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In the Matter of Interest Arbitration Between)
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MILWAUKIE POLICE EMPLOYEES)
ASSOCIATION,)
(Association),)
)
and)
)
)
CITY OF MILWAUKIE,)
(City).)
)
_____)

EMPLOYMENT
RELATIONS BOARD

OPINION AND AWARD

BEFORE: David W. Stiteler, Arbitrator

HEARING LOCATION: Milwaukie, Oregon

HEARING DATE: April 11 & 12, 2011

APPEARANCES: For the Association:
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RECORD CLOSED: May 16, 2011

OPINION & AWARD ISSUED: June 15, 2011

OPINION

I. INTRODUCTION

The Association and the City negotiated for a successor agreement for about a year but were unable to resolve all their differences. The parties submitted final offers and initiated the statutory interest arbitration procedure. They selected the undersigned as the Arbitrator.

A hearing was held before the Arbitrator on April 11 and 12, 2011 at City offices in Milwaukie. The parties had the full opportunity to present documentary evidence, examine and cross-examine witnesses, and argue their positions. After all the evidence was presented, they agreed to submit written post-hearing briefs. I received their briefs on May 16, 2011, and closed the hearing record.

II. BACKGROUND

The City is a suburb of Portland. It has a population of about 20,000. The City is no longer a full-service city. Parks and recreation and wastewater treatment services have been transferred to Clackamas County (County). Fire services were transferred to Clackamas County Fire District as the result of an election.

Most City employees are in one of two bargaining units. The Association represents sworn police department (Department) personnel. AFSCME represents a general employee unit of 87 City employees. There are also about 20 unrepresented employees.

The Department is budgeted for 37.5 sworn FTEs. That total includes the chief and two captains that are not part of the Association's bargaining unit. Bob Jordan has been the chief for about three years. The unit covers seven sergeants and about 26.5 officers.¹ At the time of hearing, one sergeant position and one officer position were vacant, and there were two officers in the police academy.

¹ There is a half-time motorcycle officer position.
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There are several divisions in the Department: patrol; detective; traffic. The Department has a temporary holding facility, but offenders are generally taken to the County jail. The patrol division operates on a minimum critical staffing basis of at least two patrol officers and one sergeant at all times.

Funding for the Department comes from the City's general fund (GF). In the two prior fiscal years, the City spent over \$1.1 million more from the GF than it took in from tax and other revenue. For the fiscal year ending June 30, 2010, however, the City had a positive GF ending fund balance of more than \$300,000.

In January 2011, the City adopted a policy for a GF reserve of 25% of projected expenditures. According to Andy Parks, who served as the City's chief financial officer from February 2010 to January 31, 2011, a 25% GF reserve level is typical in Oregon local governments.

Wages. The expired contract provided for an annual wage increase of between 3% and 6% each July, based on the CPI-U Portland. The language resulted from an interest arbitration award by Arbitrator Sylvia Skratek in 2002, and the parties continued it in subsequent agreements. As recounted in Arbitrator Skratek's award, the two prior contracts between the parties had included a fixed wage increase in the first year and annual increases of between 3% and 6% based on the CPI-U Portland in subsequent years.

Dog handler position. The City added the dog handler position a few years ago. An officer who was interested in starting a K-9 program in the Department raised \$24,000 from the community for the purchase of a dog and related expenses. Not long after the K-9 program started, the City began providing the dog handler with two hours of paid time off each week as compensation for the extra work involved in feeding and caring for the dog. The expired agreement included that compensation.

About two years ago, Officer Scott Huteson applied and was selected for the dog handler position. He kept track of the off-duty time he spent caring for his dog during the first four months in the position. It averaged over 35 minutes a day.

At some point, the City acquired a second dog for no cost. The first dog was trained for patrol (tracking and protection); the second dog is trained to find drugs. Two officers applied for the second dog handler position; it was awarded to Officer Billy Wells.

Dog handlers get overtime if called out with the dog. The Department's dog handlers may respond to nearby communities if a tracking or drug specialist dog is needed.

SWAT. The City does not have its own SWAT team. Before Jordan became chief, the Department relied on the Portland Police SWAT team if there was a need. Jordan favored a different approach and talked to the County Sheriff about converting the County's SWAT team to an inter-agency team. The sheriff agreed.

In addition to the City and the County, the Oregon City and Canby police departments also participate. All candidates for the team go through the same selection process, regardless of their jurisdiction. The sheriff has the final say on who makes the team.

Two City officers tried out initially. One made the team, but was later discharged by the Department and is no longer with the City. The other also was selected but did not make it through the team's probationary period. A third officer, Detective Lou Strait, later applied and was selected. He currently is the only City officer on the team.

The City pays for SWAT gear and training. Special gear includes a rifle, scope, uniform, and locks for the vehicle. The City is also responsible for overtime costs if Strait is called out for a SWAT deployment outside his regular hours.

Strait spends two days per month training with the SWAT team. He also spends time off-duty in fitness training in order to remain able to pass the SWAT team fitness standard. He contributes \$50 a month from his personal funds to a SWAT team fund, which is used to pay training or other team costs not covered by the various jurisdictions. He personally purchased some equipment, because he

wanted something other than what the City would provide. Strait has been called out for SWAT duty about six times in eight months; none of those calls was within the City's jurisdiction.

Strait's assignment for the Department is detective. He receives a 7.5% contractual premium for that assignment. Under the terms of the expired agreement, an officer cannot receive more than one special assignment pay regardless of how many special assignments the officer has. Strait is currently part of the metro gang task force. In that role, he works out of the Portland Police Department's North Precinct office. He typically has about 15 hours of overtime every two weeks due to task force duties.

TriMet officer. The City has provided officers to TriMet since before Jordan became chief. Currently, one sergeant and two officers are assigned full-time to TriMet. On that assignment, the officers act as part of the TriMet police force, and are under the operational control of TriMet. Most of their activities take place outside the City. About 15 other agencies in the Portland metro area contribute officers to TriMet. TriMet reimburses the City and other jurisdictions that provide officers for the cost of those officers.

Jordan believes that City officers have a broader range of responsibility than officers serving on the TriMet assignment. In his view, the TriMet assignment is outside the Department's core function, and withdrawing from it would not diminish the Department's services to the community.

Officer Danny Hill is one of the three City officers in a TriMet assignment. When he applied for the assignment, he was the only applicant. He is aware, however, that there have been multiple candidates for more recent vacancies. In his experience, his TriMet assignment encompasses the full spectrum of police duties, including investigative work that goes beyond what a City patrol officer does. Hill understands that TriMet used to reimburse contributing jurisdictions at 110% of an

officer's cost, but that TriMet is having some financial difficulty. Reimbursement is currently at 105% of cost.

Court call-back. The expired contract provided for a minimum of four hours pay if an officer was called out for a court appearance outside their regular shift. If the court appearance was within four hours of the officer's shift, this could result in an officer receiving double compensation for the same hours. It came to the Department's attention while preparing for bargaining that this occurred on at least one occasion.

Sgt. Ryan Burdick handles scheduling for the Department. In his experience in that role, where court call-out runs up against an officer's shift, the contractual call-out amount is not paid; instead, the officer receives overtime on an hour for hour basis for the extra time.²

Compensatory time. The expired contract provided that officers could accrue compensatory time up to a maximum of 60 hours. The accrued compensatory time could be used by the officer for time off, or sold back to the City. Officers' right to sell the time back is an unfunded liability for the City.

When officers take accrued time off, the Department still maintains the critical staffing levels. Officers' use of accrued compensatory time makes planning more challenging. The Department does have discretion in deciding whether to grant an officer's request to use accrued compensatory time. Such requests are typically not granted if doing so would cause the Department to incur overtime costs.

Insurance. The expired contract required the City to pay 85% of the premium for officers' health insurance for a specific Blue Cross/Blue Shield plan; officers paid the remaining 15%. For officers who opt for the Kaiser medical plan, the City pays the same dollar amount toward the Kaiser premium that it pays for the Blue Cross/Blue Shield plan.

² Sgt. Jon Foreman, current Association president, agreed that, except in one instance, court call-out has not been authorized if it was annexed to an officer's shift.

The City currently pays 85% of the officers' dental insurance premium for the ODS plan, with officers responsible for 15%. For officers opting for Kaiser or Willamette dental plans, the City pays the same dollar amount toward those premiums as it pays for the ODS plan.

HRA VEBA. The expired contract required the City to participate in an HRA VEBA program. The purpose of the program is to provide employees with a tax-free health reimbursement arrangement to cover otherwise unreimbursed current or future medical expenses. Contract language allows the Association's bargaining unit to have a portion of officers' cost of living increase, longevity pay, or compensatory time contributed to officers' individual accounts in lieu of wages.

Other City employees. The City was negotiating with AFSCME at the same time it was bargaining with the Association. The City and AFSCME eventually reached an agreement on a three-year successor agreement. The agreement provided for no wage increase in July 2010, a 1.5% increase in July 2011, and an increase of 2 to 4% depending on the CPI in July 2012. The prior AFSCME-City agreement had language similar to that in the Association-City agreement providing for wage increases of a minimum of 3% and maximum of 6% based on the CPI.

Under the new agreement, the City continues to pay 85% of the premium for health and dental insurance. AFSCME also agreed to a City proposal to move from allowing employees to contribute a percentage amount to their HRA VEBA accounts to contributing a specific dollar amount from wages to the accounts. This change will be implemented for unrepresented employees when it becomes effective for the AFSCME unit.

III. LAST BEST OFFERS

The Association's last best offer (LBO):

1. All Tentative Agreements to Date
2. Except as modified by the attached articles and except as modified by tentative agreements, current language.

3. Articles 7, 8, 9, 10, 12, 13, 14, 15, and 21 modified per attached language.

The City's LBO:

1. All Tentative Agreements to Date;
2. Except as modified by the attached articles and except as modified by tentative agreements, current contract language;
3. Articles 7 (Hours of Work), 8 (Wages), 9 (Additional Compensation), 10 (Overtime and Compensatory Time Off in lieu of Overtime), 12 (Vacations and Holiday), 13 (Leaves), 14 (Benefits), 21 (Term of Agreement) modified per attached language.

The parties continued to bargain after the LBOs were exchanged and reached agreement on Articles 7, 12, 13, and 21.³ Those issues were not part of this proceeding.

After the parties' post-LBO agreements, there are four articles still in dispute. Those articles cover the subjects of wages, additional compensation, compensatory time, and benefits.

A. Article 8 – Wages

The Association proposes the following language for Section 8.B.:

Effective and retroactive to July 1, 2010, and effective July 1, 2011, all MPEA members will receive a cost of living wage increase in the amount of the CPI-U Portland for the previous calendar year (with a minimum of 3% and a maximum of 6%).

The City proposes the following language for Section 8.B.:

Effective on the first day of the pay period of July 1, 2010, all MPEA members will receive a cost of living wage increase in the amount of one percent (1%).

Effective on the first day of the pay period of July 1, 2011 all MPEA members will receive a cost of living wage increase in the amount of the

³ The parties tentatively agreed to the deletion of the former Article 20, so Article 21–Term of Agreement will become Article 20 under the new agreement.

CPI-U Portland for the previous calendar year with a minimum of one percent (1%) and a maximum of three percent (3%).

Under the Association's proposal, bargaining unit members would receive a wage increase of 3% retroactive to July 1, 2010, the minimum. They would receive a wage increase on July 1, 2011 based on the CPI-U Portland for the previous calendar year with a minimum of 3% and a maximum of 6%; based on the CPI numbers, that increase would also be 3%.

Under the City's proposal, the existing 3–6% guaranteed increase would be deleted, and unit members would receive an increase of 1% for July 1, 2010, and an increase of 1.3% on July 1, 2011 based on the CPI-U Portland for the previous calendar year. The City also proposes to delete language in this section that refers to VEBA contributions. (See Article 14 below.)

B. Article 9 – Additional Compensation

The Association proposes three changes to the special assignment pay chart in Section 9.A. The dog handler currently receives special assignment pay of two hours per week paid time off at the officer's straight time rate. The Association proposes retaining that language and adding an additional 5% of the base police officer pay.

There currently is no special assignment pay for either SWAT or TriMet officers. The Association proposes adding special assignment pay of 5% of base police officer pay for each assignment.

The City proposes one change to Section 9.A: changing the current special assignment pay for the dog handler from two hours per week paid time off to 5% of the base police officer pay. The City does not propose special assignment pay for either SWAT or TriMet officer.

C. Article 10 – Overtime and Compensatory Time Off (CTO) in lieu of Overtime

The Association proposes to modify the cap on accrued CTO in the current Section 10.D. as follows: "Compensatory time may be accrued to a maximum of one

hundred twenty (120) hours at any given time." The Association's proposal doubles the current 60 hours CTO cap. The City proposes no change to this section.

The City proposes to modify Section 10.B. by adding the following language to the subsection on call-back: "Court call back shall not apply to hours worked that are annexed to the beginning or the end of a scheduled shift." The Association proposes no change to this section.

D. Article 14 – Benefits

The Association proposes to modify Section 14.A. to increase the amount the City pays for employee health and dental insurance premiums from the current level of 85% to 95%, and reduce the employee's obligation accordingly. The City proposes no change to this section.

The City proposes to modify Section 14.A. regarding the HRA VEBA program as follows: "The Association as a unit may elect to have a specific dollar amount per employee, per pay period ~~any portion of the member's cost of living increase, longevity pay, or the compensatory time sell back option~~ contributed to the member's individual HRA VEBA account in lieu of actual wage payment." (Underlining and strikethrough in original.) The Association proposes no change to this section.

IV. DISCUSSION AND ANALYSIS

A. Preliminary Matters

1. Claim of error

The City argues that the Association's LBO contains a fatal flaw that essentially bars the Arbitrator from awarding it. The City's contention is that the third section of the Association's LBO lists Article 15 as being modified by attached language in the LBO. However, there is no attached language proposing modifications of Article 15. As the City reads the Association's LBO, Article 15 is missing: (a) it is not covered by the first section because there was no tentative agreement on it; (b) it is not covered by the second section on current contract language because it is specifically listed in the third section; and (c) it is not covered by the third section

because there is no proposed modification. The City claims that this means that there would be no Article 15 in the resulting document if the Arbitrator awarded the Association's LBO.

According to the City, it is "widely agreed" that an interest arbitrator is not permitted to modify a party's LBO.⁴ The City cited Arbitrator Hayduke's analysis that, since it was unclear that an interest arbitrator could correct even an obvious scrivener's error, an award that did so could be subject to legal challenge and thus did not serve the interests and welfare of the public.

I have carefully considered the Association's LBO in light of the cited awards and conclude that this case is distinguishable. In the *Baker County* case, the county erroneously listed the same date for its third year wage proposal as its second year wage proposal. In the *McMinnville* case, the city erroneously listed January 2000 All Cities CPI instead of January 2001 as the basis for its third year wage adjustment. No such error exists in the Association's LBO.

Oregon's process of interest arbitration, by requiring the arbitrator to select one party's LBO on all matters in dispute, is intended to encourage the parties to narrow their differences and perhaps reach agreement before arbitration. Where, as in *Baker County* and *McMinnville*, a party's LBO contains a material error, the statute's purpose may be undermined. There is no claim of confusion or detrimental reliance by the City here.

When read as a whole, there is no material error in the Association's LBO. It includes three basic elements: all TAs; specific proposals on certain articles; and current contract language on everything else. Specifically, it provides "[E]xcept as modified by the attached articles and except as modified by tentative agreements, current language." (Emphasis added.) The attached articles did not contain any proposed modification to Article 15. Thus, the Association's LBO must be read to propose

⁴ Two interest arbitration awards were cited for this proposition: *Baker County and Baker County Law Enforcement Association* (Hayduke 2007) and *City of McMinnville and McMinnville Police Officers' Association* (Wollett 2000).

current language on that article. I conclude that the Association's LBO does not contain a fatal error.

2. Evidentiary objections

The City objects to Association exhibits 14, 18, 19, 20, 21, 22, and 28 as being without foundation. Exhibit A14 concerns private sector pay trends. Exhibits A18, A19, A20, and A21 concern recruitment and retention issues in law enforcement. Exhibit A22 concerns economic data. Exhibit A28 concerns FLSA issues for K-9 officers.

I reviewed my notes of the hearing.⁵ Though I have no record that the City objected to these exhibits at the time they were introduced, I will consider the City's objection on the merits.

There was little, if any, substantive testimony regarding these exhibits. However, it must also be said that there was little, if any, substantive testimony about other exhibits offered by each party, a practice that appears to be the norm in Oregon interest arbitration.

I examined each of the disputed exhibits in detail. Though informative, I found that they did not offer any relevant guidance for determining the issue before me— which party's LBO should be awarded under the statutory criteria. I will retain the disputed exhibits as part of the official record, but they played no role in my decision.

3. Status Quo

The Association argues that one of the factors an interest arbitrator *must* consider is whether a party is seeking to change the status quo, and if so, whether that party has shown a "compelling reason" for the proposed change.⁶ In fact, the Association states that this is the second factor to be considered after the interest and welfare of the public. Status quo is, however, not one of the express criteria for interest arbitration.

⁵ The parties chose not to have the hearing transcribed by a court reporter. There is no verbatim record of the proceeding.

⁶ *City of Sutherlin and Sutherlin Police Association* (Greer, 2009).
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Nonetheless, over the years, interest arbitrators have sometimes placed a heavier evidentiary burden on the party proposing to alter existing contract language or other aspects of the status quo. The rationale is that this best promotes the purposes of the interest arbitration process and the PECBA overall. I agree that stability and predictability are valuable in the labor-management relationship and continuation of the status quo may serve those goals. Because this is not a statutory factor, however, I believe that it must be applied as a balancing tool. That is, all things being equal under the statutory factors, the status quo proposal should ordinarily be favored.

Both parties here have raised the status quo argument when it suited their purpose regarding a particular issue. They also tended to ignore or downplay it when it supported the opposing party. As discussed below, application of the status quo argument cuts both ways.

B. Application of Statutory Factors⁷

1. Interest and Welfare of the Public

The law requires an interest arbitrator to give "first priority" to "the interest and welfare of the public" in deciding which party's LBO to award. That phrase is undefined and more than a little subjective. In most cases, an argument could be made that both parties' LBOs serve the public interest, depending on how that term was interpreted. ORS 243.742 offers some guidance in its reference to considering both the "high morale" of strike-prohibited employees and the "efficient operation" of their departments. From this, one could conclude that the interest and welfare of the public is best met by balancing the employees' right to fair compensation against the employer's ability to operate and provide other vital services.

A significant majority of post-SB 750 interest arbitrators has concluded that, in the absence of a statutory definition of public interest and welfare, the best way to

⁷ The statutory criteria on which an interest arbitration award are set forth in ORS 243.746(4), and need not be recited in detail here.

give meaning to the phrase is to consider the remaining factors. In other words, the interest and welfare of the public is determined by deciding which party's LBO is favored by application of the secondary criteria. The parties recognized this prevailing interpretation of the statute in their arguments, and I will follow it here.

2. Ability to Pay

The statute requires consideration of the "reasonable financial ability" of the employer to pay for the proposed LBOs, while also considering its other services and priorities. The statute also allows an employer to set aside a "reasonable operating reserve."

The City argues that the evidence established that the City's expenditures were outpacing its revenues, an unsustainable situation. The shortfall of \$1.2 million that the City projected during the 2002 interest arbitration has grown to \$1.3 million. The City's GF is down almost 13% because of decreased property tax collections. The Department's budget is about 60% of the GF, and most of that amount is from personnel costs.

The Association argues that the City has the burden of establishing that it cannot afford the Association's LBO. Adequate funding for the police should be a City priority. The Association contends that the City had a GF ending balance of \$1.7 million on June 30, 2010, of which only \$1.4 million was budgeted for the next fiscal year, leaving over \$300,000 to pay the cost of an increase. In addition, the Association says that the evidence shows a projected surplus of \$600,000 in revenue over expenses. Whether either the City's or the Association's costing analysis is used, the Association asserts that there is ample revenue to fund its LBO.

There is no reasonable dispute that in recent years the City has spent more from its GF than it took in. It is also undisputed that for the fiscal year ending June 30, 2010, the GF balance ended on the positive side of the ledger by over \$300,000. The City is projecting a GF surplus for the current fiscal year.

The parties submitted documents costing the LBOs. Their respective estimates of the first year costs of the Association's LBO differ by about \$64,000. The City estimates that the Association's LBO would cost \$189,408; the Association figures that its LBO would only cost \$125,403. Whichever estimate is used, it appears that the City's LBO (by its estimate of \$66,420) would be about one-half to one-third as costly as the Association's.

The evidence does not support a conclusion that the City cannot afford the Association's LBO. The City pointed out that it has a policy of maintaining a reserve of 25%, and it is below that amount. It is fiscally prudent for the City to maintain an adequate reserve, especially in these uncertain economic times. But that policy was adopted in January 2011 with interest arbitration pending. If an employer could overcome other statutory factors by merely adopting restrictive fiscal policies during or after bargaining, no negotiations would occur without such policies being adopted.

I find the City has the ability to pay for either LBO, and this factor does not significantly weigh in my decision.

3. Recruitment and Retention

The statute requires consideration of a public employer's ability to attract and retain qualified employees at provided compensation levels.

The City argues that this factor does not support the Association's LBO. According to the City, the evidence was that officers who leave the Department are not leaving for primarily economic reasons. The City also contends that the evidence shows that there have been an ample number of applicants for recent vacancies.

The Association argues that the public interest is best served by the LBO that will help the City attract and retain officers, and that its LBO would do that because it has better economic provisions. The Association cites studies that show officers typically change jobs for more money. According to the Association, the City's contention is flawed because it looks to the past rather than projecting what will happen in the future.

There is no dispute that it is costly to hire new officers. There is a cost to recruitment. The City pays for medical and psychological examinations. The officer is paid while attending the police academy, which takes 16 weeks. After returning from the academy, a new officer will spend around nine months patrolling with a field training officer before being ready to go solo. Having made such a significant investment, it is in everyone's interest to retain that officer.

Within the past three years, six officers have left the City. Only one of those left for another police agency; he went to Portland. Of the remaining five, three were terminated, one resigned in lieu of termination while on probation, and one resigned for personal reasons.

Within that same period, the City had one recruitment. There were 180 applicants. That number was cut to a little more than 100 for the written test. Four were eventually hired. Two of those are no longer with the City (the two resignations above); two are in the academy.

These numbers do not support a conclusion that the City has a recruitment and retention problem. There is no evidence of an exodus from the Department for higher paying jobs elsewhere. One officer did leave for Portland, but his reasons for doing so are not clear in this record. It may be assumed that he will earn more in Portland than he did at the City, but it is also a fact that a large metropolitan police force offers more opportunities for advancement and diverse experience than available at the City. And it is a fact of life that smaller suburban or rural police departments often serve as training grounds for larger agencies. Nothing in either LBO will change those facts.

I find that the City's ability to attract and retain qualified officers is not a relevant factor in selecting an LBO in this case.

4. Total Compensation and Comparables

The statute requires the arbitrator to consider the overall compensation—wages and direct or indirect monetary benefits—received by the employees at issue and then

compare that with the overall compensation received by similar employees in comparable communities. Discussion of the comparison of overall compensation begins with an analysis of comparables.

The statute requires consideration of communities "of the same or nearest population range." It provides no further guidance. Since 1995, interest arbitrators have applied a variety of different standards to determine which communities are appropriate comparators. No single approach has gained universal approval.

The parties agreed on six comparables: Oregon City; Tualatin; West Linn; Forest Grove; Sherwood; and Canby. The first four have a larger population than the City, though Forest Grove's is less than 1,000 more. Sherwood and Canby are smaller. All but Forest Grove are located in reasonably close proximity (less than 25 miles) to the City as part of the south Portland metropolitan area.⁸

There is a dispute about whether the parties agreed to a seventh comparable, Wilsonville. The Association contends that during bargaining the City proposed using Wilsonville. The City asserts that it did not.

The evidence on this point is not entirely clear. Neither party's chief negotiator (the advocates in this proceeding) testified. The testimony of others who were at the table was inconclusive.

Each side introduced bargaining notes. The Association's notes show a list of comparables purportedly suggested by the City. It matches the list offered by the City here, except that it includes Wilsonville and does not include Sherwood. The City later agreed to use Sherwood. The City's notes show the comparables purportedly proposed by the Association. It matches the list offered by the Association in this proceeding. Two of the comparables on that list—Lake Oswego and Wilsonville—are circled, but there is no explanation given. It is clear that the City has never agreed to Lake Oswego as a comparator.

⁸ Though geography is not a statutorily qualifying factor, many arbitrators, like the parties here, recognize that proximity may be a relevant labor market issue. That said, it was not made clear why they agree that Forest Grove is an appropriate comparator.

This limited and somewhat conflicting evidence suggests that, at least in April 2010, the City was thinking about using Wilsonville as a comparator. Obviously, much time passed since that bargaining session. Neither list of comparables was TA'd. Whatever the situation in April 2010, there is no doubt that by April 2011 the City did not agree that Wilsonville was an appropriate comparator.

Wilsonville does not have a police department. It contracts with the County for police services. Oregon interest arbitrators have come to differing conclusions about whether the statute allows comparisons between different governmental subdivisions in contexts similar to this one.⁹

Arbitrator Nancy Brown ruled in 2006 that Wilsonville was an appropriator comparator for Oregon City, saying " * * * the statute speaks to Cities and makes no exclusion for Cities that may contract out either Police or Fire services."¹⁰ In 2008, Arbitrator Norm Brand ruled that the state, which provides parole and probation services in certain counties, was not an appropriate comparator for Josephine County. Brand pointed out that the statute divides comparable communities by political subdivision, concluding "[T]he statute does not permit comparisons between different political subdivisions."¹¹

Though both interpretations have merit, I agree with Arbitrator Brand's reading. Using a county as a comparator for a city may skew comparisons because of the different budget structures, revenue sources, and operational priorities in the different political subdivisions. As Arbitrator Brand stated, the statute "specifically requires counties to be compared to counties." The compensation of employees of the County Sheriff's Department is based on different comparables than that of the City's police. If the legislature believed that cross-jurisdictional comparisons were appropriate, there would have been no need to break out the political subdivisions.

⁹ It appears to be generally accepted by Oregon interest arbitrators that it is appropriate to use a fire district that provides services to various cities that do not have fire departments as a comparator for a city fire department, however.

¹⁰ *Oregon City Police Association and City of Oregon City* at 5.

¹¹ *FOPPO and Josephine County* at 13.

Further, the law admonishes interest arbitrators to compare overall compensation of the subject employees with "employees" performing similar services in comparable communities. Wilsonville is an appropriate comparator for the City based on population—its population is within 3,000 of the City. It is less than 25 miles away, and is also located to the south of Portland near mutual comparators Canby and Sherwood. However, Wilsonville does not have "employees" performing police services, and thus is not an appropriate comparator for the City under the statute. I will not consider Wilsonville—or the County—as a comparator.

The Association proposed one additional comparable, Lake Oswego. It is larger than the City, but is the City's nearest neighbor among possible comparables. The City uses the Lake Oswego dispatch office, and Lake Oswego sometimes provides K-9 officer support to the City.

I agree with the City that Lake Oswego is simply too large to be a reasonable comparator. Though a close neighbor and one with some operational ties to the City, Lake Oswego's population is almost 16,000 more than the City's, a difference significant enough in this context that it cannot be said to be within "the same or nearest population range."

The City proposed three additional comparables: Newberg; Troutdale; and Gladstone. Newberg is larger than the City; the other two are smaller. Newberg is not reasonably proximate to the City, though it is about the same distance as Forest Grove. Troutdale and Gladstone are closer, with Gladstone the City's second nearest neighbor after Lake Oswego.

I agree with the Association that Gladstone, though a close neighbor of the City, is too much smaller to be a fair comparator. I considered adding Newberg. It is at least as proximate as Forest Grove and is a better fit geographically since it is closer to the south metro area and adjacent to Sherwood, a mutual comparable. In the end, however, I left it off because it would have thrown the balance between larger and smaller communities further off since it is also larger.

After examining all the arguments about the comparables that were not mutually accepted, I have added only Troutdale to the list. Troutdale fits well on a population basis, falling between Sherwood and Canby among smaller comparators. It is closer to the City (22 miles) than Newberg, another factor that favors its inclusion over Newberg. While it is not part of the south metro area, neither is Forest Grove, which the parties selected.

The resulting list of comparables is Oregon City, Tualatin, West Linn, Forest Grove, Sherwood, Troutdale, and Canby. With the exception of Oregon City, whose population is slightly more than 10,000 higher than the City's, the other six fall in a narrower range from 5,230 more to 5,700 less.¹² That final list of comparators thus has three larger, three smaller, and one roughly the same size as the City.

The parties each provided several exhibits comparing the overall compensation of City police to their respective comparators at several benchmarks—5, 10, 15, and 20 years of service; the same years of service with an AA degree and/or intermediate certification; and the same years of service with a BA degree and/or advanced certification. Aside from the differences in comparators, the parties used the same basic methodology in making the comparisons.¹³

By the City's calculations, considering all 12 benchmarks, it is 0.4% behind the average of its list of comparators in overall compensation before considering the LBOs. The City figures that adding its LBO brings it to 0.5% above the average of its comparators. The City's calculations show that if the Association's LBO was used, the City would be 4.8% above the comparators' average.

The City repeated its calculations with the inclusion of the County (as the proxy for Wilsonville). Those figures show the City 1.1% behind the adjusted list of

¹² But for the fact that the parties both use Oregon City, I would exclude it as too large, since there are adequate comparators within a range of less than 6,000 in population either way.

¹³ Dana Bennett, an HR/LR consultant with LGPI, did comparisons for the City. She used to do the same work for the former law firm of the Association counsel.

comparators before the LBOs are considered. The City would be 0.2% behind using its LBO and 4.1% ahead using the Association's LBO.

Finally, the City also went through this exercise using the Association's list of comparators and calculated that it was 4% behind the average with no LBO, 3.1% behind with the City's LBO, and 1.3% ahead with the Association's LBO.

The Association provided a similar series of charts on overall compensation, though it only shows how the City fares in comparison to its list of comparators. The Association's figures show the City at 5.3% behind its list of comparables. The Association did not show the impact of either LBO.

I examined A11 and C40 at the 5 year service level to determine the reason for the variance between the City's calculation that it starts out 4% behind and the Association's calculation that the City is 5.3% behind. Two lines accounted for most of the difference. The Association included a January 2011 wage increase for the County; all the other numbers on both charts are as of July 2010 (the City has a September 2010 date for Tualatin, but both parties had the same base wage figure). The Association also shows a much lower base salary figure for the City than appears on the City exhibit. A review of the record did not account for that discrepancy. For consistency of the dates, I relied on the City's exhibits for comparison purposes.

Looking at the seven comparators (the six mutuals plus Troutdale), and calculating the aggregate market average in the same manner as the parties, I found that the City is 1.7% behind the market average in overall compensation for July 2010 before the LBOs are considered. Adding in the City's LBO puts the City 0.5% ahead of the comparators. Using the Association's LBO, the City would be 3.4% above the market average.

Because several of the comparators' contracts are currently open and July 2011 increases not yet established, second year comparisons are less precise. Based on either fixed increases or CPI-based formulas in comparators' contracts that are settled, it appears that the market average for July 2011 increases will be between 2% and

3%. With the City's offer for July 2011 calculated at 1.3%, this would put the City roughly 1% to 2% behind its comparators on June 30, 2012, which is about where it started this contract period.

According to the City, it is a generally accepted industry standard that anything within 5% of the average either way is within market. Since its LBO would keep police at or above market, the City argues that there is no justification for awarding the Association's LBO. The Association argues that, looking at base wages, the City currently ranks second among comparators; it would fall in the ranks under either LBO so there is no justification to change the status quo.

By any measure, the City police are behind the market when comparing their compensation as of June 30, 2009 to comparators' July 2010 rates. The City's proposed increases, while not overly generous, would put the police slightly ahead of the comparators for the July 2010 increase. Its offer does not keep pace with comparators in the second year, putting the City again behind the market, albeit by a relatively small amount.

The Association's proposed increases, on the other hand, would put the police 3.4% ahead of its comparators for July 2010. Its wage formula, which guarantees at least a 3% increase in July 2011, would likely increase that gap by at least 1%.

These are not big percentage differences. But in the current economic context, the spread between a 3.4% and a 0.5% edge over market is significant. I do not find support in the record for a compensation increase that would move the City that far over market.

Another way to consider this factor is to analyze how the City ranks against its comparators in overall compensation. Using the same 12 benchmarks and the same calculation methodology—averaging the rankings to produce an aggregate overall ranking—I find that the City ranks sixth on average in overall compensation before considering the LBOs. The City is ahead of Sherwood and Troutdale and behind West Linn, Tualatin, Oregon City, and Canby. When the City's LBO is added in, its

ranking improves fractionally, but not enough to move it above sixth. If the Association's LBO was added, the City would rank second on average, well above its starting position. There is no evidence supporting a bump in the rankings of that magnitude.

The City's LBO puts the police above the market average for the first year and maintains its existing ranking against the comparators. It is troubling that, under the City's offer, the police fall back in year two, but at least they would maintain their relative position to the market that existed in June 2010 when the current contract expired. On the other hand, the record does not support an economic package that moves the City above its comparators and increases its ranking against comparators as the Association's does.

I find that a comparison of the overall compensation favors the City's LBO by a slender margin.

(a) Article 8 – Wages

The Association proposed to continue the current language providing for wage increases in July of each year based on the preceding year's CPI increase, with a minimum increase of 3% and a maximum of 6%; this would result in wage increases of 3% and 3%. The City proposes to provide a 1% increase for the first year, and a second year increase based on the preceding year's CPI increase, with minimum increase of 1% and maximum of 3%, which would mean a 1.3% increase for the second year.

The Association argues that the status quo favors its proposal. The City has not proven that the existing language is unworkable and there is no evidence that the City has "bought" its proposed change with some other benefit or increase. According to the Association, the secondary criteria support its proposal even though the CPI increases have been small.

The City argues that the comparators do not support the Association's proposal. Conceding that the Association's proposal is the status quo, the City

contends that the times have changed since that language was created in 2002, and points out that the statute does not require the status quo to be maintained. According to the City, the secondary criteria do not support successive 3% increases.

The City has the ability to pay for either wage proposal, though its proposal would obviously have less impact on the budget. While higher wages might make it easier for the City to attract and retain officers, there is no evidence that wages have played a role in the City's ability to recruit or retain. Comparing base wages, it appears that the City's wage offer would put it less than 1% ahead of the comparators for the first year; the Association's wage proposal would put the City about 2.5% ahead. The City's offer is more than the CPI; the Association's proposal is more than double the City's.

The Association relies strongly on its status quo argument, and that argument does carry weight. The formula has been in the contract since being awarded in the 2002 interest arbitration. However, the structure of the City's proposal—fixed percentage in the first year with a CPI based formula in the second—also harkens back to prior contracts. In 2002, Arbitrator Skratek was faced with a proposal from the City for a fixed percentage increase in each year and a proposal from the Association based on the 3% to 6% formula language. Neither precisely replicated the status quo, which was a fixed percentage increase in the first year and a variable CPI-based increase thereafter. She found that the Association's proposal, using the same formula language, continued the important established practice of a variable wage range.

Here, both proposals include language providing a variable wage range. The difference is in the numbers. The Association proposes the current numbers and the City proposes numbers that more accurately reflect the CPI trends. Language that provides for a minimum increase of 3% regardless of the CPI changes is essentially a guaranteed 3% increase during a period where the CPI is trending less than 3%. On balance, I find that the weight of the evidence supports the City's proposal on wages.

(b) Article 9 – Additional Compensation issues

Special assignment pay – Dog handler. The Association proposes to add an additional 5% of the base police officer rate to the existing two hours a week of paid time off as special assignment pay for the dog handler. The City proposes to delete the current rate of two hours of straight time and substitute 5% of the base police officer rate.

A regular workweek for a City police officer is 40 hours, so two hours of straight time equates to a 5% premium. Thus, the Association is essentially seeking to double the amount of special assignment pay for the dog handler, while the City is basically seeking to retain the status quo.

The Association bases its proposal mainly on the testimony of Huteson. He testified that he maintained a log showing that he spent over 30 minutes a day off-duty caring for the dog. The Association asserts that its proposal best serves the interest and welfare of the public because it would more accurately compensate dog handlers for the four plus hours of off-duty time per week required to care for a dog.

The City argues that increasing compensation for the dog handler is not justified under the comparables. Four of the parties' comparables do not have a dog handler or K-9 officer. Six of those that do provide either a 5% premium in pay or an equivalent amount of paid time off. Only one—the County—provides a higher premium of 15% (5% plus an hour a day of paid time off). Jordan believes the position is a desirable one, and has not heard complaints from current or past dog handlers about compensation.

The amount of money at issue for this proposal is not particularly significant. The City does not claim that it does not have a reasonable financial ability to pay for the proposal.

There is no evidence that the City has had difficulty attracting and/or retaining dog handlers due to the current premium. Huteson, one of the two dog handlers, believes he should receive compensation that more closely reflects the amount of off-

duty time he puts in working with the dog. However, there is no evidence that either he or Mills are unwilling to remain in the position if that compensation does not materialize. The City had no difficulty finding another officer for a dog handler position when it acquired the second dog.

The comparables likewise do not support an increased premium for this assignment. Regardless of which group of comparables is considered, the accepted rate for K-9 officer assignment pay is 5% with only one outlier.

The contract has provided the equivalent of a 5% premium for this assignment. None of the statutory criteria favors an increase in the premium. Other than one of the current dog handler's understandable belief that he should receive a higher rate, the Association has produced no compelling reason to support its proposal.

Special assignment pay – SWAT. The Association proposes a premium of 5% of base police officer pay for as long as an officer is assigned to the SWAT team. The City proposes no premium for SWAT.

The Association points out that its proposal would have no cost to the City at this time because the only City officer on the SWAT team is Strait and he already receives incentive pay as a detective. The Association also argues that the inter-agency concept on the County's SWAT team is new and other participants have not yet had the opportunity to bargain in an incentive.

The City relies mainly on the fact that none of the comparables, even those suggested by the Association, provides special assignment pay for the SWAT team.

During the period that the Association and the City were bargaining, CCPOA was in or preparing for bargaining with the County. CCPOA prepared a document to support a proposal for SWAT premium pay. That document included a list of premiums paid in other jurisdictions, some in Oregon and some in Washington. Only two of the jurisdictions were city police departments; the rest were counties. Neither of the two city departments—Portland and Salem—is on either party's list of

comparables. According to the document, Portland pays a base premium of 6%, and 10% when an officer is on-call. Salem pays a premium of 2.5%.

There has been no premium pay for the SWAT team in the past. However, the City only began participating on the County's team a couple of years ago. This change in circumstances tends to favor the Association's proposal.

The SWAT team, however, is not like other assignments that are within the City's control. It is not clear whether the Department has the ability to limit the number of its officers who can apply for SWAT team positions. The ultimate decision about who makes the team is the sheriff's; the City has no role in the selection process. This lack of control mitigates the fact that Strait would not get the premium.

The determining factor is the comparables. Even accepting the Association's contention that the inter-agency concept is so new that participating agencies have not had time to bargain over incentive pay, I find it telling that the County, which created and controls the team, does not pay an ongoing premium. Instead, it pays its team members double time when they are called out for SWAT duty. Based on Strait's testimony that he has been called out about six times in eight months, the amount paid by the County is far less than a regular premium of 5%. I find that the weight of the evidence does not support the Association's proposal.

Special assignment pay – TriMet. The Association proposes a premium of 5% for TriMet officers. The City does not propose a premium for the assignment.

The Association argues that, contrary to the City's contentions, TriMet officers actually have a broader scope of duties than City officers. In the Association's view, TriMet officers' duties are comparable to those of detectives, who do receive premium pay. The Association also stresses that the TriMet officer positions do not affect the City budget because TriMet reimburses the City for more than the cost.

The City responds that Tualatin is the only one of either party's group of comparators that provides premium pay for TriMet officers. The City also points out

that, without the reimbursement, these positions would not exist because there is not enough money in the Department's budget to fund them.

The City does not pay for the TriMet officers, so the addition of a 5% premium would not adversely affect City finances. Recruitment and retention in the positions does not seem to be an issue. There is some dispute over the nature of the work. Jordan believes it is less complex than City patrol officers; Hill contends that the lack of a TriMet detective division means that TriMet officers are required to do more investigative work than City patrol officers. The City is correct only one of the comparables pays a premium.

On balance, I am persuaded that the TriMet officers' duties warrant a premium. My view on that is bolstered by the fact that the officers' costs do not affect the City's budget. I find that the evidence supports the Association's proposal.

(c) Article 10 – Court call-back

The City proposes to insert language eliminating the minimum four-hour pay requirement when court call-back immediately precedes or follows the officer's shift. The Association proposes no change to existing language.

The City contends that the existing language, if strictly interpreted and applied, would require double payment for certain hours. For example, if an officer's shift started at 2 p.m. and the officer was called to court at 1 p.m. and claimed the call-back pay, the City would essentially be paying twice for the first three hours of the officer's shift. The City concedes that, with one exception, the language has not been applied literally, but it points out that arbitrators often hold that clear contract language trumps a prior practice that is inconsistent.

According to the Association, there is no need to change the language because the practice has not been to pay the four-hour minimum where the call-back was annexed to an officer's shift. The Association asserts that the City has not satisfied its burden of justifying a change in the status quo.

The City's concern about a possible adverse grievance arbitration decision has merit. Arbitrators are not of one mind on the extent to which a past practice will be found to have essentially amended clear contract to the contrary.¹⁴ Though the Association has not sought to enforce the letter of the contract to this point, there is nothing to prevent it from doing so in the future. The evidence showed that in at least one instance an officer received the four hours of call-back in the circumstances the City is seeking to avoid, so the City's desire to change the language is not groundless.

The Association acknowledges that the practice and the contract language are out of sync. To avoid the potential of a future dispute over whether the language should prevail over the practice, it makes sense to change the language to reflect the practice. Since the Association agrees that officers should not be receiving the four-hour call-back when the court appearance is annexed to their shifts, employees will not be adversely impacted by this change. I find the evidence supports the City's proposal.

(d) Article 10 – CTO cap

The Association proposes to raise the cap on compensatory time accrual from 60 to 120 hours. The City proposes no change.

The Association argues that the change will not affect the City because it retains the discretion to grant or deny CTO, and it does not backfill for employees on CTO if it would result in overtime. The Association further argues that the City failed to prove why the proposal would be harmful to City operations or finances. The proposal allows officers more time off, which the Association contends should tip the balance in its favor.

The City's position is that there is no justification for doubling the amount of compensatory time employees are allowed to accrue. The City points out that none of

¹⁴ See *Elkouri & Elkouri: How Arbitration Works*, 6th Ed., Ruben, ed., 627-629 (BNA 2003).
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the comparables has a cap that high and no other City employees can accrue that amount.

It does not appear that there would be a significant cost to the City under the Association's proposal. However, increasing the cap to 120 hours would put the City well above the average of the comparables. If all 11 of the comparables are considered, the average is 72 hours; if only the mutual comparables are considered the average is 65 hours. While the City is behind the comparables either way, it is not so far below the average that a jump to 120 hours is justified. These facts do not provide a compelling reason for a change, particularly of this magnitude. I find that the facts do not support the Association's proposal.

(e) Article 14 – Insurance

The Association proposes to increase the amount the City pays for employees' medical and dental insurance premiums from 85% to 95%. The City proposes no changes to the existing 85/15 split for premium payments.

The Association claims that premium costs are a big part of the reason that the police are behind the comparators on overall compensation. The evidence shows that none of the comparators, whichever group is considered, has an 85/15 split. According to the Association, a 95/5 split is the norm for police, which constitutes a compelling reason to change the existing formula.

The City counters that if the Association's insurance proposal were awarded, it would move the police further ahead of the market. According to the City, it is necessary to consider other aspects of compensation as well, and the police receive benefits such as deferred compensation and longevity that other comparators do not. The City contends that its insurance benefits are better than the market, and that it would be unfair to other City employees to pay more of the premium for police. The City also disputes the numbers used by the Association for its cost comparison.

Insurance is an important element of any economic proposal in bargaining. Making comparisons, however, is not easy. There are many components to each

insurance plan other than premium cost–deductibles, prescription coverage, out-of-pocket costs, etc.–and no two plans are alike. Consider the comparables. None offers the same medical plan. Deductible levels are different; prescription coverage varies; out-of-pocket costs range from a high of \$15,000 to a low of \$1,000.

Those differences explain the focus on premium share. The premium amount paid by the employer reflects the most direct monetary benefit to the employee, even if the insurance coverage is not as good and will end up costing the employee more than a better plan on which the employer paid less of the premium.

On a premium share basis, the current 85/15 split does not measure up well against the mutual comparables. Sherwood at 87/13 is the closest to the City. The others are at 90/10 or better. I do not agree, however, with the Association's claim that a 95/5 split is the norm for police.

Based on what the employee's pay, the City fares even less well. Looking at the comparables, employees do not pay more than \$200, with a range from \$0 to \$199.94; the City police pay \$245.66.¹⁵

I find that these variances from the market provide substantial support for the Association's insurance proposal. Indeed, if this were a single-issue interest arbitration on insurance, I would award the Association's LBO.

(f) Article 14 – HRA VEBA (also Article 8)

The City proposes to delete the reference to the VEBA account in Article 8, which provides that the unit can vote each year on what percentage of their cost of living increase they want contributed to their VEBA accounts. The City also proposes to modify Article 14 to provide that the Association as a unit can choose a specific dollar amount of the deferral and delete the option of selecting the source of the contribution. The Association proposes no changes to the VEBA language in either article.

¹⁵The Association asserts, based on a document it says came from the City, that employees pay over \$300 a month. I find the City's evidence in this regard to be more reliable, particularly given that the Association used the \$245 figure in its overall compensation analysis.

The City says it made its proposal based on the recommendation of its VEBA consultant. The consultant advised the City that moving away from a percentage deferral to a fixed dollar amount is a best practice because a specific dollar deferral is considered more equitable to lower paid employees in the program.

The Association did not address this proposal in its post-hearing brief. I must assume that this omission should not be viewed as a concession on the merits of the proposal. If the Association was no longer in opposition, it had the opportunity to reach agreement with the City before or even during the hearing.

The nature of the record makes analyzing this issue somewhat difficult. The City, as the proponent of the proposal, offered little evidence in support, other than the consultant's recommendation. The Association offered essentially no evidence in rebuttal.

The statutory criteria offer little guidance either. The proposal would not appear to affect the City's financial position, since this is a deferred compensation program. There was no evidence offered on recruitment and retention or comparables relative to this issue, though the City did point out that AFSCME agreed to the change. It is related only tangentially at best to CPI changes.

Under these circumstances, I am not persuaded that the City made the case for changing the existing language. I would have been more inclined to the City's position—from a percentage to a flat dollar amount—but for the proposal to delete the employees' option to choose the source of the deferral. Being able to elect to use monies other than part of the cost of living increase seems like a valuable benefit, especially when cost of living increases are small, and I do not find any evidence justifying that part of the proposal.

5. Cost of Living

The statute directs interest arbitrators to consider the CPI-All Cities Index in evaluating the LBOs. The parties have stipulated to the use of the CPI-U Portland.

The language in the expired agreement calls for wage increases on July 1 each year based on the CPI for the prior calendar year. The 2009 cost of living as measured by the CPI-U Portland was 0.1%. The 2010 cost of living was 1.3%.

The City points out that its offer of a 1% increase for July 2010 exceeds the 2009 CPI and its offer of a 1.3% increase for July 2011 matches the CPI. The City also introduced evidence showing that over the last 10 years, the raises received by the Association have exceeded the CPI by 8.5%, a total that would increase to over 13% if the Association's LBO were awarded.

According to the Association, the City's look at how police have fared in the past is irrelevant to the question here. The Association sees the Arbitrator's duty as deciding which LBO best preserves an employee's spending power. The City's LBO will not do that because increases under the contract always trail the actual CPI and more recent information suggests that the current cost of living is higher,

Both LBOs keep the employees ahead of the CPI (at least based on the parties' prior practice of using the prior year's CPI), the City's by a little, the Union's by two or three times. I am mindful that costs for certain goods and services have increased by more than the 2010 CPI, but the parties have historically set wages looking back rather than at current data. Given that the Association's LBO exceeds the cost of living, either looking back as the contract language does or considering projected increases, I find that this factor slightly favors the City's LBO.

C. Conclusion

As other arbitrators have noted, Oregon's total package LBO approach sometimes puts interest arbitrators in the position of having to select a package that contains individual elements that are not favored under the statutory analysis. That is true here. There are parts of each party's LBO that I would not select if my award were to be made on an issue-by-issue basis. Since I must select one party's total package, however, I am required to select an LBO containing elements that I find less than compelling under the statute.

The scope of the unresolved issues also played a part in my decision. As discussed above, if the sole unresolved issue was insurance, the Association would have a winning case.

The decision was not that simple, however, because the Association's insurance proposal cannot be viewed in isolation. In addition to the insurance proposal, the Association sought a generous (by CPI standards) wage proposal, three new types of incentive pay, and double the amount of compensatory time accrual. Apart from the wage proposal, its remaining proposals are all significant changes from the status quo. While an increase in insurance contribution and perhaps the TriMet incentive are warranted, the total package is simply too much.

Having considered the parties' proposals in light of the secondary criteria, I find that the City's LBO best serves the interest and welfare of the public. Based on the whole record and my findings discussed above, I conclude that the City's LBO should be selected under ORS 243.746(4). I will issue an award ordering the parties to adopt the City's LBO.

AWARD

Pursuant to ORS 243.746(4) and for the reasons explained in the foregoing Opinion, I award the City's last best offer and order that it be adopted by the parties.

Respectfully issued this 15th day of June, 2011.



David W. Stiteler
Arbitrator