would prevent any change to the status quo regarding insurance. Also, the two-year proposal gets the Parties back at the bargaining table to implement to results of the joint study. The Cities' proposal would not allow a solution to be memorialized in the CBA until 2018. Time is of the essence because the members are frustrated. The Members have sacrificed a great deal to support the merger and are beginning to feel those sacrifices are not appreciated. Curing the insurance inequity will increase moral across the bargaining unit and promotes a harmonious relationship between the Cities and the Union. The Union's proposal addresses the glaring inequality as soon as possible and better meets the requirements of ORS 243.746(4)(b) through (h).

THE CITIES

In summary, the Cities argue that ORS 243.746(5) requires selection of only one of the last best offers submitted by the Parties, and the statutory criteria overwhelmingly support the Cities' last best offer and rejection of the Union's last best offer.

The Cities argue that with regard to wages and term of the agreement, the Cities' LBO best promotes the interest and welfare of the public. The interest and welfare of the public is given first priority. The public policy statement of the interest arbitration statutes reflect what best promotes the interest and welfare of the public. Interest arbitration is an alternate to the right of certain safety-sensitive employees to strike. It should not be used to achieve more than what could be gained through collective bargaining and the strike process. A strike-prohibited union resorting to interest arbitration should receive the same package that it would have received had it been strike-permitted. Interest arbitration must approximate the parties' probable resolution under strike conditions. Agreement to the same terms by other bargaining units appears to reflect the judgment that a strike would not result in a more favorable settlement and that delay in settlement would not

enhance the terms of the contract, citing arbitral authorities. In this case, three other unions represent employees in Eugene in addition to IAFF. AFSCME represents a strike-permitted unit of over 600. IATSE represents a strike-permitted unit of approximately 10. EPEA represents a strike-prohibited police unit of approximately 225. Three other unions represent Springfield employees. SEIU represents a strike-permitted unit of approximately 120. AFSCME represents a strike-permitted unit of approximately 40. SPA represents a strike-prohibited unit of approximately 100. In addition, Battalion Chiefs formed a bargaining unit in 2014 with the same wage increase that captains receive in 2015 and with known CPI-based minimum and maximum increases thereafter, now at 2%.

In the last six years none of the other six unions of either City have negotiated a wage increase anywhere close to the 5% the Union seeks here. Since FY 2011 AFSCME has agreed to annual increase of 2% in FY 11, 2% in FY 12, a wage freeze in FY 13 with a one-time \$400 stipend, 1% in FY 14 with a one-time stipend of \$150, 2% in FY 15 and 2% in FY 16. IATSE and EPEA were similar, although EPEA received a 3% increase in two of the six years and no wage freeze. Wage increases for Springfield bargaining units are very similar over the last eight years although a bit lower than Eugene. None of the six bargaining units have ever received a wage increase of 5% or more except SEIU in Springfield who got a market study increase of 5.12% following three consecutive years of wage freezes. That none of the other bargaining units have received wage increases anywhere close to the Union position is an indication of what the Union would have agreed to if strike-permitted. The Cities three-year offer of 3.5%, 3.5% and 3% is higher than any of the other unions received over a three year period since FY 08.

The interest and welfare of the public includes the ability to sustain public support for public employees and City government. This is eroded when the public decries the level of pay and benefits of public employees as being in excess of what the Cities can sustain. Other bargaining units and non-represented employees expect parity. Numerous Oregon interest arbitrators have held that internal equity is an important consideration, citing arbitral authorities. Internal equity is an important factor that should be considered. The Cities' LBO best promotes consistency, sustainability and stability within the Cities, and best promotes the interest and welfare of the public.

The Cities argue that the Union LBO purports to promote only the interest and welfare of the employees. It is virtually unheard of in Oregon for a union to seek 5% per year wage increases at interest arbitration. Since the statute was enacted in 1995 there have been 115 interest arbitration awards issues. In only 5 of those has the union sought 5% or more in any two or more years. Only twice has such an increase been awarded and both times it was in a booming economy with a relatively high cost of living index. 2007, prior to the recession, was the last time a union sought a wage increase similar to what the Union seeks here. The Union LBO cannot satisfy the Union burden under the interest and welfare criterion of the other statutory criteria. It should not be awarded.

The Cities also argue that it believes there is evidence within which to reach a conclusion using this first criteria, as a few arbitrators have been able to do. Most arbitrators consider the secondary criteria in considering the first priority of the interest and welfare of the public. Even

so, application of the secondary criteria all point to the reasonableness, fairness and equity of the Cities' LBO.

The Cities' argue that application of the secondary criteria support the award of the Cities' LBO. Relative inability to pay favors the Cities' last best offer. An employer's ability to pay is relative, not absolute. ORS 243.746(4)(b) requires a contextual inquiry into the Cities' reasonable (or relative) ability to meet the proposed costs. Other priorities compete for the same dollars. If the cost of the Union LBO would come from a reasonable operating reserve or cause adverse effects on other Cities' services, then the Cities do not have statutory reasonable financial ability to meet the costs of the proposed contract.

The cost in the first year of the Union LBO for Eugene is approximately \$1,220,000 and for Springfield is \$517,000. Second year costs are approximately \$2,396,000 and \$1,015,400 respectively. Cumulative two year costs are \$5,148,400 - \$3,616,000 for Eugene and \$1,532,400 for Springfield. The cost in the first year of the Cities' LBO for Eugene is approximately \$881,000 and for Springfield \$372,000. Second year cost are approximately \$1,690,000 and \$713,945 respectively. The Cities' third year cost is \$2,470,500 for Eugene and \$1,070,783 for Springfield. For a three year cumulative cost of approximately \$7,198,227 - \$5,041,500 for Eugene and \$2,156,728 for Springfield. The two year cost comparison between the two LBOs is a difference of nearly \$1.5 Million. Both Cities are emerging from the recession with only moderate revenue increases. Unemployment has decreased, but not all jobs lost have been regained and per capita personal income has remained stagnant and fallen in comparison to the U.S. average. PERS costs as a result of a recent Oregon Supreme Court decision will increase significantly. Eugene expects to see PERS contribution rates go from \$14.2 million to \$17.7 million in FY 18, or nearly 25% with higher rates after that. Springfield PERS contributions are expected to go from \$2.5 million to \$3.7 million in FY 18, an increase of 48%. Taking on the additional \$1.5 million cost of the Union LBO in view of these PERS increases is not in the interest or welfare of the public. It would result in a larger unfunded pension liability and higher PERS rates. It would have a significant effect on base wages in subsequent years. This factor has been the reason for awarding an employer's LBO in other Oregon interest arbitrations, citing arbitral authority.

For Eugene, a \$30 Million budget gap was closed between 2008 and 2014 resulting in a loss of approximately 100 positions, the spend down of reserves, and postponements of needed capital projects. The City is not fully recovered from the recession. Although the FTE count in 2015 was down from 2007, the Fire Department did not lose any personnel (other than administrative positions eliminated as part of the ESF merger). Police and Fire are the largest departments in the General fund, at 55% of the FY 16 budget. The growth rate of post-recession General Fund revenues significantly lags pre-recession rates. The Union's 5% annual increases are not sustainable when the City General Fund revenues are growing only at 2.8%. The City is losing money through its Ambulance Transport Fund, covering only 96% of costs. This is projected to continue and worsen after factoring in PERS. And from FY 06 to FY 16 the Fire Department budget has significantly increased by 31.2%. Other than Police, the other departments have remained flat or decreased. The Library increase is due to a voter-approved tax levy. The Union LBO compromises Eugene's ability to maintain current service levels and impacts the ability to address workload/call volume issues and the Cities' ability to live within its means. Other priorities include revitalizing downtown, improving public safety, homeless issues, secured facilities, a skate

park and upcoming international track and field competitions – many unfunded. Eugene’s Reserve for Revenue Shortfall (RRSF) has a target level of 8% of the General Fund, approximately \$12 million. It is projected to drop from 6.8% in FY16 to 5.6% in FY 20, before the PERS Court decision and the increase in minimum wage. There is little ability to raise money for additional expenses, as voters rejected 2 to 1 a ballot measure to raise money for fire and other critical services costs.

For Springfield, since the recession revenue growth has increased at a very modest pace. Springfield budgeted for a 3% increase in property tax revenue in FY 16, but the actual was only 2.1%. From FY 04 through FY 08 the General Fund growth rate was 5.26%. From FY 09 through FY 13 the rate dropped to 1.22%. From FY 14 through FY 16 it averaged 2.8%. The Building Fund reserve of \$2 Million was exhausted by 2011. The Street Fund burned through its reserves and positions were reduced with maintenance and capital projects deferred. Streets continue to deteriorate. Only some of Springfield’s immediate needs are able to be funded. At the end of FY 2015 the FTE count was down by 41 since FY 09, with a voter approved levy in 2013 for 20 positions in the jail. Unlike most other department, the Fire Department did not lose any line personnel as a result of the recession. The City continues to rely on the fire levy as it has no ability to fund the fire station positions through the General Fund. The Ambulance Fund went to below zero in FY 09 and while back up, is expected to decrease again based on expenditures over revenues. The City intentionally reduced overall City expenditures in 2014 due to less revenue than budgeted, spending less money than budgeted to spend. From FY 06 to FY 16 the Police and Fire budgets increased significantly (40.8% for Police and 37.4% for Fire). They account for 71% of the budget. Other Departments are being squeezed. If the Union’s LBO were awarded, the City would be forced to make difficult decisions about which public services must be reduced.

The Cities further argue that Union witness Michele Shaffer, who testified about the Cities’ financial ability to pay wage increases, did not analyze the financial documents of either City, but reviewed an analysis of another IAFF employee. She focused on each City’s unreserved fund balance, finding each falls within GFOA’s guidelines for minimum unreserved balance of two months operating expenses, or 16.67%. In reality, two months is the bare minimum. A recent GFOA article explains a particular situation may require a balance in excess of the minimum, and applied within the context of long-term forecasting, avoiding the risk of too much emphasis upon fund balance at any one time. Eugene’s unreserved fund balance ranged between 29.7% and 33.0% over the last three years. Springfield’s ranged between 24.3 and 25.4 percent over the last three years. While within GFOA’s minimum recommendations, neither City can be accused of hoarding money. Cities need money for expenses between July 1 and November when property tax revenue is received, or else have to borrow money. To borrow money and pay interest in order to fund a high wage increase is not in the best interest and welfare of the public. There is no reason for the Cities to hold themselves to the lowest bar of unreserved fund balances while paying employees at the highest compensation levels. Witness Shaffer, while testifying the Cities could afford to pay the Union’s LBO over two years, failed to take into account the compounding effect in future years. If the Union’s LBO causes a depletion in the unreserved balance during two years, then it is likely to continue to negatively impact the Cities in future years as well. The Cities’ proposed wage increases of 3.5%, 3.5% and 3% is very generous given the financial challenges the Cities have been weathering and slow revenue growth. The Cities’ LBO reflects what they can afford to pay, with other services in mind. The Cities looked at comparator wage data and made a proposal

that is fair to the employees and in line with the community as a whole. The Cities' LBO is a significant increase from its final offer after mediation, which was a wage increase of 3%, 2.5% and 2.5%. The Union made no movement at all.

The Cities further argue that the Cities' recruitment and retention history favors the Cities' LBO. The burden of proof belongs to the Union. Speculation that employees have left because of wages and benefits does not meet the burden of showing recruitment or retention problems. The Cities lost only eight employees in the past five years, a rate of less than 1% per year. That 28 bargaining unit employees retired over the last five years and only eight or nine voluntarily left to a fire job elsewhere shows there is not a retention issue. Of eight who left to take positions elsewhere, seven went to departments in the Portland area where wages and benefits are generally higher due to higher tax base and cost of living. Both Union witnesses who left to work at TVF&R initially has a cut in pay and now earn slightly more than in Eugene. The primary reason they left was not pay and benefits, but for a lower call volume which improved lifestyle. Both had other personal motivations for going to TVF&R. TVF&R has almost no ambulance transports and is in an area of fewer fires. The Cities are trying to reduce the call load at ESF but there is only so much they can do given the social and economic conditions of the Cities. Hiring more personnel is not cost effective as oppose to hiring those with Paramedic certification. The Union LBO will do nothing to address call volume. And there have been spikes of firefighters leaving during the course of the Chiefs' 36 year careers. The Cities have an experienced workforce with 207 out of 238 at the top step of the pay range, making it even more unlikely those at the top step would leave. A majority are also in promoted ranks. The City has had very little difficulty attracting qualified candidates. Since 2011 each entry level recruitment generated between 210 and 296 applicants. Applicants hired per recruitment ranged between 12 and 20 with around 20 applicants per vacant position and 15 qualified applicants per vacant position. With relatively low wages in the Eugene Springfield area, wage and benefit packages for positions in the fire department makes those positions some of the most desirable in the area. During the lateral recruitment, only three hires were made out of the targeted six. But six conditional offers were made as intended with three being later disqualified, and there were 38 applications - all with a paramedic degree. The evidence does not support finding of a recruitment or retention problem. This factor favors the Cities' LBO.

The Cities argue that comparison of the overall compensation favors the Cities' LBO. ORS 234.746(4)(d) and (e) requires the Arbitrator to consider overall compensation of the bargaining unit employees and to compare that overall compensation to employees performing similar services in communities of the same or nearest population range.

The Cities maintain that the comparator data presented by the Cities is the most appropriate and favors the Cities' LBO. The Cities provided two groupings. The first, which the Cities consider the appropriate one, looks at cities close to the population of Eugene and Springfield that perform ambulance transports. Cities with a population from 10,000 above Eugene's population to 10,000 below Springfield's population are:

Salem	159,265 (serves 167,614)
Gresham	106,455 (serves 143,000)
Bend	79,985 (serves 108,000)
Hillsboro	95,310

Medford	76,650 (serves 90,000)
Corvallis	56,535 (serves 68,960)
Albany	51,270 (serves 57,200)

Of the above, only Salem, Bend, Corvallis and Albany provide ambulance transport service. Those four are the most appropriate because the employees perform “similar services” to those in Eugene and Springfield. The Cities include Medford because of population, it is on the I-5 corridor and located outside the Portland metropolitan area. Gresham and Hillsboro are excluded as they do not transport patients so they don’t perform “similar services.” Also, Gresham and Hillsboro are influenced by being located within Portland metropolitan area where the cost of living and tax base is much higher. Firefighter, Engineer and Captain classifications make up all but 15 employees and are the most relevant for comparison purposes. The Cities’ comparison charts for the top step of the pay range included a wage increase of 3.5% since it is retroactive to July 1, 2015. Excluding health insurance contribution from employees and employers, the Cities’ Firefighters earn 2.16% more in total compensation than the average of those in comparator jurisdictions. When health insurance including VEBA, HRA and post-employment contributions are factored in, the Cities’ Firefighters earn between 6.05% and 7.93% more than the comparators. For the Engineer classification, excluding health insurance the Cities’ Engineers earn approximately 4% less than comparators. With health insurance they earn between 0.90% and 2.82% more than comparators. For Captains, when excluding insurance they earn approximately 4.6% less than comparators. With insurance they earn between 0.02% and 1.80% more than comparators. Total compensation will climb even higher in subsequent years under the Cities’ proposal. Other jurisdictions are offering annual increases between 1.5% and 3%. Over three years the Cities’ LBO is for 10%. Bend agreed to a cumulative 8% and Corvallis to a cumulative 6% over three years. Albany is at 4% over two years. Medford and Salem agreed to 2.25% and 1.5% effective July 1, 2015. None has offered a one year increase even close to the 5% the Union seeks here. The Cities’ employees have more paid time off than comparators, which must be considered. They get an average of 71 additional hours, or over 16%, more than comparators. If Engineers and Captains are slightly behind in just wages, it is more than made up in paid time off. This bargained for benefit to the Union represents a tradeoff between paid time off and smaller wage increases. Seeking 5% wage increases is having its cake and eating it too. And the statute requires insurance to be considered.

The Cities’ second group of comparators adds to the first group Gresham, Hillsboro and Clackamas Fire District. The Cities do not believe the last three are appropriate because they do not transport patients. And all three are in the Portland metropolitan area. Population is the only thing they share in common with ESF. Wages are higher in the Portland area than in Eugene, Springfield and other cities outside the metropolitan area. Top step monthly wages for Firefighters are over \$7,500 after Kelly Day adjustments, while all seven comparators outside the Portland area pay between \$6,620 and \$6,918. This disparity is similar for Engineers and Captains. The three Portland area comparators are not appropriate due to significant differences in cost of living (10% higher), tax base, per capita income (18% higher), and employment trends. 43% of household in Lane County are ALICE households, 44% in Eugene and 48% in Springfield, while those Counties near Portland are between 30% and 33%. The Portland area has higher housing costs and a higher tax base. Rental costs are also higher near Portland. Job growth in the Eugene-Springfield area significantly lags Portland, Bend, Medford, Salem, and Grants Pass. Effective January 1, 2017 the Portland metropolitan area will have an approximately 10% higher minimum wage than all other

metropolitan areas in Oregon. It is unrealistic of the Union to expect their employees should be paid the same as firefighters in the Portland metropolitan area. Numerous arbitrators have considered this issue and determined that cost of living and relevant labor market is relevant in determining appropriate comparators, and which LBO is in the interest and welfare of the public. Citing arbitral authorities, the Cities argue that arbitrators have the ability under the statute to consider factors in addition to population in determining appropriate comparator jurisdictions. The first Cities' list here is appropriate because all perform "similar services" and all are located outside of the Portland metropolitan area.

The Cities contend that there are numerous problems with the Union's comparator data and it should be disregarded. The Union failed include Medic Unit Pay/Ride Time, it selected inappropriate comparators influenced by the Portland metropolitan area which inflated total compensation averages and, it did not include the Cities' proposed wage increase retroactive to July 1, 2015 while comparators' wages were as of July 1, 2015. The Cities included Ride Time in its comparison charts. The Union didn't. This is the primary difference in the disparity between the Parties' comparison calculations, \$1,853.49 per month. This can be up to approximately \$1,400 per month more than the average potential Team Assignment pay available for comparator jurisdictions. No comparators offer Ride Time. Most offer higher Paramedic certification pay, which is higher than Eugene and Springfield because the Cities pay Ride Time. The Union has fierce opposition to eliminating Ride Time in exchange for higher Paramedic certification pay. The Union insists on continuing to receive Ride Time, but does not count it for purpose of total compensation.

And the Union used a results-oriented methodology that enabled it to compare the Cities to jurisdictions primarily in the Portland metropolitan area by combining the populations of Eugene and Springfield and then compares that to other jurisdictions that serve a similar population. This ignores the fact that ESF has two separate employers. The statute defines comparable communities as those of the same or nearest population range. The appropriate comparators should have a population around the range of 60,000 to 160,000. The statute does not state that populations should be combined where there are two separate employers. A Union comparator, Beaverton, does not even have a fire department. It is served by TVF&R, the largest fire district in Oregon serving a population of approximately 454,000. Yet the Union chose Beaverton based on its population of 94,215. It is not appropriate to compare Springfield to an agency serving nine times the population of Springfield or compare Eugene to an agency serving nearly three times its population. TVF&R has an enormous, wealthy tax base with almost unlimited resources. It is not realistic for Eugene and Springfield to match TVF&R in pay and benefits. The Union then reverses its logic and includes Clackamas Fire District which serves 202,000 but its largest City is Oregon City with a population of only 33,000. The Union's heavy reliance of comparator jurisdictions in the Portland metropolitan area is inappropriate.

Further, the Union's spreadsheets exaggerated the difference in total compensation by including wage increases received by comparator jurisdictions on July 1, 2015 but failing to include the Cities' 3.5% increase retroactive to July 1, 2015. This effects base wages and all other values affected by an across-the-board wage increase. There are additional problems with the Union's comparator charts. Gresham's Firefighter wages are inflated because Gresham uses a combined Firefighter/Engineer classification. The Union used an incorrect amount of 37 hours a

month with regard to Shift Holiday and Personal leave, when the correct amount is 42 hours per month. The Union did not credit Springfield for its significant \$200 month HRA contribution. TVF&R is not giving its employees an 8% wage increase on July 1, 2015 and July 1, 2016 as the Union portrayed in its exhibits. A Union witness acknowledged those employees are actually receiving only a 2% wage increase in each of those years. The Union incorrectly counted a one-time bonus as a cost of living increase.

The Cities argue that in light of the extremely high wage increases the Union is seeking at a time when the Cities are experiencing only modest revenue growth, this case can be decided without a need to rely on the comparability criterion.

The Cities also argue that the cost of living favors the Cities' LBO. The All Cities Index has been extremely low recently and decreased by 0.4% in 2015. It increased only 2.1% in 2012, 1.3% in 2013, and 1.5% in 2014. The Union's first year 5% increase exceeds the CPI increase over the last four years, and seeks another 5% the year after. Such increases are not warranted in light of the relatively flat CPI Index in recent years. The Cities proposed wage increases are extremely generous in light of CPI data. Only twice since 2004 has it increased annually by more than 3.5% - in 2008 and 2011. The average from 2004 through 2015 has been only 2.16%. With the Cities' proposal the employees stand to fare far better than the CPI. The Union did not introduce any contradictor evidence, and apparently want the Arbitrator to ignore this factor. That is not allowed unless an award can be made solely on the interest and welfare of the public criterion. And the evidence reflects the fire bargaining units have fared as well or better than all other employee groups in each City over the last nine years, excepting the Eugene police unit. If the Cities' LBO is awarded, Cities exhibit E-68 shows that the fire unit will have received a cumulative wage increase of 22.5% since FY 2008 - higher than the 21.79% increase for the 600+ AFSCME unit and the 18.66% for the IATSE unit. The cost of living history for Springfield in E-69, assuming the Cities proposal is awarded, shows the fire unit will have received a cumulative wage increase of 24.38% since FY 2008, virtually the same as the Springfield police unit, and greatly exceeding the SEIU (17.48%) unit, the AFSCME (14.16%) unit, and the non-represented (13.25%). The fire bargaining unit will look even better over the next two years. Neither City has the financial ability to give the other groups wage increases that match that offered to the IAFF.

The Cities argue that as to the term of the contract, and notes the Union argument that a two-year contract will allow the Parties to get back to the bargaining table quicker because the two health insurance plans are a wedge dividing the employees, who all want to be on the same plan. The Union never informed the Cities during negotiations that its two year proposal was to get back to the bargaining table quicker. It did not submit a written proposal to put all unit members on the same health insurance plan. Both Cities' plans are extremely generous. Some employees prefer Eugene's plan, others Springfield's. An IAFF representative on the Springfield insurance committee stated during a meeting in 2015 that the Union no longer had concerns about Springfield's plan now that the free medical clinic was open, and that the Cities' plans were essentially equal. The Union downplayed Springfield's \$200/month HRA contribution due to the high deductible insurance plan. But the 2014 year-end balances show all but 13 of the 89 individuals had money in their HRA accounts, averaging \$3,542.28. Balances should climb higher now that the free clinic is open without out of pocket costs. The balance is valuable. Springfield's employees are not charged for a number of services despite it being a high deductible plan. There

is no guarantee that the next round of bargaining will see all bargaining unit employees on the same insurance plan because removing one or both groups for fire employees from their current plans could have significant consequences on the Cities' insurance rates for other employees. It may not be cost effective for the fire unit to have one plan. If the health study leads to finding it would be cost effective to separate the fire bargaining unit employees from others employees, there is nothing preventing the Parties from agreeing to that change before the contract expires. That is why they agreed to the reopener in Article 17.

The Cities' proposal for a three year contract is preferable as it provides stability, a short break before new labor negotiations and time to see how the new contract is working. Under the Union LBO the contract will expire approximately one year after the arbitration decision is issued, with bargaining beginning within a period of only a few months. The Cities' proposal best meets the public policy calling for an "expeditious, effective and binding procedure for the resolution of labor disputes." ORS 243.742(1).

DISCUSSION

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

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

Primary consideration must be given to this factor, but it is undefined in the statute. Arbitrators in Oregon generally have concluded that the best way to determine the interest and welfare of the public is by analyzing the remaining factors. If a Parties' LBO better satisfies the secondary criteria in paragraphs (b) to (g) it then satisfies the primary criteria of the interest and welfare of the public. Pursuant to paragraph (h) of the subsection, such other factors consistent with paragraphs (a) to (g) of the subsection as are traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of employment shall not be used if, in the judgment of the arbitrator, the factors in paragraphs (a) to (g) provide sufficient evidence for an award.

The Parties both contend that their LBOs best promote the interest and welfare of the public, and offer evidence and argument on the secondary factors to substantiate that. The Cities do make a separate argument under (4)(a) that the interest and welfare of the public favors its LBO. Its' arguments go to internal comparable or internal equity, the effect of increases in PERS costs, and to what it perceives as the overall cost of the Union LBO on the Cities' ability to pay. Most if not all of those arguments go to the secondary factors, particularly factor (b), and analysis of the secondary factors will be considered.

(b) The reasonable financial ability of the unit of government to meet the costs of the proposed contract giving due consideration and weight to the other services, provided by, and other priorities of, the unit of government as determined by the governing body. A reasonable operating reserve against future contingencies, which does not include funds in

contemplation of settlement of the labor dispute, shall not be considered as available toward a settlement.

The Cities do not contend that they cannot pay the cost of the Union's LBO. They do argue, however, that they have a relative inability to pay and that favors their LBO. The Union points out that the Cities have not made the argument that there is an inability to pay for the Union's wage proposal.

The cost of the Parties' proposals varies both in yearly amounts and due to different lengths of their proposals. They use different starting amounts and factor in different cost items in their calculations. The Union calculates the current annual cost for the bargaining unit including roll ups at \$23,683,535 and using its proposal over a two-year duration the wage increase cost totals \$2,427,562. Exhibit U-10. The Union calculates the City three-year proposal has increased costs of \$2,447,971. Its chart can add the first two years cost of increase to the Cities as \$1,686,859.

The Cities calculations are in Exhibits E-7, E-8. They start with FY 16 wages of \$32,116,200. They then project the increases for FY 16 and FY 17. To those columns they add personal leave at \$100,000, cost of health study at \$16,000, and standby costs of \$15,000. 5% is added to personal leave and standby for the year two column. If the line items for these last three costs are already included in the starting wage total they are not delineated as such. The Cities calculate the additional costs over a two-year period with the Union offer being approximately \$5,148,400. They calculate the Cities' offer for a cumulative cost of \$3,656,945. This is a difference between offers over two years of about \$1.5 million. The third year cost under the Cities' offer is an additional \$3,541,283.

The Parties' calculations of cost increases over two years shows a widely separated amount in the difference between the Parties' wage proposals. The Union's chart indicates a difference between the Parties of \$740,703. The Cities' charts puts the total two year cost difference at \$1,491,455 (essentially \$1.5 million). Thus, the range of cost difference between the Parties is \$750,752. The higher starting cost of wages used by the Cities is \$8,432,666 higher than that used by the Union, and is about \$843,266 with 5% added each year. The Cities also add paid leave, standby and the health study for an additional \$250,400 over two years. These two items total approximately \$1,114,348. The differences are not easily reconciled by these two added items. While the Union calculations do not show paid leave or standby, those are still of value to the Union and their costs have to be covered by the Cities. Adding those costs to the Union analysis would bring the Union calculations closer to that of the Cities. The actual cost difference may not be as large as the Cities claim, but the cost increases appear higher than the Union's number.

The Union notes that Eugene has recently had a year-end average asset to liability ratio of 3.46 and since FY 12 its expenditures out of the general fund were below budget predictions and revenues and transfers in exceeded FY 14 predictions. It points out a FY 14 unreserved fund balance of approximately \$41.3 million with a GFBPE of 33% or roughly four months operating expenses. Springfield is similar, with an average liability ratio of \$3.58. Springfield's expenditure and transfers out of the general fund have been below budget with revenues exceeding expenditures. As of FY 14 the unreserved fund balance was \$8.3 million and the GFBPE at 25.4,

roughly three months expenditures. The Union shows that for both Cities their financial position is currently stable and they are not faced with an inability to pay the Union wage proposal.

The statutory factor is not whether the employer can pay. It requires giving weight to the other services and priorities of the unit of government. In this context the test is the reasonable financial ability to meet the costs. The GFBPE number of 16.67 is a minimum two month number and unrestricted general funds must sometimes be available for well more than a two month period to pay bills and liabilities between July 1st and receipt of taxes in November ORS 243.746(4)(b) states in part : “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 towards a settlement.”. A growing unreserved General Fund and operating reserves must thus be approached with caution in assessing the reasonable financial ability to meet the costs of the proposed contract. That both Cities’ general funds are in excess of two months as of FY 14 is no guarantee that the funds will remain so. There are other competing needs of the Cities for funding and although there has been a strengthening of City finances since the recession, neither City can be said to be in a robust financial condition. PERS contribution rates for the Cities will increase due to a recent Oregon Supreme Court ruling. Eugene has been struggling with a \$30 million budget gap, forcing the loss of approximately 100 positions, but not in the fire bargaining unit, and the spend down of reserves. Capital projects, maintenance and repairs have been deferred. Other City priorities include revitalizing downtown, improving public safety, homeless issues, building a skate park and hosting the upcoming international track and field competitions. Its general fund growth rate post-recession is now 2.8%. The Ambulance Transportation Fund can pay only 96% of current costs. The Reserve of Revenue Shortfall is projected to drop below its target level of 8%.

Springfield also has other priorities competing for resources. Like Eugene, the local economy is slowly improving since the recession. From FY 14 the General Fund Growth rate has been 2.8%. The City Building Fund was exhausted by 2011 and the Street Fund spent its reserves. City positions were reduced, but not in the fire bargaining unit. The FTE count is down by 41 since FY 09 and positions have not been replaced. Maintenance and capital projects have been deferred. 20 jail positions have been funded through a voter approved levy. A fire levy from 2002 has been renewed and is still used. Springfield did spend less money in FY 14 than it took in because it reduced its spending when revenues came in less than budgeted.

Though stable, as pointed out by the Cities, neither City has fully recovered from the recession. While their economies are getting better, City financial growth is still slow. The Union LBO outpaces that growth. And the other needs and priorities have remained in competition for scarce resources. The Cities may be in a position where they can pay the Union wage proposal, but that would put unreasonable strains on their ability to meet their other obligations and priorities. Secondary factor (b) favors the Cities.

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

In the last two years nine bargaining unit employees have left ESF for other employment in other departments, some with up to eight years of experience. Some did so for better pay and

lighter workloads. Up to five others are involved in the application process at other departments. The Union contends that this recent spike is a serious issue for the Department and that the Union's offer will bring wages to a level that is more commensurate with the level of work being performed in the department, help morale and help in retention and recruitment of the best qualified applicants. This also reduces costs of training an employee. At 5.5 employees per year this could amount to about \$550,000 per year. The Union feels its offer will move ESF in the right direction more expeditiously than the Cities' LBO.

The Cities note a loss of eight or nine employees over the past five years to take a fire job elsewhere. They point out that in a bargaining unit of 238, with 87% at the top step of the pay range, the number of those leaving for another fire job is small and as a percentage of the bargaining unit is very small, about 1%. There has not been much if any difficulty in replacing employees when they have left or retired. 28 retired over the past five years. In the last six years there were five entry-level recruitments and one lateral recruitment. Each entry level recruitment generated between 210 and 296 applicants, and 72 to 82 percent were invited to test during four recruitments. The number hired was from 12 to 20. In the lateral recruitment, three were hired out of a target of six. There were 38 applications, all required to have a paramedic degree. Six were made conditional offers, but three did not pass subsequent psychological, fitness or background checks.

The statutory factor looks at the ability to attract and retain qualified personnel. The number of applicants for openings and invitations to test for recruitment shows the Cities can attract qualified employees for the fire Department. While there may have been a spike those leaving for other fire departments in very recent years, the numbers in that spike are still relatively very small in comparison to the size of the bargaining unit and does not necessarily mean there is a retention problem. In as much as work load is a reason for leaving, neither Parties' offers will actually do anything about that. That five others may be looking elsewhere is not to be lightly disregarded, but whether they actually go, and for what reasons, are all speculative on this record. It is to be expected that some people will move or change employers for a multitude of reasons other than pay and work load. Even if some or most of them were to leave, the historical numbers of applicants and offers to test are greatly in excess of potential vacancies. With most employees at the top steps in pay they have a larger incentive to stay. Concerns may be beginning about retention, but at this point it is not an urgent problem as contended by the Union. Retention is still good and any need for personnel has been easily met by attraction. The Cities are able to attract and retain qualified personnel at the wage and benefit levels provided. Secondary factor (c) favors the Cities LBO.

- (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.
- and,
- (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....

These two factors are very often considered together, and both Parties have provided evidence and argument as to both of them in conjunction with each other.

The Parties have two fundamental differences on what communities should be considered comparable and their respective lists of comparators result in higher or lower levels of compensation accordingly. They are whether the combined populations served by ESF, 238,000 should be used as did the Union, or if Eugene and Springfield populations should be looked at separately, 160,000 and 60,000 as they are separate employers as did the Cities. The other difference is what comparators provide “similar services”. The Cities contend that similar services must include only those comparators that provide ambulance transports in addition to their other services as the Cities do. A third issue is whether other matters such as cost of living, tax base, per capita income and employment trends, primarily in the Portland metropolitan area, are proper to consider in eliminating communities in that area as comparators because of the large differences.

The Cities’ lists of comparators by population from 10,000 above Eugene to 10,000 below Springfield. They are:

Salem	159,265 (serves 167,614)
Gresham	106,455 (serves 143,000)
Bend	79,985 (serves 108,000)
Hillsboro	95,310
Medford	76,650 (serves 90,000)
Corvallis	56,535 (serves 68,960)
Albany	51,270 (serves 57,200)

The Union’s list uses seven communities in Oregon with the closest populations to Eugene/Springfield and the combined population served of 238,000. They are:

Milwaukie (Clackamas County#1)	179,000
Salem	160,690
Gresham	107,065
Hillsboro	97,480
Beaverton (TVF& R)	94,215
Bend	81,310
Medford	77,655

As to combined or separate populations, the bargaining unit is now in the combined unit in ESF. The members work side by side throughout the entire area of both Cities. The size of the bargaining unit is larger than it was under separate Cities. It is a single Department that does serve about 238,000 people. It is administered as a single unit. Even the Cities point to the improved efficiencies and performance of ESF as a single, combined entity. Its size helps allow for these efficiencies. The Cities refer to the Eugene/Springfield area and the area economy in reference to some of their ability to pay economic arguments. Regardless of funding sources, the scope of the work for ESF covers a population of 238,000. ESF is not a formal fire district with taxing authority, but it does resemble one in respect to the size and duties it performs. It is in some ways similar to a conventional fire district. Fire districts in Oregon are recognized as a comparator. See, e.g., CITY OF HOOD RIVER AND IAFF LOCAL 3256, IA- - (STITELER 2014):

Interest arbitrators routinely have confronted this issue over the nearly 20 years since the statute was amended in 1995. The near unanimous conclusion is that fire districts are an appropriate comparator for a city under the statute. Thus, even though cities continue to raise the issue, it has become the accepted interpretation of the statute.
(footnote omitted)

When it comes to fire department services, 238,000 is the population of the community served by ESF, and best meets the statutory requirement for a comparator. The Union's list of comparators as to population prevails.

There is the issue of similar services. The Cities would still exclude from the Union list Gresham, Hillsboro and Clackamas Fire District because they do not transport patients. However, the statute says "similar" not "same". There is some latitude in the choice of the word "similar", and this recognizes that there can be some variety in the scope of services provided in comparator communities. Even though these three communities departments may not transport, they still deliver other services as at ESF. That they do not transport patients is not a reason to exclude them from the Union list as comparators.

A remaining issue is the Cities contention that Gresham, Hillsboro, Clackamas Fire District and Beaverton should be eliminated as comparators because they are in or near the Portland metropolitan area. Being in the metropolitan area increases their tax base, cost of living, income and employment trends, driving up wages and benefits. However, the statute does not mention these considerations in determining what communities are proper comparators. The statute only refers to population. This drives the conclusion that these communities are not excluded because of their location in the more expensive Portland metropolitan area. But that is not to say that those economic considerations effecting the wages and benefits in those communities cannot be recognized in making the actual comparisons of wages and benefits and determining how much weight to place on those communities, which is a different matter than what communities will be compared. Accordingly, the Union's list of comparators will be used.

The Union compares entry-level positions, mid-level positions and senior-level positions based on duties performed. Its charts are set out in Exhibit U-18. Total compensation for each comparator includes wages and employer PERS contributions, incentive pays, premium/certification pays, special duty pays, longevity pays, and paid leaves. Not included are team and assignment pays. Insurance premiums paid by employees are subtracted from total compensation.

The Union analysis shows an entry-level Firefighter at ESF makes 11.5% less than the average total compensation received by entry-level firefighters in the comparable communities. An entry-level Engineer makes 15.9% less. At mid-career level ESF Engineers earn 17.6% less than average and Captains make 20% less. At the senior-level ESF Captains earn 20% less and Fire Marshalls 18% less. Union analysis shows compensation for ESF is lower for every position at every level of service than in the comparators. The Union criticizes the Cities' analysis for omitting employer PERS contributions for some forms of compensation on its comparator list, and for the Cities inclusion of ride time pay for ESF employees because, says the Union, some

employees go weeks or months without the opportunity to receive ride time pay. The Union further notes that the Cities' calculation of insurance rates is inaccurate because it compares plans with tiered and composite rates.

Although it compared a different list than the Union, (both included Bend, Medford and Salem) the Cities' analysis include their proposed wage increase of 3.5% in the charts since it is retroactive to July 1, 2015. Cities' charts in Exhibits E-38, E-39, E-40, and E-41 use the top steps in its smaller comparators and includes an average for ride time pay in the ESF communities. They show ESF firefighters earn between 6.05% and 7.93% more than the average of its comparator communities. The percentage differs because Eugene and Springfield are on different health plans and contributions. ESF Engineers earn between 0.90% and 2.82% more than the average. ESF Captains earn between 0.02% and 1.08 percent more than the average of the Cities' comparators.

Exhibit E-42 compares wage increases proposed by the Cities to increases agreed upon by other jurisdictions, reflecting other jurisdictions offering increases from 1.5% to 3%. Bend agreed to a cumulative increase of 8% over three years and Corvallis agreed to 6% over three years. ESF has offered a cumulative 10% over three years. These City Comparisons show some of the differences in results when different lists are used for comparators and other assumptions, such as the 3.5% ESF offer is already calculated into wages. Had the Cities not included the 3.5% increase in its comparisons the results would be closer to the results seen in the Union charts. They would be even closer if compared to all of the communities on the Union list. Even using the Cities' list, when the 3.5% is initially removed, the ESF employees earn less than their comparators. That is why some type of wage increase is called for in the first place. But as stated above, the Union's list will be dispositive.

The Cities then include Exhibits E-44, E-45 and E-46, adjusted for Kelly Days, to demonstrate the higher wages in the Portland metropolitan area by including Gresham, Hillsboro and Clackamas Fire (not Beaverton) The charts show that none of the departments outside the Portland metropolitan area pays wages as high as the lowest of the three Portland-area agencies.

The Cities argue that the differences in economic conditions between the Portland metropolitan area and the Eugene/Springfield area should exclude the Portland area communities from consideration. As stated above, they will be included. But in weighing them into the averages, it is noted that per capita incomes, cost of living, housing costs and values with attendant tax bases are all higher in the Portland area, while unemployment rates and number of ALICE households as a measure of poverty are higher in the Eugene/ Springfield area. Taking these items into consideration it is not surprising that the averages on the Union list are higher than those on the Cities' list. But the list does show where ESF stacks up in comparison to its comparators, and the ESF unit as a whole is below that average. And the ESF bargaining unit does have a higher call volume than some of the comparators. They work very hard. Comparing what they do for the wages and benefits they get weights in the Union's favor. These members do get ride time. Even though it is not distributed evenly, it still goes to the membership and the Cities still have to budget for it. This lessens somewhat the difference between what the ESF members get and the average of their comparators. Cities' concerns about general differences in the metropolitan and local economies do offset some of this deficit as does inclusion of ride time in its calculations. A few other relatively smaller items help the Cities some. Those are a Paid Leave understatement by 5

hours and the Springfield \$200/month HRA contribution. But on balance, the ESF bargaining unit is not earning as much as its comparators' average. The secondary factors (d) and (e) favor the Union.

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

The CPI-All Cities Index decreased by 0.4% in 2015. It had increased by 1.5% in 2014. Over the past four years it increased a total of 4.6%. The City points out that only twice since 2004 has the CPI-All Cities index increased annually by more than 3.5%, and both times it was below 5%. The average CPI-All Cities Index increase from 2004 through 2015 has been 2.16%. The fire department bargaining units of the Cities have done better in wage increases than almost all of the other bargaining units in both Cities over the past nine years. Exhibit E-68. The City proposes wage increases of 3.5%, 3.5%, and 3.0% over three years. The Union merely contends that with a combination of unusually low CPI and the bargaining unit's wage disparity, the cost of living is not particularly relevant or determinative. The Union seeks a wage increase of 5% and 5% over two years. The Union wage offer is well in excess of the CPI. Even the City proposal is above the CPI. This factor (f) favors the Cities.

The term of the contract remains in dispute. The City proposes a three year contract and the Union proposes a two year contract. The City seeks to spread out its 10% cumulative wage increase by an additional year and to have time between bargaining and to see how the insurance study comes out and how the combined fire department continues to develop. The Union seeks to get back to the bargaining table quicker to be able to get to interest arbitration on the health insurance issues as soon as possible. The Union has also argued that a shorter implementation of its 10% wage increase proposal will help what it perceives as a retention and recruitment problem. That has been resolved against the Union above.

The Union maintains that there is a pressing need to resolve the difference between the two Cities' health insurance plans as it is an inequitable situation. Some Springfield bargaining unit members even have considered trying to become Eugene employees to obtain what they feel are better health insurance benefits. However, it is not likely that a large number of Springfield employed bargaining unit members would risk a loss of seniority to try to obtain Eugene's' health benefits. There may be some employees who would prefer a different plan, but there is little evidence of a large number of disquieted members in the fire bargaining unit in view of it having about 238 members. And as the Cities point out, there is an upcoming insurance study and because of that Article 17.4 of the CBA provides for a reopener of the Health Insurance Article if either Party asks for it after the study concludes. The study is expected to take about two months. There is a chance that the insurance issue can be addressed and resolved by mutual agreement before the end of a three year contract.

The current interest arbitration will be retroactive to the end of the 2012-2015 contract, so a good part of a three year contract will have gone by already. A two year contract would not give the Parties much of a respite from bargaining, even though the Union appears eager to bargain sooner than later. Springfield does have a high deductible health plan, but it recently opened a free clinic for its employees with no out-of-pocket expenses for many routine items or procedures. Springfield also has a \$200/month HRA contribution and most employees have balances in their

accounts. This indicates that medical insurance benefits have been handled well by the employees, and the balances can pay for post-employment insurance. The need the Union argues to get to bargaining over insurance is undercut by these considerations.

A three year contract will provide more stability and time for the newly combined Department to see how things go and what other issues may need to be negotiated, if anything, when bargaining of the entire contract begins again. The Cities are correct in that a three year contract provides more stability, which is in the interest and welfare of the public.

In assessing which of the two LBO's best promote the interest and welfare of the public, the secondary factors have been examined. They do provide sufficient evidence for an award that is in the interest and welfare of the public. Because of this, factor (h) of the statute, such other factors...as are traditionally taken into consideration shall not and will not be used. The Cities' have made several arguments about internal comparability with its other bargaining units' wages. It is not necessary to consider those. The Union has urged use of other factors in assessing its argument for a two year contract because of the insurance issue. However, only one of the LBO's can be selected for the award. The term of the contract issue does not prevent an award from being based on the evidence supporting an award on wages. The Union's factor (f) other factor arguments on the term issue ultimately do not need to be considered in light of the other sufficient evidence for an award.

As seen above, the reasonable financial ability of the unit of government to meet the costs of the proposed contract factor favors the Cities. The ability to attract and retain qualified personnel factor favors the Cities. The overall compensation received by the employees and the comparison with other employees in comparable communities factors favor the Union, but only slightly. The CPI-All Cities Index factor favors the Cities. On balance, these factors lead to the conclusion that the interest and welfare of the public is best served by the Cities' LBO. The three year duration of that LBO is consistent with the secondary factors favoring the Cities as to wages. With the factors in (a) to (g) of the statute providing sufficient evidence for an award, the term of the contract follows the selection of the Cities' LBO.

Accordingly, based on the evidence and the arguments of the Parties I issue my

AWARD

Pursuant to ORS 243.746(4) I award the Cities' last best offer and ORDER that the Parties adopt it.

Issued this 6th day of May, 2016.

Paul Gordon, Arbitrator