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3 **IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR JACKSON COUNTY**
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5 JOSEPH BOVA,
6 Plaintiff,

7 vs.

CASE NUMBER: 08-1663-E7

8 CITY OF MEDFORD, an incorporated
9 Subdivision of the State of Oregon, and
10 MICHAEL DYAL, City Manager of the City
11 of Medford, as an Individual, and in his official
12 capacity,

Defendants.

**OPINION AND ORDER ON MOTION
FOR PURCHASE OF INSURANCE**

13 This matter comes before the court upon Defendant's Motion For Approval Of
14 Purchase of Insurance, and the court having conducted evidentiary hearings on said motion on
15 August 17, 2010 and October 21, 2010, and having considered the evidence presented at said
16 hearings, as well as the written memoranda provided by the parties, and having considered the
17 argument of counsel, Robert E. Franz Jr. on behalf of defendants' motion, Stephen L. Brischetto
18 and George P. Fisher on behalf of plaintiff's opposition to the motion, and Lisa M. Umscheid on
19 behalf of certain individually represented members of the management employee group, and
20 being otherwise fully advised in the premises, the court sets forth its Opinion and Order.

21 **OPINION**

22 Defendants seek an order of the court approving defendants purchase of insurance for
23 class members from CityCounty Insurance Services ("CIS") and for the court's further order
24 requiring each class member to give written authorization to the City for payroll deductions for
25 the payment of each class members portion of the increased insurance premium.

26 The parties have stipulated that the plans proposed by CIS would, if entered into, be in
27 compliance with ORS 243.303. Plaintiff complains that CIS is the only insurance company
28 from which defendants sought a bid. There is evidence in the record (witness Jeffrey Furnish)
that a competitive bid process might have led to the identification of other insurance policies that

1 might have provided the same or better benefits as CIS, and/or might have cost less than the CIS
2 plans. Evidence was presented to the effect that many, perhaps most, insurance companies will
3 not submit a bid unless dealing with an “agent of record” (CIS is apparently an exception, at least
4 when dealing with a municipality). Further evidence is in the record to the effect that defendants
5 looked into securing the services of an agent of record a couple of months after the court signed
6 the Limited Judgment declaring the defendants to be out of compliance with ORS 243.303, and
7 that defendants rejected hiring such an agent because of the projected cost of \$5000 to that agent.
8 In light of what has been, and is, at stake in this litigation, the court cannot help but note that, in
9 the court’s opinion, the failure to hire an agent of record on those grounds borders on
10 astonishing. Nonetheless, it is correct to point out that ORS 243.303 does not place any
11 obligation upon the defendants to provide the “best” coverage, or the “least expensive” coverage,
12 and therefore the city was under no legal obligation to hire an agent of record, or to seek
13 competitive bids. It is simply hard for the court to understand why the City would not take all
14 steps to seek the best and least expensive coverage for its employees and to then share that
15 information completely, thoroughly and transparently with the court and with the class.
16 Likewise, the lack of a claims experience history because of the City’s previous decisions to
17 secure insurance from Oregon Teamsters Employers Trust (“OTET”), the fact that Blue
18 Cross/Blue Shield will not bid against OTET, or the historical breaking up of the employee pools
19 for rate determinations were not things that the City had any legal obligation to prevent from
20 occurring, although each of those issues may now have a negative effect on assuring a most
21 successful bidding process. Those are all now simply historical facts that must be reckoned with
22 as the City moves forward.

23 It should be apparent from these observations that the court would have preferred that the
24 City make its determination of an appropriate insurance policy after surveying the market and
25 getting competitive bids. One would assume that that course of action would have been
26 preferred by the defendants’ employees, as well. But, we know that CIS provides a policy that
27 would be in compliance with the statute, and it is the only policy presented to the court for
28 consideration at this juncture. The court would also prefer to merely authorize the purchase of

1 such a policy, rather than order it, because this is, and should be, a matter of employee relations
2 rather than court dictate. However, given the very tight time constraints the court is working
3 under, and given the City's apparent reluctance to act until ordered to do so, and directed how to
4 do so, the court will order the defendants to purchase CIS Plan V-B for all current Medford
5 employees, as well as those members of the class who have retired since the class was certified.¹

6 The City shall cover any and all increased premium costs for current employees and for
7 those members of the class who have retired since the class was certified, for the calendar year
8 2011 or for the balance of any contract period in effect in 2011. Thereafter, how costs are to be
9 divided between the City and its employees will be subject to negotiations between the parties in
10 the normal course of such employee relations matters, and subject to future determinations about
11 caps and splits. Further, the defendants shall submit to the court, by December 6, 2010, the
12 City's written plan explaining how the City will compensate members of the class for out of
13 pocket financial losses sustained by those class members through December 31, 2011, or the
14 balance of any contract period in effect in 2011, resulting from the reduction in health insurance
15 benefits caused by the required change to CIS Plan V-B.

16 While ORS 243.303 does not require the City to pay any portion of the cost for retiree
17 coverage, this court has ordered injunctive relief to the plaintiff class on two separate grounds—
18 Declaratory Judgment and Age Discrimination—for defendants violation of ORS 243.303. It is
19 because of defendants' violation of the statute that this equitable relief is being granted. Further,
20 now ordering class members to give written authorization for payroll deductions to cover

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25 ¹ Evidence was presented at the August hearing to the effect that OTET had modified its policies to extend
26 coverage to non-union members (the court determined, on September 10, 2010 after yet another hearing, that those
27 modifications still did not bring the OTET policy into compliance with the statute). Further evidence was presented
28 at the October hearing that the Board of Trustees of OTET had agreed to still more modifications of the OTET
policy. These modifications may bring the OTET policy into compliance with the statute, but questions still remain
on that issue. If those concerns are adequately addressed at a later time, the court's order might be modified to
include an appropriate OTET plan for certain city employees.

1 increased premium costs, as requested by defendants, would violate ORS 652.610.

2 **ORDER**

3 Based upon the above and foregoing, and good cause appearing therefore, it is hereby

4 ORDERED that defendant City of Medford purchase CIS Plan V-B for all employees of
5 the City of Medford and all retired members of the class forthwith, and it is further;

6 ORDERED that defendant City of Medford pay any and all increased premium costs
7 associated with said purchase as set forth above, and it is further;

8 ORDERED that defendants submit their plan for compensation for other out of pocket
9 financial losses, as set forth above, by December 6, 2010.

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11 DATED this 25 day of October, 2010.

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13 
14 MARK SCHIVELEY
15 Circuit Court Judge

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21 cc: Mr. Stephen L. Brischetto
22 Mr. George P. Fisher
23 Mr. Robert E. Franz, Jr.
24 Ms. Lisa M. Umscheid
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