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IN THE MATTER OF ARBITRATION BETWEEN

International Association of Firefighters,
Local 851, Eugene, Oregon

And

City of Eugene, Oregon

EMPLOYMENT
RELATIONS BOARD
OPINION AND AWARD

CONTRACT ARBITRATION

ARBITRATOR

Joseph L. Daly

APPEARANCES

On behalf of IAFF, Local 851
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On behalf of City of Eugene, Oregon
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JURISDICTION

In accordance with ORS 243.746(4); and under the jurisdiction of the State of Oregon Employment Relations Board, the above Contract Arbitration was submitted to Joseph L. Daly, Arbitrator, on April 18 and 19, 2008, in Eugene, Oregon. Post hearing briefs dated May 23, 2008, were received by the Arbitrator on May 28, 2008. The decision was rendered by the Arbitrator on June 23, 2008.

ISSUES AT IMPASSE

The following unresolved issues were certified for Last Best Offer Interest Arbitration:

A. Union's Last Best Offer

The union proposes adjusting the Agreement by:

1. Amending Article 20 of the Agreement between the City of Eugene and IAFF, Local #851 to include a wage scale increase in three six-month increments.

- 20.1 3% retroactive to July 1, 2007;
2% increase retroactive to January 1, 2008;
3% increase on July 1, 2008.

- 20.6 1% deferred compensation matching contribution as of July 1, 2008.

2. Amending Article 13: As of July 1, 2008:

- 13.4 EMT-Is assigned to a medic unit will receive 10% of top step;
EMT-Ps assigned to medic unit as driver or tech receive 15% of top step;
- 13.4b Members assigned to combination crews will receive medic unit pay for entire shift.
- 13.5b Medic IIs that are Field Trained Paramedics (FTPs) will receive 10% of top step Medic II for all hours worked in that capacity

B. The City's Last Best Offer

The City proposes amending Article 20 to include wage increases of 3.3% retroactive to July 1, 2007 and a 3.5% increase as of July 1, 2008, amending Article 13 to include: as of July 1, 2008 EMT-Is assigned to medic unit will receive 10% top step; EMT-Ps assigned to medic unit either as a driver or tech will receive 15% top step;

Medic IIs that are FTPs will receive 10% top step Firefighter pay for the period of time they are assigned to that unit.

In summary, the contract provisions remaining in dispute are 1) the wage increases and 2) CBA Article 13.4b ride time pay for combination crews.

LAW TO BE APPLIED

ORS 243.746(4) governs the matter and guides the arbitrator's findings and opinion. The law states:

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 follow [emphasis added]:

- (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.

Essentially, the sole question before this arbitrator is to determine which party's Last Best Offer meets the interest and welfare of the public of the City of Eugene, Oregon. The Last Best Offers of the City and Union diverge with respect to: 1) Wages and total compensation; 2) Ride time pay for the Station 8 combination crew.

A. The Union's arguments are summarized as follows:

1. The Arbitrator's function in interest arbitration has traditionally been one of legislation rather than the interpreting the "four-corners" of a document. Public sector interest arbitration additionally put the Arbitrator in the difficult position of balancing the interests of both parties with the interests of a third party-the public. The Arbitrator must also consider issues not arising in private interest arbitration, such as attraction and retention of personnel and quality and morale of the employees. The role of the Arbitrator changes even more when public sector interest arbitrations are based on selection of one parties' Last Best Offer only, such as in this case.
2. In this case, the City failed to raise several issues during pre-arbitration negotiations: Its ability to pay, the relative cost of living within geographic areas of Oregon, comparable jurisdictions never discussed previously (such as Medford and Bend), use of internal city comparisons, and the inadequacy of deferred compensation. By subsequently raising these issues during Arbitration the city unfairly disadvantaged the union and deprived it of potentially determinative discussions during the negotiation phase.

3. In deciding which final offer to accept in light of the statutory criteria, the Arbitrator should consider that this case turns primarily on the appropriate comparison of the City of Eugene to other cities of comparable population, and the superior methodology of the union in comparing overall total compensation. The city included inappropriate cities as comparables in overall compensation while arbitrarily excluding others, and based its compensation on strategic inclusion and exclusion of various assignment pays, benefits, and even overtime and compassionate leave.
4. ORS 243.746(4)(e) requires parties to base their data on comparable communities determined by population alone.
5. This dispute focuses on ensuring that: a) Union employees are compensated fairly in comparison with others performing similar services in comparable communities, and b) Station 8 employees are compensated fairly for the additional responsibilities that they experience. No more, no less.
6. It is difficult to isolate the interests and welfare of the public from the secondary factors listed in ORS 243.746(4). Frequently, employers argue that keeping costs low is in the interest of the public, and Unions argue that a well paid workforce is similarly critical to the public welfare. Finding the proper balance between keeping costs reasonable and paying employees a fair wage usually requires looking at the specific secondary factors enunciated in the statute. Thus, while the statute demands that “interests and welfare of the public” be given primary consideration, in practice, arbitrators usually determine the interests and welfare of the public by considering other listed factors including the

financial ability of the employer and comparisons with other employees in comparable communities.

7. One of the most important criteria to be considered includes the high morale of public safety employees and the efficient operation of government services. It is clearly in the interest of the public to enjoy quality fire prevention services. The City claims that Eugene enjoys highly motivated, excellent firefighter personnel. However, despite this praise Eugene firefighters are receiving less than their comparators in wages and overall compensation. There is a compelling need for Eugene employees to catch up to their comparators. If the city fails to ensure that overall compensation competes with other jurisdictions, then employees will have little incentive to remain. For example, employees in Eugene are 4.6% behind their comparables in monthly rates and 7.4% behind in hourly rates [Post-hearing Brief of Union p.12]. Employees in Eugene do not enjoy the opportunities for tax sheltered wages such as deferred compensation matching, post employment health plans, and VEBAs that their comparables do. The increase in overall call volume and rising demand for services as the population continues to increase (especially the number of senior citizens) has resulted in higher demands on individual employees. Though department staffing has remained relatively stable, the percentage of paramedics per capita has actually declined since 1981. As a result, the City's own numbers show that calls per firefighter/paramedic have increased over 627% [Id.]. Increasing wages and overall compensation will serve to improve retention rates, increase employee morale, and improve service to the public.
8. The city does not suffer from a relative or absolute inability to pay. To consider simple budgetary priorities as reflective of an inability to pay is inaccurate and misleading. Even

if budget priorities intend to allocate more money to road repair because citizens are crying out for pothole repair, that budgetary restraint does not equate to an inability to pay. Financial burdens on a public entity cannot be placed squarely on the shoulders of a union. The City's budget report shows it consistent increasing general fund balance and decreasing non-departmental expenditures [Id. at 13]. The City of Eugene has seen its total assets increase by \$23 million from 2006-2007, while total liabilities have decreased by \$9.6 million during the same time [Id.]. The net assets of the city increased by 4.7% from the previous year while the General Fund's balance at the end of the fiscal year was 28.3% [Id.]. During the fiscal period from 2001-2005 the General Fund balance percentage of revenues never dropped below 24% [Id.]. The city's total bonded debt actually decreased by \$13.5 million in 2007 [Id.]. Eugene still enjoys a near 97% collection rate on property taxes while the overall amount of taxes collected as a percent of the amount levied has been increasing. Even with the national economic downturn, Eugene per capita revenue is experiencing a modest annual increase. During the last year the difference between the budgeted revenue and the actual revenue left a surplus of \$1.8 million, after a surplus of \$2.7 million the previous year and a \$4.4 million surplus for the two years prior [Id.p.14, citing City Fiscal Audits, p75 of 2007, p. 71 of 2006 and 2005 Audits]. Accordingly, the budgeted and actual expenditures from the same years have left the City with consistently lower expenditures than expected. Given the differences in actual and projected expenditures, it is unsurprising that the City experienced a difference in actual revenue and expenditures last year that left it with a \$2.3 million surplus [Id. at 14].

9. It must be noted that the City has sufficient revenues to afford to spend several million dollars purchasing 15 new apparatus within the recent 18 month period. While the Union is grateful that the City is one of the best equipped on the west coast, the City's claim of its inability to pay stands in stark contrast to its actions.

10. The Union's calculations of total costs are more accurate and the difference between proposals is well within the City's ability to pay. The City inaccurately projected the total cost of both parties' proposals by using incomplete methodology that resulted in flawed data. The Union, however, accurately calculated the current annual total cost of Eugene compensation from actual employee wages as of June 30, 2007, while the City was initially critical of the use of June 30, 2007, "snapshot" in extrapolating current annual costs, it later admitted that there was "no specific reason to believe" the month of June 2007 was in any way "out of the ordinary." The overall difference between the Union's proposal and the City's proposal is \$487,039.27 [Id. at 18]. The difference between the two proposals can be explained by three things: a) the inclusion of overtime in the City's figures, b) the exclusion of step increases in the City's projections, and c) the failure of the City to capture the 4% drop in PERS rates. Even with the inaccuracy in the City's numbers, the difference between the two proposals is ultimately less than half of a million dollars—a reasonable sum given the financial stability and growth enjoyed by Eugene [Id.]. This modest difference is one worth paying to ensure quality employee retention and morale.

11. The union's proposal will reinforce Eugene's ability to attract and retain qualified personnel. The stark reality is that less than 100 miles up the I-5 corridor employees can receive greater overall compensation for the same work. For example, in Beaverton an

entry level firefighter receives \$5,564.09 while a Eugene firefighter at the same level receives \$4,664.75 [Id. at 19]. In addition, most employees (especially those in higher ranks) receive top step pay in Beaverton, while in Eugene nearly a third of bargaining unit member firefighters are below top step. If the City fails to compete with the wages paid in other jurisdictions the City will find it difficult to retain experienced, qualified firefighters. Firefighters who can receive top step pay and higher overall compensation elsewhere may transfer after a few years employment, leaving the City with a less experienced workforce and higher training costs due to increased turnover.

12. Training requirements and workloads have changed, and because of this the department may begin to see a decrease in qualified applicants for paramedic jobs. Two semesters of community college are now required for EMT-Intermediate status, and Paramedics require a 2-year associates degree. The combination of more demanding job requirements and the lower overall compensation offered by the City will likely lead to an increase in both transfers of personnel to other departments as well as a dearth of qualified applicants to the Eugene department.

13. Eugene firefighters receive less total compensation than firefighters in comparable communities [Id. at 20]. The statute defines comparable communities as those communities of the same or nearest population range within Oregon. Thus, only one factor is relevant to determining comparable communities: population range. The statute dictates that the parties are to look only to communities of similar populations providing similar services when comparing overall compensation [Id.]. It defined comparability based solely on population [Id.]. When the Oregon legislature amended the statute in 1995, it sought to limit the scope of comparable communities, and consequently

arbitrators' discretion. The geographic area criterion of the previous bill was deleted, leaving only population as the criterion. Thus, the Oregon legislature made a conscious choice to change the open-ended, discretionary approach of the pre-SB750 statute. The current statute limits comparable communities to those cities that are of the same or nearest population range. Since then arbitrators have expressed virtual unanimity in finding that population is the sole criterion in selecting comparable communities [Id. at 24, citations omitted].

14. The comparables selected by the Union follow the statutory directive and support the Union's Last Best Offer. The Union chose Salem (pop. 151,895), Gresham (pop. 99,225), Hillsboro (pop. 88,300), Beaverton [TVFR] (pop. 85,569), Clackamas [Fire District nearest Eugene in size] (pop. 165,000) [Id. at 28]. The population of Eugene is 153,690. The Union's method was to select four cities with slightly higher populations and four with slightly lower populations. This method chooses communities where firefighters perform activities sufficiently similar in nature. Eugene is the second largest city in Oregon and has automatic aid and mutual aid contracts with surrounding jurisdictions. Eugene also provides medical transports for Lane County, which places greater demands on the district than others. While the City objected to the use of both Clackamas and Beaverton, Beaverton is unquestionably one of the four cities nearest to Eugene in population size, and all the City's analyses used Beaverton as a comparable. Beaverton remains a comparable community because according to the statute, population range is the most important factor in determining comparability, and Beaverton is simply one of the only Oregon cities nearest in population to the City of Eugene. Though the statute directs comparisons based on similar services, the most heavily weighted criterion

remains population. The City is attempting to manipulate the use of comparable communities to its advantage. The City posited that comparables should be based on closest cities in population, cities that provide medical transport and only include the salaries for the position of firefighter. However comparable communities are to be determined by consideration of population, not by “expanded markets” and not by narrow views of one bargaining classification alone.

15. Eugene is behind comparable communities in all areas of overall compensation. The Union’s figures show that in major bargaining classifications Eugene Firefighters are behind by between 9% and 39% [Id. At 33]. When the comparables selected by the City are considered, or those objected to excluded, Eugene still remains below average and in some cases more strikingly so. For examples, the Union’s list illustrates the difference in total wages and overall compensation: entry-level firefighters-3.7% below average in total wages (including PERS contributions) and 8.6% below average in overall compensation. Entry-level engineers – 10.4% below average in total wages and 15.3% behind in overall compensation. Entry-level captains – 28.9% below average, mid career captains – 18.4% below average, senior captains – 27.9% below average. If comparables such as Bend and Medford are added (assuming for the sake of argument that they are appropriate) the percentages still show that Eugene is behind. Firefighters between 8.6-9.6%, engineers by 11.7-15.3%, and captains by 18.4-28.9% [Id. at 34]. The comparator data shows that the bargaining unit is falling significantly behind comparable jurisdictions in both wages and overall compensation regardless of the lists of comparables selected for comparison. While the City argues that Eugene firefighters are “well paid by any measure”, the Union demonstrated that the retirement benefits enjoyed

by 76% of the current bargaining unit members hired under PERS were significantly devalued by the recent legislative change from PERS to the Oregon Public Service Retirement Program [Id. at 35].

16. The calculations of the City, which claim to show that employees now in the OPSRP will receive greater benefits from IAP accounts than the previous PERS system, failed to address the fact that OPSRP employees hired after 2003 will benefit far more than those hired under PERS [Id. at 36]. As such, the analysis done by Allen Stonewall, an expert witness for the City, is valid only for the small percentage of employees (24%) hired under OPSRP [Id. at 36-37]. Mr. Stonewall's analysis does not account for firefighters hired under PERS, firefighters that retire early, or the loss of employees due to the removal of the money match program [Id. at 37]. Since firefighters now retire at 53, and social security benefits aren't available until 67, comparables have started offering deferred compensation, post-employment health plans, VEBA accounts and even sick leave conversions. Eugene firefighters are greatly behind in the opportunities of other forms of retirement benefits/tax sheltered wages, receiving none of the benefits that other jurisdictions receive [Id.]. Comparable jurisdictions receive additional benefits beyond OPSRP/SSI such as deferred compensation matching, post-employment health and other options. Employees in Eugene are receiving lower retirement benefits than all comparables [Id. at 38].

17. The Union accurately calculates the overall compensation of Eugene firefighters. The City failed to incorporate the 4% drop in PERS rates thus skewing its final numbers, resulting in falsely inflated overall compensation. The Union's figures are based on current information included as components of the total compensation, in accordance

with statutory directive, are base wages and any “other wages,” vacation and holiday pay, PERS pick-up (accounting for the 4% decrease in PERS rates), employee insurance co-pays of premiums, emergency medical technician pay and other incentive pays [Id. at 39]. All paid leaves are quantified in these analyses, including holiday, vacation and personal, but the figures importantly exclude sick and bereavement leave. The City, in contrast, includes sick and bereavement leave in their figures thereby distorting its numbers. Sick leave accrual is not added to wages and is not a benefit until it is cashed out and converted to paid time off. Proper comparison would be to take the average sick leave taken by Eugene employees and compare it to the average sick leave taken by those in comparable communities. Bereavement leave is rarely taken, generally only in cases of serious illness or death in the family. By including overtime in Eugene’s compensation and not including in comparables, Eugene’s rates are falsely elevated against the average. The Union correctly excludes overtime, sick and compassionate leave from their calculations, as well as team and assignment pays because only a few benefit from them and they are largely at the discretion of management. The City also includes unit pay, which is currently received by only 6 people in Eugene, it excludes assignment pays from their comparables because only a few receive them (such as the 5% bilingual pay in Salem). Team and assignment pays must either be included across the board or, conversely, be excluded. The Union correctly excluded them. The City has ultimately skewed its figures to portray a more equitable compensation package through its manipulation of data [Id. at 41].

18. The Consumer Price Index is less useful in comparing overall compensation of firefighters, and the data introduced by the City should be excluded as statutorily

inappropriate. CPI is less useful in comparing firefighter wages because firefighter wages are consistently higher than CPI increases. Nearly all firefighters in comparable communities received wage increases out pacing the CPI by an average 7.9% [Id. at 42]. Prior to 1995 it was common for parties to argue that regional variations in state CPIs existed. However, by amending the language in the 1995 statute, the Legislature specifically indicated it wanted to limit the factors arbitrators could consider [Id.]. The language of the current statute states that the only standard to be considered is the CPI-All Cities Index [ORS243.746(f)]. By bringing in an expert to testify as to the local CPI in state regional variations in wages of both public and private employees, the City is attempting to circumvent the requirements and limitations of the statute [Id.].

19. The Arbitrator should select the Union's Last Best Offer because Station 8 paramedics deserve a wage increase for the additional workload that swing medic combination crews encounter. Current medics on the combination crew receive "ride time" pay per call worked, with a minimum of 4 hours. If they are activated three times per shift, only then do they receive "ride time" pay for the entire shift. This approach is unfair [Id.]. It denies employees working the combination crew pay proportionate to the increased responsibilities they experience. The Union's proposal will insure that combination crews receive "ride time" pay for the entire shift regardless of activations. The increase in ride time is for the increased workload and responsibilities combination crews experience, not "unearned compensation for work not being performed" as stated by the City in its opening statement. Since 1981, calls for emergency services have increased by over 726% while the number of firefighters and medics has dropped by 21%. That equates to an increase of 627% in calls per firefighter/medic. Of the total calls in 2007,

16,976 were for medical services, while only 3,533 were for fire suppression and other reasons. Patient transports equated to 11,167 calls, and 1,560 were public assistance. Community calls for medical transport alone have increased by over 40% since 2003 [Id.]. Medic 8 is the only fire suppression crew that swings into an ambulance crew. Ladder 8 is the primary fire suppression and rescue vehicle at Station 8, but it is not used in emergency transports. The two transport units are Medic 28, the overload ambulance called out when the City runs out of ambulances, and Medic 8, the swing unit which runs currently 1-7 times per employee shift. The Swing Medic Combination Work Crew has both standard firefighter responsibilities and additional responsibilities as medics (daily checks, maintenance, forms, responses). To perform the required, and prioritized, maintenance on the several apparatus at the station (Ladder 8, Medic 8, Water Tender 8, Medic 28) generally requires at least 2 hours of labor and can take longer with only one medic on shift to perform the ambulance specific inspections. When Medic 8 Swing Crews are out on a fire suppression call and receive a medic activation the crew must return to the station, switch gear and equipment from the ladder unit to the ambulance, and then rush out to respond. That equipment transfer takes valuable time and increases the combination crew's responsibilities. Other stations, such as 6, 10 and 11, have 24 hour medic crews that receive full time medic unit pay and do not have the additional fire suppression duties that Medic 8 crews perform. Basing combination crew medic pay on activation times is a flawed approach that unfairly denies the employees pay commensurate with their overall increased responsibilities [Id.]. The disadvantage to the Medic 8 Combination Crew is that it receives less money because their acting capacity pay is based arbitrarily on the number of activations per shift. Regardless of the number

of shifts in which activation resulted in actual transport, the combination crew is valuable precisely because of the crew's ability to provide the dual functions of both firefighters and medics. The swing crew is maintained because it can fulfill dual functions on short notice and thus maintain flexibility during peak periods while conserving resources. With the increase in medical service demands in the growing community, dual functions have high value.

20. In conclusion, the Union contends its proposal is consistent with the Legislative intent of the statute and the criteria provided. The Union's Last Best Offer increases wages modestly and incrementally in an effort to obtain parity with a total compensation paid in comparable jurisdictions, and ensures that all employees are paid commensurate with their actual responsibilities and experience. On balance the Union's proposal better accomplishes the goals of the statute.

B) The City of Eugene's arguments are summarized as follows:

1. The City's Last Best Offer calls for wage increases of 3.3% retroactive to July 1, 2007, and 3.5% effective July 1, 2008. In all other respects, the City's proposal on the articles remaining open is for current contract language or changes that were agreed to by IAFF. The City's offer is a reasonable offer that ensures, through more than ample wage increases, that the public will continue to receive high quality Fire and Emergency Medical Services. At the same time, the City's proposal is a fiscally responsible one in light of the City's constrained budget situation and other pressing public needs. The Union's proposal seeks significant enhancements to the existing labor contract, most notably, a new retirement benefit, without any public interest based reason for doing so.

The Union's wage proposal calling for wage increases of 3% retroactive to July 1, 2007, 2% retroactive to January 1, 2008, and another 3% increase effective July 1, 2008, is a back loaded proposal [Post-hearing Brief of City at 2]. The impact of that back loading will be felt most acutely after the 2-year contract period [Id.]. In addition, the Union proposes that City pay combination crew staff a medic unit pay premium for the entire shift, regardless of whether the medic unit is called into service or how often. There is no rational labor market reason to award the IAFF Last Best Offer (LBO) when the City readily recruits and retains fire and emergency services responders at current compensation levels. Nor is there a compensation-based reason when salaries are already within market, and the salary increases received by these employees well exceed cost of living increases and salary increases received by every other group of City employees [Id.]. The statutory criteria strongly favor the City's Last Best Offer.

- 2 The burden of proof lies with the party who seeks to change the status quo. Absent persuasive evidence to justify significant departure from the status quo, arbitrators favor the proposal which most closely continues the existing terms and conditions of the parties' bargaining agreement.
- 3 Oregon law expressly recognizes the public as the most important stakeholder to the interest arbitration process [Id. at 4]. It addresses directly the public's purchasing power to address other pressing governmental concerns. The arbitrator must award the Last Best Offer that best serves the interests and welfare of the Eugene community at large, not the special interests of the bargaining unit. The public interest is served by an award of a fair wage that also allows the government to spread its resources elsewhere in order to meet public needs. The public interest is best served when a governmental entity

incurs just enough expense to provide for compensation that is both competitive and sufficient to attract and retain capable and qualified employees. Conversely, it is against the public interest to allocate public funds to higher wages and benefits than are needed to maintain the satisfactory level of service as such an allocation negatively impacts the public's purchasing power for other services and priorities. The high-needs service priorities of Eugene relate to revitalizing downtown, fixing roads, and reducing crime. Eugene's budget environment is extremely constrained, a situation that is compounded by the financial difficulties of Lane County, where Eugene is located [Id.]. A \$47 million anticipated shortfall at Lane County has created an uncertain and dynamic situation, in which City policy makers must consider how significant service cutbacks at the county will impact the needs of the Eugene community and the City's role in servicing those needs [Id.]. Lane County is facing large cuts in funding and staff and this impacts the City of Eugene because the City is in Lane County and some of its services are integrated with Lane County. For example, a few days before the arbitration hearing, Lane County closed 20% of its jail bedding [Id. at 5-6]. This decision impacts the City because the City rents jail beds from the county and now overhead costs may increase. City staff and policy makers are now engaged in figuring out how to set priorities in light of new realities, and the public process that will address what accommodations need to be made is currently underway.

4. The undisputed evidence in this case is that the city is able to hire and retain a sufficient number of workers, and those hired and retained are of excellent quality. As Labor Economist Dr. Glenn Waddell testified, in the absence of evidence of a problem that wage increases would help to combat, wage increases result in a transfer of public funds

for no apparent motive Id. at 6]. Through split wage increases of 3%, 2%, and 3%, through deferred compensation contributions of 1% and through new assignment pay for combination crew members, IAFF's proposal will result in the public's paying far more for a quality fire service than is justified [Id. at 6-7]. By placing most of the increases in the second year of the contract, IAFF has back loaded its proposal, with the result that its full impact is not felt during the term of the present contract [Id. at 7].

5. The IAFF's deferred compensation proposal is adverse to the public interest for several reasons: a) the public already pays the cost of retirement plans for IAFF employees that are in excess of the national standard those plans include a deferred compensation benefit of 6% which paid for by the City, in addition to a defined benefit component; b) as a result of an extensive public process, Oregon's retirement system was reformed by the state legislature in the 1990s and 2003 in an attempt to bring PERS into line with its originally intended purpose [Id. at 7]. The IAFF attempt to extract from the public new retirement dollars is at odds with the reform and is illogical, given that the reforms largely held police and fire service employees harmless as compared to the general service participants in the system; c) the proposal is very costly; and d) IAFF employees already have the ability to participate in the voluntary deferred compensation plan offered by the City and 80% of them already do so [Id.]. The IAFF employees at all levels enjoy a rich retirement plan as compared to the national standard, and will continue to do so [Id. at 8]. Testimony at the hearing by Alan Stonewall, an actuary testifying on behalf of the City, showed that an adequate replacement ratio upon retirement is between 70 and 80%, with an average of about 75% [Id.]. The IAFF employees average replacement ratios have ranged between 61% and 83% since 1990, and these amounts do not include Social

Security benefits. When factoring in Social Security, an additional 33% needs to be added to these percentages. An employee who begins working for the City of Eugene Fire and EMS Department at age 25 and works a minimum number of years required by OPSRP to receive fully funded retirement benefits can reasonably expect retirement benefits at the rate of 108% of his or her pre-retirement income [Id.]. In other words, IAFF's assertion that newly hired firefighters on the whole will be worse off in retirement as compared to their predecessors is groundless. The "problem" asserted by IAFF does not exist [Id.]. It is not in the public interest to put money in a "problem" that does not exist. IAFF's argument ignores the very precise public interest that led to the PERS reform, i.e. under-funded actuarial liability, escalating costs, and need to reform and stabilize PERS. [Id.]. In light of this, it is adverse to the public interest to pay for a significant new retirement benefit through interest arbitration. The IAFF's deferred compensation proposal creates costs that the public can not afford to bear. It starts at an estimated \$198,208 per year and increases every year after that [Id. at 12]. As a result this case can be decided on public interest alone, without considering any secondary criteria. The deferred compensation proposed by IAFF is the key difference between the parties' proposals. The deferred compensation proposal is against the public interest. Focusing solely on the interests and welfare of the Eugene community at large and not on the special interests of the bargaining unit members, the evidence strongly favors the City's proposal.

6. An analysis of the secondary factors in ORS243.746(4) further shows that the City's Last Best Offer fulfills the requirements of the statute.

7. Because of the City's constrained condition of the General Fund, the City does not have a reasonable financial ability to meet the costs of the proposed contract giving due consideration and weight to other City services and priorities. The General Fund has been experiencing an operating deficit for several years which essentially means it is in a structural imbalance, and City expenses are consistently exceeding its revenues [Id. at 14 citing Angel Jones, City Manager Pro Tem, Testimony]. Expenses are increasing approximately 6% per year, but revenues are only increasing at approximately 4.5% each year [Id. at 14, citing James Carlson, Executive Director, Central Service Department, Testimony]. In fiscal year 2007, the general fund had an operating deficit of approximately \$2.063 million [Id. at 14]. The City is expected to experience an operating deficit in each of the next 6 years as well [Id.]. The expected operating deficits for that time period range from a low of approximately \$500,000 to a high of over \$6 million [Id.]. To cover the difference in operating costs and revenues, the City has been eating away at its "rainy day fund," the reserve for revenue shortfall [Id. at 15]. The City lacks viable avenues for creating additional revenue sources. 60% of the City's General Fund are property tax revenues, user fees, and fines. Since 1990, voters failed to approve two measures that would have raised funds for general government purposes [Id. at 15]. The City of Eugene provides a full complement of municipal services. The citizens of Eugene are demanding that the City fix the condition of the city streets, develop and revitalize the downtown area and address police staffing needs. The City is impacted by the service cuts that Lane County has been, and will continue, implementing. The IAFF proposal will cost more than \$600,000 during the first two years [Id. at 17]. Overtime, a predictable cost due to minimum required staffing levels and employee absences, have

exceeded \$2 million for three of the last five years [Id.]. These differences in the City's and the Union's methodologies account for the Union's lower base for current costs, which results in the Union's lower estimated cost differences between the parties' Last Best Offers. Additionally, because of the back loaded nature of the Union's economic proposals including the combination pay and deferred compensation benefit in the second year of the contract, the true cost of the proposals are more accurately reflected over time. Assuming a 3% annual wage increase for two years following the present, the projected difference in cost of proposals over the next four years is an estimated \$1,628,433 [Id. at 18, citing Projected Cost Summary-Four Year View; Helen Towel, Retired HR Manager, Testimony].

8. The City has a relative inability to pay [Id. at 18]. "Agency budgets are not bottomless pits," "at some point, there is no more toothpaste in the tube, no matter how hard we squeeze." [Id.]. The City is rapidly approaching that point because the City can not afford to continue with the level of services it currently provides because the City's expenses exceed its revenues, and it is rapidly depleting its resources [Id.]. With respect to the recent large purchase of fire apparatus, the City made a conscious decision to wait and purchase multiple pieces of fire apparatus/equipment at one time from one vendor making this multiple unit purchase allowed the City to realize significant cost savings over making single unit purchases.
9. The City can attract and retain highly qualified personnel at existing wage and benefit levels. Its turnover rate is low and the city regularly recruits large numbers of qualified applicants. In the last two completed recruitment processes for entry-level positions, the City received 316 and 242 applications. In total, 50 firefighters were hired [Id. at 20]. A

recruitment process is now pending and the City received 194 applications [Id.]. District Chief DeWitt testified that high quality individuals have been accepted into the fire academy. The City fire and EMS department has never had to look outside the department to fill a promotional position. District Chief DeWitt testified he has been “very pleased with the quality of personnel seeking these promotional positions.” The City turnover rates are low. In the last 7 years, the percentage of all line employees who left Eugene for a job in another district has ranges between 0% and 2.7% [Id. at 21]

10. The parties disagree about what elements are included in existing compensation. The methodology used by the City was to analyze the top step of the salary range both in bargaining and in setting new salary ranges. It is the most meaningful measure of earning potential for IAFF represented employees. Everyone reaches top step, and IAFF-represented employees do so within 5 years [Id. at 22-23]. There are 182 positions in the bargaining unit, and more than 75% of them are at top step already [Id. at 23]. The validity of looking at top step has been recognized repeatedly by Interest Arbitrators. The City’s methodology focuses on firefighters as that is the entry point for the 162 positions within the fire suppression line. 90% of employees in the bargaining unit are now firefighters or were firefighters before being promoted internally [Id.]. Further, given that applicants for the firefighter position are mostly drawn from throughout Oregon, while candidates for promotion are internal only, it makes sense to focus on the point of entry into the organization. The City also provided data and analyses on the compensation of engineers and captains, as taken together those positions are a significant part of the unit. The Union takes a contrary, yet selective approach, presenting data on selected classifications that are not representative of the broader

composition of the bargaining unit. Among the classifications picked by the unit are: training captain (one position), EMS training coordinator (1 position), DFM1 (3 positions), Lieutenant (6 positions). It is evident that a multimillion-dollar labor contract should not be chosen based on data about classifications that comprise less than half of a single percent of the bargaining unit. Unless there is a wage proposal that specifically addresses a concern with a particular position (and there is nothing like that in either LBO), presenting data about selected minor classifications detracts from the core issues.

11. The statutory criteria direct the arbitrator to look at overall compensation not just at salary. The parties agree this properly includes retirement [Id. at 24].
12. The parties contract provides a premium pay of 7% for fire suppression employees who hold an EMT Paramedic certificate [Id. at 25, citing CBA p46]. The parties' contract also provides for medic unit pay, and both parties have agreed that medic unit pay will increase effective July 1, 2008. The City also includes monthly average medic unit pay in its compensation analysis because every single firefighter/paramedic earns unit pay. Medic unit pay is the pay premium that applies when the firefighter/EMT works on the medic unit; it is distinguished from paramedic certification pay, which is an incentive pay that applies to personnel who have attained that certification. Working on the medic unit is not a volunteer assignment; and it is not a special team assignment. The parties negotiated medic unit pay with the specific intent that paramedics would be rewarded for the time spent on the medic unit. The IAFF clearly values medic unit pay more, as evidenced by its LBO, which proposed to increase medic unit pay (and made no proposed change to EMT certification pay). The City includes monthly unit pay as a component of EMT-P because every firefighter/paramedic can obtain it, most receive it, and it is a

substantial part of the paramedic premium pay available to the bargaining unit. To ignore unit pay, as the Union proposes, is to accept a distorted compensation analysis [Id. at 26]. It is misleading to ignore unit pay as a factor when it is available to and actually earned by, all firefighter/paramedics [Id.].

13. The City looked at the average vacation and holiday leave benefits earned over a 25-year career, because it gives a more valid picture of the benefits available. Taking a snapshot of leave benefits at particular points in time will skew the analysis since jurisdictions increase leave benefits at different years of service [Id. at 27]. Looking at a 25-year period normalizes the inconsistencies in the data, allowing an accurate comparison [Id.]. IAFF's information on vacation and holiday leave is less accurate because it is based on selected points in time. Looking at a single point in time fails to provide the most representative picture.

14. An analysis of total compensation also requires consideration of health and other insurance benefits. IAFF claims that what an employer pays for health insurance is not a measure of total compensation. However, an employer's premium payment is an acceptable measure of the value of the benefit to employees [Id. at 27].

15. By any measure, IAFF employees currently receive ample total compensation [Id. at 28]. They enjoy high annual earnings as compared to full-time wage earners in the local community, and an outstanding benefits package, including a robust retirement plan and comprehensive medical insurance plans almost fully paid by the City. In addition, IAFF members receive, on average, 354 hours per year for vacation and holiday leave. They

also accrue 144 hours of sick leave per year. Given the total compensation presently enjoyed by IAFF, this factor favors selecting the City's proposal [Id.].

16. It bears repeating that every secondary factor in the statute is to be viewed for its relevance to the public interest and welfare [Id.]. Given the ease with which Eugene is able to recruit and retain quality employees, it is not apparent how the welfare of the Eugene public is furthered by putting much, if any, weight on wage data from comparator jurisdictions. This case is not about comparables and it is not useful to give weight to this factor without a reason for doing so [Id.]. Courts have recognized that over reliance on comparability data “inevitably leads ...to what is known as ‘whip sawing’ or ... ‘keeping up with the Jones’s’” citing *Hillsdale PBA v. Borough of Hillsdale*, 622 A.2d 872, 866 (NJ super 1993) [Id. at 29]. Over reliance on comparability results in unexplained wage inflation because it is a mathematical certainty that to have an “average wage” the subject wages being compared will be arrayed below and above the average point [Id.]. Being within the same or nearest population is not the sole criteria to apply in selecting comparators. Who are the market comparators? The City first looked at jurisdictions that were closest in population to Eugene. The City also considered the market with and without Gresham, because Gresham has a combined class of firefighters/engineers whereas Eugene has separate classes, making comparisons to Gresham less relevant [Id. at 32]. The City also analyzed the market from the standpoint of those jurisdictions that provide ambulance transport—Springfield and Bend [Id.]. Eugene is one of the few jurisdictions that provide ambulance transport service. The statute directs that comparisons be made between those who provide “similar services,” therefore Springfield and Bend are fair comparators [Id.]. Notwithstanding Springfield’s smaller

population size as compared to Eugene, Springfield is entitled to weight because it operates in the exact same labor market as Eugene [Id.]. Springfield is Eugene's immediate neighbor and the public safety systems of Eugene and Springfield provide for forms of mutual aid [Id. at 32-33]. Finally the City looked at an expanded market because the first two methods yielded few jurisdictions [Id. at 33]. Applying this methodology, the City concluded that Eugene is within market [Id.]. The average monthly salary for Eugene fire fighters is 2.1% above comparators [Id.]. Looking at total compensation for Eugene firefighters which includes the value of vacation, holiday, health insurance and health reimbursement arrangement HRA contributions, Eugene is minus 0.3% as compared to the market average [Id.]. Although the City does not believe that Gresham should be included in the analysis on account of the combined firefighter/engineer classifications, even adding in Gresham, City firefighters are well within market [Id.]. The City compares compensation for Eugene firefighters with Bend and Springfield, which are two jurisdictions closest in population to Eugene that also supply medic transport services [Id.]. This approach shows that the total monthly salary received by Eugene firefighters is 4% above the average of the medic-transport jurisdictions [Id.]. Eugene firefighters' total compensation is also above the average of the medic-transport districts [Id. at 14]. The City also compared Eugene firefighters with an expanded market [Id.]. This demonstrates that Eugene's total monthly salary is 2.5% above market average and 0.4% above average in total compensation [Id.]. The City's wage proposal for the second year of the contract is 3.5% [Id.]. This increase will ensure that Eugene maintains its position in the market. The City also examined firefighter compensation using only those jurisdictions that the union asserts are comparable. Their

analysis shows that Eugene is -1.1% below the average [Id.]. The City also analyzed compensation for Eugene engineers as compared to the market. The City's analysis for engineers was based on the same methodology as the City's analysis for firefighter compensation, except that it excluded unit pay (which a smaller percentage of engineers receive). The City concluded that Eugene engineers are -2.6% of average for total monthly salary and -3.5% of average of total compensation [Id.]. The City also compared Eugene's captains' compensation to the market. Eugene fire captains are shift captains, meaning they are responsible for coordinating the activities of one or more companies on a shift. Comparing Eugene fire captain position description with job duties reflected in the position descriptions of other jurisdictions the City concluded that Eugene fire captains are comparable to captain classifications in Bend, Medford, Salem and Springfield and to the lieutenant classifications in Gresham, Hillsborough and at TVF&R. The City concludes that Eugene's compensation for its fire captains is at Market.

17. IAFF's total compensation comparisons are unreliable [Id. at 37]. IAFF asserts that Clackamas F & R is a fair comparable for Eugene. This argument is not supported by the statute, which directs that comparable "communities" be compared [Id.]. Clackamas F & R is not a community, but a district which contracts with multiple cities – the largest of which is approximately 30,000 (or 5 times smaller in population than the COE) [Id.]. Further, applying IAFF's logic that service districts should be compared, even in the absence of similarity among the populations of the cities with which they contract leads to the conclusion that TF & R should not be a comparator. Thus, even if Clackamas F & R compared to Eugene (based on the size of the budget, number of personnel and stations), applying all these criteria requires excluding TF & R (which has a budget more

than double Eugene's; which has close to 3 times its personnel; which has double the number of stations; a total tax base of 102.6 billion and no requirement to provide the public with services other than first responder fire services) [Id. at 37].

18. The exclusion of unit pay and the selection of comparators from the Portland metro region without any consideration of geographic wage differences significantly skews the end result, and creates a negative and distorted representation of Eugene's market position [Id. at 38]. While ignoring significant elements of compensation received by most or all IAFF members, IAFF selected forms of pay at other jurisdictions received by only a handful of employees at those jurisdictions, and included those rare incentive pays in its calculations [Id. at 39]. In sum, IAFF's compensation methodology is unreliable as are the results it produces. It is distorted by incentive pays received by a few and/or not available to all. It disregards health insurance and unit pay for Eugene, despite those elements being significant to overall compensation and available to every firefighter. IAFF's selection of market comparable is internally inconsistent and skewed to jurisdictions in the Portland metro area, where wage earners in all categories earn significantly more than their counterparts in Lane County. Finally, IAFF does not compare classes in Eugene with classes in other jurisdictions that have similar job duties, and in fact excludes logical comparators [Id. at 40]. These significant errors understate the City's market position and create an unwarranted impression that a significant wage differential exists.

19. The cost of living criterion favors the City. IAFF salary increases have outpaced CPI [Id. at 41]. Since July 1, 1995, the cumulative increase in IAFF salaries totaled 50.6% and the compounded increase totaled 52.6% [Id.]. For the same period, CPI-U has only

increased a cumulative total of 30.6% and a compounded total 35.3% [Id.]. These dramatic differences in IAFF salary increases and CPI increases have created a sizeable cushion that insulates IAFF employees from truly experiencing any diminished buying power. The City's proposed increases will continue to exceed CPI [Id. at 42]. The City's proposed wage increase of 3.3% for the first year is above the CPI average of 3.2% for calendar year 2006; and its proposed wage increase of 3.5% for July 1, 2008, is well above the CPI average of 2.9% for calendar year 2007 [Id.]. Even if 2008 turns out to be an unusually high inflationary period, as the Union attempted to imply in its opening statement, because the IAFF's salary increases have so strongly outpaced CPI over the last dozen years, that accumulated cushion will continue to IAFF members from truly experiencing any real world erosion of their buying power for many years into the future. The Union's assertion that the CPI has not kept pace with overall firefighter salaries lacks merit. The important thing to determine is whether the IAFF salary increases have historically kept pace with CPI and where the proposed salary increases will continue to keep pace with CPI. IAFF's salaries have far outpaced CPI for the last 12 years [Id. at 43].

20. When the factors listed in the statute do not provide sufficient evidence for awards then the statute calls for the arbitrator to take into account "other factors." This third level criterion also favors the City's Last Best Offer. IAFF salaries have exceeded those of all other employee groups in the City over the last decade.
21. The IAFF combination crew proposal fails to serve any identifiable public interest [Id. at 44]. Of Eugene's 11 fire stations, 3 have a fully staffed engine company and fully staffed medic unit. These stations are 6, 10 and 11 [Id.]. Personnel assigned to the medic units

at these stations receive medic unit pay for their entire shift. Station 8 is generally staffed by a three-person crew and the default apparatus is an engine. However, Station 8 also has a medic unit, which serves as a relief unit that is activated when the City's other medic units are unavailable. Essentially, the crew swings from an engine to a medic unit. The existing contract between the parties provides that when the combination crew is activated (meaning activated as a medic unit), the employees will be paid unit time for all worked on unit with a minimum of 4 hours. If the crew is activated three or more times, they will be paid medic unit pay for the entire shift. Activation refers to the tones that sound in Station 8 which signal that the crew is about to be dispatched by 911 dispatchers. When the medic crew is activated, they take a few items from the engine and place them in the medic unit, taking some time. Under the existing contract, premium pay is provided when the medic unit is activated. This recognizes that the medic unit at Station 8 serves a relief function and it is fair in that the crew receive medic pay in proportion to the time they are assigned to the medic unit. Of the 365 shifts per year, on 142 shifts during 2007, medic unit was not activated a single time [Id. at 45]. There were 97 shifts when it was activated once [Id.]. On those shifts when Medic 8 was activated 3 or more times – which happened 16% of the time in 2007 – the crew was paid medic unit pay for the full 24 hour shift as required by the contract [Id.]. IAFF proposes that combination crew members be paid unit pay for their entire shift, even when the medic pay is not activated, which is almost 40% of the time [Id.]. This is a windfall and amounts to an inequitable and irrational allocation of the public resources.

22. In conclusion, the City's Last Best Offer is appropriate under ORS 243.746(4) in fulfilling the interest and welfare of the public. Only the City's proposal is in the interest

and welfare of the public, keeping compensation within market and in line with inflation while avoiding significant new benefit obligations that would require sacrificing other services. The City's LBO is fair to IAFF employees and protects the interests of the public. Higher wages, deferred compensation, and premium pay for the combination crew are not required to recruit or retain qualified personnel. Only the City's proposal ensures the public interest and quality service at the lowest reasonable cost will be met.

C) Analysis and Decision

1. Introduction

The state of Oregon through a series of Legislative reforms changed two basic laws which affect the decision in this matter. ORS 243.746(4) altered the method that arbitrators analyze and decide Interest/Contract Arbitration matters. And, legislative changes to the Oregon Public Employment Retirement System to the Oregon Public Services Retirement Program negatively affected some of the bargaining unit members.

ORS 243.746(4) a-h, as amended by SB750, specifically require that Interest/Contract Arbitrators give "first priority" to criterion ORS 243.746(4)a "the interests and welfare of the public." Secondary priority is to be given to the remaining statutory criteria, subsections b-h.

Because Firefighters are essential employees they are not permitted to strike. A work stoppage by firefighters would be dangerous and therefore unacceptable to the public. Since firefighters are not permitted by law to withhold their services, the Oregon legislature has mandated that the method to resolve disagreements over contract provisions is by arbitration. The Oregon legislature delineated a series of criterion by which an arbitrator is to analyze and

decide an Interest/Contract dispute. The Oregon law expressly mandates that the first priority of any arbitrator deciding an Interest/Contract dispute is to recognize that the public is the most important stakeholder in the Interest arbitration process. “The interests and welfare of the public” takes first priority. “Secondary priority” is to be given to the criteria delineated in paragraphs b-h. The secondary criteria are delineated to help the arbitrator achieve the first priority. In applying each individual criterion the first priority must be kept in mind. After addressing each secondary criterion, if necessary, the arbitrator must choose between either the Union’s Last Best Offer package or the City’s Last Best Offer package. There is no picking and choosing of each individual issue. Oregon law [ORS 243.746(4)] requires the arbitrator to choose which Last Best Offer Package best achieves the interests and the welfare of the public.

The essential arguments of the Union are that “interest and welfare of the public” can not be isolated by itself from the simple perspective of keeping costs low for the City. A well-paid workforce in a critical area like firefighting and emergency medical response is vital to the interests and welfare of the public. The Union argues that the firefighters in the City of Eugene are 4.6% behind comparables in monthly pay rates and 7.4% behind in hourly pay rates. Further, contends the Union, the firefighters have less opportunity in tax shelters, post-employment health plans, and VEBAs. The Union further contends that Station 8 combined firefighters/paramedics deserve a wage increase for the additional workload that swing medic combination crews encounter. The Union contends the City does not have an inability to pay by highlighting that the City of Eugene has seen its total assets increase by \$23 million from 2006-2007 while total liabilities have decreased by \$9.6 million during the same time. The Union contends that net assets of the City increased by 4.7% from the previous year. The Union further contends that during the last year the difference between the budgeted revenue and the actual revenue left a

surplus of \$1.8 million, after a surplus of \$2.7 million the previous year and \$4.4 million for the 2 years prior. Accordingly, contends the Union, the budgeted and actual expenditures from the same years have left the City with consistently lower expenditures than expected. “Given the differences in actual and projected expenditures, it is unsurprising that the City experienced a difference in the actual revenue and expenditures last year that left it with \$2.3 million surplus” [Post-hearing Brief of Union at 14].

The City views the finances quite differently. The City argues that the General Fund has been experiencing an operating deficit for several years [Id. at 14]. The City expenses are consistently exceeding its revenues. Expenses increase 6% per year; revenues increase at approximately 4.5% each year [Id.]. In fiscal 2007, the general fund had an operating deficit of approximately \$2.063 million [Id.]. Further, contends the City, it has been eating away at its rainy-day fund, i.e. the Reserve for Revenue Shortfall for several years [Id. at 15]. Further, since 1990, voters failed to approve two measures that would have raised funds for general governmental purposes. The City argues that there is a desperate need to develop and revitalize downtown, repair city streets and address policing needs. Finally, the City argues that the comparators the Union uses, i.e. those within the same or nearest population, can not be the sole criteria to apply in selecting comparators. The statute requires other criteria other than strictly population.

The Union concludes its proposal “[I]s consistent with the legislative intent of the statute and the criteria provided. The Union’s Last Best Offer increases wages modestly and incrementally in an effort to obtain parity with the total compensation paid in comparable jurisdictions, and ensures that all employees are paid commensurate with their actual

responsibilities and experience. On balance the Union’s proposal better accomplishes the goals of the statute.” [Post-hearing Brief of Union at 48].

The City concludes “The City’s Last Best Offer is appropriate under ORS 243.746(4) in fulfilling the interests and welfare of the public. Only the City’s proposal is in the interest and welfare of the public, keeping compensation within market and in line with inflation while voiding significant new benefit obligations that would require sacrificing other services. The City’s LBO is fair to IAFF employees in protects the interests of the public. Higher wages, deferred compensation, and premium pay for the combined crew are not required to recruit or retain qualified personnel. Only the City’s proposal ensures the public interest in quality service at the lowest reasonable cost will be met.” [Post-hearing Brief of City at 46-47].

2. Interest and Welfare of the Public

It is in the interest and welfare of the public for the City to act in a fiscally responsible manner, particularly in light of a constrained budget and other pressing public needs. Is the budget of the City of Eugene constrained? Does the City of Eugene have an inability to pay? If the Union’s proposal is accepted, will it so back-load the expenses that in a few years the City of Eugene will no longer have the ability to pay? These are some of the questions that must be answered before it can be determined what is in the best “interest and welfare of the public.” In other words, the criteria designated in the statute must be addressed in order to answer priority number one, i.e. “the interest and welfare of the public.”

3. Ability to Pay

The union contends that the city does not suffer from a relative or absolute inability to pay. Even if budget priorities require that money be allocated to road repair, downtown revival and increase in crime, this does not equate to an inability to pay. The Union argues that the financial burdens on a public entity can not be placed squarely on the shoulders of the union. The City's budget report, contends the Union, shows consistent increasing general fund balance and decreasing non-departmental expenditures. For example, during the last year the difference between the budgeted revenue and the actual revenue left a surplus of \$1.8 million, after a surplus of \$2.7 million the previous year and \$4.4 million surplus for the two years prior. The differences between the budgeted and actual expenditures for the same years have left the City with consistently lower expenditures than expected. The Union highlights that it is "unsurprising that the City experienced a difference in actual revenue and expenditures that left it with a \$2.3 million surplus." [Post-hearing Brief of Union at 14].

The City disagrees. It contends it is facing a "constrained condition of the General Fund" and the City "does not have a reasonable financial ability to meet the costs of the proposed contract giving due consideration and weight to other City services and priorities." [Post-hearing Brief of City at 13]. The City argues that the General Fund has been experiencing an operating deficit for several years, which essential means it is in structural imbalance, and the City's expenses are consistently exceeding its revenues. Expenses are increasing approximately 6% per year, but revenues are only increasing at approximately 4.5% each year. [Id. At 14, citing Angel Jones, City Manager Pro Tem; James Carlson, Executive Director, Central Service Department]. The General Fund has been experiencing an operating deficit for several years [Post-hearing Brief of City at 14, citing Jones testimony]. The City argues that in fiscal year 2007 the General

Fund had a operating deficit of \$2.063 million. The City is expected to experience an operating deficit in each of the next six years. The expected operating deficits for that time period range from a low of approximately \$500,000 to a high of over \$6 million. [Post-hearing Brief of City, citing General Fund Forecast, Exhibit C-14].

To cover the difference in operating costs and revenues, the City has been using its “rainy day fund, the Reserve for Revenue Shortfall.” [Id. at 15]. The City projects that this reserve will be depleted by fiscal year 2010, at which time the city will either have to make significant service cuts or be forced to begin using its Unappropriated Ending Fund Balance. [Id at 15, citing Jones Testimony]. The resources that account for over 60% of the City’s General Fund are property tax revenues, user fees, and fines. The City’s ability to raise property taxes is limited by Measures 5 and 50. Measure 5 imposed a \$10 cap on the total tax rate for local governments. Measure 50 imposed the permanent tax rate for local governments (Eugene’s is approximately \$7) and combines that with the underlying assessed property tax value base, which is limited to a 3% increase each year. [Id at 15, citing FY08 Annual Budget, Exhibit C-13, p75].

The City also contends that the IAFF proposal will cost more than \$600,000 during the first 2 years. Overtime, a predictable cost due to minimum required staffing levels and employee absences, has exceeded 2 million for 3 of the last 5 years.

Differences in the City’s and the Union’s methodologies account for the Union’s lower base for current costs, which result in the Union’s lower estimated cost differences between the parties’ Last Best Offers. Because of the back-loaded nature of the Union’s economic proposals, including the combination pay and deferred compensation benefit in the second year of the

contract, and assuming a 3% annual wage increase for 2 years following the present, the predicted difference in the cost of proposals over the next 4 years is an estimated \$1,628, 433.

With respect to the recent large purchase of fire apparatus, the City made a conscious decision to wait and purchase multiple pieces of fire apparatus/equipment at one time from one vendor. This allowed the City to realize significant cost savings over making single unit purchases.

The citizens of Eugene are demanding that the City fix the streets, develop and revitalize downtown, and address police staffing needs and crime. Currently the City has approximately \$170 million backlog of street repairs. Compounding all this are the financial difficulties of Lane County, where Eugene is located. The \$47 million anticipated shortfall in Lane County has created an uncertain and changing situation in which City policy makers must consider how significant service cutbacks at the county will impact the needs of the Eugene community and the City's role in servicing those needs. Lane County is facing large cuts in funding and staff and this will impact the City of Eugene because the City is in Lane County and some of its services are integrated with Lane County. At this moment, City staff and policy makers are engaged in figuring out how to set priorities in light of these new, difficult and grim financial realities.

The Union and the City basically view the City's General Fund balance quite differently. The Union focuses on the City's skill at decreasing non-departmental expenditures thus saving the City money. The City focuses on the back-loaded nature of the Union's proposal, its relative inability to increase taxes, and the likelihood that operating costs will soon exceed revenues. Combined with the shortfall in Lane County and the competing city services and priorities, the

City argues that it has a relative inability to pay. While the City has been quite fiscally responsible in the past, thus giving it some breathing room, the immediate future is grim. Consequently, the City's proposal is in the best interest of the public because it gives due consideration to the City's other acutely needed services and priorities, while also providing ample compensation to IAFF represented employees and ensuring that the public receives the same high level fire and EMS services.

Using the City's figures and the testimony of Ms. Jones and Mr. Carlson, it is clear that due to the back-loaded nature of the Union's proposal, the City will face, in the very near future an inability to pay, what the Union is requesting. Choosing the City's Last Best Offer the Union members will still receive fair wage increases for 2007 and 2008 which will keep them in fair comparison to whatever comparators are used. And internally, they will remain among the highest paid employees of the City of Eugene compared with other wage earners in the City.

As a result of the finding of inability to pay the back-loaded proposal of the Union, the analysis could end here, without the need to consider the secondary criteria in the statute. The City's inability to pay proves that the interest and welfare of the public is best served by choosing the City's Last Best Offer. Nevertheless, based on the criteria in the statute I will continue the analysis in order to show that applying the secondary criterion also supports the City's Last Best offer.

4. Ability to Attract and Retain Qualified Personnel.

This factor is in favor of the City. The evidence establishes that the City is able to recruit qualified applicants; its turn over rate is low; and even those firefighters who have left City employment have not done so to take higher paying jobs elsewhere. The City regularly recruits

large numbers of qualified applicants. In the last two completed recruitment processes for entry level positions the City received 316 and 242 applications. In total, 50 firefighters were hired [Post-hearing Brief of City at 20]. A recruitment process is now pending, and the city received 194 applicants. The City Fire and EMS Department has never had to look outside the department to fill a promotional position (i.e., an engineer, lieutenant, or captain position). [Post-hearing Brief of Union at 20-21]. The applicable labor market for City firefighter candidates is Oregon and the City has had no difficulty in attracting large numbers of applicants to fill the firefighter position. The applicable labor market for all promotional positions is internal, and the City has had no difficulty attracting staff to these promotional positions. [Id at 21].

5. Overall Compensation.

The parties disagree about what factors should be included in existing compensation. The Union uses entry-level positions when comparing overall compensation. The City has consistently used the top-step of the salary range both in bargaining and in setting new salary ranges because it is a meaning measure of earning potential for IAFF represented employees. The salary structure contains an entry-level step and step-by-step progression until the employee reaches the top (or maximum) step of the salary range after 4 years of employment. In other words, everyone reaches top step within 5 years. Presently there 182 positions in the bargaining unit and more than 75% of the members are at the top step already. [Post-hearing Brief of City at 22-23]. The City focuses on firefighters, as that is the entry point for the 162 positions with in the fire suppression. 90% of employees in the bargaining unit are now firefighters or were firefighters before being promoted internally.

The Union also includes the 4% drop in PERS. The City does not incorporate that 4% drop in PERS. The Union argues this skews the final numbers in comparing the overall compensation of Eugene firefighters. The Union includes base wages and other wages, vacation and holiday pay, PERS pickup, employee insurance co-pays of premiums, emergency medical technician pay, and other incentive pays. All paid leaves are quantified in the Union's analysis including holiday, vacation, and personal, but the figures exclude sick and bereavement leave. The City includes sick and bereavement leave in their figures, thereby distorting its numbers, contends the Union. The Union does not use sick leave accrual in its overall comparison because the Union does not see this as a benefit until it cashed out and converted to paid time off. Bereavement leave is rarely taken, generally only in cases of serious illness or death in the family. Thus the Union contends that it correctly excludes overtime, sick and compassionate leave from their calculations as well as team and assignment pays because only a few benefit from them and they are largely at the discretion of management. The City includes unit pay, which is currently received by 6 people in Eugene, it excludes assignment from the comparables because only a few receive them. The Union contends team and assignment pays must be either included across the board or, conversely, be excluded. The Union excluded them. The Union contends the City has skewed its figures to portray a more equitable compensation package through its manipulation of data.

The City includes wages, retirement value, EMT-P certification pay and EMI-P unit pay, the value of average monthly vacation and holiday leave, health life and other insurance benefits, in overall compensation. The City concludes that by any measure, IAFF employees currently receive ample total compensation. They enjoy high annual earnings as compared to full-time wage earners in the local community, and an outstanding benefits package, including a robust

retirement plan and comprehensive medical insurance plans almost fully paid by the City. In addition, IAFF members receive, on average, 354 hours per year for vacation and holiday leave. They also accrue 144 hours of sick leave per year. Given the total compensation presently enjoyed by IAFF members, overall compensation favors selecting the City's proposal.

The statute also asks the arbitrator to examine the employees' overall compensation as compared to "the overall compensation of other employees performing similar services with the same or other employees in comparable communities." "Comparable" is limited to communities of the same or nearest population range within Oregon. ORS243.746(4)(e). Comparability, while a secondary factor, and like all the secondary factors, must be viewed for its relevance to the public interest and welfare. The Union and the City argue over which places are to be used as comparables. But this case is not about comparables, and as a consequence it is not useful to give weight to this factor without a reason for doing so. It has already been determined that the City faces an inability to pay because of the back-loaded nature of the Union's proposal and because of the constrained nature of the fiscal future of the City of Eugene. Eugene Firefighters and Paramedics are within the market and will remain so for the foreseeable future. IAFF employees working in Eugene's environment receive annual pay of over \$80,000, on average, before benefits. There is little risk that IAFF employees will leave for better compensation elsewhere. IAFF employees receive compensation that is within the market no matter what comparables are used. Total compensation presently received by IAFF members, even using the Union's comparables, favor awarding the City's Last Best Offer.

6. Cost of Living

The appropriate measure for CPI is a yearly average. IAFF salary increases have outpaced CPI for the last dozen years. Since July 1, 1995, the cumulative increase in IAFF salaries totaled 50.6% and the compounded increase totaled 52.6% [Post-hearing Brief of City at 41, citing Salary Increase History Since FY96 – City-wide (EX C-36)]. For that same period, CPI-U has increased a total of 30.6% and a compounded total of 35.3%. The City’s proposed wage increase of 3.3% for the first year is above the CPI average of 3.2% for calendar year 2006; and its proposed wage increase of 3.5% for July 1, 2008, is above the CPI average of 2.9% for calendar year 2007. Even if 2008 turns out to be a high inflationary period, because the IAFF salary increases have so strongly outpaced CPI over the last dozen years, that accumulated cushion will continue to insulate IAFF members from experiencing erosion of their buying power. The CPI favors the City.

7. Other Factors.

Other factors are not necessary to be considered because the primary and secondary criteria are sufficient to determine what is in the best “interest and welfare of the public.” But if internal equity is taken into account, IAFF salaries have exceeded those of all other employee groups in the City over the last decade.

8. Combination Crew Proposal of Union.

The Union has made a strong and convincing case for the increased workload of the combination crew at Station 8. Presently when the combination crew is activated it will still be paid unit pay for all time worked on the unit with a minimum of four hours. If the crew is

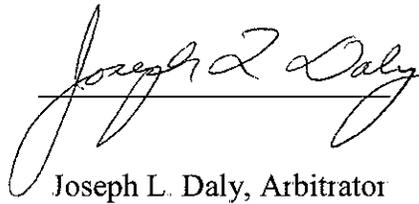
activated three or more times, they are and will continue to paid medic unit pay for the entire shift. The increased workload, training and education is substantial. The Union makes a good case for its position. However, the Oregon statute calls for Last Best Offer arbitration of the entire package. As a consequence, I am limited to the package.

The package which best satisfies ORS243.746(4)a-h is the City's Last Best Offer package.

AWARD

Adopt the City's package.

June 23, 2008



Joseph L. Daly, Arbitrator