The Firehouse Lawyer

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Inside this Issue

New Year and New Office Location:

As of January 1, 2018, our new office will be located at 7403 Lakewood Drive West, Suite No. 11, Lakewood, WA 98499. Our office mailing address shall remain the same (as set forth to the left). From the Firehouse Lawyers, we say Happy New Year!

Labor Concepts: Comparables

Arbitrators have found that a particular jurisdiction must share a "common labor market" with another jurisdiction for either jurisdiction to be considered a valid metric for establishing comparable wages and benefits for the other. *City of Bellingham v. Teamsters Local 23*, PERC Case No. 11718-I-95-250 (1996). This means that an arbitrator would likely not find that using wages paid and benefits conferred to administrative staff in King County is a valid metric to establish comparable wages for those administrative staff in Whatcom County, due to different demographics, property taxes and general cost-of-living variations.

Instead, Whatcom County employees and employers would be better-served by using wages paid and benefits conferred to employees of the City of Bellingham as a metric for comparables. That is because

Bellingham is within Whatcom County so there is more likely a "common labor market" between the two jurisdictions.

Arbitrators appear to give the employer much latitude in establishing comparable wages and benefits, for purposes of bargaining. Ultimately, like many other areas of labor law, common sense should always prevail.

The Consequences of Annexation to Regional Fire Authorities

This question arose recently: When a city annexes a portion of territory served by a regional fire authority (RFA), is that territory no longer a part of the RFA, and therefore not subject to the taxes and other assessments imposed by that RFA? The answer to this question is "that depends," for the following reasons:

1. A municipal corporation "may exercise only those powers expressly granted by the legislature, those necessarily implied or incident to the powers granted, and those essential to the legislature's declared purpose." *Moses Lake Dist. v. Big Bend Community College*, 81 Wn.2d 551, 556, 503 P.2d 86 (1972);

2. The Washington Legislature has explicitly stated that "*[A]ny* portion of a county not incorporated as part of a city or town but lying contiguous thereto may become *a part* of the city or town by annexation." RCW 35.13.010. (emphasis added); and

3. Cities may annex territory within "fire protection districts," and any such portions of the district may become a part of the "city fire department." RCW 35A.14.485 (2).

Again, cities have been expressly granted the authority to annex contiguous territory, and if the annexing city has a fire department, then the annexed fire district may be functionally dissolved due to operation of the asset-transfer statutes. Essentially, the asset-transfer statutes address three different scenarios:

1. The contiguous city annexes at least 60% of the assessed valuation (AV) of the fire district (RCW 35.02.190);

2. The city annexes less than 60% of the AV but more than 5% of the area of the district (RCW 35.02.200); and

3. The city annexes less than 5% of the area of the district.

In scenario #1, ownership of all fire district assets vests in the city, but the city has to pay (in cash, properties or contracts for service) to the district within one year the value of the assets equal to the percentage of the AV not annexed. In other words, if the city annexes 65% of the AV, it has to pay an amount equal to 35% of the asset value to the district within one year after withdrawing the land from the district. The city also "inherits" 65% of the liabilities of the district. The fire district may also present to the voters of the un-annexed area a proposition to require the city to take over the service responsibilities for the entire district area. The obvious intent of the legislature was that, if a city annexes such a substantial part of a fire district, "incentives" should be given for the city

to take over the service in the whole area, but have the district's assets with which to do so. Although it may have to pay for the privilege, the city takes over the assets and the service area. Needless to say, such a substantial annexation means that the entire tax revenue stream perpetually goes to the city and not the district. See RCW 35.02.190.

In scenario #2—the less than 60% scenario—the scheme is the opposite. The fire district is not functionally dissolved. All assets remain with the fire district, but the fire district has to pay the city to keep them. Within one year, the district must pay the city (in cash, properties or contracts for service) a percentage of the value of its assets equal to the percentage of the AV annexed by the city. The district continues to serve the annexed area as long as the district collects the taxes therefrom. See RCW 35.02.200 (2) and 35.02.210. The word "assets" in this statute really means "net assets" as accountants would define the term, i.e. assets minus liabilities, including bonded indebtedness.

Now for scenario #3, when less than 5% of the district's **area** is annexed: Again, obviously, the fire district is not functionally dissolved. (Note that only this statute speaks of percentage of territory or area, where by contrast the others speak of percentage of AV.) Under RCW 35.02.205, an "asset transfer" only occurs in this situation if the city adopts a resolution finding that the annexation imposes a significant increase in the fire suppression responsibilities of the city, with a corresponding reduction in the district. Such a resolution must be adopted within 60 days of the effective date of the annexation. If the district does not concur in that finding, the matter goes to arbitration. For the details of that process, I refer you to the statute.

In summary, the "asset transfer" provisions of these statutes are quite onerous as you can see, and we have always believed that they strongly favor the cities and towns that annex land in fire districts. Depending on the size of the annexation, these laws sometimes severely impact the viability of fire districts whose property is taken into a city.

The territory of a fire district may become "a part of" a city by annexation. The law of annexation is not designed to dissolve other municipal corporations, but instead is generally designed to expand the taxable areas of the taxing authority—a city or town. Annexation does, however, remove the annexed territory from the other taxing district. The law of annexation is not designed to erase the taxing authority of another municipal corporation, absent express statutory authority. But again, the asset-transfer laws may call the feasibility of future fire-district operation into question in the event of an annexation.

Now let's compare that to city annexation of territory located in an RFA. If the territory is within an RFA, and the city is one of the participating fire protection agencies in that RFA, a statute, RCW 52.26.290, resolves the issue: the territory is still in the RFA.

But what if a contiguous city that is *not* a participating fire jurisdiction wants to annex part of an RFA? There is no statute that applies except the city annexation laws and therefore

the city can annex and take the territory. If the city has no fire department, of course it would be necessary to resolve the service area problem, probably by requiring (by virtue of a determination by the Boundary Review Board) the city to contract with the RFA for service to its new citizens.

The moral of this story is that when forming an RFA near a city, the "founding fathers and mothers" had better ensure that the city is participating in the RFA from the beginning.

Ultimately, no matter what territory is being annexed—whether it be included in a fire district, public utility district, port district or RFA—the territory served by that corporation becomes "a part of" of the city; the other municipal corporation is not necessarily dissolved, nor do the asset-transfer statutes necessarily apply or nullify the corporation. This is especially true for RFAs.

SAFETY BILL

If and when your employees are injured and are receiving temporary total disability (TTD) payments, you, as the employer, are entitled to request that a physician certify that the injured employee may perform light duty work that is not within the general duties performed by that employee—such as a police officer whose job duties require that she respond to emergency scenes. If you provide such light-duty work—and therefore pay wages for such work—you, as the "employer of injury," are entitled to up to $10,000 in (that employee's) wage subsidies from the Department of Labor and Industries, for a maximum period of 66 workdays over a two-year period. *See* RCW 51.32.090 (4).

With that being said, does your agency have any employees who are receiving TTD payments, or disability leave supplement (DLS) payments,[1] who are also performing light-duty tasks that fall outside of their general job duties but within the scope of their employment? If so, your agency is eligible for the above wage subsidies set forth under RCW 51.32.090 (4), provided that applicable procedures are followed.

Take note, however, that the employee's TTD payments shall cease during the performance of such light-duty work, unless and until the work prevents his or her recovery, or the work comes to an end prior to his or her recovery. *See* RCW 51.32.090 (4)(b).[2] If the light-duty work ceases or prevents the employee's recovery, her TTD payments will resume. *Id.*

CASE NOTE: King County Will Not Lose Its Lid Lift Revenues After All

We wrote in September 2017 about the Washington Court of Appeals finding that King County could not use the dollar amount of a levy allowable by virtue of a multi-year lid lift to calculate levies in future years,

[1] https://www.firehouselawyer.com/Newsletters/v07n07jul2007.pdf

[2] *See Also Richardson v. Dep't of Lab. And Indus.*, No. 77289-9-1 (Div. I 2018) (noting that "[O]nce the employer offers the certified work, the worker's temporary total disability payments end, replaced by wages earned in the temporary transitional position.")

because the ballot title used for that lid lift did not adequately state that the dollar amount in the final year of the levy would be used to calculate the levy in future years.[3] When a ballot title does not include such language, the levy in the year following expiration of the lid lift shall be collected as though the lid lift never occurred. RCW 84.55.050(5)(a). In other words, the highest lawful levy would revert to what it was instead of being reset.

However, the Washington Supreme Court reversed the Court of Appeals because RCW 29A.36.090 states that challenges to a ballot proposition must be brought within 10 days of the ballot title setting forth the proposition being filed; the citizens' group brought a challenge to the applicable ballot title nearly *four years* after it was filed. *See End Prison Industrial Complex v. King County*, No. 95307-4 (2018). The result of this: King County may use the maximum allowable levy in the final year of the lid lift to calculate the particular levy in future years.

DISCLAIMER

[3] https://www.firehouselawyer.com/Newsletters/September2017FINAL.pdf