

THE MATTER OF THE INTEREST)
)
 ARBITRATION BETWEEN) OPINION & INTEREST AWARD
)
 CITY OF PORT ANGELES)
)
 "THE CITY" or "THE EMPLOYER")
)
 AND)
)
 TEAMSTERS 589 - CITY OF PORT)
 ANGELES POLICE DEPARTMENT)
)
 "TEAMSTERS 589" OR "THE UNION")



HEARING: December 5, 2013
 Port Angeles, Washington

HEARING CLOSED: February 14, 2014

ARBITRATOR: Timothy D.W. Williams
 2700 Fourth Ave., Suite 305
 Seattle, WA 98121

REPRESENTING THE EMPLOYER:
 Bruce Schroeder, Attorney
 Bob Coons, HR Manager City of Port Angeles
 Abbi Gates, HR Analyst City of Port Angeles
 Byron Olson, CFO City of Port Angeles

REPRESENTING THE UNION:
 Michael McCarthy, Attorney
 Dan Taylor, Union Business Representative
 Sky Sexton, Port Angeles Police Officer
 Brian Stamon, Port Angeles Police Officer

APPEARING AS WITNESSES FOR THE EMPLOYER:
 Bob Coons, HR City of Port Angeles
 Byron Olson, City of Port Angeles

APPEARING AS WITNESSES FOR THE UNION:
 Dan Taylor, Union
 Michael McCarthy, Attorney

EXHIBITS

Comparable Agencies Collective Bargaining Agreements

1. Aberdeen CBA
2. Anacortes CBA
3. Camas CBA
4. Centralia CBA
5. Oak Harbor CBA
6. Tumwater CBA
7. Wenatchee CBA

Employer

1. State of Washington Revised Code of Washington (RCW)
2. Washington Administrative Code (WAC)
3. Current Collective Bargaining Agreement
4. PERC Letter Certifying Issues
5. Employer's Proposal
6. Union Proposal
7. Agency Description
8. Organizational Chart
9. Employee Roster
10. Employer's Methodology
11. Population Served of Comparables
12. Assessed Valuation Comparisons of Comparables
13. Sales Tax Comparisons of Comparables
14. Washington Population, assessed Valuation and Sales Tax Data
15. Clallam County Local Area Profile
16. Chelan County Local Area Profile
17. Clark County Local Area Profile
18. Grays Harbor County Local Area Profile
19. Island County Local Area Profile
20. Lewis County Local Area Profile
21. Skagit County Local Area Profile
22. Thurston County Local Area Profile
23. Geographic Location of Comparables
24. Presence of Comparables in Central Puget Sound Area
25. Financial Conditions
26. June 26, 2012 Mid-Year Report
27. Quarterly Update on Budget Status, 4th Quarter 2012
28. Quarterly Update on Budget Status, 1st Quarter 2013
29. Quarterly Update on Budget Status, 3rd Quarter 2013
30. October 23, 2012 Presentation to Teamsters re 2013 Operating Budget
31. November 12, 2012 Presentation re 2013 Budget
32. November 10, 2013 Presentation re 2014 Budget

33. GFOA Best Practice Memo, Appropriate Level of Unrestricted Fund Balance
34. Cost of Proposals
35. Retail Sales Comparison - sequim, UGA, and Port Angeles East Side
36. Limits on Use of Utility Funds for General Fund Obligations
37. Sales Tax Comparison with Sequim

Union

1. Current Seniority List
2. Current Wage Scale
3. Top Step Base Wage/Years to Top Step - Officer
4. Real Wage - New Hire Officer
5. Real Wage - Median Seniority Officer 6.3 Years
6. Real Wage - 10.4 Year Officer
7. Real Wage - Most Senior Officer - 25.9 Years
8. Real Wage Including Social Security and Deferred Compensation - New Hire Officer.
9. Real Wage Including Social Security and Deferred Compensation - Median Seniority Officer - 6.3 Years
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11. Real Wage Including Social Security and Deferred Compensation - Most Senior Officer 25.9 Years
12. Top Step Base Wage, 1 Year to Top Step - Corporal
13. Real Wage - Least Senior Corporal - 14.7 Years
14. Real Wage - Median Seniority Corporal - 17.5 Years
15. Real Wage - Most Senior Corporal - 24.1 Years
16. Real Wage Including Social Security and Deferred Compensation - Least Senior Corporal - 14.7 Years
17. Real Wage Including Social Security and Deferred Compensation - Median Seniority Corporal - 17.5 Years
18. Real Wage Including Social Security and Deferred Compensation - Most Senior Corporal - 24.1 Years
19. Top step Base Wage, 1 Year to Top Step - Sergeant
20. Real Wage - Least Senior Sergeant - 14.7 Years
21. Real Wage - Median Seniority Sergeant - 20.3 Years
22. Real Wage - Most Senior Sergeant - 25.9 Years
23. Real Wage Including Social Security and Deferred Compensation - Least Senior Sergeant - 14.7 Years
24. Real Wage Including Social Security and Deferred Compensation - Median Seniority Sergeant - 20.3 Years
25. Real Wage Including Social Security and Deferred Compensation - Most Senior Sergeant - 25.9 Years

26. Social Security and Deferred Compensation - Comparison Jurisdictions
27. MOU - Deferred Compensation, 5/16/95
28. Withdrawn
29. History of Raises, 2004 - 2014
30. Medical Premium Sharing
31. Education Pay - Officers
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BACKGROUND

The City of Port Angeles (The City) and Teamsters Union Local 589 - City of Port Angeles Police Department (Union) have a collective bargaining relationship. The 2008-10 collective bargaining agreement (CBA) expired on December 31, 2010. The Parties agreed to extend the agreement through 2011. They are in the process of completing the negotiations for a successor agreement that would be effective January 1, 2012. Negotiations have been unsuccessful at resolving all issues.

Under the State of Washington public sector collective bargaining statute, the instant bargaining unit has access to interest arbitration in order to resolve a continuing dispute over the terms of a collective bargaining agreement. The Parties can proceed to arbitration on issues certified by the Public Employment Relations Commission (PERC). By letter dated April 26, 2013, PERC certified six issues for arbitration:

Article IV, Compensation, Section A: Wages

Article IV, Compensation Section G: Education Incentive

Article V, Paid Leave, Section B: Sick Leave

Article V, Paid Leave, Section C: Holidays

Article VI, Health Benefits

Article VII, Grievance Procedure

In accordance with WAC 391-55-205, each Party had the right to name one partisan Arbitrator to serve as a member of an arbitration panel. Part one (1) of the cited code provides that "The use of partisan arbitrators shall be deemed waived if neither Party has notified the executive director of its appointee within fourteen days following the issuance of a certification of issues for interest arbitration, and the Parties' principal representatives shall then select the neutral chairperson". Both Parties waived the use of partisan arbitrators and Arbitrator Timothy Williams was selected as the neutral chairperson. For the purposes of this document, the terms "neutral chairperson" and "interest arbitrator" or "arbitrator" shall be interchangeable. A hearing was held on December 5, 2013 in Port Angeles, Washington. At the hearing, both Parties had full opportunity to make opening statements, examine and cross-examine sworn witnesses, present documentary evidence, and make arguments in support of their positions.

At hearing the Parties informed the Arbitrator that only three of the six issues were still in dispute and the hearing

proceeded with both Parties presenting evidence in support of its position on each issue. The three include:

Article IV, Compensation, Section A: Wages

Article IV, Compensation Section G: Education Incentive

Article VI, Health Benefits

RCW41.56.450 requires that a recording of the proceedings shall be taken. For this requirement an official transcript of the proceedings was made and a copy provided to the parties and one to the Arbitrator. The Parties agreed to submit written closing arguments, by February 14, 2014, in the form of briefs. The briefs were timely received by the Arbitrator and he declared the hearing closed on February 14, 2014. The Arbitrator requested and was granted an extension of time for filing the final decision until Friday, April 4, 2014.

INTEREST ARBITRATION OVERVIEW

Interest arbitration is a process commonly used in the public sector for bargaining units that provide critical public services and whose work is deemed essential for public safety. Police, fire and prison guards usually fall into this category and interest arbitration is granted by statute in exchange for a prohibition against a work stoppage (strike). The statutes that provide for interest arbitration inevitably include a set of criteria that the arbitrator must use in fashioning his or her

decision. The State of Washington follows this model in that it does provide for interest arbitration and in RCW 41.56.465 sets forth the following criteria for uniformed personnel:

- (1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, the panel shall consider:
 - (a) The constitutional and statutory authority of the employer;
 - (b) Stipulations of the parties;
 - (c) The average consumer prices for goods and services, commonly known as the cost of living;
 - (d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and
 - (e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment.

The Arbitrator's opinion and awards are submitted, having given careful consideration to the above criteria, on an issue-by-issue basis. The Arbitrator's interest award is based on a careful analysis of the evidence and argument presented during the hearing, as well as the arguments found in the written briefs. On each of the three issues, the Arbitrator will set forth the position of the Parties, a discussion of the Parties' arguments, the basis of the Arbitrator's award and the award.

As is true in most interest arbitration proceedings, the record in the instant case is voluminous with both Parties presenting extensive documentary and testimonial evidence. The

Arbitrator has carefully reviewed this evidence in the context of the above stated statutory criteria. While he has given consideration to the whole record, the Arbitrator will not attempt to provide an exhaustive discussion of all points raised or respond to every piece of documentary evidence. Rather, his discussion will focus on those factors that ultimately were key in determining the award.

POSITIONS, ARGUMENTS, OPINION AND AWARD

The Parties' negotiations over the successor agreement resolved all matters with the exception of three issues. The first two issues involve wages and the third is concerned with the employee's contribution to the medical benefit. The issues will be presented in sequential order.

Article IV, Compensation, Section A: Wages

Proposals:

	<u>Union</u>	<u>City</u>
1/1/2012	Retroactive increase of 2%	No increase
1/1/2013	Retroactive increase of 2%	Retroactive increase of 2%
1/1/2014	Retroactive increase of 2%	Retroactive increase of 2%

Discussion:

This is a very narrowly defined issue as the Parties have agreed to increase wages by a retroactive 2% on January 1, 2013 and a retroactive 2% on January 1, 2014. Thus the only point of

dispute between the two Parties is whether the Arbitrator should award a retroactive 2% increase effective January 1, 2012. The City says "no." It points to the fact that other City bargaining units accepted a wage freeze for 2012 and so should this Union. The Union sees the matter differently. It contends that comparability issues and the fact that it received no increase for the 2011 year support the retroactive 2% increase for 2012.

The Arbitrator begins his discussion of this issue by noting that the Parties arguments focus in three general areas: 1) the efficacy of a two year wage freeze, 2) the significance of comparability as a criterion and 3) the City's financial condition. The Arbitrator will provide a separate discussion for each of these areas.

Two Year Wage Freeze

The Police Union accepted a wage freeze in 2011 and it does not believe that there are adequate reasons to extend that freeze through 2012. In its brief the Union emphasizes that to insist on a second year wage freeze is tantamount to punishing the officers for voluntarily accepting the freeze in the first year (U Br 6).

While the Arbitrator can see the logic in this argument, he is more persuaded by the Employer's arguments over the role of

the interest arbitrator. This Arbitrator concurs with the arbitral authority cited by the Employer that emphasizes that interest arbitration is an extension of the bargaining process not a substitute (E Br 4&5). As an extension of the bargaining process, the Arbitrator's award should come as close as possible to what the Parties could have achieved at the bargaining table through persistent, good faith negotiations. Negotiation outcomes, particularly the financial terms of the agreement, are usually driven by economic realities. Thus the essential question is not whether it would be a slap in the face of cooperative behavior to award a second year freeze but rather whether the conditions viewed as a whole argue for or against a second year freeze.

Thus, the remainder of this discussion gives no particular consideration to the fact that the City is asking for a second year freeze. Rather, this analysis is based on the merits of the arguments for or against a 2012 wage freeze for this bargaining unit.

Comparable Wages

Comparability is the second general focus of the Parties arguments related to the issue of a retroactive 2% wage increase for 2012. The Union contends that comparability data strongly supports the 2% increase while the City is not convinced. The

Arbitrator carefully reflected on the Parties arguments and the evidence provided in support of those arguments and offers the following multipoint analysis to support his ultimate conclusion.

First, the Parties are in general agreement as to comparable jurisdictions against which to compare wages provided to the members of the instant bargaining unit. The following is the list of those jurisdictions with only two being contested.

Tumwater
Wenatchee
Aberdeen
Centralia
Oak Harbor
Anacortes
Camas
Mountlake Terrace

Mountlake Terrace and Centralia are the two disputed comparables with the Union contesting the presence of Centralia and the City contesting the presence of Mountlake Terrace. The Arbitrator's review of the evidence finds that neither one does a great injustice to the list when the list is based on jurisdictions similar to Port Angeles with regard to population, assessed valuation and assessed valuation per capita.

Second, the Arbitrator notes that there are actually two considerations when looking at the wages of a bargaining unit compared to wages of bargaining units in similar jurisdictions.

The first is the determination that the jurisdictions are reasonably similar based on whatever criteria are being used. The second consideration involves the relationship between the wages of a particular bargaining unit and its comparators; should the instant bargaining unit be a leader, should it seek to be at an average or should it lag behind.

In the State of Washington, as is amply summarized in the briefs of both Parties, there is always an ongoing debate at an interest arbitration proceeding over certain factors which tend to push wages up or push wages down. Remote locations pay less than jurisdictions in close proximity to major metropolitan areas. Jurisdictions on the west side of the mountains typically pay more than the east side of the mountains. And, there are other similar factors over which the parties argue. The end result is that selecting a set of truly equitable comparators is extremely difficult.

Often cited at interest arbitration is the phrase "apples-to-apples" with the idea that the Parties are seeking the elusive goal of finding truly equitable comparators. The disputes, however, usually end up being of a practical nature. In the instant case, the City objects to Mountlake Terrace which if used make the average wages for the comparators higher and the wages paid by Port Angeles less comparable. The Union objects to Centralia, which if used make the average wages for

the comparators lower and the wages paid by Port Angeles more comparable.

The point the Arbitrator is making is that there is no perfect list of comparators and that he is comfortable using the full list of 8 comparators but with the caveat that the appropriate position for Port Angeles is to lag slightly behind the average. Lag slightly behind because five of the eight comparators have economic factors that rationally and logically will push their wages higher than wages found in the Port Angeles area. Tumwater, Camas and Mountlake Terrace all have close proximity to a major metropolitan area. Oak Harbor has the advantage of federal dollars from the Whidbey Island Naval Base and, by way of a commuter ferry, has close proximity to the Seattle area. Anacortes, while remote, has the economic advantage of an industrial base related to a major oil refinery.

The Arbitrator uses the phrase "lag slightly behind the average" as reflecting the appropriate position of the wages for this bargaining unit compared to the average of the eight comparators. This conclusion is primarily a reflection of economic considerations and geography. Expressed numerically, lag behind is in the 2% to 3% area and is not intended to mean substantially less than the average.

Third, this Arbitrator is completely convinced that the measure of comparability has to reflect total compensation and

expressed in a unit of measurement that makes sense for the nature of work performed by the employees in question. For police work, this Arbitrator believes that the best unit of measurement is total compensation per hour of work. The equation is simple in that the total compensation paid by the City to an officer for one year is divided by the total number of hours worked by that officer during the year. This formula corrects for those jurisdictions that give more paid time off and adjusts for all forms of financial compensation.

While the above equation is simple, applying it is often quite difficult as the comparable jurisdictions all differ in terms of the component parts of total compensation. Moreover, if all elements of the compensation package were given out during the year in question, that would make determining compensation per hour easier. However, there are forms of deferred compensation, such as the right to accumulate sick leave and vacation accrual, which make the mathematics of total compensation more difficult. Ultimately, however, it is possible to create approximations that are reasonably accurate and that can be compared jurisdiction to jurisdiction.

Fourth, the Arbitrator carefully reviewed comparability data as set forth by both Parties. He found the appendices to the Union's brief the most helpful, particularly that which focused on a real hourly wage. The Arbitrator paid particular

attention to the Union's assertions that the City's data understated total compensation for many of the comparables (U Br 10-15). The Arbitrator studied the supporting documents and re-did the math and found support for most of these assertions. One exception is that Camas gives longevity for 2012 of 4% starting the 11th year of employment as opposed to the Union's assertion of 5.5%. The 5.5% does not take effect until the 2013 contract. In any regard, the 4% is still more than what the City credits to Camas and the 5.5% creates comparability issues for the 2013 contract.

Similarly, the Arbitrator notes his agreement with the Union's argument that the Employer's contribution to Social Security is a form of total compensation and must be included in an accurate determination of hourly compensation. The Arbitrator further agrees with the Union that the employee's contribution to Social Security should not be deducted because it is simply a form of deferred compensation. While it does reduce take home pay, that reduction is returned to the employee at the time of pay-out; the contribution grows the employee's personal Social Security account.

Ultimately, after giving full consideration to all of the data, the Arbitrator finds that a 2% increase for 2012 is essential in order to keep total compensation from lagging too far behind the comparators.

City's Financial Condition

The final set of the Parties' arguments concerns the economic health of the City. The City, at pages 6 through 11 of its brief, paints a bleak economic picture with regard to the City's financial condition. Assessed valuation of property within the City has gone down, sales tax revenue is flat, unemployment remains high as the area has not experienced a rebound from the recent economic downturn and necessary expenditures other than wages continue to rise. The Arbitrator reviewed the City's arguments and the documentary and testimonial evidence in support of these arguments and found the evidence persuasive. The fact that the other City bargaining units have accepted a two year wage freeze (2011 and 2012) is, in and of itself, proof positive that the City is struggling financially.

The Union urges the Arbitrator to ignore the City's financial distress arguments and asserts that the evidence indicates an ability to pay the modest increase supported by the comparables. The Union notes that the City has only laid off "2 employees of the total work force of around 230" (U Br 24) and that there has only been a reduction of "about 14 FTE's between 2007 and 2013" (U Br 25). More importantly, the Union emphasizes that the City's reserve is close to 20% when only 10% is required (U Br 25).

Ultimately the Arbitrator considered these factors but did not find them overwhelmingly persuasive when viewed in the context of the evidence put forth by the City. For one thing, the fact that the City has been able to maintain a healthy reserve is obviously a function of the fact that the management group and the other four bargaining units did take a wage freeze in 2012. There is a certain amount of irony when thinking about granting a wage increase based on income generated by a wage freeze accepted by other groups of City employees.

Ultimately the Arbitrator must make a decision and his decision is to grant the 2% wage increase for 2012 but to not make it retroactive. This decision imposes no retroactive additional costs on the City for 2012, which is reflective of its overall financial condition. However, the 2% increase moves base wages upward and improves the City's position with regard to the comparable jurisdictions when setting wages for 2013 and 2014. While the evidence is insufficient to give a firm answer, providing a 2% non-retroactive wage increase for 2012 should help move wages for this bargaining unit closer to the goal of lagging slightly behind the average for the comparators.

Award:

1/1/2012	Non-retroactive increase of 2%
1/1/2013	Retroactive increase of 2%
1/1/2014	Retroactive increase of 2%

Article IV, Compensation Section G: Education Incentive

Proposals:

	<u>Union</u>	<u>City</u>
AA Degree	Change \$56 per pay period to 3%.	No change
BA Degree	Change \$85 per pay period to 4%	No change
MA Degree	New step of 5%	No Change

Discussion:

A review of the comparables indicates that the education incentive is a standard part of most collective bargaining agreements and that it is, in almost all cases, expressed as a percentage of the base wage. Expressing the educational incentive premium as a percentage of base wage has the added advantage that it does not need to be renegotiated with each new contract. By retaining the flat rate, the Parties either have to renegotiate it or accept the fact that its value recedes as wages grow.

The Union requested that the AA incentive be 3%. The Arbitrator determines that the comparables' average for the AA would be closer to 2%. By awarding a prospective 2% educational incentive for the AA, the Arbitrator is aware that it might result, in the short term, in a reduction in the incentive for some officers. The award provides language to grandfather the existing benefit until such time as the 2% incentive exceeds the existing flat rate.

The Arbitrator did not find persuasive the Union's request for a new educational incentive related to a master's degree. Such a step is not supported by the comparables and the Union provided no persuasive evidence as to how the City would benefit from encouraging its officers to acquire the master's degree. For these reasons the Arbitrator did not award a new MA educational incentive step.

Award:

- AA Degree Change \$56 per pay period to 2% of the employee's base wage. In the event that the implementation of this benefit reduces the educational incentive for an officer, the higher premium shall continue to be paid until the 2% premium exceeds the flat rate of \$56 per pay period.
- BA Degree Change \$85 per pay period to 4% of the employee's base wage. In the event that the implementation of this benefit reduces the educational incentive for an officer, the higher premium shall continue to be paid until the 4% premium exceeds the flat rate of \$85 per pay period.

Article VI, Health Benefits

Proposals:

	<u>Current</u>	<u>Union</u>	<u>City</u>
% Paid	91% City 9% Employee	90% City 10% Employee	88.5% City 11.5% Employee

Discussion:

In asking for a 2.5% (9% + 2.5% = 11.5%) increase in the employee's contribution towards the Medical Insurance benefit, the City relies primarily on an internal parity argument and the

economic challenges it faces. The Arbitrator found both of these arguments persuasive. The City has five bargaining units and a management/non-represented group. Each of the five bargaining units has its own labor contract. There are clearly areas in which each contract uniquely represents the interests of that particular bargaining group. The medical benefit, however, is a common denominator across all bargaining units. Thus the parity argument is persuasive.

The Arbitrator has previously discussed the obvious reality that the City still struggles to fully recover from the recent economic downturn and thus its overall economic health is not particularly good. In this context, a small increase in the employee's contribution towards the medical insurance benefit as a method of helping to offset the significant increase in the overall cost of that benefit is more than justified.

Finally, the Arbitrator is mindful of the Union's concern that increasing the contribution from 9% to 11.5% constitutes a 27.77% increase in the contribution rate. From the Union's perspective, this is excessive. While the Arbitrator lauds the Union's math, it does not change the fact that moving from a 9% contribution to an 11.5% contribution is relatively modest in terms of actual cost shifting. Moreover, when the numbers are small any change can appear large as a percentage even when the actual effect is de minimis. For example, changing from a 1%

contribution to a 2% contribution would be a 100% increase in the contribution rate but only a very small increase in actual dollars.

Award:

The Arbitrator awards the City's position of an increase of 2.5% to the premium contribution made by the employee (88.5% City/11.5% Employee).

This interest arbitration award is respectfully submitted on the 4th day of April, 2014 by,

Timothy D. W. Williams
Arbitrator

