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Title: City of Ashland and Ashland Firefighters Assoc Local 1269

Date: March 1, 2001

Arbitrator: [Katrina I. Boedecker](#)

Citation: 2001 NAC 104

In the matter of the arbitration of an interest dispute between: CITY OF ASHLAND and ASHLAND FIREFIGHTERS ASSOCIATION, LOCAL 1269 IAFF, Union. (Wage Issue) IA-12-00.

JURISDICTION

On August 1, 2000, the undersigned arbitrator was notified that she had been selected to hear an issue in interest arbitration resulting from an impasse in bargaining between the City of Ashland and the Ashland Firefighters Association, Local 1269 IAFF. The selection of the arbitrator, and the interest arbitration proceedings which followed, were conducted pursuant to the ORS 243.742 et seq.

The arbitration hearing was originally scheduled for December 7, 2000, in Ashland, Oregon, but it was canceled that morning due to weather conditions. The matter was then heard January 11, 2001, in Portland, Oregon. Twenty-eight exhibits were offered by the union and admitted into evidence; thirty exhibits were offered by the employer and admitted into evidence. The record was completed when the parties filed post hearing briefs with the arbitrator by February 12, 2001. Due to the February 28, 2001, earthquake in Washington state, the arbitrator's office was disrupted for a period of time. The arbitrator requested, and the parties did not object to, additional time to issue this opinion and order.

PERTINENT STATUTORY LANGUAGE

The State of Oregon regulates interest arbitration procedures through the Oregon Revised Statutes (ORS). ORS 243.746 provides, in part:

(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, opinion 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.

[Emphasis by underline added.]

STATEMENT OF THE ISSUE

The parties did not submit a stipulated statement of the issue at the hearing. In its written argument, the city frames the issue as:

Should the parties' July 1, 2000, to June 30, 2003, collective bargaining agreement contain the provisions of the city's last best offer or the union's last best offer?

It is clear from both parties' arguments at the hearing and in writing, that only one item remains in dispute: Wages.

BACKGROUND

The union testified at the hearing that "Ashland is the best of what Oregon has to offer." It is located in the southwestern part of the state, which is rated as one of the major tourist areas within Oregon. The city's strives to balance small town values, brought by its settlers in 1874, with the needs of a growing community of approximately 19,000 citizens.

Ashland has a mayor/council form of government, with a full time city administrator. The city provides a full range of municipal services including police and fire protection, parks and recreation facilities/activities, streets, airport, planning, senior program/hospital, and general administration services. The city also operates the water, sewer and electrical utility systems as well as the ambulance and rescue service. Ashland employees 204 people. The city council is assisted by 20 advisory boards and commissions on which 120 Ashland citizens sit. [\(1\)](#)

Bargaining Unit and Retention of Employees

The bargaining unit includes firefighters, engineers and captains. Currently there are 23 employees in the unit: 3 captains; 6 engineers, and 14 firefighters. All but one firefighter holds a paramedic EMT certification, which carries a premium pay.

Over the last five years, eight employees have left the department for firefighter jobs with other employers. Six took jobs at larger departments or fire districts; two went to comparably sized departments. Generally, the city hires firefighters every year. In recent years, it has received 18 to 31 applications for two to three job openings. While half the bargaining unit has been employed by the city for more than 8 years, one-quarter has been with the city for less than 3 years.

Ashland's Strategic Plan and Budget

Ashland states that its vision is to have a city government that helps create an environment within which its citizens are able to live happy and productive lives by having a healthy and sustainable environment; an opportunity to acquire the basic necessities of life; a sound infrastructure that meets its needs for transportation, energy, information and communications, health care, water and waste management and a variety of social, recreational, business and cultural opportunities.

Its mission statement is:

To ensure that all people in Ashland live in a safe, strong, and caring community, the City of Ashland seeks to enhance the quality of life and promote the self-reliance, growth, and development of people. To these ends, the City of Ashland will strive to provide resources and services to meet basic human needs.

Among the goals of its strategic plan are: Develop a comprehensive transportation, transit and parking plan; begin the design phase of Siskiyou Boulevard; develop a long-range affordable housing program; begin construction of the Hillah temple, fire station and library; finalize the riparian ordinance; and accelerate the development of bike lanes, bike paths and sidewalk construction.

Property taxes account for 2.11% of the total revenue anticipated in the 2000-2001 budget year. ⁽²⁾Its general fund revenue for fiscal year 2001 is nearly \$11 million dollars. This is an increase of 30% over revenues from 1998. For the past three years, the city has had a budget surplus carry over averaging 15% per year. The city is involved in \$28 million worth of capital improvement projects.

For its operating funds, the city relies to a significant extent on a user tax from its utility services. Receipts from utility fees and other charges are approximately \$40 million with a carryforward of approximately \$25 million.

The fire department budget for 2000-2001 is \$3,221,400. The city allocated \$2,282,000 from its general fund to the fire department. Personnel expenditures account for \$1,816,000 of the department's budget. Another \$29,000 is earmarked as capital expenses for equipment. The remaining money covers all other expenses of the department.

Last Best Offers

ORS 243.746(5) directs that the interest arbitrator must select the last best offer of either the employer or the union. The employer's last best offer is:

FIREFIGHTERS AND ENGINEERS

July 1, 2000 3%

January 1, 2001 2%

July 1, 2001 CPI (3% to 5%)

January 1, 2002 1.5%

July 1, 2002 CPI (3% to 5%)

January 1, 2003 1%

CAPTAINS

July 1, 2000 3%

July 1, 2001 CPI (3% to 5%)

July 1, 2002 CPI (3% to 5%)

The union's last best offer is:

FIREFIGHTERS AND ENGINEERS

July 1, 2000 3%

January 1, 2001 3%

July 1, 2001 3%

January 1, 2002 3%

July 1, 2002 3%

January 1, 2003 3%

CAPTAINS

July 1, 2000 3.5%

July 1, 2001 3.5%

July 1, 2002 3.5%

The exact three-year wage increase proposed by the employer is impossible to determine since it is dependent on the consumer price index during the second and third years of the contract. The range of the employer's proposed wage increase, uncompounded, is from 13.5% to 17.5% for firefighters and engineers and 9% to 13% for captains. The union's offer over three years, uncompounded, is 18% for firefighters and engineers and 10.5% for captains.

POSITIONS OF THE PARTIES

The union argues that in this case the arbitrator need only consider three of the statutory factors: the city's ability to pay; the city's ability to retain firefighters; and the total compensation of firefighters compared to compensation of firefighters in comparable Oregon communities. The union contends that these three factors all favor the union's proposal.

The employer contends that the interest and the welfare of the public is met by the city's last best offer and that none of the secondary factors override it. It emphasizes that Ashland does meet the interest and welfare of the public by providing a qualified, competent fire department. The employer asserts that the

interest and welfare of the public also encompasses the taxpayers', residents' and other city employees' perception that the wage increases of public employees are fair and justified by understandable factors. It contends that a wage increase that fits an established pattern is defensible and understandable, as is a wage increase based on the cost of living.

DISCUSSION

Primary Statutory Criteria

ORS 243.746 (codifying Senate Bill 750) directs that interest arbitrators must base their findings and opinions on certain criteria, giving first priority to the interest and welfare of the public. Senate Bill 750 has helped to bring parties closer together in bargaining. Clearly, having an employer and its union agree on wages, hours, and terms and conditions of employment is in the best interest of the public.

In the instant case both parties do agree on certain aspects of a wage increase:

- Both the city and the union propose annual increases for all job classifications on July 1st of each year.
- Both the city and the union propose "equity" or "catch-up" adjustments on January 1st of each year for firefighters and engineers.
- Both the city and the union propose lower total wage increases over the life of the contract for captains than for firefighters and engineers.

In the present case, neither the employer nor the union have offered proposals that are fundamentally at odds with the interest and the welfare of the public. Where both parties have reasonable proposals, they may, very well, both be within the public interest. [\(3\)](#)

Costs of proposals--

Since the city's proposal bases the second and third year wage increase on the CPI, the total cost difference between the two last best offers depends on what happens to the CPI. In addition, July

increases occur at the start of the contract year and therefore are twice as expensive as the same increase implemented the following January. The city's proposal is front-loaded, with the larger CPI increases in July and the smaller equity increases in January. As a result, the city admits that depending on the CPI, it's proposal could actually cost more and put more money in the pockets of employees than the union proposal.

During the first year of the contract, the cost of the union's proposal is approximately \$5,000 more than the city's proposal. During the second year of the contract, if the CPI is 3% or less, the July wage increase under the city's proposal would be 3% and the total percentage increase for firefighters and engineers for the year would be 4.5%. In that event, the union proposal for firefighters and engineers, at 6% total, is more expensive. But, if the CPI is 5% or more in the second year, the July wage increase under the city's proposal would be 5% making the total percentage increase for firefighters and engineers 6.5%. Under that CPI, the union's proposal for firefighters and engineers, at 6% total, is less expensive.

During the third year, if the CPI were 3% or less, the total percentage increase for firefighters and engineers under the city proposal is 4%, compared to the union's 6%. If the CPI is 5% or more, the annual percentage total increase for firefighters and engineers, under both the city's and union's proposal, is 6%.

For captains, the cost of the union's proposal is 0.5% more expensive during the first year than the city's proposal. For the second and third years of the contract, the city's proposal for captains is less expensive if the CPI is 3% or less; but the city's proposal is more expensive than the union's if the CPI is over 3.5%.

The cumulative additional cost for all employees under the city and union proposal would be almost identical if the CPI were 5% or above in the second and third years.

Both parties offered exhibits costing out their proposals. The cost calculations are somewhat different because the city and the union used different methodologies. However, they both agree that the arbitrator's decision does not turn on total cost.

Mission and strategic plan --

The record establishes that Ashland is a well managed city. Its citizens should be proud of its sound financial health and ambitious improvement projects. Certainly, the city's own adopted mission statement and developed strategic plan clearly reflect the interest and welfare of the public as the city, itself, defines it. Its mission statement includes ensuring that its citizens "live in a safe, strong, and caring community", enhancing "the quality of life" and promoting "the self-reliance, growth, and development of people." Ashland's strategic plan includes numerous construction projects as well as the development of numerous comprehensive plans.

Conclusion --

I find that in a city managed as well as Ashland is, while having as many ambitious planned future improvements for its citizens, the interest and welfare of the public is best served by having a set, established, predictable wage increase in place for accurate budgeting purposes. The union's last best offer meets this standard for the interest and welfare of the public.

Under the union's proposal, the city can budget for the outbound three years with pinpoint accuracy. Without having to budget for a potential span of financial liability (3% to 5%) in the fire department bargaining unit, the city will have more certainty about how much money it has to fund all the services and projects it offers its citizens.

This award is NOT a death knell to cost of living "corridor" wage increases based on minimums and maximums. This decision turns on the specific facts of the record before me:

- The parties agree that this decision should not turn on cost.
- There is a potential that the employer's proposal will grant greater increases than the union's proposal. [\(4\)](#)
- The city has ambitious projects and designs in its strategic plan that it has determined best serve the interests of its citizens.

Knowledge of the actual costs of labor settlements enhances the city's ability to plan accurately and is in the best interest and welfare of the public for the City of Ashland for the next three years. This is the rationale for granting the union's last best offer for settlement.

Secondary Statutory Criteria

Having followed the statutory direction to develop my findings and opinions giving first priority to the interest and welfare of the public, I will now examine the secondary priorities listed in the statute.

Ability to Pay --

The city is on sound financial footing. In light of the city's strong financial health, the impact of either of the two proposals is fairly negligible. The city's proposal allows for raises of up to 5%, based on the CPI.

If the CPI is at or over 5%, the city's proposal will actually cost more than the union's proposal. If the city is willing to pay more than the union's proposal, there can be little doubt that the city has the ability to meet the costs of the union's proposal.

The CPI is currently on the rise, but it is impossible to tell in 2001 if it will meet or exceed 5% by 2003. Even if one relies on a more conservative estimate of costs, however, the union's proposal will have only a minor financial impact on the city. Over the course of the three-year contract, the estimated cost of the union's proposal is \$54,800 more than the city's proposal; an average of \$18,250 per year. This is less than 0.17% of the annual general fund revenues, based on the 2001 figures, which will increase over the future years.

Ability to attract and retain personnel --

Like virtually all local government that provide fire protection, the city has little problem attracting applicants for open firefighter positions. However, retaining firefighters has been more challenging. In the last five years, eight firefighters, over one third of the bargaining unit, have left Ashland for firefighting jobs in other departments.

The problem with such a turnover rate is twofold. First, experienced firefighters leave the city necessarily creating a less experienced workforce. This could potentially impact the ability of the city to provide the quality fire protection service its citizens expect and deserve. Second, turnover creates additional costs in recruiting and training. Too often, a firefighter will begin to work for a city, gain valuable training and experience at the city's expense, and then leave to work for an employer who offers a more generous compensation package. As these experienced firefighters leave, the city must repeat the cycle and expend more resources training more new firefighters.

While Ashland's turnover rate is not at a crisis stage, the recent exit of a third of its bargaining unit to other fire departments does suggest that a more competitive wage package, to maintain experience firefighters, would serve the city and its citizens well.

Overall compensation --

The employer points out that it is one of a shrinking number of cities that pays the full premium for full-family medical, dental and vision coverage. Thus it, not the employees, bears the risk of increases in medical insurance premiums. Additionally, the employer contributes \$22 per month per employee to offset employee co-pays and deductibles under the insurance plan.

The record shows that the employer agreed to add vision coverage to the firefighters' medical insurance package during this round of bargaining. There is no evidence that the employer tied this insurance increase to its wage package during bargaining. While the employer can take pride in its well rounded insurance program, it should not be allowed to grant a lower wage increase, ostensibly to fund the insurance component, when there is no record that it explained this strategy during bargaining.

Comparable communities --

The parties could not agree on a list of comparable communities. The city offers three lists.

- List A is the group of cities and one fire district that are closest to Ashland in population: Coos Bay; Grants Pass; Roseburg; Jackson County Fire District 5; Newberg; Pendleton; Forest Grove.
- List B is only cities that provide fire service through their own employees, i.e. not through a fire district: McMinnville; Grants Pass; Roseburg; Newberg; Pendleton; Forest Grove; La Grande.
- List C includes all the jurisdictions that either the union or the city have suggested using as comparators: Tualatin Valley Fire & Rescue; Clackamas County District 1; Klamath County District 1; Woodburn Rural Fire Protection District; McMinnville; Grants Pass; Roseburg; Jackson County District 5; Newberg; Pendleton; Forest Grove; La Grande.

The union asserts that comparable communities are those within a population band of 20% above and 20% below Ashland. The union offered the Oregon Blue Book which lists Ashland's population for 1999 as 19,490. According to the Oregon Blue Book, the union's calculation produces the following list: Oregon City; West Linn; Tualatin; Grants Pass; Roseburg; Milwaukie; Klamath Falls; Newberg; Pendleton; Woodburn; Forest Grove.

The union argues that the statute is unambiguous in requiring that the arbitrator determine comparables by looking only at the populations of Oregon communities. It contends that the city cannot exclude communities served by fire districts.

ORS 243.746(4)(e) mandates the arbitrator compare the two proposals with the overall compensation of employees performing similar work in "comparable communities." It defines "comparable" as "limited to communities of the same or nearest population range within Oregon."

In recent years other employers have argued that a city that provides its own fire protection is not comparable to similarly sized cities that rely on larger fire districts for their fire protection. Thus, the argument goes, a city like Ashland, with a population of @19,500 is not comparable to a city like Milwaukie with a population of 20,000 because Ashland provides its own fire protection and Milwaukie is serviced by Clackamas Fire District 1. This argument ignores the relative populations of CITIES, to base comparators on the relative size of the ENTITY providing the fire service. Interest arbitrators have

rejected this argument. In *City of North Bend*, (Lankford, 1999), the arbitrator reasoned:

The City argues that a fire protection district does not face the same conflicting demands for limited financial resources that a city must deal with. There is, of course, no getting around that fact. But the statute specifically reflects the legislature's instruction to consider "other services, provided by, and other priorities of, the unit of government" under the heading of ability to pay (subsection (4)(b)), but not under the heading of comparability (subsection (4)(c)). That distinction certainly makes sense on its face, because if exact congruence of services were to be a requirement for comparability, then Oregon -- with its notorious proliferation of special service districts -- would present an impossibly tangled skein indeed. Cities of the same size could not be compared, for example, if one included fire suppression services and the other did not or sewerage, or water, etc.

Arbitrator Brown wrote in the *City of Grants Pass*, (Brown, 2000),

The Legislature clearly defines "comparable." They limit the arbitrator to communities of similar size in Oregon. In addition, they provided specific parameters for cities and counties with populations above a certain number and for the State. The legislative criteria speaks to employees performing similar work. There is no reference made to cities providing similar services but rather the generic word "communities" is used. I do not find in a reading of this criteria any language that would lead me to believe that the previous arbitral precedent to include cities that provided fire service through fire districts as a comparable community had been legislatively overturned.

Additionally, in *City of Astoria*, (Lindauer 2000), it was found that:

The legislature clearly defined the term "comparable" communities by relying upon the "population range" as the sole basis for determining comparability. Had the legislature intended the "nature of any employer" to be a factor, it would have included that factor in the statute. Accordingly, the clear and unambiguous language of the statute, requires the Arbitrator to consider only those communities that are of the same or nearest population range in comparison to the population of the City of Astoria, irrespective of whether they are served by a separate fire district.

In the current case, the City of Ashland argues that those cities that rely on fire districts for their fire protection are not "communities" for the purpose of the Act. Rather, those cities have been subsumed into larger "communities" -- those of their fire districts.

Fire districts are creatures of stature, created originally to provide fire protection services only to outlying rural areas. In more recent times, however, fire districts have made intergovernmental agreements with certain cities to provide fire protection services. The Legislature is assumed to have been aware of this in 1995 when it passed Senate Bill 750. It was able to specify "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;" and it used the same details for counties with a population of more than 400,000, to be compared to other counties and for the state to be compared to other states. By not mentioning fire

districts in any manner -- including or excluding their existence -- the statute continues to direct arbitrators to find comparables based on similarly populated communities.

The employer argues that if small cities can be compared to small cities within fire districts, then large cities in fire districts can be compared to Portland. It claims that since the City of Portland is compared to large out of state cities, eventually the union will claim that Ashland is comparable to San Francisco or Seattle. I am confident that an arbitrator will reject that argument if, and when, a union makes it.

Although the meaning of "community" will vary from arbitration to arbitration, depending on the public employer involved -- city county or state -- this does not change the general mandate of the statute that a city like Ashland should be compared to other Oregon cities of roughly the same population. The employer argues that Tualatin, West Linn and Milwaukie are not "communities" because they provide fire service through association with fire districts. However Tualatin, West Linn and Milwaukie did not vanish simply because they provide fire service through fire districts. Nothing in the statute suggests that "community" should be defined "entity that provides fire service." The statute expresses only one criteria to determine comparable communities, population range. The statute does not allow arbitrators to determine comparability based on HOW a community provides fire service.

The employer's argument that cities cannot compete with fire districts because of a city's wide variety of financial commitments, is best addressed in the "ability to pay" analysis. Here Ashland has never claimed an inability to pay the union's proposal.

I accept the list of comparable communities as identified by the union. The union exhibits illustrate a significant gap between Ashland and the comparators. Ashland firefighters' salary is 12.9% below the average of its comparables; an engineers' salary is 13% below the average; and the captains' salary is 6% below the average. This evidence also supports the adoption of the union's last best offer.

The CPI-all cities index --

The CPI for the past year has generally fluctuated between 3.0% and 3.7%. The union proposal calls for 3% raises every six months for firefighters and engineers and 3.5% annually for captains. The city's proposal ties raises to the CPI. This would suggest that the city's proposal will most likely be more in line with the CPI than the union's. However, this overlooks the fact that the employer itself is also proposing mid-year equity or "catch-up" raises. It appears, therefore, that both parties agree that more than just cost of living raises are appropriate.

Stipulations of the parties --

Under this criteria, there were no stipulations entered by the parties presented to the arbitrator.

Other factors --

No other factors were submitted by the parties for the arbitrator's consideration.

CONCLUSION

ORS 243.746(5) requires that the Arbitrator select one of the parties' last best offer proposals in its entirety. My role is to choose which last best offer more appropriately meets the statutory criteria of ORS 243.746(4).

I find that the union's last best offer supports the interest and welfare of the public. It agrees with the employer's approach that annual increases for all job classifications be paid on July 1st of each year; there is a concept of equity or "catch-up" adjustments on January 1st of each year for firefighters and engineers; and there is a lower total wage increase over the life of the contract for captains than for firefighters and engineers. The parties agree that this decision should not turn on cost. Given that the employer's proposal is a wage corridor which could grant a bigger increase than the union is seeking, and that the union's proposal is specific, by awarding the union's offer, the city will have more certainty about how much money it has to fund the projects and plans it has determined best serve the interests of its citizens.

ARBITRATION EXPENSES

Since ORS 243.746(6) provides "The cost of arbitration shall be borne equally by the parties involved in the dispute", the arbitration expenses will be equally divided between the City of Ashland and Ashland Firefighters Association, Local 1269 IAFF.

ORDER

Based on the sworn testimony of the witnesses, the documents admitted into evidence, the arguments of the parties and the record as a whole, it is the Order of your Arbitrator that:

The parties shall incorporate the union's last best offer on wages into their collective bargaining agreement.

Issued at Chehalis, Washington, on this _____ day of March, 2001.

Katrina I. Boedecker, Arbitrator

Miller Nash, by Donna Cameron, Attorney at Law, appeared on behalf of the employer.

Michael J. Tedesco, Attorney at Law, appeared on behalf of the union.

1. These include the Housing Commission, Bicycle & Pedestrian Commission, Airport Commission, Cable Access Commission, Citizens Budget Committee, Conservation Commission, Historic Commission, Planning Commission, Senior Program Board, Sister City Committee, Tree Commission, and Traffic Safety Commission.
2. Of the property taxes Ashland residents pay, 35% goes to the city with the remainder spread among other government bodies such as the county and school district.
3. Oregon State Police Officers Association and State of Oregon. (Bethke, 1996).
4. The union is charged with knowing what is best for its bargaining unit members. Granting the employer's proposal because it could potentially provide a bigger wage increase would be patronizing to the union bargaining team.

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