

BEFORE THE ARBITRATOR

In the matter of the arbitration  
of a dispute between the:

CITY OF ORTING

and

ORTING POLICE GUILD

CASE 26508-I-14-0645

INTEREST  
ARBITRATION  
AWARD

Makler Lemoine and Goldberg, by *Sean Lemoine*, Attorney at Law, for the union.

Kenyon, Disend Law Firm, by *Bruce L. Disend*, Attorney at Law, for the employer.

PROCEDURAL MATTERS

On May 29, 2014, the Executive Director of the Public Employment Relations Commission certified that the City of Orting (“the employer” or “the city”) and the Orting Police Guild (“the union”) had reached impasse in bargaining for a successor collective bargaining agreement (“CBA”). The Executive Director certified four issues for interest arbitration, three of which remained at the time of hearing. The parties have waived their right to appoint partisan arbitrators and, pursuant to WAC 391-55-210(2), asked the Commission to appoint a staff member to serve as arbitrator. The Commission appointed Karyl Elinski, who conducted a hearing on October 7, 2014, in Orting, Washington. All witnesses testified under oath. The parties retained the services of a court reporter, who prepared the transcript of testimony presented at the hearing. The parties filed post-hearing briefs on November 17, 2014.

BACKGROUND

The city of Orting is located in Pierce County, in the Orting Valley between the Puyallup River and the Carbon River. It is approximately 30 miles northwest of Mount Rainier, an active volcano. Due to its location, the city endures flooding once approximately every four years, inundating city neighborhoods, and placing stress on storm, sewer, and water systems. In addition to the flooding, the city is at risk of a lahar (a mud flow caused by an explosion, or a collapse of large rock formations) from Mt. Rainier. The city sounds monthly sirens to help keep its residents prepared for the danger of a lahar.

The city's workforce consists of 34 employees. Eleven of the employees work in the police department (including the Police Chief and one unfilled bargaining unit position). The remainder of the employees belong to the city's only other bargaining unit (a public works and clerical unit represented by another union), or they are unrepresented. The most recent CBA between the parties expired December 31, 2013. The parties seek an arbitration award covering a CBA for the period beginning January 1, 2014, and ending December 31, 2016.

The parties sought resolution of the following three issues at interest arbitration:

Article 13 – Health Insurance

Article 24 – Premium Pay (Longevity)

Appendix A – WAGES

### STATUTORY CRITERIA

In order to avoid strikes by public safety officers (and other specified categories of public servants), the Washington State legislature adopted RCW 41.56.450, which provides for interest arbitration to resolve disputes regarding the terms of the parties' CBAs. Arbitrators selected to issue interest arbitration decisions are required by the statute to consider the following factors in reaching a decision:

RCW 41.56.465(1)and(2):

- (1) . . .
  - (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 [arbitration] 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.

The weight that should be given to the criteria is not specified. I have reviewed each of the specified criteria below.

APPLICATION OF STATUTORY CRITERIA

Constitutional and Statutory Authority of Employer

Neither party to this proceeding raised any issues relating to the employer’s constitutional or statutory authority.

Stipulation of the Parties

After this matter was certified for interest arbitration, the parties reached agreement on Article 8, Hours of Work. This was the only stipulation relevant to this case of which the arbitrator is aware.

Cost of Living

In setting wages in their previous CBA, the parties relied on the Consumer Price Index (CPI-U) June-to-June for the Seattle-Tacoma-Bremerton area. Although each party now proposes flat percentage wage increases for the successor agreement, the CPI-U is nevertheless relevant. The U.S. Department of Labor, Bureau of Labor Statistics provides the following information on the consumer price index for the Seattle-Tacoma-Bremerton area:

**Seattle-Tacoma-Bremerton CPI-U**

	<b>2014</b>			
	Bi-monthly	Annual	Bi-monthly	Annual
<b>February</b>	0.8	1.8	0.7	1.2
<b>April</b>	0.4	1.2	1.6	2.4
<b>June</b>	0.8	1.4	0.4	2.0
<b>August</b>	0.0	1.1	-0.2	1.8
<b>October</b>	0.0	0.6	0.3	2.1
<b>December</b>	-0.7	1.3	-1.1	1.7

Change of Circumstances During the Pendency of the Proceedings

The parties have not made the arbitrator aware of any interim changes of circumstances.

Other Factors Normally or Traditionally Taken Into Consideration

The parties raised a number of issues related to this category for consideration by the interest arbitrator.

*Ability to Pay*

Like many other employers in the state of Washington, the city has been hit by the economic recession that began in 2008. Like other employers, the city has had to reduce spending to address the challenge brought by decreasing sales and tax revenues. The employer's reserves have shrunk from \$2.8 million in 2006 to \$1.8 million at the time of the hearing. The employer's primary sources of revenue - property taxes and business and occupation taxes - are already at maximum levels. The city has the highest property tax rate in Pierce County, and one of the highest rates in the State of Washington. The city is unwilling to seek an increase in utility taxes, its only other possible source of revenue, due to the already high tax rates in the city. The city emphasized that it has the lowest general fund balance of all of its comparators, and it devotes roughly 58 percent of its total budget to the police department.

During the recent economic downturn, the city laid off four of its full-time equivalent positions, representing roughly ten percent of its work force. Although it did not reduce the number of police officers, it rescinded an offer of employment to Officer Edward Turner just two days before he was set to begin working as a police officer. The city eventually hired Turner. It is unclear when the original offer of employment was rescinded, but Turner testified that he had been an officer with the city for five years at the time of the hearing. According to city administrator Mark Bethune, who began working for the city in 2004, there are currently fewer staff members working for the city than there were in 2004. Bethune testified, however, that the city invested a great deal of money into building a new public-safety building and acquiring a fleet of ten police cars.

Orting Mayor Joachim Pestinger testified about the increased financial risk to the city that could result from flooding of the two local rivers, and the risk to the community posed by the possibility of a lahar. Neither party offered any evidence with respect to the dangers of a natural disaster relative to any of the comparator communities.

#### *Recruitment and Retention*

Bethune testified that the city had no difficulties with recruitment and retention, and specifically mentioned that a number of bargaining unit members had longevity ranging from close to 20 years, to as long as 40 years. The city has also been satisfied with the list of potential recruits it received for a recent job posting in the police department. Although the union advanced its longevity proposal based on arguments for recruitment and retention, it presented no testimony to support this proposal.

#### *Internal Equity*

Bethune testified that health insurance premiums have increased by roughly 30 percent in the last five years. All city employees, except members of the police bargaining unit, switched from an AWC Health First Zero Deductible plan (“Health First Zero”) to an AWC Health First \$250 deductible plan (“Health First 250”) on January 1, 2015. The city hopes to place the union on the same plan. The city also advanced the argument that wage increases for this bargaining unit should be in line with those accepted by the only other bargaining unit in the city.

#### *Comparators*

RCW 41.56.465(2) requires arbitrators to compare “like employers of similar size” on the west coast. The statute is silent on how the arbitrator should make that comparison. Here, each of the parties evaluated its comparators using a common analysis tool: population and assessed valuation. The parties have chosen jurisdictions which they purport to fall within the band of 50 percent below and 150 percent above, with some preference for geographic proximity. I accept that approach as reasonable in this case, as it yields many jurisdictions falling into the same labor pool.

The parties have never before been to interest arbitration, and they have never agreed to a specific set of comparators. They do agree on six comparators, however, which include: Black Diamond, Buckley, Fircrest, Milton, Pacific, and Yelm. At the hearing, the union acknowledged that one of the city's proposed comparators, Steilacoom, is also an acceptable comparator. In rendering my decision, I will adopt these seven agreed upon comparators.

*The Employer's Comparator Analysis*

In addition to the seven comparators listed above, the employer calls for the inclusion of Duvall. Its justification for including it is that it is within the 50 percent to 150 percent range in both assessed valuation and population, and it is situated in relatively close geographic proximity to the city.

*The Union's Comparator Analysis*

The union rejects the employer's inclusion of Duvall and advances two additional comparators of its own: Brier and DuPont. The union's compensation analyst, Deb Feagler, who works for the union attorney's law firm, described her method of choosing the union's comparators as follows: with respect to population, the union chose comparators within the 50 percent to 150 percent range. With respect to assessed valuation, she attempted to stay within the same range. She explained, "[s]ometimes it doesn't quite work out that way. [Geographic] proximity may be taken into account." The union acknowledged that four of its comparators exceeded the 50 to 150 percent range for assessed valuation. Feagler included Brier on the union's list upon request from union attorney Sean Lemoine. Brier is geographically farthest from all of the parties' comparators, and is located in Snohomish County.

*Arbitrator Analysis*

The city has an estimated population of 7,065 (as of April 1, 2014) and an assessed valuation of \$378,099,092 (as of 2013). The seven common comparators fall within the 50 percent to 150 percent band of population:

<b>City</b>	<b>Population</b>	<b>Assessed Valuation</b>
Yelm	7,470	\$567,993,293
Milton	7,185	\$583,971,779
<b>Orting</b>	<b>7,065</b>	<b>\$378,099,092</b>
Pacific	6,760	\$525,337,117
Fircrest	6,540	\$569,373,361
Steilacoom	6,040	\$591,241,028
Buckley	4,370	\$318,871,406
Black Diamond	4,170	\$499,715,546

The cities found on both the employer's and the union's list lay in relative close geographic proximity to Orting, potentially drawing from the same labor pool. Although Orting is the third highest in population, it is the second lowest in assessed valuation among the seven cities. The city with the lowest assessed valuation, Buckley, is due to receive a significant boost of \$5.4 million into its general fund due to the sale of a natural gas facility. I reject the employer's addition of Duvall, because its assessed valuation is significantly higher than the others on the list (approximately \$700 million). I also reject the union's addition of Brier, due to its location, and DuPont, with its valuation of \$1.17 billion. DuPont's assessed valuation far exceeds the 150 percent maximum range. These additional comparators are not needed for the arbitrator to make an informed decision.

### WAGES

The employer offers the following wage increases to the union:

<b>Contract Year</b>	<b>Proposed Wage Increase (Employer)</b>
2014	1%
2015	1.5%
2016	2.0%

The union proposes the following wage increases:

<b>Contract Year</b>	<b>Proposed Wage Increase (Union)</b>
2014	4%
2015	3%
2016	3%

In addition, the union proposes to eliminate the first two steps of the eight-step salary schedule, reducing the schedule to six steps. Employees advance a step on their employment anniversary date. Each step on the salary schedule represents a 3 percent increase. The current longevity pay structure provides that employees receive an increase to their base pay as follows: 2 percent upon completion of ten years of service; 3 percent upon 15 years of service; and 4 percent upon completion of 20 years of service. The union proposes to increase the longevity base pay as follows: 2 percent upon completion of 8 years of service; 3 percent upon completion of 12 years of service; 4 percent upon completion of 16 years of service; and 5 percent upon completion of 20 years of service.

Employer's Position

The employer does not deny that the police officers in this bargaining unit are behind their comparators in wages. The city argues that its wage offer is consistent with its bargaining history. The city further states that its past negotiations with the union have resulted in modest wage increases, and that this is the first time the parties sought interest arbitration to settle their differences. An interest arbitration award, the city argues, should closely approximate what the parties would have agreed on if they were able to settle the contract on their own after bargaining in good faith. The city further argues that its offer is consistent with its support of the police department. Fifty-eight percent of the city's total revenues are earmarked for the police department. When the city has experienced better economic times, the city notes that it has poured its resources into improving the police department's headquarters and equipment.



The city argues that its offer is consistent with the limited economic resources of the city, and takes into account the reduced revenues and decline in general fund balance it has suffered since the economic decline of 2008, and its subsequent slow recovery. The city also has limited prospects for additional revenue given its lack of physical space for growth and the relatively small commercial activity within the city's boundaries.

The city additionally argues that its offer takes into account the very real danger of a natural disaster affecting the city and its inhabitants. In recent years, there was flooding of the rivers surrounding the community. The city is also at risk of a lahar, which has the potential of wreaking untold amounts of damage to the city's infrastructure and residents.

Last, the city argues that its proposal promotes its important objective of internal equity. The only other bargaining unit in the city accepted its wage proposal, and the proposal has been imposed upon the non-represented employees. Traditionally, city employees are paid less than their counterparts at other like-sized cities. In the words of city administrator Mark Bethune: "If you want to work for Orting, you got to love working there just because, from my job to all the other jobs, we just can't pay what these other cities are paying."

#### Union's Position

The union's position with respect to its wage proposal is that failure to address the economic issues facing this bargaining unit will place union members further behind their comparators at all levels of employment. The union's comparable analysis shows the union's wages behind the market comparables as follows: 5 year employees: 14.3 percent; 10 year employees: 9.4 percent; 15 year employees: 9.5 percent; 20 year employees: 9.5 percent. The union proposes to eliminate the first two steps of the wage scale to help attract new employees, making the base pay for new hires more competitive with its comparators. Consistent with this proposal, the union proposes to reduce the threshold for longevity pay to make it more consistent with its comparators. The union also proposes to reduce the number of years of accrual between each longevity step. More than half of the city's own comparators receive longevity pay at or upon completion of five years of employment. In addition, the city's base pay and top step pay are the lowest of all of the

comparators. The union's proposal for changes to the pay scale and longevity will help to begin to address these issues. The city's other bargaining unit receives a longevity premium after 25 years of service.

Last, the union's wage proposal is designed to keep union members from falling even farther behind their comparators. It conducted its market summary using "total compensation," analyzing hourly rates derived from wages, hours of work, and specialty pay. The union's market summary places them at an average of 10.7 percent behind their comparators when bargaining unit wages are considered at the five, ten, fifteen and twenty year marks. Its proposed wage increases are in keeping with what comparators are providing their employees in the coming years of the contract.

#### Arbitrator Analysis and Award

Using the seven agreed upon comparators, my analysis shows that the union's wages are behind by 7.7 percent at the entry level, and by 12.2 percent at the top step. The employer's wage proposal for each of the three contract years is significantly lower than the comparators. In 2014, the average wage increase was 2.4 percent. The union's proposal would go a long way toward helping the bargaining unit catch up to its comparators. Despite the wage disparity, however, there was no evidence of recruitment or retention problems in the police department.

The employer acknowledged that its reserves have been slowly increasing, due in large part to the Washington State Auditors' requirement that the city terminate certain funds. The city incorporated the terminated funds into the general fund. The city has also experienced a small budget surplus the last three years. That small surplus has been incorporated into its reserves.

The employer placed heavy emphasis on its argument that an interest arbitration award should approximate a settlement the parties would have reached if they had successfully completed bargaining in good faith. The employer's argument was recently and soundly rejected by Marvin L. Schurke serving as interest arbitrator. Acknowledging his nearly five decades of experience in public sector labor relations, most of them as Executive Director of the Washington Public

Employment Relations Commission, Schurke observed that interest arbitration awards adopting that argument were in violation of RCW 41.56.450. “Interest arbitration under Chapter 41.56 RCW is a statutory proceeding, not a forum for itinerant philosophers to dispense their own brand of industrial justice. None of [the interest arbitration awards relying upon this argument] provide any basis to add to or subtract from the criteria set forth by the Washington State Legislature in RCW 41.56.465.” In addition, Schurke observes, “[t]he employer’s ‘ability to pay’ and/or ‘fiscal responsibility’ arguments can only be considered under the ‘other factors’ language in RCW 41.56.465(1) (e).” *Cowlitz County and Cowlitz County Deputies Guild*, PERC Case 26333-I-14-0638 (Schurke, 2015).

The city’s argument that it faces economic uncertainty due to the danger of a natural disaster, while novel, is not persuasive. One does not have to look too far into the past to find that many areas in the State of Washington are prone to natural disasters: fires, mudslides, earthquakes, the risk of tsunami, and flooding are all costs people pay to live in the Northwest. While Orting may be uniquely situated to bear the impact of a lahar, none of the statutory criteria in RCW 41.56.465 considers this risk. The city provided no cases or information from its comparators regarding such risks. Although the city may suffer calamitous economic consequences from such an unfortunate event, that risk is not typically considered in interest arbitration awards, and I respectfully decline to consider it in this case.

I am persuaded that the city is struggling to maintain enough reserves to allow it to function. On the other hand, the increases sought by the union are designed to bring the union’s wages closer to the average of the comparators. I do not believe the city’s budget can absorb the full increases sought by the union, but the union wages should not be pushed even further behind the wages of its comparators.

The union’s proposal to eliminate the first two steps on the wage scale will affect only one or two current employees, and will not add significant costs to the employer. In addition, changes to the longevity scale should help to close the gaps between the union and its comparators without affecting all employees’ wages at one time. While the union proposes to reduce the number of

years between each longevity increase from five to four, that reduction is not supported by the comparators. The most common interval between longevity increases is five years, and I see no reason to change that.

I believe the following award will keep the union from falling even further behind its comparators, while helping the union to remain competitive in the marketplace without breaking the city's reserves:

Effective January 1, 2014: 2.25%

Effective January 1, 2015: 100% CPI-U (June to June), minimum 2%

Effective January 1, 2016: 100% CPI-U (June to June), minimum 2%

I also award the union's proposal to eliminate the first two steps on the wage scale (Steps A and B). Although, I decline to award the union's proposal to compress the number of years between longevity steps from five years to four, I do believe an additional step is warranted. I award an increase to the longevity base pay as follows: 2 percent upon completion of 8 years of service; 3 percent upon completion of 13 years of service; 4 percent upon completion of 18 years of service; and 5 percent upon completion of 23 years of service.

#### HEALTH AND WELFARE BENEFITS

In 2014, employees in this bargaining unit were covered under Health First Zero (which the employer referred to as the "Cadillac plan"). Union members' premium sharing under this plan is as follows: \$0.00 for employee only; \$80.00 for the first dependent; \$160.00 maximum for two or more dependents. The employer also offers a Group Health plan, which was not at issue in this case. The city currently provides vision and dental insurance with deductibles as follows: \$0.00 employee only; \$15.00 for the first dependent; and \$30.00 maximum for two or more dependents.

Beginning in 2015, the employer proposes to change its plan to Health First 250. It proposes premium sharing as follows: \$0.00 for employee only; \$80.00 for the first dependent; and \$160.00

maximum for two or more dependents. For 2016, it proposes \$0.00 employee only; \$100.00 for the first dependent; \$200.00 maximum for two or more dependents. The employer proposes to change employee contributions for dental and vision insurance in 2016 as follows: \$0.00 employee only; \$20.00 for the first dependent, and \$40.00 maximum for two or more dependents.

The union proposes to maintain the current Health First Zero plan with the following changes to employee contributions for the 2015 and 2016 contract years: 5 percent of the total cost of premium for employee; 10 percent for one or more dependents. It proposes the same premium sharing for vision and dental insurance.

#### Employer Position

Rising costs prevent the employer from continuing to provide the Health First Zero plan. The cost of the plan has increased by 30 percent over the past five years, and has increased an additional six percent for 2015. Cost escalation is likely to continue, and the city has no control over the increases. All other city employees have switched to the new plan effective January 1, 2015.

In addition to stemming the tide of rising health care costs, the employer has a great interest in internal equity. It is unfair, it asserts, for the rest of its employees to make sacrifices while the police union is excused. Such an arrangement is likely to lead to resentment. Having employees on two different health care plans will also adversely affect administrative duties, forcing the city to keep two sets of books.

#### Union's Position

Of the comparators used by the city, five of eight provide the Health First Zero plan. The union has made a significant concession by offering to contribute five percent of employee-only premiums. In addition, the premium-sharing arrangement for vision and dental benefits is an anomaly among the comparators. The city's actual cost for these plans is the same for an employee-only or an employee with an unlimited number of dependents. The employer nevertheless requires additional contributions for dependent coverage.

Arbitrator's Analysis and Award

In *City of Bellevue and IAFF, Local 1604*, PERC Case 23780-I-11-0563 (Rosenberry, 2011), the interest arbitrator observed:

Many arbitrators, including this one, find the disparity troublesome and do not desire to see the interest arbitration process become a divisive wedge between employees. Arbitrator Howard S. Block shared this concern and commented in his June 30, 1982, *Bellevue* decision stating: 'Deviations from a uniform benefit pattern can be disruptive to employee morale. In short, comparison among employee groups of the same employer are no less important than comparisons with other employers.'

(citations omitted)

Recently, Arbitrator Schurke offered a contrary view of reliance on internal equity. Schurke observed: "[t]he internal equity argument relentlessly pursued by this employer has no direct basis in the statutory criteria, and cannot be made to overrule or obliterate the external" noting that the employer was more overly pessimistic than warranted. *Cowlitz County and Cowlitz Deputies Guild*, PERC Case 26333-I-14-0638 (Schurke, 2015).

I decline to accept the employer's internal equity argument on health care. I recognize that the wages and longevity awarded in this case will place a further burden on the employer's limited financial resources. The rising costs of health insurance have forced this employer to look for ways to contain costs. Given the history and uncertainty of premium increases, and the wage increases awarded in this decision, I find the employer's proposal on health care to be reasonable. I therefore award that the bargaining unit members be switched to the AWC Health First 250 deductible plan, with the following premium sharing structure: For 2015: \$0.00 for employee only; \$80.00 for the first dependent; and \$160.00 maximum for two or more dependents. For 2016: \$0.00 employee only; \$100.00 for the first dependent; \$200.00 maximum for two or more dependents. For ease of administrative burden, and to allow employees the opportunity to adjust to the change in plan, implementation of my award on health care shall be deferred until July 1, 2015, or as soon thereafter as is administratively possible.

The employer's vision and dental benefits appear to be an anomaly. The premiums for coverage are the same regardless of whether the insurance is for employees only, or for employees plus dependents. Given the single premium structure for all employees, regardless of whether they choose to cover dependents, I do not see how the employer's rising costs for vision and dental insurance can be linked to a need to increase dependent premium sharing. I decline to award the employer's proposal on this matter, and I award current contract language.

### SUMMARY OF AWARD

#### **Article 13 – Health Insurance**

2015: (effective July 1, 2015, or as soon thereafter as administratively possible) AWC Health First 250 plan, \$0.00 for employee only; \$80.00 for the first dependent; and \$160.00 maximum for two or more dependents.

2016: AWC Health First 250 plan, \$0.00 employee only; \$100.00 for the first dependent; \$200.00 maximum for two or more dependents.

In addition, I award current contract language for vision and dental premium cost-sharing.

#### **Article 24 – Premium Pay (Longevity)**

I award an increase to the longevity base pay as follows: 2 percent upon completion of 8 years of service; 3 percent upon completion of 13 years of service; 4 percent upon completion of 18 years of service; and 5 percent upon completion of 23 years of service.

#### **Appendix A - WAGES**

Effective January 1, 2014: 2.25%

Effective January 1, 2015: 100% CPI-U (June to June), minimum 2%

Effective January 1, 2016: 100% CPI-U (June to June), minimum 2%

I also award the union's proposal to eliminate the first two steps on the wage scale (Steps A and B).

ISSUED at Olympia, Washington, this 13<sup>th</sup> day of February, 2015.

KARYL ELINSKI, Arbitrator

A handwritten signature in blue ink that reads "Karyl Elinski". The signature is written in a cursive, flowing style.