IN INTEREST ARBITRATION

Between

THURSTON COUNTY DEPUTY SHERIFFS' ASSOCIATION
(Union, Sheriffs, Association)

-and-

THURSTON COUNTY
(Employer, County)

Re:Contract Issues 1999-2001

Representatives:
For the Union:
Mark J. Makler

For the Employer:
Otto G. Klein, III

OPINION AND AWARD
(Contract Issues)

by

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PERC CASE NO:14303-I-98-318

Hearing Dates:
June 7 and 8, July 7 and August 16, 1999

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I. INTRODUCTION

These proceedings arose out of the failure of the parties to negotiate a successor collective bargaining contract to the Agreement between them effective from 1996 to 1998 (J 1, Co Tab 2). Although the parties reached agreement on many issues,

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others remained (Co 118). When unable to resolve all of their differences and arrive at a completed agreement either independently or in mediation, the parties moved to interest arbitration under the provisions of RCW 41.56. This arbitration has followed.

A. Issues

On December 30, 1998, PERC certified a list of issues for interest arbitration (J 4, Co Tab 1). Prior to and during these arbitration hearings the parties resolved some issues certified by PERC. Those remaining for consideration by the arbitrator were as follows:

+ Article 2 - Labor-Management Relations
  Section 2(a)(5) of Management Rights
+ Article 3 - Association Business
  Section 8. Personnel Files (new language by Un)
+ Article 8 - Hours of Work
  Section 1. Regular Work Hours and Work Weeks
  Section 6. Semi-Annual Shift Assignments (new language by Un)
+ Article 9 - Leave
  Section 4. Sick Leave

+ Article 10. Compensation
  Section 1. Salary
  Section 4. Special and Temporary Assignment Pay
  Section 5. Education/Performance Incentive
  Section 10. Uniform Allowance
  Section 12. Training
  Section 14. Funeral Expenses
  Section 19. No "Make Work" (new language by Un)
+ Article 15 - Term of Agreement
+ Article (new)-Discipline and Discharge (new language by Un)

B. Standards and Guidelines for Decision Making

The provisions of RCW 41.56.465 sets forth the standards to be considered and applied in resolving the differences between the parties over the issues still in dispute (Co Tab 29). These are as follows:

> 41.56.465 Uniformed personnel -- Interest arbitration panel-- Determinations--Factors to be considered. (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 like personnel of like employers of similar size on the west coast of the United States; ....
> (d) The average consumer prices of 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. .... (Tab 29).

Various arbitrators and others have observed that the process of interest arbitration is an extension of the negotiations and collective bargaining of the parties. On that basis the arbitration process has been directed towards considering those factors as set forth in the statute above in such a manner as to reach as nearly as possible what the parties would have agreed to by themselves in continuing "to bargain with

determination and good faith." The statute places certain restrictions on the negotiating behavior of these public sector parties, not found in the private sector of the economy, such as the right to strike or lockout or to exercise certain other economic and market tactics. Thus using the standards and criteria of the statute, the arbitration decision is one that attempts to find solutions to disputed issues that most likely would have resulted had the parties been free to bargain as if in a private sector labor market environment. At best such a decision will seldom be more than a rough approximation of this goal, acceptable only because of the paramount interests of the public in maintaining continuity and stability of services from the agency involved in bargaining over and against the rights of employees to improve their wages, hours and conditions of employment.

The statute offers the above factors as "standards or guidelines to aid (an arbitrator) in reaching a decision." Although the statute is mandatory with regard to the consideration of these factors, it provides neither for the weight of these factors as one relative to another nor for the measurement of any of them. These are matters left to the judgement of the arbitrator and will depend to some extent upon the circumstances of the bargaining relationship involved.

One other preliminary observation is appropriate. Good faith bargaining does not necessarily require either party to offer changes in the provisions of a current collective bargaining agreement. Although the Sheriffs were frustrated by the unwillingness of the County to counter propose new language in certain instances, such as with regard to Discharge and Discipline, the maintenance of the position that what exists is

more acceptable than proposed new language represents an appropriate and good faith response to proposed changes. In these circumstances and under the frame work offered above, the arbitrator examined the proposed new language, its concept and content in relation to the proposal to retain current language with its concept and content, and choose between them.

C. Hearing Procedures

The arbitrator provided the parties with full and equal opportunity to make opening statements, to examine witnesses under oath, to offer documentary evidence, to argue procedural and evidentiary rulings of the arbitrator on issues presented during the hearing, and otherwise to make known their respective positions and the arguments in support thereon on the issues in dispute. Numerous representatives of the Union and Employer testified during the four days of hearing. In addition four large notebooks of exhibits containing 137 documents or sets of documents from the Union and 118 documents from the Employer plus copies of the collective bargaining agreements in effect for the proposed comparables were accepted into evidence. Further, the arbitrator tape recorded the proceedings solely to supplement his personal written notes of the arbitration. Finally, post hearing briefs were received in a timely fashion by the arbitrator with the summary arguments and contentions of the parties and specific supporting data on the proposals for the issues in dispute. The parties granted the arbitrator additional time to complete the decision.

II. COMPARABLES

A. Standards and Guidelines

Subsection RCW 41.56.465 (1)(c)(i) provides that the comparison of wages, hours and working conditions for "like personnel" shall be made on the basis of "like employers of similar size..." From this, in the instant case, the determination of "like personnel" and "like employers" is clear enough as "deputy sheriffs" or law enforcement officers and as county government. What constitutes "similar size" as among employers is much less certain. Nor is there any identification of "such other factors that are normally or traditionally taken into consideration ..." as found in Subsection (1)(f). This provision has generally been interpreted by arbitrators to refer to "labor market" conditions and factors such as geography, application and turnover rates of specific employers, training costs and worker mobility, etc.. Cost of living has been related to geographic regions and areas as well, as these may affect "real" rather than money wages.

As others have recognized, comparables can be selected on the basis of objective criteria or on the basis of the results obtained. If the employer seeks to hold the line on a general wage increase, comparables could be selected from among those jurisdictions in which no wage increase had been granted. The second step is then the selection of the common characteristics among the list to argue as the standards or guidelines for selection. Needless to say, this constitutes an improper and non objective manner of selecting comparables. Rather some bases are required that are objective in nature, that have some relationship to the determination of wages, hours and working conditions, and that represent the nature and character of the

employer business in some substantial degree.

B. Proposed Lists of Comparables

Here the parties have proposed the following lists of comparable counties to Thurston County:

Sheriffs	County
Clark	Clark
Kitsap	Kitsap
Whatcom	Whatcom
Pierce	
Snohomish	
	Skagit
	Cowlitz
	Yakima
	Benton
	Spokane

The Union based its selection upon four criteria: (1) all counties are in Western Washington and (2) for the most part are in the Puget Sound Metroplex, (3) non agricultural, for the most part, and located along the I-5 corridor within two hours of Thurston County, and (4) represent five of the 10 largest counties in the state ranging in population from half the size of Thurston County to twice its size.

Alternatively, the County argues that its list of comparables comes from those counties that the parties had previously used and (2) range in size between half the population of Thurston County to twice its size, confirmed also by assessed property valuations in the respective counties.

The major argument of the County rested on the rejection of the inclusion of Pierce and Snohomish Counties in the Union list and the exclusion of Eastern Washington counties as well as Cowlitz and Skagit Counties included by the County. These

arguments included (1) changes in the list used by the Union to obtain results, from initial bargaining, to mediation, to certification for bargaining, to the list now before the arbitrator; (2) demonstration that Pierce and Snohomish were outside any reasonable size limitations; (3) that East and West comparisons were previously made by the Union and are common practice among interest arbitrators; (4) inapplicability of Arbitrator Buchanan's decision re Snohomish County and the East West comparisons; and (5) geographic proximity fails to make employers comparable, re Pierce and Thurston Counties.

C. Discussion and Decision

I concluded that the County's list of comparables should be adopted as those comparables more nearly fit the statutory guidelines and standards for determining wages, hours and conditions of employment for uniformed personnel than the list of counties proposed by the Sheriffs. The following considerations and factors led to this conclusion.

1. Population and Property Value

First, the essential function or business of the units to be considered for comparables in this instance is the establishment and maintenance of a system of law and order, the safety and protection of people and property. Under these circumstances, both population and the value of property within the counties are logical and reasonable criteria upon which to select a group of comparables.

Although no magic exists in selecting a range for "size" to which these criteria might be applied, the 50% below and 200% above the county at issue provides a reasonable basis. This

range of measurement is statistically symmetrical and provides equal weight to units smaller or larger than the unit at issue. A county half the size of Thurston bears the same relationship to Thurston as Thurston County bears to a county twice its population size, for example. This range hold "size" within reasonable bounds where similarities of actions and responsibilities will be relatively similar and comparable among various employers.

In addition I noted that, for the most part, the parties have agreed in their respective briefs on the 50% below to 200% above comparison measurement, one that is commonly used by interest arbitrators (Er Br, p 9; Un Br, p 9;). The Union overrides a strict application of the percentages for size by contending labor market and geographic factors justify such a modification. I return to this issue below.

2. Comparables

The list of comparables offered by the County fit the size criteria whereas only three of five do so on the Union list. On the basis of population, the counties of Pierce and Snohomish far exceed twice (200%) the size of Thurston county, 344% for Pierce and 286% for Snohomish (C 8). Further, where property value is considered, the circumstances are changed little, 312% for Pierce and 329% for Snohomish (C 12; Co 32).

In contrast the counties offered by the Employer fall within acceptable limits for population and property value combined. Cowlitz county has a population of only 46.6% of that of Thurston and Spokane County's population numbers 205.7% of Thurston's. However the assessed valuations for both of these counties fall within the 50% below and 200% above that of Thurston, at 55% for

Cowlitz and 163% for Spokane counties, respectively (Co 30, 31). Since population data are based on survey samples and not a face to face count as the decennial census, the variations in percentages of Cowlitz and Spokane counties relative to Thurston County may well fall within the sampling error and lie within the 50% below and 200% above criterion for size.

I concluded that for comparable services and responsibilities among these employers as in the provision of police services and protection, that both Cowlitz and Spokane counties met the criteria for size and should properly be included among the comparables to Thurston County. No question can be raised regarding the size criteria for other counties in the list of the Employer.

3. Shortcomings of Union Proposals

In the second place, I have set aside the arguments of the Union that counties in Eastern Washington should be excluded. As a basis for this exclusion, the Union offered a difference in weather between East and West, an assertion from a decision by Arbitrator Snow that different labor markets exist between East and West, and that the East is primarily agricultural rather than industrial as in the West.

Although weather is different between eastern and western Washington, I could not determine from the Union's argument how this would adversely affect the usefulness of comparisons on the employment conditions for law enforcement. Further, even though labor markets for some services are different as between East and West, labor markets are not alone defined on the basis of location or geography.

In the instant case, the unique training and qualifications required for police officers and deputy sheriffs create an "industry" and/or "occupational" labor market more relevant to the issue of wages, hours and working conditions than mere geography and proximity of one employer to another. The labor force is mobile at least potentially, if not actually the case for deputy sheriffs, as the Union claimed in its request for wage increases (Un Br, p 14). Nor did the record in the instant case indicate any specific differentials in working conditions as between East and West, not offset, for example, by difference in living conditions and the cost of living, or other factors that would affect a direct comparison of wages among county employers between the two regions.

Finally, Yakima and Benton counties do have an agrarian character to them, but also so does Whatcom county and sections of Thurston. The Union has difficulty to justify the inclusion of Whatcom vis a vis the exclusion of eastern Washington counties on the basis of agricultural or resource based industry. This inconsistency weakens the contention to exclude Benton, Yakima and Spokane counties.

Lastly, as the Employer pointed out, the Union is on weak ground to argue against inclusion of comparables from Eastern Washington. It has relied upon such counties for comparables in the past. During negotiations and mediation, and during the preparation for interest arbitration, the Union did include eastern Washington counties in its list of comparables (C 16, p 6-8). Further, the Sheriffs agreed in the 1996-99 Agreement to use eastern Washington counties as comparables in setting the salary of lieutenants [Co 2, Art X, Section 1(f)]. The

opposition to using such counties was not persuasive for this arbitrator.

4. Contiguous Areas

The final consideration in deciding to use the County's list of comparables was based on a rejection of the central arguments of the Union regarding the reliance upon contiguous areas. The I-5 corridor from Whatcom to Clark counties was cited as a unifying character, related to travel time and commuting from one or the other to Thurston county. But among 871 county employees, only one resides in Clark county and none in Whatcom county (Co 4).

Further, in each instance of alleging comparables, some exception exists for the Union. Whatcom and Clark are not part of the Puget Sound "metroplex," another alleged unifying factor to support comparables. Skagit, Mason and Cowlitz counties interrupt the I-5 corridor, and a special case must be made for Kitsap which is not on I-5. And if the "metroplex" is the basis for determining comparables, I found the omission of King county unexplained.

I noted above that labor markets are defined and apply under different circumstances. Although geography is a common basis for determining a labor market, it applies more generally to "blue collar" and clerical workers where uniqueness of skill is rare and training costs are low for entry into the market. On the other hand, occupational or industry oriented markets apply to workers who have specialized training, such as police and law enforcement officers, and the professionalism of the occupation permits widespread mobility across geographic area. In one sense, the labor market for the services of deputy sheriffs and

police officers is not bounded by geography but by the nature of the work and services to be performed. Thus, the contiguousness of Pierce county to Thurston is a relatively insignificant factor in measuring the labor market for law enforcement services.

5. Conclusion and Decision

The common characteristics of the counties offered for comparables by the Union were insufficiently strong to override the preference for the list of the County. The list of comparables for the Union have common features as (1) to location in Western Washington, (2) represents primarily non-agricultural areas, and (3) all counties are found in the ten largest in the state. I found these criteria and standards less related to the consideration required under the statute than the size of counties by population and property values set out by the County. In addition, I found that the use of the list proposed by the County by the parties in prior negotiations added weight to the rejection of the Union list and support for the comparables offered by the Employer.

Thus, I decided to use the counties of Clark, Kitsap, Whatcom, Skagit, Cowlitz, Yakima, Benton and Spokane as comparables in the determination of the wages, hours and conditions of employment which the parties have placed before me.

III. GENERAL WAGE INCREASES

A. Proposals

The Union proposed an across the board wage increase during a three year Agreement, as follows:

Section 1. Salary

a. Retroactive to January 1, 1999, the salary steps in effect on December 31, 1998, shall be increased by five percent (5%).

b. Effective January 1, 2000, the salary steps in effect on December 31, 1999, shall be increased by five percent (5%).

c. Effective January 1, 2001, the salary steps in effect on December 31, 2000, shall be increased by five percent (5%).

The County proposed a wage increase of 3% for each of the three years of the collective bargaining agreement.

B. Support for Respective Positions

1. Union

The Union offered three contentions in support of its proposed across the board wage increase. First, the 5% per year was required to keep up and to catch up slightly with the comparable counties. This was supported by data in exhibits W 4-6 that indicates Sheriffs are underpaid and behind in salary against the average of the comparables used by the Union by between 8.61% and 11.62%. The County proposal will leave the deputy sheriff with five years of seniority exactly in the same deficient position as is the case now.

Second, the Union asserted that the 5% annual increase was required to meet the pace of inflation and the higher cost of living in the Puget Sound metroplex. Although acknowledging that the level of prices has increased only nominally in the last three years, the Union argued that in the next three the robust metroplex economy and its higher cost of living than other areas will require the 5% wage increase each year to keep pace with

inflation and the cost of living. A smaller increase will be detrimental and the deputy sheriff of Thurston county will fall even farther behind the comparables in the Puget Sound metroplex area.

Finally, the Union argued that a 30% turnover rate for the five year period just ending was the result of lower salaries and poor working conditions in Thurston County relative to the comparables. Thus the 5% annual increase is needed to stem the outflow of trained deputies. Citing the high costs of training replacements, the Union contended that the 5% wage increase relative to the 3% offered by the County would save the County money by reduced replacement and training costs for new recruits to fill the vacancies of those leaving for better paying positions.

2. Employer

The Employer contended that the salaries of Thurston County deputies have not lagged among the comparables. Here the Employer argued that the top step base salary was the best comparative statistic to use for salaries. On this measure it showed on the basis of the eight comparables for 1998 data that the County was ahead of the average of comparables by 1/2% (Co 43); that adding longevity payments for 10, 15 and 20 years, showed Thurston salaries behind by .23% at 10 years but ahead by .26% and .41% for 15 and 20 years, respectively (Co 44); that including education incentive pay to the top step base salary and longevity, Thurston county salaries exceeded the average for the comparables for both AA and BA degrees with the later exceeding the average by over one percent (Co 45, 46). Finally, using the average seniority of Thurston County deputies at 71/2 years,

comparisons of salaries across the comparables for base plus longevity, base plus longevity and education, the Thurston salaries are almost exactly the same as the average of the comparables except that those with a BA have a 1.5% salary advantage over deputies in the comparable counties (Co 5, 47).

In addition, the County contended that the Union had included insurance contributions improperly and incorrectly in its wages comparisons, although the major difference in results between the Employer and Union regarding any alleged catch up in salaries for deputies arose from the use of Pierce and Snohomish counties as comparables. In addition, the Union ignored education incentive payments since to have included them would have eliminated much of the alleged catch up need, the Employer maintained. Several other differences in the presentation of salary information between Union and Employer were pointed out, such as inclusion of the Clark County sick leave plan not included elsewhere, ignoring that some deputies in Clark county work 2190 hours, not the 2080 shown elsewhere, counting vacation given in time off as actual dollars earned, and some confusion between use of 1998 or 1999 data.

Finally, the County pointed out that its offer of a 3% increase fits what other jurisdictions have been agreeing to. Here three of the comparables have 1999 increases of 3%, one at 4.5%, three at 3.5% and that King, Snohomish and Pierce counties have increased 1999 salaries by 3%, 2.25% and 3% respectively (Co 53; 53A). The proposal of the County fits this pattern and will retain the historical relationship of Thurston County deputy sheriffs' salaries to those of the comparables and of the metroplex counties as well. The County's offer is "fair and reasonable when analyzed in this context," the County concluded.

C. Discussion and Decision

The 1998 salary data from among the eight comparables demonstrate clearly that an increase for 1999 and thereafter for Thurston County deputies is not required to "catch up." On the basis of the top step data, adjusted for longevity and education incentives, and on the basis of salary adjusted for the average seniority for Thurston County Deputy sheriffs showed no catch up necessary relative to the average salary in each of the comparables. As the data in Co 43-47, the Thurston county salaries are right on the average and with only two exceptions exceeded the average for the comparables by a small amount. The two percent greater increase than that offered by the Employer as requested by the Union is not required to "catch up" salaries in Thurston county with the comparables.

Thus the initial remaining issue here is determining an increase for 1999 independent of a "catch up" variable. In this respect, I have reproduced Co 43 with extensions through 1999 as found in the collective bargaining agreements, tabs 21 through 28 in Book two of the County's exhibits and the data in Co 53.

The table is as follows:

County	1998 Salary	% Increase	1999 Salary	% Increase 2000	% Increase 2001
Benton	$3,655	3.0*	$3,765	N/A	N/A
Clark	3,684	3.0	3,795	3.5	N/A
Cowlitz	3,681	3.5	3,810	N/A	N/A
Kitsap	3,813	3.5	3,946	N/A	N/A
Skagit	3,757	4.5**	3,891	4.0	3.5
Spokane	3,722	3.5***	3,852	N/A	N/A
Whatcom	3,788	3.0	3,902	N/A	N/A
Yakima	3,660	3.0	3,770	3.0	N/A
Average	$3,720	3.25	$3,841	---	---
Thurston	$3,736	----	-----	---	---
County---		@ 3.00	$3,848		
Union----		@ 5.00	$3,923		

Notes: * Assumed Benton would settle per pattern at Yakima.
** Effective March 15, 1999. Salary adjusted to January 1, 1999.
*** As understood from Er Br at page 26 that "three others are paying a 3.5% increase." Cowlitz, Kitsap and Spokane (Co 53).

From the above table the data do not support the claim for a five percent salary increase for Thurston County deputy sheriffs in 1999. Rather the three percent increase offered by the County will retain the position of County salaries relative to those in the comparables.

Other information supports the reasonableness of the County's proposal for a three percent salary increase in 1999. First, as testimony reported at the hearing, neighboring metroplex counties of Pierce, King and Snohomish provided for salary increases in 1999 of 3%, 3%, and 2.25% respectively.

Second, other bargaining units within the County have settled for or have tentatively agreed to settle for the 3% salary or wage increase for 1999. These settlements include the Corrections Officers' unit, the clerical and OPEIU unit and other units represented by AFSCME (Co 17; testimony). The deputy sheriffs' are not disadvantaged by maintenance of "internal equity" for employees of the County. Over the preceding several years, the sheriffs have gained percentage wise relative to other County employees, and by the substantial amount of some ten percentage points over non uniformed personnel (Co 15). Here, where the comparables do not indicate any greater increase than the 3%, maintaining equity between the deputy sheriffs and the other County employees has merit.

Two issues remain. First, the Union argued for catch up vis a vis the cost of living index for Seattle-Tacoma in relation to the lag of salaries in Thurston behind the comparables that it proposed. Second, there is the matter of retention of employees rather than a flight to "higher paying" jurisdictions.

Although an argument is reasonable to provide some increase in salary in excess of the rise in prices and the cost of living index, the proposal of the Union was less than convincing on that basis. Arguing primarily for a catch up in salaries (W 19 ff), the Union relied upon the Seattle-Tacoma index for urban consumers that showed 2.90% increase in 1998 (W 42). The CPI-W for the area increased only 2.6% and why one index rather than the other was selected was not indicated.

However, what is relevant here are two factors. First, reliance upon an metropolitan area index is questionable because of the great variability in the index and the probability of a high sampling error because of the small sample size used (See Co

21, p 2). BLS recommends specifically that metropolitan indices not be used for labor contracts because of sampling error inherent in such small populations. The national or regional measures are far more reliable as indicators of increases in the cost of living. (See the discussion by Sutberry, Co 26).

Second, the estimate of 2.9% for the area is clearly too high. The more stable and accurate all cities index was only 1.6% above a year ago as of the early spring, 1999. Nor is there any indication that prices are likely to rise as the Union contended. The guiding principle behind recent changes in the interest rate on bank funds is the control of and prevention of rising prices in a booming economy. Increases in interest rates increases the cost of doing business, slows down expansion, and thus contracts the upward pressure on production and prices. Although no one can foretell the future with a great deal of accuracy, the recent trends and the controls exercised by the Federal Reserve Board and Chairman Greenspan provide no firm basis for the proposed five percent increase in salaries for Thurston County deputy sheriffs as justified by past or expected cost of living increases.

Specifically, with regard to the salary increases of the deputy sheriffs in Thurston County vis a vis the cost of living changes, I noted that in the eight year period between 1991 and 1998, the national CPI rose 24.8% compared to salary increases of the deputy sheriffs of 38.86% (Co 16, 20). Although productivity gains in the economy should be shared by everyone, the 12 percentage point spread between changes in prices and rise in wages indicates that the bargaining unit in question here did not lose out on rising productivity and higher standards of living.

Changes in the consumer price index supports and justifies the County's proposal for a 3% salary increase better than the proposed Union increase of 5%.

Finally, I set aside the argument of the Union that a five percent salary increase can be justified on the basis of defections of present workforce members to other jurisdictions. First the turnover rate is properly set as an annual rate. Thus the real turnover rate among deputy sheriffs over the last five years is about 6% per year rather than the 29.5% five year rate computed by the Union. Although the 6% rate is a relatively good one, I noted that of the 23 deputies to have left the force in the last five years, six retired, one died, two had career changes and among the remaining 14, only seven actually went to another law enforcement agency although the two who moved out of state could have done so (W-35). Thus the actual defection rate to other agencies would be more near the 2.5% turnover level, an insignificant factor in affecting the level of salaries and other working conditions in Thurston County.

Increases in the level of salary and more advantageous working conditions for deputy sheriffs in Thurston County cannot be justified on loss of personnel to other law enforcement agency. Co 6 shows 15 new hires from other law enforcement agencies in the last five years. Compared to the loss of only 7, as reported in W-35, the ability of the County to obtain additional deputies in even greater numbers fails to persuade the arbitrator that a five percent salary increase is needed or warranted at this time.

Thus I conclude here that a 3% per cent salary increase for 1999 would be appropriate. The salaries of deputy sheriffs remain comparable to those salaries among the comparables,

represent similar increase to those obtained elsewhere in the County and in the Puget Sound Metroplex, are not being depleted by increases in the cost of living, nor are the salaries so low that the workforce is being depleted by defections to higher paying law enforcement agencies.

Little information or data were provided by the parties concerning salary changes contemplated for the year 2000 and beyond. Among comparables, only three have set salaries for 2000 and these represent an average increase of 3.5%. On the other hand local negotiations in the County have adhered to the 3% increase, as would be the minimum guaranteed in King and Pierce Counties under current deputy sheriff agreements there. More will be granted if 90% of the CPI exceeds 3%. As suggested above, I question the likelihood of that occurring. Almost no information is available upon which to rely for the year 2001, and thus here I must rely upon the basic judgement of the parties. The arguments for a five percent increase in 1999 or in 2000 have left this arbitrator unconvinced. Other evidence indicates that the 3% may be closer to the mark, and what the parties would likely have agreed upon had they concurred with the 3% in 1999.

Thus, I conclude to adopt the proposal of the County for salary increases of 3% across the board for each of the years of 1999, 2000, and 2001 with the increase effective on January 1 of each year. The parties are directed to amend Article X, Section 1 a, b, and c accordingly.

IV. LIEUTENANTS' PREMIUM OF 2%

A. Proposals

The Union proposed to amend Article X, Section 1.e to read as follows:

> e. In addition to the amounts provided for above, the salary steps for Lieutenants shall, retroactive to January 1, 1999, be increased by an additional two percent (2%).

The Employer proposed that no additional percentage increase in salary for Lieutenants was appropriate.

B. Arguments and Data in Support of Proposals

1. Union

The Union's support for its proposal rested upon two primary contentions. First, the Union points out that the salaries of lieutenants in Thurston County fall 23% to 25% below the salaries of lieutenants in the list of comparables proposed by the Union (W-10 and W-11). Second, although the Union believes that the lieutenant classification in Thurston is more comparable to lieutenant classifications elsewhere, comparing sergeants salaries to those of lieutenants in Thurston county, on the basis of the Union's comparables, indicates that the salaries of lieutenants are still at least 11% behind (W-16, 17, 18). Thus the lag of lieutenants salaries on this basis justifies an extra 2% per year for the lieutenants in Thurston County.

2. Employer

The Employer pointed out that the parties agreed in the current Agreement to augment the salaries of lieutenants and devised a plan to do so by using those same comparables that the

County has proposed herein. Lieutenants did receive a one percent increase greater than that of the deputies in 1997 and 1998, and the Employer argued that no further increases were justified to achieve parity between salaries of lieutenants in Thurston County with salaries of like personnel in the comparables.

The parties agreed that the lieutenants were the first line supervisor above the deputy and thus comparable to the sergeant classification in most other jurisdictions. They had agreed to set the lieutenant salary at the average spread between the top-step deputy and the first line supervisor in the comparables. At this time, according to the Employer, that differential on average among the comparables is 16.85% where as the lieutenant salary in Thurston is 17.8% above the top step deputy. Since the Union failed to present this information, the Employer argued that it did not do so because the above computations show that no increase was required (See Co 48).

Comparisons of salaries of lieutenants in other jurisdictions with those of lieutenants in Thurston County is in appropriate, since the lieutenants are first line, not second line supervisors, as in other counties. Thus these data should be ignored, the Employer concluded.

The County developed data regarding salaries among the comparables for first line supervisors in Co 49 - Co 52. These were top step salaries adjusted for longevity at 10, 15, and 20 years, and by AA and BA degrees. In all instances from base salary to the adjusted salaries, the Thurston County lieutenants received salaries in excess of the average salary of the first line supervisors in the comparables, ranging from .69% to 2.92%.

Although the Union claimed that lieutenants were underpaid relative to the command staff in the sheriff's office the Employer denied such an allegation. Lieutenants received over time pay, longevity pay, and some advantages in the payment for medical insurance that captains do not, and the County has accordingly kept the differential in pay substantial. Looking at the total package received by lieutenants relative to captains, the County insisted that the differential was very nominal, at about 4% for the lieutenant who testified relative to the captain's salary level.

C. Discussion and Decision

On the basis of the data from the comparables and the recognition that the lieutenant in Thurston County is the same level of supervision as the sergeant in other jurisdictions, I concluded that no additional increase was required for the salaries of lieutenants. The data presented by the County with regard to 1998 salaries and comparable jurisdictions were more than adequate to justify rejecting the 2% additional salary increase each year as proposed by the Union. In addition, the arbitrator computed the 1999 top step salaries of first line supervisors from the collective bargaining agreements, using a 3% increase for Benton County and a 3.5% increase in salaries in Spokane county. The average for the comparables was $4,667 per month. A three percent increase in Thurston County would raise the top step lieutenant's salary to $4,668. I found no justification for an additional 2% increase for the lieutenants' salaries on these bases.

Some issue may be raised over the internal relationship between the salaries of lieutenants and captains in Thurston

County. However, I was unpersuaded that the situation was so inequitable as to justify overriding the above parity of salaries of lieutenants in Thurston with the salaries of comparable supervisors in the eight comparable jurisdictions.

I decided that no additional salary increase for lieutenants was appropriate, and thus Article X, Section 1 e should be deleted from the Agreement.

V. EDUCATION PERFORMANCE INCENTIVE : Article X, Section 5

A. Proposals

The Union's proposed changes in Article X, Section 5 Education Performance Incentive are attached in the Appendix hereto. The proposal increases the education premium by .5% after completion of 10, 15 and 20 years, adds science degrees and the equivalent college credits for AA/AS, provision for Master's Degree, and pay of the incentive each pay period rather than towards the end of the year as now.

The Employer proposed to leave this section unchanged from the current Agreement.

B. Support for Proposals

1. Union

The Union noted first that its proposal would reward completed education degrees at a consistent and fixed time and adds significant economic benefit to the deputies. In addition the training obtained through these degrees prepares the deputies to meet the greater variety of situations that law enforcement officers encounter and do so with better judgements and understanding of the "human psyche, social and economic environments and how to communicate with people " in all

categories of life. These are real advantages to the County for it encourages officers "to improve and update their judgement and decision-making skills and abilities." For such benefits, as the County admitted, the costs are very low with an impact of only $3500 or so each year. Clearly continuing education should be encouraged, the Union concluded, and the above proposal adopted.

2. Employer

The County pointed out that Thurston County is unique in providing both longevity and education premiums. The amount of the education incentive is dependent upon longevity or seniority with the County. Among the comparables, Cowlitz, Kitsap, Whatcom and Yakima counties do not have any incentive pay. In Spokane, the deputy must choose between an education incentive system or longevity, and Clark county has now eliminated education incentive pay and uses a straight longevity system, the Employer pointed out. On this basis, the County has "a very healthy incentive program" relative to the comparables, and when coupled with longevity, no reason exists to add more money for education incentive pay. Specifically, the County asserted that the Union gave no justification for the addition of a Master's program and how this would be beneficial to the Sheriff's Office. Overall, the County is well ahead of the comparables, and no addition to pay plan is justified.

The incentive pay has been made on an annual basis, and no reason was advanced for changing it, the County stated. Payments shortly before Christmas holiday have proved advantageous for all parties. No reason exists to change the County's payroll systems and procedures in this instance.

C. Discussion and Decision

I concluded to set aside the Union's proposal for changes in the education performance incentive or premium pay. Clearly, what is proposed by the Union goes well beyond what exists in the eight comparable jurisdictions developed above. Five of those counties have no education incentive pay program, and only Spokane could be credited with a "better" one than Thurston (Co 99). But as the Employer pointed out, selection of the education package in Spokane precludes longevity pay. This leaves the matter unclear whether Spokane has a preferable system to that in Thurston with its combination longevity and education/performance system.

In addition, the salary comparison among the comparables made above included both longevity pay and education incentives. The salaries of Thurston County deputies were on a parity with the average of salaries in the comparables on these bases. This comparison indicates that no adjustment in the education/performance incentives is required at this time.

Until clear advantages of a Master's degree in law enforcement appears, I find the addition of the Master's degree program inadvisable.

I noted that the Union did not argue in its brief for payment each month rather than a one time payment at the end of the calendar year. Even if not withdrawn, I agreed with the Employer that a change in the payroll systems and procedures did not seem justified here.

I concurred with the Employer that some minor changes in the matrix might be made but that no changes in the amount of incentive pay is justified at this time. If science degrees have not been accepted, these certainly should be given an equivalence

to the arts degree. I question the advisability of allowing college credits per se to substitute for degree achievement. Completing a program is indicative of an interest to achieving a specific goal, not sampling the wide field of knowledge in a great variety of college courses. I leave these matters, however, to the wisdom of the parties.

I set aside the proposal of the Union to change Article X, Section 5 Education/Performance Incentive and direct the parties to accept the Section in the current Agreement.

VI. ASSIGNMENT PAYS: Article X, Section 4

A. Proposals

The proposal of the Union is Attachment 2 in the Appendix hereto. The proposal makes three changes in assignment pay: it allows assignment pays to compound; the sergeant's premium is increased from 3% to 5%; the compensation of Instructor and Field Training Officer is computed differently to increase total pay.

The Employer proposed that the compensation arrangements for assignment pays remain the same as in the current Agreement.

B. Support for Proposals

1. Union

The Union pointed out that the sergeant classification in Thurston County was "abysmally underpaid in relation to comparable jurisdictions" as used by the Sheriffs. The basis for this claim arose from alleged similarities of duties between sergeants in Thurston with those duties of sergeants in other jurisdictions. Citations from the draft job descriptions as between sergeant and lieutenant were relied upon to support this claim.

The Union claimed that sergeants act as field supervisor at all times, and in effect, are doing the work of lieutenants when necessary. Because they function as the lieutenants, the sergeants should be compensated higher than currently. Citing both Kitsap and Pierce Counties who have classifications that approximate those of sergeant in Thurston, the Union showed that salaries were low in Thurston by nine to 12%. In other jurisdictions, sergeants receive out of classification pay when doing lieutenant's work, whereas in Thurston, the sergeant receives only the 3% premium. Others provide for a minimum of 5%, the Union asserted.

The basis for dropping the limitation on stacking assignment pays is that sergeants and others should be paid for what they do. It is up to the Employer to decide what the employee shall do, but when assigned more than one activity, the compensation should be accordingly. Although stacking does not exist in the jurisdictions cited by the County, neither is that practice prohibited, the Union alleged. All employees should be paid on the basis of what they do, and thus limitation on stacking should be eliminated completely.

Finally, the Union maintained that the proposal with regard to compensation of field training officers was incorporation of the current practice and as such should be written into the Agreement. This was based on the testimony of Deputy Sheriff Keith, President of the Union.

2. Employer

The County's contention in support of the status quo was that deputies in Thurston County now receive higher premiums than in the comparable jurisdictions. "there simply is no reason to

increase the already substantial assignment pay of Thurston County."

Also, according to the County, no other of the comparable jurisdictions allows for the compounding of specialty pays (Co 95). Any change here is inconsistent with the practice across the state of Washington, the County asserted. Deputies receive the highest premium to which eligible in Thurston County, and no change is necessary here.

As for the increase in sergeants pay by 2%, the Employer pointed out that sergeants get the 3% at all times and not just when acting as a supervisor in lieu of a lieutenant. In other jurisdictions, the employee gets the higher pay only when actually performing the duties of a higher classification. No reliable comparison can be made here with other jurisdictions, the County concluded. Nor was any compelling justification offered by the Sheriffs to increase the sergeant's pay. Although occasionally sergeants now schedule ten hour days and approve time-off requests in the absence of a lieutenant, these duties do not justify the increase proposed by the Union.

Finally, the Employer claimed that no basis was offered for changing the pay of the field training officer and as far as the County could understand, no reason existed for the change. It should be denied by the arbitrator.

C. Discussion and Decision

I concluded that the provisions in the current Agreement with regard to Article X, Section 4 Special and Temporary Assignment Pay should be retained. This conclusion rested primarily on the practices, or the absences of practices in the jurisdictions of the comparables. As indicated in Co 97, special

pays in Thurston are more than equal to those in other jurisdictions. Further, compounding is not included in the working conditions of the comparables, per Co 95, even though no jurisdiction prohibits the practice specifically.

Although I recognize some overlap exists in the duties included in the jobs of sergeants and lieutenants, whether or not an increase from 3% to 5% over base salary is justified at this points rested primarily on the extent to which the sergeants' tasks have been increased and further overlap those of lieutenant. Some changes have taken place but my understanding was these were nominal and would not justify the 2% increase in salary.

Thus the issue was whether the 3% premium on the salary of sergeant was sufficient to compensate for upgrades when acting as supervisor/lieutenant relative to what occurred in the comparable jurisdictions. Here I found the claim by the Union that a 5% differential existed in some counties was paid only when the sergeant actually performed the supervisor's duties, not as in Thurston when the deputies as sergeants obtained the 3% as a premium on base salary as a general overall estimate of what the sergeant should get when acting as the first line supervisor in lieu of a lieutenant. I was unpersuaded that a change should be made at this time.

The information on the effect of the change in language as it applied to the compensation of the Field Training Officer was meager. Although the Union claimed that Deputy Keith testified without contradiction that the Union proposal was making the language consistent with current practice, the County in its brief claimed no evidence was offered to justify the change in language. Under these circumstances, I am remanding consideration

of this change to the parties, with the instruction that if the new language is consistent with the practice, as for example, the 3% of base pay for "any part of a shift" rather than "each month" in which they (FTO's) are assigned to perform these duties, is actually paid, then the language should be altered to reflect the practice of the parties. Although I may be obligated to make a definitive decision on this matter, I cannot regard it as a major issue between the parties to be resolved on the basis of the other conclusions expressed herein with regard to assignments pays.

Thus, with the above instruction to the parties on FTO compensation, I direct that the parties continue the provision at Article X, Section 4 in the new Agreement.

VII. UNIFORM ALLOWANCES: Article X, Section 10

A. Proposals

The Union proposed (1) to increase the uniform allowance for a new hire to $1000 at time of hire plus $600 annually on date of employment; (2) cleaning allowance increased from $40 to $50 per month; (3) eliminate the use of reconditioned body armor; and (4) the County provides a gun to the deputy. Certain nominal editing changes were included in the Union's proposal as well.

The Employer proposed to make no changes in the uniform allowance, Section 4 of Article X of the Agreement.

B. Support for Proposals

1. Union

The Union contended that the present system was inadequate for new hires. An initial outfit will cost about $1800 but the County provides a new hire with only a prorated share of the $600

annual allowance from date of hire to end of year (0-4). This represents a hardship on the new hire. Further, the Union claimed that its proposal was not out of line with that provided in other jurisdictions.

The increase in cleaning allowance was justified by increasing costs of cleaning and the sufficiency of funds to allow cleaning of two plus uniforms per week. The Union claimed that detectives should be given an allowance as well. Among comparables cited by the Union, the $50 cleaning allowance and an allowance for detectives closely approximated what those jurisdictions did.

The Union proposed that reconditioned body armor not be used. Since this was the practice, the language proposed by the Union should be adopted.

Finally, the Union's proposal was for the County to provide the gun for the deputy rather than for the new hire to obtain a gun. Currently the new hire may have the County provide the gun and then the employee pays for it over the next three years. The cost of the gun increases the burden on the new recruit, the Union claimed and with its provision by the County will allow the new hire to meet uniform needs more readily.

2. Employer

The Employer's basic argument here was that "If it works, don't fix it." The uniform allowance is adequate, meets what is provided by comparable jurisdictions, and does not constitute an undue burden on the new hire. The employee can choose the quartermaster system rather than take a monetary allowance. Further, many new hires comes from other law enforcement agencies

and the recruit already has a gun. If this is not the case, the recruit can take three years to pay for the gun.

As for cleaning allowances, Thurston County provides as much if not more allowance than the counties among the comparables. Since detectives are not in uniform, and may wear casuals on at least one day a week, cleaning of their clothes is much less than for uniforms, and may represent simple laundry in some instances. No basis exists to include detectives among those who obtain cleaning allowances.

C. Discussion and Decision

To a certain extent the Employer's argument is meritorious if no real problem exists with regard to the provision of uniforms, cleaning allowances, provision of a gun, and soft armor. However, after examining the mixture of systems for the provision of uniforms and equipment among the eight comparables, I concluded that three changes should be made in this Section of the Agreement.

First the County shall be required to furnish a gun to each new hire at the time of employment or allow $450 for the procurement of one, the method at the option of the employee. Four of the jurisdictions, Clark, Kitsap, Skagit, and Spokane provide a gun to a new hire and in the case of Whatcom an allowance of $1000 for uniform, including a gun, is provided. Only in the case of Cowlitz and Yakima did I find specific provisions in the Agreement that the employee must provide his own gun. I could find no reference to equipment provision of this nature in Benton County's Agreement. Although the pattern is not overwhelming, I concluded that the Union had a point in requiring the County to provide a gun to a new employee.

Second, Thurston County provides less in benefits re uniform allowances and cleaning than other jurisdictions for detectives. Clark, Kitsap, Skagit, Spokane, and Yakima provide funds for clothing. It was not clear whether or not detectives shared in the uniform allowance in Whatcom. Only Benton and Cowlitz appeared to exclude them from receipt of an allowance for clothes and cleaning. But in any event, a majority of the comparables do make an allowance for clothes and cleaning for detectives. Further, although the amount varies substantially from county to county, the clothes and uniform allowance centers around $500 per year, paid usually in quarterly installments. I concluded that this allowance would be appropriate for detectives in Thurston County.

As for the cleaning allowance, I found sufficient practice among the comparable to conclude some increase was appropriate in Thurston County. Although both Benton and Yakima counties take care of the cleaning bill for uniforms, Clark, Kitsap and Skagit allow at least the equivalent of the cleaning of two uniforms per week. On that basis per the schedule of costs submitted in O-3, the current $40 per months allowance for cleaning uniforms is low. Accordingly, I shall direct the parties to increase the uniform cleaning allowance for deputy sheriffs to $50 per month in the County.

Since a new employee may go to the quartermaster system, the alleged high cost of initial clothing and equipment was unpersuasive as a basis for providing a new hire with $1000 clothing allowance plus a gun, and then provide an additional $600 annually for supplements or going to the quartermaster system. Over all I concluded here that employees in the unit in

Thurston County were well treated vis a vis clothing allowance per se.

I saw no persuasive evidence that the option for the Employer to use properly reclaimed and recondition soft armor should be eliminated. Clearly no problem existed here, as far I could find in the testimony and other evidence provided.

Accordingly, I direct the parties to provide changes in Article X, Section 10 Uniform Allowance, as follows:

a. Deputies shall receive $600.00 annually as a uniform allowance. All eligible employees shall receive a cleaning allowance of $50.00 per month.. Detectives shall receive an annual clothing and cleaning allowance of $500, paid in equal quarterly installments beginning on January 1 of each year. These allowances shall be effective the first of the month following the signing of this Agreement.

b. ... (unchanged).

c. (Amend this paragraph as appropriate to provide for the provision of a "duty weapon" or "side arm" at the expense of the County).

VIII. TRAINING: Article X, Section 12

The Union proposed to change the payment for mandatory "off duty" training from the straight time rate to an overtime rate. The Employer proposed no change in the provisions of the Section.

Since the training was a mandatory assignment during hours when the employee is ordinarily off duty, when the employee normally would be using the time for personal pursuits, hobbies, family, education and other types of non-work activities, the training takes away the "quality time" and leisure time of the employee for which overtime should be and has been traditionally paid. On the other hand, the Employer believed that no change in the pay rate should occur because of the importance of the

training, and particularly because of the character and nature of that training as an in-house attempt to train deputies regarding sexual harassment, diversity issues, and similar sensitive matters.

I concluded that time spent in these training activities should be treated no differently than any other mandatory assignment of the employee. If the attendance at these sessions results in overtime for the employee, then the employee should be compensated as would be the case for any other type of overtime assignment in accordance with the overtime provisions of Article VIII.

The proposal of the Union with regard to Article X, Section 12 shall be included in the new Agreement.

IX. FUNERAL EXPENSE: Article X, Section 14

The Union proposed to increase the allowance for funeral expenses in the event an employee was killed in the line of duty from $2,000 to $10,000. The Employer proposed no change in this section.

The Union pointed out that the cost of funerals had increased since this was added to the Agreement, and that in any event, compensation for funeral and related expense on the death of an employee in the line of duty was clearly justified. On the other hand the Employer pointed out that Thurston County was the only jurisdiction among the comparables that has this benefit. On that basis the Employer claimed that the benefit should remain the same at $2,000.00.

I concurred with the Employer in this case. Although the item is insignificant in total likely expense, it is a unique provision among the comparables. On that basis I adopt the

proposal of the Employer and direct the parties to leave Section 14 of Article X unchanged in the new Agreement.

X. NO "MAKE WORK": Article X, Section 19 (New Language)

The Union proposed the following addition to the Agreement:

> When an employee is called back to work under Section 6 or Section 8 of this Article X, at the conclusion of the reason for the call-back, the employee will be released from duty and not be obligated to participate in any "make work" for the duration of the minimum call-back compensation period.

The Union proposes here that an employee shall receive the call back pay for the reason called out, and if that work is completed prior to the end of the guaranteed pay period, the employee shall be free to return to his off duty status. The proposal is based on two concerns. First, the employee is called from off duty to do a job and should not be obligated to continue working on other activities. Too frequently the additional duties given the employee beyond the reason for which the employee was called out is simply "make work," trivial and inconsequential. Currently the practice is generally to release the employee after the reason for which called out even if the guaranteed paid period is not used up, and thus, according to the Union, the proposal actually puts current practice into language of the Agreement.

The Employer concurred with the Union that generally the employee is released if his work for which called out is completed before the end of the guaranteed pay period. On the other hand, the Employer insists that it pays the employee at the overtime rate, that the employee is on duty and other tasks can be completed efficiently. The Employer denies that "make work" takes place, that employees are given bonifide work, and in many

cases are needed for additional reasons identical to or similar to those for which called out in the first place. The Employer should not be restricted from using the employee in these circumstances.

I agree with the rationale of the Employer in this instance. The overtime rate is the compensation for being called out for a specified period of time, not necessarily only for the completion of a specific task. Since the employee is paid for his time and receives the overtime rate of pay for the call out from off duty, the Employer is entitled to use his services to its best advantage even if some tasks could be done on regular duty assignment.

Section 19 No "Make Work" as proposed by the Union shall NOT be included in the new Agreement.

XI. HOURS OF WORK: Article VIII, Section 1

A. Proposals

The proposals of the parties are attached in the Appendix.

The Union proposed to establish a work week schedule consisting of five consecutive nine hour days with two days off followed by four consecutive nine hour days with three days off. Work days consist of consecutive hours worked.

The Employer proposed a weekly schedule of five consecutive eight hour days followed by two days off.

B. Support for Proposals

1. Union

The Union pointed out that its proposal increases the number of hours a deputy is on duty by 67 hours but increases the number of shifts off duty by 14. Overall the County would received an

additional 3082 hours of duty time from the deputy sheriffs on patrol. In addition, the Union claimed that minimum staffing levels would be met at all times, that shifts could be adjusted to provide for extra coverage during week ends when criminal activities increase. The Union pointed out that other jurisdictions, although allowing for use of the 5-2, eight hour day schedule, also provide other options as a 4 days on 3 days off 10 hour day schedule. The County's proposal increases the number of hours on duty during the year by 48 and reduces the days off by 12. Finally, the Union pointed out that its proposal defines the length of the work day and work weeks, and the patrol schedule could be delineated in the Agreement, as well. These provisions were found in the Union's list of comparables.

The Union contended that both the deputies and the County would benefit from its proposed new work week schedule. The schedule will allow for consistent, known-in-advance additional time off opportunities and fixed days off, and will help improve health and morale among members of the bargaining unit. Elimination of the rotating shifts under the present schedule will be a particular advantage. Additional days off will allow officers to have greater opportunities for a personal life outside of work and to become more involved in family and community affairs.

Finally, the Union maintained that its proposal will provide the County with the flexibility to cover peak periods of calls for service. This ability will lead to reduced overtime, especially from call outs. Since the schedule provides for an overlap of shifts by an hour, better communication can be accomplished under the Union schedule. These changes will provide enhanced community service, the Union concluded.

2. Employer

The Employer claimed that its work schedule of 5-2 maximizes flexibility for the County since more officers can be scheduled on duty for each day. Under the County's proposal each employee works 12 additional shifts whereas under the Union's proposal the number of shifts worked declines by 14. According to the Employer, the number of shifts worked per year is a critical factor in determining whether the Sheriff's Office can meet its minimum staffing levels. Here the Employer noted that the overlap of shifts, as proposed by the Union, does not add additional personnel for the rest of the shift, that could be done under the County's proposal. Since the 5-2 schedule can be coordinated with the calendar week, staffing up on busier days can readily be accomplished.

In addition, the County claimed that its schedule will enhance training activities especially from the additional shift coverage provided under the County's proposal. Also, the County maintained that greater stability to the personal lives of the deputy sheriffs can be achieved. A major concern now is the rotating days off. But with the County's proposal the employee knows which two days will be off duty days, and thus less disruption in the lives of the deputies and their families. Further, the proposal of the County will allow repeated assignment of the same patrol to the same community, such that the community comes to know and depend upon the deputies.

Finally, the Employer pointed out that six of the eight comparables have a five/two schedule with an eight hour day. The reason is clear, because this schedule works.

As for the Association's proposal, the smaller number of shifts increases the difficulties of maintaining minimum staff

level. Although the Association addressed this issue, it neglected to take account of sick leaves, vacations, and other reasons why deputies may be absent from regular duty. Further, the overlap of shifts where deputies may meet to communicate with one another provides no real advantage for the County, the latter argued. Deputies go on duty when they leave home or enter the County and do not meet, so the interaction has little chance of success. Although the staffing would be doubled at the beginning and end of shifts, it will be short staffed for the balance of the shift. The Employer believed that the Union proposal would adversely affect training opportunities. In all the County is faced with 602 fewer shifts, or 1.8 shifts each day. Overtime will inevitably result here, the Employer stated. Further, the County asserted that its proposal gave as great a predictability for days off as the Union proposal.

The Employer maintained that its proposal would meet the needs of the "public" better than either the current schedule or the one proposed by the Union, and ask that the arbitrator adopt it.

C. Discussion and Decision

In as much as both the Union and the Employer proposed significant changes in the current work week schedule and work hours arrangements, I concluded that neither believes the current system is worthy of its continuation. Both the objection to rotating days off and the expressed difficulties in scheduling training under the current system, and a desire on the part of the County to obtain increased flexibility in scheduling were persuasive factors to support the abandonment of the current arrangement under Article VIII and the Memorandum of

Understanding on hours worked and scheduling (HW-3). Thus I regarded that my essential task here was to decide to award either the changes proposed by the Employer or those proposed by the Union.

First, both proposals will eliminate the rotating days off and assure employees of fixed days off over the period for which the shift assignment is made. Second, both proposals would permit the Employer greater opportunity to schedule additional employees during the busier days of the week, such as on week ends. The Union proposal could provide training opportunities for short periods such as the 9th hour of the shift; the Employer proposal has more shifts in which to provide training than currently.

On the other side of the matter, the County's appraisal of the Union proposal regarding the overlap and the reduction in the number of shifts available were relevant considerations. I was unconvinced that the hour overlap between shifts would benefit the provision of services to the public, although its allows deputies to have additional days off. The double coverage during those overlap hours would serve little purpose, particularly since deputies from one shift to the next may not even see one another as no roll call is made in a central location.

Given the overlap, the County is correct that it will lose 14 shifts per deputy each year. This represents less coverage and less service to the public, except for any minimal benefits from the overlap hour. Although I was unable to manipulate the schedules provided to ascertain the effect upon size of staff on each shift, the fact that the number of shifts available to the County decreases raised a question regarding minimum staffing levels. To maintain the same level of service as now, the County

would either be required to hire additional employees or to call deputies from off duty and or retain those on duty for longer hours in an over time status. I question that the increase in costs here is justified by the increase in the additional days off for the deputy sheriffs.

The essential trade offs with the County's proposal is that the deputies gain a fixed schedule with days off known and regular and avoid the rotating days off in exchange for working only 40 hours, or five shifts per year more than currently, even though the number of shifts assigned per se would be increased by 12. Seven of these eight hour shifts are in lieu of the training required now under the Memorandum of Agreement, some 54 hours (HW -3). I regarded the tradeoff here to be advantageous to the deputies since it will allow them to achieve many of the goals expressed regarding increased community affairs and personal and family activities.

Finally, the arbitrator was aware that no other jurisdiction cited by either party had an hours arrangement as that proposed by the Union. Although this does not eliminate consideration of its merits, it did place a burden on the arbitrator to find sufficient reasons to justify its adoption over what clearly is a prevailing practice elsewhere among the counties, not withstanding the 4 days on, 4 days off with a 11.75 hour day in Clark county. Six of the remaining seven among the comparable jurisdictions selected above have a 5-2, eight hour day week, even though additional schedules may be available at the option of the employer.

Thus on the basis of the above considerations and rationale, I direct the parties to adopt Article VIII, Hours of Work proposal of the County, as follows:

Section 1. Regular Work Hours. The normal work day for Deputy Sheriffs shall be eight (8) consecutive hours of work. Deputy Sheriffs will be given a thirty (30) minute meal period at approximately mid-point of each shift. Deputy Sheriffs will be on call during their meal period and their meal period shall be paid. The normal work day for detectives shall be eight (8) hours of work within nine (9) hours, interrupted by a one (1) hour unpaid lunch. Employees shall be assigned to five (5) consecutive days on duty followed by two (2) days off duty.

Nothing contained herein shall prevent the establishment of modified work schedules or days, provided, such modified schedules shall be mutually acceptable to management and the Association.

XII. SHIFT ASSIGNMENTS: Hours of Work, Article VIII, Section 6 (New Language)

A. Proposals

The Union proposed to assign deputy sheriffs, including their supervisors, by seniority and to do so every six months. Shift and days off assignment sheets are to be posted and employees enter their names on the chosen shift, and will be assigned in order of seniority.

The Employer proposed to continue the present policy as prescribed by the Sheriff's Office Policy and Procedures Manual at Section 21.2.

B. Support for Proposals

1. Union

The Union supported its proposal on the basis that seniority was an accepted principle among unions and employers, that assignment by shifts on the basis of seniority would reward and provide an incentive to long-term deputies for continued effective effort and would improve morale and allow patrol

deputies to plan their personal lives and activities in concert with their work. Citing references in Office Policy and Procedures Manual, the Union alleged that the County already applied seniority in some assignment to the patrol, and this proposal is only an extension thereof of the principle.

2. Employer

The Employer opposed the Union proposal and supported the status quo on the basis that several deficiencies existed in the proposal of the Union. The Employer stated that the proposal failed to take account of how specialty assignments would be handled for each shift, and denies the County any flexibility in this regard. Second, the County was concerned that senior employees would be on one shift and junior ones on another which would concentrate experience to the disadvantage of service to the public. Also certain operational reasons, as change of shift and supervisor for certain employees, or where a number on a shift are off on disability, could not be accommodated under the Union proposal, the Employer asserted. Further, no account was taken of the working relationship between supervisors and deputies, nor any regard given to seniority as it may apply to rank and shift assignment. Seniority may have an adverse effect on the morale of junior employees, a factor not considered by the Union. Finally, given the above deficiencies, the Employer concluded that good reason existed that six of the eight comparable jurisdictions do not have assignment by seniority. Accordingly, for all of these reasons, the Union proposal should be rejected and the present system continued, the County concluded.

C. Discussion and Decision

I concurred with the position of the Employer in this instance. Although the principle of seniority has many advantages to it, primarily by eliminating any suspicion of preferential treatment in assignment, I found the deficiencies in the Union proposal on shift assignment by seniority as cited by the Employer above to be too real and too many to justify the adoption of the Union proposal. A more incremental approach, as assigning half of the shift by seniority, and the remainder at the discretion of the Sheriff could possibly be drafted and work. However, with what is a relatively incomplete proposal and with the prevailing practice of discretionary assignment by the Sheriff in six of the eight comparables led me to set aside the Union proposal and direct the parties to continue the present system in shift assignment.

XIII. SICK LEAVE: Article 9, Section 4

The Union proposed to remove the maximum of 1120 hours of sick leave that an employee may accrue under the current Agreement. Second, the Union's proposal allows one employee to donate sick leave benefits to another, under certain specified conditions. The Employer opposed both aspects of the Union proposal.

The basis for the proposal is to allow those who have excess leave hours to donate some of them to other employees who may be in need of them by reason of extended illnesses or injury. Removal of the maximum allows employees to have additional hours to donate. Further, the Union specifies that the Employer may determine whether need exists for the donation. In all, the

Union claimed that the proposal was consistent with other policies in the County.

The Employer claimed that the proposal was unnecessary. In the first place, the maximum hours for accrual of sick leave benefits are close to the average allowed among the comparables. In addition, the long term disability program should kick in, according to the Employer, so that accruals beyond the current maximum are unnecessary. In addition operational needs must always be balanced against the needs of the individual since the County cannot be expected to hold open a position indefinitely. Finally, the county has a "compassionate leave program" now that permits employees to donate vacation time to others who may be ill or injured and in need of sick leave benefits. This is a program that most other jurisdictions do not have, yet it is available to all county employees in Thurston County. The Employer ask that the sick leave proposal be rejected and the sick leave article of the Agreement continued.

I decided under the instant circumstances that the sick leave provision in the Agreement should remain as currently written. The alternatives indicated by the County as available for those in need, as the long term disability and the donation of vacation time, exceed what is available in other jurisdictions. Given the prevailing practice or absence of it in the comparables, I opt for the Employer's position and direct the parties to place the current Agreement language on sick leave Section 4, Article IX in the new Agreement.

XIV. JUST CAUSE, PERSONNEL FILES AND DISCIPLINE AND DISCHARGE

A. Management Rights: Article 2, Section 2.a(5)

The Union proposed language for this subsection as follows:

> a. (5) To suspend, demote, discharge, or take other appropriate disciplinary action against employees for just cause. Discipline shall continue to be subject to the grievance procedure of this Agreement as set forth in Article V.

The Employer proposed continuation of the subsection as in the current Agreement.

The effect of the Union proposal was to insert the word "just" before the word "cause" and to eliminate "in accordance with standards as provided in the Sheriff's Office Policy and Procedures Manual."

The Union contended that the Office Policy and Procedures Manual provided no standards for review of discipline and the insertion of "just cause" in this provision would do so. This argument rested on the almost universal reference to the principles of just cause in collective bargaining agreements and its interpretation and application under common law by arbitrators in resolving differences over discipline.

The Employer contended that the contents of the Policy and Procedures Manual was a negotiable subject, that under their administration there were no problems, and accordingly no need existed to alter the current contract language.

Clearly there is no firm basis to question the good faith intentions of the Employer in the administration of discipline. Nor for that matter is there any evidence to question the good faith intentions of the managements in the eight comparables. Yet each of the eight counties offered by the Employer and adopted by the arbitrator as comparables to Thurston county have

an expressly stated "discipline only for just cause" provision in its collective bargaining agreement with deputy sheriffs. The use of this principle for discipline is so universal that it is a clear anachronism that no express language on just cause discipline exists in the Thurston County Agreement.

Although the Employer contends that the statement in the management rights provision incorporating the Policy and Procedures Manual of the Sheriff's Office is sufficient to assure all rights to the employee, I could find no statement in those sections dealing with discipline that the employee would be disciplined only for just cause. Even though the present administration believes that is what it did, does and would do, the next administration could make an issue of it, that the Manual does not guarantee discipline only for just cause.

Accordingly, on the basis of the above practices elsewhere and the rationale set forth, I shall direct the parties to amend Section 2.a(5) of Article 2 as proposed by the Union, and as set forth above. I shall provide below for incorporation of the Sheriff's Office Policy and Procedures Manual as part of this Agreement.

B. Personnel Files: Article III, Section 8 (New Language)

1. Proposals

Attached as a part of the Appendix hereto is the language agreed to in current negotiations and the additional changes proposed by the Union. Basically the Union proposes to specify the periods of time over which disciplinary actions may be retained in the record of the employee and used with reference to subsequent disciplinary actions. The Employer opposes any

such limitations or restrictions on the use of past disciplinary actions or record.

2. Support for Proposal and Positions

a. Union. The Union's support for a limitation of twelve months on the materials contained in working files of supervisors rested on the premise that these materials, both positive and negative, should be referenced in the annual evaluation of the employee at which time the matters are discussed with the employee. Once this discussion is completed no need exists to retain the material longer in the working files.

Further with regard to reprimands and suspensions, the Union argued that these become stale and should not be available for use by the Employer to support subsequent disciplinary actions in any way. An employee who has performed acceptably and without further discipline should not be penalized forever by retention of stale adverse actions and discipline. The recent reference to stale records in Deputy Keith's file was noted here. Reprimands were to be removed from the personnel file after three years, after five years for performance related suspension and after ten years for suspension over misconduct.

The Union concluded that employees should be treated as innocent until proven guilty, that the present policy and practice of the Employer has led and could continue to lead to "witch hunts" when old records are reviewed in an attempt to characterize the employee. The removal of the records of stale discipline is appropriate and the arbitrator should adopt the Union's proposal.

b. Employer. Expressing adamant opposition to the Union's proposal to remove disciplinary actions from the personnel files

of the employee, the Employer contended that, aside from seriously restricting legitimate uses of records by the Sheriff, the proposal contained serious ambiguities as to the meaning of "working files," "performance notes," "similar problem," and inability of supervisors to retain needed training records close at hand. The Employer expressed concern over the need to keep certain records, such as attendance records over periods longer than 24 months, if the employee continued to violate attendance rules.

The ambiguities indicated above are a "recipe for disagreement," the Employer maintained. Further the proposal speaks to performance based and misconduct based discipline, but no clear delineation was made between the two. Some records should always remain in the file, such as sexual harassment complaints and disciplinary actions. Although recognizing that discipline may become stale, the Employer argued that this should be determined on a case by case basis. In fact why should a discipline that is three years and one day old be treated any differently than one only three years old.

The County is fully in agreement on the principle of progressive discipline, but argued that the Union is attempting to negate it. Concern was also expressed on running afoul of disclosure laws. Finally, the Sheriff should be able to determine what records are necessary in the administration of the office. This should not be spelled out in the collective bargaining agreement as proposed by the Union in its new Section 8.4.

According to the Employer, the proposal is seriously flawed. It is inconsistent with progressive discipline, with public disclosure law and "improperly intrudes on the sheriff's ability to manage the Office," and should be rejected by the arbitrator.

3. Discussion and Decision

What the Union has proposed here is neither new nor unique, nor does it set aside the general principle of progressive discipline. Other jurisdictions, such as Clark, Skagit, Yakima, and Snohomish counties place limitations on the period over which disciplinary records may be kept and used in subsequent disciplinary actions. The elimination of the use of aged discipline only changes the period of time over which progression may occur. For example, take the case cited by the Employer of the employee who received a couple of warnings or reprimands for tardiness over two years ago that have been purged and now is again in violation of the attendance policies. Progression has not been eliminated for the circumstance only means that the period over which disciplinary progression will apply has been started over on the basis that the prior discipline served its purpose.

There may well be legitimate purposes for which disciplinary records should be kept, as for example, as mentioned by the Union, for reference in considering promotion of an employee where the entire employment record may well be meaningful. Similarly some provisions related to public disclosure acts may require information on the past record of an employee. What the Union seeks here is the elimination of a degree of subjectivity in levying discipline now because different supervisors may place less or greater weight on prior discipline. If it is stale and gone, then that subjectivity is eliminated, and each employee starts on the basis of what happened now, not on the distant past record.

I found the Union proposal to be far more extensive than is required to accomplish its purpose. What is intended is

prohibiting the use of past discipline of certain age from consideration in present discipline, and whether or not it is retained in the employee's personnel file or in records of the Sheriff's office is irrelevant. Accordingly, I have revised and abbreviated the language offered by the Union as follows:

Eliminate the proposed third paragraph under Section 8 on the removal of the working files of the supervisor after twelve months and substitute at 8.1 the following:

> 8.1 Working Files. Materials in the working files of supervisors, such as but not necessarily limited to notes on the performance of the employees, training records, or commendations, that are twelve (12) months old shall not be used in any way to support a disciplinary or other adverse action against any employee unless the issue, alleged policy violation, problem or deficiency has been discussed with the employee by the supervisor and made a part of the employee's annual performance evaluation.

Comment: Although the Employer alleged that "working files" was ambiguous, I noted that the parties have already tentatively agreed to the fourth (now third) paragraph under Section 8 that permit employees to inspect working files kept in their name. From this I presume that some understanding was reached over what was a "working file." Second, I noted under the second paragraph in Section 8 that an employee may have placed in the employee's personnel file a statement containing the employee's rebuttal to any information in the personnel file. Since I assume that the annual evaluation form ends up in the employee's personnel file, then the employee would be permitted to respond to and rebut any adverse or negative aspect of the evaluation arising from such material retained in the working file of a supervisor and included in the annual performance evaluation.

Continuing:

> 8.2 Oral Warnings and Reprimands. After three years, records of disciplinary oral warnings or written reprimands shall not be admissible in arbitration under Article V for any purpose unless during the three years further discipline resulted from a similar type of offense or problem as that upon which the oral warning or written reprimand was based.

Comment: The intent is to allow use of these past records as the Sheriff may choose except that in the event one or more were used to justify a suspension, disciplinary demotion or discharge, the discipline could be grieved and arbitrated without any reliance by the Employer upon the warnings and reprimands over three years old, unless, of course, discipline for offenses or problems of similar type had occurred during the three years. Further, I chose not to remove suspensions or demotions from the record on the basis that these represent major disciplinary matters for which their weight would be determined on the basis of the age and character of the discipline.

Continuing:

> 8.3 Investigative Reports. Information relating to Internal Affairs investigations with a finding of exonerated, not sustained or unfounded may not be considered or used in support of any subsequent disciplinary action.

Comment: I concur with the Union's argument that an employee is innocent until proved guilty, and once charged and the issue resolved, that should be the end of the matter. Further, the Employer argued correctly that what the Sheriff's Office needs to do is in the discretion of the Sheriff, and of course, so long as what is done is not contrary to or inconsistent with the expressed language of the Agreement. Accordingly, the remaining language suggested by the Union in its Section 8.4 is omitted here.

Section 8.3 upon which the parties have already agreed shall be renumbered 8.4 and included in the Agreement. Sections 8.1, 8.2 and 8.3 set forth above shall be incorporated in the new Agreement.

C. Discipline and Discharge (New Language)

1. Proposals

The Union proposal on Discipline and Discharge is attached as part of the Appendix hereto. This proposal in brief sets out the requirement of discipline for just cause, identifies available disciplinary actions, and sets out the right of an employee to representation in disciplinary proceedings. Section 2 identified the Laudermill procedures and requirements for notice of charges, disclosure of the basis of the allegations and provides for the employee's opportunities for response prior to administration of discipline. Finally Section 3 sets forth certain procedures for Internal Affairs investigations of alleged "serious" offenses.

The Employer proposed no change to the Agreement but to continue the handling of discipline and Internal Investigations pursuant to the Sheriff's Office Policy and Procedure Manual.

2. Arguments and Positions on Discipline and Discharge

a. Union. The Union pointed out that the Agreement contained no language on discipline and discharge except a single reference to the Policy and Procedure Manual. According to the Union, the provisions in the Manual do not provide for handling of discipline under principles of just cause and has limited protection to the rights of the employee in interviews and investigations. Other jurisdictions provide for extensive

statements on the rights of employees, not withstanding what may be contained in the rules and regulations of the sheriff's office in those counties (D-4 through D-11). Although the County generally has followed the requirements of Laudermill in its hearing process, no specific protection is afforded the employee that the evidence against the employee is available for a response to it.

With regard to Internal Affairs investigations, the Union maintained that Thurston County has the least specificity and direction among other jurisdictions as to the appropriate way to conduct such an investigation and to treat an employee subject to that investigation. This lack of specificity permits the IA investigator to make up process, procedures and methodology as the investigation goes along. The Union alleged that both Chief Hansen and Lt. Vukich acknowledged that the process and the methods used by the IA investigator are "determined by the IA investigator." According to the Union, this means that little if any direction is given on how to treat a co-worker, when to interview the co-worker, what to tell the co-worker and how to notify the co-worker of the allegations against the worker. Here the Union cited recent experience concerning an IA investigation of Deputy Keith which caused considerable and unnecessary consternation by reason of the means used to notify the deputy that he was under investigation and for what.

The Union insisted that its proposal was not intended to eliminate or to usurp the Policy and Procedures Manual, but rather a proposal to change the process and methodology used to conduct an IA investigation of a bargaining unit employee. Here the Union cited to the comparability, if not identical statements, in its proposal relative to that material Chief

Hansen used in training personnel at the Sheriff's Institute. Several examples were given as related to Section 3 of the Union's proposal. Also with regard to the administration of the proposed language, Officer Poitras from Oregon testified to the success of his unit in utilizing the procedures set forth in the Union proposal and affirmed their usefulness without restricting the ability of the employer to discipline subordinate employees.

Thus, the Union claimed that its proposal established an objective methodology and process for IA investigations and effectively delineated the rights of all parties involved in the discipline process. The proposal should be adopted by the arbitrator, the Union concluded.

b. Employer. The Employer contended that the proposal substantially restricted the ability of the Sheriff's Office to monitor and investigate its employees; it is an unwarranted intrusion upon the ability to manage the work force and should be rejected. Rather than being concerned with whether deputies engaged in improper activity, the proposal may focus attention to whether the Office jumped through the proper procedural hoops. The Office approaches each internal investigation attempting to fairly balance the right of both the Office and deputy under investigation. The exiting investigation procedure is working and there is no basis for awarding the Association's proposal, the Employer concluded.

With regard to Section 1 of the proposal, the Employer objected to the limitation on the types of discipline, and alleged that it should be able to withhold pay increases, restrict vehicle use, and transfer employee from shift to shift, among similar actions. The listing of the five types of

discipline is simply unnecessarily too restrictive. Further, the Employer was concerned about alleged ambiguities as "other appropriate representation," and whether both the Association and the employee could separately have representatives present at interviews and hearings, or exactly when such a representative should be present. The language is unclear and should not be adopted. Here the Employer noted that under Weingarten the employee has the right to representation and the provisions in the Union proposal were redundant.

Going to Section 2, the Employer asserted that when the disclosures required therein were to be made was unclear, that the proposal calls for a decision on discipline prior to completion of an investigation, that no explanation was given regarding what was meant by an "informal meeting." Or could the employee chose to respond in writing and never appear for oral statements was unexplained as well, the Employer stated. Exactly what the difference is between the informal and formal hearing was unclear. The proposal uses the expression that "the provisions of just cause and due process" will assure the employee full opportunity to be heard, but without explanation as to exactly what those provisions are, the Employer noted. Also, no explanation was given on the relationship between the formal meeting or hearing and existing Weingarten rights? If merely a restatement, it becomes duplicative and confusing. Lastly, the ten day deadline to issue a decision may be impossible to meet if additional investigation results from information provided by the employee. No leeway is allowed here in the Union's proposal.

The Employer alleged that the proposal was problematic, also, at Section 3. What range of incidents must be investigated was not specified, and may even include accidents. The

application of these rules and procedures at any time would seriously cripple the Office to be responsive to its public, the Employer contended. The most onerous aspect of the Section related to the requirement to notify the employee 72 hours in advance of any interview where the investigation could lead to economic sanctions. Several examples were given where such a requirement would unnecessarily handicap a proper investigation. Clearly the provision of all materials to the employee prior to interviewing the employee or completing the investigation would hamper the investigation, the Employer stated, and will not work, as for example in case of investigating sexual harassment. The Office must be able to get at the truth in all circumstances.

Section 3 (c) is ambiguous, the Employer stated for it was not clear to what Section 3(a) and 3(b) did not apply, whether the 72 hour notice or the provision of all materials. 3(f) limits interviewing to the shift of the employee, which is impractical. The Office does the interviewing and should be done by it at its choice of time since the employee is on employer's time anyway. Also, 3(h) is misleading, since any internal investigation is inherently intimidating. Finally 3(k) is unclear on when tape recordings are required, and if for all interviews, such as for tardiness or similar minor infractions, the provision is clearly improper.

The multiplicity of problems and ambiguities with the Union's proposal justifies its rejection by the arbitrator and the continuation of the current policies and practices, the Employer concluded.

3. Discussion and Decision

Two principles are involved in the disciplining of employees. The first involves the rights of management to manage its business and that includes directing, correcting and disciplining employees when necessary. On the other side, there is the right of employees to an objective, fair and just treatment regarding their conduct, where adequate safeguards are provided against arbitrary and capricious decision making by employer representatives. What is demanded in a collective bargaining agreement is some clear balance between these two sets of rights.

Although this balance can be struck by the parties in the context of a single relationship, here under statute the arbitrator is instructed to examine what are the conditions of employment, including the process and procedures for disciplining employees, among like employers. Although no clear set of procedural safeguards to assure only just cause in disciplining employees can be found in any one agreement among the comparables to Thurston County, a majority of those comparables have relatively extensive provisions for handling the investigation of alleged misconduct and the administration of discipline when appropriate. Here it is clear that the County has no bargained provisions per se in its agreement with the deputy sheriffs that expressly provides for just cause in the disciplining of employees nor any other provisions concerning investigation of misconduct and administering discipline.

Although the County points to the Sheriff's Office Policy and Procedures Manual, I could find no reference to or statement in the Manual that expressly guarantees to an employee the protections implicit and explicit in a just cause disciplinary

proceeding. Some limited aspects of due process protection were noted such as certain notices. I find no reference, for example, that all of the evidence against the employee upon which discipline will rest will be provided to the employee by the employer prior to the imposition of discipline such that the employee has an opportunity to respond before the Employer has cast the disciplinary action in "stone." I concurred further with the Union that some lack of specificity exists in how investigations and related investigative interviews will be conducted, and what rights the employee has during those interviews.

There is no basis in the record to question the good faith and good intentions of the Employer here. But if advanced preparation for potential problems of arbitrary and capricious treatment is ever justified, it is in the area of the protections of the rights of the employee to fair and evenhanded treatment where rules and procedures are uniformly applied and enforced. Further, setting forth certain procedures and conditions relative to the disciplining of employees in the Agreement makes those more readily understood in the appropriate context. I found the Manual confusing and duplicative, and although all matters were not covered in the proposal of the Union, I concurred that changes of the kind proposed there were required in the Agreement. Accordingly I have awarded the slightly revised Union proposal as a new Article on Discipline and Discharge, as set forth below.

DISCIPLINE AND DISCHARGE

Section 1. Just Cause. Disciplinary action shall be imposed upon an employee only for just cause.

In the administration of discipline, the provisions of the Sheriff's Office Policy and Procedure Manual shall apply unless contrary to or inconsistent with expressed language in this Agreement.

Section 1.1 Disciplinary Actions. Disciplinary action shall include only the following:

a. Oral Warning
b. Written Reprimand
c. Suspension without Pay
d. Demotion
e. Discharge

Disciplinary action will normally be progressive in nature, but the level of discipline administered may depend upon the seriousness of the offense.

Section 1.2 Association and Employee Rights. The Association shall have the right to process any disciplinary action as a grievance through the grievance procedure, except for an oral warning, and except for employees serving an initial probationary period who are discharged.

If the County has reason to discipline an employee, the County shall do so privately and in a manner that will not embarrass the employee before other employees or the public.

The employee and the Association shall be entitled to Association representation and/or other appropriate representation at all meetings attended by the employee where discipline is being considered for that employee.

Section 2. Notice and Opportunity to Respond.

Upon reaching the conclusion that probable cause exists to discipline an employee with a written reprimand, or a suspension without pay, or a demotion, or discharge, the Sheriff or his designee shall provide the employee and the Association with the following prior to the administration of discipline:

a. the nature of the allegation(s) or charge(s) against the employee.

b. a copy of the complaint against the employee.

c. a copy of all materials a part of or related to the investigation upon which the allegation(s) or charge(s) are based.

d. the directives, policies, procedures, work rules, regulations or other order of the County that allegedly was violated.

e. what disciplinary action is being considered.

Section 2.1. Employee's Response. The affected employee and the Association shall have the opportunity to respond to the allegation(s) or charge(s) orally or in writing, normally within seven (7) days from receiving the information and materials provided by the County in Section 2 above and to do so prior to the Pre-Disciplinary meeting.

Section 2.2. Pre-Disciplinary Meeting. A formal opportunity to respond to the allegation(s) or charge(s) shall occur at a Pre-Disciplinary meeting conducted and presided over by the Sheriff or his designee, who shall have the authority to impose or to recommend the proposed disciplinary action. Reasonable advanced notice of this meeting, its time and place shall be given the employee and the Association. This meeting shall be informal. The employee and the Association shall be given full opportunity to be heard, to respond to the allegation(s) or charge(s), and to have the responses considered prior to the imposition of discipline.

Section 2.3. County's Decision. Within a reasonable time but not beyond twenty calendar days from the date of the Pre-Disciplinary meeting, the Sheriff or his designee shall issue a written decision imposing discipline, exonerating the employee or taking such other action deemed appropriate.

Section 3. Investigative Interviews/Internal Affairs Investigations. The interview of an employee concerning action(s) or inaction(s) which, if proved, could reasonably lead to a suspension without pay, demotion, or discharge for that

employee, shall be conducted under the following conditions and procedures:

a. The employee shall be informed in writing at a reasonable time in advance of the interview whether or not the County believes the employee is a suspect in the investigation, with a copy of the notice to the Association.

b. If an employee is considered a suspect, at a reasonable time in advance of the investigative interview, the employee shall be informed in writing, with a copy to the Association, of the nature of the investigation; the specific allegations related thereto; and the policies, procedures and or laws that form the basis for the investigation; and shall be advised that an opportunity to consult with an Association representative will be afforded prior to the interview.

c. The requirements of Sections 3.a and 3.b of this Section 3 shall not apply if (1) the employee is under investigation for violations that are punishable as felonies or misdemeanors under law, or (2) notices to the employee would jeopardize the administrative investigation.

d. After a complainant has been interviewed regarding an action or inaction of an employee and the County deems further investigation is necessary, the employee shall be provided a copy of the complaint as soon as practical, with a copy forwarded to the Association.

e. The employee shall have the right to have an Association representative present during any investigative interview which may reasonably result in a suspension without pay, a demotion or discharge of the employee. The opportunity to have an Association representative present at the interview or the opportunity to consult with an Association representative shall not unreasonably delay the interview. However, if the interview begins with the consent of the employee in the absence of an Association representative but during the interview the employee concludes that assistance is required by reason of increasing seriousness of the disciplinary problem, the employee shall be allowed a reasonable time in which to obtain an Association representative.

f. To the extent reasonably possible all interviews under this Section shall take place at the Sheriff's Office facilities.

g. The County may schedule the interview outside of the employee's regular working hours, however in that event the appropriate overtime rate and/or irregular hours payment shall be made to the employee.

h. The employee shall be required to answer any question concerning a non-criminal matter under investigation and shall be afforded all rights and privileges to which the employee is entitled under State or Federal laws.

i. The employee shall not be subject to abusive or offensive language or to coercion, nor shall interrogators make promises of award or threats of harm as inducements to answer questions.

j. During an interview, the employee shall be entitled to such reasonable intermissions as the employee may request for personal physical necessities.

k. All interviews shall be limited in scope to activities, circumstances, events and conduct that pertain to the action(s) or inaction(s) of the employee that is the subject of the investigation. Nothing in this Section 3 shall prohibit the County from questioning the employee about information that is developed during the course of the interview.

l. If the Sheriff's Office tape records the interview, a copy of the complete tape recorded interview of the employee, noting the length of all recess periods, shall be furnished the employee upon the employee's written request. If the interviewed employee is subsequently charged with misconduct, at the request of the employee or on its own volition, the County shall transcribe the recording and shall provide a complimentary copy to the Association in behalf of the employee.

m. Interviews and Internal Affairs investigations shall be concluded without unreasonable delays.

n. The employee and the Association shall be advised promptly, in writing, of the results of the investigation and what future

action, if any, will be taken regarding the matter investigated.

Comments:

A few comments may assist the parties to understand the bases upon which certain changes were made in the proposal of the Union as well as consideration of Employer objections. First, the list of disciplinary actions excludes transfers and reassignments. These are not discipline but represent exercise of the Employer's right to assign employees, say, from one shift to another, reassigning an employee to work with out a vehicle, and so forth. I consider the expression "the employee and the Association" in the last paragraph of Section 1.2 to represent two entities and each could have a representative present if desired.

Under Section 2, disclosures are to be made "prior to the administration of discipline" and thus before the Laudermill pre-disciplinary hearing. Although a meeting may occur under Section 2.1 that allows the employee to discuss the charges and evidence informally with supervisors, it is not required. The Laudermill Pre-Disciplinary meeting (hearing), although informal in nature, is mandatory and provides the employee and the Association full opportunity to respond to the proposed discipline. As for the time line on making a decision following the Pre-Disciplinary hearing, if further investigation is required, no restrictions prevents that eventuality since the employer "can take such other action deemed appropriate."

I concurred with the Employer regarding the 72 hour requirement on notice for an investigative interview and the necessity to provide all materials thus far obtained relative to the investigation to the employee prior to interview. This

interview is the opportunity for the employee to tell what that employee knows about the matter under investigation. By current rule and Section 3.h the employee is obligated to respond to all questions and to cooperate in the investigation. Telling the truth as the employee sees it does not require extended notice of an interview or recourse to all materials the Employer has then accumulated. Knowledge of the employee's status vis a vis the investigation and the nature of the allegations guarantees adequate safeguards of the employee's rights, given the procedures set out in Section 3.

The Employer's objections to subsections 3.c, f, h, and k, of the Union's proposal have been remedied by clarification of language in response to the arguments made in brief. The procedures of Section 3 apply only to "serious" or "major" alleged misconduct, and thus issue raised by the Employer over the hoops the Sheriff must go through would not apply to "minor" issues, as tardiness or attendance matters.

The parties are directed to incorporate the new Article on Discipline and Discharge set out above in their Agreement.

XV. TERM OF AGREEMENT: Article XV

The Union proposed the addition of an "evergreen clause" in this Article, to the effect that "In addition, pursuant to applicable RCW's and WAC's, this Agreement shall remain in full force and effect during the term of any negotiations for a successor Agreement." The Union insists that this is provided for by law, is the current practice, and should therefore be incorporated in to Article XV. The Employer argued that RCW 41.56.070 prohibits agreements beyond three years, and that the

addition of this clause could extend the Agreement in violation of the law, which would invalidate the Agreement.

I concluded that the Employer's argument raised enough of doubt as to the wisdom of including an expressed statement as that above that I decided to reject the Union's suggestion. The matter is not of great consequence since law does require maintenance of terms and conditions until a new agreement is negotiated. Since it the leaders of the Union and the senior officials of the County/Sheriff's Office that negotiate and these persons are sophisticated regarding the law, there is little need to put the evergreen clause into the Agreement for the general information of the members of the bargaining unit.

The term of the Agreement shall be three years, effective January 1, 2000 and ending on December 31, 2001.

XVI. SUMMARY AWARDS

The decisions and awards of the arbitrator have been set forth at the end of each of Sections III through XV, and will not be reproduced here.

Unless otherwise stated, all awarded changes shall be effective on January 1, 1999 at the beginning of the term of the Agreement.

Finally, pursuant to the request of the parties the arbitrator retains jurisdiction solely over his awards in this case in order to assist the parties in the interpretation and application of the awards, if necessary. This jurisdiction shall end on February 1, 2000 unless a written request for assistance from either party is pending at that time.

Respectfully Submitted

KMM:mem

Kenneth M. McCaffree

APPENDIX

I. Union Proposal: Article 10, Section 5
Education/Performance Incentive

II. Union Proposal: Article 10, Section 4
Special and Temporary Assignment Pay

III. Union and Employer Proposals: Hours of Work
Section 1, Regular Hours of Work

IV. Union Proposal: Article 3, Association Business
Section 8, Personnel Files (Parts of
Section already agreed upon)

V. Union Proposal: New Article, Discipline and
Discharge

ARTICLE ~~X~~10

COMPENSATION

Section 5. Education/Performance Incentive. Employees with an applicable ~~BA/BS~~ educational degree or credits ~~and having reached the fourth step in the pay plan~~ will be eligible for ~~a three percent (3%)~~ educational/performance incentives, as set forth in the matrix below. ~~Those employees at step four or above with an applicable A.A./AS degree will be eligible for a one percent (1%) educational/performance incentive.~~ This educational/performance incentive will be granted to eligible employees unless the employee receives an over-all unsatisfactory performance evaluation in which case the educational/performance incentive pay shall be suspended for one (1) year. After one (1) year, an over-all satisfactory performance evaluation must be received in order to re-instate the educational/performance incentive pay.

Educational/Performance ~~Premium~~ Incentive
Payable ~~in December, 1996, 1997 and 1998~~in each pay period

Completion of	3 Yrs	8 Yrs	10 Yrs	15 Yrs	20 Yrs
Performance		1.0%	2.0%	3.0%	4.0%
AA/AS Degree or equivalent college credits	1.0%	2.0%	~~2.5~~3.0%	~~3.5~~4.0%	~~4.5~~5.0%
BA/BS Degree	3.0%	4.0%	~~4.5~~5.0%	~~5.0%~~	~~5.5~~6.0%
Masters Degree	5.0%	7.5%	10.0%		

Example: A 15-year dDeputy with an AA Degree receives a ~~3~~4.50% educational/performance ~~premium~~ incentive per pay period; without an AA Degree, the dDeputy receives a 3.0% educational/performance incentive per pay period; with a BA Degree, the dDeputy receives a 5.0% educational/performance incentive per pay period. Percentages are based on actual base salary, i.e., a dDeputy receives ~~premium~~ incentive on dDeputy pay, a sSergeant ~~premium~~ incentive on sSergeant pay, a Lieutenant incentive on Lieutenant pay.

Educational/performance incentives will be included in the eligible employee's ~~November 30th~~ paycheck each pay period~~year~~. It is the employee's responsibility to have their transcripts sent in a sealed envelope to the Executive Aide of the Sheriff's Office ~~prior to November 1st of each year~~. If an employee's transcripts~~they~~ are not received ~~by November 1st of each year~~, the employee will not receive the applicable education/performance incentive pay for that particular pay period~~year~~.

Exhibit W-3

ARTICLE ~~X~~10

COMPENSATION

Section 4. Special and Temporary Assignment Pay. Special assignment pay shall be paid to employees certified by the Sheriff as having these special assignments, as follows:

Detective Lieutenants and Detectives	4% of their base pay per month
Crime Prevention and Training	3% of their base pay per month
Forestry and Traffic Teams	2% of their base pay per month
Dive, Canine and SWAT Teams	3% of their base pay per month
Instructor and Field Training Officer	3% of their base pay for any part of a shift~~each month~~ in which they are assigned to perform these duties. This pay is over and above any other specialty pay and is not limited by ~~the subsequent paragraph~~any other provision of this Agreement.

~~Except as provided above for Instructor/Field Training Officer, each employee is entitled to only one (but the highest) of such assignment pay. Employees shall receive compensation for those special assignments after 30 days of such an assignment, except for Instructors/Field Training Officers who receive such pay for each month within which those duties are assigned.~~

~~Effective July 1, 1994~~

Sergeant 3~~5~~% of their base pay per month

Sergeant pay can be received in addition to any other~~one~~ assignment pay under this provision. Sergeant pay will be authorized for those personnel who are assigned supervisory responsibility for a division, shift, unit or specialty unit.

Exhibit W-2

ARTICLE ~~VIII~~8

HOURS OF WORK

Union

Section 1.

(A) Regular Work Hours. ~~The normal work day for Deputy Sheriffs~~ Employees shall ~~be eight (8)~~ have regular consecutive hours of work with regular starting and stopping times. ~~Deputy Sheriffs~~ Employees will be given a thirty (30) minute meal period at approximately the mid-point of each shift. ~~Deputy Sheriffs~~ Employees will be on-call during their meal period and their meal period shall be paid. The ~~normal~~ regular work ~~day~~ hours for detectives shall be eight (8) hours of work within nine (9) hours, interrupted by a one (1) hour unpaid lunch. Detectives shall be assigned to five (5) consecutive days on duty followed by two (2) consecutive days off duty.

(B) Regular Work Weeks. Employees shall work a 5-9/4-9 plan. Under the 5-9/4-9 plan, employees shall be scheduled to work five (5) consecutive nine (9) consecutive-hour work days, followed by two (2) consecutive days off, followed by four (4) consecutive nine (9) consecutive-hour work days, followed by three (3) consecutive days off.

~~The intent of the parties is to continue the current practice with respect to the FLSA work periods and payment of overtime, including re-signing the Memorandum of Understanding regarding the patrol deputies' work schedule. The parties agree to continuation of the agreement regarding the current 5-2, 5-2, 5-3 patrol division work schedule, unless specifically modified by this Agreement.~~

Thurston County Proposal
Deputy Sheriff's Association Negotiations
March 5, 1999
Article VIII, Sections 1 and 2 only.

Employer

ARTICLE VIII

HOURS OF WORK

Section 1. Regular Work Hours. The normal work day for Deputy Sheriffs shall be eight (8) consecutive hours of work. Deputy Sheriffs will be given a thirty (30) minute meal period at approximately mid-point of each shift. Deputy Sheriffs will be on call during their meal period and their meal period shall be paid. The normal work day for detectives shall be eight (8) hours of work within nine (9) hours, interrupted by a one (1) hour unpaid lunch. ~~Detectives~~ Employees shall be assigned to five (5) consecutive days on duty followed by two (2) days off duty.

Nothing contained herein shall prevent the establishment of modified work schedules or days, provided, such modified schedules shall be mutually acceptable to management and the Association.

~~The intent of the parties is to continue the current practice with respect to the FLSA work periods and payment of overtime, including re-signing the Memorandum of Understanding regarding the patrol deputies' work schedule. The parties agree to continuation of the agreement regarding the current 5-2, 5-2, 5-3 patrol division work schedule, unless specifically modified by this Agreement.~~

SW
11/25/98

ARTICLE ~~HH~~3

ASSOCIATION BUSINESS

Section 8. Personnel Files. All employees shall be permitted to review ~~his or her~~their own personnel file during normal business hours. Employees shall be provided one (1) copy of all documents (complimentary or derogatory) placed in ~~his or her~~their personnel file at the time the document is placed in the file. ~~No citizen complaint shall be placed in an employee's personnel file unless the complaint is accompanying disciplinary action related to the complaint.~~ When an employee is disciplined, only the sustained disciplinary action letter shall be placed in an employee's personnel file.

An employee may, at ~~his or her~~their request, have placed in the employee's personnel file a statement containing the employee's rebuttal to any information in ~~the~~their personnel file. This provision does not apply to the records of an employee relating to the investigation of a possible criminal offense or the internal investigation of a possible departmental policy or procedure violation prior to the completion of the internal investigation. The ~~Employer~~County shall keep the contents of employees' personnel files confidential, subject to the requirements of State and fFederal law and any applicable provisions of this Agreement.

Supervisors in the employee's chain of command may retain working files consisting of performance notes, commendations, and training records not more than twelve (12) months' old, along with the most recent performance evaluation for the employee. Records of oral warnings shall be removed from working files after two (2) years, subject to the requirements of 8.1.

On a by-appointment basis, employees may request inspection of working files kept in their name and shall have the right to copy materials therein.

8.1 Disciplinary Letters. Disciplinary letters placed in an employee's personnel file shall be removed and no longer held against the employee after three (3) years. Removal of records under this section shall not be accomplished until the required period has elapsed without the occurrence of a similar problem, that is a disciplinary letter shall be "kept alive" by the occurrence of a similar problem. Removal of such material will occur upon written request by an employee to the ~~Personnel Inspector~~ Undersheriff. All removed material shall be given to the employee. However, if a request does not comply with the requirements of this section, the ~~Inspector~~ Undersheriff shall, within thirty (30) days of the request, notify the employee that the request is being denied, including the basis for such denial.

8.2 Suspensions. Disciplinary suspensions may be removed from personnel files subject to the following considerations and procedures:

8.2.1 The employee must request removal of the disciplinary suspension in a letter documenting the reasons and compliance with the conditions herein.

8.2.2 The removal eligibility period shall be five (5) years for performance-based suspensions and ten (10) years for misconduct-based suspensions.

8.2.3 The removal eligibility period shall be extended by any additional similar written discipline. This means the employee's record must be free of any similar written discipline for five (5) years or ten (10) years, respectively, for a suspension to be removed.

8.2.4 Disciplinary suspensions meeting the conditions herein shall normally be removed. The Sheriff or his designee shall respond within thirty (30) days and may, based on bona-fide concerns, deny the employee's request, but such denial shall be subject to the grievance procedure.

8.2.5 Disciplinary suspensions removed from personnel files under this section shall be retained in separate, sealed disciplinary files and shall not be subject to public inspection or release, including outside background investigations. The Sheriff may consider material in these sealed files in future promotion decisions provided the discipline in these sealed files addresses the employee's suitability for promotion.

8.3 Employee personnel files, working files, medical records and IA files will be maintained as confidential records to the full extent allowed by law. Access to the employee's personnel file shall be limited to the employee, ~~his/her~~ the employee's authorized representative, officials of the County and Sheriff's Office, and such other persons or agencies as may be allowed under State and County laws and regulations.

8.4 The Sheriff may construct and retain such records of complaints and investigations as are necessary and appropriate to the management of the ~~department~~ Sheriff's Office. Information relating to investigations with a finding of exonerated, not sustained or unfounded may not be considered or introduced in support of any subsequent disciplinary action. However, findings of not sustained which indicate a pattern or practice of a particular type of conduct may be used by the ~~department~~ Sheriff's Office for corrective action.

ARTICLE ~~HH~~3
ASSOCIATION BUSINESS

Section 8. Personnel Files.

Supervisors in the employee's chain of command may retain working files consisting of performance notes, commendations, and training records not more than twelve (12) months' old, along with the most recent performance evaluation for the employee. Records of oral warnings shall be removed from working files after two (2) years, subject to the requirements of Section 8.1.

[NB: 1st, 2nd and 4th paragraphs already TA'd; the above is the 3rd paragraph.]

8.1 Written Reprimands. Written reprimands placed in an employee's personnel file shall be removed and no longer held against the employee after three (3) years. Removal of records under this section shall not be accomplished until the required period has elapsed without the occurrence of a similar problem, that is a written reprimand shall be "kept alive" by the occurrence of a similar problem. Removal of such material will occur upon written request by an employee to the Undersheriff. All removed material shall be given to the employee. However, if a request does not comply with the requirements of this section, the Undersheriff shall, within thirty (30) days of the request, notify the employee, in writing, that the request is being denied, including the basis for such denial.

8.2 Suspensions. Disciplinary suspensions may be removed from personnel files subject to the following considerations and procedures:

8.2.1 The employee must request removal of the disciplinary suspension in a letter documenting the reasons and compliance with the conditions herein.

8.2.2 The removal eligibility period shall be five (5) years for performance-based suspensions and ten (10) years for misconduct-based suspensions.

8.2.3 The removal eligibility period shall be extended by any additional similar written discipline. This means the employee's record must be free of any similar written discipline for five (5) years or ten (10) years, respectively, for a suspension to be removed.

8.2.4 Disciplinary suspensions meeting the conditions herein shall normally be removed. The Sheriff or his designee shall respond, in writing, within thirty (30) days of an employee's removal request, and the Sheriff or his designee may, based on bona-fide concerns, deny the employee's request, but such denial shall be subject to the grievance procedure.

8.2.5 Disciplinary suspensions removed from personnel files under this section shall be retained in separate, sealed disciplinary files and shall not be subject to public inspection or release, including outside background investigations. The Sheriff may consider material in these sealed files in future promotion decisions provided the discipline in these sealed files addresses the employee's suitability for promotion.

[NB: Article 3, Section 8.3 already TA'd.]

8.4 The Sheriff may construct and retain such records of complaints and investigations as are necessary and appropriate to the management of the Sheriff's Office. Information relating to Internal Affairs investigations with a finding of exonerated, not sustained or unfounded may not be considered or introduced in support of any subsequent disciplinary action.

NEW ARTICLE

DISCIPLINE AND DISCHARGE

Section 1. Discipline. Disciplinary action may be imposed upon an employee only for just cause. Disciplinary action shall include only the following: Oral warning; written reprimand; suspension without pay; demotion; or discharge. Disciplinary action is typically progressive in nature, but may be entered at any step of the continuum depending on the seriousness of the offense.

Except for an oral warning, and except for employees serving an initial probationary period who are discharged, the Association shall have the right to process any disciplinary action as a grievance through the grievance procedure. If the County has reason to discipline an employee, the County shall do so privately and in a manner that will not embarrass the employee before other employees or the public.

The employee and the Association shall be entitled to Association representation and/or other appropriate representation at all meetings when discipline is being considered.

Section 2. Written Reprimand, Suspension Without Pay, Demotion and Discharge.

The Sheriff or his designee, intending to take disciplinary action involving written reprimand, suspension without pay, demotion or discharge will, prior to taking such action:

a. Notify the employee and the Association, in writing, of the nature of the allegations, which will include a copy of the complaint against the employee and all materials related to the investigation which the County possesses which will identify the directives, policies, procedures, work rules, regulations, or other order of the County which allegedly have been violated.

b. State the maximum range of discipline that is being considered; and

c. Provide the affected employee and the Association an informal opportunity to respond to the charges orally or in writing, normally within seven (7) days from receiving such written notice.

The opportunity to respond shall occur at a meeting conducted and presided over by the Sheriff or his designee with authority to impose or recommend up to the maximum proposed disciplinary action. The meeting shall be informal and the provisions of just cause and due process shall assure the employee and the Association full opportunity to be heard, respond to the allegations, and have the employee's and the Association's responses considered prior to the imposition of discipline.

The Sheriff or his designee will issue a written decision imposing discipline, exonerating the employee or taking any other action deemed appropriate within ten (10) days.

Section 3. General Procedures: Any employee who will be interviewed concerning an act which, if proven, could reasonably result in an economic disciplinary action against them will be afforded the following safeguards:

a. The employee and the Association will be informed at least seventy-two (72) hours prior to the interview if the County believes the employee is a suspect in the investigation.

b. At least seventy-two (72) hours prior to any interview of an employee, of which the result could be that the County may impose an economic disciplinary action upon the employee as a result of the underlying incident, the employee and the Association will be informed, in writing, of the nature of the investigation and the specific allegations, policies, procedures and/or laws which form the basis for the investigation, afforded the opportunity to consult with an Association representative, and provided all available materials the County possesses related to the investigation.

c. If, after the complainant is interviewed regarding an action or inaction of an employee, further investigation is deemed necessary, the employee and the Association shall be notified in writing of the complaint as soon as is practical. The notice requirements under Sections 3.a. and 3.b. of this Article shall not apply where the employee is under investigation for violations which are punishable as felonies or misdemeanors under law, or if notice to the employee would jeopardize the administrative investigation.

d. The employee shall be allowed the right to have an Association representative present during any interview which may reasonably result in disciplinary action. The opportunity to consult with an Association representative or to have an Association representative present at the interview shall not delay the interview more than four (4) hours, except for minor complaints (incidents for which discipline no greater than an oral reprimand or written reprimand may result) which may be handled immediately when an Association representative is not readily available. However, if in the course of the interview it appears as if a more serious disciplinary problem has developed, the employee will be allowed up to four (4) hours to obtain a representative to assist them in the interview.

e. All interviews shall take place at Sheriff's Office facilities, or elsewhere if mutually agreed, unless an emergency exists which requires the interview to be conducted elsewhere.

f. The County shall make a reasonable good faith effort to conduct these interviews during the employee's regularly scheduled shift, except for emergencies. However, where the

Sheriff is a party to any interview, the County may schedule the interview outside of the employee's regular working hours as long as the appropriate overtime or irregular hours payments are made to the employee. Where an employee is working on a graveyard shift, the interview shall be scheduled contiguously to the employee's shift, and the appropriate overtime or irregular hours payments shall be made to the employee.

g. The employee will be required to answer any questions involving non-criminal matters under investigation and will be afforded all rights and privileges to which they are entitled under the laws of the State of Washington or the United States.

h. Interviews shall be done under circumstances devoid of intimidation, abuse or coercion.

i. The employee shall be entitled to such reasonable intermissions as they shall request for personal necessities.

j. All interviews shall be limited in scope to activities, circumstances, events, conduct or acts which pertain to the incident which is the subject of the investigation. Nothing in this section shall prohibit the County from questioning the employee about information which is developed during the course of the interview.

k. The Sheriff's Office shall tape record the interview and a copy of the complete tape recorded interview of the employee, noting all recess periods, shall be furnished, upon request, to all parties. If the interviewed employee is subsequently charged, the recording shall be transcribed by the County, and the employee and the Association shall be given a complimentary copy thereof.

l. Interviews and investigations shall be concluded with no unreasonable delay.

m. The employee and the Association shall be advised, in writing, of the results of the investigation and any future action to be taken on the incident.