IN THE MATTER OF THE	)	**ARBITRATOR'S**
	)	
INTEREST ARBITRATION	)	
	)	**OPINION**
BETWEEN	)	
	)	**AND**
CITY OF EUGENE	)	
(The Employer)	)	**AWARD**
	)	
AND	)	
	)	
EUGENE POLICE	)	
EMPLOYEES ASSOCIATION	)	
(The Association)	)	

RECEIVED
IA-12-05
APR 25 2006
EMPLOYMENT
RELATIONS BOARD

HEARING: January 31, February 1 and 2, 2006

HEARING CLOSED: March 22, 2006

ARBITRATOR:

Sylvia Skratek, Ph.D.
3028 Western Avenue
Suite 405
Seattle, Washington 98121

REPRESENTING THE EMPLOYER:

Christine Nesbit
Harrang Long Gary Rudnick P.C.
City Attorneys
360 East 10th Avenue, Suite 300
Eugene, OR 97401

REPRESENTING THE ASSOCIATION:

Rhonda Fenrich
Garrettson Goldberg Fenrich & Makler, P.C.
423 Lincoln Street
Eugene, OR 97401

BACKGROUND

The City of Eugene (hereafter "the City") and the Eugene Police Employees Association (hereafter "the Association") are parties to a collective bargaining agreement which expired on June 30, 2005. (Ex. J-1) This matter came before Arbitrator Sylvia Skratek pursuant to ORS 243.746 and its administrative rules. A hearing was held on January 31st, February 1st and 2nd, 2006 in Eugene, Oregon. The parties stipulated that the matter is properly before this Arbitrator for resolution. At the hearing the parties had full opportunity to make opening statements, examine and cross examine witnesses, introduce documents, and make arguments in support of their positions. The hearing was reported by Ms. Sara Fahey, RPR, of C& C Court Reporting.

The parties were provided the opportunity to submit their closing arguments in the form of post hearing briefs which were received by the Arbitrator in a timely manner. The record was closed as of March 22, 2006.

STATEMENT OF THE ISSUE

The parties stipulated to the following statement of the issue:

Which Last Best Offer should be selected?

APPEARING AS WITNESSES FOR THE EMPLOYER:

Myrnie Daut, City Risk and Benefits Manager
Michelle Cline, Human Resources Consultant
Helen Towle, Human Resources Manager
Dennis Taylor, City Manager
Dee Ann Hardt, City Finance Director

APPEARING AS WITNESSES FOR THE ASSOCIATION:

Dana Bennett, Association Sr. Research Analyst
Willy Edewaard, Association President
Randy Berger, Association Legislative Chair
Rusty Foster, Association 1st Vice President
Erik Humphrey, Association Treasurer
Tom Schulke, Association 2nd Vice President

LAST BEST OFFERS

Association (Ex J-4)

Current contract language except:

1. All tentative agreements to date.
2. Article 16

   16 1

   Effective July 1, 2005 increase the wages for all bargaining unit members by three (3%) percent. Effective July 1, 2005 increase the wages for all Communications Specialists by an additional three (3%) percent.

   Effective July 1, 2006 increase the wages for all bargaining unit members by three and one-half (3 5%) percent. Effective July 1, 2006 increase the wages for all Communications Specialists by an additional one (1%) percent.

   Effective July 1, 2007 increase the wages for all bargaining unit members by an amount equal to the CPI-W annual average with a minimum of three (3%) percent and a maximum of five (5%) percent.

   Effective July 1, 2007 increase the wages for all Communications Specialists by an additional one (1%) percent.

City (Ex J-3)

All articles tentatively agreed to at the table or in settlement.

Article 16-Salaries

- 3% for all classifications on 7/1/05, with an additional 3% for Communication Specialists
- 3 5% for all classifications on 7/1/06 with an additional 1% for Communications Specialists
- Adjustment equal to U S City average CPI-U for the 2006 calendar year, with a minimum increase of 2 5% and a maximum increase of 5% for all classifications on 7/1/07, with an additional 1% for Communication Specialists

Article 17-Hours and Overtime

- 17 5-Separates maximum accruals for compensatory time and holiday

Article 18-Holiday

- Changes 18 2, which sets a maximum accrual of 120 hours of shift holiday, to apply to all members of the bargaining unit effective 7/1/06

Article 23-Health Insurance

- 23 2/23 3-Adds requirement for employees to pay five percent (5%) of the total cost of the premium for health insurance based on a tiered rate (single, two-party,

and family) for the City's preferred provider plan, effective July 1, 2006. Continues fully paid coverage for the managed care plan.

A,B-Salary Schedules

- Reflects the salary increases outlined in Article 16

D-Health Insurance Summary

- Current contract, except for clean-up language

E-Health Insurance Changes

- New Appendix-Summary of health plan changes for the 2nd and 3rd years of the contract.

STIPULATIONS

In addition to the previously cited stipulations the parties stipulated to the following:

> Each parties' Last Best Offer provides for wage increases of 3%/1%/ and 1% for Communications Specialists in addition to the wage increase for the entire bargaining unit. Accordingly, the parties agree that this additional differential is in the public interest. (Ex. J-6)

STATUTORY CRITERIA

Pursuant to ORS 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 secondary 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 the other services, provided by, and other priorities of, the unit of government as determined by the governing body. A reasonable operating reserve against future contingencies, which does not include funds in contemplation of settlement of the labor dispute, shall not be considered as available toward a settlement.
> c) The ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided.
> d) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other paid excused time,

pensions, insurance, benefits, and all other direct or indirect monetary benefits received.

e) Comparisons 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. . .
f) The CPI-All Cities Index, commonly known as the cost of living.
g) The stipulations of the parties
h) Such other factors, consistent with paragraphs (a) to (g) of this subsection as are traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of employment. However, the arbitrator shall not use such other factors, if in the judgment of the arbitrator, the factors in paragraphs (a) to (g) of this subsection provide sufficient evidence for an award.

CONTEXT OF THE DISPUTE

The City of Eugene is the third largest city in the state of Oregon, ranking behind the cities of Portland and Salem, Oregon. The City provides a full range of traditional, municipal services, including public safety, planning, public works, and recreational and cultural services. The Eugene Police Department (hereafter "the Department") provides a full range of police and emergency communications to the community of the City. The two hundred and thirty-six employees of the Department are represented by the Eugene Police Employees' Association. The bargaining unit consists of employees in the classifications of Police Agent, Police Officer, Communications Specialists, Community Service Officer, Forensic Analyst, Forensic Technician, Police Clerk, Police Property Specialist and Records Specialist. The majority of the members of the bargaining unit are police officers.

POSITIONS OF THE PARTIES

Both parties submitted to the Arbitrator lengthy, comprehensive post hearing briefs setting forth their arguments as to why their respective last best offers were the most compatible with the statutory criteria and best represented the interest and welfare of the public. The Arbitrator will briefly summarize each party's position below.

Association

The Association is requesting maintenance of the status quo for its historical benefits and cost of living adjustments for the contract term. According to the

Association its Last Best Offer would maintain its market position within its statutory comparables

The Association characterizes the City's proposal as a "first to worst" proposal The City's offer requires premium cost-sharing for health insurance, increases the deductibles and out-of-pocket maximums for health insurance and splits the combined compensatory and holiday time off banks into two separate banks resulting in a loss of income to the Association members.

The Association argues that the City bears the burden of proving that the status quo has proven to be unworkable, that changed circumstances impel modifications or, that there is a perceptible trade-off by which the City has bought agreement on the matter. The Association contends that a review of the City's proposals and the support provided by the City for its proposals does not evidence an unworkable contract term, nor does it provide any compelling need for changes. Furthermore, there has been no quid pro quo for the sought alterations. The City's proposal is nothing but take-aways.

The Association maintains that the interest and welfare of the public is served by a collective bargaining agreement which adequately and reasonably compensates the workforce for the work they perform for the larger community. The Association has presented a cost-effective, reasonable Last Best Offer package and asks that the Arbitrator select its offer.

City

The City emphasizes that the Association's proposal is nothing more than a status quo proposal with a wage increase and argues that status quo is not in the interest and welfare of the public.

Status quo ignores the crisis that the City faces due to skyrocketing health care and benefit costs and fails to acknowledge changed circumstances The City's proposal addresses the public interest by shifting costs and making overdue plan changes Cost

sharing will be introduced for one health care plan only, and only after wage increases that are above the CPI The City is at the top of the market and therefore more is not justified Changes to the plan will be made incrementally in the last half of the contract and are supported by the market, by the growth of the Association's real purchasing power over time, and by the fact that the deductibles and out-of-pocket maximums in the current plan are more than twenty years old

Status quo also ignores the problems associated with a joint cap on the compensatory and shift holiday benefits The City has attempted to address these problems through negotiation and interest arbitration for fifteen years There is no business reason to maintain the current system, there is no harm to employees, and the current cap is entirely out of market A recent grievance underscores the need to split the caps The City's offer would reform the shift-holiday and compensatory leave systems, and bring the compensatory leave cap within market

The Association's wage proposal is not in the interest and welfare of the public There is no justification for awarding above market wage increases absent any other trade off Additionally the Association's wage increase will cause the City to expend dollars on Association salaries that are not necessary to recruit and retain employees and that should be spent on other priorities

According to the City, only its proposal is in the interest and welfare of the public, keeping salaries above market and in line with inflation, while providing an appropriate trade off for the changes to the health care article The City's proposal ensures that the public interest in quality service at the lowest reasonable cost will be met The Association's proposal and its objections to the City's proposal center around its desire to obtain as much compensation, in whatever form, for its members It is not a status quo offer when viewed in conjunction with the expired contract which provided a 0 4% wage reduction for two years in a row to avoid having to make contributions to health insurance premiums There is no similar provision in the Association's proposal

The City's offer allows the City to continue to provide the best service possible with the dollars available, at the lowest reasonable cost. It provides the Association members with a fair compensation package. The City urges the Arbitrator to award the City's Last Best Offer.

ANALYSIS

In making a final determination in this matter the Arbitrator has reviewed the evidence and testimony regarding each party's proposal and will outline her findings below

Article 16-Salaries

City Proposal[1]

16.1 Salaries for all bargaining unit members shall be adjusted as follows:

a The salaries for all bargaining unit employees from July 1, 2005 through June 30, 2006 are listed in the schedule set forth in Appendix A which reflects a three percent (3%) increase over the previous year; ...

b. Effective July 1, 2006, the salaries for all bargaining unit employees are listed in the schedule set forth in Appendix B which reflects a three and a half percent (3.5%) increase over the previous year ..

c Effective July 1, 2007 the salaries for all bargaining unit employees, except Communications Specialists, will be increase by an amount equal to the average of the monthly U S City CPI-U for the 2006 calendar year, with a minimum increase of two and a half percent (2.5%) and a maximum increase of five percent (5%) ..

Association Proposal

16.1

Effective July 1, 2005 increase the wages for all bargaining unit members by three (3%) percent ..

Effective July 1, 2006 increase the wages for all bargaining unit members by three and one-half (3 5%) percent ...

Effective July 1, 2007 increase the wages for all bargaining unit members by an amount equal to the CPI-W annual average with a minimum of three (3%) percent and a maximum of five (5%) percent

[1] The cited language represents the areas in dispute only and does not repeat language that has already been resolved by the parties.

Discussion

Both parties have submitted the same jurisdictions to serve as the comparators under the statute: Salem, Gresham, Beaverton and Hillsboro Although the Association put forward evidence and testimony regarding the city of Portland, the Arbitrator advised the Association that she did not consider the city of Portland to be a statutory comparable.

Amongst the comparators, the city of Salem is the most comparable with a population of 147,215 which reflects approximately 105% of the population of Eugene. The cities of Gresham, Beaverton and Hillsboro have populations that are less than 100,000 and that are 66% (Gresham), 57% (Beaverton) and 56% (Hillsboro) of the population of Eugene.

Both parties have submitted detailed analyses of the market. The City's analysis concludes that the City of Eugene's maximum salary, including retirement and maximum incentive pay, in comparison with the four comparable jurisdictions is 4 7% above market. (Ex. C-29) The City emphasizes that even if it compared its average incentive pay of 11.15% to the maximum incentive pay of its comparable jurisdictions, the City's maximum salary including retirement and incentive pay is still 1.4% above average. (Ex. C-33) The Association counters that the appropriate methodology for the analysis of the comparables includes twelve benchmark comparisons of the total compensation received by selected classifications. These benchmarks include employees at 5, 10, 15 and 20 years of service with: a base rate comparison for the first four comparisons; intermediate certification and/or AA certification pay for the next four benchmarks and; advanced and/or BA certification pay for the last four benchmarks (Ex. A-16) The Association contends that the use of the benchmarks provides an overall analysis of the potential composition of the workforce and points to City Exhibit 30 as proof that the City has employees in each of these benchmarks except for 15 and 20 years of service with no incentive pay The Association's analysis concludes that the City of Eugene is .35%

behind the average of its comparators for 2005 and 1.5% behind the projected average of its comparators for 2006.[2]

The Arbitrator finds that the Association's methodology presents a more reasonable picture of the composition of the workforce and the real dollars that would be forthcoming to the employees. The City's methodology fails to take into consideration the fact that only 54 of the 136 officers have achieved premium pay above the average of 11.15% - the figure that was utilized by the City in its determination of market placement. (Ex. C-30) Even when the 20 officers who are not eligible for premium pay[3] are removed from the analysis, there are still 62 officers who would not be receiving the average 11.15% premium pay that the City suggests is an appropriate figure for determining market placement. With the Association's focus on employees at 5, 10, 15 and 20 years of service with the reasonably anticipated premium or incentive pays for each of the respective levels of service, the Association has made a more reasonable representation of the employees' pay levels.

The Arbitrator notes however that even the Association concedes that the Association is close to being at market with its market comparators. The difference in the wage offers by the parties is relatively small, .5% apart in the third year of the contract. That difference however must be viewed in conjunction with the remaining aspects of each party's Last Best Offer and must be given full and fair consideration in making a final determination in this matter. The Arbitrator recognizes that the parties disagree as to the appropriate index to be utilized in determining the increase in the third year with the City claiming that the U.S. City CPI-U is appropriate and the Association claiming that the CPI-W should be utilized. That disagreement pales however when viewed in the light of the disagreements contained within the remaining aspects of each party's proposal and warrants no further discussion other than to note that the disagreement as to the CPI index will be resolved with the Arbitrator's selection of one party's Last Best Offer.

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[2] The Association's conclusion does not include the $60 per month that would be paid by employees toward their health insurance. If that amount were to be added to the methodology the City of Eugene would be 1.55% behind the average of its comparators and .896% behind the average of its comparators if two of the benchmarks, years 15 and 20, are not included in the analysis.

[3] Officers become eligible after 3 years in the Union

Article 17-Hours and Overtime

City Proposal

17.5

Employees may accrue up to two hundred (200) hours of personal time (holiday time and –compensatory time combined). Personal time in excess of two hundred (200) hours shall be paid off automatically at the end of the pay period in which it is earned, unless supervisory approval to exceed that amount is granted. Employees who wish to receive payment for any accumulated hours at the end of the fiscal year may submit a request to the Department. If, in the City's judgment, funds are available, employees shall be paid off on a pro-rata basis until such available funds are expended.

For all employees hired after July 1, 2003, there will be a maximum accrual (cap) of eighty (80) hours on compensatory time and one hundred twenty (120) hours on shift holiday accrual. The current combined shift holiday and compensatory time cap of two hundred (200) hours will remain in effect through June 30, 2006 for all employees hired prior to July 1, 2003. Effective July 1, 2006, all employees will have a cap of eighty (80) hours on compensatory time and one hundred twenty (120) hours on shift holiday accrual. Any employee who has a compensatory time balance over (80) hours on June 30, 2006 may either leave the hours over the cap in compensatory time or move the hours over the cap to shift holiday, whichever the employee chooses. If an employee chooses to leave the time as compensatory time, he/she will be ineligible to elect compensatory time for overtime worked until the balance is below the eighty (80) hour cap.

Association Proposal

Current Contract

Article 18-Holiday

City Proposal

18.2

For all bargaining unit members hired after July 1, 2003, there will be a cap of one hundred twenty (120) hours on shift holiday accrual. Effective July 1, 2006, the cap will apply to all bargaining unit members. If any member has a balance over one hundred twenty (120) hours of shift holiday as of June 30, 2006, the excess amount will be transferred either to the employee's vacation accrual bank or compensatory time bank, whichever the employee chooses.

Association Proposal

Current Contract

Discussion

The City's proposed changes to Articles 17 and 18 would separate the maximum accruals for shift holiday time off and compensatory time off and would revise the current combined cap to accommodate the separation by establishing a cap of 120 hours of shift holiday time and a cap of 80 hours of compensatory time. The City submitted a similar proposal to Arbitrator John (Sam) Keltner in the interest arbitration dispute between the same parties in 1999. (Ex. C-27) In that dispute, Keltner was persuaded by the City's argument "...that the annual total benefits in these categories is the same whether they are paid as cash or in actual time off". (at page 21 of Ex. C-27) In the dispute before this Arbitrator however, the Association put forward a compelling argument that illustrated the complexities of the interrelationship of not only the two articles in dispute but also their interrelationship with Article 19 *Vacations*

The language within Articles 17 and 18 has been interrelated since at least the 1979-1982 collective bargaining agreement which contained language that allowed employees to accrue up to 144 hours of holiday time and compensatory time combined (Ex. C-51) In the 1992-1994 agreement the combined cap was increased to 200 hours. In the 2002-2005 agreement the City accomplished "... a fairly significant change which requires people who take a holiday to charge it to holiday." (Tr. p. 425, lns 8-10) Prior to that change, employees would not charge their holiday time for holiday but would instead use vacation which wasn't a cashable benefit thereby maintaining their ability to utilize their accrued holiday time as a form of compensation. Article 18 5 provided that any employee who had utilized all of their holiday time "... shall be allowed to utilize other personal leave banks in order to take time off on a holiday." (Ex. J-1) The Arbitrator notes however that when Detective Jeff Donaca attempted to charge 3.69 hours of a holiday to his vacation credits the City changed his request to compensatory time off. (Exs. C-55 & C-66) While there is currently a grievance pending on this matter and this Arbitrator has no jurisdiction to make a determination on that grievance, the matter does shed light on the City's desire to modify the language of Articles 17 and 18. If an employee's leave banks can be shifted to require the use of holiday time and compensatory time prior to the use of "other personal leave banks" then the City's

financial liabilities will be diminished. Through testimony at the hearing it became clear to the Arbitrator that Association members had historically viewed and utilized the combined holiday and compensatory time cap as a means of supplementing their incomes by as much as an additional 5 percent. By maintaining 200 hours on the books an employee becomes eligible for an immediate cash pay-out each pay period for the 4.3 holiday hours that are automatically accumulated each pay period. If an employee chooses to take holiday time off, and does not have any holiday time on the books, the employee may utilize other personal leave banks as per Article 18.5. Association witness Berger explained how the City's proposed change would affect his pay:

> Q. . . .any police officer who has 200 hours of only comp time in the bank each pay period is getting an additional 4.3 hours of pay?
>
> Berger: Yes
>
> Q. Because they have been able to work the system to keep it a comp time only They never build up holiday time. And by splitting out 80 hours of holiday time, they are seeing that as a loss. . . .Is that what you're telling me?
>
> Berger: Yes. Absolutely.
>
> Q. It's a loss---you perceive it as a loss because you will then have time in shift holiday?
>
> Berger: I will have time in shift holiday that I cannot recover in a fashion that I can currently recover it in.
>
> Q. And so by avoiding any accrual of holiday, you manage to get a cash pay-out every month?
>
> Berger: Correct
>
> Q. But if you draw down your compensatory time bank in order to take time off, you've quote, unquote, lost that money so—
>
> Berger: I can recover that money in a much faster method than I can through holiday time. One shift of party patrol will cover a day's worth of –a month's worth of compensation or accrual rates under holiday (Tr. pp. 703-705)

Association witness Foster explained how the City's proposal would affect a police officer who has 200 hours in holiday time. Because of the nature of Foster's work it

would be unusual for him to accumulate compensatory time. At the time of his hiring in August 1991, he was "educated" as to the benefit of the combined cap:

> Foster: "...If you wish to be disciplined about your taking time off and you want to---for example, instead of taking a holiday to spend with your family you want to work, then you receive this benefit. The benefit would be if I max out my time, then I receive approximately 5 percent added to my monthly pay ...And I'm willing—because of the age of my children, I'm willing to sacrifice. For example, if a work day falls on Christmas day, I will work that instead of taking it out of my holiday time. Now you can call it—a person can call it what they want to call it, but that's how I discipline myself to function." (Tr pp 709-711)

Foster works on the holidays in order to maintain the 200 hours in holiday time thereby ensuring a regular additional payout to him. The City claims that individuals such as Foster would continue to receive the additional payout if they had the maximum number of hours of holiday time however the Association contends that the City never made that claim during negotiations The Association understood that the intent of the City's proposal was to delete the pay-out provision for holiday time After reviewing the testimony and the evidence, the Arbitrator can appreciate how the Association had arrived at that understanding. The City's proposal caps the shift holiday accrual at 120 hours and the compensatory time accrual at 80 hours. If an employee has any excess hours in compensatory time, the excess hours can be moved to shift holiday, or if the hours are left in compensatory time, the employee would be ineligible to elect compensatory time for overtime worked until the balance is below the eighty hour cap If an employee has excess hours in shift holiday, the excess can be moved to vacation accrual bank or compensatory time bank. This Arbitrator has over 30 years of experience in contract negotiations, contract administration, mediation and arbitration and even with that background found that her several readings and reviews of the City's proposal left many questions unanswered. Citing Arbitrator Jane Wilkinson's decision in *State of Oregon, Department of Corrections,* 1A-13-03, the City emphasized in its post hearing brief, it is "...not in the public interest to maintain contract language that leads to dispute and grievances." This Arbitrator does not disagree however she must also emphasize that it is not in the public interest to incorporate contract language through the interest arbitration process into a collective bargaining agreement that will inevitably lead to

grievances and disputes. Given the amount of confusion that was evident through the testimony provided at the hearing, it is clear to this Arbitrator that if the City's proposal were to be incorporated into the parties' agreement, it would lead to disputes and grievances. There was no clear meeting of the minds as to the intent of the language being proposed by the City and it was apparent to the Arbitrator that the Association was hearing for the first time at the arbitration proceeding that the City's proposal was not a "use it or lose it" proposal

> Q. At any time during bargaining did the City say to you, I know we're just splitting these caps. You will still receive the pay-off?
>
> A. I don't recall that. I don't recall that conversation occurring. (Edewaard, Tr p.632, lns. 3-7)
>
> Q At any time did they make any representations that you would receive a pay-out for this new split cap?
>
> A. I didn't understand there were any. (Foster, Tr p.713, lns. 13-16)
>
> Q And so now you will have holiday time and comp time, and at any time during the bargaining session, did the City explain to you that this new time bank that you will have, this comp time, your holiday time was switched to comp time will be treated as comp time or will that time that you transferred, that seventy-some hours, be treated as holiday time just kind of sitting in comp time bank for a while? Will it have the power and effect of comp time?
>
> A. My interpretation of what I heard was that there would be a differential effect upon the value of the balances. To be quite honest, I'm totally confused after the last two days about how this is interpreted. I am also astounded to hear that the City within the last two days has asserted that this is not a use-it-or-lose-it bank because I was present during the last---well, during this past whole last year. I was present during the last bargaining session before that. And there was a fairly clear understanding that that—and it's almost logic by default that if this is—if the City wants this, and it's within the last two days they have asserted that it's now not a use-it-or-lose-it bank, there is the purpose of what their assertion is and the ferociousness with which they pursued this article alteration makes no sense to me whatsoever. So the short answer is I'm totally confused about what the City wants with us now. (Schulke, Tr pp 779-780)

Whether this is the result of the parties failing to have meaningful discussion about the proposal through the prior negotiation and mediation processes or is the result of the City recognizing that it would have to modify a previously implied or stated position is indicative of the failure of the negotiations process itself.

Regardless, the fact remains that the City is attempting to modify a long established and accepted method of obtaining financial benefits for holidays and compensatory time. The combined cap has been in the Agreement since at least the 1979-1982 contract. (Ex. C-51) Employees have long known about the financial benefits provided to those who are able to reach the maximum hours of the combined cap. The Arbitrator assumes that the City is also aware that this financial benefit has been long utilized by employees to supplement their incomes. Association witness Schulke is a long term, 20 year employee, who testified that employees have come to rely upon the language to receive additional money every two weeks. He agreed that it is information that is passed from the Field Training Officer to recruits as being one of the benefits of the contract. (Tr. pp. 777-778) Association witness Foster testified that when he was hired in August 1991 he was "educated" about the benefit. (Tr. pp. 709-710) While the City has characterized this management or discipline of the leave balances as manipulation, the Arbitrator is not sympathetic to this characterization. The City has been party to the agreements with the Association since 1972. There have been plenty of opportunities to modify the agreement over the years and through negotiations some changes have been accomplished. As one example, the 2002-2005 agreement required an employee who takes a designated holiday to charge the time to holiday which effectively discontinued the practice of charging the time to another personal leave bank. In that same agreement, the parties agreed to split the caps for employees hired after July 1, 2003. The Arbitrator recognizes that it will not be easy for the City to achieve its desired change through negotiations but that is no reason for the Arbitrator to award what would essentially be a windfall for the City by selecting a proposal that it would not reasonably be expected to accomplish through the negotiations process without offering a significant quid pro quo. The City is attempting to end a long established and accepted benefit that has been available to the employees for at least two decades. It has submitted language

that is subject to various interpretations and as such would most likely result in numerous grievances and disputes. And it is attempting to shift some of an employee's accumulated holiday and/or compensatory leave time to vacation time which has its own restrictions as to use. While the City attempts to portray the current practice as payment for taking a holiday off while still receiving additional shift holiday payout, the City fails to consider the fact that an employee must use hours from some personal leave bank to take the holiday off. This is the discipline that was outlined by witnesses Berger and Foster in the management of their personal leave banks and it is the choice that they have made under the terms of the collective bargaining agreement. In effect, they have elected to utilize the time off provided elsewhere in the agreement and obtain payment for the days to which they are entitled which exceed the combined cap provided in the current Article 17. This is not manipulation but rather strict adherence to the language of the collective bargaining agreement.

Article 23-Health and Accident Insurance

City Proposal

23.2 Effective July 1, 2006 employees on the City Health Plan (Preferred Provider Plan (PPO) will be required to pay five percent (5%) of the total cost of the premium for health insurance based on a tiered rate for single, two-party, and family. There will be a maximum cost per month of $25 for single, $45 for two-party, and $60 for family. ~~The City will provide fully paid coverage at the current benefit levels for all three (3) years of this agreement. As an offset for fully paid health insurance, the wages reflected in the agreement reflect an amount which is four tenths of a percent (0.4%) less in a salary increase for each of the last two (2) years of the contract.~~

23.3 Part-time employees have the following three options ~~two (2)~~ options for health insurance coverage:

b. Full coverage on the City Health Plan [Preferred Provider Plan (PPO) health plan] for the employee only for a cost of five percent (5%) of the total cost of the premium for health insurance up to a maximum per month of $25 ~~at no cost to the employee.~~

c. Full coverage on the City Managed Care Plan [Point of Service plan (POS)] for the employee only

APPENDIX E HEALTH PLAN CHANGES FOR FISCAL YEARS 06/07 AND 07/08[4]

CITY HEALTH PLAN (PPO)

Increase Out of Pocket Maximum for the Medical Plan from $750/person OOP Max per Calendar year (not including the deductible) to $850 per person effective January 1, 2007 and to $900 per person, effective January 1, 2008

Increase the medical deductible from $100 per person and $300 per family to $150 per person and $450 per family, effective January 1, 2007 and to $175 per person and $525 per family, effective January 1, 2008.

Change the Dental Plan from $25 per person and $75 per family to $50 per person and $150 per family, effective January 1, 2007.

Change dependent eligibility from full time students at least 19 and under 25 years of age to full time students at least 19 and under 23 years of age, effective July 1, 2006

Association Proposal

Current Contract

Discussion

The City emphasizes that its proposal is in keeping with its market and with national trends. To support its proposal it offered the Mercer National Survey which found in part that 88% or more of all large employers (1000 to 4,999 employees) require an employee contribution for individual coverage that averages 24% of premium cost (Ex C-15) While the Arbitrator found the Survey to be informative as to the trends in health care coverage nationwide she found that it had little if any applicability to the dispute in this matter other than to underscore the fact that employee contributions are in effect nothing more than cost shifting. By aggressively shifting cost to employees, small employers have been successful in slowing utilization, which in turn slows the overall cost to the employer:

> Higher out-of-pocket costs, combined with low wage increases, have apparently slowed utilization, which in turn slows cost. (Ex C-15, p 6)

[4] The Arbitrator has summarized only the key points in this portion of the City's proposal

The Arbitrator notes that large employers

> "... are showing more interest in the new consumer-directed health plan (CDHP) model. These plans provide high-deductible conventional insurance ... along with an employee-controlled spending account. ... Asked about their plans for the upcoming year, 14 percent of large employers said they were likely to offer a CDHP in 2005; 26 percent (in total) said they were likely to offer one by 2006. Legislation passed at the end of 2003 allowing for the creation of Health Savings Accounts (HSAs) may speed the process ..." (Ex. C-15, p. 7)

There is no doubt that health care costs in the United States have been a major concern for employers and employees alike however the excerpts of the Mercer Survey provided by the City do not provide a complete picture as to how various employee groups have been affected. There is no differentiation between union represented and non-represented employee groups. There appears to be an implication at page 5 of the exhibit that employers could unilaterally raise the deductibles and co-payments as well as unilaterally shift a portion of the premium costs to the employees. That is not the case in this matter. The City cannot implement any of the changes unilaterally and must reach agreement with the Association or failing to do so, must achieve the change through the statutorily provided interest arbitration process. In its attempt to do the latter, the City must focus its efforts on the statutory criteria.

ORS 243.746 (4) (e) requires the Arbitrator to take into consideration the overall compensation of "... other employees performing similar services with the same or other employees in comparable communities." There is no dispute in this case as to the comparable communities and both parties have provided the Arbitrator with detailed analyses of the health care plans provided within those communities.

The Arbitrator appreciates the fact that health care premiums for the Association have risen considerably over the past several years. As illustrated by City Exhibit 2 there has been a 42.1% change over a three year time period beginning with fiscal year 1999-2000; a 40.8% change over a three year period beginning with fiscal year 2002-2003 and; a 26% change is projected beginning with fiscal year 2005-2006. The Arbitrator also appreciates the fact that the Association's out-of-pocket maximum and medical

deductible has not reflected the change in the CPI-U over the past two decades (Ex. C-6) A review of the Employer's market survey however shows that these facts most likely also hold true for each of the identified comparable communities. It is unlikely that these communities experienced a significantly lower percentage change than the City of Eugene in their health care premiums over the same three year time periods and it is evident from the data presented in City Exhibit 7 that the out-of-pocket maximums have not reached the City's CPI enhanced figure of $1412 for the year 2005. (Ex C-6) As illustrated on City Exhibit 9 the out-of-pocket maximums per person in network ranges from a low of $500 for three of the comparables to a high of $1000 for one of the comparables. It is important to note however that an analysis of health care plans cannot focus on just one aspect of a plan For example, the plans of each of the comparable communities provide for different levels of co-pays for network providers ranging from a 10% co-insurance for each of the preferred provider plans offered in the cities of Beaverton, Gresham and Hillsboro to the 20% co-insurance for network providers in the preferred provider plans in Salem and Eugene The City of Eugene has the highest co-pay of all of the identified cities for the non-preferred providers, 50% Additionally only the City of Eugene does not offer an alternative health care plan to its employees that includes prescription coverage In each of the comparable communities if an employee does not wish to assume some of the cost of the health care premium then the employee has the option of selecting a different health care plan that provides some level of coverage in each of the identified areas. That option is not, and would not, be available to the Association in this matter. As is clearly stated on City Exhibit 7, prescription coverage is "not covered" under the Managed Care Plan. If the City's cost shifting proposal were to be implemented it is unknown how many employees might be compelled to shift from the City Health Plan to the Managed Care Plan however whatever number it might be, those employees would be faced with the loss of prescription coverage, a loss that is not faced by the employees in the comparable communities if they choose a health plan without an employee cost assumption.

As of July 1, 2005 the City of Eugene's monthly contribution to health insurance for a police officer was 1.1% below the average of the comparable cities. (Ex C-36)

Under the City's Last Best Offer employees would contribute anywhere from 0 4% of a maximum monthly base salary to 1 3% of a maximum monthly base salary depending on whether they were covered under an individual plan, two-party plan or, a family plan. (Ex. C-42) The Arbitrator will not quarrel with the City's choice of focusing on only the maximum monthly base salary however she did note that if one were to attempt to determine a more accurate picture of the actual cost to an employee it would have to be calculated based on an individual's actual monthly base salary. Suffice it to say, that the lower an individual's monthly base salary the higher the percentage of the cost shifting that would be incurred by the individual.

Also worth noting in the comparison of health benefits is the fact that the cities of Beaverton, Gresham and Hillsboro have each provided additional compensation in the form of a VEBA. (Ex. C-28) A VEBA is a tax-free medical savings account that provides a source of funds to pay for the cost of health care. Funding sources include contributions made by an employer in lieu of compensation increases for a group of employees. (Ex. C-62) Descriptions of the VEBA plans available in Beaverton, Gresham and Hillsboro are provided in City Exhibits 61 through 63 The Arbitrator cannot ignore the fact that a VEBA account provides monies to an employee to help offset the cost of health care either pre or post retirement

The City of Eugene has put forward a Last Best Offer in health care that would shift some of the cost to the employees which is nothing more than a reduction in compensation. An employee would see their monthly wage reduced anywhere from 0.4% to 1 3% provided they were at the maximum monthly base salary; the reduction would be higher for an employee who was not at the maximum monthly base salary. Employees who were unable or unwilling to reduce their compensation to pay for their health care would be faced with changing to a plan that provided no prescription coverage. And there would be no additional compensation provided to the employees in the form of a VEBA.

CONCLUSION

Last Best Offer interest arbitration imposes restrictions on arbitrators by statutorily requiring the selection of one party's offer regardless of the merits that might be contained within the offer of the other party. Arbitrators are also restricted by the criteria specified in the statute which must be utilized by an arbitrator in making their determination. Under those criteria, first priority must be given to the interest and welfare of the public.

As stated by Arbitrator Carlton Snow:

> The "public interest" standard allows an arbitrator to use a balancing process that weighs elements related to the impact of a proposal on the parties. Those related elements are codified in the secondary criteria set forth in paragraphs (b) to (h) of the legislation. Economic issues and departures from prior policies merit heightened scrutiny and an application by an arbitrator of what courts sometimes refer to as the "hard look" doctrine. (See Office of Comm. of the U.C. of C., 707 F2d. 1413, 1425 (D.C.Cir. 1983).)
>
> Use of the "public interest" standard as the first priority requires an arbitrator to balance all relevant factors the legislation instructs an interest arbitrator to consider. Using a balancing process to evaluate relevant statutory criteria, an interest arbitrator must determine whether one Last Best Offer package has been guided by more reasonable considerations than the other. In balancing all the relevant statutory criteria, an interest arbitrator must attempt to resolve questions of fact, evaluate the effectiveness of proposals, test the reasoning of the parties, and study comparability data. These factors help give substance to an otherwise elusive "public interest" determination. Otherwise, the decision-making process is unduly subjective, and it is more sensible to conclude the legislature designed a process that is reasonably objective. . .
>
> A key test in the "public interest" balancing process is that any factor used by an interest arbitrator to evaluate Last Best Offers must advance one of the purposes the Oregon Legislature had in mind when it enacted SB 750. A pivotal purpose of collective bargaining legislation is to maintain the high morale of public safety employees as well as the efficient operation of governmental services. . .[5]

In reaching a conclusion in this matter the Arbitrator utilized the balancing process described by Arbitrator Snow. She found that there was no issue raised as to the

[5] *Interest Arbitration between City of Portland, Oregon and Portland Police Association*. IA-06-03, p. 13

"reasonable financial ability of the unit of government to meet the costs of the proposed contract". She found that there was not sufficient evidence or testimony to support the Association's claim that there was an inability " ...of the unit of government to attract and retain qualified personnel at the wages and benefit levels provided" The comparability data provided in the proceedings, while informative, did not provide a definitive guideline. No two communities are identical In fact, the comparables in this matter varied significantly in population with only the city of Salem having a population that was reasonably close to the City of Eugene. (Exs C-25 and A-1) The previous discussion regarding the health care plans in the comparable communities illustrates how difficult it can be to make precise comparisons. Nonetheless, the Arbitrator has concluded that the Last Best Offer put forward by the City would not fulfill the mandates of the statutory criteria. The City's Last Best Offer would shift a portion of the cost of health care to the employee without good reason. While the City has argued that cost shifting would be consistent with its comparables it has ignored not only the fact that the comparables do not have precisely the same plan as the City of Eugene but it has also ignored the fact that in some cases, the comparables have provided an additional benefit in the form of a VEBA to its employees. Additionally, employees in the comparables who do not wish to assume the cost shift have the option of switching to a health care plan that provides prescription coverage, an option that is not available to the Association employees While the City emphasizes that cost shifting has been undertaken by all of its other employee groups, the Arbitrator cannot deviate from the statutory criteria that requires comparisons " ...of other employees performing similar services with the same or other employees in comparable communities". While it is true that the statute allows at paragraph (h) for the consideration of other factors such as internal equity, consideration shall only be given if the factors in paragraphs (a) through (g) do not provide sufficient evidence for an award. That is not true in this case. Even if this Arbitrator were to deviate however she would note that there was no evidence or testimony provided as to what might have transpired in negotiations with the City's other employee groups Negotiations are a give and take process which ideally results in a satisfactory agreement for both parties. The results of the process cannot be viewed in isolation. Other employee groups may have made gains in other areas of their respective agreements thereby

making them amenable to a cost shifting proposal for their health care plan. It is also worth noting that premium costs for the other represented employee groups are higher than the premium costs for the Association employees. (Ex. A-45) The City also emphasized that Eugene area employers have shifted some of the health care costs to their employees. (Ex. C-16) While the Arbitrator found this information to be interesting, she also found it to be incomplete and irrelevant. Incomplete in that no information was provided as to what type of health plans were provided; irrelevant in that none of the employers fall within the statutory definition of comparable communities.

When viewed in its totality the City's Last Best Offer would eliminate a long established and accepted practice of compensating for earned leave time. It would incorporate into the Agreement at Articles 17 and 18, language that would certainly lead to ongoing grievances and disputes. It would require employees to pay five percent (5%) of the total cost of the premium for health insurance based on a tiered rate for single, two-party, and family without any consideration given to the effect that it would have on the actual monthly compensation received by an employee. Finally, the City's Last Best Offer would provide a minimum increase of 2.5% in the third year of the agreement which is by itself not unreasonable but when viewed in the light of the costs to be incurred by the employees in the remainder of the City's Last Best Offer, is not sufficient.

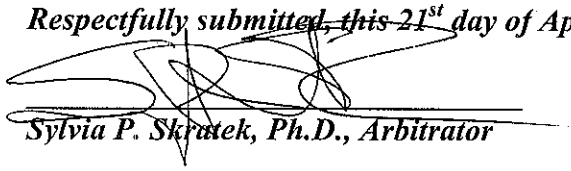
The Association's Last Best Offer maintains the status quo and the Arbitrator is reluctant to select an offer that does not take into consideration the merits that are contained within many of the City's proposals. Status quo is not always the preferred alternative and the Arbitrator would caution the Association to keep this in mind for future negotiations. The Association urged the Arbitrator to select its offer based upon its assertions that the City failed to demonstrate: that the status quo has proved to be unworkable or; that external evidence established changed circumstances which impel modifications or; that there is a perceptible trade-off in which the party seeking change has "bought" agreement. None of those assertions however served as the basis for the Arbitrator's determination in this matter. Instead, she has taken into consideration the

interest and welfare of the public and has found that the City's Last Best Offer would have too great of a negative monetary affect upon an individual employee which would in turn lead to a lower level of satisfaction than currently exists. While it is not the obligation of an arbitrator to raise an employee's level of satisfaction, it is a legitimate consideration to make certain that an employee's level of satisfaction is not lowered unreasonably. When the Arbitrator took a hard look at the City's Last Best Offer she could find no good reason to depart from the current contract that was consistent or compatible with the statutory criteria. It is in the public's best interest and welfare to select the offer that will not further affect the morale of its work force.

ORDER

Having carefully considered all evidence, testimony and arguments submitted by the parties in this matter and based on the statutory criteria prescribed in ORS 243.746 (4), the Arbitrator selects the Association's Last Best Offer package, to be incorporated with the tentative agreements previously reached by the parties, as the next agreement between the parties. It is so ordered and awarded.

Respectfully submitted, this 21st day of April, 2006,



Sylvia P. Skratek, Ph.D., Arbitrator