

In the Matter of the Arbitration)
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 between)
)
 LINCOLN COUNTY EMPLOYEES)
 ASSOCIATION)
 (Union))
 And)
)
 LINCOLN COUNTY)
 (Employer))

OPINION AND AWARD
INTEREST ARBITRATION
LCEA – DDA UNIT

BEFORE: Kathryn T. Whalen, Arbitrator

APPEARANCES: For the Association - DDA:

Kevin Keaney
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For the Employer:

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HEARING: June 8, 2016

RECORD CLOSED: August 5, 2016

AWARD ISSUED: August 29, 2016

I. INTRODUCTION

Lincoln County (County or Employer) and Lincoln County Employees Association (LCEA or Union) were parties to a 2012-2015 Collective Bargaining Agreement that expired on June 30, 2015. LCEA has a main unit and sub-unit consisting of only Deputy District Attorneys (DDAs). The parties created the DDA sub-unit because the DDAs are strike prohibited under ORS 243.736.

The County and the LCEA main unit negotiated and ratified a successor 2015-2018 Collective Bargaining Agreement. The County and the DDA sub-unit have agreed to all terms for a successor Agreement except for wages; that is, a cost of living adjustment (COLA). They submitted this remaining issue to interest arbitration pursuant to ORS 243.746.

A hearing was held on June 8, 2016, at which both parties were accorded a full opportunity to present evidence and argument in support of their respective positions. The parties elected to file post-hearing briefs which I received on August 5, 2016. I officially closed the record on that date.

II. PARTIES' PROPOSALS

The County's Last Best Offer proposes the following increases for each year of the 2015-2018 Agreement: 1.75% effective July 1, 2015; 1.75% effective July 1, 2016; and 1.75% effective July 1, 2017.¹ These proposed increases are the same as those that parties agreed to for the LCEA main unit.

The Union LBO proposes an increase of 2.25% effective July 1, 2015; an increase of 2.75% effective July 1, 2016; and an increase of 2.75% effective July 1,

¹ The County's LBO also includes all tentative agreements of the parties.

2017. Essentially, the Union's LBO incorporates the County's LBO, with an additional 2.5% increase over the term of the 2015-2018 Agreement.

III. **STATUTORY PROVISIONS**

ORS 243.746 (4) provides in relevant part:

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 an 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 opinion 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 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.

(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.

IV. FINDINGS AND OPINION

I find LCEA's LBO to be more consistent with the interest and welfare of the public. Below I set forth my factual findings and reasoning pursuant to the relevant statutory factors.

A. Background

The County is located on the central Oregon coast. Its estimated population is 47,220. The County provides general government, community, and public safety services. It is governed by a citizen Board of Commissioners and has five elected officials: Sheriff, District Attorney, Assessor, Treasurer and Clerk. DDAs report to District Attorney Michelle Branam and Chief Deputy District Attorney JW Hupp. Currently, the County employs eight DDAs. County Exhibits C-1; C-16; C-28.

DDAs represent the State of Oregon as trial lawyers in misdemeanor and felony cases in the County. They work closely with, and provide legal advice/assistance to, law enforcement agencies in investigations. In addition, they are responsible for cases involving, among other things: competency, juveniles, child support, restitution and probation violations. C-14.

B. Analysis of Statutory Factors

ORS 243.746 (4) requires the arbitrator to give first priority to the interest and welfare of the public when evaluating the parties' LBOs. Arbitrators typically look to the secondary factors for guidance in order to determine which LBO better satisfies the

interest and welfare of the public. I have applied this approach here. The parties focused their arguments primarily on two factors: attraction and retention of qualified personnel and comparability.

1. Reasonable Financial Ability to Pay

The County does not claim inability to pay. The City offered a cost analysis of its three-year LBO. Its proposed increase to base wages over the term of the 3-year contract was calculated as \$29,449. LCEA-DDA's proposal of an additional 2.5% over the term of the 3-year contract would add \$15-20,000 to that calculation. That is, the difference between the two LBO's is approximately \$15-20,000. There is no dispute that the County has the ability to pay either LBO. C-12, p. 3.

2. Attraction/Retention of Qualified Personnel

The evidence shows a significant turnover in DDAs over the course of the last ten years (2005-2015): 2005 - 4 DDAs; 2006 – 2 DDAs; 2007 – 3 DDAs; 2008 – 2 DDAs; 2010 – 2 DDAs; 2012 – 2 DDAs; 2013 – 1 DDA; 2014 – 3 or 4 DDAs; and 2015 – 5 DDAs. C-13; U-1. Of the current DDAs, six of the eight have been hired since 2014; two were hired this year. C-16.

It takes time -- six months to a year -- for a new DDA to become familiar with work at the County and to not require guidance. It also takes time for law enforcement personnel to develop trust in a new DDA. In addition, DDAs have experienced a demonstrable increase in their workload of felonies and misdemeanor cases in recent years. U-2.

With the significant turnover in personnel, all of these factors have created a difficult and stressful work situation for existing DDAs. DDAs are overwhelmed with

work and morale is poor. They have been in “triage” mode; sometimes a case is reassigned to different DDAs several times before trial.

According to the County, the DDAs who have left the County are not leaving for better paying jobs with comparable jurisdictions. Rather, argues the County, they are moving to advance their careers or because they don’t like the weather and/or social isolation of Lincoln County. Further, asserts the County, there was no evidence presented that the LCEA’s LBO would be more likely to address this challenging retention problem.

LCEA argues that the County’s argument that it takes “a special kind of person” to live in Lincoln County has no merit. According to the Union, the evidence shows numerous instances of DDAs leaving for higher pay elsewhere; the County does not currently pay enough to attract and retain qualified DDAs.

On most occasions, the evidence indicates that DDAs left the County for employment in locations other than in Lincoln County—Portland, Salem/Marion County (DOJ), Lane County—locations with higher paying jobs. Reasons for departure are not certain from the evidence. Still, it is reasonable to infer that to some extent better wages and benefits were a factor.

Several DDAs testified in these proceedings. Their testimony about DDA turnover, and the corresponding adverse impacts on their job, was compelling. That testimony, coupled with the sheer number and frequency of departures, shows that this factor favors the LCEA’s LBO.

3. Comparability and CPI

Arbitrators are faced with a particularly difficult task when parties, like those here, do not agree on comparables and/or the methodology for identifying them. The County provided a comparability analysis from a compensation expert, Brandi Leo. The Union submitted a salary survey published in 2013 by the Oregon District Attorneys' Association (ODAA).

The County's approach was to first select jurisdictions within 150% to 50% in size as compared to Lincoln County. The County then further culled that list by removing jurisdictions that are too far away from the County or are non-union jurisdictions. Specifically, above Lincoln County, the Employer removed Klamath and Columbia counties because Klamath is too far away and Columbia is nonunion. Below the County, the Employer removed: Malheur (too far), Union (too far), Wasco (nonunion) and Tillamook (nonunion). C-15.

The County's analysis resulted in the following comparables: Coos and Polk counties above the County and Clatsop and Hood River counties below the County. Polk was included even though it did not fit the initial population parameters because there were not enough comparables.

The County's analysis showed that County DDAs are ahead of the market average of its selected comparables. As of July 1, 2014, County DDAs were above the market average by: 5.2% (DDA 1), 3.1% (DDA 2) and 6.6% (DDA 3). As of July 1, 2015, with the County's LBO increase added as well as increases from other jurisdictions, DDAs remained ahead of the market average by 3.9%, 1.6% and 4.4%, respectively. C-22 through C-27.

LCEA contends that there is no legal support for excluding Columbia County as a comparator because it is the closest to Lincoln County in population. According to the Union, it is a per se legal error to omit Columbia County based upon the statutory language of ORS 243.746 (4) (e).

ORS 243.746 (4) (e) defines “comparable” as being limited to communities of the same or nearest population range within Oregon for a county the size of Lincoln County. Columbia County is the closest to Lincoln County in population.

It would have been better had the County’s analysis offered information and analysis that included Columbia County as well as other jurisdictions within its selected population parameters. With more inclusive information of comparables based upon population, alternative analyses then could have been offered with other considerations, such as geographical proximity. More complete information would have allowed for a more reliable comparison.

The County argues that it followed traditional methodology with respect to its selected population parameters and it also provided supporting testimony with appropriate verification by resource data.

It is true that the County, through the analysis of Leo, did these things. The problem, however, is that the analysis omitted information and analysis that would have allowed for a more complete assessment of jurisdictions of the same or similar population range to Lincoln County.

At the same time, LCEA offered minimal information. The Union submitted for consideration only a 2013 salary survey published by ODAA. U-10. The County

objected to its admission and consideration on the grounds that the foundation for it was legally insufficient.

I admitted U-10 but I agree with the County that there was insufficient foundation to rely upon the 2013 survey as a reliable and accurate measure of comparability. There was no evidence of the methodology used; nor was there any source information.

I have considered and taken into account the County's comparability analysis, but I am not confident in its results. Further, and more importantly, the County has a significant retention problem. As a result, comparability is not a critical factor to my decision.

The CPI also was not a decisive factor. Both the County and Union's LBO's are above the CPI. C-8.

4. Other Arguments

The parties offered historical evidence regarding the wage increases received by the DDAs and other bargaining units/County employees. C-9; U-3, U-4.

The Union argues that this history shows that DDA salary continues to be depressed by a COLA reduction agreed to during the 2008-09 financial crisis. The Union also contends DDAs have historically lagged behind the LCEA main unit and other County bargaining units in terms of COLA increases.

The County disagrees with the Union. The County contends there is no justification for providing enhanced monetary increases to "make up" for the bargain that the Union struck in 2013 which was the result of a negotiated increase in steps over COLA increases.

The historical evidence provided context from which to consider the current LBOs, but it was not an important factor in my decision.

V. SUMMARY AND CONCLUSION

The evidence established that the County has a significant problem with retention of DDAs. DDAs are suffering hardship and difficulty at work that is attributable to, at least in part, frequent turn-over of DDAs. There is only a modest difference in cost between the parties' LBOs.

I conclude that the interest and welfare of the public is better served by LCEA's LBO. In arriving at this decision, even if not specifically mentioned, I have reviewed all of the evidence and considered all of the authorities and arguments submitted by the parties. My decision is for the reasons I have explained above.

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Having carefully considered all evidence, authority and argument submitted by the parties concerning this matter, pursuant to ORS 243.746 (4), the Arbitrator selects the LCEA's Last Best Offer. Pursuant to ORS 243.746 (6) the Arbitrator's fees and expenses shall be borne equally by the parties.

Respectfully submitted,



Kathryn T. Whalen
Arbitrator
Date: August 29, 2016