IN THE MATTER OF)
)
INTEREST ARBITRATION)
)
BETWEEN)
)
WASHINGTON STATE COUNCIL OF COUNTY)
AND CITY EMPLOYEES, COUNCIL 2,)
AFSCME, AFL-CIO, LOCAL 618-CD,)
)
Union,)
)
and)
)
THURSTON COUNTY, WASHINGTON,)
)
County.)

PERC CASE 14083-I-98-312

ARBITRATOR'S OPINION

AND AWARD

1998-2000 AGREEMENT

HEARING SITE:	County Offices Olympia, Washington
HEARING DATES:	April 20 & 21, 1999
POST-HEARING BRIEFS DUE:	Postmarked June 4, 1999
RECORD CLOSED ON RECEIPT OF BRIEFS:	June 9, 1999
REPRESENTING THE UNION:	Audrey B. Eide General Counsel WSCCCE, AFSCME, Local 618-CD 3305 Oakes Avenue P.O. Box 750 Everett, WA 98206-0750
REPRESENTING THE COUNTY:	Steven M. Watson Manager, Labor Relations Thurston County 2000 Lakeridge Drive SW Olympia, WA 98502-6045
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I. INTRODUCTION

The parties are signatories to a written Collective Bargaining Agreement in effect through December 31, 1997. Un. Ex. 2. The parties began preparation for negotiation of a successor contract. The parties held several negotiating sessions in 1997 and 1999, but were unable to resolve all of their differences. Subsequent mediation sessions failed to bring the parties to an agreement.

On August 14, 1998, the PERC certified four issues for interest arbitration pursuant to RCW 41.56.450. Un. Ex. 1. The case was set for hearing on April 20 and 21, 1999. Subsequent to the certification for interest arbitration and submission to the Arbitrator, the parties resolved a sub-issue over Article II, Section 2.a.8 – Safety and Health. The parties were also able to resolve the entire issue on Article XI, Compensation. After these negotiations four issues remained for this Arbitrator to resolve.

Thurston County is located in Western Washington which is referred to as the South Puget Sound Area. The County is bisected by Interstate 5. The largest city in the County is the state capitol of Olympia. The 1998 population of Thurston County was approximately 197,600.

The Department of the County involved in this case is the Thurston County Sheriff's Office – Corrections Bureau. Gary P. Edwards is the Thurston County Sheriff. The Corrections Bureau is managed by Karen Daniels, Chief, Department of Corrections. The Corrections Bureau operates a jail which serves

as a regional facility for all of Thurston County known as the Thurston County Correctional Facility (TCCF). Co. Ex. 3. In 1997 the average daily population at the TCCF was 397 inmates. The Corrections Bureau also maintains several corrections program options, such as work release and electronic monitoring.

The Washington State Council of County and City Employees (Union) holds the bargaining rights for the corrections officers and lieutenants employed in the Corrections Bureau. The bargaining unit consists of approximately 68 employees in the classifications of corrections officers and lieutenants. The corrections officers unit is a relatively new group which recently separated from another Thurston County bargaining unit.

At the commencement of the arbitration hearing, the opening statements from the parties revealed a sharp difference of opinion over the issue of comparability. In addition, the parties also disagreed over the methodology and means by which to compare the contract benefits of Thurston County corrections officers with their counterparts in other counties. A significant amount of hearing time was devoted to the presentation of evidence and argument on the statutory factor of comparability. The Arbitrator directed the parties to address the issue at the beginning of the post-hearing briefs. The Arbitrator advised the parties he would address the comparability issue at the commencement of the Award.

Bargaining between the parties produced agreement on most issues, including all of the economic issues. However, the parties were unsuccessful in resolving all of the subjects that divided

them in contract negotiations. Four fundamental contract issues were presented by the parties for interest arbitration. The parties stipulated they had agreed the duration of the Collective Bargaining Agreement would cover the period January 1, 1998, through December 31, 2000.

The hearing in this case required two days for each side to present their evidence and testimony. 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 regarding the issues in dispute. Both the Union and the County provided the Arbitrator with substantial written documentation in support of their respective positions.

The parties also submitted comprehensive and detailed post-hearing briefs in further support of their respective positions taken at arbitration. 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 substantial 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 criteria are set out in RCW 41.56.465(1) as follows:

> (1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:
>
> > (a) The constitutional and statutory authority of the employer;
> >
> > (b) Stipulations of the parties;
> >
> > (c) (i) For employees listed in RCW 41.56.030(7)(a) through (d); comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;
> >
> > (ii) For employees listed in RCW 41.56.030(7)(e) through (h), comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists

> within the state of Washington, other west coast employers may not be considered;
>
> (d) The average consumer prices for goods and services, commonly known as the cost of living;
>
> (e) Changes in any of the circumstances under (a) through (d) of this subsection during the pendency of the proceedings; and
>
> (f) Such other factors, not confined to the factors under (a) through (e) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. For those employees listed in RCW 41.56.030(7)(a) who are employed by the governing body of a city or town with a population of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living.

Because of the voluminous record in the case, the parties waived the thirty-day period an arbitrator would normally have to publish an award under the statute.

II. COMPARABILITY

A. Background

The threshold issue to be resolved by the Arbitrator involves the statutory factor of comparability. Both parties offered strong and compelling arguments as to why their respective list of counties should be the one adopted by the Arbitrator to utilize in formulating an Award for the corrections officers Collective Bargaining Agreement in Thurston County. The differences between the parties on the issue of comparability were further complicated because each side used a different methodology for selecting the purported comparable jurisdictions to Thurston County.

The parties agree that five counties are mutually comparable as follows:

County	Population
Clark	328,000
Kitsap	229,400
Yakima	210,500
Whatcom	157,500
Benton	137,500
Thurston	199,700

The difference between the parties over the comparators, is the County will only agree to the inclusion of Clark County if Cowlitz County is added to the list of comparable jurisdictions. There was no history of comparators which had been used in the past as a guide to determine the wages and benefits for Thurston County corrections officers presented to this Arbitrator. The initial

task of your Arbitrator will be to formulate a list of comparable jurisdictions that is consistent with the statutory mandate.

B. The Union

The Union takes the position that its proposed comparators should be adopted by the Arbitrator. The Union relied extensively on the testimony of Director of Staff Services, John Cole, who explained the methodology for determining comparable jurisdictions. Cole began his analysis with the proposition that population is the single best criteria to measure comparability. Many arbitrators have held population must be the determining factor for size. Cole then used a population band of 50% down and 50% up from Thurston County. Un. Ex. 15. This approach resulted in the six jurisdictions which fell within the population band which the Union submits should be utilized by this Arbitrator when determining the comparable jurisdictions.

Moreover, Cole then looked at other factors to compare these jurisdictions. He ranked each jurisdiction by revenues and real property values. Again, these jurisdictions ran 50% up and 50% down from Thurston County.

The County has stipulated that Kitsap, Yakima, Whatcom, and Benton counties are comparable jurisdictions. The dispute is over the inclusion of Clark County. The County offered no evidence at the hearing to support their claim that Clark County was not a comparable jurisdiction. Further, the County did not offer evidence as to why Cowlitz County would be a comparable jurisdiction. The Union's position is that neither Skagit or

Cowlitz County are comparable jurisdictions. Cowlitz County has a population of 92,000. To make Cowlitz County a comparable, the Arbitrator would have to skip over Skagit County with a population of 96,900. The Union submits the County is attempting to contrive a list for their benefit rather than one that is based on well-established arbitration case law principles.

The Union also relied on generally accepted variables for determining comparability--such as geography--in coming up with comparables. The County offered no evidence suggesting that their idea of comparables would be more appropriate in demographic comparability than in the Union's proposed jurisdictions. The Union's comparables should be adopted by the Arbitrator.

C. The County

The County begins by noting the only dispute is whether Cowlitz County should be included in the list of comparable counties. In determining Cowlitz should be included, the County first looked at jurisdictions within a 50% band above and below the population of Thurston County. This led to four mutually acceptable jurisdictions of Benton County, Whatcom County, Yakima County, and Kitsap County. Faced with only four comparable jurisdictions, the County next established a population band of 60% above and below Thurston County's population. This analysis picked up Cowlitz and Skagit counties. Because of the way Skagit County uses corrections officers in their law enforcement system, the County excluded Skagit County from the comparability analysis. Based on the Union's position, the County determined Clark County

would be acceptable because Clark was within 10,000 of the 60%± band.

The County argued that, due to Clark County's size and location near Portland, Oregon, the urban influence on Clark County should be balanced with that of a rural county such as Cowlitz County. The assessed property valuation statistics also reveal that a band of 50%± would also include Cowlitz County while at the same time exclude Clark County. Thurston County's position to include Clark County in the list of comparable jurisdictions only if Cowlitz is part of the mix is logical. Beyond just the "similar size" analysis, utilizing geographic proximity, Cowlitz County is closer to Thurston County than Clark County. The County asserts Cowlitz County is also on the I-5 corridor and is definitely more aligned with Thurston County's labor market than is Clark County.

Thus, the County submits Cowlitz County should be adopted by the Arbitrator as a comparable jurisdiction for the purpose of determining wages and benefits for Thurston County corrections officers.

D. Discussion and Findings

The starting point for this analysis is to recognize both parties started their search for comparable counties using the 50% population band above and 50% below the Thurston County population. This approach yielded only four comparable counties which both parties believed was an insufficient number of comparables to use in establishing wages and working conditions for Thurston County corrections officers. The Arbitrator concurs with the parties that

four comparables is an insufficient number to provide meaningful assistance in resolving this dispute between the Union and Thurston County.

By expanding the population band to 60%, the parties picked up Clark County with a population of 328,000. There are some minor differences in what the parties reported as the 1998 populations in the comparative jurisdictions. The Arbitrator credits the population study done by the Municipal Research and Service Center as the most accurate representation of current county populations. Co. Ex. 5. The Union's population figures appeared to be derived from a document created from the information provided by the Washington State Department of Revenue, 1998 Local Tax Distribution. Un. Ex. 15. At the lower end of the population figures, Skagit and Cowlitz counties were picked up in the 60% band. County data showed Skagit with a 98,700 population and Cowlitz at 93,100 for 1998. Although Skagit County is somewhat larger, it was omitted because of the different way it uses corrections officers as an entry level position into the sheriff's office. The Arbitrator finds it reasonable to exclude Skagit County based on this difference in utilization of corrections officers by the employer.

Cowlitz County is only 5,600 smaller in population than Skagit County. The Arbitrator finds this number insignificant in the overall picture of comparability. The geographic proximity of Cowlitz County argues in favor of its inclusion on the list of comparators. Cowlitz County is located immediately to the north of

Clark County and to the south of Thurston County. All three counties are located on the I-5 corridor. Cowlitz County's total assessed property valuation is within the 50% band to Thurston County. The Arbitrator finds the inclusion of a rural county on the list of comparators provides an appropriate balance to the use of an urban county, such as Clark County. Based on all of the above-cited reasons, the Arbitrator concludes the appropriate group of six comparators are as follows:

County	Population
Clark	328,000
Kitsap	229,400
Yakima	210,500
Whatcom	157,500
Benton	137,500
Cowlitz	93,100
Thurston	199,700

The six above-named counties will provide an acceptable aid in reaching a decision on the four issues before this Arbitrator in the present case.

ISSUE 1: ARTICLE II, SECTION 5 - CONTRACTING

A. Background

The 1996-97 Collective Bargaining Agreement is silent on the subject of contracting out of bargaining unit work. An issue arose during the term of the contract when an inmate was required to be hospitalized at Harbor View Hospital in Seattle. The inmate required 24-hour security. Because the inmate was expected to be hospitalized for an extended period of time, the County hired a private contractor to provide security for the inmate.

The Union filed a grievance over what it claimed was subcontracting of bargaining unit work. The parties agreed to resolve the grievance by making it a subject for contract negotiations. The proposals offered by both parties are similar in that they recognize there may be a legitimate need to contract out work under given circumstances.

B. The Union

The Union proposed to add new language which read:

> Article II, Section 5 - Contracting.
> The parties recognize the right of the County to contract security details which are required for inmates outside of Thurston County.

The Union submits the "contract out" language is necessary to protect the bargaining unit. If the County is allowed a free hand to contract out bargaining unit work, it undermines the very premise of the public sector bargaining law.

Moreover, the Union also sees this as a safety issue. Agencies that provide security details are not necessarily fully trained in defensive tactics and security procedures. This lack of training affords inmates outside of the facility a chance to receive contraband which can be dangerous once an inmate is back inside the jail. It is also a security issue for the community when private security officers lack the proper training.

The County offered no evidence to support their proposition that security details outside the facility should be contracted out. The County provided no cost data which would support its position that it needed the ability to contract out security details such as the one at Harbor View Hospital in order to save money. The Union's proposal takes into account the County's concern, and they have limited their proposal to no contracting out of security details required for inmates inside of Thurston County. The language proposed by the Union affords the County the flexibility to contract for details that are required a long distance away from the facility. The Union's proposal should be adopted by the Arbitrator.

C. The County

The County proposed to add language to the contract which states:

> Article II, Section 5 - Contracting.
> The parties recognize the right of the County to contract security details which are required for inmates outside of Thurston County's corrections facilities.

In the view of the County, it is seeking a change in the contract to provide for a very limited right to contract out bargaining unit work. The proposal is directed at situations where security details are required at sites away from a Thurston County correctional facility.

The history of this issue reveals there has been only one occasion where the need to contract was recognized by the County. This involved the inmate who was hospitalized and required 24-hour security. The geographical location required significant travel over an extended period of time, and Thurston County corrections officers could not be assigned to work the security detail in Seattle without having to work overtime to guard the inmate.

The County argues the proposal has no impact on the integrity of the bargaining unit work performed by employees because corrections officers will still be performing all security details inside Thurston County corrections facilities, including the new facility to be opened in 2001. Under-Sheriff McClanahan testified it is unlikely contractors could be efficiently utilized in other details because most details are of such a limited duration it is not practicable to bring in contractors to perform the service. The potential benefits of contracting outside security details involve the two primary situations where the security is needed for a long duration and travel time is significant. The County submits it can efficiently provide the security at less cost and without having to burden existing

corrections employees with overtime assignments. The County's proposal should be adopted by the Arbitrator.

D. Discussion and Findings

Neither of the parties pointed the Arbitrator to the contracts of the comparators for support of their respective positions on this issue. A review of the collective bargaining agreements from the comparators by this Arbitrator reveals that, with one exception, the contracts are silent on the subject of work preservation and subcontracting out of bargaining unit work. The Kitsap County contract expressly grants the employer the right to contract "any work." Thus the comparators provide little help in deciding the type of language which should be included in this contract.

The Arbitrator finds the Harbor View case that generated this issue favors the County's position. However, the language offered by the County goes far beyond the example to allow contracting whenever an inmate is outside a Thurston County corrections facility. The Arbitrator rejects the County's proposal as seeking too much through its new contract language on this subject.

The Union's proposal allows for contract security details "for inmates outside of Thurston County." In the judgment of this Arbitrator, the Union's proposal adequately addresses the County's express concerns about controlling costs and overtime when a security detail is required for an extended period of time outside of Thurston County. Security details inside the County are more

likely to be of a limited duration and definitely would not require the extensive travel time that was involved in the Harbor View situation. Therefore, the Arbitrator will award the Union's proposal.

AWARD

The Arbitrator orders that new language be included in the contract to read as follows:

> Article II, Section 5 - Contracting.
> The parties recognize the right of the County to contract security details which are required for inmates outside of Thurston County.

ISSUE 2: ARTICLE IX, SECTION 1 - WORK SCHEDULES

A. Background

Article IX, Section 1, currently reads:

> **ARTICLE IX**
> **HOURS OF WORK**
>
> Section 1. Regular Work Hours. The normal work day for Corrections Officers is currently eight (8) consecutive hours of work with five (5) consecutive days followed by two (2) days off. Those employees under the 9/80 schedule would work five (5) consecutive nine (9) hour days, followed by two (2) days off, followed by three (3) consecutive nine (9) hour days, followed by one (1) eight hour day, followed by three (3) days off or four (4) consecutive nine (9) hour shifts and one (1) eight (8) hour shift, followed by three (3) days off, followed by four (4) consecutive nine (9) hour shifts followed by two (2) days off.
>
> . . .

What the quoted provision does is set a schedule that is commonly referred to as a 9/80 work schedule. The 9/80 is worked by 53 corrections officers in the detention facilities. The County proposed to change the existing language to allow management to go to a standard five eight-hour days on and two off beginning January 1, 2001. The new schedule alternative would coincide with the opening of the additional detention facility in Thurston County. The Union proposed to continue the current contract language.

B. The County

The County takes the position that its proposal should be adopted to allow re-establishment of the standard 5/2 work schedules of eight hours in duration. Currently administrative lieutenants, court officers, medical liaison officers, inmate service officers, and information officers work the standard 5/2 schedule. That is a total of fifteen employees. The remaining corrections officers in the detention units work the 9/80 schedule.

Chief Daniels testified concerning the history of the 9/80 schedule which was originally proposed by the County in the initial contract negotiations of this bargaining unit. Chief Daniels explained that, while the 9/80 schedule is economically inefficient, this schedule does have advantages in providing additional staff to perform necessary duties. However, Chief Daniels and Under-Sheriff McClanahan testified the 9/80 schedule is a very inefficient use of employees due to the nine-hour work day and the resulting overlapping coverage that is created.

The County has now determined that a standard 5/2 work schedule is necessary and should be included in the current agreement. The County used three independent consultants to review the staffing schedules along with other analysis of jail operations. While both types of schedules result in 2,080 hours per work year, the sheriff's office concluded the efficiencies gained by going to a standard 5/2 schedule far outweigh any advantages gained by the 9/80 schedule. The corrections officers are gaining additional days off because the schedule allows

overlapping hours when you cover a 24-hour day operation with three nine-hour shifts. The resulting overlap per shift creates an inefficiency that is very costly and not present in the standard 5/2 schedule with eight-hour work days.

The County next argues that four of the six comparable jurisdictions maintain a standard 5/2, eight-hour work day schedule for all their corrections officers. Thus, the comparable jurisdictions do not maintain work schedules with overlapping hours in the work day as Thurston County presently is required to do under the Collective Bargaining Agreement. The Arbitrator should adopt the County's proposal in order to bring it into line with the comparable jurisdictions.

The Union challenged the proposal as illegal because it had an effective date of January 1, 2001. The effective date would be outside the period covered by the 1998-2000 Collective Bargaining Agreement. According to the County, in order to complete the shift bidding and have the schedules in place for the move into the new facility, it is absolutely essential for those bids to be effective January 1, 2001. Accordingly, the County requests the Arbitrator recognize the shift bidding process which is in effect in its current contract, and adopt the County's proposal as written.

The County also argues that the Union never raised the illegality argument prior to the hearing. As such, the Union should be barred from relying on this argument to now try and discredit the County's entire proposal. To raise a new position in

arbitration is clearly recognized as an unfair labor practice. In the event the Arbitrator is convinced the January 1, 2001, date is questionable, the County requests the effective date in the County's proposal merely be modified to December 31, 2000, the last day of the Collective Bargaining Agreement subject to this interest arbitration.

C. The Union

The parties stipulated that the duration of the Collective Bargaining Agreement before the Arbitrator runs from January 1, 1998, through December 31, 2000. The County's proposed schedule change would take place January 1, 2001. The County's proposal to take effect January 1, 2001, would make it effective after the term of the current contract has expired. It either extends the term of the contract beyond the three years or automatically renews at least this Article beyond the term of the contract. The Arbitrator would be awarding an unlawful contract provision if he adopted the County's proposed effective date of January 1, 2001. Collective bargaining agreements in the state of Washington can only legally be agreed to for a period not to exceed three years. The County's proposal would bind the parties during the next contract term without the chance to negotiate for that term over this subject.

Turning to the merits of the proposal, the Union maintains the County has the burden of proof of establishing the need for a change in the current language. The Union submits the County has not met its burden of proof to make the change.

The Union notes that it was the County who originally proposed a 9/80 work schedule in 1992. The County convinced the members of this bargaining unit that this schedule would be beneficial to both the County and the employees. The numerous justifications for the schedule change provided by the County were that all staff would receive three-day weekends every other week, establish schedules, overlapping shifts which would create time on the clock for routine shakedowns, morning cleanup and inspection, medical and dental transports, court transport and releases, inmate disciplinary hearings, management team meetings, shift briefings, training, and classification activities. Un. Ex. 5. The Union submits the 9/80 schedule has proven to be an efficient and effective system for scheduling corrections officers which has been good for morale.

Regarding the studies performed by the consultants, Daniels admitted on cross-examination that none of the studies recommended that the 9/80 schedule was less efficient than others. They were inclusive and stated there were many criteria that needed to be evaluated for a more efficient facility and its staffing. The studies did not address how the duties now performed at the overlapping shifts would be performed without such overlap and extra staffing for a period each day with a 5/2 schedule change. Chief Daniels also conceded that in the proposed 5/2 schedule no one would ever receive a weekend off. The problem with the studies is they did not address the reality of the fact that the facility

rarely runs on a minimum staffing level because of absences and scheduling at the minimum levels.

The Arbitrator should reject the County's proposal because it failed to meet the burden of establishing a need for the proposed schedule change initially offered by the County in 1992. The experience of the unit is that the 9/80 schedule has benefitted both the facility and its employees. Finally, the County's proposal to take effect January 1, 2001, would be illegal under Washington law. The Arbitrator should reject such a proposal and maintain the status quo of the 9/80 schedule for the term of this Agreement.

D. Discussion and Findings

The starting point for review of this issue is to recognize the fact that the 9/80 schedule was implemented as a result of a County proposal in 1992. The County touted the numerous advantages of the 9/80 schedule to the employees. Un. Ex. 5. The employees agreed with the County and the 9/80 schedule was adopted and included in the Collective Bargaining Agreement.

The evidence shows a 9/80 work schedule has provided numerous advantages for both Thurston County and the employees. While the County argued greater efficiencies could be attained by moving to a 5/2 work schedule, the Arbitrator finds the County's evidence was not compelling enough to make such a significant change in a successful program. The relatively new 9/80 work schedule should be allowed to continue for the duration of this contract. The work schedules found in the comparables argue in

favor of a 5/2 schedule. However, they do not compel that Thurston County move to an identical work schedule. Thurston County has employed a work schedule proposed by the County and agreed to by the Union. The Arbitrator finds the County failed to produce sufficient evidence to change a work schedule that has produced benefits for both parties.

The Arbitrator is not holding that future changes in the work schedule might not be warranted. However, these changes should be left for future negotiations. With this contract expiring on December 31, 2000, the parties will have the opportunity to revisit this issue in a relatively short period of time. At this time the work schedule can be explored in the context of additional experience with the 9/80 schedule and evaluation of how it fits into the opening of the new corrections facility. The Arbitrator agrees that the proposal as written by the County with an effective date of January 1, 2001, would be improper. The Arbitrator has no authority to award a contract provision that would become effective outside of the term of the Collective Bargaining Agreement that is subject to this arbitration. It is true that the Arbitrator could cure this problem by modifying the County's proposal. However, I am unwilling to do so based on the above-stated reasons.

AWARD

The Arbitrator rejects the County's proposal and orders that the current language found in Article IX, Section 1, be continued unchanged.

ISSUE 3: POLICY 356 - MINIMUM STAFFING

A. Background

TCCF Policy 356 covers the subject of minimum staffing. Policy 356 is a County generated document to guarantee that minimum staffing requirements are maintained in the detention facilities. At issue in this case is Section 4.0 of the Policy which establishes the procedures by which vacant slots are covered for corrections officers and master control operators. Master control operators are not members of this bargaining unit.

The contract is silent on the subject of minimum staffing. What the dispute involved in this issue centers around is the use of corrections officers to cover for master control officers during their breaks and lunch periods. Union witnesses testified corrections officers covered for master control officers on a daily basis. There is some disagreement between the parties over whether the corrections officers cover for master control operators on a voluntary basis or are directed to do so by management.

The Union seeks to have the reference to corrections officers deleted from Policy 356 in Section 4.0.2.b and Section 4.0.6. With these changes, the Union asks the Arbitrator to incorporate Policy 356 into the Collective Bargaining Agreement. The County would continue Policy 356 as an employer document without its placement into the Collective Bargaining Agreement.

B. The County

The County maintains the Arbitrator's role on Policy 356 and Policy 357, which is the subject of Issue No. 4, is solely to decide whether the policies are appropriate as written, and as maintained by the County, or whether the policies should be modified to support the Union's position. According to the employer, the policy issues are properly before the Arbitrator pursuant to RCW 41.56.440. Policy 356 was certified for resolution through interest arbitration by PERC. Thus, it is clear there is statutory and administrative authority which recognizes the Arbitrator's authority to resolve disputes which are beyond mere contract language.

The parties agreed to negotiate the parties' policies as part of contract negotiation which ultimately reached impasse and were certified for interest arbitration. No contract language was ever proposed by the Union to address the subjects covered in Policy 356.

The issue in negotiations was whether the County could force corrections officers to work overtime in master control. The evidence offered at the hearing revealed the County does not force corrections officers to work in master control. The County allows corrections officers to volunteer to work in master control. The County submits this has been the past practice of the employer for at least ten years.

The County takes the position that the past practice demonstrates the use of corrections officers to cover for master

control on a voluntary basis does not in any way harm the integrity of the bargaining unit. In the view of the County, it grants a significant benefit to the members of the Union and affords them an opportunity to earn additional income.

The County is also concerned with the Union's attempt to expand the scope of Policy 356 in arbitration beyond any issues which are related to negotiations and certified for arbitration. The testimony before this Arbitrator revealed that the concern raised by the Union during negotiations centered on forcing corrections officers to work overtime in master control. Since this issue is resolved by the policy, the Arbitrator should conclude that Policy 356 as written is appropriate and adopt the County's position on this issue.

C. <u>The Union</u>

The Union takes the position the parties bargained over TCCF Policies 356 and 357. They bargained to impasse and the issues raised were certified for interest arbitration. Thus, it is appropriate for the Arbitrator to make the policies part of the contract.

The Union argues the changes to Policy 356 are necessary to prevent corrections officers from performing work outside of their unit which is covered by another bargaining agreement. The master control work is not certified as work belonging to the bargaining unit of 618-CD. Both of these sections refer to mandatory assignment of corrections officers into the master control work in the other bargaining unit. Thus, the Union

properly seeks to have deleted any reference to corrections officers from Policy 4.0.2.b and 4.0.6.

The evidence reveals that on almost every shift corrections officers are asked to cover master control for all of the breaks and lunches those employees are required to take. Although the assignment to master control might not be technically ordered, Union President Champagne testified it is an expected assignment during the shift. Under the circumstances by which the assignments are made, the assignments of corrections officers to cover for master control operators must be considered mandatory.

The Union argued the County's proposal to continue Policy 356 is unlawful. The Union reasoned that it is unlawful to skim bargaining unit work. Based on the above-stated reasons, Policy 356 should be incorporated into the Collective Bargaining Agreement, with the Union's proposed modifications.

D. Discussion and Findings

TCCF Policy 356 has been certified by PERC for resolution through interest arbitration under Washington law. The Arbitrator has three options when addressing an employer policy which has been the subject of negotiation and certified for interest arbitration. First, the Arbitrator may leave the policy as it is drafted by the employer separate and apart from the Collective Bargaining Agreement. Second, the Arbitrator may incorporate the disputed policy in its current form into the Collective Bargaining Agreement. Third, the Arbitrator has the option to make changes in

the policy and incorporate the policy with those changes into the Collective Bargaining Agreement.

One option that is not open to an arbitrator is to modify an employer policy and leave the policy separate and distinct from the collective bargaining agreement. To make such changes outside the scope of the collective bargaining agreement would be an improper infringement by an arbitrator on managerial prerogatives to establish policies which do not conflict with a collective bargaining agreement. The scope of the arbitrator's authority extends to issues covered by the interest arbitration process. It is only through the collective bargaining agreement and interest arbitration can an arbitrator breach an employer-generated policy.

The Arbitrator finds the Union has failed to show sufficient reasons why Policy 356 should be modified and incorporated into the Collective Bargaining Agreement. Evidence presented at the hearing demonstrated assignment of corrections officers to cover for master control operators during their breaks was a long-standing practice in the detention facility. Further, the evidence is mixed over whether this was a mandatory or voluntary assignment. Section 4.2.b of the Policy provides for a <u>voluntary</u> system of covering for absent master control operators which must be utilized first. If volunteers cannot be found, only then can mandatory overtime be used to cover for vacant slots. The evidence offered by the Union is that the current policy and practice has not invaded or diminished the integrity of this bargaining unit.

In sum, the Arbitrator holds the Union has shown no need for the proposal to incorporate Policy 356 into the Collective Bargaining Agreement with the modifications sought by the Union. Therefore, it will be the award of the Arbitrator to maintain the status quo of Policy 356.

AWARD

The Arbitrator awards the Union's proposal on Policy 356 should not become a part of the Collective Bargaining Agreement and Policy 356 should continue unchanged as a matter of County policy.

ISSUE 4: POLICY 357 - VACATIONS AND LEAVES

A. Background

The stated purpose of TCCF Policy 357 is to provide a "systematic procedure for the requesting and accounting of vacation, sick, leave time and personal holidays." County Exhibit 12, 4.0(5)(A) of Policy 357 speaks to the issue of compensatory time as follows:

> Employees requesting to take comp time shall do so in advance by submitting a written request to their immediate supervisor. The request shall be submitted at least five days in advance of the requested date and the supervisor shall respond within five days of the receipt of the request. In determining whether to approve the request, the supervisor shall consider operational reasons, including hardship to other employees. An example of an operational reason for denying a comp time request is that minimum staffing would not be met.
>
> Emphasis added.

In Article IX, Section 4 of the Collective Bargaining Agreement the subject of Compensatory Time is covered by language which states:

> Section 4. Compensatory Time. At the time overtime is worked, the employee has the option to request either overtime compensation or compensatory time. It shall normally be the practice to pay overtime in money during the pay period following the pay period in which overtime is worked. However, with the mutual agreement of the employee and the Sheriff, or designee, compensatory time off may be used for overtime and court appearance time. Whether or not compensatory time off is allowed to accrue, in lieu of overtime pay, shall be at the sole discretion of the

> Employer. If allowed, compensatory time shall be accrued at the rate the actual hours for which overtime payment otherwise would have been made. In no event shall an employee accumulate a balance of more than sixty (60) hours of compensatory time. The Employer shall buy down all accumulated compensatory time in excess of forty (40) in their accrual bank as of October 31 of each year (to be included in the employees' November 30 paychecks).
>
> Emphasis added.

The above quoted provision focuses on the subject of accrual of leave rather than use of compensatory time.

The dispute in this issue concerns the Union's claim employees are not able to schedule compensatory time. Part of the problem in scheduling compensatory time is seen by the Union as coming from Policy 357. The County sees the issue as one of meeting minimum standards without calling in employees at overtime rates.

B. The Union

The Union takes the position the evidence demonstrates that corrections officers are not able to schedule their compensatory time. According to the Union, Policy 357 places a road block in the way of employees seeking to utilize compensatory time off. The Union maintains the policy should be modified to include a provision that the need to use overtime to meet minimum staffing as a result of a request to schedule compensatory time should not be a valid reason to deny the request.

The practice in effect and based on Policy 357 is to deny employees' use of compensatory time if the granting of compensatory

time will take the facility below minimum staffing levels. The employer's denial of compensatory time is based on the criteria of refusing to allow the time to be taken, if overtime is required to cover a shift, means there is little or no opportunity to use compensatory time.

Corrections officers are allowed to sell back compensatory time. However, they can only sell time accrued over forty hours. If they cannot schedule the compensatory time off, they are left with compensatory time they cannot use. In essence, they work overtime for free. The testimony of Corrections Officer Downing revealed that officers are more and more reluctant to work for compensatory time because they cannot take it once it is earned. Article IX, Section 4, addresses the accrual of compensatory time. However, it does not address the utilization of accrued compensatory time. TCCF Policy 357 with the Union's proposed language, should be incorporated into the contract so that corrections officers are able to use compensatory time validly earned under Article IX, Section 4.

C. <u>The County</u>

The County takes the position that it is appropriate to consider operational reasons, including hardship to other employees, when making a decision to allow compensatory time off. A key point of this dispute is that the Union seeks to require the County to grant compensatory time off even if it takes the work unit below minimum staffing. When minimum staffing levels are not

met, the County is placed in the position of requiring an employee to work overtime.

Regarding the Union's proposal, the County argues it is absolutely irresponsible and unreasonable for the County to be placed in a position where they are granting compensatory time off to an employee which takes the facility below minimum staffing and results in overtime being required. According to the County, the inefficiencies involved in an employee taking compensatory time off, and replacing that time with an employee on overtime is inappropriate. Thus, the County submits this inefficient approach should not be required by County policy.

The County next argues that Policy 357 is consistent with Article IX, Section 4, of the Collective Bargaining Agreement where it provides, "Whether or not compensatory time is allowed to accrue, in lieu of overtime pay, shall be at the sole discretion of the Employer." Rather than denying compensatory time in its entirety pursuant to the contract, the County has attempted to come up with a reasonable approach to allow employees to use compensatory time off.

The County maintains that its position is consistent with the comparable jurisdictions that have addressed the issue of compensatory time off. All of the contracts which have language on the issue of utilization of compensatory time require that it be taken with the concurrence of management. In addition, the compensatory time off provisions of the other contracts also place

limits on its use, if the facility is taken below minimum staffing level.

The Union has contended that Policy 357 as written violates the Fair Labor Standards Act. If the Arbitrator agrees with the Union's position, he should void Section 4.5 of the Policy and recognize the County shall pay overtime in cash and eliminate any payment of compensatory time.

For all of the foregoing reasons, the County feels the Arbitrator should adopt Policy 357 as written by the County.

D. Discussion and Findings

The parties are directed to the Arbitrator's discussion of policy matters in interest arbitration at Issue 3: Minimum Staffing. There is a different twist in Issue 4 in that compensatory time is the subject of express contract language. In resolving this issue, the Arbitrator must consider both the Collective Bargaining Agreement and Policy 357. Article IX, Section 4, does not compel the County to allow corrections officers to accrue compensatory time. The employer retains the right to decide, "Whether or not compensatory time off is allowed to accrue, in lieu of overtime pay, shall be at the sole discretion of the Employer." The County has exercised its discretion to allow employees to accrue compensatory time pursuant to the agreed upon language in Section 4.

Section 4 limits the amount of compensatory time which can be accrued by a corrections officer to sixty hours. If a corrections officer cannot utilize the compensatory time, Section 4

requires the County to buy down all compensatory time in excess of forty hours. When an employee cannot schedule the accrued compensatory time from one to forty hours, they lose the value of the benefit.

Both parties have made valid points in support of their respective positions. The County correctly asserts it must maintain its minimum staffing levels and avoid paying overtime to provide coverage for an employee using compensatory time off. While it is true the right to accrue compensatory time in lieu of overtime is discretionary with the County, the County has elected to allow the accrual of compensatory time. However, the contract is silent on the use of accrued compensatory time. Policy 357 fills the gap on the utilization of compensatory time. Generally, Policy 357 places considerable discretion with management in deciding, if and when compensatory time will be allowed.

The Union is correct that officers should not be faced with forfeiture of accrued compensatory time because management will not or is unable to schedule sufficient time to use up the accrued compensatory time. Part of the problem in this case is that the staffing level at the detention facility makes it difficult to maintain minimum staffing without the use of overtime. The payroll data does not entirely support the Union's claim compensatory time was not being scheduled. Co. Ex. 7. In 1998, 1,168.75 hours of compensatory time was taken by corrections officers, or an average of approximately 19 hours per employee.

However, the fact compensatory time is being used does not address the forfeiture issue.

A review of the contract language from the comparator contracts provides some assistance in resolving this dispute. All of the contracts which provide for compensatory time place a limit on the amount of compensatory time which can be accrued, and provide for some form of payment for unused compensatory time. In addition, the contracts require the use of compensatory time to be scheduled with the mutual consent of the employee and employer.

The Arbitrator is convinced that Policy 357 should remain unchanged in order to allow management sufficient flexibility to control the use of compensatory time in a difficult situation. At the same time, corrections officers should not suffer a forfeiture of accrued compensatory time because of scheduling difficulties. To alleviate this problem, the Arbitrator will modify Article IX, Section 4, to require the employer to buy down accumulated compensatory time to thirty hours. The figure divides the maximum accrual rate which must be bought down by one-half. By requiring the employer to buy down an additional amount of the accumulated compensatory time, additional incentives will be placed on management to schedule compensatory time under Policy 357.

AWARD

The Arbitrator awards that Article IX, Section 4, shall be modified to read:

ARTICLE IX
HOURS OF WORK

. . .

Section 4. Compensatory Time. At the time overtime is worked, the employee has the option to request either overtime compensation or compensatory time. It shall normally be the practice to pay overtime in money during the pay period following the pay period in which overtime is worked. However, with the mutual agreement of the employee and the Sheriff, or designee, compensatory time off may be used for overtime and court appearance time. Whether or not compensatory time off is allowed to accrue, in lieu of overtime pay, shall be at the sole discretion of the Employer. If allowed, compensatory time shall be accrued at the rate the actual hours for which overtime payment otherwise would have been made. In no event shall an employee accumulate a balance of more than sixty (60) hours of compensatory time. The Employer shall buy down all accumulated compensatory time in excess of thirty (30) in their accrual bank as of October 31 of each year (to be included in the employees' November 30 paychecks).

Respectfully submitted,

Gary L. Axon
Arbitrator
Dated: July 19, 1999