

BEFORE INTEREST ARBITRATOR KATRINA I. BOEDECKER

1A-03-10

In the matter of the interest)
arbitration between:)
))
STATE OF OREGON, DEPARTMENT OF)
ADMINISTRATIVE SERVICES,)
on behalf of)
OREGON MILITARY DEPARTMENT,)
employer,)
and)
))
PORTLAND AIR NATIONAL GUARD,)
INTERNATIONAL ASSOCIATION OF)
FIRE FIGHTERS, LOCAL 1660,)
union.)
_____)

INTEREST ARBITRATION
OPINION AND ORDER

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EMPLOYMENT
RELATIONS BOARD

John R. Kroger, Attorney General, by Stephen D. Krohn, Senior Assistant Attorney General, appeared on behalf of the employer.

The Tedesco Law Group, by Michael J. Tedesco, attorney at law and Sarah K. Drescher, attorney at law, appeared on behalf of the union.

JURISDICTION and ISSUE

On March 25, 2010, I received notice from the parties that they had selected me to be their Interest Arbitrator. The parties were working under a collective bargaining agreement that had expired June 30, 2009. The parties were unable to reach a successor agreement during negotiations. The Portland Air National Guard (PANG) fire fighters are prohibited from striking. Therefore, the parties submitted the contract

issues that were at impasse to interest arbitration pursuant to ORS 243.746.

As the Interest Arbitrator, I am to determine which last, best offer, either from the employer or the union, better meets the statutory criteria of ORS 243.746(4).

The interest arbitration hearing was held July 6 and August 6, 2010, in Portland, Oregon and October 25, 2010, in Salem, Oregon. The parties submitted post-hearing briefs and final legal arguments by December 8, 2010. As allowed by ORS 243.746(5), the parties granted me additional time to issue this interest arbitration opinion and order.

RELEVANT STATUTORY LANGUAGE

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 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 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. Notwithstanding the provisions of this paragraph, the following additional definitions of "comparable" apply in the situations described as follows:

(A) For any city with a population of more than 325,000, "comparable" includes comparison to out-of-state cities of the same or similar size;

(B) For counties with a population of more than 400,000, "comparable" includes comparison to out-of-state counties of the same or similar size; and

(C) For the State of Oregon, "comparable" includes comparison to other states.

(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.

LAST BEST OFFERS

Employer's Last Best Offer dated June 23, 2010

Salary Adjustment

No cost of living adjustment for either year of the of the 2009-2011 collective bargaining agreement.

Incentive Pay

Increase Hazmat Technician incentive pay from \$50.00 per month to \$65.00 per month.

Amend "EMT" to "EMT Basic" (for clarification of the incentive, but no change to the rate).

Salary Selectives

Delete the implementation language of the 2007-2009 collective bargaining agreement.

Wage Table

Delete the first three wage tables of the 2007-2009 collective bargaining agreement. Retitle the November 2, 2008 wage tables

as Prior to June 30, 2009. Insert the wage table that was implemented via a Letter of Agreement effective 11:59 PM June 30, 2009.

Letter of Agreement signed on 4/23/08
(aka 6/30/09 add/drop salary range agreement)

- Suspend the LOA for 12 months following the 1st of the month after implementation of the 2009/2011 collective bargaining agreement.
- Employees at the top step would drop back to the top step of the prior step and then reinstated to the 6/30/09 11:59 PM top step at the end of the 12 months.
- Employees who received a step increase effective 7/1/09 through implementation of the 2009/2011 collective bargaining agreement would drop back to the prior step and then roll-back to the current step at the end of the 12 months.
- Employees who were moved to the new bottom step after 6/30/09 will remain on the bottom step through the end of the 12 months, and will be eligible to move to Step 2 on their Salary Eligibility Date (SED) following the 12 month freeze;
- No employees would move to a new step on their SED until the SED following the 12 months suspension period.

Union's Last Best Offer dated June 16, 2010Salary Adjustment

No cost of living adjustment for either year of the of the 2009-2011 collective bargaining agreement.

Incentive Pay

Increase Hazmat Technician incentive pay from \$50.00 per month to \$100.00 per month.

Salary Selectives

Salary step adjustments to reflect years of service with the organization. Employees will be placed on the following steps according to years of service:

Entry - 1 year	Step 1
1 to 2 years	Step 2
2 to 3 years	Step 3
3 to 4 years	Step 4
4 to 5 years	Step 5
5 to 6 years	Step 6
6 to 7+ years	Step 7.

ANALYSIS

The State of Oregon, through its Military Department, operates the Portland Air National Guard Military Base (PANG) in Portland, Oregon. The International Association of Fire Fighters, Local 1660, represents a bargaining unit of PANG employees. The bargaining unit has a total of 18 members: Three Captains, three Lieutenants and twelve fire fighters. In addition to regular fire suppression and prevention duties at the base, the PANG fire fighters assume military aircraft crash rescue functions due to their attachment to a military base. The fire fighters receive extensive training in military operations and procedures, military aircraft and specialized equipment used in crash rescues.

Interest and Welfare of the Public

ORS 243.746(4) directs that the "interest and welfare of the public" be given primary consideration when deciding which final package to award. The public interest can be addressed with a fiscally reasonable package; the public welfare can be addressed with a package that will maintain a trained work force.

Neither party's last best offer package contains an across the board wage increase. The employer's package would produce a wage freeze for the life of the contract, with a literal last minute adjustment in the employees' wage range step placement that would advance the employees for the next negotiations. The new step placement would not provide any new money during this contract.

The union's package places employees on the wage range step that corresponds to the individual employee's years of service.

Funding -

The union and the employer take different positions on who would be responsible for funding any costs that might result from this interest arbitration award. The union quotes Arbitrator Thomas Levak in the most recent interest arbitration between these parties: "While PANG firefighters are considered State employees, the funding for their wages is received from the federal government through a Master Cooperative Agreement (the 'MCA'), and the funding is allocated in accordance with ORS 291.232 - 260." *Oregon Military Department and IAFF Local 1660 (PANG)*, IA-16-99 (Levak, 2000). The union cites an employer exhibit "SB 5536-A Budget Report and Measure Summary" which analyses the revenue for the Oregon Military Department. The report states, "Federal Funds pay wages and salaries of federal employees assigned to Oregon National Guard duties; provide construction funds for a variety of maintenance, armory, training and reserve center facilities; fund several programs for at-risk youth; and contribute to central administrative costs through an interagency transfer. ... The Department's federal budget is administered separately from its state budget and is not included in the Department's Federal Funds expenditure limitation."

Although the employer introduced several exhibits demonstrating the poor financial health of the state's general fund, its own witnesses admitted that wages paid to PANG fire fighters have no impact on the state's general fund. Director of Financial Administration for the Oregon Military Department Carl Jorgensen testified that reductions in the state general fund do not impact the wages for PANG fire fighters because the state is reimbursed 100% by the federal government for these wages. Jorgensen

testified that in the nine years that he has been the Director of Financial Administration, the federal government always has paid for 100% of the PANG fire fighters' wages.

Jorgensen testified that if he ever believed that federal funds were "in jeopardy," it would be his job to inform the state of such predicament. The state then could prepare itself financially to pay for PANG wages. Jorgensen testified that, in this case, he does not have any reason to believe that federal funding is in jeopardy or that the federal government will not pay for 100% of the PANG fire fighter award reached a result of this arbitration.

According to the Master Cooperative Agreement (MCA) between the federal National Guard Bureau and the State of Oregon, signed on April 2, 2010, the federal government has already agreed to reimburse the State for 100% of the wages paid to PANG fire fighters for the 2010 fiscal year. The amount of money that the federal government has agreed to provide for PANG wages during the 2010 fiscal year totals \$2,085,800.00. This is 100% of the amount requested by the U.S. Property and Fiscal Officer assigned to Oregon, Colonel David L. Ferre. Ferre testified that, as the Property and Fiscal Officer, it is his job to oversee the execution of the MCA. In order to receive federal funding under the MCA, Ferre requests the desired amount of funding and the federal government reimburses the state for that amount. There has never been a time that the federal government did not provide 100% of the funding that Ferre has requested for PANG wages. He further testified that he requested an opinion from National Guard Bureau Chief Mary Ellen Lewis regarding how the PANG cooperative agreement would be impacted by the employer's wage freezes with other state bargaining units. In response, Lewis wrote:

National Guard Bureau policy regarding this issue is that when a State (Oregon) has a pay raise, pay freeze, pay cap, a hiring freeze or employee furloughs for like positions throughout the state, then employees under the agreement will have corresponding limitations.

Here the union has agreed to "corresponding limitations". During bargaining, the parties reached a significant tentative agreement regarding furlough days. The union agreed to implement a number of furlough days that were part of the employer's original wage proposal. In order to meet the equivalent reduction in hours that other state employees had previously negotiated, the union agreed that, during the 2009-2011 contract period, every 13th shift would be a Kelly Day and each PANG fire fighter would schedule an additional 66 hours of furlough days. In total, each member of the bargaining unit will lose 156 hours of pay in the form of furlough time. Some PANG fire fighters have already started taking these furlough days. All PANG fire fighters will take furlough days before the expiration of the 2009-2011 agreement.

Lewis also expressed that the National Guard Bureau's intent is to ensure "compliance with Oregon laws and policies." Thus, this interest arbitration should be decided under the criteria set forth in Oregon's Public Employees Collective Bargaining Act (PECBA), Chapter 243.746 ORS. The PECBA governs Oregon law and policy with respect to interest arbitrations. On cross-examination, Ferre admitted that during his consultation with Lewis he did not inform her of PECBA's requirements regarding interest arbitrations because he himself did not know what PECBA requires. Thus, the written opinion from Lewis fails to consider what Oregon law and policy requires with respect to interest arbitrations.

Lewis expressed her confidence that Ferre's knowledge and expertise of the MCA would sustain the Guard's intend.

Since the federal government will pay for 100% of the costs awarded to PANG fire fighters as a result of this interest arbitration, the union's last best offer has no discernable financial impact on Oregon taxpayers. The union's proposal supports the public interest since it is fiscally reasonable to the taxpayer.

Future Litigation --

The union also argues that the employer's proposal is harmful to the taxpayer because it is so incomprehensible that it will likely result in additional litigation between the parties. The union stresses that when enacting the PECBA, the Oregon Legislature expressed that "unresolved disputes in the public service are injurious to the public, the governmental agencies, and public employees." ORS 13 243.656(2). It contends that the purpose of collective bargaining is to resolve disputes relating to employment so that employees and employers alike can go about the business of serving their community. It stresses that labor peace is beneficial to the welfare of the public. The union describes the employer's package as "poorly worded, highly complicated, and ultimately confusing." In fact, the union was required to re-do its costing of the employer's proposal twice during the hearing because it could not comprehend it.

I generally do not base my arbitration awards on the threat of future litigation since it is too speculative a point. I will not do so here.

Union's Package Solves Two Problems: Inequity in Salary Placement and Retention --

Over the years, the parties have negotiated "salary selectives" into their collective bargaining agreement. Salary selectives place employees at different steps on the salary range than what the employee's years of service would dictate. The language in the agreement reads:

Salary Selectives

Effective 10/1/007, the following Salary Ranges will be implemented:

Fire Fighter	SR 21
Lieutenant	SR 24
Captain	SR 27

Base salary will be used to determine the employee placement. Employee placement shall not exceed the top step of the bargained salary range.

- Employees whose salary falls below the first step of the new range will be placed on the first step of the new range and the Salary Eligibility Date (SED) will be changed to 10/01/2008.
- Employees whose salary falls on a step in the new salary range will be placed on that step in the new range and the Salary Eligibility Date (SED) will remain the same.
- The following employees will be placed on Step 2 of the Firefighter range on 10/01/07, and their SED will be changed to 10/01/08; Ethan Bishop, Matthew Joens, Christina Mitchell, and Kyle Nelson.
- The following employee will be placed on Step 3 of the Firefighter range on 10/01//07, and his SED will be changed to 10/01/08: Jason McClellan.

This approach has produced salary increases for the employees, as well as what the union characterizes as "unintended consequences". It has created inequities. Although the pay scale for PANG fire fighters has 7 steps, there are no fire fighters who are higher than step 4. Lead negotiator for the union Rocky Hanes testified that the top wages in the current pay scale are "elusive" – they exist only on paper and are never actually applied to members of the bargaining unit.

Former PANG fire fighter Kyle Nelson testified that he worked at PANG for five years but he only made it to step 2 on the wage scale. Nelson testified that he would have had to continue working at PANG for 11 years in order to reach the top step of the pay scale. Instead, he left PANG in 2008 to work for the City of Portland Fire Department. There he will reach the top step of the salary scale in five years. Nelson testified that while working as a PANG fire fighter, his salary steps were constantly "tinkered with" and renumbered due to pay freezes and salary selectives. As a result, Nelson was stuck at step 2 of the wage scale for most of his career with PANG. Nelson testified that he left PANG because of low pay and a sense of insecurity – he never knew when his pay would be altered by a freeze or a salary selective.

Although Nelson's frustration is evident, it must be remembered that there is no evidence that the employer acted unilaterally. The parties reached these results through negotiations. The employer may have proposed freezes and selectives, but the union did agree to them. The employer argues that over the course of several contract periods, the union knowingly accepted additional top steps with the explicit recognition that members would be assigned to a lower step number simply because of

renumbering the steps while maintaining current pay plus retaining the ability to move up steps annually.

Now, though, the union is aware of problems that the former agreements have produced. The "unintended consequences" have created inequities. The union's package proposal is trying to correct these problems without imposing an across the board wage increase.

The union had former members of the bargaining unit testify about the problems that existed. Christina Webb worked at PANG for six years as a fire fighter before accepting a position with the Town of Stellacom in Washington State, as a fire fighter and public safety officer. Webb testified that the primary reason she left her position at PANG was because of the injustice she experienced in her salary steps. She testified that there were several PANG fire fighters with less seniority than she had, but who were placed on higher steps of the salary schedule. Webb gave the example of Mike Wou, who was hired by PANG after Webb, but who is higher on the salary schedule than Webb. (Wou was at step 4 and Webb at Step 3). Webb testified that had PANG placed her on the appropriate step of the salary schedule, she would have continued her employment with PANG.

Similarly, PANG fire fighter Alan Duval testified that he has worked at PANG for five years and is only on step 2 of the pay scale. Duval testified that he has more seniority than PANG fire fighter John Snyder, yet Snyder is on step 3 of the pay scale. Duval emphasized that for him, it is not just about the money. PANG is a paramilitary organization. In such a paramilitary organization, hierarchy among officers is very

important. The inequality in placement on the pay scale skews that hierarchy. Duval testified that if he had accepted a position with the City of Portland Fire Department, he would be at the top step of the city's pay scale by now. He has recently applied for a position with the Ontario Fire Department because he is not making enough money at PANG.

The union's package seeks to remedy the injustice in the pay scale (and thereby alleviate retention problems) by restoring employees to their proper steps. Under the union's package, every employee will be placed on the pay scale according to years of service.

The employer's package does not address the inequity in the hierarchy problem. In the employer's proposal to "roll back" employees to their previous salary step for a period of 12 months, senior employees would still be on a lower salary step than newer hires.

Secondary Criteria

The union argues that the employer's last best offer is so unreasonable that it should be rejected as not being in the public interest without regard to the secondary criteria listed in the statute. It cites the prior interest arbitration award:

Only where one party proposes a clearly unreasonable proposal should an arbitrator reject that proposal as not being in the public interest without regard to the secondary criteria. *Oregon State Police Officers' Association and State of Oregon*, (Bethke, 1996.) But where both proposals are reasonable, both are

deemed to be within the public interest, and the secondary criteria should be considered.

Oregon Military Department (Levak, 2000).

I do not agree with the union's contention that the employer's last best offer is so plagued with problems that I need not look at the secondary criteria listed in the statute. Although I find that the union's last, best offer better meets the interest and welfare of the public, I will evaluate the proposals using the secondary criteria as well, to insure that I am awarding the better package.

Ability to pay --

The funding analysis above also applies to the "ability to pay" secondary statutory criteria. In addition, the parties developed a record on other aspects of the "ability to pay" argument.

Hanes testified that during bargaining, the employer never claimed it had an inability to pay or that the federal government would be unable to pay for 100% of the wages paid to PANG fire fighters. Hanes testified that during bargaining the employer's sole position was that PANG fire fighters should receive exactly what other state employees have received. The employer then took the position that the economy of the state is in such a bad situation that no state employee should receive any salary increase.

The union claims that it was not until the hearing that the employer argued that it has an inability to pay. This argument is not persuasive since the record establishes that the federal government pays for 100% of the wages paid to the PANG fire fighters. In the last interest arbitration between the parties, cited above, Arbitrator Levak found that, because the federal

government pays for 100% of PANG wages, the ability to pay criterion did not apply:

Turning then to the first applicable secondary criteria, that of the reasonable financial ability of the unit of government to meet the costs of the proposed contract, the Arbitrator finds that this criterion favors the Association. Indeed, since the statute speaks solely to the financial ability of the unit of government – in this case the State – to meet the costs of the LBO [last, best offer], and given the fact that the federal government will be solely responsible for funding any awarded increase, the criterion, as a matter of law, cannot aid the State.

While the employer submitted evidence regarding the financial health of the state's general fund, that evidence is irrelevant since PANG wages are not paid from this general fund. The employer's exhibit of the Budget Report of the Joint Ways and Means Committee regarding the Military Department notes that PANG wages are paid entirely from federal funds and that the federal budget for salaries is administered separately from the state budget. In sum, the employer's evidence regarding the state's general fund is inapplicable because the general fund does not pay for PANG wages.

Since it is reimbursed by the federal government, the employer is able to pay for the union's package. The employer does not want to accept the union's package since it has adopted a bargaining philosophy of negotiations for these years to get concessions from its bargaining units. An unwillingness to pay is not enough to satisfy the statute. The statute requires showing an inability to pay. *Bend Firefighter's Association and City of Bend, IA-09-95*, (Snow, 1996). The employer's own evidence reveals that the

federal government has already agreed to pay for 100% of the wages paid to PANG fire fighters during the 2010 fiscal year – an amount totaling \$2,085,800.00. This pre-approved amount for 2010 exceeds the annual cost of the union's last best offer in either year of the contract. As Ferre testified, he has no reason to believe that the federal government will not pay for 100% of the PANG award resulting from this interest arbitration. This evidence is conclusive of the employer's ability to pay for the union's package.

Retention problem --

There is evidence that PANG suffers from a retention problem. In the previous arbitration between these parties, Arbitrator Levak described the retention problem as "simply overwhelming" and found that this criterion supported the union's last best offer: "Base firefighters resign and go to other Portland area jurisdictions primarily because of the substantial disparity in wages and benefits paid by the State and by area comparators. . . . The excessively high turnover has had its cost in training, overtime, shift disruption, morale and overall team work."

The record establishes that retention problems continue to plague PANG. Since 2007, six PANG fire fighters have left PANG to work at other fire departments. Those six PANG fire fighters represent 1/3 of the unit's total 18 member bargaining unit. In addition, there are at least six current PANG fire fighters who have applied to work at other fire departments: Alan Duval, Mike Wou, Matt Joens, Nick Menard, Sean Phillips, and Greg Lacquement.

Retention problems at PANG have a ripple effect on operations. Since PANG fire fighters perform duties that are entirely unique

to PANG, training new employees with regard to military operations, military aircraft and military equipment is extensive. PANG fire fighters must have specialized knowledge of F-15 and F-16 transit aircrafts, missiles, guns, and wing-tanks. PANG fire fighters are also required to have specialized training on extricating a pilot out of a military aircraft and the hazards associated with specific military aircraft. Training at PANG is more extensive than civilian fire departments because additional certification/licensure is required to establish proficiency with hazardous materials, airport fire fighter operations, and the operation of military vehicles. New hires are also required to take a number of career development courses in order to achieve proficiency with military protocols.

Until new employees at PANG are fully trained in these areas, more senior PANG employees are required to work additional hours in order to ensure that there are a sufficient number of experienced personnel on duty. PANG fire fighter Scott Donoho testified that PANG has established a "training shift" which adds more senior PANG fire fighters to a normal shift on which rookies are being trained. The senior PANG fire fighters work overtime while the rookies are being trained so that there are sufficiently experienced personnel available to respond to emergencies. Typically, it will take a new hire months of training before a "training shift" is no longer required.

The costs of a retention problem are not just monetary. As Hayes testified, because PANG is losing its most experienced fire fighters, there is also a cost to the safety of both the public and other PANG fire fighters. Retention problems of this nature are unique to PANG. Hanes, who is also President of the Tualatin

Valley Fire and Rescue Department (TVFR) bargaining unit, testified that in 15 years, TVFR has lost only two fire fighters to other departments. Jim Forquer, President of Portland Fire Department, testified that only one fire fighter has left Portland Fire for another department in the last 15 years. Karl Koenig, President of Clackamas County Fire Department, testified that in the last 10 years, only three fire fighters have left Clackamas Fire for other fire departments – and none of them left for economic reasons.

Retention at PANG is a severe and systemic problem. Until the disparities and injustices in the wage scale are remedied, experienced PANG fire fighters will continue to leave PANG for other departments. The union's last best offer seeks to remedy PANG's retention problem by placing PANG fire fighters on their proper length of service steps on the wage scale.

The employer's package fails to address the retention problem. The employer acknowledges that there has been turnover in staff. It contends, however, that employees leave for mixed reasons, not just monetary ones. It also advances that positions have not been vacant for extended periods of time, so turnover is balanced by the "attract" part of the attract/retain secondary statutory criteria. Chief Paul Looney testified that he did not have any difficulty filling vacancies. But six out of eighteen in the bargaining unit have left. The employer's approach does not acknowledge that if salaries were higher, even given mixed reasons, the higher wages might inspire the employee to stay. The money could outweigh the other "mixed" factors. The employer does not address the costs of constant training and overtime. The employer's speculation about employees leaving for mixed reasons

does not outweigh direct testimony from former employees that they left because of the wage step placement problems.

The union has shown demonstrable proof that the status quo is unworkable because of ranking being upside down to the time in service in this paramilitary organization. The union has established a compelling reason for the change in the status quo of salary selectives.

Overall compensation -

The employer argues that the compensation package of the bargaining unit is comprehensive and generous. The record shows that the employer pays for medical, dental and vision insurance as well as a retirement program. Employees receive paid vacation, sick leave and holidays. Employees can also set pre-tax money aside in deferred compensation accounts and child and health care accounts.

Overall compensation at PANG does not appear to be significantly above what other employers of fire fighters in the area are offering. When adding the wages to the benefit package, PANG's total compensation has not been enough to deter 1/3 of the bargaining unit from seeking employment elsewhere.

Comparable jurisdictions --

ORS 243.746(4)(e) requires the arbitrator to compare the overall compensation received by PANG fire fighters to that received by other employees performing similar job duties in comparable communities. It defines "comparable communities" as communities of the same or nearest population range within Oregon. ORS

243.746(4)(e)(C) further states that for the State of Oregon, "comparable" includes comparison to other states.

The employer argues that statutory language requires comparison only to other states. However, ORS 243.746(4)(e)(C) does not direct an interest arbitrator dealing with state employees to "only" compare to other states. The phrasing of the language allows an arbitrator to consider both communities with similar populations within Oregon, as well as other states. The statutory language at (C) does not exclude non-state employers from comparability. The language makes the comparable data circle bigger.

The employer produced legislative history that shows one iteration of the statutory language included a reference that comparable means "within the Oregon geographic labor market of the public employer" but the language is not in the final bill that was passed by the legislature. The employer argues that this means that the legislature did not intend to have interest arbitrators refer to the labor market. I find that the employer's version is not the only interpretation of the meaning of the absence of the language in the final bill. What is more noteworthy is that the final language of the statute does not prohibit looking at the labor market. Who knows what compromises were reached in the passing of the statute? The employer's conclusion is just one of many that could explain the current language.

Arbitrator Levak addressed this matter in the previous arbitration between the parties:

In the Arbitrator's opinion, ORS 243.746(4)(e)(C) is clear and unambiguous: It expressly allows an arbitrator to consider both communities with similar populations within Oregon and other states. The State argues that the word "includes" in paragraph (C) limits an arbitrator's authority to comparisons with other states. The Arbitrator cannot agree. Had the legislature intended such a limitation, it would have instead utilized a phrase such as "is limited to."

Arbitrator Levak went on to find that the more appropriate comparators for PANG were not the out-of-state bargaining units offered by the employer, but the neighboring fire departments proposed by the union:

Regarding community comparison, the Arbitrator deems it appropriate, for two reasons, to compare Base firefighters with other firefighters employed in the same community, namely: the Portland area, an area which is its own statistical measuring area. First, the Base's situation is almost unique, both because the Base has no population range of its own, and because the only other base of its type exists within the State in a community that does not have a population range similar to that of either the City of Portland or the Portland area. Second, the Base's situation is similar to that of Portland area fire districts, and employees of such districts are normally first compared to other districts and departments within that area.

In the present case, both parties have taken the same positions with respect to comparators as they did in the last interest arbitration. The employer has proposed out of state units as the appropriate comparators, while the union has asserted that neighboring fire departments in the Portland area are more

appropriate. I have considered the data from the other states as proposed by the employer, as well as the data from the neighboring fire fighter employers as proposed by the union.

The record does not establish that the out of state units selected by the employer are similar to PANG with respect to hours, work schedules, benefits, and salary steps. Therefore, the comparison to other states' bargaining units is unreliable. Jim Walsh, a representative from the employer's Human Resources Compensation Unit, testified he looked for out of state comparators that performed job duties similar to those performed by PANG fire fighters. Walsh selected Nevada, Idaho, Arizona, Montana, Oklahoma and Iowa as comparators. (In the previous arbitration the employer selected Iowa, Nevada and Oklahoma.) However, on cross-examination, Walsh admitted that he did not determine whether the fire fighters at these out of state comparators worked the same hours and workweeks as PANG fire fighters, even though he acknowledged that the hours worked per week could have a dramatic impact on the level of pay.

Arbitrator Levak also noted that differences in hours and workweeks make these out of state comparators inappropriate. Fire fighters at these out of state comparators can work anywhere from 37.5 hours to 53 hours per week, so the work week for the PANG fire fighters may vary by up to 18%. This variation is not attributable to differences in pay; rather, it is attributable to the variation in hours worked per week. The employer fails to account for these differences in hours and work schedules.

Additionally, when questioned regarding his methodology for determining the overall compensation paid at the out of state

jurisdictions, Walsh admitted that he did not include paid leaves, incentive pays, certification pays, or PERS in his computation of "overall compensation". While he did include employer paid health insurance, he did not make any deductions for the employee's share of health insurance.

The employer also fails to account for the differences among the states as to their consumer price indexes. The union submitted evidence showing that the CPIs in the out of state comparators are below the CPI in Oregon. In other words, the cost of living in the out of state jurisdictions is less than the cost of living in Oregon. The employer did not consider the differences in the CPIs when comparing the overall compensation paid at PANG to that paid at the out of state jurisdictions.

The employer argues that PANG fire fighters should not be compared to local fire fighters. It advances that PANG fire fighters are "specialists" while local fire fighters are "generalists". PANG fire fighters are trained to rescue pilots from crashed military aircraft. They have extensive specialized training and expertise that local fire fighters do not have. Therefore, the employer contends that only military crash rescue fire fighters who do comparable work at other air bases in other states are valid comparators to PANG. It also points out that PANG fire fighters are basic Emergency Medical Technicians' (EMT's) but are not required to have intermediate or advanced certificates.

The employer's argument that there is no similarity between Portland area fire departments and PANG is contrary to the evidence in this case. The employer claims that there should be no comparison to area departments because members of neighboring

departments would not automatically qualify to work at the base due to the specialized nature of the fire crash work at the PANG base. The employer's argument fails, though, because it only addresses attracting applicants and the employer contends that it has no problem attracting new employees. The reverse of the claim works against the employer since, in fact, two former PANG fire fighters have gone to work for the City of Portland.

The union's comparators, on the other hand, are more reliable. The union selected the same comparators that Arbitrator Levak deemed appropriate in the last interest arbitration, namely: Clackamas County Fire District 1; Gresham Fire Department; Lake Oswego Fire Department; Port of Portland Fire Department; and Tualatin Valley Fire and Rescue (TVFR). These are the neighboring jurisdictions that PANG fire fighters are selecting when they leave PANG. Four PANG fire fighters have left PANG for these neighboring jurisdictions since 2007. The neighboring fire departments are also more appropriate for comparing overall compensation because employees in these jurisdictions work similar hours and workweeks; they receive similar paid leaves and incentive pays; and they are PERS members, so they receive the same or similar retirement benefits as PANG unit members.

As in the prior interest arbitration, I find that the neighboring fire departments in the Portland area are the more appropriate comparators. In addition to their physical closeness to the PANG base, using the same comparators from the prior interest arbitration gives the parties some predictability at the bargaining table and stability in their labor relations.

Since no one at PANG is receiving wages at the top step of the salary schedule, the union compared total compensation received at the lower steps of the salary schedule in addition to the total compensation received at the top step of the salary schedule. The union also included paid leaves, incentive pays, and PERS benefits in its calculations. These calculations reveal that, at the entry level, PANG fire fighters are 17.15% behind the total compensation received at other local jurisdictions. Entry-level lieutenants at PANG are 2.0% behind their counterparts at neighboring jurisdictions. Captains at PANG are 5.2% behind their counterparts at neighboring jurisdictions.

These numbers do not improve much as PANG fire fighters advance up the pay scale. At 25+ years of experience (top step of the pay scale), fire fighters at PANG are 11.8% behind fire fighters at neighboring jurisdictions. At 25+ years of experience (top step of the pay scale), lieutenants at PANG are 12.0% behind their comparators. And at 25+ years of experience (top step of the pay scale), captains at PANG are 9.8% behind their counterparts at neighboring jurisdictions.

As these figures demonstrate, PANG fire fighters are behind their counterparts – both at the entry level and at the top step of the pay scale. The union's approach will help PANG fire fighters catch up to their counterparts at neighboring jurisdictions by placing employees on their appropriate step of the pay scale, without an across the board wage increase. Therefore, this criterion favors the union's last best offer.

Consumer Price Index (CPI) --

The secondary criteria of examining the CPI allows compensation to be measured against inflation. The employer offered inflation information starting from 1993. Going back 18 years for data seems suspiciously manipulative. Does the employer really have to cast a net back nearly 20 years to prove that its wage proposals have kept up with inflation?

The review of CPI information allows for an analysis of whether salary increases are able to maintain an established standard of living. At the time of the hearing, the CPI was 2.6%. Given that the employer's package proposes a decrease of 4.48% in each year of the contract, the union's package is more consistent with the CPI.

CONCLUSION

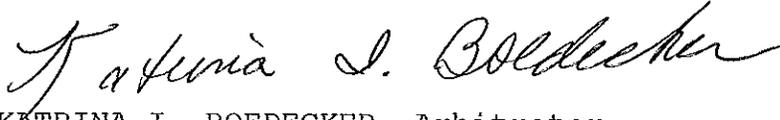
The union's package does not contain an across the board wage increase. The union's proposal corrects a problem where more senior employees are being compensated at a lower rate than employees with less seniority. This is a significant problem in a paramilitary organization where wage step placement that recognizes "time in service rank" corresponds to respect. The union has also proven that there is a retention issue. The union's package holds promise that retention problem will begin to be curtailed.

AWARD

Any arguments presented in briefs not cited within this decision I found non-persuasive or immaterial. Based on the record as a whole, I award:

The union's last best offer package better meets the statutory criteria.

ISSUED in Chehalis, Washington, this 21st day of January, 2011.


KATRINA I. BOEDECKER, Arbitrator