In the Matter of Arbitration between KITSAP COUNTY, WASHINGTON Employer, and OFFICE & PROFESSIONAL EMPLOYEES' INTERNATIONAL UNION, LOCAL NO. 11, LAW & JUSTICE DIVISION FOR SHERIFF'S DEPARTMENT UNIFORMED EMPLOYEES & SUPERVISORY UNIFORMED EMPLOYEES, Union.	)	Interest Aribtration PERC No. 06183-I-86-00138

OPINION & AWARD

OF

ARBITRATOR

Arbitrator: PAUL P. TINNING
1299 S. W. Cardinell Drive
Portland, Oregon 97201

(503) 223-9719
227-1101

Dated: 15 December 1986

INTRODUCTION

By letter of August 6, 1986, Ronald A. Franz, Counsel for the Employer herein, advised the undersigned Arbitrator that he had been selected by the parties herein to arbitrate an interest dispute identified by the Washington Public Employment Relations Commission as PERC No. 06183-I-86-00138. The parties to this dispute are KITSAP COUNTY (hereinafter the "Employer") and the OFFICE & PROFESSIONAL EMPLOYEES' INTERNATIONAL UNION, LOCAL NO. 11, LAW & JUSTICE DIVISION FOR SHERIFF'S DEPARTMENT UNIFORMED EMPLOYEES & SUPERVISORY UNIFORMED EMPLOYEES (hereinafter the "Union").

A hearing on this matter was held on October 16, 1986, in a conference room in the Department of Personnel and Human Resources, Kitsap County, in Port Orchard, Washington. The parties were afforded a full and complete opportunity to be heard, to call witnesses, to introduce evidence and present argument. Upon conclusion of the hearing, the parties agreed to submit post-hearing briefs three weeks after receipt of the transcript. The Employer's brief was received on November 22, 1986, and the Union's brief was hand-delivered on December 8, 1986.

By letter of December 3, 1986, Mr. Franz, Counsel for the Employer, advised the Arbitrator to decide the subject dispute since the Union failed to submit a post-hearing brief pursuant to the parties' agreement at the hearing that such briefs would be submitted, with simultaneous service on each party, three weeks after receipt of the transcript.

The Arbitrator received the transcript on November 3, 1986, and the Employer's post-hearing brief was received on November 22, 1986.

By letter of December 5, 1986, hand-delivered with the Union's post-hearing brief on December 8, 1986, Mark B. Hansen, Counsel for the Union, requested that said brief be considered in this matter.

By letter of December 8, 1986, the Arbitrator advised Messrs. Hansen and Franz that the Union's untimely brief would not be considered.

The hearing was recorded by Kathryn M. Todd, RPR, CSR of Port Orchard, Washington.

The Employer called the following witnesses: John Horsley, County Commissioner; Joan Marie Weber, Director of the Department of Internal Management; Penny Starkey, Personnel

Division Supervisor; Lee Thorson, an attorney with the Seattle law firm of Lane, Powell, Moss & Miller; Cabot Dow, Labor Relations Professional; and Charles A. Wheeler, Undersheriff in the Sheriff's Department. The Employer called Messrs. Thorson and Dow as rebuttal witnesses.

The Union called the following witnesses: Morton H. Zalutsky, attorney; Wayne Shelton, Union Business Representative; Smed Wagner, Detective and member of the Union bargaining team; and Gary Kirkland, Union Executive Officer and Secretary-Treasurer.

APPEARANCES

For the Employer:

RONALD A. FRANZ, Chief Civil Deputy
BERT FURUTA, Director, Department of Personnel & Human Resources

For the Union:

MARK B. HANSEN, Attorney at Law
Horenstein & Horenstein P.S.
Vancouver, Washington
GARY KIRKLAND, Union Executive Officer & Secretary-Treasurer

ISSUE

The issue involves interest arbitration under the terms of RCW 41.56.450 et. seq. The parties previously agreed in mediation to submit the following issue to arbitration:

> Shall the County be required to concede to the attached proposal of the Union dated August 9, 1985 (see attachment/erissa [sic][1] Trust) or shall it be required [to] be as the County proposed as hazard duty pay in its letter of September 10, 1985 [?] (Jt. Ex. 1)

STATUTORY FACTORS

Under the State of Washington Public Employees Collective Bargaining Act, the following statutory factors shall be considered in determining interest arbitration matters involving uniformed personnel:

> (a) The constitutional and statutory authority of the employer;
>
> (b) Stipulations of the parties;
>
> (c) Comparison of the wages, hours and conditions of employment of personnel involved in the proceedings with the wages,

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1 Employee Retirement Income Security Act of 1974 commonly known as ERISA.

hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.

(d) The average consumer prices for goods and services, commonly known as the cost of living;

(e) Changes in any of the foregoing circumstances during the pendency of the proceedings; and

(f) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment. (RCW 41.56.460)

STATEMENT OF FACTS

A. Background

The Employer is a political subdivision of the State of Washington. The Employer provides various services to inhabitants within its jurisdiction.

The Union is the exclusive bargaining representative for all regular full-time and part-time uniformed employees, excluding specified personnel, including another bargaining unit of supervisory uniformed Sergeants and Corporals, excluding specified personnel (Jt. Ex. 4).[2]

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2 Reference to the exhibits will be designated as follows: "Jt. Ex." (Joint Exhibit); "Er. Ex." (Employer Exhibit); and "Un. Ex." (Union Exhibit). Reference to the transcript will be designated "Tr." followed by the page number(s).

There are approximately 53 uniformed employees represented by the Union in two (2) separate bargaining units affected by this dispute. Of that total, all of whom are provided medical insurance coverage by the Employer,[3] approximately 21 employees pay $170.65 per month for medical insurance coverage for their dependents (Tr. 59).

Approximately 41 non-uniformed employees in the Sheriff's department are also represented by the Union in a separate bargaining unit not affected by the subject dispute.

Many of the other employees are represented by five (5) or six (6) other labor organizations (Tr. 20).

B. History of Bargaining

The three (3) bargaining units represented by the Union began negotiations for a new collective bargaining agreement on September 19, 1984. The non-uniformed unit, which is not involved in the instant dispute, reached a settlement and a new agreement was executed on June 24, 1985 (Tr. 159).

Reference to the Employer's post-hearing brief will be designated "Er. Br." followed by the page number(s).

3 The Employer also assumes the cost of dental, vision and life insurance coverage for employees only (Tr. 54). Such coverage is provided through the Washington Counties Insurance Fund.

The two (2) uniformed bargaining units, who also vote separately on contract proposals affecting their units, rejected two (2) different proposals submitted by the Employer primarily on the grounds that they provided for longevity pay rather than medical coverage for their dependents. According to the uncontroverted testimony of Union witness Wayne Shelton, a Union representative who participated in the negotiations, the parties engaged in over 15 bargaining sessions, including several mediation sessions under the auspices of the State of Washington Public Employment Relations Commission (PERC) (Tr. 163).

At one point in those negotiations, the Employer, according to Mr. Shelton, suggested that:

> ... we could submit some language to show how we could have relief on dependent coverage without the word dependent coverage being mentioned. And that's when we submitted a proposal that they contribute X dollars amount to Local 11 trust. (Tr. 163)

According to Mr. Shelton, one of the prime objectives of the uniformed bargaining units was to negotiate some relief from the cost of medical insurance coverage for their dependents (Tr. 163). In this regard, Employer witness Charles A. Wheeler,

Undersheriff, acknowledged under cross-examination that dependent medical coverage was a "big issue" in negotiations eight (8) to 10 years ago (Tr. 117).

(1) Union Proposal

In response to the Employer's suggestion, Union representative Shelton, by letter of August 9, 1985, to Bert Furuta, Director, Personnel & Human Resources, submitted the following language for consideration:

> ARTICLE -- DEPUTY TRUST FUND
>
> Effective January 1, 1985, for each member of the bargaining unit the Employer agrees to pay twenty-five dollars ($25.00) a month into the Office Employees Local #11 Trust Fund, Kitsap County Deputy Sheriff's account. (Jt. Ex. 1)

Employer witness John Horsley, a County commissioner who participated in the negotiations, acknowledged that the issue of dependent medical coverage was discussed in a number of bargaining sessions prior to and during mediation. In this regard, he stated that:

> ... they [Union] asked for and we said we could not give dependent medical. It's just against our policies. We are very leery of the financial impact of granting all of our bargaining units and all of our employees dependent medical, so as an alternative what was suggested is there's a way to give it but

> hide it, in essence, disguise it by calling it a contribution to a trust fund, and then the trust could pass out those dollars as they please, but it wouldn't be the County that was paying dependent medical. In essence, back door. (Tr. 29-30)

According to Mr. Horsley, dependent medical coverage is not a practice that the Employer believes in or can afford (Tr. 27). He stated that the Employer:

> ... refuse[d] to accept the disguised trust fund, because it's back door. That's why we offered instead, we're willing to pay and right on the table is the $25 a month hazardous duty pay which is unique to the hazards that deputies face. No other unit could ask for that. (Tr. 31)

(2) Employer Proposal

By letter of September 10, 1985, Commissioner/Chairman Horsley responded to the Union's proposal of August 9, advising Union representative Shelton that:

> [W]e have reviewed your proposal, wherein Kitsap County would pay twenty-five dollars ($25.00) a month in the Office Employees Local #11 Trust Fund, Kitsap County Deputy Sheriff's Account, with our legal staff. We have been advised that there are significant concerns relating to our participation in a Trust, a major area being the applicability of the Employee Retirement Income Security Act of 1974 (ERISA) and its impact upon Kitsap County as an employer and the Deputies as employees.

> To facilitate the conclusion of our negotiations, I would propose that the agreed upon payment of twenty-five dollars ($25.00), thirty dollars ($30.00), and thirty-five dollars ($35.00) per month for 1985, 1986 and 1987 be added to the adjusted monthly base wage OR we would be willing to discuss establishing it under a separate section of the contract as longevity bonuses or hazardous duty pay.
>
> * * * (Jt. Ex. 1)

Thereafter, the parties reached agreement on the terms of a new contract, which was ratified by the subject employees, which included a new section under the salary schedules set forth in Appendix 'A' as follows:

> Section 2. Other Salaries
>
> The parties have agreed to the following additional wage adjustments as part of the total economic package set forth in this Agreement:
>
> 1985 - Twenty five dollars ($25.00 per month to all job classifications.
> 1986 - An additional five dollars ($5.00) per month to all job classifications.
> 1987 - An additional five dollars ($5.00) per month to all job classifications.
>
> However, since the parties are unable to reach agreement as to the allocation of this Section 2 monies, the Public Employees Relations Commission (PERC) has certified the following issue for interest arbitration under RCW 41.56 (Case No. 6138-I-86-138):
>
> Shall the County be required to concede to the attached proposal of the Union, dated August 9,

1985 (Appendix A-1, Insurance Trust), or shall it be required as the County proposed, i.e. hazardous duty pay, in its letter of September 10, 1985 (Appendix A-2) to the Union. (Jt. Ex. 4)

POSITIONS OF THE PARTIES

A. Employer

The Employer contends that the Union's proposal to provide dependent medical coverage is not a viable program by virtue of the fact that the Union failed to show what benefits that deputy sheriffs would receive in the event the Employer were to pay specified contributions into the Union's trust fund. In this regard, the Employer pointed out that Union witness Zalutsky, the attorney who drafted the Union's trust plan, did not know what type of medical insurance coverage could be obtained for $25.00 per month, nor did he know whether such insurance was available to dependents only (Er. Br. 3; Tr. 138, 146-147).

The Employer also pointed out that Union representative Shelton, who participated in the subject negotiations, did not know what deputy sheriffs would receive based upon contributions from the Employer (Er. Br. 3; Tr. 208).

Moreover, the Employer further pointed out that Union witness Kirkland, Executive Officer of the Union, testified that the mechanics of providing dependent medical coverage had not been worked out, but that the Union would, based upon the Employer's contributions, provide "... some type of supplementary dependent medical coverage or attempt to offset it in some manner...." (Er. Br. 4;Tr. 240). The Employer also noted that Mr. Kirkland did not know if such insurance could be obtained for dependents only.

In trying to ascertain the viability of the Union's proposal, the Employer elicited testimony from Lee Thorson, an attorney who specializes in tax law and employee benefits, who stated that the Union could provide dependent medical insurance coverage as follows: (1) self-insurance; (2) buy such insurance; or (3) channel the Employer's contributions through the Union's trust fund and thereafter remit such monies to the Employer to purchase coverage through its present insurance carrier. According to the Employer, Mr. Thorson claimed that the first alternative was economically prohibitive. With respect to the second alternative, Mr. Thorson stated that he knew of no insurance carriers, after consulting with representatives from four (4) of the larger benefits administration and insurance brokerage groups in Seattle, that would provide dependent medical coverage separate from employee coverage. The third alternative, according to Mr. Thorson, is viable to the extent that such

insurance could be obtained on a cost-effective basis. The Employer, however, is unwilling to participate in this alternative (Er. Br. 5-6; Tr. 86-87).

The Employer submits that several of the statutory factors enumerated in RCW 41.56.460 for determining interest arbitration cases involving uniformed personnel, such as the instant case, are not impacted by the subject dispute, namely, Sections (a) (constitutional and statutory authority of the employer); (d) (cost of living); and (e) (changes in any of the foregoing circumstances) (Er. Br. 7-10).

With respect to RCW 41.56.460 (b) (stipulations), the Employer submits that the parties stipulated to the issue for determination herein. With respect to the statutory factor of comparing wages, hours and conditions of employment (Section (c)), the Employer claimed that such comparisons must be of "like employers" as noted by Arbitrator Thomas F. Levak in City of Tukwila and International Association of Firefighters, Local 2008 (1985), wherein he stated, in relevant part, that:

> [I]t is readily apparant [sic] that 'like personnel' are commonly employed by unlike employers. For example, cities, counties and fire districts all employ firefighters. However, cities, counties and fire districts are most certainly not 'like employers'; and the statute makes it very clear that the like

> personnel utilized in any comparability analysis must be like employers. (Er. Ex. 18, p. 11).

Moreover, the Employer submits that any comparability analysis must include like employers on the "west coast" of the United States as required by the statute as so noted by Arbitrator John H. Abernathy in Everett Police Officers Association and City of Everett (1981), wherein he stated, in relevant part, that:

> [T]his language [RCW 41.56.450 (c)] requires comparisons of cities and counties respectively of similar size on the 'west coast of the United States', and as normally used, the term 'west coast of the United States' does not require the strained interpretation of being on coastal waters as the Association so argued, but applies to cities of comparable size in Washington, Oregon, California and Alaska. (Emphasis in the original; Er. Br. 9)

In view of these statutory guidelines, the Employer submits that the Union's comparative analysis of various other counties in the State of Washington, including cities in Kitsap County, is flawed to the extent that the comparison does not indicate whether the counties and the cities surveyed are of "similar size" as required by the statute (Er. Br. 7-8; Un. Ex. 5). Moreover, the Employer submits that the Union's reliance on

Washington counties as comparables fails short of the statutory requirement that such comparison be made of like employers on the "west coast of the United States".

The Employer submits that the comparative analysis prepared by its consultant, Cabot Dow, conforms to the statutory requirements in that like employers, namely, counties, of similar size in terms of population throughout the west coast of the United States were selected for comparison. Since the State of Alaska has no boroughs, rather than counties, of similar size to the Employer, Mr. Dow stated that none was included in the analysis (Er. Br. 8-9; Er. Exs. 4, 5). The results of that analysis are as follows:

COUNTY	Has the County agreed to such a proposal as made by OPEIU #11	Does the County provide medical benefits for deputies and not for other County employees?
Washington State		
Kitsap	No	No
Benton	No	No
Clark	No	No
Thurston	No	@ Yes
Whatcom	No	No
Yakima	No	* Yes
Oregon State		
Clackamas	** Yes	No
Douglas	No	No
Jackson	No	No
Linn	No	No
Marion	No	No
Washington	No	No
California State		
Butte	No	No
Merced	No	No
Placer	No	No
San Luis Obispo	No	*** Yes
Santa Cruz	No	No
Shasta	No	No

@ County contributes $30.00 per month towards dependent coverage for deputies.

* County contributes more per month towards medical coverage.

** In lieu of increased wages, 1% of salary is placed in Trust to offset expense of retiree medical benefits (co-administred [sic] by Clackamus [sic] County and the Union)

*** County contributes $15.00 more per month towards dependent coverage for deputies. (Er. Ex. 6)

Based upon the foregoing analysis, the Employer submits that there is only one (1) county of the 18 county comparables that makes a "... contribution to a union trust fund ... similar to that proposed by Union" (Er. Br. 14).

With respect to the statutory guideline of RCW 41.56. 460 (f), which requires that other factors normally considered in determining wages, hours and conditions of employment must be taken into account, the Employer submits that the following factors must be taken into consideration:

1. Equity of Other Employee Groups

With regard to equity, the Employer submits that if it were required to accede to the Union's proposal that it would face considerable pressure from other employee organizations in light of its policy to treat all employees, union and non-union, equally. In this regard, the Employer noted that its expert witness, Cabot Dow, testified that such proposal would have a de-stabilizing effect on labor relations until the disparity were equalized (Er. Br. 10-11).

2. Financial Impact

Although the Employer acknowledged that the parties' respective proposals are, from a financial standpoint, "equivalent", it nevertheless registered concern about the financial impact of future Union demands for increased contributions to defray employee costs for dependent medical coverage.

Moreover, the Employer submits that such financial concerns would be heightened by pressures from other employee groups to also obtain dependent medical coverage for the employees they represent. Under the Union's proposal, the Employer pointed out that it would initially cost $15,900.00 to fund dependent medical coverage for 53 uniformed employees. If all County employees were provided such coverage, the Employer submits that it would cost $171,600.00 per year (Er. Br. 12; Er. Ex. 3). If such coverage were fully funded by the Employer for all employees, the Employer claims that it would cost approximately $370,000.00[4] per year.

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4 The Arbitrator notes that Employer witness Penny Starkey, Personnel Division Supervisor, acknowledged that if dependent medical coverage were fully funded for all employees that it would approximately double the amount of $164,950.00 currently paid by some 142 employees for dependent medical coverage. Doubling that figure amounts to $329,000 per year (Tr. 64).

According to the Employer, these financial concerns must be evaluated in light of a bleak economic outlook evidenced by the fact that revenue sharing, which accounted for $926,000.00 in 1986, has been eliminated by the U.S. Congress. As a result, the Employer claimed that it expects to lay off 20 to 30 employees sometime in 1987 (Er. Br. 12, Tr. 47).

3. Morale in the Sheriff's Department

The Employer submits that morale within the Sheriff's department would, according to Undersheriff Wheeler, be adversely affected to the extent that the other bargaining unit in the department, namely, clerks and jailers, would not receive dependent medical coverage. Moreover, the Employer submits that only 21 of the 53 uniformed employees in the subject bargaining units would benefit from such coverage whereas the other 32 employees would receive nothing (Er. Br. 12-13).

In view of the foregoing, the Employer requests that its proposal should be adopted because it is preferable to the one proposed by the Union.

B. Union

The Union contends that the monies agreed upon by the parties in Section 2, Appendix 'A' of their 1985-87 collective bargaining agreement, namely, $25.00 per month for all job

classifications in 1985; an additional $5.00 per month in 1986; and another $5.00 per month in 1987, "... be paid to a trust fund for the purpose of obtaining dependent medical coverage" (Tr. 13). According to the Union, the specified monies were "... negotiated in terms of a benefit, and the intent of the parties was to provide for an employer contribution to family or dependent benefits" (Tr. 16).

The Union contends that it is a "... prevailing ... and common practice for similarly situated organizations and agencies in the State of Washington to pay dependent medical coverage" (Tr. 15). In this regard, Union representative Shelton testified that his survey, with respect to dependent medical coverage for law enforcement personnel, of 39 counties in the State of Washington revealed that "... 72 percent of the counties ... paid from 100 percent to ... a minimum ... [of] $50 - some a month" (Tr. 178).

Based upon data compiled by the Attorney General of the State of Washington in a 1986 report entitled, "Washington State Law Enforcement Survey" (Un. Ex. 4), the Union extracted data therefrom in preparing the following comparative analyses:

WASHINGTON COUNTIES ***

County	Full-Time General Enforcement Personnel	Does Department Contribute to Dependent Medical Coverage?	Percent/Amount Paid by Dept for Dependents	
KING	513	Yes	100%[5]	***
PIERCE	174	Yes	100%	***
SNOHOMISH	131	Yes	100%	***
SPOKANE	143	Yes	$82.13/mo	***
CLARK	96	Yes	100%	***
YAKIMA	69	Yes	$173-248/mo	***
THURSTON	62	Yes	$ 65/mo	***
KITSAP	60	No	0%	***
WHATCOM	38	Yes	100%	***
BENTON	30	No	0%	***
COWLITZ	41	Yes	100%	***

CITIES IN KITSAP COUNTY

City	Full-Time General Enforcement Personnel	Does Department Contribute to Dependent Medical Coverage?	Percent/Amount Paid by Dept for Dependents	
BREMERTON	56	Yes	100%	***
POULSBO	10	Yes	75%	***
PORT ORCHARD	11	Yes	100%	***
WINSLOW	?	Yes	100%	***
KITSAP	60	No	0%	***

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5 The Arbitrator notes that the Attorney General's survey report designates a question mark (?) as to the percentage amount paid by King County for dependent medical coverage (Un. Ex. 4, p. 47).

COUNTIES ADJACENT TO KITSAP COUNTY

County	Does Department Contribute to Dependent Medical Coverage?	Percent/Amount Paid by Dept for Dependents
KING	Yes	100%
PIERCE	Yes	100%
JEFFERSON	Yes	100%
MASON	Yes	$55/mo
KITSAP	No	0%

(Un. Ex. 5)

Based upon the foregoing analyses, the Union pointed out that two counties (Kitsap, Benton) of the 11 counties surveyed by the Union for comparative purposes do not contribute to medical insurance coverage for dependents of uniformed personnel (Un. Exs. 4, 5; Tr. 191). The other nine (9) counties contribute to such coverage ranging from a low of $65.00 per month (Thurston) to full coverage (100 percent).

With respect to the Union's comparative analysis of city law enforcement jurisdictions, the Union pointed out that four (4) cities contribute to dependent medical coverage ranging from a low of 75 percent to full coverage (100 percent) (Un. Exs. 4, 5; Tr. 193).

With respect to the Union's comparative analysis of counties adjacent to Kitsap County, the Union pointed out that all four (4) adjacent counties (King, Pierce, Jefferson, Mason) contribute to dependent medical coverage ranging from a low of $55.00 per month (Mason) to full coverage (100 percent) (Un. Exs. 4, 5; Tr. 193).

The Union also submitted copies of collective bargaining agreements containing dependent medical coverage provisions in some of the jurisdictions surveyed for comparative purposes, namely, Thurston County (Un. Ex. 6); Spokane County (Un. Ex. 7); Cowlitz County (Un. Ex. 8); and Clark County (Un. Ex. 9). The Union also introduced the collective bargaining agreement for the City of Bremerton which provides dependent medical coverage for police officers through the Association of Washington Cities Group Medical Plan (Un. Ex. 10; Tr. 221).

The Union rejects the Employer's assertion that dependent medical coverage would create a serious morale problem among employees in all three (3) bargaining units. Rather, the Union submits that, according to Union representative Shelton's testimony, the "... morale issue is that they [employees] have got to pay 170 bucks out of their pocket to get dependent coverage" (Tr. 168). Similarly, the Union claims that Union witness Smed Wagner, a detective in one of the subject bargaining

units who participated in the negotiations which resulted in the current agreement, testified that he did not think that dependent medical coverage would create a morale problem (Tr. 225).

The Union also elicited testimony from Union witness Morton Zalutsky, an attorney specializing in tax and employee benefits who drafted the subject Union trust document, concerning the legality of the Union's trust plan, noting that the plan itself assumes, through its employer and union trustees, including professional staff, the statutory responsibilities and obligations under ERISA (Tr. 128-140). Therefore, the Union submits that the Employer would not be subject to liability under the plan, except, of course, for the specified contributions into the trust fund (Tr. 135).

The Union also noted that one of the significant features of such a trust plan is, according to Mr. Zalutsky, that "... contributions are deductible to the employer, they are not taxable to the trust, and they are not taxable to the employees" (Tr. 129).

The Union also rejects the Employer's concern that ERISA and administrative obligations would erode the contribution monies available for dependent medical coverage. In this regard, the Union noted that Mr. Zalutsky testified that the "...

percentage of employer contributions used to provide benefits is in the upper 90 percent, 94, 95 and even 100 percent of the dollars contributed" (Tr. 140).

In view of the foregoing, the Union requests that its proposal is "... just and right and is fair and should be granted" (Tr. 17).

DETERMINATION & AWARD

This interest arbitration case involving law enforcement personnel under the State of Washington's public sector collective bargaining act (RCW 41.56.450) is somewhat unique and distinguishable from other interest arbitration cases by virtue of the fact that the parties herein reached and ratified a settlement on wages, hours and conditions of employment on a total economic package basis, except for the "allocation" of certain monies specified in Section 2, Appendix 'A' of their 1985-87 collective bargaining agreement. As noted earlier herein, that section reads as follows:

> Section 2. Other Salaries
>
> The parties have agreed to the following additional wage adjustments as part of the total economic package set forth in this Agreement:

1985 - Twenty five dollars ($25.00 per month to all job classifications.
1986 - An additional five dollars ($5.00) per month to all job classifications.
1987 - An additional five dollars ($5.00) per month to all job classifications.

However, since the parties are unable to reach agreement as to the allocation of this Section 2 monies, the Public Employees Relations Commission (PERC) has certified the following issue for interest arbitration under RCW 41.56 (Case No. 6138-I-86-138):

> Shall the County be required to concede to the attached proposal of the Union, dated August 9, 1985 (Appendix A-1, Insurance Trust), or shall it be required as the County proposed, i.e. hazardous duty pay, in its letter of September 10, 1985 (Appendix A-2) to the Union. (Jt. Ex. 4)

Simply stated, the instant case involves a determination whether the monies agreed upon should be allocated for dependent medical coverage provided by the Union trust plan under the Union's proposal or whether they should be allocated for hazardous duty pay as proposed by the Employer. In light of that specific mandate, coupled with the fact that the parties reached agreement on a total economic package basis, the Arbitrator finds that the statutory factors provided in RCW 41.56.460 (a) through (f) to determine interest arbitration cases have limited application to the instant dispute.

Even assuming arguendo the applicability of RCW 41.56.460 (c), the statutory factor which deals with a comparison of wages, hours and conditions of employment of "... like personnel of like employers of similar size on the west coast of the United States", the Arbitrator finds the comparative analyses submitted by both parties deficient in most respects. For example, the Arbitrator finds merit in the Employer's argument that the comparators relied upon by the Union, namely, select county and city jurisdictions providing law enforcement services in the State of Washington, do not accord with that statutory guideline to the extent that no information was provided whether such jurisdictions were of "similar size" to the Employer in terms of population, coupled with the fact that they were limited to one (1) state and did not include other comparable jurisdictions on the west coast of the United States.

The Arbitrator also finds merit in the Employer's argument that the Union's reliance on select cities as comparators likewise does not accord with this statutory factor to the extent that they are not "like employers" within the context of the statute. In this regard, the Arbitrator concurs with the reasoning of Arbitrator Levak in City of Tukwila and International Association of Firefighters, Local 2008 (1985), wherein he stated, in relevant part, that:

> [I]t is readily apparant [sic] that 'like personnel' are commonly employed by unlike employers. For example, cities, counties and fire districts all employ firefighters. However, cities, counties and fire districts are most certainly not 'like employers'; and the statute makes it very clear that the like personnel utilized in any comparability analysis must be like employers. (Er. Ex. 18, p. 11).

In contrast, the Arbitrator notes that the Employer selected five (5) counties, including Kitsap, in the State of Washington, six (6) counties in the State of Oregon and six (6) counties in the State of California, all of which are like employers providing law enforcement services and all of which are of comparable size in population to Kitsap County, as comparators in its analysis. While such comparisons more closely conform to the subject statutory guideline, the Arbitrator finds that such comparative data are significantly limited and, hence, deficient to the extent that the information obtained was in response to the narrow question, "Has the County agreed to such a proposal as made by OPEIU #11?", namely, providing dependent medical coverage through employer contributions to a union trust plan.

The foregoing conclusion is buttressed by the testimony of Employer witness Cabot Dow who testified under cross-examination that the Employer's inquiry was specifically limited to employer contributions into a union trust without inquiring whether or not the comparator counties provide medical insurance

coverage for employee dependents (Tr. 109). The latter inquiry, whether such comparators provide dependent medical coverage, is, in my opinion, equally, if not more, essential in analyzing comparative data on the existence of such benefit. A mere comparison of employer contributions into a union trust does not, in my opinion, satisfy the subject statutory guideline.

This deficiency in the Employer's comparative data is best illustrated by comparing that data with that of the Union. For example, the Employer's data reveals that Clark County does not make contributions into a union trust, as proposed by the Union, for dependent medical coverage whereas the Union's data reveals that Clark County fully funds (100 percent) such coverage for dependents (Er. Ex. 6; Un. Ex. 5). While it is true that both comparisons are accurate in response to the specific inquiries posited, the Arbitrator finds that the comparative data relied upon by the Employer for that jurisdiction, as well as its other 16 comparators, are not particularly useful in making a determination in this matter.

Thus, the Arbitrator is compelled to analyze other factors, including those within the scope of RCW 41.56.460 (f), for guidance in determining the subject dispute. In this regard, the morale factor cited by both parties -- the Employer claiming that dependent medical coverage would pose a serious morale problem among non-uniformed employees represented by the Union in

another bargaining unit in the Sheriff's department, including employees in the affected bargaining units who do not have dependents, as well as for other County employees, and the Union claiming that a morale problem currently exists insofar that approximately 21 of the 53 employees in the two (2) bargaining units affected by this dispute pay $170.00 per month for dependent medical insurance coverage -- weighs in my opinion, in favor of the Union's position based upon the record in this case. Apart from the testimony of most Union witnesses who acknowledged that dependent medical coverage was one of the principal objectives of both bargaining units in the negotiations, as evidenced by the fact that such employees twice rejected Employer proposals for longevity pay, the record further reveals that Undersheriff Wheeler also acknowledged that such coverage was a "big issue" with the employees eight (8) to 10 years ago.

Another relevant factor to be considered is the financial impact of the parties' proposals. In this connection, the Arbitrator notes that the Employer acknowledged that the Union's proposal would initially cost $15,900.00 to fund dependent medical coverage, or the "equivalent" amount to fund hazardous duty pay under the Employer's proposal. As noted earlier herein, the parties agreed upon certain monies, except for their allocation, specifying $25.00 per month for 1985 with additional increments of $5.00 each for 1986 and 1987 as provided in Section 2, Appendix 'A' of their 1985-87 collective bargaining agreement.

Notwithstanding the financial equivalency of both proposals, the Employer raised, in light of its stated policy to treat all County employees equally by providing the same benefits, objection to the Union's proposal on the grounds that if it were required to accede to such proposal that it would be confronted by pressures from other employee groups to likewise obtain such benefit. These anticipated pressures, according to the Employer, potentially pose a substantial financial impact on already diminishing revenues as a result of federal revenue-sharing funds being eliminated. This concern, in my opinion, must be analyzed in light of the Union's obligation to fairly represent bargaining unit employees in reasonably achieving their stated interests, noting that the Union is not required to premise its bargaining objectives out of concern for other employees that it does not represent. Achieving a reasonable balance between such competing interests is virtually an impossible task. The weight of the record evidence, however, albeit largely conjectural in terms of the financial impact anticipated by demands from other employee groups for dependent medical coverage, tips slightly in favor of the Employer's position.

The record in this case reveals that the Union's trust plan, which was established pursuant to the Taft-Hartley Act, duly complies with all statutory and reporting requirements of ERISA. While the legality and administration of the trust is not

in question, the record reveals that the matter of providing medical insurance for dependents only through the Union's trust remains somewhat of an open question in light of the fact that bargaining unit employees already have medical coverage under a plan fully funded by the Employer.

Notwithstanding assurances by the Union that the trust could provide such dependent medical coverage, the record in this case raises, in my opinion, sufficient doubt to cloud the issue. One of those doubts was raised by the uncontroverted testimony of Employer witness Lee Thorson, an attorney specializing in tax law and employee benefits, who claimed that he was not aware of any insurance carrier that would "... sell dependent medical care separate from employee medical care" (Tr. 86). He further stated that this observation was supported by recent discussions with representatives from four (4) of the larger benefits and insurance brokerage groups in Seattle advising him that they did not believe it was possible to obtain dependent medical coverage separate from employee medical coverage.

Another uncertainty over this issue of dependent medical coverage surfaced from the testimony of Gary Kirkland, Union Executive Officer and one of the trustees of the Union's trust plan, who testified under cross examination that he didn't know that such coverage could not be obtained if the employees

were not covered by the same insurer (Tr. 241). He further stated, in response to an inquiry whether the Union could deliver such coverage, that:

> I think that we can provide that in one manner or form, either offsetting the existent dependent premium to the existing carrier or in fact providing some other type of deal. But again, we have not done all of the homework on that because we do not know where that issue is until the Arbitrator rules on it. (Tr. 242)

A significant drawback surrounding the offset option described above, namely, that the Union trust would receive the monies agreed upon and thereafter remit them to the existing insurance carrier to offset the employees' cost for dependent medical insurance premiums, stems from the fact that the trust would not, in my opinion, be acting in the capacity of a purchaser of such insurance. Rather, the trust presumably would serve merely as a conduit for such monies with limited, if any, ability to negotiate changes or improvements in existing benefits. While such option is presumably permissible, it cannot reasonably be said that the Union trust would be substantively providing dependent medical coverage.

Even assuming that the trust were to purchase dependent medical insurance, the rather small group of 21 employees with dependents presumably would not, based upon the record in this

matter, be able to obtain much coverage or benefits for the specified amounts of monies involved, notwithstanding that the trust would also have a cushion of funds by virtue of the fact that it would be receiving contributions on the other 32 employees who have no dependents.

While the Arbitrator is fully cognizant that the issue of dependent medical coverage is a big issue with employees in the subject bargaining units, the Arbitrator is nevertheless compelled to conclude that, based upon the entire record in this case analyzed in light of the various factors considered herein, the Union's proposal cannot be sustained. Accordingly, the Arbitrator adopts the Employer's proposal herein and awards that the specific monies agreed upon by the parties in Section 2, Appendix 'A' of their 1985-87 collective bargaining agreement be allocated to hazardous duty pay.

AWARD

Based upon the entire record in this case and the findings contained herein, the Arbitrator determines that the issue presented for determination must be decided in favor of the Employer's proposal.

Accordingly, the Arbitrator hereby adopts the Employer's proposal contained herein and awards that the specific monies agreed upon by the parties in Section 2, Appendix 'A' of their 1985-87 collective bargaining agreement be allocated to hazardous duty pay.

Signed this 15th day of December, 1986.

Respectfully submitted,

PAUL P. TINNING
Arbitrator

PPT:cjt

Parties served by mailing certified copies to representatives of record at addresses of record. A copy also served on the State of Washington Public Employment Relations Commission.
16 December 1986