BEFORE THE ARBITRATION PANEL

THOMAS F. LEVAK, NEUTRAL ARBITRATOR
JOHN COLE, UNION APPOINTED MEMBER
GARY CARLSEN, COUNTY APPOINTED MEMBER

In the Matter of the Interest Arbitration Between

SPOKANE COUNTY

The County

and

WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, COUNCIL 2, AFSCME, AFL-CIO, LOCAL 492

The Union

PERC 10059-I-94-235

NEUTRAL ARBITRATOR'S OPINION AND AWARD

This matter came for hearing on January 18, 1995, at Spokane, Washington. The Union was represented by Audrey B. Eide and the County by Otto G. Klein, III. Testimony and evidence were received. Post hearing briefs were received by the Neutral Arbitrator on February 23, 1995. Based upon the evidence, the arguments of the parties, and an application of the statutory criteria thereto, the Neutral Arbitrator decides and awards as follows.

THE ISSUES.

This is an interest arbitration convened pursuant to RCW 41.56.[1] The County

[1]This case primarily concerns Corrections Officers ("COs). COs are included within the definition of "uniformed personnel" by RCW 41.56.030(7)(c). The reference to RCW

is located in Eastern Washington, and is contiguous with the Idaho border; it is situated midway between the State's north and south borders; and it is the fourth largest county in the State.

The parties are signatory to a collective bargaining agreement with a term of January 1, 1992 through December 31, 1993, which covers a unit of Corrections Officers ("COs"), a Communications Officer, a Cook, an Identification Officer I and a Senior Systems examiner; almost all of the unit personnel are COs. The Jail, constructed in 1986, is part of the Sheriff's office, and is a modular "direct supervision jail," as opposed to a traditional "lock up" jail. Each unlocked module is under the supervision of a CO.[2] The Jail Commander is a commissioned officer, the equivalent of a captain.[3]

The parties have reached tentative agreement on a new January 1, 1994 through December 31, 1996, agreement, except for two issues, which have been referred to the Panel for resolution: (1) wages and (2) vacation relief scheduling during the Jail's in-service training program.

THE PARTIES' PROPOSALS.

1) Wages.

County Proposal.

Effective 1/1/94: 3%;

effective 1/1/95: 100% Seattle CPI-W (min 3%, max 6%);

effective 1/1/96: 100% Seattle CPI-W (min 3%, max 6%).

41.56.030(7)(a) includes law enforcement officers.

[2]COs, who deal intimately with inmates, were described as "problem solvers" for those inmates. COs are protected only by a radio and a body alarm.

[3]The Jail chain of command is: Sheriff, Under Sheriff, Jail Commander, Correction Lieutenants, Correction Sergeants, COs.

Union Proposal.

Effective 1/1/94: 4.5%;

effective 7/1/94: discontinue current entry level, add new top step, and all employees move up into a new range, 5.1% across-the-board;
effective 1/1/95: 4.5%;

effective 1/1/96: 100% of the West C July to July CPI, min 3%, max 6%.

2) Vacation Relief.

The parties have agreed to add the following new language to Article VI, Annual Leave, Section G:

> The County shall maintain eight (8) vacation relief positions which shall be used to accommodate timely (at least 5 days notice) requests for vacation and personal holidays. Individual requests for vacation, other than the primary and secondary vacation bids, will be approved unless the vacation relief personnel are not available (working, on vacation, and days off). If any of the eight (8) vacation relief employees goes on a long term leave (maternity, long term disability, etc.) The County will continue to grant vacation and/or personal leave requests as if all eight positions were filled. Management retains the right to cover the absences referenced herein by other means and to assign vacation relief staff to other work if all timely vacation and/or personal holiday requests have been met.

County Proposal.

The County proposes language to the following effect:[4]

> Provided, however, that during the time in-service training takes place, normally during January through March, the County will only be required to have available the number of relief officers necessary to cover for vacations which were bid during the previous December bid

[4]Neither the County nor the Union have proposed specific language.

period, up to a maximum of eight (8). During such in-service training, the County may utilize relief officers to cover for COs who are receiving in-service training.

Union Proposal.

The Union opposes any such proviso. It wants all relief officers to be available solely for vacation relief at all times of the year.

ISSUE NO. 1. WAGES.

County Evidence, Contentions and Argument.

First, under the statutory criteria, the Impartial Arbitrator must fashion an award that will, as nearly as possible, approximate what the parties themselves would have reached had they continued to bargain with determination and good faith.[5] The Union's wage proposal would effect a 14.1% increase over the first two years and cost the County an additional $800,000 over the term of the new Agreement. Under the statutory criteria, there is no justification for such increases.

Second, regarding the comparability criterion, the comparators proposed by the County should be adopted by the Impartial Arbitrator. The County selected its comparators after a careful study of may other arbitration awards, including all of the most recent Eastern Washington awards. The County's analysis also followed the past analysis of the Impartial Arbitrator in selecting comparators of "similar size," that is, size by resident population.[6] Further, the County's analysis utilized only Washington comparators, a method utilized by every arbitrator of Eastern Washington cases.[7] In addition, the County's analysis attempted to focus on Eastern Washington comparators, as has every cited arbitrator. The County's labor market analysis is consistent with the fact that the vast majority of applicants for unit positions come from Eastern Washington. The County's analysis continued by using a population band of +50% and -50% of population of State-wide Washington

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[5]Citing, City of Seattle, Snow, 1988; City of Kent, 1980, LaCugna; City of Bellevue v. Int'l Ass'n of Fire Fighters, Local 1604, 119 Wn.2d 373 (1992).

[6]Citing, City of Tukwila, 1985, Levak; see also City of Pullman, 1981, Lumbley.

[7]Citing particularly, City of Pasco, 1994, Wilkinson.

comparators, a method utilized by the Impartial Arbitrator in his City of Pasco decision, which resulted in the following comparators:

Snohomish	516,500
Clark	280,800
Kitsap	213,200
Yakima	202,100
Spokane	392,000

Recognizing that most arbitrators have utilized more than four comparators, the County used a population band of +100% and -100% of population State-wide, which added Pierce County. Since only one of the five comparators was located in Eastern Washington, the County added Benton county to the comparator list, a county that includes two of the three tri-cities, Richland and Kennewick, is educated, has a high per capita income, has a large metropolitan core area, and as a county, has the highest average monthly wage of any of the comparators. The average population of all six comparators is 331,417, only 15.5% below that of the County.

The Union's comparability list is artificially contrived; no actual parameters were set. All California counties with populations even slightly larger than that of the County were not utilized and larger counties than those selected were not utilized. California counties with a better population fit were excluded and others that pay higher wages were included. The Union simply ignored the statute's mandate that comparators of similar size be utilized, and its distinction between linear and modular jails is one not contemplated by the statute. Similarly, the use of jail size is also specious, as are staffing decisions. Moreover, the data used by the Union is unreliable. Further, the Union was also inconsistent in treating facility size versus population. Moreover, the Union did not take into account rebookings when utilizing bookings as a factor. In addition, assessed valuation cannot be considered because of the different rules and restrictions in California governing the collection of property taxes. Another problem is that the Union's list is substantially outweighed toward California and Oregon jurisdictions. And it must be noted that in Oregon, COs are paid the same as deputy sheriffs, a situation that does not exist in Washington. An additional factor is recent Oregon legislation regarding the pension pickup. Finally, the argument that the Union's selected California comparators are in any way comparable to the County is, at best, problematic. In summary, it is to be noted that a recent LERC Monograph points out that the two most important comparability

factors are population and geography.[8]

Third, the County's wage position should be adopted by the Arbitrator. In the first place, the County's wages compare favorably with comparator wages. Second, the Union's analysis is flawed: It makes an apples to oranges comparison; it has displayed all numbers based on an hourly rate of pay, while historically, the parties have bargained using salaried figures; it fails to utilize a January 1, 1994 benchmark; it fails to give any credit to the cost of the County's medical and dental plan; and it fails to consider that in Oregon, COs are paid as deputy sheriffs. Third, the County's proposal is consistent with wages received by other County employees Fourth, wage increase levels in the local community support the County's offer. Fifth, changes in the CPI support the County's offer. Sixth, COs have historically fared well in comparison to CPI increases. Seventh, potential uncertainty concerning additional incorporation is a factor that the Impartial Arbitrator should consider. Eighth, the Union's proposal is extremely expensive. Eighth, the Seattle Area CPI-W should be used.

Union Evidence, Contentions and Argument.

First, the County has offered no explanation why it has not offered an acceptable wage increase comparable to the 16% to 19% increase it provided to its Correction Sergeants. Neither did it present a coherent argument based upon County economics. The Union's proposal would do no more than create internal parity with deputies and sergeants.

Second, the Union's comparability argument should be adopted. The Union's list of comparators includes other direct supervision jails -- Marion, San Luis Obispo and Salano -- and includes jails of similar size, when comparing jail population, number of COs and average number of bookings. Of County comparators, only Snohomish is a direct supervision jail; no others utilize like personnel of like employers of similar size. The number of inmates and bookings at the County comparators is far below that of the County. By its own admission, the County did not even know what the size of the jails were in their comparator counties. The only factor that it used was assessed valuation, and even there, the comparators were far below the County. The County-cited arbitration decisions are not supportive: They did not involve jails or corrections officers, and they did not involve situations where it was necessary to look to out-of-state comparators.

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[8]Citing, Kaplan, Interest Arbitration and Factfinding, Some Principles and Perspectives, University of Oregon LERC Monograph Series No. 13 (1994).

Third, valid comparators and internal parity justify the Union's proposal. Moreover, the County failed to consider all outside benefits; and in any event, an overall compensation package is not at issue here, only wages are at issue. Finally, the County offered no evidence that it was unable to fund the Union's proposal.

Award of the Impartial Arbitrator.

The Impartial Arbitrator adopts the County's proposal and awards the following:

Effective 1/1/94: 3%;

effective 1/1/95: 100% Seattle CPI-W (min 3%, max 6%);

effective 1/1/96: 100% Seattle CPI-W (min 3%, max 6%).

The following is the Impartial Arbitrator's rationale:

First, there are no issues relative to ability to pay, the authority of the County or stipulations. The sole issues relate to comparability, the cost of living, the County's analysis of overall wages and benefits paid, and one so-called "other factor."

With regard to comparability, the persuasive and compelling evidence supports the County's position, both with regard to the selection of comparator jurisdictions and with regard to the County's relationship vis a vis those comparators.

Regarding selection, the County began its analysis by selecting Washington counties of similar size, based upon resident population. The Impartial Arbitrator agrees that the County's reliance on Washington jurisdictions was well-placed. While the statute allows for consideration of Oregon and California jurisdictions, such consideration is inappropriate (1) where sufficient Washington jurisdictions exist upon which to base a comparability study, (2) where there is a dearth of evidence concerning revenue sources, assessed valuation or socio-economic composition of the out-of-state jurisdictions, or (3) where special size or proximity of location do not exist.[9] In the instant case, sufficient comparable Washington

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[9]For example, the legislature may have considered it appropriate to allow comparisons between large west coast cities, such as Seattle, Portland and Sacramento; or it may have

jurisdictions exist; the Union failed to provide persuasive evidence regarding revenue sources, assessed valuation and socio-economic composition of its out-of-state comparators; and special size and proximity of location do not exist.

The Impartial Arbitrator further agrees with the County that virtually all interest arbitrators hold that resident population is the appropriate similar size standard under the statute. In selecting comparator counties by resident population, the County again followed the methodology utilized by all experienced arbitrators: It first utilized a +50%/-50% test, and when it arrived at only four comparators, it broadened its search by utilizing a +100%/-100% test.

The Impartial Arbitrator also agrees with the County that its attempt to insure that more than one Eastern Washington comparator was included in its comparator list was appropriate. As it points out, every arbitrator to consider cases involving Eastern Washington jurisdictions has utilized Eastern Washington Comparators to the greatest extent possible. Moreover, its inclusion of Benton County was patently reasonable. That county is similar to the County in terms of core area population, education, per capita income and average wage paid.

In sum, the Impartial Arbitrator adopts the following comparator list as appropriate: Pierce County, Snohomish County, Clark County, Kitsap County, Yakima County and Benton County.

Turning then to the impact of utilizing the selected comparators, the Impartial Arbitrator concludes that the County appropriately utilized data relating to the top step base wage, longevity pay, educational incentive pay, and medical/dental/vision payments, based upon 1994 wages and benefits negotiated for COs employed by County comparators.

The average top step base wage for County comparators is $2,777. The County pays $2,839, and is therefore 2.2% ahead of the comparator average. Figuring the County's top step as longevity pay, the County's analysis of ten-year COs with longevity in 1994 reveals that its $2,839 wage is .2% ahead of the comparator average of $2,834. As the County further notes, when payments for medical plans are considered, the County is almost 5% ahead of its comparators. Similar results occur when educational incentives are considered. In sum, the County fares well in comparison to its comparators.

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considered it appropriate to allow consideration of nearby cities, such as Pullman, Washington and Moscow, Idaho.

The County evidence regarding so-called "internal comparability" is also persuasive.[10] The only evidence is that the vast majority of County employees received a 1994 wage increase of 3%. Moreover, as the County further notes, the range adjustment received by Correction Sergeants is the same adjustment that COs already have in their Agreement.

Additional secondary consideration evidence offered by the County also supports its position. As it notes, 1994 public sector wage increases within the local community averaged around 3%, and private sector increases averaged around 2.7%.

The County's position is also strongly supported by the cost of living criterion. Arbitrators generally hold that where comparability data is relatively neutral, as it is in the instant case, a current year's increase should be consistent with the last year's increase in the appropriate CPI. The annual increases in the both the Seattle/Tacoma area CPI-W and the CPI-U for the year ending 1993, were 2.8%. The use of those CPIs was clearly appropriate. The only evidence is that, in the past, the County has generally used the Seattle CPI-W, has occasional used the CPI-U, but that it has never used the Union-suggested West Coast Index. The Union presented no persuasive argument why the traditional CPI should no longer be utilized.

The CPI formula increases utilized by the County for the second and third years of the Agreement are also appropriate. Since at least 1987, absent considerations not here present, almost all arbitrators have typically utilized CPI increase formulas tied to 3% floors and 6% ceilings.

In sum, all relevant statutory criteria support the position of the County. Accordingly, the Impartial Arbitrator has adopted that position.

ISSUE NO. 2. VACATION RELIEF.

Union Evidence, Argument and Contentions.

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[10]Internal comparability or "internal parity" is an "other factor" of secondary consideration only. Under the statute, an arbitrator is charged with determining an appropriate wage for a group of employees with primary consideration being given to the labor market in which those employees compete. COs compete with other COs; they do not compete with police officers, classified employees, clericals and administrators employed by their own employer.

Without the relief guaranteed by the language of the T/A, there will not be the availability for the vacations that COs accrue. This year, relief personnel were utilized to provide computer training in addition to in-service training. It is uncertain exactly how long in-service training will take each year or in which months it will occur. Without guarantees, relief officers will not be available for COs on vacation.

If the County is to be allowed to utilize relief officers for in-service training, the use should be well defined and limited. That is, in-service training cannot mean computer training, and the specific months of in-service training should be delineated.

County Evidence, Argument and Contentions.

Under the County's proposal, any CO who bids for a vacation during the time of the in-service academy will be allowed to take vacation. However, once the secondary bid is completed, the County would be able to close the bidding for future requests during the academy. In essence, the County's proposal is exactly what was done in 1993 and 1994. The cost savings in those years was $40,000 to $50,000 over previous years. The Union's argument that there already isn't enough time for COs to take vacations is inapposite since very few COs vacation during academy months. Finally, the Union's position is non supportable since its argument largely relates to non-academy time, and only that time is relevant.

Award of the Impartial Arbitrator.

The Impartial Arbitrator awards the following language:

> Provided, however, that during the time in-service training takes place, normally during January through March, the County will only be required to have available the number of relief officers necessary to cover for vacations which were bid during the previous December bid period, up to a maximum of eight (8). During such in-service training, the County may utilize relief officers to cover for COs who are receiving in-service training.

The following is the Impartial Arbitrator's rationale.

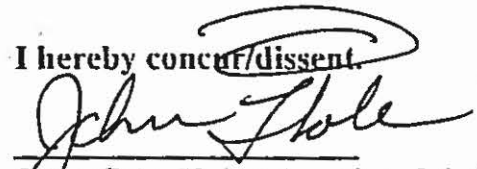
The persuasive evidence established that during the January through March in-service training, a bona fide need exists for the County to assign relief officers to

cover for COs who are receiving such in-service training. The persuasive evidence further established that the County actually did so during 1993 and 1994, with no detriment to COs' vacation bid rights. So that there is no question concerning the scope of the award, the Impartial Arbitrator memorializes his intent that the awarded language only apply to the In-Service Academy and to the type of subjects traditionally taught at that academy. The awarded language does not apply to specialized, one-time training, such as training on a new computer.

IT IS SO AWARDED.

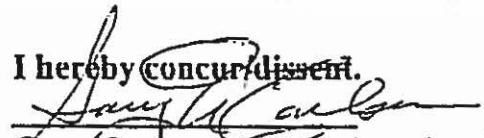
Thomas F. Levak, Impartial Arbitrator.
March ~~10~~ 27, 1995.

I hereby concur/~~dissent~~.



John Cole, Union Appointed Arbitrator.
Date: March 21, 1995

I hereby ~~concur/dissent~~.



Gary Carlsen, County Appointed Arbitrator.
Date: 3/23/95