

JUN - 3 1996

PUBLIC RELATIONS

IN THE MATTER OF)
)
 INTEREST ARBITRATION)
)
 BETWEEN)
)
 CLARK COUNTY)
 DEPUTY SHERIFF'S GUILD,)
)
 Guild,)
)
 and)
)
 CLARK COUNTY, WASHINGTON,)
)
 County.)

PERC NO. 11845-I-95-252
 ARBITRATOR'S OPINION
 AND AWARD
 1995-97 AGREEMENT

HEARING SITE:

County Offices
Vancouver, Washington

HEARING DATES:

February 26, 27, 28, 29, 1996

POST-HEARING BRIEFS DUE:

Postmarked April 5, 1996

RECORD CLOSED ON RECEIPT OF BRIEFS:

April 8, 1996

REPRESENTING THE GUILD:

Daryl S. Garrettson
 Hoag, Garrettson, Goldberg
 & Fenrich
 1313 N.W. 19th
 Portland, OR 97209

REPRESENTING THE COUNTY:

Otto G. Klein, III
 Heller, Ehrman, White
 & McAuliffe
 6100 Columbia Center
 701 Fifth Avenue
 Seattle, WA 98104-7098

INTEREST ARBITRATOR:

Gary L. Axon
 1465 Pinecrest Terrace
 Ashland, OR 97520
 (541) 488-1573

Table of Contents

<u>ISSUE</u>	<u>Page</u>
Introduction.....	2
1 - Wages/Economics.....	6
2 - Paid Days Off/Holidays.....	43
3 - Incentive Plan.....	52
4 - Pay Period/Method of Pay.....	59
5 - Hours of Work/Schedules.....	70
6 - Benefits/Insurance.....	83
7 - Miscellaneous.....	87
Conclusion.....	94

I. INTRODUCTION

This case is an interest arbitration conducted pursuant to the Public Employees Collective Bargaining Act. The parties to this dispute are the Clark County Sheriff's Guild (hereinafter "Guild") and Clark County, Washington (hereinafter "County"). The County and the Guild are parties to an Agreement that covered the period from January 1, 1992, through December 31, 1994. This was the first Collective Bargaining Agreement entered into by the parties following certification of the Guild in 1991 as the representative of the deputies in the Clark County Sheriff's Office. The prior Agreement concluded with an interest arbitration in the summer of 1993. The parties were unable to reach final agreement for the successor contract in either bargaining or mediation and submitted their dispute to interest arbitration. The parties agreed to waive the provision for partisan arbitrators and the case was submitted to this Arbitrator for a final Award.

Clark County is located in southwestern Washington, across the river from Portland, Oregon. The County has grown rapidly over the last ten years. The Sheriff's Office is responsible for providing a variety of police services within the 633 square miles that encompass Clark County. The Sheriff's Office services the unincorporated areas of Clark County which have a current population of about 206,000 people. The total population of Clark County for 1995 was estimated at 291,000 persons. Vancouver is the largest city located in Clark County.

The Guild represents approximately 107 deputy sheriffs and 15 sergeants in the bargaining unit. During 1995 patrol officers received approximately 67,944 calls for service. Thirteen percent of those calls were priority 1 and 2 which required immediate response. Co. Ex. 2. The deputies issued 10,551 citations and wrote over 24,510 original crime reports. The Sheriff's Office employs a total of 326 persons in paid positions.

At the commencement of the arbitration hearing the parties agreed to a list of comparable jurisdictions to assist in the resolution of this contract dispute. The jurisdictions stipulated to as comparable for the purposes of this interest arbitration are:

1. Clackamas County, Oregon
2. Kitsap County, Washington
3. Marion County, Oregon
4. Spokane County, Washington
5. Thurston County, Washington
6. Washington County, Oregon
7. Yakima County, Washington

The hearing in this case took four days for the parties to present their evidence and testimony. Because of the stipulation of the parties, it was unnecessary for the parties to present evidence on the issue of the appropriate jurisdictions with which to compare Clark County for the purpose of establishing the terms of the successor Agreement to the 1992-94 contract. The majority of the hearing time was consumed with different attempts by the parties to make comparisons of compensation among the seven jurisdictions. The hearing was tape recorded by the Arbitrator as

an extension of his personal note taking. Testimony of the witnesses was received under oath. At the hearing the parties were given the full opportunity to present written evidence, oral testimony and argument. The parties provided the Arbitrator with substantial written documentation in support of their respective cases.

The parties also submitted comprehensive and lengthy post-hearing briefs in support of their respective positions taken at arbitration. For the purpose of presenting evidence and argument, the parties categorized the areas of dispute into seven issues. In addition, there were sub-issues included within the seven areas in dispute. The seven issues identified for an Award by this Arbitrator are as follows:

1. Wages/Economics
2. Paid Days Off/Holidays
3. Incentive Plan
4. Pay Period/Method of Pay
5. Hours of Work/Schedules
6. Benefits/Insurance
7. Miscellaneous

The approach of this Arbitrator in writing the Award will be to summarize the major and most persuasive evidence and argument presented by the parties on each of the issues. After the introduction of the issue and positions of the parties, I will state the basic findings and rationale which caused the Arbitrator to make the award on the individual issues. A considerable portion of the evidence and argument related to more than one of the issues

and will not be duplicated in its entirety in the discussion of the separate issues.

This Arbitrator carefully reviewed and evaluated all of the evidence and argument submitted pursuant to the criteria established by RCW 41.56.465. Since the record in this case is so comprehensive it would be impractical for the Arbitrator in the discussion and Award to restate and refer to each and every piece of evidence and testimony presented. However, when formulating this Award the Arbitrator did give careful consideration to all of the evidence and argument placed into the record by the parties.

The statutory factors to be considered by the Arbitrator may be summarized as follows:

- (a) the constitutional and statutory authority of the employer;
- (b) the stipulations of the parties;
- (c) the wages, hours and conditions of employment of like personnel of like employers of similar size on the West Coast of the United States;
- (d) the average consumer prices for goods and services, commonly known as the cost of living;
- (e) changes in any of the foregoing circumstances during the pendency of the proceedings; and
- (f) such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

ISSUE 1 - WAGES/ECONOMICS

A. Background

This contract came to arbitration as the result of the impasse reached between the parties in negotiations for a successor to the 1992-94 Collective Bargaining Agreement. The top pay for a 40-hour deputy under the 1992-94 contract was \$3,337 per month. The 48-hour deputy top pay was set at \$3,514 per month. The road deputies work a 48-hour schedule consisting of four 12 hour shifts. In the 1992-94 Agreement, the parties added a 5.28% premium pay for all of the deputies working on the 48-hour schedule. This compensated the road deputies for the additional time they spent working for the County. Sixty percent of the Guild members are road deputies. The pay system for the 48-hour deputies complicated the ability of the parties to make direct comparisons with the other law enforcement agencies stipulated to by the parties as the point of comparison.

The current salary schedule is a six-step system which provides separate salary ranges for 40-hour deputies, 48-hour deputies, 40-hour sergeants and 48-hour sergeants. A major point of contention between the parties is a County proposal to convert the monthly pay system to an hourly pay system for the members of this bargaining unit. This issue will be discussed separately under Issue 7.

Moreover, the Guild proposed to make additional adjustments to the rates of pay set forth in Article 11. The County countered with a number of its own proposals to change

existing language or to continue current contract language rather than adopt the Guild proposals.

B. The Guild

The Guild proposed to increase the salary schedule over a two-year Agreement with four separate pay adjustments. Effective January 1, 1995, the Guild seeks a 5% increase plus an amount equal to the Portland CPI-W for the period July 1993 to July 1994. Effective July 1, 1995, the salary schedule would be adjusted by an additional 5%. Effective January 1, 1996, the Guild would have the salary schedule increased by 5% plus an amount equal to the Portland CPI-W for the period July 1994 to July 1995. The final wage increase would be effective July 1, 1996, with an additional 5% increase. The Guild proposal would make the increase retroactive to January 1, 1995, for all employees as well as for those who may have retired in the interim. The Guild would continue the 5.28% premium for the 48-hour deputies.

The Guild begins by noting that a straightforward top step analysis reveals that as of the date of the arbitration the Clark County deputy sheriffs are paid 5.9% below the comparable jurisdictions. Guild Ex. G-1-4. In order to make an accurate comparison of the compensation paid by the comparator jurisdictions, the Guild maintains several adjustments are necessary to accurately reflect the true compensation received by deputies in the comparable jurisdictions. In Guild Exhibit G-1-5 wages are projected to December 31, 1996. The analysis of projected increases in the comparator jurisdictions reflects an

adjusted wage deficiency of 8.4%. The Guild reasons that a straightforward comparability analysis of the adjusted wage indicates a catch-up of 5.9% is necessary on the date of the arbitration, and a catch-up of 8.4% is necessary at the expiration of the contract.

The wage increase the Guild is seeking is reinforced by the total compensation analysis provided in Guild Exhibit G-1-11. The Guild notes that a total compensation analysis is complicated by the unique system in Clark County concerning paid days off. None of the comparable jurisdictions have a similar paid days off system. In essence, the Clark County program provides that holiday time off, vacation time off and sick time off all are encompassed under the paid days off umbrella. Although Clark County does provide for sick leave at the rate of 4 hours per month, that sick leave cannot be utilized until the individual has been sick for three consecutive days. All of the other comparators have holidays off and first day sick leave.

The normal compensation analysis utilizes the value of vacation, sick leave and holidays for the purpose of developing a net hourly wage. The methodology used was to reduce the normal 173.3 hours by the value of the time of holidays and vacation days off. This results in a net hours worked a month which is divided into the monthly salary and the result is the net hourly wage. In this case, the Guild undertook a total compensation analysis that properly considered the uniqueness of the paid days off component of the Clark County compensation package. The Guild converted

holidays off into a value for holiday pay. Vacation and sick leave are then deleted as categories in the computations. The Guild reasons that because patrol deputies working a 4/12 schedule work approximately 120 hours more per year than deputies in the comparator jurisdictions, vacation and sick leave are properly deleted from the computations. The extra hours have been valued at approximately 5.28% by the Guild.

The Guild then chose to demonstrate its compensation analysis based on salaries in existence at the time of the arbitration, and not the salaries adjusted to reflect the increases which will be received during the term of the contract as set forth in Exhibit G-1-5. Based on the total compensation analysis, the Guild submits that the overall amount of catch-up necessary to reach the average total compensation in the comparable jurisdictions is 8.2%. Guild Ex. G-1-3.

If the projected salaries for the comparator jurisdictions are utilized, the numbers set forth in Exhibit G-1-3 would increase substantially. In Exhibit G-1-5 the Guild projected adjusted wages to December 31, 1996, the end of the two-year contract it is seeking. The exhibit reflects that Guild members are currently 5.9% behind and will be 8.4% behind the adjusted wage at the completion of the two-year contract. In the area of total compensation they are 8.4% behind as of the date of arbitration and will on the expiration of the contract period be 10.2% behind in the overall average compensation paid in the comparator jurisdictions.

Turning to the County's comparability exhibits, the Guild argues these exhibits are seriously flawed in several respects. First, none of the County exhibits reflect the salary increases received by the Oregon jurisdictions on July 1, 1995. Second, the County compounds its errors in County Exhibit 6 when it seeks to delineate the value of the PERS pickup by failing to pickup the additional 4% of deferred compensation by Clackamas County. This results in the overall understatement of Clackamas County compensation in excess of 7%.

Third, the County consistently failed to take into account the status of salaries at the time of arbitration which understated the total compensation. Fourth, the County's capriciousness in utilization of numbers can also be found in its decision to utilize arbitrarily a five year mark for educational pay analysis. The failure to recognize the increasing valuation of the educational incentive results in further understatement of total compensation received in comparable jurisdictions.

In sum, the County has plainly understated the total compensation for the comparable jurisdictions. The County has also made certain assumptions which are not accurate and further understate the compensation paid in the comparable jurisdictions. By the County's own analysis for 1995, the average increase offered in the comparable jurisdictions is 2.76%. However, the County offers only 1.5% to the members of this bargaining unit.

Regarding the Consumer Price Index, the percentage of change for the first half of 1995 was 3.2% and the percentage of

change for the first half of 1994 was 2.9%. According to the Guild, the minimum increase necessary for 1995 is 2.9% and the minimum increase for 1996 would be 3.2% to keep pace with increases in the cost of living. A cost of living increase would not catch the Clark County deputies up with the comparable jurisdictions or bring them to a salary appropriate for the Portland Metropolitan Area.

The County's own exhibits on the CPI reflect an increase of over 6.1%. The County has offered increases amounting to 50% of the CPI. No analysis submitted by the County can justify such a low offer for the members of this bargaining unit.

With respect to changes during the pendency of these proceedings, the only circumstance applicable to this is the fact that salary increases have occurred for comparable jurisdictions up to the arbitration. Further, salary increases will occur in the comparable jurisdictions after the rendering of the Award in this case.

The Guild asserts the labor market for Clark County is an integral part of the Portland Metropolitan Area. The Portland Metropolitan Area consists of four counties, with Multnomah County at the center. If Multnomah County is added to the equation, then Clark County is 14.7% behind the projected salaries. Adding the cities and counties together for the total Portland Metropolitan Area labor market as of the date of the arbitration, reveals that Clark County is 14.8% behind. It is clear from the evidence that the labor market analysis establishes Clark County deputy sheriffs

are paid substantially below the labor market for police officers and deputy sheriffs within the Portland Metropolitan Area. The members of this bargaining unit need a substantial increase to bring them in line with the comparable jurisdictions, not only outside the Portland Metropolitan Area, but more particularly inside the Portland Metropolitan Area.

Regarding the ability to pay factor, the Guild suggests the County's evidence on this factor is highly suspect. The County presented no official documents but chose to rely upon highly suspicious working papers for the purpose of justifying a preordained result. While the County relies on projected revenue losses as the result of annexations, the County's exhibits do not reflect any savings in reduced demand for services as the result of annexations. Finally, a County witness testified with respect to budgeted revenue that there was an apparent "\$400,000 typographical error" in County Exhibit 42. The error changes the 1995 budget from a deficit to a surplus. The Guild also offered a statement of the County manager recorded on video tape where he states that the County is not in a state of financial crisis. The Arbitrator should conclude from the evidence that the County does not suffer from an inability to pay what the Guild is seeking through this interest arbitration. Thus, the Guild submits the County failed to prove that it had an inability to pay the wage increase sought by the Guild over the life of its proposed two-year Agreement.

The evidence is undisputed that the County has granted all other County employees a 3% increase per year. This is twice

as much as the County has offered the Guild. When one looks at internal comparability, the minimum that should be received by the Guild should be 3% per year. The data submitted by the Guild demonstrates that its members are entitled to an increase of substantially more than 3% per year.

The documentary evidence submitted by the Guild proved that deputy sheriffs are paid 5.9% behind the current adjusted wage for the stipulated comparables. Guild Ex. G-1-4. On December 31, 1996, the Guild will be 10.2% behind the total compensation paid to deputies in the comparable jurisdictions. Guild Ex. G-1-5. All of these numbers speak to a minimum increase of 5% per year just to come to the average of the comparables. When one takes into account that all of the comparables in the stipulated group except Clackamas County and Washington County are outside a major metropolitan area, the larger labor market dictates a 15.1% increase by December 31, 1996, is justified. The Arbitrator should award 5% retroactive to January 1, 1995, 5% retroactive to July 1, 1995, and 5% retroactive to January 1, 1996.

The Guild also proposed under the wage issue that an employee who left employment with Clark County should still receive a retroactive check. To do otherwise would encourage the County to drag out negotiations.

The first sub-issue under the wage issue relates to shift differential. Article 11.3 currently provides for a 30 cent shift differential for the swing shift and a 40 cent differential for the graveyard shift. The Guild would increase the shift differential

by 20 cents for both shifts. The Guild's justification for this proposal is based on internal comparability. The Joint Labor Coalition contract reflects a shift differential of 90 cents per hour. The Joint Labor Coalition increase in shift differential was substantial over the previously negotiated agreement. The Guild merely seeks to increase its shift differential by an amount which reflects the same justification the County utilized for increasing the Coalition shift differential. The County's proposal to delete the shift differential must be viewed as punitive in nature.

The Guild next proposed to amend Article 11.4 to eliminate the half shift qualification for working out-of-classification premium pay. The Guild also proposed to provide premium pay of 5% for the SWAT Team and 5% for those employees assigned to carry a pager. The Guild would also provide for the integration of a senior deputy program.

The evidence revealed that every single day between 3 a.m. and 5 a.m., there is no sergeant assigned to be on duty. This results in 2 hours where deputies are required to function in essence as deputies in charge without any additional compensation. This means that the senior deputy has to assume the additional responsibilities that go with the deputy in charge function without any additional compensation.

The 5% premium for SWAT Team pay is justified because they are the only members of the bargaining unit who are required to meet a physical fitness standard. As a result, they must work out on their own time in order to retain that level of physical

fitness required by the County. When the physical fitness requirement is coupled with the dangerous nature of SWAT Team work and being subject to callout, a 5% premium is appropriate. Spokane, Thurston and Washington Counties have all recognized that SWAT Team assignment calls for additional compensation.

The pager pay premium is in essence detective pay. Because patrol deputies work a 4/12 with four days off thereby securing a large number of days off and because they receive an additional 5.28% in pay reflecting their additional hours worked, it has become more difficult to encourage patrol deputies to volunteer for special assignments. If the pager pay is viewed as a detective incentive, then the Guild's proposal is in line with the comparables who provide a detective premium.

The final proposal of the Guild relates to the institution of a senior deputy program. According to the Guild, there is a need for an intermediate level of supervision. The Guild's proposal will provide the County with the benefit while allowing more flexibility in the assignment of sergeants and provide a clear chain of command. The creation of a senior deputy program would recognize that knowledge and experience of veteran employees provides an economic benefit to the County. Four of the comparables have either a corporal or a special senior deputy classification which generates additional pay.

C. The County

The County begins by setting the context for a wage award during the term of the successor Agreement. When the Guild took over representation of the bargaining unit from SEIU, Local 11, in late 1991 they were successful in securing substantial increases for the 1992-94 Agreement. The parties agreed on wage increases of 23.9% over the duration of the 1992-94 Agreement. With the "roll-in" of the 2.4% premium for working on holidays which was moved into base salaries, the deputy sheriffs' wages increased by 29.4% or 9.8% per year. In addition, a pay adjustment of nearly 5.3% was granted to 4/12 shift employees in the 1992-94 Agreement. This 5.28% premium compensated road deputies on a hour-for-hour basis for the additional time they spent working for the County. As such, these Guild members which make up 60% of the Guild, received increases of about 35% over the three-year period. County submits it is quite obvious that the members of this bargaining unit enjoyed substantially greater increases than the CPI, and increases received in the comparable jurisdictions.

The County characterized the Guild's "cash cube" approach to arbitration as a blatant money grab. The Guild is proposing a 12.9% wage increase for 1995 to be followed by a 12.3% wage increase in 1996. Further, the Guild seeks to obtain a new senior deputy program which is essentially a disguised longevity pay plan. Adoption of this plan would yield an additional 10% on top of the current and very generous incentive plan. The Guild also seeks to obtain pager pay of 5% for almost one-half of the bargaining unit,

SWAT Team pay of 5% and an increase in shift differential and working out-of-class pay on top of this wage proposal.

The County asserts the impact of these proposals is staggering. The County calculated that by the end of 1996 a 48-hour deputy would be making over \$5,000 per month or over \$60,000 per year. Co. Ex. 3. For a senior master deputy at the top step, this would equate to an overall increase of 94.7% since January 1992. If a member was also on the SWAT Team and carried a pager, that member would receive an additional 10% increase. If that same person would be eligible for the senior deputy program this would yield a substantial longevity bonus on top of the wage increase and premium pay. The Arbitrator should reject the Guild's "shoot for the moon" approach to interest arbitration.

The County next asserts that "economic red flags are waving" with respect to the financial health of Clark County. The County has been growing rapidly both in terms of population and revenue. The most significant factor impacting the financial health of the County is annexation. The City of Vancouver has embarked on an aggressive plan to annex all unincorporated areas within the urban growth boundary. The annexations are in areas of substantial retail concentration which will cause a loss in sales tax revenue. In addition, Vancouver announced that effective January 1, 1997, it will annex a significant part of the unincorporated eastern Clark County which includes about 55,000 people. The bottom line is that this annexation along with others will bring an additional 50,000 people into the City.

The impact in the County is that it will be servicing a population of one-half the current service area with an anticipated drop in revenues from 1996 to 1998 of about \$6,000,000.

Moreover, three other factors are also impacting the current budgeting situation. First, there have been dramatic increases in the cost of providing mandated regional services in the area of corrections. Second, the County is experiencing a decline in certain special revenues. Third, the last few years have seen a substantial moderation in revenue growth at the County. Given the "red flag" in terms of the current economic status of the County, this is not the time for another substantial wage increase for the members of this bargaining unit.

The County next argues that the comparables support the County's wage proposal. The County has proposed a three-year contract with a wage increase of 1.5% in each of the three years of the contract. Whether one looks at base wages or analyzes total cost of compensation, the comparables strongly support the County's wage offer.

The beginning point of the County's analysis was of top step base wages. The average base wage of the comparables on July 1, 1995, was \$3,333 per month. If the County's 1.5% offer is accepted, the 40-hour deputies in this unit will be paid \$3,389 per month. Adoption of the County's offer would place the members of this bargaining unit 1.67% above the average wage paid in the comparable jurisdictions on January 1, 1995.

The County recognizes that there is a problem when making comparisons with the Oregon jurisdictions because of the PERS pickup. Given the uncertainty of the litigation over the PERS pickup, the County offered alternative wage comparisons. If the Oregon Supreme Court upholds Ballot Measure 8, the County's position on the wage comparables will be 1.7% higher than displayed in the County data. If Ballot Measure 8 is found unconstitutional, then the PERS pickup would have to be added to the base wages for Marion and Clackamas Counties. Co. Ex. 7. If the PERS pickup is added to base wages, Clark County would be paying right at the average of \$3,389 on the adjusted base for the seven comparable jurisdictions.

Moreover, the County calculated its comparison study based on the 40-hour deputy. However, the majority of the deputies in this unit work a 48-hour workweek, and receive a base wage which is 5.28% greater than used in the comparison. As such, the majority of the members of this unit receive pay that is 5.28% ahead of the comparables in terms of base wages received for 1995 on the assumption the County's proposal is adopted.

The County next argues that base wages alone do not provide a true picture of the generous compensation program for Clark County deputies. The County's extraordinarily rich incentive plan is structured in such a way that an officer cannot help but receive a generous incentive payment if he or she attends the basic training academy and mandatory County training. When the longevity pay is computed the County deputies fare quite well. At the five-

year level the County deputies are .76% below the average of the comparable jurisdictions. However, when the base wage plus longevity is looked at the ten-year level, members of this bargaining unit are 3.29% above the average and at the fifteen-year level members are 7.38% above the average. Once a deputy reaches the twenty-year level, the deputy is 6.30% above the average between Clark County and the comparables. Co. Ex. 9.

The County next offered a series of net hourly compensation charts to compare the wages among the various jurisdictions. In computing this data, the County added the total medical benefits, various levels of educational incentives and total hours worked by deputies in each department. The County revised its Exhibits 15 through 26 to correct mathematical errors found in the exhibits used at the hearing. (Attachment A to Brief).

The net hourly compensation study prepared by the County yielded figures that placed Clark County deputy sheriffs ahead of their comparables by substantial amounts. At the fifteen- and twenty-year level of service with no educational incentive, members of this bargaining unit were 11% ahead of the average of the seven comparable jurisdictions. At the fifteen- and twenty-year levels of service with an AA degree, the percentage differential was 10% over the comparables. The lowest percentage level was at five years of service with no education which placed deputies 3.07% above the comparables. The remainder of the service levels and educational levels ranged from 5% to 9.5% above the comparables.

The overall average of the net hourly compensation study demonstrates that members of this bargaining unit are 8.3% ahead of the comparables. The County concludes this important wage analysis strongly favors the County's proposal being adopted by this Arbitrator.

Turning to the Guild's wage studies, the County submits the Guild's methodology is flawed and should be rejected. The Arbitrator should reject the Guild's analysis which included the higher paying jurisdictions of Multnomah County, King County, Pierce County and Snohomish County because these counties are substantially larger than Clark County and are not among the stipulated group of comparator jurisdictions.

The County summarized its attack on the Guild's wage study in the post-hearing brief as follows:

This significant change is attributable to six significant and fundamental flaws in the methodology used by the Guild in this proceeding: (1) the Guild has compared 1996 wages in the other jurisdictions with 1994 wages in Clark County; (2) the Guild has ignored hours of work in this proceeding, unlike the documentation it provided during bargaining; (3) the Guild did not give Clark County appropriate credit for the incentive program in existence, while inappropriately applying community service credits from Clackamas County and inaccurately depicting Marion County's longevity plan, which is actually a blended matrix; (4) an inaccurate figure for medical care was used; (5) the Guild included a misleading "calculation" of holiday pay; and (6) the Guild's use of employer retirement premiums inappropriately compounds the actual differential between comparables. When these factors are accounted for, the Guild's own data leads to a very

different conclusion: the County's offer is supported by the comparables.

Brief, p. 18.

The County submits the cumulative effect of the fundamental flaws in the Guild's data is as follows:

ADJUSTMENT BASIS	EFFECT
Base year flaw	6.00%
Understatement of medical premium	0.75%
Improper holiday pay credit	3.00%
Overinclusive pension contributions	1.30%
Cumulative effect on Guild data	11.05%

Brief, p. 26.

The County avers the impact of these changes is substantial. If the Guild's own figures, as contained in Guild Exhibit 1-11 are changed to reflect the correct incentive and medical payments for Clark County, and exclude holiday pay and employer pension contributions, the wage picture is quite different. Once the correct base year is used and the hours are factored in, the average wage differential is only 1.1%. The bottom line is Clark County is 5% ahead of the comparables, even without consideration of net hours. The County submits it is fairly paying its deputies and that no catch-up wage adjustment is required. The wage data offered by the County establishes that the members of this unit are over the market among the stipulated comparables.

Regarding the changes in consumer prices, the Guild completely ignored this statutory factor. Whether the Arbitrator uses a CPI-W or the CPI-U Index, inflation has been running at less

than 3%. These averages have been hovering between 2.5% and 3% for the last couple of years and are both currently at 2.5%. At the time the parties would have otherwise reached agreement for the 1995 wage agreement, the indexes were increasing at a 2.9% rate. Given that the CPI overstates inflation by 1% to 1.5%, the actual increase in consumer prices is only 1% to 2%. The County submits its wage offer of 1.5% is supported by the change in consumer prices as reflected by the CPI.

The County next argues that deputy sheriffs have fared well when compared to other County employees. Co. Ex. 4. If the County's proposal of 1.5% a year is awarded for the years 1995 through 1997, Guild members will have received an increase from 1992 to 1997 which is 6% higher than the next highest group of County employees. The difference is even greater for the bulk of County employees with the Guild having received total annual increases of 29.3% as compared with 22% for most other employees. The County conceded that it agreed to a 3% annual increase for the Joint Labor Coalition during the three-year term of that agreement. However, the County received significant benefits and concessions as a result of the bargaining process. Given the 3% wage increase was part of a balanced package, the County was able to agree that a 3% wage increase was appropriate for employees covered by the Joint Labor Coalition agreement. The Guild and the County were unable to agree to many of the very same concessions that became a part of the Joint Labor Coalition contract.

The County also finds support for its proposal from the wage increases received by comparable employees. The average increase for 1995 was 2.76%. Co. Ex. 27. In addition, wage increases being paid in the comparables for 1995 are in the 2.5% to 3% category. Three of the four increases are not known because they are CPI driven. Given the increases in the CPI, it is likely that those jurisdictions will receive increases in the 2.5% to 3% range. If the Arbitrator considers the context of the 8.5% this group of employees received in 1994, the County's wage proposal is entirely appropriate.

The County next pointed to the four items under the miscellaneous other factors category of the statute. First, turnover in the Clark County Sheriff's Department is virtually non-existent. Only one deputy has voluntarily left the Department since 1992. The low turnover rate reveals the wage level is sufficiently competitive to attract and retain qualified officers.

Second, the Arbitrator should reject the evidence offered by the Guild on the local labor market. The County produced an exhibit portraying the wage relationship between metropolitan jurisdictions similar to the size of Vancouver and the county that jurisdiction is in. In each case, the County wages are about 5% to 10% behind the wages paid to city police officers. The County evidence established the differential is nothing more than a standard city-county differential which will be continued with the adoption of the County's offer.

Third, the Guild suggested that since Clark County Sheriff's Department is accredited that deputies should be paid more than the average of the comparables. According to the County, accreditation measures the Department's established procedures and standards set forth by the accreditation agency. There is no reason to consider accreditation as a factor at all relevant to establishing pay levels or a basis for determining a wage adjustment.

Fourth, the Guild witnesses suggested the number of calls the County has been responding to have increased faster than the number of deputies employed. In the view of the County, this increase in the number of calls does not in any way merit an extraordinary wage increase sought by the Guild. The Guild failed to put on any evidence establishing that deputies in Clark County are working harder than deputies in the comparables.

Turning to the Guild's proposal for SWAT Team pay and pager pay premiums, the County asserts these proposals should be rejected. Only two of the comparable jurisdictions pay a SWAT Team premium. Even those premiums are lower than the 5% sought by the Guild. SWAT Team members already receive a substantial amount of money for their participation on the SWAT Team due to the fact that training is often conducted when the deputies are on off-duty time and are paid the minimum callback at the premium rate. The number of SWAT Team incidents does not require premium pay. In 1995 there were only five incidents and in 1994 there were eight incidents. The facts simply do not warrant a 5% premium for SWAT Team members.

The pager pay proposal should also be rejected by the Arbitrator because it is a thinly disguised mechanism for getting premium pay to detectives. The evidence reflected that 52 members of the Guild bargaining unit carry pagers. This includes all members of the SWAT Team, hostage negotiators, DARE officers, marine patrol, etc. The concept of paying all 52 of these deputies a 5% premium pay merely because they carry a pager is wholly unfounded and unjustified. Deputies with pagers are not restricted in any way in their off-duty activities. None of the comparable jurisdictions has pager pay. The proposal should be rejected by the Arbitrator.

It is also the position of the County that the Guild's master deputy program should be rejected because it is yet another mechanism for ratcheting up the longevity component of an already rich incentive program. While the incentive program is not literally tied to longevity, as a practical matter the County's incentive program is in fact driven by years with the Department. Because the training component allows incentive credits to be earned by simply attending the training which is required for all employees, the incentive flows through to the deputies based on years of service.

Seven of the eight comparables do not have a senior deputy program. There is nothing in the evidence to support the creation of such a program for Clark County. Adoption of the master deputy program would result in a substantial salary compression within the bargaining unit. The 5% pay differential

between a patrol deputy and a sergeant as the result of the program is wholly inequitable and not supportable on the record of this case. The proposal should be rejected.

The County proposed the deletion of the current shift differential of 30 cents on the swing shift and 40 cents on the graveyard shift. Among the comparables, only Kitsap County has had a shift differential. Effective January 1, 1995, Kitsap County discontinued shift differential pay. According to the County, it has had no problem getting deputies to choose swing and graveyard shifts. The County spends approximately \$40,000 per year on shift differential. The Guild's proposal should be rejected as unnecessary and would result in increasing an already unacceptable cost for shift differential.

Each party made a proposal to amend Article 11.4 on the working out-of-classification pay. The County proposed that the premium would be paid for a full shift worked in the higher position. The County submits this is in line with the threshold for working out-of-class premium to a level more closely aligned with the comparables.

The Guild has proposed that out-of-class pay be awarded any time the deputy performs the duties of a higher ranking position, even if that occurs for only five or ten minutes. Covering for a sergeant for an hour at the end of a shift is hardly tantamount to being responsible for the full range of functions performed by a sergeant. In addition, the opportunities to work in a higher classification provides valuable training and professional

growth opportunities that enhance the employee's likelihood of eventual promotion. The Arbitrator should reject the Guild's proposal and accept the County's proposal as consistent with the comparables and as being operationally sound.

The County also asks the Arbitrator to dismiss the Guild's officer-in-charge proposal because it requires the County to appoint an officer-in-charge at certain times and circumstances. The decision as to the advisability and necessity of replacing absent employees should rest with management. The Guild's proposal simply does not make operational sense in light of the needs of the Sheriff's Office to staff its personnel in such a manner as to provide the most efficient and effective law enforcement service. The Guild's officer-in-charge proposal should be rejected.

The Guild has proposed to change the method by which wage retroactivity is applied. The current contract provides that deputies who have retired prior to the effective date of the Agreement shall receive a retroactive adjustment only for the "minimum period of time necessary to guarantee the higher retirement benefits." The Guild has proposed amending the clause so that retired employees would receive a retroactive wage increase for the entire period of time covered by the wage increase. The County reasons that the Guild has proposed a windfall for retired members. The current arrangement is a reasonable deal which should be continued into the successor Agreement.

The County proposed to add language to Article 11 which seeks to ensure that deputies will be paid only for the time they

work unless specifically provided for in the Agreement, such as callback premiums, paid leave, etc. Without this language, the County asserts the Agreement could be construed to require Guild employees, who are currently salaried, with pay to continue regardless of the deputy's duty status. The County's proposal is reasonable and should be adopted.

D. Discussion and Findings

The Arbitrator finds after review of the evidence and argument, as applied to the statutory criteria, that a 3% increase, effective January 1, 1995, on the existing salary schedule is justified for 1995. Further, an additional increase of 3%, effective January 1, 1996, is warranted. The Arbitrator will be ordering the implementation of a three-year contract per the discussion found in Issue 7. The Arbitrator finds for the third year of the contract, effective January 1, 1997, that the existing salary schedule shall be adjusted by 4%. The adoption of a 3% increase will move the top step pay of a 40-hour deputy to \$3,437 per month effective January 1, 1995. The top pay for a 40-hour deputy will be increased to \$3,682 per month in the third year of the contract. The top pay for a 48-hour deputy will go to \$3,618 per month on January 1, 1995, and \$3,727 per month effective January 1, 1996. The reasoning of the Arbitrator--as guided by the statutory criteria--is set forth in the discussion which follows.

Constitutional and Statutory Authority of the Employer

Regarding the factor of constitutional and statutory authority of the employer, no issues were raised with respect to this factor.

Stipulations of the Parties

Regarding the stipulations of the parties, it was agreed that four Washington counties and three Oregon counties would serve as the comparables for this interest arbitration proceeding. The seven counties are a reasonable and appropriate group with which to measure and assist in defining the wages and working conditions for this bargaining unit. Given the stipulation, the Arbitrator rejects the Guild's attempts to justify its proposals based on jurisdictions outside of the stipulation.

Comparability

The stipulation as to the seven jurisdictions with which to compare Clark County for the purpose of determining compensation and working conditions is a credit to the parties. However, what normally would have been a relatively easy task of reviewing the wages and other compensation paid in the comparable jurisdictions was complicated by the different methodology employed by the parties to measure total net hourly compensation. Each party vigorously asserted the methodology employed by the other side was flawed and should be rejected.

The Guild asserts the County has plainly understated total compensation in the comparator group. The County countered

the Guild's wage comparison data substantially minimized the net hourly compensation paid to Guild members. If the Guild had accurately accounted for such factors as hours of work, the incentive program, holiday pay, medical insurance, etc., the County submits a very different picture of comparability emerges.

Moreover, the creation of accurate comparability data is complicated by three primary factors. First, the paid days off system used in Clark County is unique among the comparators. Second, the retirement system in Oregon (PERS) is different from the Washington system. The retirement issue is further complicated by the ballot measure in Oregon which would end the PERS pickup and the pending litigation challenging the constitutionality of the ballot measure. Third, over 50% of the members of this unit work the 4/12 schedule which materially increases the deputy base pay. The parties agreed in the previous contract that the value of the extra 8 hours should be set at 5.28% of the base deputy pay.

This Arbitrator has previously noted in other arbitration awards that preparation and evaluation of compensation studies is not an exact science. The instant case demonstrates the validity of this point. The unique nature of the paid days off system in Clark County inherently creates a problem in making accurate comparisons. It is the opinion of this Arbitrator the parties would be better served by narrowing their differences on the appropriate methodology to be utilized to compare total wages and benefits.

The Arbitrator has carefully examined the wage comparison studies developed by the parties. On the whole, I find the County's approach presents a better picture of the overall level of compensation paid to deputies in the comparator groups with Clark County. While County's methodology is not perfect, it properly takes into account the hours of work and incentive programs. The Guild's failure to give credit to the paid days off program is unacceptable. The weakness in the County's exhibits is that they do not reflect salary increases granted on July 1, 1995, for the three Oregon counties. Nor do the exhibits include wage increases for deputies in the Washington counties over the term of the proposed three-year Agreement.

Based on its wage studies, the Guild concluded that its members were currently 5.9% behind, and would be 8.4% behind the adjusted wage at the completion of the two-year contract. Guild Ex. 1-5. Further, the Guild reasoned Guild members were 8.4% behind the adjusted wage as of the date of the arbitration and would be 10.2% behind at the end of the proposed two-year Agreement. The Arbitrator finds the Guild's conclusions overstate the disparity in total compensation between Clark County and the comparators. The County's data proved members of this unit enjoy a competitive and reasonable total compensation package.

The adoption of the 3% wage increase effective January 1, 1995, will set the top step base wage at \$3,437 or \$104 above the average of the seven comparators. At the beginning of the contract term on January 1, 1995, the base wage for Clark County deputy

sheriffs will be in a virtual tie with the two top paying counties of Kitsap and Marion. Even with mid-year adjustments for the Oregon counties, Clark County will maintain its competitive position in the rankings.

The Guild projected wages to December 31, 1996. Guild Ex. 1-5. The Guild exhibit reflects an average top step wage as of December 31, 1996, of \$3,535 per month and an adjusted wage of \$3,616. The implementation of a 3% increase effective January 1, 1996, will set the top step base wage for Clark County at \$3,540 per month or \$5 above the average wage. Even using the Guild's adjusted wage, Clark County deputies would be comfortably positioned in the middle of the comparator group. It should be noted that the Guild's own figures projected 1996 wage increases in the 3% range for the comparator group. The 3% award for each of the first two years of the contract is consistent with actual and projected improvements in the wage levels of the comparator group.

The Arbitrator was persuaded that a 4% increase effective January 1, 1997, is necessary and appropriate to maintain Clark County's competitive position among the comparator group. The top step for a 40-hour deputy would rise to \$3,682. Adoption of the County's 1.5% per year increase for three years would certainly cause a deterioration in the total compensation package paid to the members of this group. The Arbitrator holds there is absolutely no justification for adoption of a three-year package that would drive the wages paid to the members of this unit to the bottom end of the comparator group.

The Arbitrator has made no attempt to reconcile the parties' divergent total compensation wage studies or to apply the 3% award to the wage studies offered by the parties. In the judgment of this Arbitrator, the three-year increase of 10% over the term of the 1995-97 contract will flow through to the total compensation analysis performed by the County necessary to maintain a reasonable and competitive compensation package through December 31, 1997. The three-year adjustment awarded by this Arbitrator is consistent with both the internal and external comparators and the increase in the cost of living as measured by the CPI.

In reaching a conclusion on the wage issue, the Arbitrator was mindful of the additional pay members of this unit earn under the incentive plan. The Arbitrator rejected the County's proposal to drastically change the incentive plan. The continuation of a generous incentive plan will provide additional dollars for the members of this unit.

Cost of Living

Turning to the factor of cost of living, the evidence overwhelmingly supports a wage settlement closer to the County's offer. The cost of living standard provides absolutely no support for the Guild's proposed wage increase exceeding 15% over the duration of a two-year contract. In fact, the cost of living factor argues strongly against the Guild's proposal.

The national CPI-W and CPI-U has been running between 2.5% and 3% for the past couple of years. The Portland area CPI-W and CPI-U figures are at about 3%. Further, the 23.9% wage

increase the members of this unit received during the life of the 1992-94 Collective Bargaining Agreement clearly protected them from any loss of purchasing power due to inflation. Thus, the Arbitrator must hold that a substantial wage increase over the recorded CPI figures is unnecessary to keep pace with the cost of living.

If the evidence on comparables demonstrated Clark County was paying a substandard level of compensation, then the CPI figures would assume a smaller role in establishing the overall compensation package. However, as previously discussed in the comparability section of this Award, members of this bargaining unit enjoy a competitive and generous total compensation package.

In sum, the 3%, 3% and 4% wage increases awarded over the term of the 1995-97 contract by the Arbitrator are consistent with past and projected increases in the cost of living.

Changes in Circumstances During the Pendency of the Proceedings

The only relevant change in circumstances is the salary increases enjoyed by deputies in the comparable counties. As noted in the comparability discussion, wage increases for 1995 were running in the 3% to 4% range. For 1996, negotiated increases and CPI driven wage adjustments will be in the area of 3%.

Other Factors

The single most important "other factor" relevant to this case is internal comparability. The County agreed to a 3% annual increase for the Joint Labor Coalition during the term of their

three-year contract. The Joint Labor Coalition contract covers the majority of County employees. While the focus of this case is to decide the appropriate compensation level for deputy sheriffs, the Arbitrator cannot totally ignore internal comparability. In crafting an Award for the members of this bargaining unit, the Arbitrator must avoid a result that is out of touch with other County wage settlements.

The Guild's proposal to increase base wages by over 15% in two years was not supported by compelling evidence to justify an increase of this magnitude. On the other hand, the Guild's evidence on overall compensation did show that the increases for its members need not be identical to that of the Joint Labor Coalition contract. The Guild is a separate and distinct bargaining unit with its own needs and issues unique to law enforcement.

The lack of turnover in this unit also reflects a compensation package that is sufficiently competitive to attract and retain qualified deputies.

The County did not make a straightforward inability to pay argument. Instead, the County asserted the "economic red flags are waiving." The impact of the City of Vancouver's aggressive annexation plan on County services and revenue was a primary concern of the County. In addition, the County sees a substantial moderation in its revenue growth over the next few years. The Arbitrator concurs with the Guild that the County's evidence did not establish an inability to pay defense.

The Arbitrator accepts the County's argument that this County is in a period of rapid transition and should operate with caution concerning wage settlements. Given the absence of hard evidence to support the substantial wage increase sought by the Guild, the Arbitrator holds it would be inappropriate to grant the 15% plus increase proposed by the Guild over the term of a two-year Agreement.

Wage Retroactivity

The Guild proposal to amend Article 11.1.7 to grant full retroactivity for retired members is without merit. Current contract language provides retroactivity for the "minimum period of time to guarantee the higher retirement benefits." This language strikes an appropriate balance on the issue for retirees.

Shift Differential

The Guild proposed to increase the shift differential by 20 cents per hour. The County proposed to delete the 30 cents per hour premium for the swing shift and the 40 cents per hour differential for the graveyard shift. The Arbitrator finds neither party made a convincing case to change current contract language.

The total compensation package for members of this bargaining unit argues against a shift differential similar to that found in the Joint Labor Coalition contract. While comparability supports the County's position, the Arbitrator was not persuaded sufficient reasons exist to remove the shift differential premium from Article 11.3.

Working Out-of-Classification Premium Pay

Article 11.4 grants premium pay when a member works in a higher classification for one-half shift. Both parties proposed changes to this section. The Guild proposed to require premium pay whenever a member worked the higher classification. The County countered with a proposal to increase the time worked to one shift before premium pay was due.

The Arbitrator finds the Guild's position to be excessive and unworkable. The Arbitrator concurs with the County that a brief period of performance in a higher position should not warrant extra compensation. Filling in for a sergeant for a brief period does not require a deputy to perform the full range of a sergeant's duties. It is often true that lines of division between work classifications are not sharply defined and working the higher job for brief periods of time does not justify premium pay.

The County's proposal to increase the time necessary to qualify for premium pay to a full shift is reasonable. Where an employee is assigned to work a full shift in a higher classification, the lines of demarcation between the two jobs are clearly defined. Operationally, the assignment to a full shift expressly places the employee in the higher rated job for a measurable period of time.

Moreover, the working out-of-classification threshold of one shift is the standard in the comparator group. Therefore, the Arbitrator concludes the County's proposal should be adopted.

The Guild also proposed to add a new sentence to Article 11.4.1 that when no sergeant is on duty the "senior deputy on duty" shall be appointed the officer-in-charge." For the reasons set forth in the discussion of the "senior deputy" program, this language should not be added to Article 11.4.1.

Senior Deputy Pay

The Guild proposed the addition of new language to Article 11 which would create a senior deputy program. Pursuant to the Guild's offer, a deputy completing ten years of service and the required training would automatically be designated as a senior deputy. Senior deputies would be eligible for premium pay ranging from 2.5% to 10%, depending on the length of service. The County opposes the creation of a senior deputy program because it sees the proposal as a method of "ratcheting up the longevity component of an already rich incentive program."

Based on the evidence presented, the Arbitrator concludes the Guild failed to demonstrate any substantial need for an intermediate level of supervision in the Sheriff's Office. Thus, the Arbitrator was not persuaded to add a senior deputy program, which in essence, would provide additional premium pay for veteran employees.

SWAT Team and Pager Pay Premiums

The Guild proposed a 5% premium for each shift a deputy is assigned to the SWAT Team. Further, deputies required to carry a pager would receive a 5% premium. If a deputy was assigned to

the SWAT Team and required to carry a pager, the premium would be 10% pursuant to the Guild's language set forth in Article 11.4.2.

Regarding the SWAT Team pay, the Arbitrator finds the 5% premium unwarranted and unnecessary. SWAT Team members were called out five times in 1995 and eight times in 1994. If a SWAT Team member is called back to work for an incident, each member receives the minimum callback pay at time and one-half. If a SWAT Team member is called back for training outside of their regular shift, the same callback and overtime premiums apply.

Turning to the issue of pager pay, there is even less justification for this 5% premium than for the SWAT Team premium. Deputies who carry a pager are not restricted in their off-duty activities. None of the comparables have a pager pay provision.

The Guild's main argument for this premium was that detectives normally carry a pager. A detective works a 40-hour week and thereby earns less than a road deputy who works a 48-hour week. The longer workweek generates an additional 5.28% in pay. According to the Guild, this disparity has created animosity between detective assignments and patrol deputies. The Guild also argued the lower pay reduces the incentive for members to move into specialty positions.

The Arbitrator finds the pager pay proposal should not become a part of the contract for two main reasons. First, the Guild's proposal does not limit the premium to detectives who are required to carry a pager. Any employee who carried a pager would qualify for the 5% premium. Second, if the detectives are under

compensated for their work, a pay increase should be justified on the basis of the merits of detective work. The Arbitrator rejects the back door approach to securing additional pay for detectives by means of pager pay.

Pay for Time Worked

The County submitted a new Article 11.8 which would purport to ensure deputies are paid consistent with the Agreement. According to the County, deputies should be paid only for time they work or when using an established paid leave program. The County reasoned that "salaried" deputies might assert their pay should be continued regardless of their work status.

The County produced no evidence there was a problem that needed fixing. No past practices or provisions of the contract were cited by County as arguably requiring that it pay for time not worked. The hours and days of work are established by other provisions. When paid time off is due, the contract expressly denotes when it is permitted and paid for by the County. Therefore, the Arbitrator rejects the County's proposal to add Article 11.8 to the successor Agreement.

The County's proposals for Articles 11.2.2 and 11.7 will be discussed in Issue 4. In Issue 4, the Arbitrator awarded the County's proposal to amend Section 11.2.2 in order to pay all personnel on an hourly basis. The Arbitrator ordered this switch from monthly to an hourly pay basis to be effective January 1, 1997.

AWARD

The Arbitrator awards that Article 11 be modified as follows:

11.1 Salary Schedule Increases

11.1.1 Effective January 1, 1995, the salary schedule shall be adjusted by 3%.

11.1.2 Effective January 1, 1996, the salary schedule shall be adjusted by 3%.

11.1.3 Effective January 1, 1997, the salary schedule shall be adjusted by 4%.

11.2 Other Salary Adjustments

11.2.1 Forty-eight (48) hour personnel shall be paid an adjustment of 5.28% effective January 1, 1995, and January 1, 1996.

. . .

11.4 Any regular full-time employee who is assigned to perform substantially all the duties of a budgeted position in a higher classification for one shift or more shall be paid according to the promotional formula in Section 11.5.1 for the duration of the assignment.

Except as agreed to by the parties, the remainder of Article 11 shall remain unchanged. The issues concerning Section 11.2.2 and Section 11.7 (Currently Section 3.5) will be discussed in Issue 4, Pay Period/Method of Pay.

ISSUE 2 - PAID DAYS OFF/HOLIDAYS

A. Background

Article 7 is entitled "Paid Days Off." Pursuant to this Agreement each employee is granted a number of paid days off to be used during the year for vacation, illness, holidays or personal business time off. Maternity, bereavement, military leave and sick leave are covered by other provisions of the Agreement. The PDO system consolidates multiple leave programs into a single account which provides a specified number of PDO time each year. The PDO system replaces the more conventional vacation and holiday benefits, and a portion of the sick leave system, that is commonly found in other law enforcement departments. Article 7.2 established a two-tier system. The two-tier system was placed in the Collective Bargaining Agreement in the mid-1980s. The lower tier was created and applied only to new employees hired after January 1, 1985. Employees employed before January 1, 1985, earned a higher level of PDO system. The Guild proposed to delete the lower tier for deputies employed after January 1, 1985, and to amend the upper tier by adding a twenty-five year accrual rate. The Guild would also increase the number of PDO hours that may be accrued. The County would continue current contract language as amended by the parties.

During the course of negotiations and this arbitration the parties were able to resolve the holiday issue covered by Article 7.4. The parties also reached an agreement on Article 7.7.

The issues left for the Arbitrator center on the Guild's proposals to change Article 7.2 and Article 7.3.

B. The Guild

The Guild begins by noting that the PDO system was established to create an incentive for employees to reduce their sick leave. Under Article 8.5 any sick leave which requires a leave of two full working days or less shall be charged to the PDO account. A leave beyond the second full day shall be charged to the employee's sick leave account. The evidence reflects that the system has worked to create an incentive for employees to reduce their unplanned absences. According to the Guild, the system has clearly worked in that the number of unpaid absences has been severely reduced. Because employee attendance has become more reliable, the Sheriff's staffing and overtime problems have been minimized.

At the time the two-tier system was adopted no one in the bargaining unit was affected since all employees were pre-January 1, 1985. With the hiring of new employees after January 1, 1985, and the retirement of pre-1985 employees, the bargaining unit eventually reached the point where the new employees outnumbered the pre-1985 employees. The Guild submits that a higher level of dissatisfaction has developed because the pre-January 1, 1985, deputies earn more PDO time than the post-January 1, 1985, employees who are now in the majority. The Guild's solution to this growing dissatisfaction and accompanying morale problem is to restore the pre-January 1, 1985, status quo by eliminating the

lower tier. In the view of the Guild, the schedule is consistent with the stipulated comparable jurisdictions. A review of Exhibit G-2-3 reveals that at every five-year interval deputies in this unit are substantially below the combined vacation/sick leave and holiday time granted to comparable jurisdictions. The Guild noted that the County in preparation of its economic exhibits chose to utilize the higher tier, even though over half the employees are in the lower PDO tier. The County did not factor in the savings they realized by having the two-tiered system.

The Guild points to Exhibits G-2-3 and G-2-4 to establish that the post-January 1, 1985, deputies are substantially behind their counterparts in paid time off. Even if the 48 hours of sick leave deputies receive each year are added in they still would be 20 hours behind at ten years, 47 hours behind at fifteen years and 20 hours behind at twenty years. However, the Guild argues that it is inappropriate to add in sick leave because it is not available for usage unless someone has a substantial illness. Therefore, the Guild concludes that some relief is required for the post-January 1, 1985, deputies.

The Guild proposed to add a new twenty-five year accrual rate to the first tier. A review of Exhibit G-2-3 establishes that pre-January 1, 1985, deputies are substantially behind at twenty years among the comparable jurisdictions. The Guild's proposal to add a twenty-five year step merely brings them in line with their comparables at twenty-five years. Since few law enforcement

employees work twenty-five years or more, the twenty-five year step is not going to be a substantial economic hardship on the County.

The Guild also proposed to increase the maximum amount of accumulation from 1.25 times the annual rate to 2 times the rate and that employees be paid rather than lose paid days off. From the viewpoint of the Guild, there are employees within the bargaining unit who are not able to go on paid leave status. By eliminating the amount of paid days off that can be accumulated, the employee is placed in the situation where if they suffer from repeat illnesses of a short duration, they will end up spending all of their paid days for that without the ability to save up for further protection. The rate of 1.25 times the annual accumulation rate is substantially below that of the comparable jurisdictions. The average of the maximum rates of accumulation is approximately 1.58 times the annual rate. Clark County's accumulation rate is substantially behind and therefore it is appropriate to award the Guild's proposal.

C. The County

The County takes the position that the Guild's proposal to eliminate the post-January 1, 1985, tier should be rejected. In the mid-1980s the parties agreed on a two-tiered system. The deputies who came to work with the County accepted this second tier with full knowledge of the PDO benefit available to them. The two-tier system has been in place for ten years and should be continued. In addition, Guild members separately accrue six days

of sick leave which is available when a Guild member is absent for three days or more due to illness.

In order to make an apples-to-apples comparison of PDO plans with conventional vacation, holiday and sick leave programs, it is necessary to add together vested leaves such as vacation and holiday pay to the calculation. Using that method of comparison the total paid vacation days and holidays each year grants Guild deputies substantially more days off of vacation and holiday leave than their counterparts.

Regarding the Guild's attempt to play down the substantial differential by focusing on the fact that Guild members use some PDO time for sick leave, while comparable jurisdictions do not, the County suggests this method of calculation is erroneous. Creation of the PDO system was accomplished by moving six days of the sick leave into the new PDO account. The rest of the sick leave became available for any use. The gain to employees became six days per year, less any PDO time used for sick days. The remaining six days or 48 hours continues to accrue for conventional sick leave use. In other jurisdictions, sick leave time can only be used for sick leave. The Guild's combination of vacation and sick leave blends a restricted use leave with traditional vested vacation type of leave. This is an apples-to-oranges comparison which should not be accepted by the Arbitrator.

The County calculated that the accruals compare very favorably with the comparables. At all levels deputies in the lower tier have more days off than their counterparts. For those

deputies in the upper tier, they are with one exception better off than any of their counterparts.

Moreover, the County's position is further buttressed by an examination of the number of days off enjoyed by employees working patrol who are in the upper tier. Because of the 12 hour schedule, a ten-year employee has 7 calendar weeks off per year. At fifteen years, the patrol deputy has 7.6 weeks off per year. By twenty years, the patrol deputy is off 8.2 weeks per year. A twenty-five year patrol deputy has 8.8 weeks off per year. Co. Ex. 47. This exhibit makes it patently clear why the County bargained for and achieved the gradual phase out of the top tier. The Guild's belated effort to resurrect that tier should be rejected by the Arbitrator.

The County asserts the Guild's data is misleading because it includes all vacation, sick leave and holiday time for the comparables. However, for Clark County, the Guild excluded the 48 hours of sick leave earned by deputies because the restrictions on its use are misleading. The bottom line is that all Guild employees, regardless of the tier they are on, enjoy a substantial amount of time off. The Guild's proposal to have the Arbitrator undue the 1985 Agreement should be rejected.

Present contract language permits accrual of PDO time to a maximum of 1.25 times the employee's current annual accrual rate. The Guild's proposal to raise the cap to 2 times the employee's accrual rate should not be adopted by the Arbitrator. The proposal is not supported by the comparables or the circumstances in Clark

County. Clark County deputies already accrue more time than deputies in the comparable jurisdictions. Co. Ex. 50. There is no reason for the Arbitrator to change the status quo. It is also the position of the County that the Arbitrator should reject the Guild's proposal to require the County to pay for all paid days off in excess of the maximum accrual ceiling. The County has already agreed to a limited and restricted PDO sell-back program because it wants to ensure that deputies actually use their PDO for time off. There is no need to add a new means for cashing out deputies at the maximum accrual rate. The one example cited by the Guild occurred in the late 1980s and there is no evidence that the situation has been repeated.

In sum, the Arbitrator should continue current contract language except as agreed to by the parties in the negotiations.

D. Discussion and Findings

The Arbitrator finds the Guild's proposal to eliminate the lower tier should not be included in the 1995-97 contract. Once again the Guild fails to give credit for the 48 hours of sick leave members of this unit earn under this contract. The sick leave benefit cannot be ignored simply because there are some restrictions on its use. The sick leave benefit is part of the contract which members utilize when they are sick. The evidence reflects members used approximately 3,000 hours of sick leave from January 1994 through August 1995. In addition, members used 3,500 hours of PDO time for sick leave purposes.

Moreover, patrol deputies working the 12 hour schedule-- in the upper tier--at ten years have 7 weeks off per year. At fifteen years the employee has 7.6 weeks off per year. By twenty years the amount of time off increases to 8.2 weeks per year. The phasing out of the upper tier is understandable in light of the significant amount of time a deputy is not available for work.

The two-tiered system went into the contract in 1985. The evidence proved the PDO system generates substantial paid and unpaid time off from work. Based on the record before this Arbitrator, the deletion of the two-tier system is not justified at the present time. As the pre-1985 deputies leave County employment, modification of the two-tier system during the next round of bargaining maybe appropriate.

In reaching the conclusion to retain the two-tiered system, the Arbitrator took into account that in Issue 5, I rejected a County proposal to change the length of the work day to an 11.5 hour day. Thus, the amount of time off for patrol deputies will remain undisturbed through December 1997.

The Guild's proposal to increase the accumulative rate from 1.25 to 2 times the deputy's annual accrual rate is excessive and unsupported by the record. County Exhibit 50 demonstrates that the accumulation rate for vacation time already compares favorably with the seven other jurisdictions. The PDO system applies to more days than the pure vacation systems contained in the contracts of the comparables.

The need for the Guild's proposal to require the County to pay employees for all paid days off in excess of the maximum accrual ceiling was not substantiated.

AWARD

The Arbitrator awards that Article 7 shall continue unchanged except where the parties have reached agreement to modify the language.

ISSUE 3 - INCENTIVE PLAN

A. Background

Article 12 of the Collective Bargaining Agreement refers to an incentive plan. During the 1992 contract negotiations the parties attempted to reach agreement on a change in the incentive plan found in Article 12. The parties were unable to reach agreement on a new incentive plan. The parties agreed to submit the incentive plan to last-best offer arbitration. The Guild prevailed in that arbitration proceeding. On August 17, 1993, arbitrator Eric Lindauer issued an award that established the incentive plan for the 1992-94 contract. The Guild proposed to incorporate the Lindauer award into the Collective Bargaining Agreement. The County proposed a substantial modification of the current incentive plan.

B. The County

The County set two primary goals for proposing a change to the incentive program. First, the County seeks to establish a program that actually creates an incentive for bargaining unit members to get additional education. Second, the County believes it is necessary to establish a program that is comparable in its payouts and eligibility criteria to those of the comparable jurisdictions. According to the County, the incentive program now in place is essentially a disguised form of longevity pay. While the current program rewards training, longevity and education, the County argues that the present system does not serve as an

incentive to secure additional education because the rewards accrue automatically based on longevity and mandatory training.

The County believes it is inappropriate to have an incentive program in which the incentive can be earned by simply attending mandatory and required training classes. The County believes its proposal encourages all employees to get additional education. If an employee does not obtain an AA degree or the equivalent, that employee would never be able to attain the 10% premium. An employee with five years experience would be able to receive a 5% premium for a BA degree or equivalent and a 10% premium by the fifteenth year. In essence, the County would reserve the 10% premium to employees with a BA degree or equivalent.

The County seeks to eliminate financial recognition for attending internal training and change the threshold qualifiers to more in keeping with what it asserts are the external norms. The County argues that the system needs an overhaul because the training/longevity component overwhelms the educational component. The result is the current incentive program is not working as a means for encouraging deputies to take college classes. Thus, the County submits the incentive system needs a complete revision.

The County next argues that the current incentive program is far and away the richest of any incentive program among the comparables. From the viewpoint of the County, the Clark County deputy sheriffs have a program which pays more and requires less than in the comparable jurisdictions. Since the current program is

too far removed from even the most generous law enforcement incentive plans, it should be replaced.

The County displayed the maximum incentive that could be attained in the comparators as follows:

<u>Comparables</u>	<u>Maximum</u>
Kitsap . . .	2.2%
Spokane . . .	9.0%
Thurston . . .	5.5%
Yakima . . .	4.0%
Clackamas . . .	9.9%
Marion . . .	9.5%
Washington** . . .	12.5%
 AVERAGE	 7.5%

Co. Ex. 54.

The exhibit also reveals that for an employee to attain the maximum incentive they must hold bachelors or MA degrees in those counties. In contrast, a Clark County deputy with a BA can receive a 10% incentive in just six years.

The County is not seeking to create an average plan but one that will still remain the "richest" of all the plans in place among the comparable employers. Nor does the County propose to take away any current deputy's incentive pay because it has provided a "grandfather" provision in the plan to ensure a smooth transition into the new incentive program. The County submits this will guarantee deputy sheriffs do not actually lose money while the transition into the new program is completed.

Regarding the Lindauer award, the County argues that its proposal was rejected because the arbitrator in that case found several technical and substantive problems with the County's plan.

According to the County, it has cured the "warts" of the plan that arbitrator Lindauer rejected in 1993. The County concludes that the time has come to create a new plan which actually encourages deputies to achieve additional education.

C. The Guild

The Guild proposes to continue the incentive plan as awarded by arbitrator Lindauer in Exhibit G-3-3. The Guild argues that the County is unhappy with the arbitration decision and seeks to overturn it by its new proposal. Since the County is proposing substantial changes to the existing program, it is incumbent upon the County to present persuasive reasons for the elimination of the existing incentive program. The Guild submits the County failed to meet its burden of proof on this proposal.

The Guild characterized the County's proposal as merely a cost saving measure. Given the County proposal of only a 1.5% across the board wage increase, the essence of its proposal on the incentive plan is to take that money back through modifications of the incentive plan. The testimony of Steve Foster, Human Relations Manager, demonstrated that what the County really objects to is the cost of the plan because it believes it is too generous.

Contrary to the County's position that the incentive program has not worked, the Guild asserts that the program has served to encourage behavior and has worked extremely well. The County now seeks to undo a successful program. The Arbitrator should see the County's proposal as purely an economic issue that has nothing to do with the merits of the current incentive program.

Arbitrator Lindauer wrote in his award that the County presented no substantial evidence to justify changing an incentive program that has existed, in essence, since 1980 in its current form. The Guild submits the County has presented no evidence in the instant arbitration to indicate that less than three years after the Lindauer award the incentive plan should be radically revised. Therefore, the Arbitrator should incorporate the language awarded by arbitrator Lindauer into Article 12 of the Collective Bargaining Agreement.

D. Discussion and Findings

The Arbitrator concurs with the Guild that the County has failed to present persuasive evidence to totally revise the incentive program. Arbitrator Lindauer in his 1993 award cogently detailed the reasons why he favored the Guild's proposed incentive program. In the judgment of this Arbitrator, Lindauer's stated reasons for adopting the incentive program in 1993 remain applicable for continuing the incentive plan in the 1995-97 contract. The Arbitrator does find that there are areas of the current incentive plan which could be improved to deliver what the County seeks. However, this Arbitrator is unwilling to overturn the incentive program and adopt a totally different approach less than three years after arbitrator Lindauer affirmed the incentive program in his 1993 award.

Moreover, the current incentive plan does deliver continuing education to the members of this bargaining unit which enables them to perform their jobs more efficiently and

effectively. The questions raised by the County about the current program center more on the type of continuing education that will be offered to the members rather than the effectiveness of the training. In order to attain the incentive pay, members of this bargaining unit do in fact have to participate in educational training activities.

The Arbitrator in issuing the Award on the wage issue took into account the members of this bargaining unit do in fact enjoy a generous incentive program that delivers additional dollars over the base pay. One of the reasons for rejecting the Guild's wage proposal was the fact the incentive program is relatively easy to participate in, in order to attain the incentive pay.

AWARD

The Arbitrator awards that the Guild's proposal to incorporate the existing incentive program--as awarded by arbitrator Lindauer in 1993--into the Collective Bargaining Agreement should be adopted.

ISSUE 4 - PAY PERIOD/METHOD OF PAY

A. Background

The primary focus of this issue is a County proposal that bargaining unit members be moved into the County's new payroll software system. The new payroll system is structured to pay nonexempt employees on an hourly basis. The County proposed that the members of this bargaining unit be changed from a monthly salary to an hourly basis for pay. Under the current payroll system, employees are paid on the 1st of the month with a draw on the 15th of the month. The employees are paid for the previous month salary on the 1st of the month. The County's proposal would switch to a semi-monthly pay cycle, with pay days on the 10th and 25th of each month. The Guild objects to the County's proposal to switch from a monthly salary to an hourly rate of pay.

B. The County

The County begins by noting that it provides service to over 1,200 Clark County employees and an additional 500 employees from a number of outside entities. The County's payroll system includes five local fire districts, the local health district and a number of regional employers. There are a total of 28 different employers and/or bargaining units which are paid by the County's payroll system. As of the date of the arbitration, all County employees except for three of the four bargaining units in the Sheriff's Office have been converted to the new hourly system.

This means that about 1,000 of the 1,2000 County employees have made the conversion to an hourly rate of pay.

The County's proposal is driven by what it asserts is a payroll system that is out of date. The vendor which supplied the proprietary system to the County is out of business which makes support and upgrades extremely difficult. Maintenance and manipulation of the old system has become very expensive. The County selected a new state-of-the-art Oracle database, which is the industry standard. The system is a combined personnel and payroll database which directly interfaces to the general ledger and budgetary process. The system has built-in FLSA compliance features as well as many other features which will be a benefit to the County for obtaining business records about its employees.

Under the new system employees are paid for their time from the 1st through the 15th of the month on the 25th, and for time from the 16th to the end of the month on the 10th of the following month. The pay is based on actual hours and leave used each pay period. The new system improves the old system in that overtime and premium pay are calculated each time a paycheck is processed.

The County next argues that the system should be upgraded because there is a conflict between Washington State law and the Internal Revenue Code. According to the County, state law prohibits the County from making any withholdings at the time of the "draw" under the current system. On the other hand, the Internal Revenue Service requires the County to withhold taxes and

FICA payments at the time any payment is made to an employee. When the County pays on a semi-monthly basis they are not required to offer a draw, thus solving the IRS issue. The County submitted the conversion to semi-monthly pay was significantly motivated by this feature. The County would accomplish this change by two major modifications of the current Collective Bargaining Agreement. First, the County would delete the last sentence of Section 3.5 of the Agreement and move it to Section 11.7. The proposed Section 11.7 would state:

11.7 The employer reserves the right to modify its payroll system and procedures during the term of this agreement, including but not limited to changes of system hardware and software, and timekeeping forms and procedures.

The second change would be to modify Section 11.2.2 to state:

11.2.2 All personnel shall be paid on an hourly basis.

The Guild has proposed that deputies continue to be paid on a monthly, salaried basis. According to the County, the continuation of the current system would require the County to maintain two separate and distinct payroll systems. It would require that two payrolls be run with a total of four paydays each month. The County is strongly opposed to this idea because the estimated additional cost of maintaining the former payroll

software is about \$67,000 per year. The County submits the old payroll system will be completely dysfunctional by the year 2000.

The Guild resisted the change to the hourly pay system based on two primary objections. The County asserts the Guild's reasons to continue the old system are insufficient to require the maintenance of two payroll systems. The first concern of the Guild is that hourly pay of deputy sheriffs will fluctuate from month to month. The County concedes that in a particular month deputies on one shift will earn more than deputies on another shift. However, the County asserts that over time everything will come out even. Deputies will be paid for each and every hour of service, and their long range, annual earnings will not be impacted by the change in the payroll system. Any reduction in pay due to the shift loss will be minimal.

The Arbitrator should reject the Guild's claim that some members will make less than others. The only reason a deputy would make less in a particular month is that he or she has worked fewer hours. The bottom line is pay is keyed to the amount of time a deputy works during the pay period.

The second concern of the Guild is that members will lose pay as the result of the lag inherent in the new payroll system. The County counters that deputies will not lose any money. Rather, the County avers the new payroll system will simply pay the money out to employees at different times. In addition, the system will deliver premium and overtime pay quicker to employees as they will be paid in the payroll period when the premium pay was earned.

While there will be a slight lag in the receipt of some pay, no one will actually "lose" money as the result of the "lag" in pay.

Section 3.5 of the 1992 Agreement explicitly gave the County the right to purchase new payroll software. The decisions to pay all employees on a semi-monthly basis and to pay nonexempt employees on an hourly basis were made in the context of the features of the software ultimately purchased by the County. The County bargained with the Guild over the impact of that purchase decision and forestalled implementation pending bargaining. The approach taken by the County was entirely appropriate in this case.

The County also rejects the Guild's proposal to adopt the "Vancouver fix." The County has already reached agreement with a substantial number of employees, and most bargaining units to move to the hourly pay system. It is not appropriate to use an alternative system for this bargaining unit. The County is now down to only two bargaining units, other than the Guild, which are not on the new system. The transition into the new system has been successful, and problems with it are being worked out as implementation goes forward.

In sum, the County submits the new system is working and there is no reason the 122 Guild members should not be paid on a semi-monthly, hourly basis, the same as other employees of the County. The County's proposal should be adopted by the Arbitrator.

C. The Guild

The Guild sees the County proposal as making two fundamental changes in the system. First, the County is proposing to change the payday to the 10th and the 25th of the month. According to the Guild the effect of this change is that employees would no longer receive their full pay at the end of the month worked. In the view of the Guild, members will only receive approximately 50% of their normal salary in the month it was earned.

The second fundamental change is to eliminate the monthly salary, and pay on a purely hourly system. According to the Guild, this will result in fluctuating pay again causing severe economic hardship to the members. The Guild proposes to delete Article 3.5 from the contract and thereby eliminate any issue as to whether or not the County can change the payroll system. The Guild also proposes to eliminate the reference to "hourly" in Article 11.2 relating to the 48-hour deputies' compensation. The Guild has never viewed this language to authorize hourly pay. The County's proposal to move Article 3.5 into Article 11.7 would amend it so the County would have the unilateral right to change payroll at will, with no obligation to bargain.

The Guild's arguments against the County's proposal may be summarized as follows:

1. The Guild questions the legality of the County's proposal to switch to an hourly pay rate. RCW 49.28.010 is the 8-hour day law which applies to municipalities. The statute has been construed by the Washington Supreme

Court to mean that it only applied to contracted labor and day labor done. In essence, the County seeks to convert deputy sheriffs to day labor--which is of questionable legality--under the 8-hour law.

2. The Guild points out that none of the comparable jurisdictions pay by the hour. The County was unable to cite a single jurisdiction in either the state of Washington or the state of Oregon that pays by the hour. The proposal of the County is simply unprecedented.

3. The City of Vancouver shares the same computer program as Clark County. The City of Vancouver was able to develop the payroll system which functions under that computer system to avoid switching to an hourly pay system.

4. The County's strongest argument in support of their proposal is that the Coalition has agreed to an hourly pay system. It is the Guild's position that in this case and under the facts and circumstances in existence, this factor should be given little or no weight. The members of the Joint Labor Coalition cannot strike under Washington law and so the County could have unilaterally implemented the payroll system, regardless of whether the Coalition agreed to it or not.

5. The implementation of an hourly pay system will cause substantial variations in the amount of the checks members receive from month to month. Further, depending on the shift an employee works, the deputy may earn more or less than a coworker on another shift. The members of this bargaining unit should not bear the brunt of a self-created situation by the County's purchase of a payroll system that does not account for these variances.

The Guild concludes that the County has not produced sufficiently strong evidence to justify the novel change it is proposing in the way the payroll system is administered. Thus, the

Arbitrator should reject the County's proposal to convert from a monthly salary system to an hourly pay program.

D. Discussion and Findings

The Arbitrator finds that the County has made a convincing case for a revision in the payroll system. The Arbitrator will award the County's proposal for Section 11.2.2 with a modification that it shall be effective January 1, 1997. The Arbitrator will also award the continuance of Section 3.5 so that it will be clear that any future changes will be subject to bargaining. The Arbitrator will move Section 3.5 into the County's proposed Section 11.7.

The County's proposal is based on the sound premise that employees will be paid for all time worked. The principle of pay for time worked is fundamental to any collective bargaining agreement. While the Guild went to great lengths to demonstrate that deputies will "lose" money under the hourly system, the bottom line is that deputies will be paid for each and every hour of work performed for the County and that their long-range earnings will not be impacted by the change.

Moreover, the only reason a deputy would make less money in a particular month is that he or she has worked fewer hours than a coworker. There is nothing inequitable about a system that accurately pays for time worked. The prime example in this contract is that 48-hour employees make more money than 40-hour employees. The sole reason for that is the additional 8 hours of

work performed by the road deputies. This does not violate the sound principle of equal pay for time worked.

The Guild's concern that members will "lose" pay as the result of the time lag inherent in the new payroll system is inaccurate. The deputies will not lose any money as the result of the adoption of the new payroll system. The only difference is that money will be received at different times during the month. The new payroll system will actually deliver premium pay and overtime pay quicker than the old system.

The Arbitrator was persuaded by the County's arguments that there is absolutely no justification for maintaining an outdated and expensive payroll system for the exclusive use of the members of this bargaining unit. The County estimated the annual cost of maintaining a separate system for this group of employees at \$67,000. In addition, the County's argument that the old system will be totally outdated by the year 2000 lends further credence to the County's position that change is in order.

The County presented solid proof that it needs to update its payroll system to deliver an efficient and effective payroll to the 17,000 individuals employed or paid by the County. The administration of the payroll system is complex and should not be burdened by a separate system for the members of this bargaining unit. The status quo should not prevent the full implementation of the state-of-the-art Oracle database payroll system.

Regarding the Guild's questions about the legality of the hourly pay system, the Arbitrator will make no attempt to access

the legality of the proposal. The County has presented a proposal to change to an hourly system and the Arbitrator has been persuaded to adopt that proposal. The constitutional and statutory questions raised by the Guild will have to be decided in another forum.

The strongest argument in support of the Guild's position is based on the fact none of the comparable jurisdictions pay on an hourly basis. In the judgment of this Arbitrator, the real question is the total amount of pay earned by the members of this unit, as compared to that of the deputies in the comparable jurisdictions. The fact that compensation is paid on an hourly basis is irrelevant, if the total amount of dollars delivered are reasonable and competitive. The decisive factor is the amount of pay received by the deputies in this unit, as compared to those in the other units, not the manner in which the pay is computed.

The Arbitrator recognizes that this Award represents a significant change in the way the earnings will be computed and paid to members of this bargaining unit. For this reason, I am delaying the effective date of this change until January 1, 1997, so that time will be available to make the necessary adjustments in order to accomplish the transition from a monthly salary to an hourly wage as easy as possible. The Arbitrator will retain the language included in Section 3.5 to guarantee that any future changes of this sort will be subject to bargaining.

AWARD

The Arbitrator awards with respect to the payroll system issue as follows:

1. Section 11.2.2 shall be amended to read:

11.2.2 Effective January 1, 1997, personnel shall be paid on an hourly basis.

2. Section 3.5 of the current contract shall be moved and renumbered as Section 11.7. The current contract language shall continue unchanged in the new Section 11.7.

ISSUE 5 - HOURS OF WORK/SCHEDULES

A. Background

Article 10 of the current Agreement contains the matters pertaining to hours of work and overtime. Section 10.1 establishes a shift schedule of 8 hour, 10 hour and 12 hour shifts as the County determines to be in the best interest of effective service. The County proposed to amend Section 10.1 to allow for the implementation of an 11.5 hour shift effective January 1, 1997. As has been previously noted, the standard shift for road deputies is 12 hours. The additional 8 hours of work are paid with an adjustment of 5.28% on the base salary.

The County also proposed to move Section 10.2 to 10.1 and insert a clarification. The County announced in its post-hearing brief that it has withdrawn this proposal and the Arbitrator does not need to address this part of the County's proposal. Post-Hearing Brief p. 69.

Patrol deputies working a four on/four off schedule, work 12 hours a day. They work a total of 2,190 hours per year. The 5.28% payment for the additional hours is based on a straight time calculation. The tradeoff for accepting those straight time hours was the ability to have four days off in a row. The Guild objects to the ability of the County to implement an 11.5 hour work shift because it will reduce the amount of time off.

B. The County

The County proposed to amend Article 10.1 to include a sentence which states:

Effective January 1, 1997, the department may implement an 11.5 hour shift.

The County also proposed modifications of other sections of Article 10 to accommodate the adoption of the 11.5 hour work schedule. Pursuant to Section 10.7 the 11.5 hour schedule will rotate on a 23-day repeating cycle of four on/four off, four on/four off, four on/three off, beginning with the first shift following the employee's three days of rest.

The County proposes to restructure the 2,190 hours to improve the Department's efficiency and facilitate the County's ability to provide training. Under the County's proposal, deputies will continue to work the same number of annual hours (2,190) that they currently work. The .5 hour less each shift is offset by an additional workday every 24th day. The County maintains that the additional workday is intended to be used primarily for training.

Chief Criminal Deputy Mike Brown testified about the benefits of the new training schedule. According to Brown, the Sheriff's Office has had a very difficult time finding the time to adequately train deputies. The Sheriff's Department uses a "mini-academy" which blocks out time early in the year which is used for training purposes. The deputies are taken out of their regular assignment and given an extensive week of training. The maximum amount of training which can be scheduled is about 40 hours. The

problem comes when large blocks of deputies are pulled from the field for training and are unable to perform their normal functions. Deputies are required to change their schedule in order to provide coverage in the field. The Sheriff's Office must restrict the number of vacations during the mini-academy so that it will be able to cover field operations while deputies are in training. Chief Brown estimated that the overtime costs incurred by this process were over \$15,000 per year.

The adoption of the new 11.5 hour schedule will create a total of eight overlap days each year where there would be twice the number of deputy sheriffs on duty. The Sheriff's Office could maintain coverage while at the same time provide training without incurring substantial overtime costs.

The County next argues that if the new schedule were implemented deputies would still have a substantial number of days off each year. Under the new schedule they would have about 174 days scheduled off per year. Under the 4/12 schedule, the deputies average 182.5 days off per year. The County suggests the reduction in days off is minimal. Further, the new schedule would allow deputies to return to their families .5 hour earlier on 191 scheduled workdays.

The County next argues that the reduced shift provides additional safety and operational benefits. According to the County, a 12 hour shift is extremely long, especially when worked four days in a row. The Department continues to be concerned about what might happen late in the shift of a tired patrol deputy who is

on his or her fourth straight scheduled day of work. The County submits the movement to an 11.5 hour shift is a significant movement in the right direction. The implementation of the 11.5 hour shift will be for a one year trial period to give the parties an opportunity to test the new schedule during the final year of the Agreement. If the parties do not like the new schedule, they will be free to bargain over it for the successor Agreement.

The Arbitrator should reject the Guild's argument that the County would not make good use of the overlap days. It is the County's responsibility to determine how to best provide police protection within the County. The Sheriff's Office should be trusted to make productive use of the time during this one year trial period. The County concludes that a minimal reduction of workdays off per year, when combined with a shorter workday, is a reasonable compromise on the work schedule issue.

The County also proposed to revise the callback pay provision found in Section 10.11.1. The County would revise Section 10.11.1 to read:

10.11.1 Callbacks on the employee's regular day off shall be compensated at the rate of time and one-half the employee's regular rate of pay with a minimum of three (3) hours.

According to the County, bargaining unit employees currently receive 2 "bonus" hours of compensation whenever they are called back to work. Specifically, the deputies receive the actual time spent on the callback, plus 2 additional hours of pay at time and one-half. The County is proposing a system where deputies

receive the actual time spent on the callback, with a minimum of 3 hours.

The County reasons that the purpose of callback pay is to provide adequate compensation to an employee who is inconvenienced by having been called back to work outside of their regular schedule. The systems used in the comparators establish a payment based on a minimum number of hours threshold, as is proposed by the County. Co. Ex. 69, 71. There is no reason or justification for a callback system like that in Clark County, which pays additional bonus hours, all at time and one-half, regardless of the length of the callback.

The County also proposed language to modify the definition of callback with new language to state:

10.11.3 "Required" to return to work shall exclude all voluntary overtime assignments and overtime which is scheduled more than 72 hours in advance.

The County reasons that callback pay should not apply to those situations where the deputy sheriff receives substantial advance notice of the callback. The County asserts the primary inconvenience comes from being called back to work on short notice. With at least three days advance notice, this inconvenience factor is generally de minimis. The County understands that on many occasions the deputies will be required to report to court with a long period of notice and yet will only be obligated to appear for a short period of time. The County took this into account and excluded callback for court appearances from this proviso.

The Arbitrator should reject the Guild's proposal to expand the definition of callback so that PDO and compensatory days off would be included. The Guild incorrectly seeks to overturn an arbitration decision which held that the callback provision only applies to a deputy's regularly scheduled day off, and not the PDO or comp time days. The County submits there is no reason to overturn the decision.

C. The Guild

The Guild begins with the observation that the County currently has a goal of providing 40 hours of training a year. The shift proposed by the County would create sixteen overlap days, or 128 hours. This is substantially more hours than needed for training. The Guild has two primary objections to the proposed 11.5 hour shift. First, the Guild has serious concerns whether or not the sixteen overlap days would be properly utilized. Second, the Guild is concerned that the proposed 11.5 hour schedule would result in more hours worked at the straight time rate, without the accompanying benefit of days off. The Guild next argues that it accepted the 4/12 shift schedule which reduced compensation for the additional 128 hours because the 4/12 schedule maximizes days off. Deputies who work the 4/12 schedule receive a significantly greater number of days off during the course of the year than the 40-hour employees. The County's proposal takes away sixteen of those days off but continues to expect those employees to work 2,200 hours and to compensate the additional 120 hours at straight time rates. The

County has provided in its proposal no benefit to its employees for the reduction of the number of days off.

The Guild also asks the Arbitrator to reject the County's reliance on the cost of overtime to provide training because the problem with the overtime is not the 4/12 schedule, but rather because the people on the 40-hour overtime threshold were placed into a 48-hour workweek. The problem with overtime will continue regardless of whether the Arbitrator grants the 11.5 hour workday. The overtime problem was aggravated because the County chose to unilaterally adjust those schedules, as opposed to coming to the Guild and negotiating the change.

Turning to the issue of safety, the Guild submits that the reduction of the 12 hour shift by a half hour would not improve the safety conditions for members. The Guild reasons that the reduction of sixteen fewer days in the recycling of an employee on only three-days rest would more than offset any safety improvements by a half hour reduction in the shift. The Guild concludes the County has failed to present any strong or cogent evidence to justify its proposed change in the work schedule.

The Guild also objected to the County's proposal to change Section 10.1 and Section 10.1.1. The County sought to move a 48-hour notice provision into Section 10.1 so as to provide that employees shall be afforded the 48-hour notice of any temporary change of four weeks or more. The County withdrew this proposal in the post-hearing brief so this objection is noted for the record only. The Guild also objects to the County's proposal to delete

Section 10.1.1 which affirms the continuing duty to bargain over changes in the work schedule. The Arbitrator should not force the Guild to waive its right to bargain. The Guild also objects to the County's proposal to delete the last sentence from Section 10.2 because it would allow the County to change--on a moments notice--for up to four weeks a deputy's work schedule.

The Guild points out that if the Arbitrator chooses to award the 11.5 hour day, the County's proposed language for Section 10.1, Section 10.4 and Section 1.7 and part of Section 10.8 is acceptable in order to implement the 11.5 hour shift. However, the change proposed by the County to Section 10.8 is an attempt to alter the current overtime threshold. The County's proposal should be rejected because it fails to deal with the question of work on a regularly scheduled day off.

Regarding the County's proposal to amend the callback provision, the Guild submits the County presented no justification beyond the fact they do not believe it is in line with the comparable jurisdictions. The Guild alleges this provision is of long duration and should not be changed without substantial evidence. The Guild submits the County has presented no significant evidence to change the callback language.

The final County proposed change is a new Section 10.11.3 wherein they seek to define the term "Required" to exclude voluntary overtime assignments which are scheduled 72 hours in advance. In the view of the Guild, the County is seeking to get around the callback requirements. Adoption of this proposal would

open the door to the potential for abuse of the rest time of the deputies. The County presented no evidence to justify the addition of its proposed language to the successor Agreement.

The Guild submits that its one proposal to amend Section 10.11.1 concerning callback should be adopted. An arbitrator interpreted Section 10.11.1 to mean that the callback provision did not apply to paid days off or compensatory days off that had been scheduled in advance. The Guild believes the purpose of callback pay on a day off is to protect the employee's leisure time. That justification is equally applicable to both regular scheduled days off and a paid day off that has been scheduled in advance. The Guild's proposal would merely provide that any PDO or compensatory time which had been pre-approved, would be part of the definition of a regular day off.

In sum, the Guild asks the Arbitrator to reject the County's proposals to amend Article 10 to allow for an 11.5 hour shift and to adopt the Guild's single proposal to modify Section 10.11.1.

D. Discussion and Findings

Present contract language provides for three alternative types of shifts. The options available to the Sheriff's Department are 8 hour, 10 hour and 12 hour shifts. The Arbitrator finds that the County's proposal to add a fourth option of an 11.5 hour shift should not be included in the 1995-97 contract. With the exception of the difficulties the County asserts it has with scheduling training, the 4/12 system has served the parties well. The County

offered no examples of problems where the 4/12 schedule impeded the operations and effectiveness of the Sheriff's Department.

The County's concern with the amount of overtime required to accomplish training is understandable. However, this Arbitrator remains unconvinced that the training issue should form the basis to eliminate the 4/12 schedule that has worked to the advantage of the parties to this Agreement for several years. County's evidence for making such a substantial change in the 4/12 scheduling system was insufficient to compel this Arbitrator to adopt the County's proposal.

Moreover, the Arbitrator in rejecting the County's proposal for an 11.5 hour shift took into account that I did award the County's proposal to convert the pay to an hourly system. Two substantial changes in the way the parties to this Collective Bargaining Agreement have scheduled and paid for deputy time in a single year would not be in the best interest of stable labor relations. This Arbitrator is not necessarily holding that alternatives to the 4/12 scheduling should not be considered. However, the time is not right to modify the current 4/12 scheduling system during the term of the 1995-97 Collective Bargaining Agreement.

The parties will have the opportunity to negotiate this issue for future Agreements. The Arbitrator will award the continuation of Section 10.1.1. which recognizes the continuing duty to bargain over issues relating to the work schedule. Given the rejection of the 11.5 hour shift schedule, the Arbitrator will

not award the proposed changes to Section 10.4, Section 10.7 and Section 10.8 concerning the 11.5 hour work schedule.

The Arbitrator concurs with the County that Section 10.11.1 should be modified to eliminate "bonus" hours of compensation whenever a deputy is called back. The County's proposal to require compensation at the rate of time and one-half the employee's regular rate of pay with a minimum of 3 hours is adequate recognition for the disruption of the employee's off-duty time. The revision of the callback provision will bring it into line with the callback compensation provided in the comparator jurisdictions.

The County's proposal to add the new language contained in Section 10.11.3 to the Collective Bargaining Agreement which would eliminate callback pay to situations where the deputy receives substantial advance notice of the callback is without merit. Whether the employee receives a 72-hour notice of the callback or a shorter period of time, the impact on the employee's off-duty time is the same. Specifically, the employee has to interrupt their off-duty time to perform services for the County. The fact that the employee received a 72-hour notice of the loss of off-duty time does not change the fact the employee's personal life is disrupted.

The Arbitrator finds the Guild's arguments to expand the definition of callback to include paid days off or compensatory days off that have been scheduled in advance to be well founded. The purpose of callback pay on a day off is to protect the

employee's personal time. The Arbitrator concurs with the Guild that the justification is equally applicable to both the regularly scheduled day off and a paid day off that has been scheduled in advance. There is no reason to distinguish between paid days off or compensatory time and a regular day off. The Arbitrator will award the Guild's proposed addition to Section 10.11.1.

AWARD

The Arbitrator awards that current contract language contained in Article 10 shall be continued with the modification to Section 10.11.1 as follows:

10.11.1 Callbacks on the employee's regular work day shall be compensated at the rate of time and one-half the employee's regular rate of pay with a minimum of three (3) hours. For the purposes of this section regular day off means the employee's scheduled days off and any paid leave (PDO and compensatory time) which has been preapproved.

ISSUE 6 - BENEFITS/INSURANCE

A. Background

The only issue remaining for the Arbitrator relates to the "buy-up" for the Blue Cross Indemnity Plan 100/80 coverage for the third year of the contract. The Arbitrator awarded a three-year contract so it is necessary to determine this remaining issue. The parties agreed during negotiations that the buy-up will be at \$10 for single coverage, \$20 for two-party coverage and \$30 for the family coverage rate for both 1995 and 1996. Article 13.1.1.F contains the current language on the buy-up for the 100/80 plan.

B. The Guild

The Guild sought a two-year contract through this interest arbitration. The Arbitrator rejected the Guild's proposal for a two-year contract and accepted the County's offer of a three-year contract. The Guild proposed that in the event the Arbitrator awarded a three-year contract that the current formula of \$10, \$20 and \$30 or a reopener on the buy-up rate be applicable in 1997. According to the Guild, the County presented no real justification for its proposed change in the buy-up formula from the 1995 and 1996 agreed upon rates. The Arbitrator should reject the County's proposal to deviate from the existing formula.

C. The County

The County proposes that the buy-up formula in the existing Agreement remain in place for 1997. The County notes that the 100/80 plan is a costly program because of its high level of

benefits. Beginning in 1994 employees who wanted to participate in the Blue Cross 100/80 plan were required to "buy-up" their participation in that plan pursuant to a formula agreed upon by the parties. When the parties reached the 1992-94 Agreement, they agreed upon a buy-up formula. That formula was applicable in 1994 and used to calculate the 1995 contribution rate. While the parties deviated from that formula for 1996, the County requests that the formula once again be applicable for 1997. The County asserts that all employee groups and unrepresented employees who are still participating in the Blue Cross 100/80 plan are basing employee contributions on this formula.

The County submits there is no reason to treat the deputy sheriff's bargaining unit any different than the other units. The County submits its proposal to continue the existing buy-up agreement should control for 1997.

D. Discussion and Findings

The Arbitrator holds that the County's proposal to have the existing buy-up formula control the employee participation for 1997 should be adopted. The Arbitrator concurs with the County that the formula which is applicable to all other employee groups and unrepresented employees who are still participating in the Blue Cross 100/80 plan should be identical. The Guild offered no persuasive reasons why the deputy sheriff's bargaining unit should be treated any different than the other units.

The \$30 payment for the 1996 buy-up was agreed to through negotiations because the overall contract had not been settled.

The Award of this Arbitrator will bring the negotiations over the 1995-97 contract to a close. Therefore, it is appropriate that the existing formula for determining the level of participation in the Blue Cross 100/80 plan should be governed by existing contract language.

AWARD

The Arbitrator awards that Article 13.1.1.F shall be included in the contract to state:

13.1.1.F For calendar year 1996, the monthly buy-up amounts for employees electing the Blue Cross 100%/80% plan are \$10, \$20, and \$30 at the single, 2-party, and family coverage levels. In 1997, if an employee wishes to continue participating in the current Blue Cross 100%/80% plan, the employee shall pay the difference in premiums between the Blue Cross 100%/80% plan and the highest priced of the three County-paid plans. The determination of the highest priced plan shall be based on the family coverage premium. Buy-up costs shall be based on the premium differential at each level of coverage.

ISSUE 7 - MISCELLANEOUS

A. Background

Two items remain in dispute between the parties which are included under this category. The first issue which divides the parties is a Guild proposal to add a new article providing tuition reimbursement to deputies who seek continuing education.

The second issue is the duration of the contract. The County is proposing a three-year contract through December 31, 1997, and the Guild proposed a two-year contract effective through December 31, 1996.

B. The Guild

The Guild submits that its tuition reimbursement proposal would result in a direct benefit to the County by educating its officers. The Guild's evidence shows that if tuition reimbursement was allowed, the members would utilize this program aggressively to further their education. The Guild reasons there is a direct correlation between advanced education and effective law enforcement. The County should support this goal by participating in a tuition reimbursement program.

Turning to the Guild's proposed two-year Agreement, the Guild avers there are many unresolved issues that can only be settled at the bargaining table. The Guild cites the hourly pay proposal of the County as a prime example of an issue that needs further discussion between the parties. This issue alone dictates

the imposition of a two-year contract as opposed to a three-year contract.

Moreover, the County's desire to implement the 11.5 hour shift requires further exploration at the bargaining table. The County refused to consider other options to its 11.5 hour shift schedule. Since these are issues the County wants to have resolved, the Arbitrator should send a message to the County that they need to bargain openly, honestly and in good faith in order to attain these significant changes to the current Agreement. Hence, a two-year Agreement is reasonable and appropriate to be implemented for the successor contract.

C. The County

The County characterized the Guild's tuition reimbursement proposal as little more than a request for a blank check. The Guild proposal does not in any way give the County discretion to reject requests for tuition reimbursement based on budget or operational considerations. The County submits that all tuition reimbursement programs grant the employer some ability to evaluate the request in light of its operational needs.

The County next argues that the tuition reimbursement program goes beyond payment for college classes and would demand the County pay for any and all seminars which are in any way job related. The County would have no ability under the Guild's proposal to evaluate a program and determine whether or not it is worthy of County financial support. The virtual unrestricted

ability of deputies to take any class they so elect is a flaw which by itself is enough to reject the proposal.

It is also the position of the County that it already rewards deputies for attending college. Under the incentive program, each college class completed gives the deputy a point. These points can be added with training points in order to more quickly achieve the 5% and 10% incentive payments. The evidence reflects the County is committed to training its deputy sheriffs and offers programs which deputies participate in to enhance their professional skills.

Turning to the issue of duration, the County submits "the parties need a rest." The record reflects that these parties have engaged in almost nonstop bargaining since the Guild was voted in as the exclusive bargaining representative in late 1991. Bargaining for the initial contract was prolonged, and the final Agreement was not reached until the spring of 1993. The remaining issue of the incentive plan was resolved by the arbitration award dated August 17, 1993. In less than one year the parties were back in bargaining for a successor Agreement. The parties bargained through 1994 and into early 1995. Mediation failed to produce an agreement. The interest arbitration was conducted in February 1996 and by the time the arbitration Award is issued there would be approximately seven months left, if a two-year Agreement was awarded. The Arbitrator should order a three-year contract in order to provide a period of labor stability free from the conflicts of continuous negotiations.

D. Discussion and Findings

Tuition Reimbursement

This Arbitrator has a history of supporting continuing education programs included in collective bargaining agreements. In addition, the Arbitrator accepts the logic of the Guild's argument in support of its proposal that continuing education has value both to the employee and the employer. However, the language contained in the Guild's proposal is unacceptable and will not be awarded by this Arbitrator. The proposal is so extreme that I will not attempt to modify it to an acceptable format.

The County correctly pointed out that the Guild's proposal, if adopted, would create a blank check on which members could take college classes or other educational programs that would be required to be paid for by the County. There is no maximum amount of money that would be required to be allotted.

The complete disregard for the financial implications of the program and operational impact on the County is illustrated by a sentence in the proposal which reads:

Request for reimbursement shall be denied only upon the basis that the seminar or class is not related to the employee's job and career development, or is not related to the securing of a college degree.

The broadly worded language would create a potential for grievances when the County denies requests for tuition reimbursement.

The Arbitrator also notes that Guild members currently receive rewards for attending college under the existing incentive

program. The incentive points earned by taking college credits benefit the employee by moving them into the 5% and 10% incentive payments under the program. The Arbitrator awarded the continuation of the current incentive plan so members will continue to enjoy the financial rewards of continuing education. For all of the above reasons, the Arbitrator rejects the Guild's tuition reimbursement proposal.

Duration

The Arbitrator finds that the County's proposal for a contract extending through December 31, 1997, should be adopted. The unending bargaining which these parties have been engaged in since 1991 must come to an end for the good of labor relations between Clark County and the Clark County Deputy Sheriff's Guild. The parties to this Agreement need a reprieve from the time consuming and often emotional aspects of the bargaining process. Mature and stable labor relations will not be attained by continuing the constant turmoil of collective bargaining.

The Arbitrator can think of no valid reason for awarding a contract which would compel the parties to immediately begin negotiations for a successor to the Guild's proposed 1995-96 Agreement. If the Arbitrator were to adopt a two-year Agreement, approximately 75% of the contract's duration would fall prior to the signing of the Agreement. As the County correctly pointed out, the "shelf-life" would be approximately seven months. The idea of compelling these parties to turn right around and begin bargaining for a successor Agreement is totally without merit. The delay in

bargaining will allow the County to work through some of the uncertainties created by the impending annexation issues. The impact of the annexations on the County and this bargaining unit will be better understood at the end of 1997. The imposition of a three-year Agreement will give the parties the opportunity to reconsider the issue concerning changes in the hours of work.

AWARD

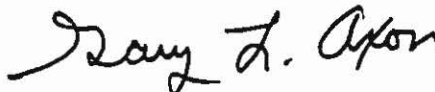
The Guild's proposal to add new language providing for tuition reimbursement is rejected. The County's proposal for a three-year Agreement is accepted. Article 24, Duration, should be amended to state:

Except as specifically provided herein, this Agreement shall be effective as of the date it is ratified by the parties and shall remain in full force and effect through the 31st day of December, 1997. If either the Employer or the Guild desires to modify this Agreement for any reason, they shall give written notice to the other not later than June 1, 1997.

CONCLUSION

The parties have continued to work under a Collective Bargaining Agreement which expired on December 31, 1994. The parties negotiated without success for over a period of several years to reach a new Agreement. The Arbitrator has awarded some changes in contract language. With the exception of the move to an hourly pay system, the Arbitrator has awarded no radical or drastic changes for the 1995-97 Agreement. For the most part, I have attempted to be careful to use basic and conservative language in order to preserve what has served the parties well in the past. The time has come to put negotiations to an end, and concentrate on improving the working relationship between the parties as defined in the terms of the 1995-97 Collective Bargaining Agreement.

Respectfully submitted,



Gary L. Axon
Arbitrator

Dated: May 30, 1996