



**WASHINGTON STATE COUNCIL OF
FIRE FIGHTERS RESOLUTION 23**

LEOFF Plan 2 Retirement Board

August 24, 2011

OVERVIEW

- Issue Description
- Policy Considerations



ISSUE DESCRIPTION

- WSCFF resolved at their 2011 conference to work with the Board on two issues:
 1. The feasibility of creating enhanced plans that the individual locals would fund
 2. The feasibility of creating a statewide benefit enhancement that would be solely funded by plan members



POLICY CONSIDERATIONS

- Benefit improvements at local level



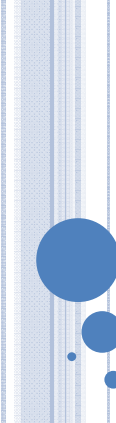
POLICY CONSIDERATIONS

- Statewide benefits funded solely by members



Questions?






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Questions?



LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' PLAN 2 RETIREMENT BOARD

Washington State Council of Fire Fighters

Resolution 23

Initial Consideration

August 24, 2011

1. Issues

The Washington State Council of Fire Fighters resolved at their 2011 annual conference to work with the LEOFF Plan 2 Retirement Board to research two issues: 1) the feasibility of creating enhanced plans that the individual locals would fund, should they choose, from their members; and, 2) the feasibility of creating a statewide benefit enhancement that would be solely funded by plan members.

2. Staff

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3. Members Impacted

These issues could impact all LEOFF Plan 2 members. As of June 30, 2009 there were 16,951 active members and 1,367 retirees as reported in the Office of the State Actuary's *2009 Actuarial Valuation Report*.

4. Current Situation

Currently, statute and case law prohibits members from bargaining for benefit improvements in LEOFF Plan 2 at the individual employer level. Additionally, there is a statutory formula for sharing costs between the members, employers and state for any benefit improvements.

5. Background Information and Policy Issues

Background

The Washington State Council of Fire Fighters (WSCFF) passed a resolution at their seventy-third annual convention in June 2011 asking that the WSCFF work with the Board on researching two issues during the current interim. Those two issues are: (1) the feasibility of creating an enhance plan that the individual locals would fund, should they choose, from their members; and (2) the feasibility of creating a statewide benefit enhancement that would be solely funded by the members.

Benefit improvements at the individual employer level: Currently, all members of LEOFF Plan 2 have the same benefits and pay the same contribution rate regardless of who employs them. In a Court of Appeals of Washington case (93 Wn. App. 235, Fire Fighters v. City of Seattle) the court ruled the Law Enforcement Officers' and Fire Fighters' Retirement System Act (RCW [41.26](#)) does not permit a public employer to provide additional benefits to law enforcement officers or firefighters through LEOFF Plan 2. A copy of the case can be found in Appendix A. Employers can provide different levels of other compensation and benefits such as salary, health insurance and employer contributions to deferred compensation accounts.

Statewide benefit enhancement funded solely by members: RCW 41.26.725 establishes the cost sharing formula for LEOFF Plan 2 at fifty percent member, thirty percent employer and twenty percent state. A copy of RCW 41.26.725 can be found in Appendix B.

Policy Issues

Benefit improvements at the individual employer level: Allowing members and their employers to bargain for improvements to LEOFF Plan 2 would create the opportunity for benefit improvements in those jurisdictions that have resources to pay for benefits beyond what is currently in LEOFF Plan 2. Those employers that provide more benefits than their competitors might be better able to recruit and retain employees. However, this would also put employers who are unable to provide additional benefits at a competitive disadvantage. Historically, this type of competition has led to “leap-frogging” as employers strive to remain competitive with their peers.

A lack of uniformity in benefits also creates administrative difficulties, such as determining benefits if members move from one employer to another where the benefits are not the same. The contribution rates for members in those jurisdictions that provide additional benefits would be different.

Determining the cost of additional benefits would require additional actuarial services. Those services are currently provided by the Office of the State Actuary (OSA) on a plan-wide basis. OSA does not have the capacity to price benefit improvements for several hundred different employers. OSA also does not currently distinguish between employers

when evaluating demographic experience for the purpose of calculating the required contributions.

Statewide benefit enhancement funded solely by members: The issue of creating a statewide benefit enhancement that would be solely funded by the members is similar to the issue the Board has previously studied regarding member contributions to the Benefit Improvement Account (BIA).

Allowing members to fund a benefit improvement may increase the likelihood of a benefit improvement if members are more capable of funding the improvement than their employers or the State. However, many of the budget challenges affecting employers and the State are also affecting employees. So, the capacity for members to assume contribution rate increases, particularly for a larger benefit improvement, is an issue.

The Board previously expressed concern about ensuring that members would benefit equally from a plan change and benefit proportionately to their individual contributions.

The Board also previously expressed some concern that funding a benefit improvement solely through member contributions could set a precedent that would complicate achieving the Board's strategic goals related to future benefit improvements.

6. Supporting Information

Appendix A: WSCFF 2011 Annual Conference Resolution 23

Appendix B: Court of Appeals Ruling on Fire Fighters v. City of Seattle

Appendix C: RCW 41.26.725

Appendix A: WSCFF 2011 Annual Conference, Resolution 23

2011 WSCFF Convention Resolution

1 SUBJECT: LEOFF Plan 2 Supplement Benefit
 2 RESOLUTION #: 11-23
 3
 4
 5 WHEREAS: The ability to increase pension benefits has long been a struggle of the WSCFF;
 6 and
 7
 8 WHEREAS: One of the limitations in securing enhancements has been increasing contributions
 9 from the state; and
 10
 11 WHEREAS: WSCFF locals have been very successful in collective bargaining with their
 12 employers; and
 13
 14 WHEREAS: The ability of locals to fund enhancements if they choose would be beneficial for
 15 our members; now therefore be it
 16
 17
 18 RESOLVED: That the WSCFF work with the LEOFF Plan 2 Retirement Board to research the
 19 feasibility of creating enhanced plans that the individual locals would fund, should
 20 they choose, from their members; and
 21
 22 RESOLVED: That the WSCFF work with the LEOFF Plan 2 Retirement Board to also research
 23 the feasibility of creating a statewide benefit enhancement that would be solely
 24 funded by our members; and be it further
 25
 26 RESOLVED: That these results be presented to the body at the 73rd annual convention in
 27 Vancouver.
 28
 29
 30 SUBMITTED BY: Pension

Committee	Action Taken	Recommendation
Pension		Do Pass
Floor	Adopted	

ASSIGNED DESIGNATION:

Appendix B: Court of Appeals Ruling on Fire Fighters v. City of Seattle

**INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL 27, Appellant, v.
CITY OF SEATTLE, Respondent.**

No. 40771-6-I.

-- November 30, 1998

James Henry Webster, Lynn Denise Weir, Webster, Mrak & Blumberg, Seattle, for Appellant. Spencer Walter Daniels, Olympia, Janet Kathleen May, Seattle, for Respondent. Spencer Nathan Thal, Teamsters Local 117, Seattle, for Amicus Curiae.

During collective bargaining with the City of Seattle, the International Association of Fire Fighters, Local 27 (Union) proposed retirement benefits to supplement current benefits fire fighters receive under the Law Enforcement Officers' and Fire Fighters' Retirement System Plan II (LEOFF II). Retirement benefits are normally a mandatory subject of collective bargaining. Negotiations over the benefits stalled and the city declared the proposal to be an illegal subject of collective bargaining. Both sides filed unfair labor practice complaints with the Public Employment Relations Commission (PERC). PERC dismissed the Union's complaint and granted the City's. The Union appeals PERC's cease and desist order which prohibits the Union from making similar proposals in future negotiations. We accepted review and affirm PERC's order.

RCW Chapter 41.26 establishes the Law Enforcement Officers' and Fire Fighters' Retirement System (LEOFF). The purpose of LEOFF is to provide for an actuarial reserve system for the payment of death, disability, and retirement benefits to law enforcement officers and fire fighters, and to beneficiaries of such employees, thereby enabling such employees to provide for themselves and their dependents in case of disability or death, and effecting a system of retirement from active duty.[1]

Significant changes were made to LEOFF in 1977 resulting in a separate plan for employees hired thereafter. The old plan is called the Law Enforcement Officers' and Fire Fighters' Retirement System Plan I (LEOFF I) and the new plan is called LEOFF II. LEOFF I has substantially more generous benefits than LEOFF II.

The City of Seattle and the Union have a collective bargaining agreement (CBA). Article 23.1 of the CBA provides that "Pensions for employees and contributions to pension funds will be governed by the Washington state statute in existence at the time." The CBA also contains the following reopener provision:

29.3 Upon thirty (30) days advanced written notification, either the City or the Union may require the other party to meet for the purpose of negotiating those amendments to this Agreement which relate solely to the following issues:

(a) Supplemental pension benefits, per Article 24 [sic 23] of this Agreement, may be opened on or before May 1, 1993 and may be arbitrated at the Union's discretion after impasse has been reached.

Through this reopener, the Union proposed to increase the service, duty disability, and duty death retirement benefits its LEOFF II members receive, to bring them more closely in line with LOEFF I benefits.

The City and the Union entered into negotiations regarding the proposal. They reached an impasse. The Union modified its proposal and the City acknowledged that progress had been made. Thereafter the City claimed the proposal was illegal because it was contrary to Article XXII of its City Charter and was preempted by state law. In addition, the City claimed that the CBA subordination language subordinated the reopener to LEOFF because the LOEFF system was intended to be the exclusive retirement system for fire fighters.

Both sides brought summary judgment motions before PERC, which PERC denied. The parties began mediation and the mediator decided that interest arbitration was required because mediation could not resolve the issue. The matter went to arbitration and the arbitrator held that the City violated the parties' contract by refusing to bargain the union's proposal to finality, and that the employer breached its duty to bargain by unilaterally concluding the union's proposal was illegal and in violation of the city charter.

Thereafter both sides filed unfair labor practice claims. The hearing examiner determined that the Union had committed an unfair labor practice by insisting to impasse regarding its supplemental pension proposal, and by insisting on interest arbitration. PERC required the Union to withdraw its proposal and ordered the Union to cease and desist from making similar proposals in the future negotiations.

The standard of review for PERC unfair labor practice cases is derived from the Administrative Procedures Act.² Findings of fact are reviewed for substantial evidence.³ Conclusions of law are reviewed by the error of law standard where "the court may substitute its interpretation of the law for that of PERC."⁴ Great deference is usually given to PERC's interpretation of the law it administers.⁵ However, the court may reverse a PERC decision where it unduly limits the RCW 41.56 right to bargain.⁶

Collective Bargaining Duty and Preemption

As our Supreme Court recognized in *Mulholland v. Tacoma*,⁷ the purpose of LOEFF was to create a single statewide system for all full-time fire fighters and law enforcement officers, replacing the multitude of separate retirement systems which previously existed. The Legislature made that purpose clear by adding an exclusivity provision to the Act:

Notwithstanding RCW 41.26.030(8), all fire fighters and law enforcement officers employed as such on or after March 1, 1970, on a full time fully compensated basis in this state shall be members of the retirement system established by this chapter with respect to all periods of service as such, to the exclusion of any pension system existing under any prior act.⁸]

Contrary to the Union's assertion in oral argument that the exclusivity provision only applies to LOEFF I and specifically not to LOEFF II, RCW 41.26.005 provides that "RCW 41.26.010 through 41.26.062 shall apply to members of plan I and plan II." Thus the exclusivity language of RCW 41.26.040(1) specifically applies to LOEFF II members.

The Union then argues that LOEFF conflicts with the Public Employees Collective Bargaining Act (RCW 41.56) which requires collective bargaining for retirement benefits because such benefits are part of wages. However, in order to create the retirement supplements, the City needs authority to do so.

The Union first points to LOEFF itself as such authority. But LOEFF was created to establish a uniform, state-wide retirement system in place of the various different systems then in place—thus the exclusivity provision. It flies in the face of logic to argue that the enactment which created the uniform system at the same time allowed local governments to go back and recreate many separate systems all over again.

The Union next argues that the City derives the necessary authority from Article XI section 10 of the Washington State Constitution which provides for the incorporation of municipalities. The implementing legislation, RCW 35.22, details the rules for first class cities. RCW 35.22.280(22) and (23) enable Seattle to have a fire department. RCW 35.23.440(21) authorizes Seattle to have a paid fire department. Retirement benefits are part of wages and thus Seattle has a city charter enabling it to pay retirement benefits to fire fighters.⁹

However, even though Seattle is authorized to pay retirement benefits under RCW 35.22 and 35.23, the exclusivity language of RCW 41.26.040 still precludes the Union's retirement benefit proposal. RCW 41.26.040 states that LOEFF provides retirement benefits "to the exclusion of any pension system existing under any prior act." RCW 35.22 and RCW 35.23 were enacted prior to LOEFF and thus are specifically excluded.

Nor are we persuaded that the City could pay these additional benefits without creating a retirement "system" to do so. As the City argued, a separate system would necessarily have to be created in order to convey the proposed benefits to the fire fighters. The City could not simply pay into the existing LOEFF system because that plan is not authorized or administered in a manner to permit the extra benefit payments to some of its members.¹⁰

We conclude that LOEFF II provides the exclusive retirement system for full-time fire fighters. The City is not required to bargain or submit to interest arbitration concerning the Union's proposal. The decision and order of PERC is affirmed.

FOOTNOTES

- [1.](#) RCW 41.26.020.
- [2.](#) RCW 34.05.570.
- [3.](#) RCW 34.05.570(3)(e).
- [4.](#) RCW 34.05.570(3)(d); Pasco Police Officers' Ass'n v. City of Pasco, 132 Wash.2d 450, 458, 938 P.2d 827 (1997).
- [5.](#) Local 2916, IAFF v. Public Employment Relations Comm'n, 128 Wash.2d 375, 379, 907 P.2d 1204 (1995).
- [6.](#) Municipality of Metro. Seattle v. Department of Labor & Indus., 88 Wash.2d 925, 568 P.2d 775 (1977).
- [7.](#) 83 Wash.2d 782, 784-85, 522 P.2d 1157 (1974).
- [8.](#) RCW 41.26.040(1) (emphasis ours).
- [9.](#) The City Charter prohibition against participation in a city pension, death or disability system, by any employee who is covered by a system under state law, does not resolve the issue. Conflicts between the charter and RCW 41.56 are resolved in favor of the statute.
- [10.](#) The same analysis applies to the proposal for additional disability retirement benefits.

BAKER, J.

KENNEDY, C.J., and WEBSTER, J., concur.

Appendix C: RCW 41.26.725

Board of trustees — Contributions — Minimum and increased benefits.

(1) The board of trustees shall establish contributions as set forth in this section. The cost of the minimum benefits as defined in this plan shall be funded on the following ratio:

Employee contributions 50%

Employer contributions 30%

State contributions 20%

(2) The minimum benefits shall constitute a contractual obligation of the state and the contributing employers and may not be reduced below the levels in effect on July 1, 2003. The state and the contributing employers shall maintain the minimum benefits on a sound actuarial basis in accordance with the actuarial standards adopted by the board.

(3) Increased benefits created as provided for in RCW [41.26.720](#) are granted on a basis not to exceed the contributions provided for in this section. In addition to the contributions necessary to maintain the minimum benefits, for any increased benefits provided for by the board, the employee contribution shall not exceed fifty percent of the actuarial cost of the benefit. In no instance shall the employee cost exceed ten percent of covered payroll without the consent of a majority of the affected employees. Employer contributions shall not exceed thirty percent of the cost, but in no instance shall the employer contribution exceed six percent of covered payroll. State contributions shall not exceed twenty percent of the cost, but in no instance shall the state contribution exceed four percent of covered payroll. Employer contributions may not be increased above the maximum under this section without the consent of the governing body of the employer. State contributions may not be increased above the maximum provided for in this section without the consent of the legislature. In the event that the cost of maintaining the increased benefits on a sound actuarial basis exceeds the aggregate contributions provided for in this section, the board shall submit to the affected members of the plan the option of paying the increased costs or of having the increased benefits reduced to a level sufficient to be maintained by the aggregate contributions. The reduction of benefits in accordance with this section shall not be deemed a violation of the contractual rights of the members, provided that no reduction may result in benefits being lower than the level of the minimum benefits.

(4) The board shall manage the trust in a manner that maintains reasonable contributions and administrative costs. Providing additional benefits to members and beneficiaries is the board's priority.

[2003 c 93 § 1; 2003 c 2 § 6 (Initiative Measure No. 790, approved November 5, 2002).]

Notes:

Effective date -- 2003 c 93: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 23, 2003]." [2003 c 93 § 2.]