

INTEREST ARBITRATION

BETWEEN

Jackson County

Employer,

and

Federation of Oregon Parole & Probation
Officers

Union.

BEFORE ARBITRATOR
DAVID M. BLAIR

FINDINGS, OPINION AND
ORDER

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Hearing location:

Jackson County Offices
Medford, Oregon

Hearing:

June 25, 2014

Hearing closed:

July 31, 2014

Date of this Award:

August 15, 2014

Witnesses for the Employer: Shane Hagey
Sasha Grafenstein

Witness for the Union: Larry Boeck
Jennifer Choate
Michael Hescoock

INTRODUCTION

The Federation of Oregon Parole and Probation Officers (FOPPO) hereinafter referred to as the “Union,” is the exclusive bargaining representative for adult parole and probation officers employed by the Jackson County Community Justice Department (“County”) hereinafter referred to as the “Employer.”. These employees are charged with the responsibility for the supervision of adults on parole or probation and the enforcement of court sanctions for these offenders.

The parties were unable to settle all terms and conditions of a successor Collective Bargaining Agreement (“CBA”) which expired on June 30, 2013. As a result, the parties each submitted their last best offer (“LBO”) to the arbitrator pursuant to statute as provided in ORS 243.746, hereinafter “Statute.” An Interest Arbitration hearing was scheduled for June 25 and 26 in Medford, Oregon and was heard and concluded on June 25, 2014. The arbitrator heard testimony from both parties and received the evidence presented at that time. The parties agreed to submit post-hearing briefs to the arbitrator on July 31, 2014, and as such the hearing was deemed to have been concluded on that date.

As the present matter involves the resolution of the parties’ CBA, both parties are deemed to share an equal burden of persuasion upon the arbitrator in order for the arbitrator to award one party their LBO to conclude their negotiations.¹ The parties agreed that the Employer would present all of its arguments first.

¹ The Statute does not assign either party with the burden of persuasion though earlier arbitrators have acknowledged a higher degree of persuasion upon a party seeking a change from the status quo.

Each party presented their LBO to the arbitrator within the statutory 14 day window prior to the scheduled hearing. The arbitrator prepared a comparison of the two offers in advance of the hearing and presented a copy to both parties at the commencement of the hearing. The parties acknowledged that subsequent information would now show the August 1, 2013 insurance contributions to be \$1,558.14 for the County's offer and \$1,589.16 for the Union's offer during this same time frame, using the parties' respective LBO language with the known costs of such plans now available to the parties. The parties further acknowledged that there was no longer a dispute between the parties relative to the Employer's new language involving "Direct Deposit" which was included within a new Section 8 under Article 14. The parties stipulated that the applicable Consumer Price Index ("CPI") was 1.4% for the second year of the contract, 2014. The parties also stipulated that each represented County employee group and County management group have their own insurance plans. The arbitrator's review will focus solely on those issues presented which remained in dispute at time of the hearing.

LAST BEST OFFERS

Employer's Position

The Employer has proposed the following language as its last best offer:

Article 14 – Compensation

Section 8. Direct Deposit.

Effective on the first full pay period following ratification of the contract by both parties, all FOPPO represented employees either receiving pay checks via direct deposit on that date or hired after that date shall receive their pay via direct deposit.

Article 15 – Fringe Benefits

Section 3. Funds Available for Insurance Programs.

- a. Effective August 1, 2013, the County shall make available for health, dental, vision, disability and life insurance premiums, a maximum of one thousand five hundred fifty eight dollars and fourteen cents (\$1,558.14) per month for each eligible bargaining unit employee toward current premium costs. It shall be the right and the responsibility of FOPPO to use the available funds for any combination of insurance programs they choose.
- b. Effective August 1, 2014, the County shall make available for health, dental, vision, disability and life insurance premiums, a maximum of one thousand six hundred twelve dollars (\$1,612.00) per month for each eligible bargaining unit employee toward current premium costs. Should the cost of the benefit package in place on the date of such increase exceed this amount per month, the County agrees to increase its monthly contribution by an amount equal to one-half (1/2) of the additional cost.
- c. Effective August 1, 2015, the County shall make available for health, dental, vision, disability and life insurance premiums, a maximum of one thousand seven hundred thirty three dollars (\$1,733.00) per month for each eligible bargaining unit employee toward current premium costs. Should the cost of the benefit package in place on the date of such increase exceed this amount per month, the County agrees to increase its monthly contribution by an amount equal to one-half (1/2) of the additional cost.

Union's Position

The Union has proposed the following language as its last best offer:

Article 15 – Fringe Benefits

Section 3. Funds Available for Insurance Programs.

- a. Effective August 1, 2013, the County shall make available for health, dental, vision, disability and life insurance premiums, a maximum of one thousand five hundred fifty eight dollars and fourteen cents (\$1,558.14) per month for each eligible bargaining unit employee toward current premium costs. Should the cost of the benefit package in place on the date of such increase exceed this amount per month, the County agrees to increase its monthly contribution by an amount equal to one-half (1/2) of the additional cost.
- b. Effective August 1, 2014, the County shall make available for health, dental, vision, disability and life insurance premiums, a maximum of one thousand six hundred sixty-seven dollars (\$1,667.00) per month for each eligible bargaining unit employee toward current premium costs. Should the cost of the benefit package in place on the date of such increase exceed this amount per month, the County agrees to increase its monthly contribution by an amount equal to one-half (1/2) of the additional cost.

- c. Effective August 1, 2015, the County shall make available for health, dental, vision, disability and life insurance premiums, a maximum of one thousand seven hundred eighty three dollars (\$1,783.00) per month for each eligible bargaining unit employee toward current premium costs. Should the cost of the benefit package in place on the date of such increase exceed this amount per month, the County agrees to increase its monthly contribution by an amount equal to one-half (1/2) of the additional cost.

In short, the only issue separating the parties at time of hearing was the amount of the Employer's monthly contribution towards the bargaining unit's health, dental, vision, disability and life insurance premiums.

In year one of the contract (effective August 1, 2013), the parties agreed upon the minimum monthly Employer contribution of \$1,558.14, but remained separated on the manner in which any additional costs would be shared. The Employer proposes no additional contribution, while the Union proposed that the parties share equally in any increased cost above such minimum. We now know that the Union's proposal would increase the Employer's monthly contribution to \$1,589.16, or an increase of \$31.02 per month for each bargaining unit employee.

In years two and three of the contract (effective August 1, 2014 and August 1, 2015), the parties agree that the Employer and the Union will equally share in any increased cost above the minimum, but each has offered a different minimum in each of these years.

The Union contends that its' LBO would involve an approximate increase from the Employer's LBO in the amount of \$22,000.00 over the term of the new contract.

FINDINGS

The Statute sets forth the perimeters by which the interest arbitrator is to fulfill their duty to the public when selecting a LBO. The first criteria is to determine which offer is in the interest and welfare of the public. See ORS 243.746(4)(a). Often arbitrators must proceed with

an analysis of what has come to be known as the six secondary factors set forth in the Statute since the primary criteria often offers little assistance and guidance to the arbitrator. See ORS 243.746(4)(b)-(g). The six secondary factors are: (b) the reasonable ability of the public entity to meet the costs of the proposed contract considering the other services and priorities of the public entity and a reasonable operating reserve; (c) the ability of the public entity to recruit and retain qualified personnel at the wage and benefit levels provided; (d) the overall compensation package presently received by the employees including wages, paid time off, pensions, insurance, and all other direct or indirect benefits received; (e) comparison of the overall compensation package received by the employees to the overall compensation received by the employees of other comparable public entities; (f) the CPI-All Cities Index; and (g) the stipulations of the parties.

The arbitrator will review each of the factors addressed by the parties.

1. Interest and Welfare of the Public

The Union contends that the primary factor involving the interest and welfare of the public should favor the Union's LBO as (1) the bargaining unit had agreed to a first year wage freeze and mere cost of living adjustments in years two and three, (2) the Employer has the ability to pay, and (3) the bargaining unit is behind their comparators in terms of total compensation. Additionally, the Union notes that the insurance benefits at issue here include three components (life, short-term and long-term disability) which are provided at no cost to the employees of comparable employers. Hence, in fairness to the bargaining unit and in support of their critical law enforcement mission, the Union's LBO will better serve the public both now and into the future.

The Employer argues that its LBO satisfies the interest and welfare of the public as its offer maintains a wage and benefit package that is at or above market levels.

The public interest and welfare argument in favor of both LBO's are centered around the results of a number of the secondary factors. As such, the arbitrator will explore each of these secondary factors raised by the parties in order to answer the ultimate question of which LBO best meets the interest and welfare of the public.

2. Ability to Pay

The Union asserts that at no time has the Employer raised the argument or presented evidence to support an inability to pay for that which the Union has proposed. The parties are each provided with an opportunity to prepare for the arbitration and are afforded 14 days in which to learn of the other's LBO as presented to the arbitrator. Such affordability argument could also have been raised earlier in the negotiations if it were of concern or at issue.

The arbitrator was not presented with any testimony or evidence of the Employer's inability to pay for the Union's LBO or even any earlier related proposals, except to show that a deficit exists within the County's 2013/2014 Adult Supervision and Program budget of approximately \$413,000.00.² This same budget also included information pertaining to program revenues reflecting a 17% increase over the prior year due to the County's receipt of a greater share of state funds following an increase in the state-wide felony population.³ The arbitrator heard testimony from the Employer's witness Sasha Grafenstein, employed in Human Resources, who reported that the Union's LBO would amount to an approximate \$22,000.00 difference over the life of the contract. The arbitrator also heard testimony from the bargaining unit's department director, Shane Hagey, who noted that the approximate \$7,300.00 per year shortfall would not interrupt the program and that the \$400,000.00 budgeted deficit would likely be funded by the County's General Fund. Mr. Hagey further commented on the projected

² See Employer Exhibit 2, Page 116.

³ Id at Page 12.

difference in cost between the Employer's and the Union's LBO that, "[He]'d make it happen," speaking to his ability to maintain staffing and program functionality under such circumstances. He noted that approximately 3 million dollars per year is funded by the state based on the felony population in order to fund the program. No testimony or evidence was presented to indicate that such state funding was to be reduced or in turn that the state had an inability to pay which would trickle down to the Employer.

For the foregoing reasons, the arbitrator does not find the Employer in a position where it is unable to pay the difference between their LBO and that of the Union.

3. Retention and Recruitment

The Employer's Human Resource witness testified that in recent history there had been three separate recruitments for bargaining unit positions. Of these three, the Employer had approximately 19 qualified applicants having the requisite education and experience for the position. Those that left employment had "self-identified" their reason for leaving employment as being "retirement." The Union did not provide any testimony to refute the Employer's witness. As such, the arbitrator finds that the considerations under ORS 243.746(4)(c) leans in favor of the Employer, though with insufficient data to weigh heavily in relation to the interest and welfare of the public.

4. Total Compensation

In its post hearing brief, the Employer notes that it provided revised Employer Exhibits 16 and 17 to more accurately compare its employees with the comparable counties noted above. The arbitrator received only revised Employer Exhibit 16. As this revised exhibit was not available to the Union to cross-examine during the hearing, the arbitrator will judiciously receive it as if the Union had objected to its inclusion the same as it did with the original Employer Exhibit 16, that being approved subject to verification of the data. It should also be noted that the Employer's Exhibit 16 (original and revised) only compare the bottom step (year 1) and the Findings, Opinion and Order

top step (year 13) of the Senior Deputy Parole and Probation Officer positions whereas the Union's compensation comparables included intermediate steps as well. Additionally, there is no indication on the Employer's revised Exhibit 16 as to which if any of the comparable counties actually include life insurance, short-term and long-term disability benefits within their benefit packages.

Without consideration of the life insurance, short-term and long-term disability benefits, the Employer's Exhibit 17 reflecting the wage comparisons for year one of the contract shows the Employer's entry level wage at 7.49% above the comparables. Similarly this exhibit shows a negative .94% wage level when compared with the other counties at the top step. The record also shows that the average Senior Deputy Parole and Probation Officer currently has eight years service with the Employer.

The Union provided testimony from Larry Boeck, the insurance agent responsible for the negotiations of the bargaining unit's medical and dental plan premiums with its insurance carriers since 2005. Mr. Boeck noted that his office has been very successful in negotiating below average insurance premium increases for this bargaining unit. He also noted that it was too early to speculate on how the 2014 negotiations will fare since one unknown variable included the Affordable Care Act ("ACA") mandates. He acknowledged that statewide trends have shown 10 to 13% increases in premiums and that about half of those adjustments were due in large part on the taxes and fees imposed by the ACA. Mr. Beck was unable to speculate as to what level of increase the bargaining unit could see in the future with its medical premiums.

Assuming that the figures offered in Employer Exhibit 17 could be brought even lower if factoring in the life insurance, short-term and long-term disability benefits, it appears that the Employer is clearly at the low end of the total compensation scale when compared with the approved comparable counties at the high end of the length of service scale. It is also clear that

insurance premiums will be increasing and that the bargaining unit at the higher end of the length of service scale will slide further behind in the area of total compensation if the bargaining unit were to assume more responsibility for such premium payments.

5. Comparability

The Union offers a list of comparable Oregon counties that include one up and one down in population from that of Jackson County with a population of 203,950. Those comparable counties would be Deschutes County with a population of 158,875, and Marion County with a population of 318,150. It is noted that only Deschutes County is within a 50% range in population compared to Jackson County, while Marion County would have approximately a 56% greater population when compared to Jackson County.

The Employer proposes the same comparables as that of the Union, but with one additional smaller county to be included in the comparison. That additional county would be Yamhill with a population of 99,850 which is also within the same 56% population range as Marion County.

Recognizing a few differences in the manner in which both parties arrived at their compensation comparisons, it should be noted that the Union's Exhibit 7 would show the Employer to lag behind a combined Marion and Deschutes County compensation comparison at the 5 year service mark by -3.2% and -2.4% at the 10 year service mark.

The question then is whether or not the selection of comparable counties should be by (a) the "one up and one down" formula as offered by the Union, or (b) by the "all counties within a designated and acceptable range" method as proposed by the Employer. As the Statute addresses the "same or nearest population **range**,"⁴ the arbitrator is inclined to adopt the Employer's comparables where a 56% of population range had been accepted by both parties.

⁴ See ORS 243.746(4)(e) (Emphasis added.)

6. Cost of Living

The parties agreed that the bargaining unit would not see a cost of living wage adjustment in the first year of the contract and stipulated that the applicable CPI for the second year of the contract was 1.4%. The Union presented testimony through Michael Hescok, Senior Deputy Parole and Probation Officer, President of the Union and member of the negotiating team, to report that it was their intention to negotiate a wage freeze in the first year of their contract in order to pursue benefit concessions. These concessions involved the matter of insurance premium contributions and not a change in the actual benefits to be provided under these plans. The arbitrator takes judicial notice of the fact that such economic trading tends to result in a savings to the Employer while providing a valuable monetary benefit to the bargaining unit.

The parties have negotiated future wage adjustments based upon an agreed upon CPI formula. The only remaining unknown factor will be a wage adjustment based on the CPI for the third year of the contract which will range from a low of 1.0% to a maximum of no more than 2.5%. Inasmuch as the parties have agreed upon a realistic cost of living range to be applied to the final year of their contract and neither party has presented evidence to suggest that the current total compensation for the bargaining unit has failed to rise with such index, the arbitrator does not find the CPI –All Cities Index relevant or helpful to the question of the interest and welfare of the public in this matter.

OPINION

Both parties have had the opportunity to provide the arbitrator with evidence and testimony sufficient to persuade the arbitrator as to which LBO best satisfies the criteria under the Statute. Each primary and secondary criteria addressed by the parties has been reviewed and discussed above. Neither party provided a compelling argument relative to the Statute's vague primary criteria relative to the interest and welfare of the public. Each party provided ancillary

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support relative to the secondary factors which in turn would assist in answering the predominant question of the interest and welfare of the public.

The Employer has shown that its comparables of Marion, Deschutes and Yamhill County are most consistent with the criteria set forth in ORS 243.746(4)(e). However, using the Employer's comparables, we find the Employer's total compensation package to be deficient at the high end of the length of service scale. This deficiency becomes even greater when the life insurance and disability benefits are factored into the mix, and when consideration is given to the 5 and 10 year service mark information provided by the Union.

As there is no apparent inability for the Employer to fund the additional \$22,000.00 cost of the Union's LBO over the length of the contract, and where the majority of Senior Deputy Parole and Probation Officer's are nearer the high end of the length of service scale which justifies an increase in the overall compensation package, the Union's LBO more closely retains the status quo in keeping with market conditions. As such, the Union's LBO is deemed to be in the interest and welfare of the public.

ORDER / AWARD

For the foregoing reasons, the arbitrator orders and awards the Union with the LBO that more clearly satisfies the interest and welfare of the public. As such, the Union's LBO will be implemented in conclusion of the parties' 2013-2015 contract negotiations.

Dated: August 15, 2014.

By: 
ARBITRATOR DAVID M. BLAIR