THE MATTER OF THE INTEREST	)	ARBITRATOR'S
	)	
ARBITRATION BETWEEN	)	OPINION & INTEREST AWARD
	)	
CITY OF VANCOUVER	)	
	)	
"THE CITY" OR "THE EMPLOYER"	)	
	)	
AND	)	
	)	
VANCOUVER POLICE OFFICERS' GUILD	)	
	)	
"VPOG" OR "THE GUILD"	)	

HEARING: July 29th & 30th, 2015
Vancouver, Washington

HEARING CLOSED: October 8, 2015

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Ron Kirkpatrick, LPG Advisors
Mark Johnston, Vancouver Fire Department

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BACKGROUND

The City of Vancouver ("The City') and the Vancouver Police Officers' Guild ("VPOG or The Guild") have a collective bargaining relationship. The last collective bargaining agreement (CBA) expired on December 31, 2014 (E A.3). The Parties have been negotiating a successor agreement but those efforts have not been successful.

Under the State of Washington public sector collective bargaining statute, the VPOG 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 December 16, 2014, PERC certified the following issues for arbitration:

Article 11.3 Work Week
Article 11.9 Patrol Staffing
Article 12.4 and Appendix A – Rates of Pay
Article 12.5 Shift Differential/Premium Pay
Article 12.10 Longevity Pay
Article 13.4, Overtime
Article 13.6, Callback Pay
Article 13.8, Court Appearances
Article 17 and Appendix B, Health Insurance
Article 19.3, Deferred Compensation

Article 20.3, Compensation for Training Related Travel
Article 21.1, Equipment and Clothing Allowances
Article 34, Termination and Renewal

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 Timothy Williams was selected as the neutral Arbitrator.

A hearing was held on July 29th and 30th, 2015 in Vancouver, 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 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 12.4 and Appendix A – Rates of Pay
Article 12.5 Shift Differential/Premium Pay

Article 17 and Appendix B, Health Insurance

RCW41.56.450 requires that a recording of the proceedings 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 October 8, 2015, in the form of briefs. The briefs were timely received by the Arbitrator and he declared the hearing closed on October 8, 2015. The Arbitrator requested and was granted an extension of time for filing the final decision until Monday, December 14, 2015.

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 suppression personnel 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.

(2) For employees listed in RCW 41.56.030(7)[1] (a) through (d) the panel shall consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.

The Arbitrator's opinion and awards in the instant case are submitted, having given careful consideration to the above criteria, on an issue-by-issue basis. The Arbitrator's 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

[1] The statute contains a footnote that provides: *RCW 41.56.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (7) to subsection (14). RCW 41.56.030 was subsequently amended by 2011 1st sp.s. c 21 § 11, changing subsection (14) to subsection (13).*

will set forth the position of the Parties, his award and the reasoning behind the award.

As is true in most interest arbitration proceedings, the Parties were represented by experienced, highly competent labor professionals. The arguments and evidence set forth by each were carefully crafted to address the pertinent points of dispute between the two Parties. 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. The simple fact is that each side provided compelling arguments sufficient to warrant adopting its position on all three issues. Ultimately the Arbitrator's job is to sift through the arguments and the evidence and make a determination as to which Party made the stronger case. The analysis that is provided is focused on setting forth the particular points of argument that led to the final award.

POSITIONS, AWARD AND ARBITRATOR'S REASONING

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 Employer's contribution to the medical benefit.

The Arbitrator notes that the question of the appropriate list of comparators is almost always a point of dispute in an interest arbitration proceeding. The Parties, in the instant case, are sharply divided on this question and it will be addressed as a preliminary point of discussion since it impacts the ultimate decision on all three issues.

The City proposes the following list of comparables taken from the states of Washington and Oregon:

1. Federal Way, WA
2. Tacoma, WA
3. Spokane, WA
4. Everett, WA
5. Kent, WA
6. Hillsboro, OR
7. Gresham, OR
8. Eugene, OR
9. Salem, OR
10. Beaverton, OR

The Guild agrees with the above ten comparables but would add five from the state of California to include:

11. Corona, CA
12. Elk Grove, CA

13. Oceanside, CA
14. Ontario, CA
15. Santa Rosa, CA

After extensive study of the exhibits provided by the Parties related to the comparables and after thoroughly reviewing the work of Arbitrator Beck and Arbitrator Axon, this Arbitrator finds the following list of comparables appropriate for the VPOG and the City of Vancouver:

1. Federal Way, WA
2. Tacoma, WA
3. Spokane, WA
4. Everett, WA
5. Kent, WA
6. Hillsboro, OR
7. Gresham, OR
8. Eugene, OR
9. Beaverton, OR
10. Elk Grove, CA

The Arbitrator's discussion of the comparables issue begins by noting that the City/VPOG have had two prior interest arbitration awards where the subject of comparables was central to the Arbitrators' ultimate decisions. Arbitrator Beck issued a decision in December of 1997 and Arbitrator Axon issued his decision in December of 2013. The City, at the current time, argues to retain the list of 10 comparables' adopted by Arbitrator Axon. Axon's comparables contained five Washington cities and five Oregon cities. Arbitrator Beck set forth 12

comparables which included four cities from California. This Arbitrator, for the instant dispute, adopts 10 comparable cities to include those proposed by the City; less Salem, Oregon; plus Elk Grove, California.

The Arbitrator notes that both Axon and Beck provided extensive discussion in their awards on the question of comparability. The Parties, in their briefs, thoroughly reviewed and critiqued, both pro and con, the rational set forth by both Arbitrators. This Arbitrator finds little value in rehashing what has already been thoroughly dissected by the Parties in their briefs. What, hopefully, will be of value is for him to set forth some additional thoughts that were influential in determining the set of comparables that the Arbitrator adopted for this decision.

The City proposes 10 comparables, the Guild argues for 15. This Arbitrator concurs with Arbitrator Axon in finding that 10 comparables are more than sufficient to provide for a reasonable test of comparability. More than that, in his view, provides little additional value and makes the process of determining comparability more cumbersome. Less than that begins to raise questions as to the reliability of the information being provided. The smaller the number of comparables the easier it is for outliers to skew the results leading to unreasonable conclusions.

The Guild put a great deal of emphasis on the importance of including California comparables and in setting forth why Arbitrator Beck's decision to use California jurisdictions should be given more weight than Arbitrator Axon's decision not to use California jurisdictions. The City, of course, contended that Arbitrator Axon provided a reasonable set of comparators and that there is substantial value in consistently using the same set from one labor contract to the next.

This Arbitrator simply notes that the statutory criteria call for the use of west coast cities[2] and cities in California clearly qualify. A careful and thoughtful reading of Arbitrator Axon's award indicates that he does not outright reject cities from California as comparators to the City of Vancouver Washington police department but rather rejected those cities proposed by the Guild. While the point will be discussed in greater detail later in this analysis, this Arbitrator also rejects four of the five cities from California that the Guild proposed in this proceeding.

Simply put, from this Arbitrator's perspective, applying the statutory criteria as related to comparability permits the use of appropriate cities from Washington, Oregon and

[2] The actual words of the statute are: "employers of similar size on the west coast of the United States."

California. The the real issue is not the state but rather the selection criteria.

As thoroughly discussed by the Parties, population size and assessed valuation are two important criteria in determining a good fit related to comparability for the City of Vancouver. As noted above, those two criteria have been thoroughly dissected both by Arbitrators Axon and Beck, and by the Parties themselves in their briefs. Moreover, the 10 comparables this Arbitrator has adopted are more than justified based on size of population and assessed valuation.

Additionally, this Arbitrator has regularly taken the position in interest arbitration awards that consideration also has to be given to the economic market in which employees purchase goods and services. In attempting to set forth the importance of this criterion, the Arbitrator is reminded of Moliere's play *The Miser.* In this theatrical production, the miser is a man by the name of Harpagon and Harpagon loves money. He loves to hold it, possess it and hoard it; he loves it more than his children. To him there is an intrinsic value to simply having the money.

Few of us are like Harpagon. There is for the normal person no intrinsic value to money. The value of money is in what it can be exchanged for; a home, a car, medical services, vacations, etc. The simple fact is that the value of money as

expressed in what it can be exchanged for changes from location to location. Sufficient money to buy a nice 4 bedroom - 2 bath house in Vancouver, Washington will probably not be a sufficient amount of money to buy even a very small efficiency condominium in downtown New York. That is why employers, like the Federal Government that have employees spread across the country, often find it necessary to provide a special living allowance to those employees assigned to work in high priced locations. Thus it is possible for an employee to receive a lesser wage than a comparator but be better compensated in terms of what the wage can be exchanged for.

It is primarily marketplace difference that leads this Arbitrator to reject the California cities of Santa Rosa, Oceanside, Ontario and Corona as comparators. Santa Rosa is part of the Bay Area marketplace which is clearly dissimilar to that of the City of Vancouver. Oceanside, Ontario and Corona are all part of the Los Angeles marketplace and the Arbitrator finds no reason to conclude that that marketplace is similar to the City of Vancouver.

On the other hand, the City of Elk Grove, California is located in the Sacramento marketplace and the Arbitrator does see some similarity between that marketplace and the fact that the City of Vancouver is neighbor to the City of Portland Oregon and shares that marketplace. Thus it made sense to him to

eliminate Salem, Oregon as a comparator; its assessed valuation per capita was the lowest (E B.7) of all the comparators suggested by both Parties and it is the most removed from the Portland marketplace[3]. Adding the City of Elk Grove, which can reasonably be seen as a better comparator than Salem, provides the 10 comparables.

The Arbitrator provides one final note about the comparators. A review of all of the comparator information set forth by the Parties indicates that the Oregon comparators generally have lower base wages for police officers then do the Washington comparators. With the exception of Eugene Oregon, however, the Oregon cities chosen as comparators share the same marketplace as the City of Vancouver, Washington. A City of Vancouver police officer or his or her family can often times shop in the very same stores and obtain services from the very same providers as a police officer in Gresham or Beaverton. This is one reason these cities serve as good comparators.

In summary, there is no perfect set of comparables. Rather, using population size, assessed valuation and similarity of marketplace as three criteria, the Arbitrator has arrived at a reasonable set of 10 comparables. These comparables will be used as part of the process of making an ultimate decision on

[3] Eugene is its own separate marketplace while Salem is on the outskirts of the Portland marketplace.

the three issues in dispute. The three issues will be presented in sequential order.

Article 12.4 and Appendix A – Rates of Pay

Proposals:

The Guild proposes the following language to cover wage increases for each year of the two your agreement.

12. Rates of Pay

12.4 Regular monthly rates of pay will be set forth in appendix A

Effective January 1, 2015 regular wages for the classifications covered by one hundred percent (100%) of the percentage increase in the U.S. Department of Labor's Consumer Price Index (CPI-W) for Urban Wage Earners and Clerical Workers, Portland-Vancouver area, for the period July 2013 to July 2014, with a minimum of two and one-half percent (2.5%) and a maximum of five and one-half (5.5%). Regular wages for sergeants shall be increased by an additional one percent (1%).

Effective January 1, 2016, regular wages for the classifications covered by one hundred percent (100%) of the percentage increase in the U.S. Department of Labor's Consumer Price Index (CPI-W) for Urban Wage Earners and Clerical Workers, Portland-Vancouver area, for the period July 2014 to July 2015, with a minimum of two-and one-half percent (2.5%) and a maximum of five and one-half percent (5.5%). Regular wages for sergeants shall be increased by an additional one percent (1%)

The City proposes to increase wages by 1.75 in 2015 and an additional 1.75% in 2016. The City does not propose any additional increase to the sergeant's wages.

Award:

12. Rates of Pay

12.4 Regular monthly rates of pay will be set forth in appendix A

Effective January 1, 2015 increase regular wages for the classifications covered by two percent (2%). Regular wages for sergeants shall be increased by an additional one percent (1%).

Effective January 1, 2016, increase regular wages for the classifications covered by two percent (2%). Regular wages for sergeants shall be increased by an additional one percent (1%)

Arbitrator's Discussion:

The Guild proposes wage increases for 2015 and 2016 linked to any increases in the CPI-W for Portland with a minimum of 2.5% and a maximum of 5.5%. At page 17 of its brief, the City notes that the data is in and the Guild's proposal is the 2.5% for both years. The Guild does not contest this fact.

So, the Arbitrator is confronted with a very narrow gap (.075%) between what the City offers (1.75%) and what the Guild requests (2.5%). While narrow, there still is a substantial amount of money involved and the Arbitrator was diligent in reviewing the evidence and arguments. This review primarily focused on questions about cost of living increases and the comparability data.

One of the statutory requirements that the Arbitrator must use and one that is commonly associated with wage increases is the cost of living. The Arbitrator reviewed the cost of living evidence and finds persuasive the City's position that a 10 year view of wage increases compared to cost of living increases shows a favorable position for the Guild's wages (E 3.3.2). As a result, no persuasive argument can be made for a catch up increase.

Turning to comparability data based on the 10 comparables adopted by the Arbitrator, police officers in Vancouver appear to be right in the middle. For example, the Guild's exhibit 51-A provides an adjusted salary for officer top step. If the cities of Salem, Oregon and the California cities of Corona, Ontario, Oceanside, and Santa Rosa are removed; then the average is $6,634. This compares to the City's wage of $6,669. Vancouver is just slightly ahead of the average. Of course, this is just one exhibit. However, the Arbitrator's review of all of the exhibits, both City and Guild, leads him to roughly the same conclusion. Using the adopted 10 comparators, the Guild's wages are just slightly better than average.

Since slightly above average was the position of the City for the last year of the expired agreement, the question the Arbitrator asked himself is what level of increase will it take to maintain that position? In other words, when all of the data

is in for the comparators for 2016, what will it take for the City to still be slightly above average in 2016. The Arbitrator notes that the Axon award was for a 2% increase all three of the years covered by his award. The Arbitrator is convinced that since we are experiencing a steady growth in the economy with only mild increases in cost of living; those facts support a conclusion that maintaining the same 2% level of increase will retain the desired position versus the comparables.

The above analysis applies to the officers but not necessarily to the sergeants. The Arbitrator notes that the Guild's proposal includes an additional 1% increase each of the two years of the agreement for the sergeants. Going back to the 10 comparators[4] and looking at Guild exhibit 53-A, the Arbitrator notes that the average sergeant salary on that exhibit is $8,180. The City of Vancouver lags behind the average by almost 5% with the top step salary for sergeants of $7,793. The Arbitrator's review of all of the evidence related to compensation for sergeants provides additional support to the conclusion that sergeants do lag behind the average for the comparables. As a result, the Arbitrator's award includes the additional 1% each year for the sergeants.

[4] Again, Salem, Corona, Ontario, Oceanside and Santa Rosa data is removed.

Article 12.5 Shift Differential/Premium Pay

Proposals:

The Guild proposes the following language to cover premium pay for shift differential.

12.5 Shift differential Premium Pay

Effective January 1, 2015, Any sworn officer who works on a swing shift as defined in article 11 (including early swing shift – 4th shift- and late swing shift) shall be paid shift differential premium pay of 3% of base pay as defined in Section 12.4 of this agreement. Any sworn officer who works on a graveyard shift as defined in article 11 shall be paid shift differential premium pay of 5% of base pay as defined in Section 12.4 of this agreement for each hour worked. Shift differential premium pay shall be included in paid days off (other than shirt-term disability) and compensatory time off based on the employee's specific assignment.

The City opposes any change to the current language on shift differential and argues for no increase in shift premium pay.

Award:

No change to the language found in Article 12.5 of the expired agreement.

Arbitrator's Discussion:

In its brief, the Guild stakes out its position by emphasizing that:

> The Guild's proposal to increase the shift differential for the first time in nearly three decades to 3% for officers assigned to swing shift and 5% for those assigned to graveyard shift is supported by consideration of the loss of value of this premium over the years, internal equity with other City bargaining units, and the undisputed burdens of shift work. (p 8)

What is obviously missing in the above overview, a fact that is strongly emphasize by the City in its arguments, is the lack of support from the comparables. Only Tacoma and Spokane offer shift differential and Spokane pays far less than what the Guild is requesting (E 4.3). The simple fact is that police work is 24/7 and that makes shift work a reality that should be assumed when you become a police officer. Moreover, the internal equity comparisons with other City bargaining units seem to this Arbitrator to be an apples to oranges comparison as there are very few employees involved and only under special circumstances.

The fact that the rate of compensation for the existing shift differential has been ignored for three decades leads this Arbitrator to conclude that it should continue to be ignored.

Article 17 and Appendix B, Health Insurance

Proposals:

The Guild proposes a significant change from the status quo in seeking to implement an insurance trust through which to provide medical, dental and vision benefits to the members of the bargaining unit and their families. The trust would closely model what the City of Vancouver fire suppression bargaining unit implemented in 2011. The proposal itself is some 11 pages long and will not be repeated here. Two key elements of the

proposal include an implementation date two months if the Arbitrator awards for the Guild and that, in 2016, the City would contribute to the trust $1696.80 per member per month.

The City opposes the shift to the medical trust and argues to continue with the insurance program currently in place with a few small improvements and the addition of the following new language in Article 17.2:

> Beginning January 1 of each year of the contract, the City contribution will increase up to 5% of the previous years' City contribution. Any increase in contributions above 5% will be the employees' responsibility, in addition to the 10% dependent contribution.

Award:

> The Arbitrator awards for the City on this issue but without adding the new language to Article 17.2 – no 5% cap on increased insurance costs.

Arbitrator's Discussion:

This is a case of almost persuaded as the Guild put on an extensive and convincing case with regard to the potential benefits of a medical trust for the members of the bargaining unit. There are a number of good reasons why the Guild's proposal could have been awarded including the fact that the City already has a successful model, the issue of internal equity considering the fact that the fire suppression unit was granted the right to have a medical trust in 2011, that there are clearly benefits to members of the bargaining unit when their medical, vision and dental benefits are provided through a

medical trust and, in the long run, there may actually be cost savings to the City.

But, as noted above, almost persuaded. Almost for what the Arbitrator perceives to be some very good reasons. In summary form the more important of those reasons can be outlined as follows:

1. Establishing a medical trust breaks new ground as no comparable provides medical, vision and dental benefits through a trust. This raises a statutory concern to the Arbitrator; a concern that can be satisfied but only upon strong showing that implementing the medical trust at this time is reasonably feasible and doable.

2. This award covers a two year agreement and is being released at the end of the first of those two years. That would mean that at most the medical trust would exist for the limited time of 10 months under this agreement and be in its startup phase as negotiations commence over a successor agreement. That is not an ideal situation. Far better to implement the medical trust at the beginning of a longer agreement with the stability that a long term agreement provides.

3. The Guild acknowledges that the City will pay more per employee ($1696.80 versus $1456.73) under the trust than it currently does under its partially self-insured benefits program (Tr 29). In and of itself, that does not bother the Arbitrator. What concerns him is that the City ought to receive something for the additional money. What the City should expect to receive is less contentiousness over the benefits that are provided and cost containment assurances. With only a 10 month possible life expectancy, the Arbitrator is not convinced that the Guild is in a position to offer the City any assurances that cost can be contained.

4. Most significantly, the Arbitrator’s review of the evidence leads him to believe that the ability of the Guild to implement the medical trust in a two month period of time is based in part on a quote from MODA.

> There are two problems with this quote. For one thing, it would have to be updated with new information before it could be used (Tr 364). More importantly, arbitrable notice is taken of front page articles in the *Oregonian* that MODA is in financial trouble at the current time and has determined to cease doing business in the states of Washington and California. That being the case, the Medical Trust is back at square one in terms of needing to obtain a quote from a bona fide insurance provider. Obviously that can be done but the question is at what cost will the quote come in? Too little time and too risky is this Arbitrator's observation.

In summary, while the Arbitrator supports for a number of reasons the implementation of the Medical Trust, he will not award it for this contract. More work needs to be done and it would need to be implemented earlier in a contract period.

As to the Employer's request for a 5% cap, the Arbitrator sees no reason to award that provision at this time as it would take the pressure off the Employer to manage its partially self-insured program in such a manner as to limit increased costs. This reason is particularly important to the Arbitrator since the Employer has just recently implemented its self-insurance program.

AWARD SUMMARY

The Arbitrator awards the following on the 3 issues in dispute:

Issue 1.

12.4 Regular monthly rates of pay will be set forth in appendix A

Effective January 1, 2015 increase regular wages for the classifications covered by two percent (2%). Regular wages for sergeants shall be increased by an additional one percent (1%).

Effective January 1, 2016, increase regular wages for the classifications covered by two percent (2%). Regular wages for sergeants shall be increased by an additional one percent (1%)

Issue 2.

12.5 Shift Differential/Premium Pay

No change to the language found in Article 12.5 of the expired agreement.

Issue 3

Article 17 and Appendix B, Health Insurance

The Arbitrator awards for the City on this issue but without adding the new language to Article 17.2 – no 5% cap on increased insurance costs.

This interest arbitration award is respectfully submitted on the 14th day of December, 2015 by,

Timothy D. W. Williams
Arbitrator