

In the Matter of the Interest Arbitration

between International Association of Firefighters, Local
1432 (“Union” or “IAFF”),

and

the City of Medford, Oregon (“City”)

Findings,
Discussion and
Award.

Case Numbers:	Arbitrator’s N44.
Representing IAFF:	Michael J. Tedesco and Tedesco Law Group, 3021 NE Broadway, Portland, OR 97232.
Representing the City:	Todd A. Lyon and Barran Liebman LLP, 601 SW 2 nd Avenue, Suite 2300, Portland, OR 97204.
Arbitrator:	Howell L. Lankford, P.O. Box 22331, Milwaukie, OR 97269-0331.
Hearing held:	In the offices of the City on June 18, 2012.
Post-hearing argument received:	From both parties by email on August 8, 2012.
Date of this award:	August 20, 2012.

This is an interest arbitration under the authority of ORS 243.746. The parties agree that they have completed the procedures contemplated by the statutory scheme leading up to interest arbitration and that their respective notices of issues in dispute were satisfactory. The hearing was orderly. Each party had the opportunity to call and to cross examine witnesses, but both parties chose to build an almost entirely documentary record, without objection, leaving it to the arbitrator to separate evidence from argument in the voluminous documentation introduced into the record. Both parties filed timely post-hearing briefs.

THE ISSUES IN DISPUTE

The parties agree to a two-year successor agreement. The issues in dispute include both pay rates and employer insurance contributions, and in this instance those two are so closely intertwined that the parties' proposals require a brief preliminary explanation. Employee and dependent medical expenses are addressed in two ways under the agreement of these parties. Day-to-day medical costs are paid out of an employee's individual medical savings account, which is administered by HRA VEBA. Under the just expired CBA, the City paid 2.4% of base wages each month into each employee's HRA VEBA account.¹ The second part of the City's medical coverage is an insurance policy. The CBA sets out a fixed contribution per employee, which increased from year to year under the prior agreement.² Since 2001 the parties have left the choice and design of insurance coverage to the Union. Each employee chooses either a more expensive, lower deductible plan or a less expensive, higher deductible plan. If the cost of the chosen plan is greater than the City's bargained contribution, the employee pays the difference; and if the cost of the plan is less than the stated contribution, the excess goes into the employee's medical savings account.

Aside from retirement, the most significant components of labor costs to the city, therefore—and the most significant components of employment benefits to the members of the bargaining unit—are direct wages, medical savings account contributions, and medical insurance costs. Both wages and medical coverage costs are in dispute here, and although the total costs of the parties' proposed packages in those areas are not massively different, there is a significant difference in how they would allocate those additional expenditures. The Union also proposes to allow the City to increase by one the cap on the number of employees on vacation leave at any given time.

The Union proposes two increases in wages: 1.75% on July 1, 2011 and another 2.00% on July 1, 2012; and the Union would continue the City's current \$1,430 per month medical insurance contribution until January 1, 2013, at which time the Union would increase that

1. That rate was 1.2% at the adoption of that 2008-2011 CBA, and it increased to 2.4% on July 1, 2009.

2. It began at \$1,250 per month, increased to \$1,310 for FY 2009, \$1,375 for FY 2010, and \$1,430 for FY 2011 (annual increases of approximately 5%, 5% and 4%).

contribution to \$1,550 per month (about an 8.4% increase). That would increase that portion of the City's health insurance costs by 8.39% against the Union's "guess" of an upcoming 8% premium increase as of the first of the year. The City, on the other hand, would not change the wage rate at all for the first year of the new contract and would increase it by only 0.75% as of July 1, 2012. On the medical coverage side, the City would not increase insurance contributions at all during the life of the new contract; but it would increase the HRA VEBA contribution from 2.4% of base wages up to 3.6% along with a one-time additional payment of \$300.00. Finally, the Company proposes a one shift increase in all employees' leave balances as of January 1, 2012.

The parties agree that a 1% wage increase for this bargaining unit would cost the City about \$100,000. On that basis, the Union costs its first year proposal—7.5% wage increase—at about \$175,000; and it costs its second year proposals—2% wage increase and increased insurance costs of \$120 per month for six months for 68 employees—at about \$249,680. That adds up to a total cost of \$424,680. Taking that same approach, the Union costs the City's proposal at \$248,285, all of it second year costs (\$75,000 in wages, \$90,866 for the one-time VEBA increase, and \$82,419 for an additional shift of time off). That makes the difference between the two proposals just over \$176,000. The City's numbers include the costs of step and other increases which are not at issue here and find a total cost difference of about \$260,400.

The only other issue in dispute is the Union's proposal to allow the City to grant one additional shift of vacation leave at any one time (increasing the maximum number of employees on leave from three to four) at the complete discretion of the City.

THE CITY, THE DEPARTMENT, AND THE BARGAINING UNIT

The City and the Department. This is a full-service fire department serving the City of Medford and the contiguous Medford Rural Fire District. The Department operates five stations. The 68 employee bargaining unit includes 34 Firefighters, 15 Engineers, four Fire Inspectors, and 15 Captains. Departmental management includes three Battalion Chiefs and a Chief. The Department's fire services costs per capita (\$122) and firefighter size per protected population (0.79) are exemplary.³ In terms of 'bang for the buck,' the citizens of Medford get a remarkably good deal.

The expiring contract covered the period from 2008 to 2011. Both the national and local economy experienced substantial distress during that period, but the contract called for increases of 3.5% in 2008, 3.6% in 2009, and 4.3% in 2010. The unemployment rate in the Medford area rose above 10% in April, 2010; and most of the City's bargaining units agreed to reopen their previously bargained collective bargaining agreements. The Union was an exception. There is

3. On average (of Salem, Bend, Hillsboro, Corvallis, Eugene, Albany and Springfield) citizens of similar cities pay almost half again as much for fire services (1.47) and employ about 15% more firefighters.

no substantial dispute that the City was not unable to meet the terms of its previously bargained agreement with the Union or to meet the additional costs of the Union's proposal in the current negotiations; but most of the City's other unions have agreed to a salary freeze for both 2010-2011 and 2011-2012. And the Jackson County unemployment rate touched 10.8%, substantially above the State-wide average.

DISCUSSION

The Oregon interest arbitration statute is uniquely restrictive. Whereas Washington, for example, generally requires an arbitrator to "be mindful of" certain listed factors, the statutory language in Oregon is far stricter: "Arbitrators *shall base their findings and opinions* on these criteria ..."

STATUTORY AUTHORITY AND DIRECTIVES UNDER ORS 243.746(4)

*** Arbitrators shall base their findings and opinions on these criteria giving first priority to paragraph (a) of this subsection and secondary priority to paragraphs (b) to (h) of this subsection as follows:

- (a) The interest and welfare of the public.
- (b) The reasonable financial ability of the unit of government to meet the costs of the proposed contract giving due consideration and weight to the other services provided by, and other priorities of, the unit of government as determined by the governing body. A reasonable operating reserve against future contingencies, which does not include funds in contemplation of settlement of the labor dispute, shall not be considered as available toward a settlement.
- (c) The ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided.
- (d) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance, benefits, and all other direct or indirect monetary benefits received.
- (e) Comparison of the overall compensation of other employees performing similar services with the same or other employees in comparable communities. As used in this paragraph, comparable is limited to communities of the same or nearest population range within Oregon. ***
- (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.

This is not the usual interest arbitration dispute. The Union's Post-hearing Brief describes the situation pretty well:

Ordinarily, the Union seeks to change the status quo with requests for "catch up" pay based on a perceived lack of comparability with "comparable communities" under ORS 243.672(4)(f) and (e). These arguments are generally met with some form of an "inability to pay" claim by the employer under ORS 243.672(4)(b). Neither party takes the "usual" position in this case. The City openly acknowledges that it has the money to pay the requested compensation increases, and the Union agrees that the bargaining unit, as of July 1, 2011, is paid at approximately the midpoint of the comparable jurisdictions.

Here, instead of the usual appeals, the City appeals to internal comparability and fairness and to the sacrifices made by other City employees in the recent past; and the Union appeals to the uniqueness—among comparable jurisdictions—of the City's zero first year proposal, to the uniqueness of the insurance freeze proposal, to the need "to maintain the historical relationship between Medford and its comparable cities," and to the "once only" characteristics of the City's proposed allocation of the costs of its proposal.

That presents a substantial threshold question of whether the Oregon statutory scheme allows me to base the decision in this case on any of those additional factors. Taking internal comparability and equity as an example, the City argues (Post-hearing Brief at 2) that I should "give meaning to the priority directive (i.e., 'interest and welfare of the public') by considering the internal equity throughout the City and Jackson County as a whole." The City cites a number of interest awards by noted arbitrators addressing internal equity under the guise of interest and welfare of the public. The problem with that approach, it seems to me, is the language of subsection (h), which directs an interest arbitrator to consider

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.*

There is not much room for dispute that internal comparability and equity are traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of

employment.⁴ Similarly, there is no dispute that considerations of internal comparability and equity are “consistent with paragraphs (a) to (g).” Indeed the City’s main argument is that proper consideration of paragraph (a) requires consideration of internal comparability and equity. But that brings us squarely to the express limitation: (h): “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.*” To me, that limitation seems pretty clear. In particular, the statute does not allow the use of such additional factors simply because the award would be better for their inclusion. As long as there is “sufficient” evidence for “*an award,*” the use of such other factors is expressly prohibited.⁵

I invited the parties to address this issue in particular in their Post-hearing Briefs:

You...want me to address various factors in the case, and fit them into the statutory scheme in creative ways. And that’s what I want you to address... How do I do what you want me to do? How do I pay attention to what you want me to pay attention to? How do I turn the case on the bases that you propose to see it turned on, in light of the statutory scheme?

Both parties directed me to various approaches taken by other interest arbitrators in prior awards; and I have paid careful attention to those proposed work-arounds. I honor my colleagues who have sought ways around the serious limitations of the list of factors set out in the statute. That limitation is particularly frustrating in light of the case law that finds interest arbitration a continuation of the bargaining process, because collective bargaining is never limited to the factors listed in paragraphs (a) to (g). And I depart reluctantly from what may well be the majority view of Oregon interest arbitrators on this topic. But that the statutory language of the ‘other factors’ limitation in subsection (h) is clear and express: I cannot in good faith judge that the factors set out in paragraphs (a) to (g) do not provide *sufficient evidence for an award*—except with respect to the proposal to allow an additional employee off on vacation—and I have no choice but to find that the decision here must be based on those factors and on no others.

(a). *The interest and welfare of the public.* Neither party suggests that the interest and welfare of the public is a determining factor in this dispute except to the extent that the interest

4. In fact, from the point of view of modern compensation administration, it would probably be considered monstrous to neglect internal comparability and equity. Any wage and hour analyst who insisted on leaving out the factors of internal comparability and equity in setting wage rates would almost certainly be dismissed out of hand.

5. Nor is it plausible to throw up one’s hands and find the statute meaningless or impossible of literal compliance: paragraphs (a) to (g) are aimed at economic proposals, and for non-economic proposals it is pretty easy to meet the limitation set out in paragraph (h). So the statutory language on its face makes good sense, no matter how frustrating or inconvenient an arbitrator may find it.

and welfare of the public is a consequence of one of the other listed factors or of another factor which cannot be properly addressed under paragraph (h).

(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... Neither party argues that the City's financial condition would be substantially affected by the cost difference between these two proposals. On the other hand, this portion of the statute includes clear recognition that public employers such as cities provide services and have priorities other than those of any particular group of employees. And there must be some something in the record to justify departing from the governing body's determination of spending priorities.⁶

(c). The ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided. There is nothing in the record to suggest that the City's ability to attract and retain Firefighters would be impacted by the difference between these two proposals. But the Union argues that the higher wage rates it proposes will insure that the City continues to experience no such problems.

When a record shows substantial problems of recruitment and retention, that is a factor strongly favoring compensation increases. When a record shows what may be the beginning of such problems, there is room for the parties to argue over whether such foreshadowing requires prompt action. But when a record shows no evidence at all of problems of recruitment and retention, this factor is uninformative.

(d), (e), and (g). 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. Comparison of the overall compensation of other employees performing similar services with the same or other employees in comparable communities. And stipulations of the parties.

These three factors must be addressed together for two reasons. First, paragraphs (d) and (e) are intertwined because, as usual, both parties offer comparability data which reflects the paid excused time, pensions, insurance, etc. of both City and comparator employees.

Second, the stipulations of the parties here include a stipulation about proper comparables. The parties' 1998-2001 and 2001-2005 collective bargaining agreements included annual increases indexed to the wages of Firefighters in Albany, Corvallis, Eugene, Gresham,

6. The governing body's determination does not bind an interest arbitrator, for that would make the whole process rather pointless. But this paragraph requires an interest arbitrator to take into account at least the fact that the public employer has made such a determination and to weigh that determination as one of the elements on which the award is based.

Hillsboro, Lake Oswego, Salem and Springfield. The parties stipulate that those are still appropriate comparators for the purposes of this interest arbitration, and they agree to the City's proposal to add Bend to the list. The City objects to the Union's proposal to add Beaverton.⁷

The sort of 'all things considered' comparison required by taking paragraphs (d) and (e) together presents inevitable analytical choices because employers commonly offer various types of pay incentives. In the nature of incentives, not all employees earn every financial prize; and that fact brings with it the question of how to properly reflect elements of compensation that are received by some but not all of the employees in a particular classification. Here, then, are two summaries of the Union's total compensation data for the stipulated comparables, including Bend.⁸ The first chart, on page 9, includes the value of vacations and other leaves, PERS contributions, and employee contributions to insurance premiums, but does not include incentives and premium pay; and the second, on page 10, includes EMT and other premiums.

The City strenuously objects to the inclusion of Beaverton because Beaverton's fire suppression service is provided by Tualatin Valley Fire and Rescue (TVF&R). The City points out that TVF&R has a service area of almost half a million people and a budget of about \$105 million, compared to the \$11 million budget of the Medford Fire Department; and the City calls particular attention to arbitrator (and prior ERB Chair) David Stitler's observation that when a jurisdiction provides services through a third party—such as TVF&R—it arguably does not have its own "employees" for purposes of the statute. (See *Milwaukie Police Employees Association v. City of Milwaukie*, IA-08-10 (2011) at 18-19.) It is not necessary to resolve this dispute in the case at hand, as shown by the two following tables, which show the averages and percentages by which Medford leads its comparables both without and with the inclusion of Beaverton.

(The Union also points out that Eugene, Gresham, Hillsboro and Beaverton have instituted Kelly Day paid time off systems which effectively reduce the work week. But the record does not provide the data necessary to appropriately adjust the compensation figures for those comparables, and apparently the Union could not find a way to make that adjustment either.)

7. The Union also provided data averaging the five larger and five smaller cities in Oregon, which it characterizes as the 'statutory comparables.' The City provided similar data.

8. I reproduce the Union's numbers not because I find the City's data defective but because they show the closest approach that could be found in good faith to a rosy scenario.

Total \$ w/leaves & PERS	Firefighter			Engineer			Captains			Fire Inspector II		
	Entry	15 years	25+ years	Entry	15 years	25 years	Entry	15 years	25+ years	Entry	15 years	25+ years
Albany	5,081	6,998	7,173	5,456	7,492	7,679	6,053	8,365	8,574	5,310	7,262	7,492
Bend	4,700	6,386	6,479	5,405	7,335	7,442	7,641	8,111	8,228	5,352	7,121	7,332
Corvallis	4,877	6,675	6,775	5,258	7,191	7,298	5,691	7,780	7,895	5,638	7,641	7,800
Eugene	4,605	6,517	6,669	5,197	6,668	7,027	5,477	7,259	7,428	5,276	6,961	7,116
Gresham ⁹	4,640	7,560	7,730	4,640	7,560	7,730	5,156	8,320	8,506	5,157	8,313	8,408
Hillsboro	5,005	6,991	7,151	5,880	7,360	7,528	6,623	7,838	8,017	6,010	7,839	7,980
Lk Oswego	5,202	7,186	7,252	5,643	7,760	7,831	6,144	8,351	8,428	6,433	8,509	9,612
Salem	4,848	6,989	7,071	5,037	7,273	7,361	8,142	8,744	8,850	5,025	7,264	7,319
Springfield	5,016	6,436	6,677	5,378	6,908	7,167	5,780	7,243	7,514	5,470	6,788	6,905
Beaverton	5,042	7,530	7,792	5,386	8,142	8,313	5,807	8,796	8,979	5,783	8,741	8,910
AVERAGE w/o Beaverton	4,886	6,860	6,997	5,322	7,283	7,451	6,301	8,001	8,160	5,519	7,522	7,774
Medford	5,471	7,079	7,287	7,180	7,789	8,018	7,868	8,496	8,746	7,152	7,559	7,987
% Difference	11.98	3.20	4.15	34.93	6.94	7.60	24.87	6.18	7.18	29.59	0.49	2.74
AVERAGE w/ Beaverton	4,902	6,927	7,077	5,328	7,369	7,538	6,251	8,081	8,242	5,545	7,644	7,887
% Difference w/ Beaverton	10.41	2.15	2.89	25.80	5.39	5.99	20.55	4.89	5.76	22.46	(1.13)	1.24

9. Gresham requires all firefighters to be able to drive the rig, so its entry level position is really Engineer, as indicated by the duplicate numbers here. If Gresham Firefighter data were not included, the average would increase slightly.

Total \$ w/ EMT & Other Incentives	Firefighter			Engineer			Captain			Fire Inspector II		
	Entry	15 years	25+ years	Entry	15 years	25+ years	Entry	15 years	25+ years	Entry	15 years	25+ years
Albany	5,614	7,531	7,706	5,989	8,025	8,213	6,586	8,898	9,107	5,315	7,266	7,496
Bend	5,291	7,422	7,515	6,185	8,330	8,437	7,840	9,211	9,328	5,805	8,018	8,229
Corvallis	5,544	7,818	8,035	5,975	8,420	8,654	6,465	9,107	9,359	5,902	8,253	8,538
Eugene	5,011	6,923	7,075	5,603	7,273	7,433	5,883	7,665	7,834	5,276	6,961	7,116
Gresham	5,155	8,361	8,531	5,155	8,361	8,531	5,629	9,201	9,388	5,225	8,419	8,514
Hillsboro	5,140	7,785	7,944	6,039	8,196	8,363	6,802	8,728	8,907	6,175	8,048	8,188
Lk Oswego	5,680	7,814	7,880	6,162	8,438	8,509	6,709	9,081	9,158	6,729	8,887	8,990
Salem	5,541	7,770	7,853	5,744	8,074	8,162	8,509	9,129	9,234	5,251	7,582	7,637
Springfield	5,634	7,054	7,294	5,910	7,440	7,698	6,311	7,775	8,046	6,002	7,320	7,434
Beaverton	5,679	8,268	8,429	6,024	8,780	8,951	6,445	9,434	9,617	5,783	8,741	8,910
Average w/o Beaverton	5,401	7,609	7,759	5,862	8,062	8,222	6,748	8,755	8,929	5,742	7,862	8,016
Medford	5,976	7,905	8,113	7,831	8,693	8,922	8,578	9,479	9,729	7,577	8,382	8,610
% difference	10.64	3.89	4.56	33.58	7.83	8.52	27.11	8.28	8.97	31.95	6.62	7.41
Average w/ Beaverton	5,429	7,675	7,826	5,878	8,134	8,295	6,718	8,823	8,998	5,746	7,949	8,105
% difference w/ Beaverton	10.07	3.00	3.67	33.22	6.88	7.56	27.68	7.44	8.13	31.86	5.44	6.22

Using the intermediate, 10-year numbers for each classification and a distribution of 34 Firefighters, 15 Engineers, 4 Fire Inspectors, and 10 Captains, the Union's numbers show bargaining unit wages currently ahead of the stipulated comparables by an average of 4.52% before counting incentives and by an average of 5.62% with incentives. Even including the disputed Beaverton, the averages come out at 3.28% and 4.66% respectively. These numbers—any of the four sets—eloquently argue against the pay rate increase proposed by the Union.

(f) *The CPI-All Cities Index, commonly known as the cost of living.* The parties agree that item (f) shall be the December to December change in the National index. The City points out that the 43% increase period in firefighter wages over the past decade far outstrips the 26% increase in the CPI index over the past decade.¹⁰ Moreover, over the difficult economic period covered by the contract which just expired, these employees experienced a total 11.4% pay increase during a period which saw a substantial drop in the CPI, whether measured from 2008 to 2009—the largest drop in recent years—or from 2008's 4% to 2010's less than 3% or to 2011's roughly 1.5%.

On the other hand, in order for the City to put that happy face on this statutory factor it is necessary to stay firmly turned toward the past. The Union points out that the CPI index increased by 2.3% for fiscal 2011, followed by something like 1.7% in the current year. I cannot agree with the City's claim (Post-hearing Brief at 8) that its "historically generous economic packages insulate the Firefighters from any CPI effect." No analytical magic can change the fact that these employees will lose something like three percent in purchasing power over the course of the contract at issue; and such losses seem to me to be squarely within the intended focus of this paragraph of ORS 243.746(4). But the Union's proposal substantially overshoots that loss—at 3.75% in total wage increases plus about half a percent in insurance premium costs. On the other hand, the City's offer comes a bit closer to that total over the course of the two years, at about 2.5%, but only if we count the cost and value of the additional day of leave and the substantial increases to the employees' VEBA accounts.

VEBA accounts potentially benefit some employees more than others, as the Union points out. For employees nearing retirement, a substantial VEBA account is particularly attractive because those funds may be used for insurance *premium* payments after retirement. In this instance, the record shows that exactly half of the covered employees have opted for less expensive, higher deductible insurance coverage so that the saved premium dollars enrich their VEBA accounts; and 54% of bargaining unit employees have over ten years seniority in the department.¹¹ On that record, it is hard to conclude that the City's proposed VEBA contributions should be devalued in any respect.

The Union is certainly correct in arguing that the City's proposed one shift of leave is "a gimmick approach that allocates resources to one-time only payments." It increases the cost to the City and the immediate benefit to the bargaining unit members without increasing the base from which the parties will begin subsequent negotiations and without affecting the calculation basis for retirement benefits. Under this statutory language and in the face of these numbers,

10. The Union provided data showing a total CPI-W increase from 2006 to 2010 of 15.8% as compared to an average compensation increase for the comparable departments of 17.1% and an increase for Medford of 19.4%.

11. Medical savings accounts are also somewhat more attractive to older, married employees, since the account may be passed on to a surviving spouse. They are perhaps least obviously attractive to young, healthy, single employees. But that is true of all insurance.

Cost of living—and more specifically the *current* changes in the cost of living—is the Union’s first argument for its proposed pay increase. Its second argument is that an increase is necessary “to help maintain the historical relationship with the other comparable jurisdictions and...offset the lower work week in a number of the comparable jurisdictions.” That “historical relationship,” according to the Union, is that the parties have always understood that Medford would remain above the comparable average. That understanding seems to be reflected in the stipulated comparables. The usual first step in picking comparables under the statute is to consider employers with populations in the $\pm 50\%$ range of the jurisdiction in question. There is a respectable body of opinion that the formula should be a product rather than a sum, i.e., “half-to-twice” rather than $\pm 50\%$. But there is no substantial authority for including comparables outside the half-to-twice range. Two of the *stipulated* comparables here, however, Eugene and Salem, are both well over twice the population of Medford (209% and 207%, respectively). With the addition of Bend, the resulting nine stipulated comparables are pretty evenly split, with five larger than Medford and four smaller. The smallest, Lake Oswego, actually falls just below the traditional -50% or “half” cut off, at 48.85% of Medford; but Lake Oswego pay rates are above the average of the comparables in almost every particular. In short, the stipulation to comparables here is generous and makes it very likely that Medford will remain substantially above the average of the *statutory* comparable jurisdictions. Based on the stipulated comparability data here, Medford will continue to be able to compete with some of the larger departments in the state for new hires and should lose no personnel to those departments. There is no good basis, on this record, to justify a pay rate increase in the face of this stipulated comparability data.

Finally, some of the stipulated comparable jurisdictions are in negotiations. That is almost always the case in any interest arbitration proceeding. Albany is in negotiations for a contract beginning in 2012. Corvallis, at the time of hearing, was working out the final details of a TA calling for no increase in 2012 and a CPI-based increase (0.5% to 3%) on July 1, 2013 and another (1.0% to 3.0%) on July 1, 2014. Gresham settled a new contract with CPI increases (all 2% to 4.5%) on July 1 of 2012, 2013, and 2014. Hillsboro’s contract expired on June 30, 2012. Eugene and Springfield have newly consolidated their fire departments, and their negotiations are complicated by that major organizational change. Lake Oswego has a new contract with a 2.9% increase July 1, 2012 and a CPI increase (0.5% to 3.0%) July 1, 2013.

Out of the stipulated comparables, there are at least five with settled contracts through FY 2013, i.e., Beaverton, Corvallis, Gresham, Lake Oswego, and Salem. Five was a significant number under the parties’ prior indexing agreements in the 1998 and 2001. Those contracts required that “at least five of the eight comparators have set wages” for the periods at issue. Although the issue is not quite the same, in light of that history I have no hesitation in finding the state of bargaining among the comparables sufficiently stable to support the necessary analysis.

In short, even sticking to the Union’s own numbers on comparability, the record here simply does not support the proposal to justify an award requiring additional costs to be allocated to pay and benefits for this unit. Even though the cost difference between the two proposals is quite small, the Union failed to justify even that small difference; and I must award the City’s proposal.

AWARD

I award the City's final offer package.¹²

Respectfully submitted,



Howell L. Lankford
Arbitrator

12. By agreement of the parties, the City becomes the official custodian of the record and holds the arbitrator harmless in that regard.