

BEFORE THE ARBITRATOR

In the Matter of the Interest Arbitration Between)
)
The City of Bend)
)
the Employer) **ARBITRATOR'S**
)
and) **AWARD**
)
Bend City Police Officers' Association)
)
the Association)
)
_____)

Appearances:

For the City:

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July 17, 1998

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I. PROCEEDINGS

This dispute, between the City of Bend, Oregon (the City or the Employer) and the Bend City Police Officers' Association (the Association) concerns certain terms of a labor agreement to take effect on July 1, 1997, between the City and a bargaining unit of police employees. The parties successfully negotiated various issues (including retroactivity to July 1, 1997) relative to a new Collective Bargaining Agreement, but remained at impasse on the following issues:

1. Wages
2. Earned Time Off (ETO) / Extended Illness Bank (EIB).
3. Term of Agreement

The parties submitted their last and final offers on these issues to interest arbitration before Arbitrator Jane R. Wilkinson as provided in ORS 243.746(3) and they proceeded in accordance with ORS 243.742 and .746. An evidentiary hearing was held in Bend, Oregon on May 15, 1998, and was transcribed by a court reporter. Each party had the opportunity to present evidence, examine and cross-examine witnesses and argue its case. The Arbitrator received the parties' post-hearing briefs on June 17, 1998, which shall be deemed the closing date of hearing. The Arbitrator's task is to select one party's last best offer based on evidence presented with respect to criteria set forth in the statute.

II. RELEVANT STATUTORY LANGUAGE

Pertinent provisions of the Oregon Public Employees Collective Bargaining Act, ORS 243.746 et seq. state (italicized emphasis added):

243.746 Selection of arbitrator; arbitration procedure; last best offers; bases for findings and opinions; sharing arbitration costs.

(3) The arbitrator shall establish dates and places of hearings. Upon the request of either party or the arbitrator, the board shall issue subpoenas. Not less than 14 calendar days prior to the date of the hearing, each party shall submit to the other party a written last best offer package on all unresolved mandatory subjects, and

neither party may change the last best offer package unless pursuant to stipulation of the parties or as otherwise provided in this subsection. The date set for the hearing may thereafter be changed only for compelling reasons or by mutual consent of the parties. If either party provides notice of a change in its position within 24 hours of the 14-day deadline, the other party will be allowed an additional 24 hours to modify its position. The arbitrator may administer oaths and shall afford all parties full opportunity to examine and cross-examine all witnesses and to present any evidence pertinent to the dispute.

(4) 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 subsections (b) to (h) of this subsection as follows:*

(a) *The interest and welfare of the public.*

(b) *The reasonable financial ability* of the unit of government to meet the costs of the proposed contract giving due consideration and weight to the other services, provided by, and other priorities of, the unit of government as determined by the governing body. A reasonable operating reserve against future contingencies, which does not include funds in contemplation of settlement of the labor dispute, shall not be considered as available toward 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.*

(5) Not more than 30 days after the conclusion of the hearings or such further additional periods to which the parties may agree, *the arbitrator shall select only one of the last best offer packages submitted by the parties and shall promulgate written findings along with an opinion and order.* The opinion and order shall be served on the parties and the board. Service may be personal or by registered or certified mail. The findings, opinions and order shall be based on the criteria prescribed in subsection (4) of this section.

(6) The cost of arbitration shall be borne equally by the parties involved in the dispute.

243.752 Arbitration decision final; enforcement; effective date of compensation increases; modifying award. (1) A majority decision of the arbitration panel, under ORS 243.706 and 243.726 and 243.736 to 243.746, if supported by competent, material and substantial evidence on the whole record, based upon the factors set forth in ORS 243.746 (4), shall be final and binding upon the parties. Refusal or failure to comply with any provision of a final and binding arbitration award is an unfair labor practice. Any order issued by the board pursuant to this section may be enforced at the instance of either party or the board in the circuit court for the county in which the dispute arose.

(2) The arbitration panel may award increases retroactively to the first day after the expiration of the immediately preceding collective bargaining agreement. At any time the parties, by stipulation, may amend or modify an award of arbitration.

243.756 Employment conditions during arbitration. During the pendency of arbitration proceedings that occur after the expiration of a previous collective bargaining agreement, all wages and benefits shall remain frozen at the level last in effect before the agreement expired, except that no public employer shall be required to increase contributions for insurance premiums unless the expiring collective bargaining agreement provides otherwise. Merit step and longevity step pay increases shall be part of the status quo unless the expiring collective bargaining agreement expressly provides otherwise.

ORS 243.650 provides relevant definitions, as follows:

As used in ORS 243.650 to 243.782, unless the context requires otherwise:

(11) "Final offer" means the proposed contract language and cost summary submitted to the mediator within seven days of the declaration of impasse.

(14) "Last best offer package" means the offer exchanged by parties not less than 14 days prior to the date scheduled for an interest arbitration hearing.

III. PROPOSALS AND ARGUMENTS OF THE PARTIES. PROPOSALS AND ARGUMENTS OF THE PARTIES

A. City's Proposals and Arguments. City's Proposals and Arguments

1. Wages. Wages

a) City's Wage Proposal) City's Wage Proposal

Section Twenty-Six. Salaries

A. Salaries covered by this Agreement shall be in accordance with the schedule set forth in Appendix A. attached hereto and incorporated herein.

Effective July 1, 1997, all employees' salary schedules in Appendix "A" shall be increased by 2.5%.

Effective July 1, 1998, all employees' salary schedules in Appendix "A" shall be increased by the US CPI-W for the year ending May, 1998 with a minimum of 1.0% and a maximum of 3.0%.

Effective July 1, 1999, all employees' salary schedules in Appendix "A" shall be increased by the US CPI-W for the year ending May, 1999 with a minimum of 1.5% and a maximum of 3.5%.

b) City's Arguments in Support of Wage Proposal:b) City's Arguments in Support of Wage Proposal:

- (1) The City acknowledges that it has the ability to pay its wage proposal
- (2) With respect to the criterion of the ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided, the City notes that it received a total of 938 applications in three recruitments conducted from April of 1994 to March of 1998 (Exh. C-2). During this same period, the Police Department had no turnover of sworn officers (other than retirees). While Union counsel argue orally that the majority of these applicants were unqualified, it provided no evidence to support this claim and the Arbitrator should disregard it, the City contends.
- (3) Regarding the standard of comparability with communities of similar size, the statute requires arbitrators to confine comparability issues to communities in the "nearest population range" within Oregon (ORS 243.746(4)(e)). The City states that it chose a group of cities with immediately larger and immediately smaller populations (Exh. C-8). These cities are: Albany, Tigard, Lake Oswego,

Keizer, McMinnville, and Oregon City. Bend is at the top of the salary schedule for both entry step and the top step positions, compared to these six cities. The City notes that if the Association had information indicating that comparable communities had superior fringe benefits, surely it eagerly would have provided such information.

The City stresses that the Association provided no evidence with respect to comparability with other cities performing similar law enforcement services in the nearest population range, as the statute requires. This is tantamount to an admission by of the Association that it had no comparability data to support its proposal.

- (4) With respect to the criterion of the cost of living, the City maintains that its wage proposal is consistent with the national All Cities CPI, which Senate Bill 750 requires arbitrators to use. (See, ORS 243.746(4)(f). According to the City, its Exhibit 7 shows that over the past five years, police Association members have received a 19.9% wage increase, including the City's current offer. The National CPI for the same five year period shows a 13.8% increase, resulting in a gain of 6.1% for City of Bend Police Association (COBPA) members.
- (5) The Association argues that the cost of living in Bend is higher than that in Portland or other areas. The City asserts that it is irrelevant because the statute requires the Arbitrator to use the All Cities index.
- (6) The City disputes the Association arguments with respect to internal comparability. First, the City disputes the Association claim that its members should receive the same salary increases as other City bargaining unit employees. For example, because the City of Bend Employees Association (COBEA) representing public works clerical and technical employees, received a 3% increase, the Association claims that police likewise should receive 3%. The City points out that it negotiated the COBEA contract in early 1995. At that time, the All Cities CPI-U was 3.1%. This is a four year contract expiring June 30, 1999. If the City were negotiating that contract now, it would not agree to a 3% increase.

The City further notes that the Bend Fire Fighters Association recently settled its contract with the City for a salary increase of 2.5% effective July 1, 1997, with additional increases effective July 1, 1998 and July 1, 1999 based on the US City Average CPI-W, May to May with a minimum of 2% and a maximum of 3%. According to the City, these settlements recognize that factors affecting the current CPI do not support the factors driving the 1995 CPI.

With respect to unrepresented employees, the City notes that these employees received no across-the-board salary increase for 1997-98. The salary of each employee was reviewed and adjustments ranged from a minimum of no increase to a maximum of an annualized rate of approximately ten percent. The City explains that its salary plan for non-union employees consists of an open range with reflect points of minimum, midpoint and control point, 5% above the midpoint, and maximum. The midpoint is set at approximately the salary of comparable positions in similar organizations. According to the City, if bargaining unit employees were placed on the management salary schedule,

they would all take a significant decrease in pay to place them at the control point (5% above the midpoint) of comparable cities. Unlike bargaining unit employees, City management personnel generally are not paid even at the average of their comparators.

The City claims that the gross pay amounts that the Association used in its arbitration brief were wrong in 10 of the 11 examples cited. Figures that the Association reported for 1996 excluded bonuses and car allowances, while 1997 gross pay included bonuses and car allowances, thereby overstating the salary increases. The City notes that, in any event, Senate Bill 750 does not provide for consideration of supervisory, management or other non-public safety personnel as comparators.

- (7) Last, the City addresses the Association’s claim that police office assistants are the lowest paid assistants in the City. If in fact the Association could establish their pay to be below that of employees in comparable cities, the Association could have provided in its last best offer “special adjustments” for police assistants. It did not do so. The Arbitrator should disregard Association claim on this point.

2. Earned Time Off/Extended Illness Bank (ETO/EIB):

- a) **The City’s Proposal on ETO/EIB.** The City proposes to delete Section Nineteen of the current Contract and replace it with the following:

Section 19A. Vacations:

A. Permanent employees having served continuously in the City Service for twelve (12) full calendar months shall be credited with eight (80) hours vacation leave. Thereafter, vacation leave shall be credited monthly at the following rates:

Error! Reference source not found.		VAC/MO	VAC/MO
MONTHS OF SERVICE	YEARS	40 HR SCH	48 HR SCH
12-48	1-4	8 hours	10 hours
19-108	4-9	10 hours	12 hours
109-180	9-15	12 hours	14 hours
181-240	16-20	14.33 hours	16.33 hours
241-300	21-25	16 hours	18 hours
301+	26+	17 hours	19 hours

B. “Continuous Service” is defined as that service unbroken by separation from the City Service, except that time spent by military, Peace Corps, vacation or sick leave. Time spent on other types of authorized leave will not count as time for continuous service, except that employees returning from such leave, or employees who were laid off, shall be entitled to credit for service prior to the leave or layoff.

C. Employees shall be responsible for planning, initiating requests for and using vacation credit. In case of conflicts between employees concerning the scheduling of vacations, the employee with the longest period of service with the City shall be given first consideration. Once a vacation has been scheduled, it will not be changed absent an emergency, as defined in Webster’s Dictionary.

D. Upon termination of a permanent employee for any reason or in the event of his or her death, a lump sum payment shall be paid for all earned but unused vacation credits.

E. Accumulation of vacation credit is to be discouraged. Normally a maximum of two years' accrued vacation credit may be carried into the next calendar year. An employee who accumulates vacation hours of excess accumulation, or (2) have the excess carried over for a limited extension by the Chief of Police. [sic]. Vacation leave for which payment is made shall be canceled.

F. Vacation leave shall not be earned during the time an employee is off work for a period of more than one hundred sixty (160) hours in any given month due to reasons other than vacation leave.

G. Prior Earned Time Off Accrual (ETO). At the time of implementation of this policy, employee's existing earned time off accrual balance will be transferred into the vacation account.

Section Nineteen B. Sick Leave:

A. Employees shall accumulate sick leave at the rate of eight hours for each full month of service. Sick leave may be accumulated to a maximum of two thousand (2000) hours. Unused EIB, extended illness bank, accumulated and not used prior to the execution of this Agreement shall be credited to each employee's accumulated sick leave. Eligibility for the sick leave benefit is established after the first thirty (30) days of employment.

B. When an employee must be away from the job because of a serious illness in the immediate family, such time off may be granted by the Police Chief and charged against sick leave time.

C. With the single exception of Subsection (B), sick leave will be allowed only when an employee is unable to work because of illness, off-the-job injuries or purposes of relating to pregnancy and childbirth, and not from disabilities resulting from outside employment. Verification of illness by a doctor's certificate may be requested by the City.

D. Unused sick leave shall not be compensated directly upon termination or death, but the City will convert unused sick leave to retirement benefits pursuant to ORS 237.153.

E. For the purpose of this Section, immediate family is defined to include spouse, parents, children, brother and sister.

F. Any such sick leave shall be for no longer period than the employee has sick leave credit. Additional sick leave shall not accrue during the time an employee is off work for a period of more than one hundred sixty (160) hours in a given month due to reasons other than vacation time.

G. If an employee uses less than 48 hours of sick leave per calendar year (beginning and ending dates to correspond to those used for payroll purposes), said employee shall have the following options: a) maintain the unused accumulated sick leave on the books for future use and potential credit toward PERS retirement benefits, (b) transfer to vacation time an amount equal to the difference between 48 hours and the number of hours of sick leave used during the calendar year, or (c) receive pay for unused sick leave hours equal to the difference between 48 hours and the number of hours of sick leave used during the calendar year. For options (b) and (c) the sick leave accrual balance will be reduced by the hours transferred or paid.

H. An employee who is on sick leave and must appear in court to testify shall have the hours of sick leave reinstated on an hour-for-hour basis for all hours worked testifying.

I. Prior Extended illness Band Accrual (EIB). At the time of implementation of this policy, employee's existing extended illness bank accrual balance will be transferred into the sick leave account.

b) City's Arguments in Support of ETO/EIB Proposal:

- (1) The City asserts that its proposal represents its effort to deal with a problem originating from the passage and subsequent overturning of Ballot Measure 8. Ballot Measure 8 disallowed the use of future earned unused sick leave in the calculation of a retiree's retirement benefit. The parties negotiated the current contract for 1995-97 during the pendency of this measure. Based on the content of Ballot Measure 8, the parties believed that the rules regarding future unused sick leave accumulation would no longer be applicable. Bend police officers historically have had unusually low use of sick leave. Recognizing this, the parties agreed to change from a traditional sick leave and vacation program to one that allocates more discretionary leave, which they called Earned Time Off (ETO), and less time restricted to use as sick leave, called Extended Illness Bank (EIB).
- (2) Thereafter, Ballot Measure 8 was overturned and the prior rules concerning crediting unused sick leave and retirement benefits were reinstated. According to ORS 238.350, the least amount of sick leave earned by any PERS-subject City employee is the maximum that may be credited as a PERS benefit for any PERS-subject City employee. While Police Association bargaining unit employees receive four hours of sick leave under the EIB, other City employees accrue more than four hours. Four hours is thus the minimum under PERS rules and thus would be the maximum that any PERS-subject City employee could accrue. Therefore, all other City employees potentially could suffer a loss of PERS retirement benefits due to the ETO/EIB program of the current Police Association contract. This circumstance has serious legal and monetary consequences for the City if it is unable to return to an 8-hour accrual system for Police Association members.
- (3) The City proposes to solve this problem by deleting all of the current contract language with respect to ETO and EIB and replacing it with the new language for vacation and sick leave set forth above. According to the City, its proposal is intended to preserve the positive elements of the ETO/EIB program to the extent possible. The only significant change is that access to the additional discretionary time would be delayed from taking place monthly to taking place at year's end. The City proposal retains the benefits of the ETO/EIB program for Association members and meets the primary criterion of Senate Bill 750. That is, it serves the interest and welfare of the public by protecting the City from costly litigation and from excessive additional benefit costs.
- (4) The City disputes the Association claim that the City proposal represents a loss to employees because it reduces the maximum carryover of vacation/ETO by 48 hours per year or 96 hours total if an employee wishes to carry over the maximum leave for the two years allowed. The City asserts that its proposal was a minor reduction in the amount of unused leave that can be carried over

on the books, but is not a reduction of leave accrued to the employee. It does not reduce the amount of discretionary leave to which the employee has access.

- (5) The Association claimed that the City had not cleared its proposal with PERS and thus did not know whether its proposal, in fact, would solve the problem. In its post-hearing brief, the City asserts that the Northeast Oregon Region PERS Employer Counsel, Terri Sanford, confirmed that the City proposal to allow employees to convert unused sick leave to vacation would not cause any problems with the 8-hour sick leave accrual and reporting to PERS for other City employees.
- (6) The City asserts that it has an obligation to all of its employees to maintain the PERS unused sick leave benefit. If the Arbitrator awards the Association's Last Best Offer and the ETO/EIB program remains in place, the City asserts that it will be left with limited and costly choices. All options would increase costs to the City. The City proposal has the least detrimental impact on the smallest number of employees. It is most fair and equitable to all City employees. It is in the best interest and welfare of the public to keep leave costs at the current level and make the Police Association leave benefit as close as possible to current levels.

3. Term of Contract:

a) **The City's Duration of Contract Proposal.** The City proposes a three-year contract, to be effective from July 1, 1997 to June 30, 2000.

b) **The City's Arguments in Support of Its Duration of Contract Proposal:**

- (1) According to the City, by the time the decision in this dispute is rendered, the parties will be in the second year of the contract: i.e., 1998 to 1999. If the Arbitrator awards the Association proposal for a two-year contract, contract negotiations for 1999-2000 would be reopened in approximately six months. The Arbitrator should select the City proposal in the interest of labor stability and to provide the City adequate opportunity for strategic financial planning. It could defer for an additional year the extensive time and energy both parties expend in the collective bargaining process.
- (2) The Association asserts that the parties had few meaningful bargaining sessions for the contract at issue. According to the City, the reason for this is that it was virtually impossible to get the Association to come to the bargaining table.
- (3) The Arbitrator therefore should award a three-year contract.

B. Association's Proposals and Arguments

1. Wages

a) **The Association's Wage Proposal:**

Article 26:Salaries

Effective July 1, 1997, the salaries for all employees shall be increased by 3%.

Effective July 1, 1998, the salaries for all employees shall be increased by 3%.

b) Association's Arguments in Support of Wage Proposal:

- (1) The Association notes that, under ORS 243.746, interest and welfare of the public is the primary criterion that the Arbitrator is to apply in determining which last best offer to award. The statute lists other secondary criteria that the Arbitrator may consider. While the statute does not require the Arbitrator to utilize these secondary criteria, a review of the criteria lends itself to the conclusion that the Association's offer, not that of the City, is in the best interest and welfare of the public.
- (2) With respect to the criterion of ability to pay, the City clearly has the financial ability to meet the proposed contract offers, as the City admits.
- (3) The City has not had an overwhelming ability to attract qualified individuals. According to City Exhibit 2, it had 279 applicants at its last round of hiring for the police officer position. This number did not reflect the number of qualified applicants, however. Of the 279 applicants, only 65 tested and only 25 of those 65 passed the test. When the City finished the whole testing process, it was left with only seven qualified candidates for seven openings: five police officer positions and two community services officer positions. The statute addresses ability to attract qualified personnel, not merely the number of applicants for open positions.
- (4) Comparability of overall compensation: ORS 243.746(4)(d) allows the Arbitrator to consider internal comparability of the particular group of employees to determine which party's offer is in the interest and welfare of the public. Regarding internal comparability, the Association notes that its proposal mirrors the final two years of the City's contract with its public works employees union (COBEA). The Association asserts that the workload of the Bend Police Department has doubled in six years. In the City's budget for fiscal year 1997-98 (Exh. A-4), the City's charts at II-39 and II-55 show the increased workload and call volume in the City Police Department without any corresponding increase in personnel. The increased workload should result in equitable treatment of the City's police officers. Public works employees in the City have not experienced a corresponding workload increase, as the City's charts in Association's Exhibit 4 at II-7 show.
- (5) In addition, the evidence shows that personnel in the Police Department are not receiving comparable salaries for comparable services as ORS 243.650 mandates. Police Department office assistants are the lowest paid office assistants in the City. Police Department employees clearly have not kept pace with other City employees in terms of wages for skilled and certified positions, the Association maintains.(5) In addition, the evidence shows that personnel in the Police Department are not receiving comparable salaries for comparable services as ORS 243.650 mandates. Police Department office assistants are the lowest paid office assistants in the City. Police Department employees clearly have not kept pace with other City employees in terms of wages for skilled and certified positions, the Association maintains.

- (6) The Association points out that the City proposal of 2.5% for 1997 for bargaining unit employees is significantly lower than the proposal of 4.4% for management employees (based on an average of management salary increases as shown in Association Exhibit 2, and 3.0% for COBEA employees.(6) The Association points out that the City proposal of 2.5% for 1997 for bargaining unit employees is significantly lower than the proposal of 4.4% for management employees (based on an average of management salary increases as shown in Association Exhibit 2, and 3.0% for COBEA employees.
- (7) The Association asserts that the City wants to fund higher management increases on the backs of its public safety employees. The Association notes that the City provided five years of guaranteed 3% per year wage increases for public works employees, while giving police employees well below that amount.(7) The Association asserts that the City wants to fund higher management increases on the backs of its public safety employees. The Association notes that the City provided five years of guaranteed 3% per year wage increases for public works employees, while giving police employees well below that amount.
- (8) According to the Association, internal comparability is essential in an arbitration proceeding where the City cannot argue inability to pay. The Association is requesting a compensation package that will place the amount of increase at levels consistent with public works employees, but lower than the average management wage increase. This increase, based on a consistent approach to all City employees, is in the interest and welfare of the public. It would not be in the interest and welfare of the public to compensate police employees at a level below the area's cost of living.(8) According to the Association, internal comparability is essential in an arbitration proceeding where the City cannot argue inability to pay. The Association is requesting a compensation package that will place the amount of increase at levels consistent with public works employees, but lower than the average management wage increase. This increase, based on a consistent approach to all City employees, is in the interest and welfare of the public. It would not be in the interest and welfare of the public to compensate police employees at a level below the area's cost of living.
- (9) With respect to external comparability, the City has attempted to place Bend police officers 7.5% ahead of its comparables. The City's data, however, is flawed for several reasons.(9) With respect to external comparability, the City has attempted to place Bend police officers 7.5% ahead of its comparables. The City's data, however, is flawed for several reasons.
- (10) First, the City did not compare total or "overall compensation," which the statute requires. ORS 243.746(4)(d) includes in "overall compensation," the "direct wage compensation, vacations, holidays and other paid excused time, pensions, insurance benefits and all other direct or indirect monetary benefits received." Where, as here, the statute is clear and unambiguous, it must be followed. Therefore the Arbitrator should disregard the City's claims with respect to comparability.(10) First, the City did not compare total or "overall compensation," which the statute requires. ORS 243.746(4)(d) includes in "overall compensation," the "direct wage compensation, vacations, holidays and

other paid excused time, pensions, insurance benefits and all other direct or indirect monetary benefits received.” Where, as here, the statute is clear and unambiguous, it must be followed. Therefore the Arbitrator should disregard the City’s claims with respect to comparability.

- (11) Further, even if the Arbitrator were to consider the City’s data, the Arbitrator should note that the City has artificially inflated the data. It backed out the City of Tigard’s payment of PERS but did not back out other items, such as Bend employees’ co-payment of insurance. Nor did the City add into Oregon City and Tigard wages the automatic incentives that its employees receive. (11)

Further, even if the Arbitrator were to consider the City’s data, the Arbitrator should note that the City has artificially inflated the data. It backed out the City of Tigard’s payment of PERS but did not back out other items, such as Bend employees’ co-payment of insurance. Nor did the City add into Oregon City and Tigard wages the automatic incentives that its employees receive.

- (12) With respect to the criterion of cost of living, the Association emphasizes that the cost of living in Bend historically has been greater than the national average. The City itself recognizes the cost of living in Bend is 105% of the national average (see Exh. A-4 at page I-4). The City’s proposal calls for a CPI based formula without any consideration given to the added costs of living in Bend. According to the Association, a strict CPI formula should not be imposed in an area known to exceed that formula.(12) With respect to the criterion of cost of living, the Association emphasizes that the cost of living in Bend historically has been greater than the national average. The City itself recognizes the cost of living in Bend is 105% of the national average (see Exh. A-4 at page I-4). The City’s proposal calls for a CPI based formula without any consideration given to the added costs of living in Bend. According to the Association, a strict CPI formula should not be imposed in an area known to exceed that formula.

- (13) For these reasons, the Association requests the Arbitrator to adopt its wage proposal.(13) For these reasons, the Association requests the Arbitrator to adopt its wage proposal.

2. Earned Time Off/Extended Illness Bank (ETO/EIB). Earned Time Off/Extended Illness Bank (ETO/EIB)

a) **The Association's ETO/EIB Proposal** is to retain the current Contract language.)
The Association's ETO/EIB Proposal is to retain the current Contract language.

b) **Association's Arguments in Support of ETO/EIB Position:) Association's Arguments in Support of ETO/EIB Position:**

(1) The Association argues that the current ETO/EIB program is a significant benefit to bargaining unit employees and should be maintained unless there is compelling reason to change it. The City proposes no such compelling reason. Any change in this program will have a negative impact on employee morale, which clearly would not be in the interest and welfare of the public. The Arbitrator therefore should reject the City proposal, the Association asserts.(1)

The Association argues that the current ETO/EIB program is a significant benefit to bargaining unit employees and should be maintained unless there is compelling reason to change it. The City proposes no such compelling reason. Any change in this program will have a negative impact on employee morale, which clearly would not be in the interest and welfare of the public. The Arbitrator therefore should reject the City proposal, the Association asserts.

(2) According to the Association, while the City claims that its proposal is intended to return the parties to traditional forms of sick leave and vacation, its intent and the actual wording of the proposal do not match. The Association cites the testimony of City Human Resources Manager Janice Grady at page 22 to 23 of the transcript. According to the Association, Grady admitted that intent, to be useful, must be in writing (TR-22). Oregon law establishes that clear and unambiguous language must be enforced as written. Here, regardless of the City's intent, the contract language that it has proposed is injurious to the police bargaining unit. Grady admitted that they way the language is written, bargaining unit employees would lose six hours per month in vacation accumulation (TR-21). (2) According to the Association, while the City claims that its proposal is intended to return the parties to traditional forms of sick leave and vacation, its intent and the actual wording of the proposal do not match. The Association cites the testimony of City Human Resources Manager Janice Grady at page 22 to 23 of the transcript. According to the Association, Grady admitted that intent, to be useful, must be in writing (TR-22). Oregon law establishes that clear and unambiguous language must be enforced as written. Here, regardless of the City's intent, the contract language that it has proposed is injurious to the police bargaining unit. Grady admitted that they way the language is written, bargaining unit employees would lose six hours per month in vacation accumulation (TR-21).

(3) In fact, the City proposal is injurious to the Association in several respects. First, the proposal results in 96 hours less in potential vacation accumulation. According to the City proposal, the maximum accumulation of vacation accrual is limited to an amount equal to two years' accrual. According to the City proposal, an employee will accrue 48 hours less in vacation time than the employee accrued in the ETO program. Thus, an employee can carry 96 hours

less than in the current system.(3) In fact, the City proposal is injurious to the Association in several respects. First, the proposal results in 96 hours less in potential vacation accumulation. According to the City proposal, the maximum accumulation of vacation accrual is limited to an amount equal to two years' accrual. According to the City proposal, an employee will accrue 48 hours less in vacation time than the employee accrued in the ETO program. Thus, an employee can carry 96 hours less than in the current system.

- (4) Not only does the employee have 96 hours less in biennial vacation accrual, but the employee may carry over 144 hours less in vacation leave toward retirement. PERS allows a conversion of the employee's vacation buyout at retirement for purposes of calculating the retirement benefit. (4) Not only does the employee have 96 hours less in biennial vacation accrual, but the employee may carry over 144 hours less in vacation leave toward retirement. PERS allows a conversion of the employee's vacation buyout at retirement for purposes of calculating the retirement benefit.
- (5) Using the \$20 per hour figure that Ms. Grady used in her example of PERS losses to other employees, this proposal has a potential impact of \$2,880 in vacation accrual alone. (5) Using the \$20 per hour figure that Ms. Grady used in her example of PERS losses to other employees, this proposal has a potential impact of \$2,880 in vacation accrual alone.

The Association further maintains that the City's projected career loss for an employee working 20 years at the four hour per month accrual rate is \$5,000. The City proposal will result in a potential net decrease in the employee's sick leave bank, the Association maintains. The City allows a 48-hour per year transfer from the sick leave bank to the employee's vacation bank. Such transfer may occur if the employee is under the two-year vacation cap and the employee used less than 48 hours sick leave in the prior year. This aspect of the City proposal could have the following impact.

- Bargaining unit employees not only will lose \$2,880 worth of vacation leave as shown above, they could lose an additional 48 hours toward their sick leave fold-in, resulting in the \$5,000 loss Janice Grady calculated for other employees.
 - The City has not cleared its new proposal with PERS (TR-25). Therefore the City cannot guarantee that its proposal will "cure" the PERS issue that it faces.
 - PERS statutes require that an employer account the lowest accumulation of sick leave credits accumulated by a regular employee. If bargaining unit employees may change the status of sick leave to vacation, reducing the number of hours they accumulate in the sick leave bank by 48 hours per month, would not the City be back in the same position that it is now?
- (6) The City claims that Ballot Measure 8 produced this problem. This claim is untrue. As John Carlon testified, the City did not raise Ballot Measure 8 as support for its ETO/EIB proposal in the current contract. Also note that the PERS fold-in statute was unchanged during this time.(6) The City claims that Ballot Measure 8 produced this problem. This claim is untrue. As John Carlon

testified, the City did not raise Ballot Measure 8 as support for its ETO/EIB proposal in the current contract. Also note that the PERS fold-in statute was unchanged during this time.

- (7) According to the Association, the City has other options available to rectify the loss of hours to other City employees (TR-34, 35). The City has not fully explored its options, nor has it entered negotiations with other employee groups concerning this issue.(7) According to the Association, the City has other options available to rectify the loss of hours to other City employees (TR-34, 35). The City has not fully explored its options, nor has it entered negotiations with other employee groups concerning this issue.
- (8) The City's proposal is not designed to minimize the impact on the Association. John Carlon testified that the Association settled the last contract with the ETO/EIB program as part of the bargain (TR-37). He testified that the Association accepted less in wages, given the benefit of the ETO/EIB program (TR-41). (8) The City's proposal is not designed to minimize the impact on the Association. John Carlon testified that the Association settled the last contract with the ETO/EIB program as part of the bargain (TR-37). He testified that the Association accepted less in wages, given the benefit of the ETO/EIB program (TR-41).
- (9) The City's proposal would provide police employees 144 hours less at retirement and would provide them the lowest wage increase of any City work group. The City clearly has not recognized the value of ETO/EIB to police employees. It wants to treat its other employees "fairly," but seeks to do so at the expense of the Association.(9) The City's proposal would provide police employees 144 hours less at retirement and would provide them the lowest wage increase of any City work group. The City clearly has not recognized the value of ETO/EIB to police employees. It wants to treat its other employees "fairly," but seeks to do so at the expense of the Association.
- (10) In a dispute between the City of Bend and its firefighters, Arbitrator Snow addressed the burden of proof that the party proposing a change in a last best offer circumstance has. He stated that that party must show evidence that the existing circumstance is unworkable or inequitable, must show evidence of a quid pro quo and must show proof of a compelling need.(10) In a dispute between the City of Bend and its firefighters, Arbitrator Snow addressed the burden of proof that the party proposing a change in a last best offer circumstance has. He stated that that party must show evidence that the existing circumstance is unworkable or inequitable, must show evidence of a quid pro quo and must show proof of a compelling need.
- (11) Here, the Association claims, the City could not prove a compelling need. It has no mandate to alter its sick leave program and continues to report 8 hours sick leave per month for other employees.(11) Here, the Association claims, the City could not prove a compelling need. It has no mandate to alter its sick leave program and continues to report 8 hours sick leave per month for other employees.
- (12) The City has overstated the potential harm to its other employees. Janice

Grady estimated a loss of \$10,000. PERS does not allow a 100% “fold-in” of sick leave hours, but limits fold-ins to 50% of the employee’s accumulated but unused sick leave (TR-34). Thus the potential loss is only half of what the City claims.(12) The City has overstated the potential harm to its other employees. Janice Grady estimated a loss of \$10,000. PERS does not allow a 100% “fold-in” of sick leave hours, but limits fold-ins to 50% of the employee’s accumulated but unused sick leave (TR-34). Thus the potential loss is only half of what the City claims.

- (13) The City has not shown a “compelling need” to alter the Police Association contract to rectify the PERS problem. The City has not given serious consideration to other remedies. Since the potential harm is to other employee groups, it seems odd that the City has not attempted a remedy with those groups (see Exh. A-21). (13) The City has not shown a “compelling need” to alter the Police Association contract to rectify the PERS problem. The City has not given serious consideration to other remedies. Since the potential harm is to other employee groups, it seems odd that the City has not attempted a remedy with those groups (see Exh. A-21).
- (14) The City has not offered a quid pro quo for removal of the ETO/EIB program. Its proposed system is inequitable. The City has created a system where employees will continue to accrue sick leave and a system which reduces the ability of the employee to accumulate vacation. By placing two restrictions on the conversion of sick leave to vacation (which the City refers to as “discretionary time”), the City has insured that not all bargaining unit employees can actually convert the time. Specifically, the employee must use less than 48 hours sick leave during the year and must be under the vacation accumulation limitation, which the City has proposed to be 96 hours less than current limits (TR-42).(14) The City has not offered a quid pro quo for removal of the ETO/EIB program. Its proposed system is inequitable. The City has created a system where employees will continue to accrue sick leave and a system which reduces the ability of the employee to accumulate vacation. By placing two restrictions on the conversion of sick leave to vacation (which the City refers to as “discretionary time”), the City has insured that not all bargaining unit employees can actually convert the time. Specifically, the employee must use less than 48 hours sick leave during the year and must be under the vacation accumulation limitation, which the City has proposed to be 96 hours less than current limits (TR-42)
- (15) Also, the net impact on the employee’s retirement is potentially substantial. Under the ETO/EIB program, the employee utilizes ETO for the first two days of any illness, thereby maintaining a larger sick leave account balance for retirement. Under the City’s proposed plan, the employee will lose hour-for-hour out of the employee’s sick leave bank. Thus when the employee retires under the City’s proposed system, he will have 144 hours less in vacation to cash in, three years’ sick leave accrual at four hours per month, and the employee potentially loses sick leave accrual based on the requirement that the employee use it first. Obviously, the proposed system does not approximate the prior system.(15) Also, the net impact on the employee’s retirement is potentially substantial. Under the ETO/EIB program, the employee utilizes ETO for the first two days of any illness, thereby maintaining a larger sick leave

account balance for retirement. Under the City's proposed plan, the employee will lose hour-for-hour out of the employee's sick leave bank. Thus when the employee retires under the City's proposed system, he will have 144 hours less in vacation to cash in, three years' sick leave accrual at four hours per month, and the employee potentially loses sick leave accrual based on the requirement that the employee use it first. Obviously, the proposed system does not approximate the prior system.

- (16) Clearly, it is not in the interest and welfare of the public to alter a workable, desired program on the whim of the City. The City has not explored other options to avoid harm both to bargaining unit employees and to other City employees. It is in the interest and welfare of the public to retain the current system, the Association maintains.
- (16) Clearly, it is not in the interest and welfare of the public to alter a workable, desired program on the whim of the City. The City has not explored other options to avoid harm both to bargaining unit employees and to other City employees. It is in the interest and welfare of the public to retain the current system, the Association maintains.

3. Term of Contract:. Term of Contract:

a) The Association's Duration of Contract Proposal:) The Association's Duration of Contract Proposal:

Article 41.Termination and Duration

This agreement shall be effective as of the first day of July, 1997 until June 30, 1999. The agreement shall remain in full force and effect throughout negotiations. This Agreement shall automatically be renewed from year to year thereafter unless either party shall notify the others in writing on or about November 1, prior to the annual anniversary date that it wishes to modify the Agreement. Notification of intent to modify shall include the substance of the modifications desired and the parties initial proposal on each item. In the event that such notice is given, negotiations shall begin no later than December 1. Provisions not reopened shall automatically renew from year to year.

b) Association's Arguments in Support of Duration of Contract Proposal:b) Association's Arguments in Support of Duration of Contract Proposal:

- (1) According to the Association, a two-year contract is preferable to the City's three-year contract for two reasons, both of which are in the interest and welfare of the public. First, a two-year contract would require the parties to return to the bargaining table in November. No meaningful negotiations took place for the current contract. The Association believes that awarding the City's offer would be contrary to the "meaningful negotiations" requirement of PECBA and would give the City the message that it does not need to negotiate.(1) According to the Association, a two-year contract is preferable to the City's three-year contract for two reasons, both of which are in the interest and welfare of the public. First, a two-year contract would require the parties to return to the bargaining table in November. No meaningful negotiations took place for the current contract. The Association believes that awarding the City's offer would be contrary to the "meaningful negotiations" requirement of PECBA and would give the City the message that it does not need to negotiate.

- (2) The second reason is that the City plans to annex 12,000 to 15,000 additional people by the next contract term. With this annexation, the City will exceed its currently proposed top comparable by at least 7,000 people and will alter its comparability. Annexation will occur during the third year of the City's proposed contract term. According to the Association, it would be more appropriate to allow the parties to negotiate in terms of that population shift.(2) The second reason is that the City plans to annex 12,000 to 15,000 additional people by the next contract term. With this annexation, the City will exceed its currently proposed top comparable by at least 7,000 people and will alter its comparability. Annexation will occur during the third year of the City's proposed contract term. According to the Association, it would be more appropriate to allow the parties to negotiate in terms of that population shift.

IV. ARBITRATOR'S ANALYSIS OF PROPOSALS; . ARBITRATOR'S ANALYSIS OF PROPOSALS; FINDINGS, OPINION AND CONCLUSION

As an Interest Arbitrator operating under ORS 243.746, my task is to review the parties' proposals against the statutory criteria set forth in ORS 243.746(4). I will do so with respect to each issue, as follows.

A. Wages. Wages

1. Interest and welfare of the public. Interest and welfare of the public

The statute does not define the meaning of this term. The Association cites a number of arbitration awards in which the arbitrator addressed this term. For example, the award of Arbitrator Tongue in a 1985 interest arbitration between *Multnomah County Corrections Officers and Multnomah County* (Exh. A-13) stated:

“[T]he public interest is served by payment of fair and competitive wages to employees who serve the public.”

Arbitrator Stratton, in a 1988 dispute *between Multnomah County Corrections Officers Association and Multnomah County* (Exh. A-14), stated:

“The interest and welfare of the public is best served with competitive, effective and well motivated officers operating the County detention facilities. In other words, the cost should be reasonable to the taxpayer and fair to the employee.”

The Association cites the first interest arbitration after passage of Senate Bill 750, decided by Arbitrator George Lehleightner in a dispute between *IAFF and Winston-Dillard Fire District* (1995).

The arbitrator stated that it would be in the interest and welfare of the public to “pay a competitive wage unless the District’s finances are such that to do so would create an unreasonable financial obligation.” (Exh. A-16, p. 18).

The Association notes that the legislative history with respect to this statute contains little or nothing in terms of definitions of the term. The City, however, contended that the Legislature enacted Senate Bill 750 to restore balance in a system that historically had favored police unions.

The 1995 interest arbitration award of Arbitrator Bethke in *Association of Oregon Corrections Employees and State of Oregon* (Exh. A-18) reviewed and discussed the legislative history of Senate Bill 750 and concluded that it was not instructive as to the Legislature’s intent with respect to the meaning of “interest and welfare of the public.”

In my view, the standard of interest and welfare of the public would be served by an award of a fair and competitive wage that also allows the unit of government to spread its resources elsewhere in order to meet public needs. In this case, the standard of interest and welfare of the public is, in a general sense, insufficient to decide this dispute, at least with respect to wages. It tends to favor the City’s proposal, but for reasons that are better explained under the rubric of the secondary criteria, which I will review next. I therefore will proceed to review the other statutory criteria.

- 2. 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.... 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...**

This factor is not an issue in this case. The Association asserts, and the City concedes that it has an ability to pay its own wage proposal and makes no claim of inability to pay the Association’s wage proposal.

3. The ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided. The ability of the unit of government to attract and retain qualified personnel at the wage and benefit levels provided

As noted earlier, the City asserts that it clearly has had the ability to attract and retain qualified personnel at existing wage and benefit levels. Said another way, the City asserts that it does not need to impose significant wage and benefit increases to rectify a problem with attracting and retaining such personnel. The City states that it has had virtually no turnover in recent years.

The City cites a total of 938 applications in three hiring processes from 1994 to 1998 as evidence supporting its claim. The Association does not dispute this number, but claims that many of these applicants are unqualified. According to the Association, as noted in its argument with respect to the wage issue, only a few of the 279 applicants in the last round of hiring actually were qualified for the position. The Association offered no documentation or testimony to support this claim, however. Also, the Association did not challenge the City's arguments regarding the minimal turnover in the workforce. I find that the weight of the evidence supports the City's position that it in fact does have the ability to attract and retain qualified personnel at the wage and benefit levels provided.

4. 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..

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.

The City did not specifically address this criterion. The Association contends that this provision of the statute allows the Arbitrator to consider “internal comparability,” which it characterizes as evidence about other employee groups within the City of Bend. It is not clear to me, however, that this criterion refers to comparison with other employee groups. By its terms, this criterion appears to refer to the overall compensation presently received by the bargaining unit that is the subject of the arbitration. In any event, the parties have not specifically addressed overall compensation in their discussion of their wage proposals. I do note that police officers receive between 4% and 14% in incentive pay, and 95% of their health premiums are paid by the City. The City also provides uniforms or gives a clothing allowance.

The parties do address the relationship between wages and the ETO/EIB program, specifically whether police employees accepted a lower wage increase in order to secure that program in bargaining for the last contract. I will address this issue in the discussion of the ETO/EIB issue.

5. 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. . 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.

The City cites a list of Oregon cities immediately above and immediately below it in terms of population in support of its wage proposal. This information is as follows:

<u>RANKING</u>	<u>CITY</u>	<u>1994 POPULATION</u>
10	Albany	37,095
11	Tigard	35,925
12	Lake Oswego	34,005

13	Bend	32,220
14	Keizer	27,450
15	McMinnville	22,880
16	Oregon City	20,410

This list appears to meet the statutory definition of “comparable” communities.

POLICE SALARY COMPARABILITY
No Incentive Pay
(ranking based on entry step pay)

<u>RANKING</u>	<u>CITY</u>	<u>AMOUNT</u>
1	Bend	\$2,979*
2	Lake Oswego	\$2,847
3	Tigard	\$2,820**
4	Albany	\$2,713
5	Keizer	\$2,696
6	Oregon City	\$2,688
7	McMinnville	\$2,553
Average	\$2,757	
Bend	\$2,979	8% over

POLICE OFFICER SALARY COMPARABILITY
No Incentive Pay
(ranking based on top step pay)

<u>RANKING</u>	<u>CITY</u>	<u>AMOUNT</u>
1	Bend	\$3,624*
2	Albany	\$3,417
3	Lake Oswego	\$3,401**
4	Tigard	\$3,375
5	Keizer	\$3,278
6	McMinnville	\$3,259
7	Oregon City	\$3,241***

* Includes 2.5% City proposed salary increase effective 7/97

** Tigard policy pay 6% PERS contribution, salary adjusted accordingly

*** Last COLA in Oregon City was effective 7/96

According to the City, these comparables show that the City is at the top of the list in terms of both entry level and top step police officer positions.

The Association did not present any comparators whatsoever with “comparable communities of the same or nearest population range within Oregon.”. I find this omission significant (and

unusual). Not only did the Association provide no such comparables, it offered no explanation for its failure to do so. It is reasonable to infer from the absence of this evidence that a valid comparability analysis would support its wage proposal. I will discuss the Association contentions with respect to internal comparability (as opposed to geographic comparability) later in this opinion.

The City did not present “overall” compensation data. According to the City, comparison of other fringe benefits is relevant only if the employer’s wages are below comparables and the employer attempts to offset wages with a superior fringe benefit package. I disagree. Nothing in the statute calls for such a two-step process and I find that the level of fringe benefits is always relevant.

The Association asserts that the City’s data is faulty for not including a total or overall compensation analysis. The Association’s argument is not persuasive, however, that by statute, an arbitrator can consider only total compensation comparability data. Two provisions of the statute allow an arbitrator to consider what the arbitrator deems appropriate: the primary criterion of interest and welfare of the public, ORS 243.746(a), and the tertiary catch-all criterion, ORS 243.746(h). As will be explained next, there are circumstances where it is in the interest and welfare of the public to consider the best data made available to the arbitrator, even if the data is not as complete as the arbitrator would like. In my opinion, the Legislature included ORS 243.746(a) and (h) in order to give arbitrators the flexibility to exercise some common sense when warranted by the evidence.

I agree with the Association that that ORS 243.746(d) directs arbitrators to consider comparables in the context of “overall” compensation. I also believe that, at least theoretically, this is the more appropriate way to present and analyze comparability data. Nevertheless, there are at least two difficulties that arbitrators encounter with performing an overall or total compensation analysis. The first is the problem of converting variable benefits to an appropriate dollar value for purposes of comparison. This has led arbitrators in the past to consider both

overall compensation and base wage compensation. The second - which is relevant here - is that the parties may choose not to present their arbitrator with this information. The Association advances the reasonable argument that the City's failure to present overall compensation data implies that this information would hurt its position. However, the Association did not elect to fill this void, which suggests that it found the information didn't help its case.

More importantly, the Association did not present any comparator information of its own, leaving me with little choice but to consider what the City has placed before me. My experience has been that an overall compensation analysis might alter the subject employer's relative ranking somewhat, an important consideration in a close case. It does not, however, tend to propel an top-ranked jurisdiction to the other end of the scale, or even to a below average position, and vice-versa. Accordingly, I do not find the City's data so flawed that I would deem it unworthy of consideration.

In comparing Bend's wages for bargaining unit members with the comparator group placed into evidence, I find that the evidence clearly supports the City's proposal over the Association's. Even with the City's proposal, its base wage at both the entry level and top step will be higher than its six comparators. In terms of population, Bend's ranking is in the middle.

6. The CPI-All Cities Index, commonly known as the cost of living. The CPI-All Cities Index, commonly known as the cost of living

The City cites data showing that bargaining unit employees have received a 19.9% wage increase over the past five years (including the City's current offer), while the national CPI for that period is 13.8%, a 6.1% difference. The data in City Exhibit 7 supports these numbers.

The Association makes the argument that the cost of living in Bend is 105% of the national average, citing Association Exhibit 4. Association Exhibit 4 is the City's 1997-98 budget. The Association is correct that at page I-4 of this document there is a statement that cost of living is 105% of the national average, and it comprises the sum total of the evidence on relative cost of living. The Association criticizes the City for using a CPI-based formula without considering the

added cost of living in Bend. The Association claims that a strict CPI formula should not be used in this circumstance.

Unfortunately for the Association, the statute does not give the Arbitrator the authority to choose which CPI index should apply. The statute expressly states that arbitrators “shall base their findings and opinions on these criteria” and specifically lists the “CPI-All Cities index” (ORS 243.746(4)(f)).

I cannot help but noting, however, that the Association’s assertion that “[g]iven the fact that the cost of living in Bend exceeds that of the national CPI, the employees will lose each year with the City’s proposal” (Association Post-Hearing Brief at 14) has not been proved or disproved by the evidence. The absolute or relative cost of living differs conceptually from changes in the cost of living; they are not interchangeable concepts. And, I note that the Association did not present any trailing evidence comparing recent changes in the Portland CPI or another index with changes in police wages.

Again, the weight of the evidence favors the City. The City has presented the appropriate evidence comparing changes in the bargaining unit’s wages with changes in the statutorily mandated “CPI-All Cities Index,” and that evidence shows that that bargaining unit wages have outpaced changes in the cost of living, as measured by the All Cities data.

7. Stipulations of the parties. Stipulations of the parties

The parties entered into no stipulations and, accordingly, I make no findings with respect to this criterion.

8. **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.. 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.**

The City takes the position that the Arbitrator need not consider any other factors. This subsection arguably is the category in which the Association’s internal equity argument could be considered. In my view, the evidence regarding subsections (a) to (g) is sufficient for an award.

As to considerations of internal equity generally, I find them useful, if at all, during periods of tight budget constraints. If, for example, some employee groups have been asked to accept a wage freeze, notions of fairness might indicate that all employee groups should have a freeze, or very small increments.

A specific comparison between groups performing like work within an employer’s work force is valid, and it is one that the Association asserts with respect to police office assistants. According to the Association, employees in that category lag other Bend office assistant wages by nearly 22%, as shown on the following table:

OFFICE ASSISTANT [II] COMPARISON	Top Step
Office Assistant- Community Development Services	\$16.76
Office Assistant II- Community Development - Building	14.46
Office Assistant II- Community Development - Long Range	14.00
Secretary - Fire/EMS	14.06
Office Assistant II - Public Works-Administration	14.46
 Average	 14.75
 Police Office Assistant	 \$12.10
% Difference	21.9%

No substantial evidence was presented showing that these identified groups perform comparable work. In fact, the Association did not explain why it didn’t compare the position of Office Assistant

I with the Police Office Assistant. The record (Association Exhibit 4, pp. V-21-21) indicates the following comparison, and it paints a different picture:

OFFICE ASSISTANT [I] COMPARISON		Top Step
Office Assistant I- Community Development Services		vacant
Office Assistant I- Community Development - Building		\$12.50
Office Assistant I- Community Development - Long Range		no position
Office Assistant I - Public Works-Administration		12.50
 Average		 12.50
 Police Office Assistant	 \$12.10 ¹	
% Difference	3.3%	

And, as the City points out, the Association’s proposal did not contain any provision for a special increase to employees in that classification. Thus, the only way I could give that job group a “catch-up” increase, assuming, without deciding, that one is warranted, is to award the same increase to the entire bargaining unit. Given the evidence in this case, I find that option unacceptable.

As to the entire bargaining unit, even if I were to consider the Union’s argument with respect to internal comparability, it would not assist the Association because the argument fails for lack of evidence. Specifically, without knowing how competitive the other bargaining unit and management wages were, I cannot say that the larger increase given these employees was unfair. Those employees’ pay groups may have lagged the market to some degree, perhaps a great deal, suggesting that some “catch-up” was in order. The City asserts that this was the case.

I also note that the COBEA unit negotiated a series of 3% increases when the CPI was at that level, which explains its contract terms being at that level. (The police bargaining unit, according to the 1995-97 Collective Bargaining Agreement, received a 4.8% increase the first year, and at least a 3% (CPI-based) increase the second year.)

¹ The record is confusing because the 1995-97 Collective Bargaining Agreement does not identify the position of Police Office Assistant, and therefore contains no wage data for that position. That position is identified for 1997 in the City’s budget document, Association Exhibit 4, and the maximum hourly rate specified for that position

The Association, on the other hand, merely labels the increases “outrageous,” without giving any analysis other than to calculate the difference between the City’s proposal for police employees and wages given to other employee groups, in particular management employees. The Association further suggests (without so labeling the argument) that an arbitrator should consider “comparable worth.” For example, it complains that the “Cemetery Sexton’s wages are equal to a top step officer. See Exhibit 20. The street sweeper for the City of Bend makes the same as a step 4 police officer.” Association’s Post-Hearing Brief, page 12.² I know of no arbitral precedent for considering this kind of argument.

In short, I find that, even if I were to consider it, the Associations’ internal equity argument would not persuade me that it has the better offer with respect to wages.

Taking all of the evidence into account in light of the above-discussed statutory criteria, I conclude that the weight of the evidence strongly supports the City’s wage proposal over that of the Association.

B. Earned Time Off/Extended Illness Bank (ETO/EIB). Earned Time Off/Extended Illness Bank (ETO/EIB)

Here, the Association proposes maintenance of the status quo (i.e. current contract language) and the City proposes to delete current contract language and replace it with language that it believes will resolve the problem it faces with respect to PERS retirement benefits for its employees.

In analyzing the parties’ proposals, I note that neither party has emphasized the statutory criteria in their respective arguments for this issue. The statutory criteria perhaps lend themselves

is the same figure as used by the Association. I, therefore, have used the figures from that document as well.

² For whatever its worth, I note that according to Association Exhibit 4, p. V-21, for 1997-98, the Cemetery Sexton pay is budgeted at \$13.78 to \$17.96, while police officers’ pay is budgeted at \$16.76 to \$24.42. Association Exhibit 20, which it cites, lists the Cemetery Sexton’s top step pay at \$18.41 hour. Interestingly, I could find nothing in the record clearly specifying the top level police officers’ base wage for 1997-98 (with or without the City’s offer). The 1996-97 increment was CPI-based, and I haven’t been provided the exact figure, although City Exhibit 6 indicates it was 3%. Based on the wage schedule in the 1995-97 Collective Bargaining Agreement, the top step police officer wage after successive 2.8%, 2.0% and 3.0% compounded increments would be around \$20.97. I presume the 1997-98 budgeted amount of \$24.42 for a top step officer includes incentive pay. In any event, it is significantly higher than the Cemetery Sexton’s pay.

to determination and evaluation of the wage proposals to a greater degree than proposals for other sections of the contract. In my judgment, the criterion of interest and welfare of the public is a significant factor in evaluating the parties' proposals for this issue. The City has identified a problem that it faces with regard to sick leave for its other employee groups. The purpose of the proposal is to allow the City to deal with that problem. While the program that the City has proposed is not as advantageous to the Association as the current program, I find that it would be in the interest and welfare of the public to avoid the risks of loss of PERS retirement benefits to other City employees, with its attendant potential legal and monetary consequences to its other employees or to the City and the citizens that it serves.

One should note that the City's proposal does not reduce the amount of leave available to bargaining unit members. In that respect, the Association has lost nothing. The loss is with the carryover of unused leave, which will vary among employees. The potential loss, which the Association calculates at \$5000, will incurred only when a police officer has worked for 20 years, has take little or no sick leave, and has eschewed the use of bankable vacation time. Arguably, the City's proposal could accomplish the City's objective with less of a downside to bargaining unit members. Janice Grady, for the City, testified that the City did not intend to cause a loss of carryover. Tr. 21, 27. Counsel for the Association elicited testimony from her that with the City's proposal, an employee with 10 to 15 years of service will lose four (Tr. 28) or six (Tr. 21) hours a month in vacation carryover. Grady explained, however, that:

the City proposal for the conversion from earned time off for the vacation accrual was submitted to the Association. The City repeatedly requested feedback in order to make this an equitable conversion; the City did not receive feedback.

Tr. 22.

The language in the City's proposal could be improved upon, something that is best dealt with in negotiations and which apparently did not occur here.

I note that, while the Association argues that the City's proposal would not be as advantageous to bargaining unit employees as the current contract language, the evidence does

not indicate that any loss to the Association members would be so great as to justify ignoring the City's stronger position on wages. In a pre-SB 750 interest arbitration, I might reach a different result with respect to this particular issue. Because this is a last best offer interest arbitration, however, I must choose one package over the other, warts and all. I find the wage issue to be the most important of the three issues before me. I do not find the flaws in the City's proposal to be so great as to override my conclusion that the City clearly has the stronger argument concerning the parties' wage proposals.

C. Term of Agreement. Term of Agreement

The City proposes a three-year contract, the Association a two-year contract. The City's rationale is that a three-year contract would be in the interest of labor stability, since a two-year contract would require the parties to begin bargaining for a successor agreement within about six months. The Association contends that a return to the bargaining table in a short time is desirable because the parties had no meaningful negotiations for the contract at issue in this case. The City counters that if, in fact, no meaningful negotiations took place, it was because it was virtually impossible for the City to get the Association to the bargaining table.

It is not clear from the record how much negotiation took place and who might have been responsible for any failure to negotiate, although I note that the Association did not deny the City's charge concerning its willingness to negotiate.

The Association argues that a two-year contract is desirable because the City plans to annex 12,000 to 15,000 people in the third year of the contract if the City's proposal for a three-year contract is adopted. According to the Association, this move will alter the City's comparability with communities of the "nearest population range."

A three-year contract would run from July 1, 1997 to June 30, 2000. If by then the City has a larger population base, the Association might be able to come forward with geographic comparables to support its wage proposal, should the parties have to resort to interest arbitration.

As noted earlier, the Association's wage proposal suffered greatly from the Association's failure to present any such geographic comparables to support it. Thus I do not agree with the Association that it would necessarily be disadvantaged by a three-year agreement.

That observation aside, I find both parties' proposals on this issue to be satisfactory. The question of duration is the least important of the three issues. Therefore, this issue will have no influence on my final ruling.

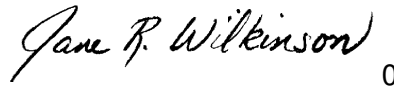
D. Conclusion. Conclusion

For the reasons stated above, I find the City's last best offer to be preferable to that of the Association when evaluated against the statutory criteria set forth in ORS 243.746(4). I therefore will award the City's last best offer. All of the statutory criteria but one (ability to pay) support the City's wage offer over the Association's. I do not find the question to be a close one. Although the City's ETO/EIB proposal is less than satisfactory, and the duration issue could go either way, the importance of wages generally, and the clear superiority of the City's proposal on this item, leads to my selection of the City's offer over the Association's.

V. ARBITRATOR'S AWARD. ARBITRATOR'S AWARD

The Arbitrator awards the City's last best offer for the disputed terms of a Collective Bargaining Agreement to replace the parties' 1995-97 negotiated Agreement.

Date: July 17, 1998



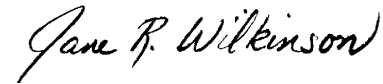
Jane R. Wilkinson
Labor Arbitrator

In the Matter of the Interest Arbitration Between)
)
The City of Bend)
)
the Employer)
)
and)
)
Bend City Police Officers' Association)
)
the Association)
)
_____)

CERTIFICATE OF SERVICE

The undersigned, Jane R. Wilkinson, hereby certifies that on July 17, 1998, she served the annexed Arbitrator's Award in the above-captioned dispute upon the parties thereto, and upon the Oregon Employment Relations Board, by depositing the same in the United States Mail, Certified Mail, Postage Prepaid.

Date: July 17, 1998


_____₀
Jane R. Wilkinson
Labor Arbitrator