In the Matter of the Interest Arbitration

between Technical Employees Association ("Association" or "TEA")

and

King County, Washington ("County").

Findings, Discussion and Award.

Case Numbers:	PERC case No. 17685-I-0490 and 17686-I-03-0410. Arbitrator's case No. EA1.
Representing TEA:	James M. Cline, Cline and Associates, 999 Third Avenue, Suite 3800, Seattle, WA 98104.
Representing the County:	Otto G. Klein and Summit Law Group, P.C., 315 Fifth Avenue S., Suite 1000, Seattle, WA 98104.
Neutral Arbitrator:	Howell L. Lankford, Esq., P.O. Box 22331, Milwaukie, OR 97269-0331.
Party-appointed Arbitrators:	David Levin, King County Personnel, 500 Fourth Avenue, Room 450, MS 4A, Seattle, WA 98104, appointed by the County.
	Chris Casillas, Esq., Cline & Associates, 999 Third Avenue, Suite 3800, Seattle, WA 98101, appointed by TEA.
Hearing held:	In the offices of the Summit Law Group in Seattle, Washington, on March 2-5 and April 27 & 28, 2004.
Witnesses for TEA:	Elizabeth Morgan, David Crippen, Stephanie Woodward, Marc Dallas, Dave Wallace, and Severne Johnson.

Witnesses for the County:	Harold Taniguchi, Sid Bender, Jill Krecklow, Rick Hayes, Olivia Sroufe, Chris Egan, and Matthew McCoy.
Post-hearing argument received:	From both parties on August 16, both timely postmarked on August 11, 2004.
Date of this award:	January 31, 2005.

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This is an interest arbitration proceeding arising out of the negotiations of an initial collective bargaining agreement for the employees in the County's public transportation design and construction department. There are no preliminary issues of substantive or procedural arbitrability.[1] The hearing was extensive and orderly. Both parties had the opportunity to present evidence, to call and to cross-examine witnesses, and to argue the case; and both filed timely and extensive post-hearing briefs. The parties voluntarily agreed to waive the statutory timelines for issuance of this Award in light of the complexity of the issues and the size of the record (which runs to 17 volumes, or about eight linear feet).

HISTORY AND CONTEXT

At bottom, this is a garden-variety interest arbitration. It addresses the economic core issues for the initial collective bargaining agreement for about 75 employees in the transportation engineering design and construction division of King County.[2] On the other hand, this particular dispute includes just about every complication imaginable—and some that would have been hard to imagine—in an interest arbitration case. Those complications form the history and context of the dispute; and four of them are crucial:

First, this will be an initial contract, so there is no squarely relevant "track record" to look to.

Second, the employees in this bargaining unit come from Metro. Metro was an entirely separate unit of government until it was merged with the County, as a result of court decisions, in about 1996. (The other two divisions of Metro—waste water management and technical services—were also absorbed into the County administration.[3]) Metro had its own classification scheme, which was

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1. The County filed a ULP complaint over some of the Association's proposal between the first and second series of hearing days. In response, TEA amended its proposal—eliminating a part of the previously proposed retroactivity—before the second series of hearing days began. The parties agree that the Association's current, amended proposal is properly before the arbitrators.

2. That number includes about eight long-term temporary employees, who are included in the bargaining unit.

3. The Engineers in Metro's Technical Services division had to choose between coming into TEA or into waste water in the County's workforce. The same union that

(continued...)

substantially different from that of the County. In particular, Metro almost limited the job title "Engineer" to employees who were licensed as Professional Engineers under RCW 18.43.020 *et sec.*[4] About 30-35 of the about 75 employees in this bargaining unit are Engineers in Metro's sense. On the other hand, the County uses the job title "Engineer" in a much more generic sense; and the County workforce includes about 350-400 employees who fall under that title in the County's sense. In the County's Roads Division, some of the employees whom the County classifies as Engineer do not even have BS degrees in engineering, and some of the Senior Engineers and even Managing Engineers (the top two classifications in the series) do not have PE licenses. Job *titles* are, of course, an entirely non-mandatory topic of collective bargaining; and the title issue itself is not presented in this case. But that difference in the application of the "Engineer" job title—and the underlying dispute about what constitutes an engineer—severely colors the parties' approach to comparability and complicates the entire case. The integration of the two workforces, as Director of the Department of Transportation put it, was "wonderfully difficult and wonderfully awkward" due, in part, to the two quite different cultures involved.

To make this unification element even more complicated, the County is completing the implementation of a new class comp plan. (In fact, for most of the County's professional and technical classifications, the new classification system and pay ranges were implemented in January, 2002, retroactive to January, 1998.[5]) Thus the record includes reference to old County class titles and descriptions, new County class titles and descriptions, and Metro class titles and descriptions.[6] (The County included an appeal procedure as part of the transition from the old classes into the new; but that procedure was generally completed by the time TEA was recognized in 2001.) Because the transition from the Metro classification plan to

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3. (...continued)
represents the employees at issue here also represents the (previously Metro) County waste water employees in a separate bargaining unit which is not eligible for interest arbitration.

4. I will use the terms "licensed engineer," "professional engineer," and "registered engineer" interchangeably.

5. Nonrepresented employees did not get the retroactivity.

6. For example, the class comp revisions made these title changes: Engineering Tech (ET) 1 became Assistant Engineering Tech, ET2 became Associate ET, ET3 became ET1, Engineer (E) 1 became E2, Senior Engineer became E3, Supervising Engineer became E4, and Managing Engineer remained Managing Engineer.

the County's new class comp plan is just now being completed, the County is particularly keen on seeing this bargaining unit end up with overall compensation that can be rationally related to the rest of the County's workforce. On the other hand, there seems to be no dispute that the initial release of the County's class comp scheme was the major driving force behind the initial formation of the Technical Employees Association, because the employees in this unit—and perhaps some of the managers brought over from Metro—were deeply offended by the County's new scheme.[7]

Third, the Washington legislature added "public passenger transportation system" employees to the list of public employees subject to interest arbitration under RCW Chapter 41.56. Most of that Chapter previously addressed "uniformed personnel," i.e. police officers, corrections officers, and firefighters; and the legislature extended to public transit employees most of the interest arbitration procedures previously set out for those uniformed personnel. But when it came to the list of factors to be considered in interest arbitration, the legislature specifically departed from the factors set out for uniformed personnel interest disputes. The first two listed factors are the same, i.e. authority of the employer and stipulations of the parties; and here are the differences:

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7. Classification schemes are, perhaps above all else, management tools for imposing some sensible picture on a huge workforce. One of the basic, systemic issues that always arises in designing a classification scheme for a workforce as large as the County's is, "How many classifications shall there be?" Having a vast number of classifications allows each classification description to narrowly describe the work done by each small group of employees, but having a vast number of classifications obscures, rather than expresses, the similarities of the work done by many of those small groups. Having a tiny number of classifications has the opposite virtue and the opposite vice. When the County designed its new class comp scheme, it generally tried to reduce the number of classifications across the County workforce; and the result, of course, is that each new classification title covers employees who used to have a variety of class titles. The County's new classification "engineer," therefore, covers employees in this bargaining unit who used to be in the Metro classifications "Designer," "Construction Manager," and "Project Control," as well as in "Engineer."

Uniformed (41.56.465(1))	Transit (41.56.492(2))
c. ...[C]omparison of the wages, hours and conditions of employment of personnel involved in the proceedings with the wages, hours and conditions of employment of *like personnel of like employers of similar size* on the west coast of the United States. * * *[8]	c. Compensation package comparisons, economic indices, fiscal constraints, and similar factors determined by the arbitration panel to be pertinent to the case; and
d. The average consumer prices for goods and services, commonly known as the cost of living.	
e. Changes in any of the circumstances under (a) through (d) of this subsection during the pendency of the proceedings; and	
f. Such other factors...that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. * * *	d. Such other factors...which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment.

The statutory language applicable to uniformed service personnel focuses the interest arbitration panel's attention on "like employers of similar size;" and the statutory language applicable to transit personnel does not. The Association does not dispute that similarity in size is a proper consideration in the selection of comparables, but it points out that "like employers" would, of course, be public sector employers (41.56.030(1)). There *are* no *private sector* employees of uniformed service personnel, but there certainly are private sector transit employers; and the Association argues that the language of the statute controlling this case makes room for—and, indeed, requires—comparison with private sector employees performing quite similar work. The County disagrees.

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8. The "uniformed services" provision recognizes difference in categories of population (41.56.030(7)); and the transit service provision does not.

Fourth, with respect to most uniformed services personnel, duties and responsibilities are generally fairly similar from employer to employer by classification. Most interest arbitration cases, therefore, can establish one or two "index points" to examine in order to have a pretty good picture of the comparability of the entire workforce; and the parties' disputes in this area are typically over whether, e.g., a 15-year firefighter or a 10-year firefighter is the proper indicator employee for comparison of the unit's compensation generally. In short, a firefighter is a firefighter is a firefighter and a corrections officer is a corrections officer is a corrections officer. On the other hand, alas, a senior managing engineer is not necessarily a senior managing engineer. The process of comparing overall compensation is vastly complicated in the case at hand because there are so very few nonproblematic correspondences of classifications among the various candidate comparable employers.

The employer. King County is massive, and the former Metro employees account for about a third of its workforce. As of February, 2003, that workforce included almost 14,700 employees. 11,700 of them are represented in a total of almost 100 different bargaining units.[9] The County's operations are organized into eight major departments.[10] A summary list of those departments provides some faint picture of the scope of the County's business: Executive Services, Community & Human Services, Public Health, Natural Resources and Parks, Development and Environmental Services, Adult & Juvenile Detention, and Transportation. The Transit Division is one of five in the Department of Transportation (along with Road Services, Fleet Administration, Airport, and the DOT Director's Office). The largest concentrations of the County's engineer employees—as the County uses that term—are divided as follows: about 33 in Transit, about 335 in Roads, and not quite 60 in Wastewater. The engineers in the Transit Division make up not quite half of the bargaining unit at issue in the case at hand.

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9. Bargaining unit sizes range from almost 2,700 down to three (with about 17 units in the single digit range).

10. This list of Departments does not include the "County" employees who are also responsible to some other elected official such as of the Assessor, the Prosecuting Attorney, the Superior and District Courts, and the Sheriff; nor does it count the employees of the County Council itself.

The largest concentration of engineers—in the County's sense of the term—is in the Road Services Division (which was called Public Works before the unification of the County and Metro workforces). That Division is charged with the design and construction of new roads and bridges and the widening and redesign and maintenance of existing roads and intersections in the unincorporated portions of the County.[11] As in the TEA unit, the Roads Division contracts out a substantial amount of work, depending on the size of a particular project and the current workload of the Division.

The Union. There were two sides of Metro, transit and wastewater; and Metro's entire design and construction section supported both sides. The employees of that section were unrepresented. Metro's structure was left more or less intact from about 1994 to 1995, which was the initial year of the consolidation. But eventually the design and construction engineers had to choose whether to become part of the County's Transit Division or part of its Waste Water Division. The County had begun working on a revised classification/compensation (hereafter, "class comp") system—in anticipation of the consolidation—since about 1993; and the new class comp classes were unveiled between 1994 and 1996.[12] For a time, therefore, the County operated with a pastiche of old County classifications, old Metro classifications, and new class comp classifications.

The former Metro design and construction employees were not very happy with the new class comp classifications, compensation or approach to the engineering profession. In 1995 they petitioned PERC for the creation of a combined bargaining unit (wastewater, water resources, and transit), but the County objected; and, in 1997, PERC agreed that such a unit was not appropriate because it reflected the organization of the now-defunct Metro, rather than the organization of the current employer, King County.[13] Negotiations and litigation continued; and early in 2001 the County finally recognized four separate bargaining units, each represented by the Technical Employees Association: the Transit Division

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11. The County also does such work for various cities under contract.

12. Most of the class comp design was apparently done in-house, although the County did hire Ernst & Young as consultant.

13. This quite truncates the extensive litigation history of these parties—both in a series of representation cases and in a series of unfair labor practice complaints—leading up to this interest arbitration. Those various cases have been back and forth on numerous occasions among PERC's Executive Director, PERC itself, the Superior Court and the Court of Appeals.

employees (wall-to-wall), the Transit Division supervisors, the Waste Water employees, and the Waste Water supervisors.[14] The first two of those units are parties to this interest arbitration.[15]

The County had long been bargaining with its other various unions about the consequences of adoption of the new class comp system. Those discussions had generally been completed by the time the County recognized TEA as the representative of the Transit Division employees. The County's original proposal in negotiations with TEA was for all the Transit Division employees to immediately shift into the new class comp classifications, too.[16] But the County eventually agreed to make no classification changes for employees in four of the classification series in this bargaining unit: Engineers, Construction Management, Project Control, and Designer. There is no dispute at all that the County's proposed imposition of the new class comp classification scheme on those employees was one of (and perhaps *the* major) impetus behind the initial formation of the TEA. (The County intends to shift bargaining unit employees in other series to the most appropriate new class comp classifications at the end of the negotiation process.[17])

The work: The County inherited from Metro the largest commuter van / ride-share program in the United States, operating somewhere between 6,000 and 7,000 vans. The TEA bargaining unit is responsible for designing the park & ride lots; and the trend is toward larger, multi-story facilities.

The bargaining unit designs 200-300 bus shelters or bus stops per year. The process involved in such a project illustrates the nature of the bargaining unit's everyday work. The process begins with customer requests or with bus data

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14. Two other unions were involved in the recognition agreement, because TEA had once proposed bargaining units that would have included employees represented by those unions in other County bargaining units.

15. The recognized Waste Water unit is also essentially wall-to-wall and is about three times the size of the units at issue here. Negotiations for that unit are now in mediation, and the County's proposal there is the same as its proposal here (including leaving the same classification series unchanged from the old Metro status quo).

16. The parties did not agree—and still do not agree—about whether that proposal to implement the new class comp system was a mandatory matter for negotiations at all.

17. The class comp implementation process included an appeal procedure, and there are no transition issues in the case at hand.

showing volumes of passenger loading at a particular location. An employee then checks to see if a shelter is plausible, and there is a location and design review to determine proper size and chair-lift accessability. Plans are drawn and building permits are secured from the proper jurisdiction. The Construction Section then does a RFP and gets a contractor to do the actual building under TEA employees' oversight. The entire process takes six to twelve months and involves several bargaining unit employees: a Civil Engineer and technician doing the design and CAD work, an Electrical Engineer, a Planner, and unit employees taking care of right-of-way and construction.

For those four classification series, the parties in these negotiations tried to work out some comparisons with some of the arguably relevant nearby public employers. That required an analysis of the classifications at issue. The parties created a committee including representatives of King County Human Resources, of the old Metro organization managers, and of TEA representatives. After extensive discussion, the committee decided that the only practical focus for comparison was in terms of minimum qualifications for the various classifications. The following chart sets out the Committee's agreed conclusions about the minimum education and experience requirements for the classifications in the largest three of these four series which will remain in the old Metro classes in the TEA bargaining unit. The first number in parenthesis shows the number of employees in that class. (From <C11>.) There is no similar agreement about the minimum education and experience qualifications for the other series in the bargaining unit (except for the PCE series), which the County does *not* agree to leave in the old Metro classes.

ENGINEER SERIES

Engineer I (0)	BS in engineering
Engineer II (1)	BS in engineering plus two years engineering experience
Engineer III (6)	BS in engineering, EIT Certificate, and three years engineering experience[18]
Engineer IV (9) (unit supervisors, e.g. civil, mechanical)	BS in engineering, PE License and five years engineering experience[19]

18. All new hires in the last five years were required to have an EIT Certificate.

19. Under the new class comp system, an Engineer IV would not be required to have be a PE.

Engineer V (10) (Department supervisor[20])	BS in engineering, PE License, ten years engineering experience, and five years experience as a supervisor
Engineer VI (5)	

DESIGNER SERIES

Designer II[21] (1)	AA degree in science
Designer III (1)	AA and three years experience as engineering designer
Designer IV (6)	AA and five years experience
Designer V (2) (lead designer for a unit, e.g. civil, etc.)	AA and five years experience
Designer VI (1)	BS in engineering and eight years experience (equivalent to Engineer III).[22]

CONSTRUCTION MANAGEMENT SERIES

Const. Mgr. I (0)	One year of college or one year experience as an inspector
Const. Mgr. II (1)	Three years experience in constr. mgt., or AA in science and one year experience in const. mgt.
Const. Mgr. III (9)	Six years experience, or AA and four years experience, or BS in engineering.
Const. Mgr. IV (3)	BS in engineering and six years experience in constr. mgt.
Const. Mgr. V	BS and seven years experience in constr. mgt.
Const. Mgr. VI	MS in engineering and ten years experience in const. mgt.

COMPENSATION PROPOSALS

TEA's compensation proposal is relatively simple but very substantial. It consists of across -the-board increases in each year of a three-year contract: a huge, 19.32% increase effective February 4, 2002, and, on January 1 of 2003 and 2004, 100% of the Seattle CPI-W for the prior June, with a minimum each year of 2%. TEA also proposes the continuation of the County's established 5% merit pay program and the addition of a 5% additional payment for employees in positions requiring a PE or Architect stamp.

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20. There are three Managing Engineers: Engineering Construction Services, Program/Project Management, and Engineering Design. The Engineering Design manager is responsible for the supervising engineers in the Electrical, Civil, Mechanical and Structural sections.

21. There are no Designer Is, and the Committee was unable to find a class description.

22. The Committee generally agreed that a Designer VI should be at the same pay rate as an Engineer III.

The County's proposal, on the other hand, is quite complex and includes moving many bargaining unit employees onto a different compensation scale, i.e. that used in the County's workforce in general. That basis of that movement is the initial shift to whatever cell of an employee's salary range is at least as high as his or her current salary (with those over the top of the schedule being, essentially, red-circled until the schedule catches up with their rates). (The entire proposal, including the proposed transition rules, is set out below as Appendix A.) The County then proposes COLA increases for 2003 and 2004 of 90% of the All Cities CPI-W index for the prior September, with 2% minimum and a 6%maximum.

COMPARABILITY

TEA's proposal addresses several alternative sets of comparables, arguing that there are three sorts of informative comparisons to consider: similar public sector employers, similar private sector employers, and local labor market comparators.

As the appropriate *local* comparables—if any—TEA proposes the City of Seattle, Seattle City Light, Sound Transit, and the Port of Seattle; but TEA argues that even this set of local public sector employers does not include truly comparable jobs for much of this bargaining unit. (The next closest "local" comparable, according to TEA would be TriMet, in the Portland metropolitan area.)

TEA's labor market analysis: Public employers. TEA proposes a "macro labor market" consisting of the western coastal United States. Looking for large metropolitan transit operations within that general area, TEA comes up with the Alameda-Contra Costa Transit District in the San Francisco-Oakland area, the Los Angeles Metropolitan Transit Authority, the Orange County Transportation Authority, Sacramento Regional Transit District, San Francisco Bay Area Rapid Transit District (BART), San Mateo County Transit District, Santa Clara Valley Transit Authority (around San Jose), the San Francisco Municipal Railway, and Tri-Met (around Portland). In order to establish similarity, TEA analyzes these public transit employers in terms of a variety of factors such as annual scheduled vehicle revenue miles, annual vehicle revenue hours, unlinked passenger trips, and passenger miles. Los Angeles Metropolitan Transit comes out substantially ahead in most of those respects. (It's 495,000 unlinked passenger trips per year is almost five times King County Transit's 98,000, for example.) But King County Transit is in second place for half of those comparisons and quite near the top in the others.

The table on the next two pages sets out the fundamentals of TEA's comparability data, classification by classification, with respect to these public sector comparables.

TEA's Public Sector Comparables

CLASS.	City of Seattle	Port of Seattle	Seattle City Light	King County	City of Bellevue	Sound Transit	BART	SF Muni	Santa Clara VTA	BART	Sacramento RT	San Francisco Bay Area Rapid Transit	Orange County Transportation Authority	Los Angeles MTA	TEA
Engineer I	28.89	32.33						31.74	30.89	25.79					25.28
Engineer II	32.19				34.22	35.70	45.11	35.16	33.61	30.49	29.54				27.99
Engineer III		41.67		40.85	39.71	38.91	49.74	41.71		35.49	32.57	40.04	35.65		33.16
Engineer IV	36.30	46.98	39.20	48.35	39.71	42.38	57.58	48.29	39.08	46.24	37.71	43.86	42.55		36.69
Engineer V	38.12	49.85	41.31	57.58	43.85		63.48	55.89	45.72	56.35	45.84	52.86			38.58
Engineer VI	41.49	55.98			48.43	54.49	69.99	61.79	54.69	56.35	53.06	63.64	57.87		40.60
Project Control Engineer I	28.89	32.33						31.74	30.89	25.79					23.62
PCE II	32.19				34.22	34.83	45.11	35.16	33.61	30.49	29.54				27.99
PCE III		41.67		40.85	39.71	37.96	49.74	41.71		35.49	32.57	40.04	35.65		33.16
PCE IV	36.30	46.98	39.2	48.35	39.71	41.35	57.58	48.39	39.08	46.24	37.71	43.86	42.55		36.69
Designer II											23.13				20.30
Designer III	30.39				28.06			27.01		23.44	25.52				23.62
Designer IV	34.25	28.41			32.57			29.35		30.49					25.28
Designer V								33.99							28.00
Construction Manager I	26.55														21.36

CLASS.	City of Seattle	City of Seattle	City of Seattle	City of Bellevue	BART	SF Muni	Santa Clara VTA	Sacramento RT	San Francisco	Orange County	TEA Average	TEA
CM II		27.22			29.5							25.28
CM III		31.02			32.57	35.70		37.29				29.45
CM IV	36.30	41.67				38.91					40.04	34.87
CM V	38.12	46.98				41.35					43.86	38.58
CM VI	41.97	55.98		49.39		44.99		48.28				40.60
Real Property Agent I										35.79		21.36
RPA II					30.99							28.00
RPA III	31.80	41.67			34.99	35.70				30.48		30.96
RPA IV	35.85	44.26							47.24			34.87
RPA V	33.30	49.85			40.82	46.12			52.08			38.59
Environmental Planner I					28.06					30.49		21.36
EP II	31.18	36.83			32.57		42.96			32.84		26.59
EP III	34.56	44.26		41.42	37.79			39.01		35.49	41.32	33.16
Admin. Spec. I	15.98	17.13	17.78	19.44	18.72		21.81	20.83				17.27
Admin. Spec. II	20.67	19.37	19.19	21.00	21.73	22.31	24.55	22.84	23.87		23.66	20.01	22.17	21.78	18.28

TEA's Private Sector Comparators. TEA also proposes to compare bargaining unit salaries with the salaries paid by local private sector firms employing similar employees to do similar work.[23] There is no dispute that the County does not do all of its transit design and construction work "in-house." On the contrary, 60%-80% of the design and construction work is contracted out. With respect to that work, the function of the bargaining unit employees is to get enough of the design specifications put together to draft an accurate RFP (Request for Proposal), to evaluate the resulting bids, and then to maintain some oversight over the contractor's progress and approve the contractor's final product.[24] The County also commissions work on a work order basis (without going through the RFP process) from some local firms with special expertise. Those outside experts thus essentially function as supplemental County staff. The County does some of this work in-house.[25] Therefore, there are employees of the private contractors who do the identical sort of work as bargaining unit employees. TEA's list of private sector comparators includes four firms with such work order contracts with the County: HDR Engineering, Berger/ABAM, Tetra Tech/KCM, and URS. (TEA recognizes that these firms generally have equivalents only for the higher level bargaining unit employees.[26])

The umbrella work-order contracts between the County and each of those firms sets out billing rates for the higher level employees of the contractors. Based on those rates, TEA calculates the following comparisons between the County's wages and those paid by the contractors.[27] The "#" column indicates the number of private sector matching

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23. The County objects that TEA did not identify its exact proposed private sector comparables until very shortly before the interest arbitration hearing began. There is no dispute about that timing. While such late identification might well be a problem in many interest arbitration proceedings, the hearing in the case at hand began in early March and then resumed in late April, and the County does not claim that it had inadequate opportunity to prepare its response to TEA's proposed private sector comparables.

24. Projects over $10 million are generally required to include an outside construction management firm.

25. The determination of what projects are put up for outside bids and what projects are done in-house is apparently made on the basis of the size of the project in question and the varying workload of the bargaining unit.

26. At least, TEA did not provide comparability data for contractor employees doing work similar to the County's Administrative Specialist series or Project Assistants. It is not entirely clear from the record, but the contractors costs for such personnel may be part of the built-in overhead rate in the umbrella Work Order contracts.

27. These "matches" are supported by the contractor employee resumes and the minimum qualifications for the County classifications. The matching was a labor-intensive

(continued...)

employees TEA found in each classification. The comparison does not reflect difference in benefits, and there appears to be no room for doubt that the compensation and benefit systems differ substantially between County employees and contractor employees.

Classification	#	'02 %	'03 %	'04 %	Classification	#	'02 %	'03 %	'04 %
Proj. Control III	2	115.6	119.1	108.6	Engineer III	9	95.0	95.7	101.0
Designer IV	2	100.5	103.7	107.7	Engineer IV	18	105.0	114.2	116.3
Const. Mgr. III	4	108.9	111.9	115.4	Engineer V	9	121.8	128.7	134.4
Const. Mgr. IV	4	115.2	119.2	123.6	Engineer VI	8	138.0	148.3	151.3
Designer V	2		119.7	123.8					

TEA offers two additional reasons for comparison with local private sector employers: because they compete for the same pool of trained workers and because Metro commonly included such comparisons in its own compensation studies. Metro's 1991 salary survey covered a selection of "Transit Organizations," "Water Pollution Control Organizations," (relevant only to the other side of Metro's operation) "Regional/Local Public Organizations," Private Sector Organizations," and "Participants in Published Surveys." The private sector organizations were CH2MHill (Bellevue), HNTB (Bellevue), Simpson Investment Co. (Seattle), Envirotech Operating Services (Birmingham, AL), Morrison/Knudsen (Boise, ID), Washington Forest Protection Assn. (Olympia), and HRD Engineering, Inc. (Bellevue).

The County's proposed comparables. The County's primary goal—or, at least, one of them—in this proceeding is internal consistency. "An engineer is an engineer is an engineer," as the County puts it. The County's proposal for this bargaining unit, therefore, is exactly the same as its proposal for "similar employees"—a claim which TEA contests—in the Roads unit. As one would imagine, the County's selection of comparables was determined by its established, formally adopted policy for the selection of comparables in general. In 1997—in the midst of the Metro unification and class comp processes—the County passed Motion 10262, which sets out the County's basic approach to employee compensation:

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27. (...continued)
process, done by TEA. The County questioned the compiler of this data extensively at hearing, and the process she used appears to have been careful and thorough; although that cannot make up for the fact that the numbers of comparators are rather small.

A. That placement of classifications on salary ranges should be primarily based on the market.

B. When developing and using market information to guide the placement of classifications on salary ranges:

1. The market should be defined as large public sector employers in the Puget Sound region, except where insufficient numbers of comparable jobs exist within the local public sector market or where recruitment and any employer-identified concerns regarding retention exist, then other public or private sector employers may be considered as appropriate; and
2. King County will define "large public sector employers in the Puget Sound" region to include, but not be limited to, Pierce and Snohomish counties, the cities of Seattle, Tacoma, Everett, Bellevue; the Port of Seattle; University of Washington; and the State of Washington. King County reserves the right to modify or add to this list where insufficient numbers of similar jobs are found in the foregoing public agencies; and
3. Classifications should be assigned to salary ranges so that compensation falls no more than five percent above or below the market average. . .

b. For nonrepresented groups, market analysis will be conducted at least every three years or more frequently if necessary. Criteria for expanding market analysis beyond the local public sector include:

(1) There are an insufficient number of qualified local candidates;
(2) There are an insufficient number of comparable employers.

By its own terms, that ordinance does not apply to bargaining units that are eligible for interest arbitration; but the County proposes a selection of comparables in this case which are, according to the County, consistent with the philosophy set out in Ordinance 10262. The County proposes to compare here with seven of the listed public sector employers: Snohomish and Pierce Counties, the Cities of Seattle, Tacoma, Bellevue, and Everett, and the Port of Seattle. The County also proposes to add the Sound Transit and the Cities of Federal Way, Kent, and Renton (the next three largest cities in the Puget Sound region and a large, nearby transit district), which are not included in the Ordinance.[28] The table on the following pages sets out the County's comparability data.[29] (The County notes that many of the figures for other employers' wage rates are compositions averaging two jobs.)

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28. Neither party proposes comparison with the University of Washington or with the State.

29. The numbers shown for percentages difference between the average (mean) and the County rate are not those set out on the County exhibits because the County sometimes divided the difference by the average wage and sometimes divided it by the County wage. The percentages shown here are all in terms of the County's wage rate.

Table 3: County's Comparables

	Bellevue	Everett	Federal Way	Kent	Pierce County	City of Seattle	Port of Seattle	Seattle	Snohomish County	Sound Transit	Tacoma	Average	King County	% difference
Engineer I			61,568		60,258		53,893	58,906	58,053		62,941	59,270	58,219	1.8%
Engineer II	69,680	60,715	65,614	60,736	68,349	55,499	59,467	64,355	65,478		66,654	63,655	65,541	-2.9%
Engineer III	80,850	69,306	69,659	69,852	72,873	65,728	65,686	68,463	68,765	69,440	70,480	70,100	70,366	-0.4%
Engineer IV	80,850	76,232	72,271	78,972	77,397	75,252	77,210	72,571	71,120		74,194	75,607	73,798	2.5%
Engineer V	82,181	85,509	78,790	85,145	84,142	87,772	87,339	76,211	80,432		84,885	83,241	83,075	0.2%
Engineer VI	92,331	89,843		88,369		89,170		82,950	96,984	92,000		90,235	89,211	1.1%
Constr. Mgr I						47,174	47,664	55,598	42,243		49,338	48,403	49,317	-1.9%
Constr. Mgr. II				53,604			52,584	60,757	51,334		59,238	55,503	58,219	-4.7%
Constr. Mgr III	60,048	58,642	57,876	57,684	60,258	61,947		68,474	53,852			59,848	65,541	-8.7%
Constr. Mgr. IV	66,300	69,306	67,116		68,349	68,904	71,677	68,765		65,333		68,219	72,072	-5.3%
Designer I									42,243		42,349	42,296	44,845	-5.7%
Designer II		45,947	49,057				46,467	55,598	48,835			49,181	49,317	-0.3%
Designer III	57,158	50,648		49,728	49,899		53,893	60,757	51,334			53,345	55,515	-3.9%
Designer IV				54,888	60,258	44,304	59,467		53,851		53,102	54,312	58,219	-6.7%
Designer V	66,300							68,474	59,383		58,428	63,146	65,541	-3.7%
Designer VI					68,349			71,677	62,357			67,461	70,366	-4.1%

	Bellevue	Everett	Federal Way	Kent	Pierce County	Seattle	Seattle	Seattle	Snohomish County	Tacoma	Average	King County	difference
Transp. Planner	76,932	60,444	61,572	68,616	68,349	70,030	58,472	67,891	62,357	72,862	66,753	72,061	-7.4%
Transp. Planner IV	85,197	78,678	68,796	72,024	72,758	84,670		66,581	68,760	68,099	73,951	73,798	0.2%
Administrator I	54,372				46,176	51,896	44,220	57,179	56,592	50,731	51,595	52,936	-2.5%
Admin. Spec. II	44,747		40,956	42,120	44,304	43,805	38,148	35,547	37,411	41,746	40,976	38,896	5.3%
Admin. Staff Asst.	51,734				41,974			50,045	42,243		46,499	50,482	-7.9%
Info. Syst. Prof.	69,672	63,503	66,000	70,344	72,800	70,318	60,984	60,632	56,599	66,560	65,741	67,122	-2.1%
Prop. Agent III	70,012	64,812		64,298	64,251	73,847	62,496	63,586	59,376	66,477	65,462	65,540	-0.1%
Bus. Finance Off. III*	66,300	67,308	69,312	57,684	72,758	69,000	62,941				66,472	70,366	-5.5%
													??

Choice of comparables. This preliminary issue is, of course, at the very heart of the case. Both parties recognize that the Washington courts have held quite clearly that interest arbitration is not a substitute for collective bargaining but only "an extension" of the collective bargaining process. *City of Bellevue v. Int'l Ass'n of Firefighters, Local 1604*, 119 Wn.2d 373 (1992). But, although they hold hands at the beginning of the analytical journey, the parties almost immediately find different paths leading from the Court's holding in *City of Bellevue*. The County, essentially, stresses that an interest arbitrator should not impose on an employer a contract which it would never, never accept in two-party negotiations; and the Association stresses that an interest-arbitrable bargaining unit is not just another bargaining unit, because the theoretical consequences of a work stoppage in interest-arbitrable units has been recognized by the legislature to be unacceptable.[30]

I submit that interest arbitration is properly viewed as "an extension of the collective bargaining process" not in the sense of collective bargaining as economic warfare—based on "the mutual ability to do one another harm"—but in the sense of a good faith exchange of reasons and arguments. It is undoubtably true that the economic warfare model played an important role in the history of collective bargaining. But the fundamental right of unions—in the private sector and certainly in the public sector in Washington—is not simply the right to strike but the right to *bargain*, the right to engage in the good faith exchange of reasons and argument. Both in the private sector and in the public sector in Washington the right to bargain was soon recognized as including the right to have access to the information relied on by the other side; and so the fundamental right to bargain became the right to look at the data and to analyze and argue about it. In two-party negotiations, that exchange is convincing or not depending only on whether the parties come to agree. Interest arbitration is an extension of the collective bargaining process in the sense that it provides a neutral third party to be convinced—or not—by the same sort of data, analyses and arguments the parties traditionally exchange in two-party negotiations.

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30. This is a sort of difference that nobody in the labor and employment business can profess to be ignorant of. At the beginning of the American labor movement, it was somewhat similar to the difference between the AFL and the CIO. If, for example, a plant absolutely must have a mold maker, and there are only three in the region, then—as the AFL recognized—a union of those three has as much or more bargaining power than the CIO-style union of the plant's other 1,000 employees. Similarly, the County's reference to "the relative bargaining strength of the parties," really makes sense only in the context of the legislature's judgment that the prospect of strikes by transit employees is quite unacceptable. That fundamental fact, it seems to me, makes it unhelpful to propose to explain an interest arbitrator's role in terms of the "bargaining power" of the parties.

Internal Comparability. The County makes two, very different appeals to internal consistency. The first is largely a matter of the *form* of the compensation structure. The County is just in the process of completing a lengthy and expensive process of revising its classification and compensation system; and the County is particularly anxious to avoid the continuation of a significant exception to that system. The second appeal to internal consistency is more a matter of substance and comparability. The County argues, essentially, that the most significant comparable of all should be the County itself. The County points out that this is not a typical uniformed services interest arbitration in which, for example, all of the employer's police officers are in the bargaining unit at issue and the only possible comparison is with police officers who work for other employers. In this instance, according to the County, all of the classifications at issue in the TEA bargaining unit are also found throughout the rest of the County's workforce. If the usual dispute in picking comparables is over the degree of similarity between the subject employer and each proposed comparable, then the County should certainly be its own first comparator because nothing is more similar than identity.

Internal Comparability: King County and the "market." The County's proposal to compare bargaining unit compensation with compensation of the rest of the County workforce runs into one immediate problem: The County's own study has identified certain structural shortcomings in the County's compensation system. The County performs its own market study every three years in an "attempt to place the wages of King County employees at the midpoint of the local market." The "local market" for the study consists of some of those nearby public employers identified by the County's own ordinance. (See p. 17, above.) The 2002 study, "King County Wage Rates Versus The Market" (hereafter, "2002 Study"), is included in the record before us and reached some particularly compelling conclusions about the County and about some of the comparables in the case at hand.[31] Three of those conclusions require consideration here.

First, with respect to the County's compensation structure in general—and, once again, taking the ordinance's definition of "market"—the Study concluded

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31. The County's excellent Post-hearing Brief valiantly attempts to neutralize the 2002 Study (p. 47, note 46). That project runs into two stumbling blocks. First, the 2002 Study really appears to be an official pronouncement of the County: it is, after all, authorized and required by local ordinance. Second, the choices of scope and methodology was entirely left up to the County, so the County really should not now be heard to criticize those choices. In short, the 2002 Study, an official pronouncement of the County, appears rigorous on its face; it is being used here for a purpose quite similar to that apparently intended by its authorizing legislation, and the County is simply stuck with it.

> *The market rate is reached by the King County Salary schedule at the 10th and top step. It takes an employee 8-12 years (or more) to reach the market rate after being hired by King County, therefore: King County receives the benefit of body of work performed for 7- 1/2 years below the market rate.* (Page 2, italics in the original.)

By comparison, the Study found that "most City of Seattle employees reach the top of their pay scales, i.e. attain the market rate, in 3 - ½ years from the commencement of employment;" and [r]epresented employees in Bellevue . . . reach market rates after 4 - ½ years of service" (2002 Study at pp 2-4). Most City of Seattle employees are on a five-step pay schedule; and most Bellevue employees are on a six-step schedule; as compared to the ten-step structure of the County's pay schedule. This conclusion of the 2002 Study is a substantial part of the reason for my general agreement with TEA's argument that comparison should proceed in terms of top step rates.[32] Even beyond that consequence, however, the 2002 Study's recognition of the deformation of the County's compensation system with respect to the market in general has significance for this overall dispute.

Second, the Study also addressed cost of living increases, with this introduction:

> While the "10 step" pay plan utilized by King County is responsible for some of the market lag experienced by King County employees, the majority of the market lag is due to the salary market moving faster than the County's current pay plan. The County's cost of living adjustment since 1990 has been lower than other public agencies, which creates a contradiction between the County's policy to pay salary at market and adjust cost of living increases using the 90% all-Cities CPI index. Organizations in the Seattle area that increase wages based on the Seattle CPI-W index provide raises that surpass the County by almost 1% per year[FN].
>
> [FN: To keep up with the market, the County lag behind those employers tied to the Seattle CPI-W index is approximately 2.5% every 3 years.] (2002 Study at p. 5.)

That recognition is significant both for the County's proposal—addressed immediately below—to bring this bargaining unit onto the County's common "squared table" for compensation rates and for the parties' dispute about the proper CPI index for cost-of-living increases.

Finally, the 2002 Study addresses the turnover consequences of the County's departure from market compensation:

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32. The other compelling consideration behind that conclusion is that such a high percentage of unit employees are on (or above) the top step.

> Failure to pay wages near or at the market rate contributes to high turnover rate in County employment. In the year 2000, the average turnover rate for King County was 9.8%. The turnover rate for those not represented by labor unions was 14.4%, well above the overall county average. * * *
>
> Statutory provisions enjoyed by interest arbitration groups, over which the County has no control, can cause turnover rate to be lower than non-interest arbitration eligible employees . . . It should be noted that interest arbitration bargaining units which by statute must be paid at market wage have a lower turnover than other county workers. Once interest arbitration units are excluded, the turnover rate for county workers jumps to 10.6%. (2002 Study at 7-8, footnotes and charts omitted.)

Internal Comparability: Formal consistency. The County strongly resists the Association's proposal of a simple across-the-board increase which would leave the employees in this bargaining unit on their own salary schedule and off the County-wide "squared table" of steps and ranges. The County's argument comes down to this: It really is not practicable to manage a workforce of almost 15,000 employees, represented by vast numbers of unions, without a unified salary schedule. The alternative—a different salary schedule for each bargaining unit, even though many bargaining units include employees engaged in essentially the same sort of work—would be a managerial nightmare.

The list of statutory factors to be considered by an interest arbitration panel begins with "the constitutional and statutory authority of the employer;" and the County's most fundamental argument here is really an appeal to the statutory authority and responsibility of a public employer to manage its workforce. It would be strange, in the face of that listed factor, for an arbitration panel to ignore the fundamental fact that any effective exercise of an employer's managerial authority requires that employer to bring some overall organization to the compensation of the workforce. The County's "squared table" is the sort of conceptual "cookie cutter" that provides such organization. This is largely a matter of form: If the "squared table" is to be imposed, that simply means that compensation disputes have to be translated into terms of disagreements about a classification's proper range on that table.

The County's plea for formal consistency runs into a problem, however, on this record, and that problem seems insurmountable. First, the temporal dimension of the "squared table" consists of periodic cost-of-living increases of 90% of the increase in the All-Cities CPI index. That is the COLA formula that the County has bargained into most of its non-arbitrable unit contracts, and it is the down-year formula which the County proposes in the case at hand. But, as the County's own 2002 Study points out, the design of the County's compensation system—including that COLA formula—assures that it will fall behind the market over time *as interest arbitrable units, free of those constraints,*

have not done. Second, the Company's own study concludes that the County achieves a market wage only at the very top of the squared table. Because this interest arbitrable bargaining unit "must be paid at market wage" (as the 2002 Study so succinctly summarizes the thrust of interest arbitration statutes), it cannot consistently be forced into a compensation system that cannot keep pace with the market in both of these respects.[33] That may be the reason that the great majority of the County's interest arbitrable bargaining unit contracts use separate compensation matrixes rather than the County's squared table. No matter how sympathetic I may be with the County's desire for administrative consistency, it would be contrary to the spirit of the statute, and contrary to the goal of maintaining general comparability, to place these employees on the County's squared table.

Internal Comparability: Substantive consistency. The County argues that one significant comparable for these employees—perhaps the determinative comparable—should be other County employees performing the same or similar services. In these negotiations that proposition has been expressed by what TEA describes as the County's mantra, "An engineer is an engineer is an engineer;" and TEA finds itself forced to argue against that apparent tautology.

There is an underlying conceptual divide between the parties on this issue. The overall sense of the record is that at Metro the term "Engineer" was an accolade fully deserved only by those who were certified as Professional Engineers. Every other "engineer" employee was viewed as being somewhere in the long process of finally achieving a PE. One result of that orientation is that 73% of the Transit Division engineers and 63% of the Wastewater Division engineers hold a PE, while the next highest concentration in the County's workforce is 37% in Building and Land Development while Road Services falls short of 20%. Another result is that the "engineers" in a unit strongly oriented toward PE certification strenuously object to being thrown into the same barrel as "engineers" in the rest of the County workforce, without that orientation. To them, "an engineer" with a PE or on the way toward achieving one is not at all "an engineer" who is satisfied with a BS or who has no undergraduate degree at all; and the suggested equivalence is almost offensive.

The County, characterizes this difference in orientations as follows:

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33. As TEA and the 2002 Study both note, other interest arbitrators have reached the same conclusion when addressing other interest arbitrable bargaining units.

> The engineering panel . . . had to decide between competing philosophies. On the one hand, employees could be classified and compensated based upon the degrees or licenses they held. On the other hand, employee classifications could be based upon the actual work performed by the employees.[34] Post-hearing Brief at 11.

I must beg to doubt that the County ever seriously contemplated basing compensation upon degrees or licenses held *unless those degrees or licenses were required or preferred for the performance of the work in question*. With respect to the engineers at issue, this substantive issue of internal consistency therefore comes down to a factual dispute over whether the work done by the design and construction engineers in the Transportation Section is substantially different from the work done by engineers elsewhere in the County workforce.

The parties built a considerable record of the similarities and differences between the work of engineers in the Roads Division and the work of engineers in the Transit Division, mostly in terms of cost and complexity of the projects undertaken.[35] Nonetheless, it would be extremely difficult to decide, on the basis of that record, whether the work of engineers in the Transportation Design and Construction section is substantially different from the work of engineers elsewhere in the County's workforce. The source of that difficulty is pretty obvious: the arbitration panel is not composed of managing or supervising engineers, which makes it pretty hard for us to tell whether the work in question would be done more efficiently or would be done better by PE certified engineers. But that is a systemic feature of all "wage and hour / classification" work: the person responsible for such judgments usually has some expertise in the area of employment classification work but lacks expertise in most or all of the particular work specialties under consideration. That is why such work proceeds largely on the basis of class descriptions. The managers and employees work out the class specifications—keeping in mind that they will have to be able to hire on the basis of those class specifications—and the classification analysts take those classification descriptions as

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34. The Association offers quite a different description of the same elephant: "Local 17 effectively advocated for the majority of its members in gaming the class-comp process to obtain for its engineering technicians and support people a large raise." (Post-hearing Brief at 10.)

35. It appears from this record that a substantial part of the work done by TEA employees is quite comparable to a substantial part of the work done by employees in the Roads Division. But it also appears that at least some of the work done by TEA employees is substantially more varied and complex than the work of the Roads Division. The size of the projects illustrates that difference: the largest Roads Division projects are in the $30 million range, whereas the TEA unit is now involved in a $100 million project.

gospel. The case at hand is in no way peculiar in that regard: the most compelling evidence in this area, as the Association argues, is the minimum qualifications and preferences set out in the classification descriptions for engineers in this bargaining unit and for engineers in the other County bargaining units.

There is no dispute in this record that the class descriptions for engineers in Roads set out no substantial education or certification requirements at all; while the class descriptions for engineers in the TEA unit include various education, experience, and PE certification requirements.[36] In the face of that fact, we cannot accept the County's claim that there is really no difference in the services provided by engineers in those two sections and that TEA engineers should be compensated just as Roads engineers in the interest of internal consistency.[37] As far as this record shows—on the basis of the conceded descriptions of the minimum requirements and preferences for the employees in question—the County's internal consistency argument does not really apply to the engineering positions at issue.

That argument is far more persuasive when we turn to the rest of the bargaining unit. For example, some of the employees at issue are fundamentally clerical. The record does not show that their classification descriptions or duties are substantially different from those of the County's other employees in similar classifications. For those

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36. Classification descriptions are not determinative with respect to such issues. For example, when a class description is silent but the record shows that an employer's recent hires for that class have all or nearly all had specific characteristics of education, experience or certification, those characteristics may be taken as the basic requirements of that classification even though they are not referenced at all in the formal class description. But the record here does not suggest that the County's actual hiring practices with respect to Roads engineers brings those employees up to the stated minimum qualifications in the class descriptions for TEA engineers.

37. This appears to leave one shoe still in the air: Can the County change this by changing the classification descriptions? The answer to that question is, of course. An employer may always adjust class descriptions (subject to the duty to bargain, in some instances). And a union may always set out to show, in a proceeding such as this, that the class descriptions are far of the mark when viewed against the actual hiring, assignment and promotional practices of the employer. (E.g. "They say no degree is required, but they said 'degree preferred' in most of the postings and actually hired degreed employees 85% of the time.") In the case at hand, the record does not support the conclusion that the class descriptions in question exhibit such errors.

employees, the County itself is an appropriate comparable and should be given great weight in that role.[38]

Private sector comparables. In a nutshell, TEA makes a compelling argument in favor of considering private engineering firms as comparables, and the County makes a compelling argument against doing so on the basis of this record. TEA points first to the statutory language itself; and there is not much room for doubt that that language at least leaves room for private sector comparables.[39] Moreover, in this particular case, the private engineering firms which TEA proposes as comparables do not just do work that is *similar* to the work of the bargaining unit, there is no dispute that they do *exactly the same* work and that the "make/buy" decision about each project is made primarily on the basis of the availability of personnel to do that project in-house on a timely schedule.

The problem with TEA's proposal to add private sector comparables is that the statute explicitly requires us to consider "compensation *packages,*" and the record includes only part of the "packages" received by TEA's proposed private sector comparables.[40] Moreover, as far as the record shows, there is some reason to believe that the missing parts of the "package" data—particularly insurance and retirement benefits—would change the overall picture substantially. At the very least, we cannot conclude that the lack of insurance benefit and retirement benefit data for the private sector employers is clearly *de minimus*. In the absence of "compensation *package*" data

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38. The County tends to argue that that weight should be not only substantial but dispositive; but, of course, that would essentially separate those employees from the reach of interest arbitration all together. The County agrees that this entire bargaining unit is subject to interest arbitration, so it would be inappropriate for us to find that our inquiry need go no further after all than the compensation paid to similar County employees.

39. I quite agree with TEA's argument that, when the legislature borrows an existing statutory scheme pretty much whole cloth, but rewrites one important provision of that scheme, that revision should be taken to make a substantial difference. I am not quite sure that that issue of statutory construction is properly before this panel, however. Washington courts have said repeatedly that clear statutory language should simply be applied on its face and that no analysis of legislative intent is necessary or appropriate; and the language of RCW 41.56.492(2)(c) clearly allows private sector comparators.

40. To the extent that it is proper to contemplate probable legislative intent (perhaps a very small extent indeed), it seems reasonable to suppose that the legislature's invitation to consider private sector data was intentionally couched in terms that prohibit the arbitration panel from considering only one part of total compensation. That choice may well have reflected the legislature's suspicion that greater salary rates in the private sector are frequently offset by more attractive fringe benefits in the public sector.

in the record for the private engineering firms, there is no way to consider private sector comparables under RCW 41.56.492(2).

Public sector comparables. The touchstone to the selection of comparables, it seems to us, should be the recognition that some sorts of compensation comparisons have a lot of appeal in two-party negotiations and some do not. If Big Company told its union, across the table, that no raises were justified for its 20,000 employees because a nearby "mom and pop" competitor, with three employees, was not giving any raises, that argument would be a waste of breath. Similarly, if a union argued that raises were necessary for a workforce in Seattle because a couple of similar employers in Maine and Florida had raised salaries, the employer would inevitably reply, "Why should we care?" The most appealing comparisons in two-party negotiations are local and, to some extent, similar in size. It is an obvious appeal to data about what the company's current workers could be getting for the same services if they changed to the company's competitor just down the block; and there is some obvious appeal to data about what the company would have to pay for other local workers to perform such services. When one party or the other starts to cite compensation found much farther away, at least a little bit of that appeal is lost. That appeal brings with it an additional "hump" to get over: "...if the employees moved out of town..." or "...if we got employees to move here from elsewhere..." So, too, to a lesser extent, do appeals to data about much larger or much smaller employers or to far richer or far poorer ones.

This obviously suggests the question, "How far is too far away?" To some extent, that is exactly the same as the question of the geographic size of a particular employment market. For custodians, it is probably the length of a bus ride; and for directors of neonatal surgery it is probably national. In the collective bargaining context, it seems to me, as long as there is a substantial labor market for the skills in question that is truly local, i.e. that does not require relocation, data from the local area will always be particularly compelling, and data from distances that would require relocation into or out of the local area will always be far less appealing. The record in the case at hand shows that there are enough local employees with the skills in question, and four reasonably similar local employers, to limit our principal inquiry to compensation packages that these employees could potentially access without relocation and to outside employees that the County could potentially attract without their having to relocate.[41] Those four are the City

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41. Moreover, TEA's more distant proposed comparators would complicate the discussion substantially. For example, BLS data shows a substantial difference in the mean hourly wages for public sector professional specialty and technical employees on the west coast. On average, compared with the Seattle metropolitan area, such employees made

(continued...)

of Seattle, the Port of Seattle, Sound Transit, and the City of Bellevue. In short, the most compelling data in the record is that from similar employers in the greater metropolitan Seattle area, particularly because the overwhelming majority of applicants for vacant bargaining unit positions from 2002 to present have come from the greater Seattle metropolitan area.

The parties actually *agree* on the comparability of Sound Transit, the Port of Seattle, the City of Seattle, and the City of Bellevue (the last two being the largest cities in the County); but each party proposes additions. The County would add Snohomish and Pierce Counties and the Cities of Tacoma, Everett, Federal Way, Kent and Renton. The Association objects to the disparity in size—primarily in terms of population— between the County and each of those proposed comparables. The Association also objects that there is not substantial similarity of the design and engineering work done by those smaller public sector employers.

With respect to the County's proposal to include the neighboring *counties*, the Association also points out the substantial dissimilarity in the economic underpinnings of these neighbors. Of course, there is really no Washington employer quite like King County in many respects. King County accounts for well over 40% of the entire Washington State employment picture; and about 52% of the entire State's industry earnings occur in King County. The record also shows that King County wages, on average, are somewhat higher than wages in Snohomish County and substantially higher than wages in Pierce County. King County's recent employment history is summed up this way in a recent Washington State University study:

> King County average annual real per capita growth outpaced the state average during the 1970s (2.97% vs. 2.73%), surpassed the state average during the 1980s (1.97% vs. 1.34%), and topped the state average during the 1990s (3.52% vs. 2.26%).
>
> Relative to nationwide real per capita growth, King County led the nation during the 1970s (2.97% vs. 2.58%), trailed the nation in the 1980s (1.97% vs. 2.06%), and exceeded the nation in the 1990s (3.52% vs. 1.63%).

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41. (...continued)
almost 24% more in the San Francisco-Oakland-San Jose area in 2002 and almost 19% more in the LA-Riverside-Orange County area. (On average, they made about 4.5% less in the Portland-Salem area.) Similarly, there are substantial differences in the cost of living in such distant areas. It is not that such complications are inherently beyond the reach of an interest arbitration panel. But such complications are another reason that data about distant employers and markets seldom have the same appeal in negotiations as data about what similar employers are paying right here in town.

Pierce County's personal income growth picture has been quite different:

> Pierce County's average annual real personal income growth fell below the state average during the 1970s (3.76% vs. 4.63%), trailed [sic] the state average during the 1980s (3.05% vs. 3.05% [sic]), and fell below the state average during the 1990s (3.87% vs. 4.40%).

Snohomish County is rather in between:

> Snohomish County's average annual real per capita growth outpaced the State average during the 1970s (3.26% vs. 2.73%), trailed the state during the 1980s (1.26% vs. 1.34%), and fell below the state average during the 1990s (1.66% vs. 2.26%).

Moreover, King County is substantially greater than Pierce County or Snohomish County both in population (1,737,000 vs. 701,000 and 606,000) and in population density (586/sq. mile vs. 417 and 237); and the assessed valuation of the County's transit service area is about ten times the assessed valuation of unincorporated Snohomish and Pierce Counties. Although the County argues strenuously that the comparables should certainly include other *counties*, the statute does not require that conclusion, and the fact is that the neighboring counties are really not substantially similar to King County in any relevant and compelling respect.

With respect to the comparability of the smaller cities proposed by the County—both in terms of population and complexity of engineering design efforts—the record provides quite substantial support for the Association's objections.

Four comparables—City of Seattle, Port of Seattle, Sound Transit and City of Bellevue–are not very many. The obvious question is whether they are "just barely" enough or "not quite" enough to resolve the dispute. If I were to add comparables, then the obvious candidates would be the neighboring "metropolitan" Counties. But their demographic and economic dissimilarities from King County would have to be balanced by the addition of other comparables—far more distant—that are more similar to the County in those respects. The end of that process—and not a very distant end, either—is to entirely lose the primary appeal of "what I could get without relocating" and "who we could hire right here in the immediate area." In place of that immediacy, I would have to engage in the sort of abstract "regional market" analysis that, it seems to me, always comes in in second place in two-party negotiations across the baregaining table. Considering the alternatives, then, I conclude that the four local comparables are just barely enough; and the analysis below operates in terms of those four (plus the County itself in some instances).

COST OF LIVING

TEA proposes to use the Seattle CPI. The County proposes the All Cities index.[42] TEA's proposal runs up against the advice of the Bureau of Labor Statistics (BLS):

> The 26 metropolitan areas for which BLS publishes separate index series are by-products of the U.S. City Average index. Metropolitan area indexes have a relatively small sample size and, therefore, are subject to substantially larger sampling errors. Metropolitan area and other sub-components of the national indexes (regions, size-classes)often exhibit greater volatility than the national index. *BLS strongly recommends that users adopt the U.S. City Average CPI for use in escalator clauses.* [Emphasis not in the original.]

But the County's proposal to use the National All-Cities index runs up against its own 2002 Study which recognized that the Seattle CPI has trailed the Seattle index by an average of almost 1% per year over the period from 1990 through 2000. In a sense, the County's arguments in this case seek "to have it both ways." It argues strenuously against TEA's proposal to consider distant comparables, claiming that comparability should be determined locally—which is correct in this case. But that argument somewhat conflicts with its preference for the national CPI index. Although the record is not clear about some of the comparable jurisdictions, the City of Seattle CBA is in the record, and the City appears to be one of the local employers—as referenced by the 2002 Study—which use the Seattle index. Similarly, the County's general use of the national All-cities index apparently does not extend to the County's own interest-arbitrable bargaining units. On that record, I cannot conclude that the statute's general interest in maintaining the comparability of these transit employees would be well served by departing from the Seattle index. On the other hand, the County correctly points out that the 90% approach has been a common feature of COLA language at least since the days of the Carter administration; and that limitation is appropriate here as well. Similarly, nothing in the record supports TEA's proposal that the COLA formula should have a minimum but no maximum; and I will therefore award the traditional 6% cap proposed by the County.

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42. The Transit Division itself uses the national CPI numbers for budgeting purposes; and the County has used that index for bargaining with all of its many bargaining units—and for COLA language—since the 1980s. Since that time, the usual (if not quite universal) formula for down-years in the County's collective bargaining agreements has been something like "90% of the increase in the national All Cities index with a minimum of 2% and a maximum of 6%."

RECRUITMENT AND RETENTION

One of the most significant factors in setting compensation rates is the employee turnover in the existing workforce. The two sides of this coin are recruitment and retention. TEA agrees that there have not been significant retention problems in this unit in the past. In fact, total turnover—including retirements—was about 5% in both 2001 and 2003 and was zero in 2002. But TEA argues that this is only "the lull before the storm" and that, with respect to recruitment, the storm is already here. A great deal of TEA's recruitment and retention data, however, is actually comparability and market data presented in another guise, the argument being that recruitment and retention problems are bound to follow if the County falls far below the market. Still, there is some direct evidence of recruitment problems. When the County posted an Electrical Engineer IV opening in the Summer of 2001 there were no applicants who met the minimum paper qualifications for the position. The February, 2002, reposting produced a single applicant who insisted on coming in above the bottom step of the pay schedule and then took another position, for more money, while that request was being considered. The County again reposted the opening, and hired at the top of the schedule.[43]

All in all, the County's recent recruitment record shows slightly less than 50 openings from 1999 to the date of hearing, for which there were slightly more than 550 applicants.[44] About 30 of those were filled from within the County workforce. The parties provided records of employee departures from the bargaining unit back to 1997. Some of those forms show the classification of the employee and some do not. Of those that do, based on testimony from TEA witnesses, four show departures to the Port of Seattle, five show departures to Sound Transit, and ten show employees leaving for positions with contractors or consultants. As one would expect, most of that final group departed from higher-level classes.

TEA argues that the record shows recruitment problems on the horizon because the County has had to hire some incoming positions at or near the top or the schedule. But the individuals in question were also apparently at the top of their career professional experience. This is not a unit which has traditionally hired only into the bottom classes and has then promoted from within—as some police units do—and it is not compellingly

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43. That employee took about a 25% pay cut to come to the County and—not much surprise in the case of employees taking such substantial cuts—left within a year to take a position commensurate with his prior pay rate.

44. It is not quite clear whether that number of applicants is limited to those who met the minimum paper qualifications for each opening or is the raw number of all applicants.

worrisome that, in a few instances, the County has had to hire at the top of its schedule in order to get individuals with extremely long experience. All in all, it is difficult to disagree with the County's claim that if "TEA employees truly were 20% behind the market...there is simply no way the turnover rate would be as low as it is." Post-hearing Brief at 23.

COSTS, ABILITY TO PAY, and FISCAL CONSTRAINTS

Washington's voters repealed the motor vehicle excise tax in 1998, which was a major source of public transit funding; and the 2000 legislature responded by allowing local governments to increase the dedicated transit sales tax rate from 0.6% to 0.9% with approval of the people. (See RCW 82.14.045.) The County actually increased its rate by 0.2%, rather than 0.3%, which did not replace the entire revenue loss. (Although the County has proposed to use the other 0.1% of sales tax authority to support funds lost to the health and human services budget, it has not yet managed to get the required State Legislative approval of that proposal.[45]) The work of the Road Services Division is supported by a separate levy which has traditionally been used only for road work in unincorporated areas of the County.

Of the County's 2004 total $2.9 billion budget, only $513 million is general fund money (mostly going to law, safety and justice expenditures). The County faces a $24 million general fund deficit in 2004, following general fund deficits of $41 million in 2002 and $52 million in 2003, and general fund revenues continue to grow at about 2% per year while the corresponding expenses grow at 5-6% per year. The County's revenue sources are divided between property tax (76%) and sales tax (22%). But the property tax rate is capped at 1% per year growth (a cap not applicable to new construction); and sales tax revenues have declined steadily since 2000 and are not predicted to return to 2000 levels in real dollars until mid-2005. Transit expenditures—along with Wastewater, Solid Waste, and the Airport—come out of special enterprise funds (which make up about 19% of the County's total expenditures).[46]

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45. County witnesses suggested that there is some evidence that part of the reason for the repeal of the Motor Vehicles Excise Tax was the perceived leakage of funds from that tax away from road and transit uses and into Health and Human Services and into Justice Services.

46. Road Services expenditures, somewhat similarly—along with Public Health, EMS, Veterans, and Mental Health Services—come out of Special Revenues, which account for about 22% of the County's expenditures.

The County has taken substantial steps to stem this tide of red ink in the general fund budget. Some have been organizational, in search of operating efficiencies, some have been aimed at reducing personnel costs, which account for the overwhelming part of the County's expenditures. One example of the latter sort of step is the doubling of employee insurance co-pays under various renegotiated collective bargaining agreements beginning in 2002. The County has also sought ways to avoid perpetuating the general fund support of services that come under enterprise funding or are supported by special revenues. The major examples of that step are the imposition of $7 million in landfill rents paid by the solid waste operation for the use of the Cedar Hills landfill (a declining general fund asset), the shifting of $2 million from Roads funds to pay for Sheriff's traffic enforcement, and the submission to the voters of a special parks levy (which shifted $12.7 million out of general fund expenditures). Despite all these shifts and economies, however, there have been major budget cuts over the last two years, including $11.5 million cut from the Health and Human Services budget, $4 million from the Sheriff's office, $2.4 million from the Prosecutor, $2.5 million from Public Defense, $7.3 from Adult & Juvenile Detention, etc.

The Enterprise Fund, which supports the Transit Division and its approximately 4,000 employees, shares one fundamental with the general fund part of the budget: they both rest largely on sales tax revenues. Sales tax revenues have been flat, at best, over the last four years due largely to a general economic downturn in the Seattle metropolitan area. Sales tax revenue accounts for 65-70% of the Division's income; and those revenues were flat from 2002 to 2003 (contrary to a 2003 budget that anticipated a $25 million increase). Fare box revenues account for most of the rest of the income; and they declined from 2003 into the first part of 2004.[47] There is no doubt that the County was once more optimistic about the near-term growth of mass transit. A six-year plan adopted in 2002 projected the addition of 400,000 hours of bus service by 2007; but by the end of 2002, that projection had been reduced to 165,000 hours, and the 2004 budget no longer projects even that limited expansion until 2007.

The first priority in Transit budgeting throughout the recent economic downturn has been the preservation of service levels. That has required a substantial shift from the capital fund side of the budget fund to the operating side. The County's formal policy still calls for a 25/75 division—with capital expenditures getting the 25%—but the

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47. I take notice of the recent substantial increase in gas prices throughout the Northwest. But ridership volume is driven largely by both gas prices and employment trends, and the record provides no reliable way to estimate the consequences of those gas price increases alone.

imperative of avoiding service cuts has forced the actual allocation down to about 5/95.[48] Although the Public Transit Fund has statutory bonding authority for capital projects, the County has decided to delayed base expansions and now plans no new park-&-ride facilities after the lots in process are completed.[49] Yet systematic operating costs continue to rise: workers comp costs have increased by 44% since 2001 adding $13 million to operating costs; and insurance has increased by 37%, adding almost another $10 million. Design and construction work—which is the focus of the TEA bargaining unit—can reasonably be projected to decline from about $100 million in 2004 down to about $35 million (in 2004 dollars) in 2007.

Neither party has provided exact costing data, even for its own proposal. The County estimates the cost of *its own* proposal on the basis of an estimated 4.25% average increase across the bargaining unit. On that basis, the County estimates the 2001-2002 increase from its own proposal to be just over $217,000 and the three-year cumulative cost to be almost $967,500.[50] Taking a similar approach, the County estimates the first year cost increase from TEA's proposal to be just over $964,000 and the cumulative three-year cost to be just over $3,252,000. Those estimates make the first year difference between the parties about $747,000 and the cumulative three-year difference to be a bit over $2.25 million.[51]

Even though Transit is largely funded outside the County's general fund, the County argues persuasively that "Transit is not an island; it is part of King County."

> The fact that Transit is operated through an enterprise fund does not mean that it is independent from the County's overall economic health and welfare. If funds dedicated to transit were insufficient to fund operations, the County would certainly be in the position of needing to utilize general funds to subsidize Transit. More fundamentally, it is not fair that employees who work in an area with a somewhat better financial situation should be paid more than other employees, when

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48. The County has refinanced some older bond offerings that included covenants which incorporated the 25/75 allocation.

49. For example, the South King County Bus Base, which was once planned to be operational by 2015, will now not enter the design phase until about 2014.

50. Those estimates are based on actual overtime hours for known years and assume no change in overtime pay eligibility from FLSA changes in the unknown year. They also include PERS and FICA indirect personnel costs.

51. The County also points out that extending the same deal to its Roads engineers —whose contract expires at the end of the calendar year—would add an additional $1.6 million.

the employees themselves have no control over the finances. Many vital County services have no income stream. Simply stated, an outside source of funding is not a measure of the worth of employees. Post-hearing Brief at 18.

The Association proposes to confine the ability-to-pay analysis to the particular funding of these employees, but it is not quite clear whether the statutory term "fiscal constraints" (in RCW 41.56.492(2)(c)) should be so narrowly applied. The County's past success in shifting some costs from the general fund to enterprise funded activities demonstrates that the separation between a public employer's "different pockets" is, to some extent, subject to that employer's creativity. On the other hand, the comparative fiscal health of the Transit Division—compared to the parts of the County funded primarily from the general fund—is a direct and, presumably, intended consequence of fiscal priorities established by the legislature. In other words, the legislature has paid specific attention to the "fiscal restraints" applicable to transit operations, and it would be strange to ignore the resulting apparent priorities.

Even when transit is considered as "an island," however, the record makes it clear that there are substantial fiscal constraints to be considered, and not just at some indefinite time in the future, either. The shift from the historic 25/75 allocation of capital to operating funds *down to a 5/95* allocation is eloquent evidence that the economic underpinnings of this bargaining unit—which comes out of the capital side of the budget—are shrinking fast. If the analysis of comparability here justified the 19+% increases proposed by TEA, then that fiscal reality might very well place some lesser limit on an interest arbitration award. Because the comparability data supports only a substantially smaller increase, however, the record does not convincingly argue for a reduction of that increase on the basis of fiscal constraint.

INSURANCE

The statute requires the arbitration panel to consider "compensation packages," and the second primary part of these employees' compensation package—insurance—is the second issue in this case. There is a difference in the *costs* of the medical insurance provided by the various comparable employers, but—except for differences in monthly out-of-pocket costs—the record does not show that there is really a substantial difference in the *value* of those insurance coverages to the employees in question.

With respect to monthly out-of-pocket costs, only one of the comparables requires employees to make payments toward their insurance coverage. The City of Bellevue administers its insurance program on a tiered basis, and employees pay up to $246 per month toward their own insurance costs. But the record shows only the top tier cost and does not show what the *average* out-of-pocket cost is for Bellevue employees. Even if

every employee paid $246 per month, that would still amount to something around 0.4% of the average monthly salary for this bargaining unit; and the record does not show that every Bellevue employee pays top tier out-of-pocket costs. In short, I must agree with the Association that the record does not justify an insurance-based reduction in the pay rate award as the compensation package for this bargaining unit.

THE FINAL NUMBERS

After identifying the proper comparables as the City of Seattle, the Port of Seattle, the City of Bellevue, and Sound Transit, there are still seven substantial disputes to be resolved before it is possible to do the compensation package comparison contemplated by the statute.

Broadbanding v. Steps. First, some of the comparables structure their compensation systems in the traditional "steps," and some use a "broadband" approach. One of the claimed virtues of the broadband system is that the center of the band should move up so that employees seldom, if ever, actually reach the top of the band. In order to function that way, broadbands must *be* broad, just as the name suggests, i.e. the stretch between the bottom and the top of the band must be relatively great. The stretch in the County's pay scale—the difference between the bottom of a range and the top—is 26.7%, not counting the 5% longevity bonus. With that 5% addition, the total stretch is about 32%. By comparison, the stretch in the City of Seattle pay scale—another traditional "step" compensation system—is only about 17% measured at the highest pay grade; and the stretch in Bellevue's schedule is about 38%.[52] Sound Transit, on the other hand, is a true broadband schedule, stating only the mid-point with a note that the range consists of "+/- 20% of midpoint," which makes the stretch 40%;[53] and the Port of Seattle, similarly, exhibits a full 50% broadband approach. The problem comes when we try to use "top step" numbers of traditional "step" schedules and broadband schedules together.

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52. Bellevue's compensation system appears to be a hybrid. A stretch of 38% is not really enough to be a true broadband. (It is noteworthy that the difference between the County's 32% structure and Bellevue's 38 % is less than the difference between the City's 17% structure and the County's 32%.) Moreover, it appears that a substantial number of employees are actually at the top of their range at Bellevue (see County Exhibit 64). The County argues that "only" about 12% of Bellevue employees are at the top of band; but 12% is a lot of concentration at the top for a *real* broadband system. On this record, Bellevue may best be treated as a traditional "step" schedule.

53. The Port's pay system actually includes an additional possible 4% on top of the stated 40% spread.

The first question is whether any adjustment at all is really necessary. TEA naturally urges the use of the top of the broadbands as the "top step" numbers for the Port and for Sound Transit. But one of the major points of using a broadband system, to repeat, is that employees should seldom if ever actually reach the top of a band, so using those top numbers would certainly introduce artificial inflation for those comparators.[54] If some adjustment is necessary, then, there are two obvious candidates, neither of which is entirely satisfactory. First, the County proposes to avoid the whole problem by focusing on midpoints rather than on maximums. But there are two problems with that approach: too many of the employees in this unit are actually at the top step, and the County's 2002 Report points out that it is only the top of the County's compensation schedule in general that achieves the market. An analysis in terms of range midpoints makes perfectly good sense if the jurisdiction in question has a workforce which is spread out over the range. In the case at hand, however, a vastly disproportionate percentage of bargaining unit employees are at (or above) the top steps of their ranges. Moreover, the County's 2002 Study strongly suggests that in general only the tops of the County's pay ranges bear a close relationship to "the market." Those two considerations really require the comparisons in this case to proceed in terms of "top step" compensation rather than in terms of mid points as the County suggests.

The second alternative is to limit the broadband top to the highest compensation actually paid. Both parties offered data on the actual top pay rates for the Port of Seattle and for Sound Transit; and I have used the top rates actually paid—rather than the tops of the bands—for the analysis below. (There is a third alternative, which is to shrink the broadbands to the same "stretch" as the County's ranges, i.e, in this case, to 33% around their stated midpoints. I ran the numbers that way, and the result puts the County's compensation rates substantially further behind than does the analysis below. Because both methods of adjusting broadband numbers are somewhat artificial, I find the use of the highest actually paid rates presents a more accurate picture of those comparables.)

Which classifications to sample? The second puzzle is which classifications should be sampled to determine the overall relative compensation status of the bargaining

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54. TEA points to two Port of Seattle classifications—Engineering CAD Specialist and Manager, Design Services—in which incumbents are at or above the top of the band. But the broadband approach allows the possibility of employees *occasionally* being at the very top (or bottom) of a band (and recognizes that situation as suggestive that the band itself—i.e. the midpoint—might be too low). Certainly two employees at top of band is vastly different from the County's situation in which most of the employees are at or above the top step. TEA's argument (Post-hearing Brief at 56) does not show that the Port of Seattle is not properly a broadband jurisdiction.

unit. In the usual uniformed services interest arbitration, the employees at issue all fall within a single classification series, and there is usually no proposal to change the structure of the series itself, so it makes sense to pick a single, representative class for purposes of comparing the entire workforce.[55] The TEA bargaining unit, however, is composed of several discrete classification series, so that approach is not appropriate.

The parties differ substantially on this issue. The County—in lieu of its fondest hope of completely integrating this bargaining unit into the general classification and pay schemes for the general County workforce—proposes at least a class-by-class analysis, giving extreme weight to the County itself as a comparable. The County particularly urges this approach for those employees who have duties and responsibilities which are quite similar to large numbers of other County employees. For example, the County points out that the clerical employees in this wall-to-wall unit are physically stationed among other County employees doing essentially the identical work but organized into other bargaining units. Doing the same work, the County argues, certainly should result in getting the same pay. The Association, on the other hand, proposes a common, across-the-board approach to compensation, pointing out that PERC has conclusively determined that this is a single bargaining unit.

The class-by-class analysis proposed by the County, even on the voluminous record before me, is not a practical possibility. But the fact that it is not possible, on this record, to produce a reasonably trustworthy class-by-class analysis certainly should not be construed as a rejection of the County's argument that doing the identical work as one's neighbor argues strongly for getting at least similar pay. At least with respect to the nonprofessional employees in the unit—and particularly with respect to the clerical employees—that argument might well be compelling if the record provided the basis for the analysis it required.[56] But the comparability analysis of any given class in the unit requires, first, a determination of exactly which classes correspond to that County class in each of the comparables workforces. The record before me includes volumes of job descriptions, so it is theoretically possible to do that sort of matching *on paper*; but the

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55. In fact, the choice of the class is often obvious: e.g. police officer, bus driver, etc. The disputes in this area usually focus on the details: should one look at a five year employee or a 20-year employee? at an Engineer or top step Firefighter? etc.

56. This will be the parties' initial contract, after all; and it is understandable and proper for the parties to have concentrated on the more populous and expensive engineering classes.

potential for error between the paper matching and the real world would be very great.[57] Both of the party-appointed members of the arbitration panel urged the neutral member to avoid an over-reliance on such paper matching.[58]

What that leaves, however, is a necessary reliance on the work done by the Committee: that is the only evidence in the record that reflects sound and considered judgments about the work actually performed by bargaining unit members and the matching of that work to class descriptions for the comparable workforces. After the hearing closed, I tentatively identified the probable comparables, and the party-appointed arbitrators—by joint agreement of the parties—went back to the Committee for an additional round of discussions focusing particularly on those comparables.[59] The result of that process was received into evidence by stipulation; and that constitutes the Engineering Classifications matches in the first table below. The second table below addresses the two other classification series addressed by the Committee, i.e. Construction Management and Designer. Although the record is not perfectly clear, I take these matches to reflect the Committee's conclusions about these classes. With respect to these two, non-engineer series, I have included the County itself as an additional comparable. I have used the County's own proposed 2003 pay rates, because those rates correspond to the ranges which the County claims to be proper for these classes.

Employees in the Engineer classifications make up not quite half of this bargaining unit (31 out of 74). Construction Management and Design account for another 24

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57. In part, this is because not all of the comparators' class descriptions are very usefully drafted, which tends to drive the focus of the comparison more toward a focus on minimum qualifications.

58. This conclusion has an important corollary. One of the many sources of confusion in this record is the parties' use of different names for many of the classifications at issue. TEA consistently uses the old, Metro class titles; and the County commonly uses some of the new, class comp titles. This inconsistency is not a product of mere orneryness, or course: it reflects TEA's insistence that the old classes—with their old titles—should be maintained and the County's insistence that many of them should be abolished in favor of the new class comp classes and titles. That is an extremely important dispute between these parties; but it is not at all clear whether it is properly a part of the issue before this interest arbitration panel. In any event, the same considerations that lead me to choose an across-the-board approach to the compensation issue—rather than a class-by-class approach—demonstrate the inadequacy of this record as a basis of resolving this underlying dispute over class descriptions and titles.

59. Except for Sound Transit, the Committee generally reaffirmed its prior conclusions with respect to the engineer classifications.

employees, making a total of 55, or 74% of the entire bargaining unit. That is enough of a sample to support a reasonably dependable conclusion about the overall comparable compensation of the bargaining unit in general. (Some classes are currently empty: i.e. Engineer I, Designer I, and Construction Management V and VI. The record is not clear about exactly why each of those classes is currently empty. It may be that such employees are no longer hired or used by the Department; or it may be that a class just happens to be unoccupied at the moment. Rather than averaging over currently-empty classes, however, I have restricted the analysis to those classes with at least one current incumbent.) The salary increase award, therefore, is an average of the measurements of comparable compensation packages for these classes, based on the class matching done by the Committee.

Simple averages or weighted averages? The County argues that the averaging should be "weighted" to reflect how many County employees are currently in each of the classes involved.[60] One problem with that approach, as TEA points out, is that it is somewhat adventitious, depending on today's workforce, which may differ substantially from yesterday's or tomorrow's. Moreover, the wage award is supposed to be an adjustment based on the market, which the interest arbitration statute says is to be determined by making comparisons between like employers. If a weighted average is used, the market average is subject to sizable deviations solely based on how many people are in each classification at one particular snapshot in time. Suppose, for instance, that before this arbitration King County had hired four new Engineer IIs. Engineer IIs are much further behind their market average than most other series and classifications in this bargaining unit. The overall "weighted" average would change significantly due to that change in the workforce; but the market itself would not have changed. Indeed, the County does not propose a "weighted" approach to determining the rest of the market. Such an approach would determine the average compensation for an Engineer II, for example, by multiplying the total number of such employees of each employer by the appropriate salary for that employer, adding up all those products, and then dividing by the grand total number of Engineer IIs for all of the comparable employers. That approach would make considerable sense, because a comparable employer who employs 50 Engineer IIs, for example, certainly has more impact on the market than another comparable employer who employs only 10. But neither party proposes to do the market analysis that way in the case at hand. (In fact, I have never seen any public sector interest arbitration decision anywhere in the Northwest that took that approach.) Because we are averaging employers—and not employ*ees*—for the comparables, therefore, it is hard to

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60. TEA notes that it, too, would be arguing for that approach if a weighted average came out more in its favor, and the County would probably be opposing that approach.

justify averaging employees—i.e. a "weighted" average approach—when it comes to the final step of the analysis.

City of Seattle and Seattle City Light. The Association proposes to add Seattle City Light to the list of local comparables. The County objects that Seattle City Light is a sub-agency of the City of Seattle—even though the specialized function of Seattle City Light causes it to have some classifications which the City lacks—and the addition of Seattle City light as an additional comparable would have the effect of counting the City of Seattle twice.[61] The County is apparently correct in pointing out that Seattle City Light is simply a division of the City of Seattle. (In fact, the inclusion of Seattle City Light as part of the City of Seattle makes the City overall a more compelling comparable for King County.) If Seattle City Light *is* considered part of the City, however, then, if there is a match at the City and at Seattle City light, the proper *top* match is the higher paid of those two classes, and those higher matches are used in the charts below.[62]

Port of Seattle workweek. There is no dispute that Port of Seattle employees have a 37.5 hour workweek, rather than the 40 hour week found at the County and at the other comparable employers. Most of the Port of Seattle employees corresponding to TEA employees are exempt from FLSA requirements. I have therefore made no correction to change their stated annual salary rates into hourly rates, even though TEA urges such a "correction." To do so would require me to convert the stated annual rate—i.e. the rate which the Port states as the compensation for those employees—into an hourly rate (by dividing it by the annualized hours for a 37.5 hour week) and then multiplying it by the annualized hours for a 40 hour week. In short, the adjustment would add not quite 7% to the Port of Seattle numbers. That proposed correction is not justified here, particularly considering that most of these employees are FLSA exempt as professional employees and professional employees are not, generally, held closely to the clock.

The "snapshot" date. There are two issues here. First, the sort of comparison contemplated by the statute requires the selection of a "snapshot" date for purposes of comparison. In the case at hand, as usual, the parties argue for different snapshot dates throughout the period at issue based on the various dates when rate changes went into

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61. On the other hand, TEA argues that if Seattle City Light is just a part of the City of Seattle, then wherever the Committee found a "match" both at the City of Seattle and at Seattle City Light, the numbers used for the top rate of the City of Seattle should come from the higher paid of those two classifications.

62. The County also points out that Seattle City Light's engineers are extremely specialized, i.e. power system electrical engineers working on the City's power grid. But the TEA unit, too, includes specialized electrical engineers.

effect at the County and when rate changes went into effect for the various comparable employers. The selection of a snapshot date is inevitably arbitrary to some extent, a matter of convenience which should not be disturbed as long as the particular point chosen does not greatly deform the comparison; and the selection of 1/1/03 in this case does not do so.

Second, this case involves compensation rates from 2001 (where the bargaining unit employees are now) to 2004 (the end of the contract at issue). The record does not include equally extensive compensation data for each of those years. In particular, the original "Salary Schedule and Compensation Plan" for the City of Seattle is most readily assessable in the 2003 version. I have therefore used 2003 as the measuring year; and the initial wage rate increases awarded are those that bring the bargaining unit up to comparability—with the addition of the appropriate COLA increase—as of 2003. (To put it another way, one starts with comparison of current bargaining unit rates with the comparable 2003 rates and then backs out the appropriate COLA to get to the appropriate initial increase.) Consistent with that pattern, I have used the County's proposed range placements at the 2003 rates as the County internally comparable rates because those are the rates that the Company argues these employees should have received in 2003 if their pay schedule were properly integrated with the Company's squared table.

The "real top:" Merit pay. Finally, there is a fundamental dispute between the parties over the identification of the "top" of the County's own pay schedule. The County's pay plan includes up to 5% of "merit" pay above the top of the squared table and above the apparent top of the TEA employees' current schedule (apart from the squared table). Comparison of salary schedules "at the top" of a traditional step schedule usually operates in terms of the highest pay rate that is available to an employee based on longevity alone.[63] The designation of a plan as "merit" pay suggests that longevity alone would not trigger that additional compensation; and, on paper, the County's merit pay plan does not appear to qualify: For movement above Step 10 the plan requires an evaluation rating of "outstanding" in two consecutive years. But that apparent impediment is belied by the uncontested facts in the record: Of the 74 employees in the bargaining unit, 33 receive merit pay and are above the top of their apparent pay schedule. In fact, over the entire three-year period at issue in this case, 33 unit employees have been paid at the merit step above the apparent top of the schedule. Over that same period, only one employee who was eligible for merit pay on the basis of longevity alone has actually

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63. None of the comparables provides for longevity-based pay above the top of the stated schedule, although Sound Transit awards performance bonuses on top of the employees' contracted pay rates.

had his or her pay restricted to the top of the apparent schedule.[64] In light of that concentration of almost half of the bargaining unit *above* the stated top of the schedule, it would be strange to use those schedule tops as the top pay rates and to ignore what are essentially "merit steps."[65] I will therefore include that proposal in the award in this case and use the merit steps—i.e. 5% above the stated top of the schedules—as the maximum pay rates. In order to be consistent, that same approach must be applied to the County's own squared table numbers for those classes for which the County is an appropriate comparable.

The tables. The two following tables, then, generally show the Committee's class matches at the comparable employers.

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64. This "paper tiger" nature of the "merit" portion of the merit pay plan is not an altogether uncommon characteristic of public sector salary schedules with merit pay provisions.

65. One of the parties' tentative agreements includes a provision that "An employee at the top of his or her schedule shall be eligible for merit increases according to the existing practice." On the record here, that practice makes merit pay for such employees the rule rather than the exception. Otherwise, the result here would be quite different.

COMPARISON TABLES

2003: Top Step & Top Actual Salary: Engineers

	City of Seattle		Port of Seattle		Sound Transit		Bellevue		Average	King County now	Difference
Eng. II	Engn. Assoc.	65,897	No match		No Match		Engn.	70,608	68,253	61,152	11.61%
Eng. III	No match		Design Engn.[C]	75,462	Civil Engn.[A]	74,301	Sr. Engn., Transport.	81,936	77,233	72,422	6.64%
Eng. IV	Elec. Pwr Syst. Engn.[D]	79,942	Disputed[B]		Sr. Civil Engn, Utilities[A]	78,608	Sr. Engn., Utilities	81,936	80,162	80,153	0.01%
Eng. V	Elec. Pwr. Sys. Engn., Principal[D].	84,249	Engn. Design Coord.[C]	98,777	Disputed[B]		Engn. Supv.	90,480	91,169	84,280	8.17%
Eng. VI	Manager II	85,921	Mgr. Design Services	102,378	Disputed[B]		Engn. Mrg.	99,924	96,074	88,670	8.35%
Average difference for Engineer classifications:											6.96%

Notes to the first table.

A. This appears to be the highest rate as of 1/1/03.

B. The Committee could not agree on a match; and the record provided no basis on which to resolve the dispute.

C. There is a dispute in the record about the highest rate actually paid in these classes. The County's data shows $65,729, $86,035, and $89,174;and TEA's shows $75,462, $89,779, and $102,378. TEA's data is slightly more detailed, and I adopt those figures.

D. Seattle City Light class.

2003: Top Step & Top Actual Salary: Other Classifications

	City of Seattle / Seattle City Light		Port of Seattle		Sound Transit		Bellevue		King County (2003)[A]		Ave.	King County now	Difference
Cons. Mgr. II	C E Spec. Associate[C]	61,963	Const. Inspect.	51,305			Const. Project Inspect.[B]	58,008	54	62,314	58,398	55,211	5.77%
CM III			Sr. Inspect.	58,473			Sr. Const. Project Inspect.[D]	64,056	59	70,159	64,229	64,319	-0.14%
CM IV	Civ. Engn. Sr.	74,027	Asst. Resident Engn.	78,537					63	77,141	76,568	76,157	0.54%
Dsgn. II	CE Spec. Asst. II	52,208							47	52,782	52,495	44,354	18.35%
Dsgn. III	CE Spec. Accociate	61,963					Engn. Tech.	55,200	52	59,427	58,863	51,586	14.11%
Dsgn. IV	CE Spec. Sr.	69,846	Eng. CAD Tech.	53,542					54	62,314	61,901	55,211	12.12%
Dsgn. V	CE Spec. Supervisor	61,963							59	70,159	66,061	61,152	8.03%
Dsgn. VI[E]									62			72,422	
Average for Construction Mgr. And Designer classifications:													8.40%
Average for all three classification series (12 classifications):													**7.80%**

(Notes are on the following page.)

Notes to the second table

A. These numbers are the top of the ranges (shown on the left) which the County identifies as the appropriate (i.e. comparable) placement for each class on the squared table (increasing the 2002 top by 2.0% to get 2003).
B. The County proposes an alternate match; but this appears to be the best fit (on the limited record before me).
C. I agree with the County that this appears to be a better match on this record.
D. I agree with TEA that this appears to be a better match on this record.
E. There is insufficient data to assign a rate to Designer VI.

Backwards from 2003. The overall conclusion of the above analysis is that the County's 2001 compensation rate for this bargaining unit in general was 7.8% behind the average for comparable employees in 2003. Between the beginning of the period at issue in this case and the beginning of calendar 2003, therefore, the rates must come up a total of 7.8%. Backing that total off by the 2% increase from 2002 to 2003 yields an initial increase of 5.8%. Nothing in the record adequately supports any departure from those increases in light of the factors set out in the statute.

OTHER ISSUES

TEA proposes to increase substantially the premiums paid for a PE license. But the prevalence of PEs and the role a PE plays in the Engineer classifications was what TEA successfully argued to be the distinguishing feature of these engineers, preventing their comparison with other similarly-titled County employees. It is not quite consistent to propose to add on an additional premium for a characteristic which TEA offers as definitive of the group. Moreover, and quite conclusively, none of the comparables provides such premiums. On the basis of this record, therefore, there is no adequate reason for departing from the current PE premiums established by County ordinance.

The across-the-board increase awarded here has the unfortunate result of perpetuating *Metro's* salary structure for these *County* employees. But that is a consequence of the nature of the interest arbitration process and of the record before me. It should not be construed as a recognition that Metro's old salary structure has any intrinsic appeal for this bargaining unit. These are now *County* employees. The forthcoming revision of their class specifications may show (depending on how those class specs are administered) that the County is a proper comparable even for the Engineer classes. The across-the-board 'average of averages' approach taken here is far from elegant and is recommended primarily by the virtue of providing a resolution of the dispute on the basis of the record before me. Subsequent years of negotiations—or subsequent interest arbitration awards—may well focus on one or more particular class

series and may substantially alter the relationships among the classes which were established long ago by Metro. Nothing in the record before me suggests that such changes would be inappropriate or contrary either to the letter or to the spirit of the applicable interest arbitration statute.

AWARD

The contract shall include the parties' various tentative agreements and the following article on WAGES:

1. 2002 Wage Rate. Effective February 4, 2002, the pay for all classifications in the bargaining unit shall be increased across the board above the rates in effect as of February 3, 2002, by 5.8%.

2. 2003 Wage Rate. Effective January 1, 2003, the pay for all classifications in the bargaining unit shall be increased across the board by 2.0%.

3. 2004 Wage Rate. Effective January 1, 2004, the pay for all classifications in the bargaining unit shall be increased by a percentage equal to 90% of the increase in the Seattle CPI index (from June to June) with a minimum increase of 2% and a maximum increase of 6%.

The County shall promptly make the members of the bargaining unit whole as measured by that contract language.

Respectfully submitted,

Howell L. Lankford Neutral Arbitrator	Chris Casillas TEA-appointed Arbitrator	David Levin County-appointed Arbitrator

CONCURRING OPINION

For reasons set forth below, I find that I am unable to sign the majority decision. Although I can concur in the result, I must respectfully submit that the contradictions in the rationale offered as well as the deviations from arbitral precedent, makes it impossible for me to join in the decision itself. The rationale, in my opinion, very possibly could not stand a legal challenge were the Technical Employees Association to make one in light of the internal inconsistencies with the award as it relates to merit pay.

I agree with our Arbitrator's assessment that the Award "should do no harm." Even though it was essentially asked for by King County, our Arbitrator's decision to include merit pay as if it were just another step in the salary system violates that test because it is not only at variance with the parties tentative agreement which separately resolved that issue, but more fundamentally it is the death knell of any true merit pay system.

Our Arbitrator concluded that the merit pay system was a "paper tiger" although that is more based on implied conclusions rather then being supported in the record. Regardless, the decision to treat merit pay as yet another top step effectively means the end of that program. No doubt, TEA will propose incorporating that into the step system and the County will be powerless to resist such a proposal. The County in future negotiations and arbitrations will not be able to credibly claim that these steps should be anything other than automatic given the stance they have taken here which was unfortunately ratified by our Arbitrator.

In using the merit pay system to calculate the top step wage of TEA members, the award suddenly takes on a hue of capriciousness, in part, because it is in contravention of the record. King County and TEA, after submitting different proposals on this issue of merit pay, were able to reach a tentative agreement on the merit pay system during the hearing, which essentially memorialized the past practice between the parties. This practice, which is documented in the record, evidences a system that is discretionary and requires these professional employees who are members of TEA to achieve outstanding ratings in order to receive this pay. However, the neutral arbitrator has decided to use the 5% merit pay to determine the top step wage of TEA members, and, in effect, implicitly changes the merit pay system to a guaranteed pay as an additional step. While the intuitive sense of our arbitrator with respect to this program may or may not be accurate, it is not supported in the record and is at odds with the tentative agreement on merit pay, which sets up an inherent conflict in the agreement. For that reason it opens the award up to a legal challenge, which is why I cannot support the logic of its inclusion.

As I had pointed out when the issue of credit for merit pay surfaced in the 11th hour (we had proceeded through multiple drafts of decisions with multiple calculations of the wage gap with merit pay *never* entering the picture until the very final draft) I pointed out that other jurisdictions offered other forms of compensation including overtime and other special pays which offered equal or likely greater compensation than the County

merit pay plan. It is an error in the decision to simply ignore these other pays. Whether a particular agency decides to call its particular system merit pay or longevity pay, they both have the same effect of allowing employees to move beyond the stated top of the pay scale. The failure to include the systems used by these other agencies to achieve the same goals creates imbalance in the award. Clearly the merit pay received in Sound Transit would have to be incorporated in these comparative calculations if they are to be sound and reasonable. Also, it is apparent that the merit pay program is a reward for hard and sometimes long work and since the employees in this bargaining unit do *not* receive any overtime pay, merit pay is a partial substitute for that benefit.

And partial it is. As I explained when this merit pay credit notion surfaced at the last minute, the overtime compensation received in other bargaining units likely far exceeds the average amount of merit pay received in the TEA bargaining unit.

I have to conclude the merit pay analysis contradicts two other parts of our Arbitrator's decision. First, our Arbitrator properly noted that the bargaining unit members were already at a substantial disadvantage just comparing the formal top step of ten years to other units where the employees typically top out in three to five years. Our Arbitrator properly pointed out that the County's own wage study had concluded that an elongated pay step system was one of the primary reasons the County was behind the market in a wide range of job classifications, including Engineers. So to then add on top of that ten year step system merit pay as an artificial top step which requires a minimum of two additional years, as was done here, and then to compare that to employees in other bargaining units with three, four or five years of service is simply inappropriate and unfair. Of course that is before one weighs the fact that merit pay can be lost and then takes two more years to re-earn.

I cannot share our Arbitrator's perspective that in previous arbitration decisions the top of the scale in one jurisdiction is invariably compared to the top of the scale of the comparables. In fact, I think arbitral precedent indicates steps are compared in that fashion *only* when the top of the scale is relative shortly (for example within five years) and consistent in duration with the pay step systems of the other comparables. That obviously was not the case here. Arbitrators have *not* typically counted longevity premiums as yet another wage step for purposes of computing the "average" to determine the size of the wage gap. True, premiums such as longevity have been considered but as a special form of pay along with other pays and premiums and *not* as just another step.

The second major inconsistency in the Decision relative to the merit pay credit was the conclusion regarding the handling of private sector consulting firm salaries. Our Arbitrator properly concluded that an appropriate reading of the interest arbitration statute required the comparison to private sector firms engaging like personnel. Our Arbitrator ultimately did not count these personnel into the final averages because of the absence of total compensation data. I see it as a reversal of course to then count into the average a special pay in the form of the merit pay when the amounts available in similar incentive programs in other jurisdictions – whether they be deemed pay for performance programs or more overtime – have not been included. If our Arbitrator held TEA to a

burden of proof on private sector special compensation, he should have done likewise to the County on the other comparables. The failure to apply an equal reasoning process across the body of the majority opinion undermines its intellectual integrity.

The final Decision results in a windfall for the County. Even the County argued in their brief for only a 4% credit so the ultimate decision added an extra point to that request. The 4% figure was not merely the result of some academic adventure by the County to find an average, but was an implicit acknowledgment that not even they could argue the full 5% be applied because of the nature of the merit pay program and that not everyone in the bargaining unit receives this premium. I believe the true average wage gap presented working in 2002 is somewhere in the neighborhood of 12 to 13%, and I think the original calculations performed by our Arbitrator had confirmed this result. It is undisputed that a majority of the bargaining unit does not receive merit pay whereas the special pay programs offered elsewhere appear to be available to the entire unit. This Award does not even remotely address the magnitude of that discrepancy.

I concur in the result to the extent that the comparables identified fairly reflect the statute even though I think TEA's West Coast model of comparability was a more true reflection of the statute. I also concur that the modest wage increases awarded here put TEA members on their way toward closing the market wage gap. What I cannot concur in is the analysis which inappropriately credits the County for merit pay, especially in this manner, and particularly to the extent that the Decision could possibly be read to imply that the wages bring the members up to 2002 wage parity. If our Arbitrator had concluded that a wage increase in excess of that was simply too rich in a single contract, it would have been better to have made that the rationale rather than what I can only see as a somewhat artificial and last minute deflation of the real wage gap.

I believe there are some other methodology issues that could be disputed such as the undervaluing of Sound Transit and Port of Seattle compensation by the artificial wage range applied, the disregard of the shorter work week for Port employees, the failure to include a list of the existing classifications in the contract language even though the issue was presented and had to be decided, but I need not elaborate on all those points here. The primary defect in the Award, and one which only appeared at the very end of the process was the merit pay calculation. Crediting the County as our Arbitrator did realistically restricts the bargaining freedom in the next round of negotiations where the "merit pay" now labeled as a "paper tiger" will have to be incorporated into the step system. It is now predictable that the focus of future negotiations necessarily will be in reducing the steps to a 3-5 year range as well as overtime compensation to make up for the effective loss of merit pay.

The County managers who supervise this professional body of work might not have wanted this result either, but the agenda of King County OHRM to argue for the lowest possible wage by any possible means is at cross purposes of those department managerial concerns. Regardless, the County will now get what it has effectively asked for – the treatment of merit pay as nothing more and nothing less than an automatic step. The County simply is not entitled to have its cake and eat it too.

As a result, this Award restricts the realistic freedom of the parties in a manner greater than it should have. It would have been better to have increased the wages within the existing pay system without the last minute contrivance of treating merit pay as if it was just another step in that system. By so doing, the status quo has been irreversibly altered and the next contract will result in compensation system looking much different than the current one.

For all these reasons, I cannot join in the reasoning presented in the Decision and Concur only in the result.

Christopher J. Casillas
TEA-appointed Arbitrator