

BEFORE ARBITRATOR ROSS RUNKEL

In the Matter of the Interest Arbitration )  
 )  
 between ) ARBITRATOR'S OPINION  
 ) AND AWARD  
 CITY OF COOS BAY, OREGON )  
 )  
 and )  
 ) March 13, 2006  
 INTERNATIONAL ASSOCIATION OF )  
 FIREFIGHTERS LOCAL #2935. )  
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HEARING: January 18, 2006  
Coos Bay, Oregon

HEARING CLOSED: February 18, 2006

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## INTRODUCTION

This matter came before me as arbitrator selected by the Parties using the procedures of the Oregon Employment Relations Board. This is an interest arbitration designed to resolve a dispute as to the terms to be included in the Parties' 2005-2008 collective bargaining agreement. The matter is controlled by the Oregon Public Employees Collective Bargaining Act, ORS Sections 243.650 et seq. A hearing was held on January 18, 2006 in Coos Bay, Oregon. Each party presented witness, testimony, exhibits, and arguments. The Parties filed post-hearing briefs by mail on February 17, 2006, and the hearing closed when the briefs were received on February 18, 2006.

## OPINION AND AWARD

### 1. LAST BEST OFFERS

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

The Association's last best offer was as follows:

Current contract language except:

1. All tentative agreements reached to date
2. Article 4:
  - A. Effective July 1, 2005, the wages for all bargaining unit employees shall be increased by three percent (3%).  
Effective July 1, 2006, the wages for all bargaining unit employees shall be increased by three percent (3%).  
Effective July 1, 2007, the wages for all bargaining unit employees shall be increased by three percent (3%).
3. Article 7: Effective July 1, 2005 an additional 1% for Fire Officer 1.
4. Article 12: current contract language except:

- A. The City agrees to maintain the current medical, dental and vision benefit plans and terms regarding employee premium cost-sharing until June 30, 2006. Effective July 1, 2006, The City agrees to provide medical insurance for employees and their dependents that is equal to or better than Lifewise, \$4000 deductible, HSA plan. The City shall fully pay the premium for this plan and shall pay 100% of the deductible for this plan. The City may accomplish this by placing 80% of the deductible in the employee's individual HSA and the remaining 20% of the deductible into a VEBA, or implement a similar plan for the employee's use for any outstanding medical charges. The City will initially, on July 1, 2006, deposit 5/12ths of the deductible into the employee's HSA. The City will begin paying 1/12th into the employees HSA and VEBA as part of the payroll process in January, 2007. On July 1, 2006 the City will provide a one time \$1000 transitional payment to all bargaining unit employees. Effective July 1, 2006 the City shall maintain fully paid dental and vision plans which are equal to or better than the plans currently in place.

The City's last best offer was as follows:

Article 4:

- A. July 1, 2005, the wages for all bargaining unit employees shall be increased by three percent (3%);  
July 1, 2006, the wages for all bargaining unit employees shall be increased by three percent (3%);  
July 1, 2007, the wages for all bargaining unit employees shall be increased by three percent (3%).

Article 7: Effective July 1, 2005, an additional 1% of base salary will be paid to employees with Fire Officer 1 certification.

Article 12: A. Medical, Vision and Dental Insurance

1. For the duration of this contract, the City agrees to provide dental and vision insurance coverage that is equal on the whole to that presently in effect.
2. For the duration of this contract, the City agrees to provide medical insurance for employees and their dependents that is equal on the whole to the Lifewise \$2,500/\$4,000 (single/family) deductible, HSA plan. The City shall pay 100% of the deductible for this plan by placing 80% of the deductible in the employee's individual HSA and the remaining 20% of the deductible into a VEBA, or similar plan for the employee's use

for any outstanding medical charges. Upon the plan going into effect, the City will pay, up front, into the employee's HSA and/or VEBA, 1/12th of the yearly deductible for each month left in the calendar year, but in no event more than 5/12ths of such deductible.<sup>1</sup> Thereafter, the City will begin paying 1/12th of the deductible into the employees HSA and/or VEBA as part of the monthly payroll process. The City will provide a one time \$1,000 transitional payment to all bargaining unit employees in the month that the HSA plan becomes effective. The Association will be consulted by the City, and provide input, in an advisory capacity, with regard to the City's choice of a medical insurance agent.

3. The City shall pay 90% of the premium for medical, dental and vision insurance, and each employee will pay 10% of such premiums.

Article 34: Current contract language, except that the effective date is July 1, 2005, and the agreement will remain in full force and effect until June 30, 2008.

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As an example of this provision, if the HSA plan goes into effect in March of 2006, the City will front load the HSA deductible 5 months (March through July), with monthly payments of 1/12th of the yearly deductible being made beginning in August of 2006.

## 2. STATUTORY CRITERIA FOR DECISION, ORS SECTION 243.746(4)

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, unresolved mandatory subjects submitted to the arbitrator in the parties' last best offer packages shall be decided by the arbitrator. Arbitrators shall base their findings and opinions on these criteria giving first priority to paragraph (a) of this subsection and second priority to subsections (b) to (h) of this subsection as follows:

(a) The interest and welfare of the public.

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

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

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

(d) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits and all other direct or indirect monetary benefits received.

(e) Comparison of the overall compensation of other employees performing similar services with the same or other employees in comparable communities. As used in this paragraph, "comparable" is limited to communities of the same or nearest population range within Oregon [For cities with a population more than 325,000 and counties with a population over 400,000, comparable jurisdictions may include those of similar size which are out-of-state].

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

(g) The stipulations of the parties.

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

### 3. SUMMARY OF FACTS

The Parties' offers differ solely with respect to Article 12 on Health Insurance. There are two key differences: (1) The City offer retains the 90 percent / 10 percent split for payment of monthly premiums; the Association offer shifts to having the City pay the entire premium. (2) The City offer retains the requirement that the City provide medical insurance that is "equal on the whole" to the adopted medical plan; the Association offer changes that to "equal to or better than." Although there are other differences in detail, the Parties did not discuss them in their briefs and I conclude that they are so trivial as to not merit discussion.

Under the current contract, employees are covered by Blue Cross / Blue Shield Plan V-A. The Plan pays 90 percent, has an individual deductible of \$100, and has a full family deductible of \$300. The City pays 90 percent of the premium and the individual employee pays 10 percent. This is the same health insurance plan that covers employees in other bargaining units within the City, and employees that are not in bargaining units. The current contract also contains a requirement that the City maintain insurance coverage that is "equal on the whole" to the existing coverage.

Both offers provide for a shift in approach to health insurance that can fairly be described (as one witness did) as radical. The Parties will change coverage to the Lifewise plan which provides for a \$2,500 deductible for an individual and a \$4,000 deductible for a full family. The City will pay 100 percent of the deductible by making payments into individual employees' HSAs (Health Savings Accounts) and a VEBA (Voluntary Employee Beneficiary Association) account. The City will "front load" the deductible amounts by paying five months worth of deductibles into the HSAs and VEBA. The City will pay a one-time \$1,000 transitional payment to each employee.

Under this new approach to medical insurance, the deductible amount is dramatically higher than before. However, it is 100 percent funded by the City. Eighty percent of the deductible amounts will go into an individual's HSA, which the employee can draw out for deductible payments or for any other health care expense (including such things as drugs and non-covered treatments). Any unspent amounts in the HSA stays in the HSA for possible use in a later year. An employee can also spend these funds for non-medical purposes, but in that event would be required to pay income taxes and a tax penalty.

#### 4. DISCUSSION

##### A. First priority and second priority.

The statute commands that an arbitrator give "first priority" to "the interest and welfare of the public," and "secondary priority" to the other criteria. The City argues that "the interest and welfare of the public" should be the sole criterion used in this case for the reason that the other criteria are useful only when one is deciding on the rate of compensation. I reject that approach for two reasons. *First*, that is not what the statute says. *Second*, the amount (or percentage) that an employer has to pay for insurance is a part of the compensation package. The Association argues that special emphasis should be placed on the "other factors" criterion (subsection (h)) because the Association has earned a change in the status quo by reducing its members' out-of-pocket insurance costs. My analysis will give due weight to this argument under the heading of "interest and welfare of the public" rather than "other factors" because of a lack of showing that this factor is "traditionally taken into consideration in the determination of wages, hours and other conditions of employment."

The legislature has declared that the interest and welfare of the public (subsection (a)) must be the "first priority." Other arbitrators have pointed out that the other criteria (subsections (b) through (h)), although given "second priority," are quite helpful in determining what is in the interest and welfare of the public. This is probably due to the fact that the "second priority" criteria tend to be more exact and easier to quantify, and to the fact that they are familiar criteria. It is also due to the fact that these tend to be the criteria that typically are most relevant to the public interest and welfare. However, in order to be faithful to the statutory command regarding "first priority," the "second priority" criteria cannot be used simply as a proxy or substitute for the interest and welfare of the public.

B. Health insurance premium.

The Parties' offers differ as to what percentage of the monthly premium is paid by the City rather than by the individual employee. The Association offer is that the City pays the entire amount. The City offer is that the City pays 90 percent and the employee pays 10 percent. The 90-10 split is the current situation, and has been since 1994.

Financial ability.

The City did not argue that it is "unable" to pay the added 10 percent, and (at least in the short run) there was no showing that paying the added amount would be a strain on the City's budget. In fact, it is really a matter (again, looking at the short run) of how much the City will save. The City's evidence showed that it would save (compared to retaining the present insurance plan) (a) \$27,722 over the life of the contract if the premium is divided 90-10, and (b) \$226 if the City pays the whole premium. The Association evidence suggests that the City's saving would be twice as large as the City's estimate if the 90-10 split is retained. However, any shift of the 10 percent amount from the individual employees to the City will be an added cost, and there seems to be little doubt that this added cost will increase every year for the foreseeable future. The only unknown appears to be the exact amount.

Attracting and retaining qualified personnel.

The evidence was clear that in the recent past the City has had no special problems with retention. Some employees have left, but the numbers were not abnormal. The evidence also was clear that the City has had no problems attracting new personnel.

Overall compensation and Comparison of the overall compensation.

Each Party presented a list of other jurisdictions to be used as comparables, and presented an analysis of the compensation of the comparables versus the compensation of the members of this bargaining unit. The data as presented posed two problems. *First*, each Party presented a different list of other jurisdictions. *Second*, each Party analyzed the data in a different way.

As for the lists of other jurisdictions, the Association took the simple approach of basing its selection solely on population, selecting the jurisdictions closest to Coos Bay in population: four jurisdictions with a smaller population and four with a larger population. The Association's list included: Sherwood, Troutdale, Hermiston, Wilsonville, Forest Grove, Redmond, Pendleton, and Central Point. The City's list included Roseburg, Forest Grove, Pendleton, Hermiston, LaGrande, Ontario, North Bend.

The statute is clear in stating that "'comparable' is **limited** to communities of the same or nearest population range within Oregon." [Emphasis supplied.] Thus, by statute, my analysis is limited. The Association's list complies with the statute. The City's list deviates from the statute. Therefore, I will use the list presented by the Association. The following chart summarizes each jurisdiction's population, base pay at the 5-year level, adjusted base pay (adding in the value of leaves and PERS, and deducting the employees' share of insurance cost), and the extent to which premium costs are split between the employer and the individual:

Jurisdiction	Pop.	Base pay at 5 yrs	Base pay adjusted	Cost split
Redmond	20,010	3,779	4,386	95-5
Forest Grove	19,565	4,588	5,265	90-10 <sup>1</sup> or 95-5 <sup>2</sup>
Pendleton	17,025	4,120	4,356	80-20 <sup>3</sup>
Wilsonville/Clack Dst #1	16,510	5,396	5,960	fixed sum
Coos Bay	15,850	4,259	5,128	90-10
Central Point/Jackson Dst #3	15,640	4,790	5,244	employer pays all

Hermiston	15,025	3,783	3,913	80-20
Troutdale/Gresham Fire	14,880	4,914	5,664	shared increases <sup>4</sup>
Sherwood/TVFR	14,410	5,461	6,228	fixed sum

Considering the "adjusted" pay (which closely tracks the statutory term "overall compensation"), pay in Coos Bay is approximately 5 percent below the average of all the others. Although the statute restricts the jurisdictions that can be compared, it does not require that each of the comparable jurisdictions must be given equal weight. It is normal for a jurisdiction that is in or near a major metropolitan area to have higher pay than a jurisdiction such as Coos Bay that is more rural. A glance at the chart shows that four of the higher-paying jurisdictions also are in or near a major metropolitan area: Sherwood/TVFR, Troutdale/Gresham, Wilsonville, and Forest Grove. If these four are disregarded (which the statute does not permit), then Coos Bay's pay is approximately 9 percent higher than the average. If those four jurisdictions are included but weighted at one-half value, then the Coos Bay pay is within less than one percentage point of the average.

If the premium cost sharing shifts from 90-10 to 100-0, this would be the equivalent of an increase in pay of 1.7 percent. Considering the pay in the comparable jurisdictions, and considering that the weight given to some of the comparable jurisdictions should properly be discounted (not necessarily by weighing them at one-half), I conclude that the overall compensation for Coos Bay firefighters is roughly average compared to similar employees in comparable communities. Therefore, this factor does not support a shift in premium-sharing that would result in the equivalent of a 1.7 percent increase in overall pay.

The CPI-All Cities Index.

The Parties gave this factor little attention. The CPI has been rising at the rate of approximately 3 percent per year. Both Parties' offers include a 3 percent increase in salary during each of the three years of the contract.

The stipulations of the parties.

The Parties made no significant stipulations that have not been incorporated into this Opinion.

Other factors.

A key element of the Association's argument in this case has to do with the Association's proactive role in seeking out information about the Lifewise Plan, getting both Parties informed about the plan, and obtaining a quote on premium rates. The heart of this argument is that the Association has earned a change in the status quo by seeking out and obtaining a new insurance plan that will save the City money.

The Association's argument does not fit within the statutory language in subsection (h). ORS Section 243.746(4)(h), the "other factors" provision, contains a significant qualifier. It refers to other factors "as are traditionally taken into consideration in the determination of wages, hours and other conditions of employment." There was no evidence that there is any tradition (either between the immediate Parties in this case, or between other labor organizations and other employers) of using facts like these as a factor in determining wages,

hours, or other conditions of employment. In addition, I have no independent knowledge of any such tradition. Therefore, these facts are not properly considered under the statutory label of "other factors." They will be considered with respect to their relationship to the "interest and welfare of the public."

Interest and welfare of the public.

The new health plan will provide coverage that is essentially the same as the old plan, except that well-child care is not covered. Under the old plan the individual was subject to a deductible of \$100 for an individual or \$300 for a family. Under the new plan the deductible is substantially higher (\$2,500/\$4,000), and the entire amount is paid by the City. The funds that the City will place into HSAs will be available to pay for medical and drug bills that are not covered by the plan.

Beginning in 1994 and carrying through to the present time, the City has paid 90 percent of the health insurance premiums and the individual employee has paid 10 percent. In 1994 the dollar amounts for full-family were \$360 for the City and \$40 for the individual. The current dollar amounts are \$1,159.77 and \$128.86.

Under the new plan the total premium will be significantly lower. The current estimate is that the total premium for full-family dental, vision, and health will be \$822.40. Under the City's proposal, an individual would pay 10 percent, or \$82.24. During the first year, the immediate monthly savings to the individual would be \$46.62. Assuming that insurance premiums will increase as the years go by, the amount paid by the individual would increase. The amount of premium payment that the individual would save in the future is speculative,

as that would be determined by comparing the premium increases of both the new plan and the old plan.

The City's projected saving in premium payments was estimated based on an annual premium increase of 10 percent (a highly speculative number, yet one that both Parties found useful for predicting the general range of saving). Under the City's offer, with the individual paying 10 percent, the City estimated it would save \$27,722 over the life of the contract due to the change in insurance plans, and would save \$226 if the City paid the entire premium. The Association estimated that the City would save \$58,500 under a 90-10 split.

The key difference between the Parties has less to do with the actual dollar amounts during the term of the contract, and has more to do with a difference in viewpoint. The Association's primary point is that it was the Association that was the driving force behind shifting to the Lifewise plan, that the City will be saving money under the new plan, and that the Association has earned the removal of the 10 percent premium payment. The City's primary point is that it is necessary for the individual employees to have a vested interest in the cost of premiums in order to create an incentive to be willing to change plans again if premiums keep going up.

It is clear that the major push for the Parties to move from the current medical plan to a the Lifewise plan came from the Association. The Association did a great deal of the original work of gathering information about the plan and arranging for a representative to explain the plan. The Association also obtained the only reliable quote on what the premium rate will be. The City was unable to obtain its own quote, and has relied on the quote obtained by the Association. Of course, the City has embraced the plan, but the Association's point is that it was the Association that got the ball rolling and kept it rolling.

The Association argues that these facts demonstrate that the Association has earned a change in the percentage of premium paid by individual employees. The City objects to this argument on the ground that the Association is asking for a "finder's fee" at the expense of Coos Bay citizens.

My basic view is that the 90-10 split has been a part of the Parties' contracts for long enough that it should take something significant to justify a change to 100-0. In addition, some type of cost split is common among the comparable jurisdictions.

The Association's argument that a change has been "earned" because the Association was the driving force is not strong enough to justify a change. In collective bargaining there often are many proposals brought to the table, some from one side and some from the other side. Each proposal may be viewed as beneficial to one, to the other, or to both. It seems clear that the shift to Lifewise has been viewed by both Parties as beneficial to both. However, a shift to a zero-pay arrangement would be a change that is out of proportion to the amount of effort expended by the Association.

More significant in my view is the issue of financial incentive. It seems clear that once the individual employees are cut free from any responsibility to pay for premiums, then they lose the financial incentive to re-examine the health plan from a premium-cost perspective. This is not to say that individual firefighters are motivated solely or primarily by dollars or that they do not have other incentives for helping to keep premiums low. However, to the extent that there is a direct financial incentive at the present time, that would be lost under the Association's offer. During the hearing one Association witness testified that the increase in the amount individuals had to pay (that is, their 10 percent of premium) was one factor that motivated the Association to move to the new plan. However, other Association witnesses

were unable to explain how they would be directly financially motivated in the future if their premium obligation were reduced to zero. Although one witness expressed the opinion that the Association would continue to be motivated, and I have no ground for rejecting that opinion, there was no explanation of how or why there would be a direct financial incentive.

The Association argues that there always will be a motivation when the employer's budget is devoted to health care expenses rather than wages, and that the Association will seek health care cost-containment in order to secure wage increases. I do not discount that argument. However, the financial incentive argued by the Association is an indirect one. There is a direct financial incentive that occurs when an individual's out-of-pocket health care cost (the 10 percent of premium) goes up, and it is that direct financial incentive that would be lost under the Association's offer.

Another point made by an Association witness was that it really is the usage of the health care services that drives up premiums, and employees have a significant incentive to keep their usage down due the way the HSA operates. However, there was also testimony to the effect that insurance premiums go up without regard to the usage of a particular group. Whether or not usage of services has an effect on the level of premiums, and regardless of how much effect it has, under the Association offer the individual employees would have no direct financial connection to any increase in premiums and therefore would not have a direct financial incentive to investigate and consider alternative health plans.

An examination of the situations in the comparable jurisdictions (see chart above) indicates that in every one of them except Central Point the cost of increased premiums is shared between the employer and the individual employees.<sup>5</sup> The same is true for all other employees of the City whether they are within other bargaining units or are outside of

bargaining units. Shifting to an employer-pays-all approach to health insurance premiums, particularly as to future unknown increases, would be out of the mainstream.

My conclusion is that it will be in the interest and welfare of the public to retain the 90-10 split.

C. Equal to or better than.

A second significant difference between the City's offer and the Association's offer is that the Association's offer would change the current "equal on the whole" language to "equal to or better than." The primary difficulty with such a change is that an action of the carrier (such as a coverage change) could result in the plan falling short of "equal to or better than," even though the plan would remain "equal on the whole." This event could place the City in breach of its contractual duty because of an action of the carrier over which the City had no effective control. For example, see *International Association of Firefighters Local 1269 and City of Ashland* (Arbitrator Stiteler, March 17, 2005). The Association did not demonstrate that there had been any problem with the current language, or that there would likely be any problem with that language in the future. Therefore, it is in the interest and welfare of the public that this language not be changed.

5. CONCLUSION

The City's offer is supported by the first priority criterion, the interest and welfare of the public. The City's offer is also supported by the second priority criteria, especially the comparison of overall compensation of other employees in comparable communities.

6. AWARD

It is ordered that the Parties adopt the City's last best offer package.

Dated: March 13, 2006

Respectfully submitted,

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Ross Runkel

1. City Exhibit 124.

2. Association Exhibit 13.

3. City Exhibit 124. Association Exhibit 14 indicates that the employer pay 100 percent of the employee's coverage and splits 80-20 on independent coverage.

4. Employer pays 100 percent until 2004, then employer pays the first 10 percent increase, and additional increases are shared 50-50.

5. I assume that when an employer provides a fixed sum for health care, then all future increases are paid by the individuals.