STATE OF WASHINGTON
PUBLIC EMPLOYMENT RELATIONS COMMISSION

IN RE: INTEREST ARBITRATION BETWEEN: CITY OF ELMA, Employer, and FRATERNAL ORDER OF POLICE, OLYMPIC MOUNTAIN LODGE 23, Union.	PERC Case No.: 22956-1-08-521 OPINION, FINDINGS AND AWARD

NATURE OF PROCEEDINGS

This case resulted from an impasse reached by the parties in their negotiations of a collective bargaining agreement for the period January 1, 2008, through December 31, 2010. During the period covered by the last collective bargaining agreement, bargaining unit employees were represented by Teamsters Local 252. That Union was succeeded by the Fraternal Order of Police, Olympic Mountain Lodge 23, which then bargained to impasse with the Employer.

The Union is represented by Michael E. Coviello, Associate General Counsel, FOP. The Employer is represented by Bette Meglemre of Puget Sound Public Employers.

The parties selected Michael E. de Grasse to act as sole, neutral arbitrator, after waiving their right to a three-member panel of arbitrators. By agreement, a hearing was scheduled and held in Elma on March 19, 2009. Testimony was taken under oath or affirmation, and exhibits

were received. A verbatim transcript of the hearing was prepared and furnished to the arbitrator.

At the hearing, the parties stipulated that Michael E. de Grasse was to act as the sole arbitrator in determining all issues presented. The parties stipulated that the case is properly before the arbitrator, and agreed that there were no objections on grounds of procedural or substantive arbitrability.

At the conclusion of the hearing on March 19th, the parties agreed to submit briefs in lieu of oral closing arguments. The briefs were submitted in accordance with the parties' schedule, and received by the arbitrator on May 18, 2009. On that day this case was deemed submitted for a decision. This decision is the determination of the issues in dispute, based on the evidence presented, pursuant to RCW 41.56.450.

ISSUES PRESENTED

1. Whether a new provision should be established to require the Employer to evaluate each member of the bargaining unit annually on a form mutually agreeable to the Union and Employer. (Article 11)

2. Whether a procedure should be established for removal of certain disciplinary records from an officer's personnel file. (Article 11)

3. Whether an officers' bill of rights should be adopted. (Article 14)

4. How much should wages be increased during the three-year period of the parties' anticipated collective bargaining agreement? (Article 22, Appendix A)

5. Whether the shift differential should be increased.

6. Whether longevity pay should be increased.

FACTS AND CONTENTIONS

The City of Elma is a non-suburban town in Grays Harbor County, Washington. According to the Employer, its population is 3125; the Union has it at 3142. Elma employs five patrol officers and one lieutenant, all of whom are in the bargaining unit. The chief also works on the street, as needed, but is not a member of the bargaining unit. Before the FOP became the collective bargaining representative here, the Employer had a three-year agreement with Teamsters Local 252.

The last collective bargaining agreement between the Employer and its police officers expired on December 31, 2007, about three weeks after the FOP was certified as the Teamsters' successor. Negotiations ensued, an impasse reached, mediation failed and the case was referred for arbitration of the unresolved issues. The parties have agreed that resolution of outstanding issues will be retroactive to January 1, 2008.

The Public Employees' Collective Bargaining Act sets forth standards or guidelines to aid the arbitrator's

decision making. RCW 41.56.465. Pertinent here, are the "cost of living," and the wages, hours and conditions of "like personnel of like employers of similar size on the west coast of the United States." RCW 41.56.465(1)(e) and (2). The latter guideline entails formulation of a list of comparable employers. Characteristics of the comparables or comparators are then examined in the analysis of the parties' positions.

Here, the parties sharply differ concerning determination of the cost of living. They diverge little in their choice of comparables, while greatly diverging in the conclusions derived from purportedly comparable data.

As to the noneconomic matters, the Union seeks more procedural protection and process concerning performance evaluation and discipline. The Employer contends that all the requested process is undue given the absence of any real problems, and the small police department. With respect to economic issues, the parties agree that a wage increase is needed. The Employer seeks a cost of living increase, only, seeing no disparity between current compensation and that of comparable employees. The Employer rejects the Union's claim for a market adjustment in wages. Notwithstanding the parties' diverging contentions and conclusions concerning compensation, the Employer asserts no inability to pay.

STATUTORY STANDARDS

As noted above, two statutory standards or guidelines are germane: cost of living and comparable employers. Concerning the cost of living, the Employer argues that the All Cities CPI-U should govern. It asserts that this index has been used by this Employer in collective bargaining for about seventeen years. The Union responds that the Employer draws unsupported conclusions from this index. Additionally, the Union cites regional indices for Seattle-Tacoma-Bremerton and Portland-Salem. While the Union correctly notes that consideration of regional differences in the cost of living is mandated by statute, other factors are given more weight in the following analysis.

With respect to comparable employers, the parties' formulations overlap. The Employer lists Forks, Granite Falls, La Center, McCleary, Montesano and Raymond. The Union lists the same towns, and adds Ridgefield. Selection criteria used by the Employer are population, geographic proximity and assessed valuation. These criteria were used by the Union, along with three others: total number of officers; officers per 1000 people; and crimes per officer. Based on these criteria, the Union found all six towns listed by the Employer to be comparable, and added Ridgefield and Yelm. On the advice of its expert, the Union deleted Yelm. Thus, the parties differ in their choice of comparables with respect to only one employer.

Viewing Ridgefield in the light of selection criteria used by both parties, it should be excluded. Ridgefield's population is 4015; the average population of the six towns accepted as comparable by both parties is 2855. Elma's population is 3125, or 3142. Ridgefield is 104 miles from Elma; the average distance of Elma from the six towns accepted as comparable by both parties is 69 miles. The assessed valuation of Ridgefield is $690,239,577; the average assessed valuation of the six towns accepted as comparable by both parties is $190,371,121. The assessed valuation of Elma is $163,477,894. These variances between Ridgefield and the other undisputedly comparable towns militate against treating Ridgefield as comparable. Therefore, the comparable employers in this case are Forks, Granite Falls, La Center, McCleary, Montesano and Raymond.

ANALYSIS AND FINDINGS

I

Whether to evaluate the performance of bargaining unit employees is generally and traditionally a management prerogative. Here, the Union adduced no deficiencies in the collective bargaining relationship of the parties that would be rectified by the elaborate evaluation requirement it has proposed. None of the comparable employers has a collective bargaining agreement requiring performance

evaluations. Based on the evidence, the Union's proposal for performance evaluations should be rejected.

II

In conjunction with performance evaluations, the Union proposed a process for removing records of certain disciplinary actions from personnel files. While two comparable employers (Forks and La Center) provide for removal of disciplinary documentation, three do not (McCleary, Montesano and Raymond). The employer proposed as comparable only by the Union (Ridgefield) has no removal provision. Granite Falls limits the period during which it may use a written warning for further discipline; it does not require removal. Clearly, the Union's proposal gains little support from employers that it deems comparable. As with its position on performance evaluations, the Union offers no persuasive evidence of harm that would be remedied by this proposal.

In the Employer's view, the Union's proposal is unnecessary. Additionally, the Employer contends that removal of disciplinary records as would occur were the Union's proposal accepted could impair both the Employer and officers who would be benefited from a longer view of disciplinary history.

Based on the evidence, the Union's proposal for removal of disciplinary records should be rejected.

III

The Union proposal for an officers' bill of rights contains elaborate procedural requirements. Many of the proposed requirements are designed to limit the time during which a disciplinary investigation may be conducted. With several exceptions, the Union's proposal would require disciplinary investigations to be completed within 180 days of the date the Employer is properly notified of the alleged misconduct. Other provisions specify requirements governing witness interviews and granting officers rights to present rebuttal or mitigating evidence before the Employer makes a final determination.

In urging rejection, the Employer asserts that the "overwhelming regulation and protocol" is proposed "in the absence of any showing whatsoever that it is necessary, practical or desirable." (Employer's Brief at 22) The Employer notes that the current contract language provides officers' rights. In its examination of comparable employers, the Employer concludes that four have provisions like the current agreement (Forks, Granite Falls, La Center and Montesano), and two have none. Comparability analysis does not support the Union on this question.

The Montesano rights provision is closer to the Union's proposal than is the language found in the Forks, Granite Falls and La Center contracts. Those provisions are more

like that found in the parties' last agreement. Moreover, the Employer seems to be grounding its position on its view of a national standard. (Tr. 21:15-25) The statutory standards governing this case do not include national standards in comparability analysis. Absent a stipulation, consideration of national standards should be disallowed.

Based on the evidence and the above analysis, including that which addresses the Union's other noneconomic proposals, the Union's proposal for an officers' bill of rights should be rejected.

IV

Whether to increase wages is undisputed. Both parties propose substantial raises to take effect during the 2008-2010 contract term. As noted above, the Employer does not plead poverty. Thus, the question is how much?

The Union argues for a base wage increase of: 6% on 1-1-08; 3% on 7-1-08; 6% on 1-1-09; and 5% on 1-1-10. The Employer would reduce the seven-step pay grade classification system to a five-step system. By compressing the steps and increasing the base wage by 3% from step to step, the Employer calculates a 1.5% increase over 2007. To this increase, effective 1-1-08, the Employer adds 2.7% in recognition of the increased cost of living. Then, effective 1-1-09, the Employer proposes an increase in the base wage by 4%, and an increase of a like percentage on 1-1-10.

Each party advances its view of the cost of living in support of its position. The Employer relies on the All Cities CPI-U, and proposes a 2.7% increase for 2008. That index increased 2.7% from June 2006 to June 2007. The Employer does not explain why it chose June 2006-June 2007. Perhaps it used this period because that is the period used to compute cost of living increases in the agreement which expired on December 31, 2007. Nevertheless, there is no rationale offered for selecting that period for computing cost of living increases. It should be noted the same index increased more than 5% for the period June 2007-June 2008. Finally, the Employer offers little quantitative rationale for its proposed increases of 4% in 2009 and 2010 insofar as those are characterized as cost of living adjustments.

The Union's approach to the cost of living combines a rejection of the Employer's conclusions with its own analysis of indices as well as other factors. (Union's Brief at 56-60) Essentially, the Union uses consumer price indices to buttress its argument that the cost of living "compels a significant wage increase." (Union's Brief at 59) Yet, the Union's proposed wage increase "is not tied to the CPI." (Union's Brief at 59)

Neither party stakes its position on a compelling use of cost of living. The Employer asserts that consumer price indices are flat. The Union urges the contrary.

Either could be correct concerning the future. Both focus intently on comparable employers. It is that arena where the compensation question is resolved.

The Employer has developed its own approach to handling comparable data. The Employer has constructed an approach its calls "Total Cost of Compensation."

> The Employer offered a Total Cost of Compensation Chart for each of the years 2008 and 2009. The long-standing methodology utilized by Puget Sound Public Employers on behalf of the Employer contemplates base pay plus longevity pay plus education incentive divided by the net hours worked by the employee to achieve a net hourly cost of compensation. The net hours worked is derived by starting with the total hours scheduled (40 hours per week or 2,080 per year) less the number of vacation hours earned less holiday hours. The resulting "net hours" figure is the number of hours the employee will actually work if all vacation and holiday leave time is used. (Employer's Brief at 11)

Using this approach for a hypothetical officer with ten years of service who holds a BA or equivalent, the Employer concludes that its total cost of compensation is less than 1.5% lower than that of comparable employers. Thus, the Employer contends that bargaining unit employees, after receiving its offer, will be better paid than the average of comparable employers.

The Employer's approach as applied here is flawed factually and legally. On the facts, the hypothetical officer is just that. No one in the bargaining unit fits the description proffered by the Employer. Also, the cost approach, particularly with respect to vacation pay and

holiday leave, overlooks distinctions that undermine comparability among employers designated comparable. That is to say, the Employer has found no common denominator that permits a fair comparison of vacation and holiday leave.

In addition to factual flaws, the Employer's approach departs from governing statutory standards.

> Uniformed personnel--Interest arbitration panel--Determination--Factors to be considered
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> (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:
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> (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. For those employees listed in RCW 41.56.030(7)(a) who are employed by the governing body of a city or town with a population of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living.
>
> (2) For employees listed in RCW 41.56.030(7)(a) through (d), the panel shall also 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. . . . RCW 41.56.465(1) and (2)

Wages, hours and conditions are to be compared not a construct of costs.

Based on the statutory standards and the evidence, the best approach to determining the needed wage increase flows from the examination of the base wage rates of comparable employers. Although not stipulated, there appear to be no significant disparities between bargaining unit employees and comparables with respect to other components of compensation. Thus, the base wage rate is the talisman.

The goal here is to approximate parity in wage rates between bargaining unit employees and like employees of like employers. Accepting undisputed data provided by the Union, base pay for bargaining unit employees on December 31, 2007, was $3810 per month. The average base pay for comparable employees (those working for the six towns agreed to be comparable by both parties) is $4299. To achieve parity with comparable employers, an increase of 11% is necessary. To sustain parity is more problematic. The Employer's proposal neither achieves nor sustains parity. Rough approximations and attention to the differences between the parties' respective wage increase

proposals leads to a compromise figure.

Based on the evidence and the statutory standards, the base pay of bargaining unit employees should be increased 6% effective 1-1-08, 5% effective 1-1-09 and 5% effective 1-1-10.

V

Based on the foregoing analysis, the Union's proposed changes and increases in shift differential and longevity pay, should be rejected. The provisions found in the parties' last collective bargaining agreement concerning shift differential and longevity pay should continue without change.

AWARD

Based on the evidence and in light of governing statutes, the base wage rate of bargaining unit employees shall be increased 6% effective January 1, 2008, 5% effective January 1, 2009 and 5% effective January 1, 2010. All other requested changes are denied.

Dated this 12TH day of June, 2009.

Michael E. de Grasse
Arbitrator

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June 12, 2009

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Re: City of Elma and Fraternal Order of Police, Olympia Mountain Lodge 23; Interest Arbitration; PERC Case No.: 22956-I-08-521

Dear Mr. Coviello and Ms. Meglemre:

Enclosed please find my opinion, findings and award. Also enclosed is my invoice.

Thank you for selecting me as your arbitrator in this interesting case.

A copy of the enclosed has been sent to the Public Employment Relations Commission in Olympia, Washington.

Very truly yours,

Michael E. de Grasse

Michael E. de Grasse

MEdG/cb
Enc.
cc: PERC with decision only