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PUBLIC EMPLOYMENT
RELATIONS COMMISSION

IN THE MATTER OF THE ARBITRATION
BETWEEN

WHITMAN COUNTY DEPUTY)
SHERIFFS' ASSOCIATION)
and)
WHITMAN COUNTY)
_____)

INTEREST ARBITRATION
OPINION AND AWARD

PERC Case No. 17193-I-03-396

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Arbitrator

June 18, 2004

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I. BACKGROUND

Whitman County ("County") is a rural, agricultural county situated on the southeastern border of Washington State, adjacent to the State of Idaho. In 2003, the County had a population of 41,000. The Sheriff's Department ("Department") consists of an elected Sheriff (Brett Myers), an Undersheriff (Ron Rockness), 13 commissioned officers, and a number of reserve officers. The Department's workforce is quite experienced, averaging over nine years of service. Five members of the Department have been employed for ten years or more.

The Department has primary jurisdiction over unincorporated areas and certain smaller towns in the County.¹ Approximately 8035 persons reside within those areas. Department officers serve in a backup role to police departments in the larger cities and towns in the County as well as for Washington State University ("WSU").² Sixty-five percent of the County's total population live in Pullman or at WSU, which have large law enforcement agencies of their own.³

The Whitman County Deputy Sheriffs' Association ("Association") serves as the certified bargaining representative for a unit of thirteen commissioned officers, including four sergeants and nine deputies. The deputies were formerly affiliated with Teamsters Union Local 690. They opted to decertify that union in December

¹ The smaller towns without their own law enforcement departments include Albion, Colton, Tekoa and Union Town.

² These localities include Colfax, Palouse, Pullman, and Rosalia.

³ Pullman has 26 commissioned officers. WSU has 17 commissioned officers.

represented the County. During the hearing, each party had an opportunity to make opening statements, submit documentary evidence, examine and cross-examine witnesses (who testified under oath), and argue the issues in dispute. The hearing was recorded by a court reporter, and a transcript provided for the Arbitrator's use. The parties elected to make closing arguments in the form of posthearing briefs, the last of which was received on May 10, 2004. Because the Arbitrator was sent an incomplete record by the court reporter, the parties waived the statutory requirement that a decision be issued within thirty (30) days of the hearing's closure.

II. APPLICABLE STATUTORY PROVISIONS

The Arbitrator's authority arises out of RCW 41.56, which prescribes binding arbitration for public employers and uniformed personnel upon declaration by the PERC that an impasse in bargaining exists. Relevant provisions of the Washington statutes read as follows:

RCW 41.56.030. Definitions. As used in this chapter:

* * * *

(7) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any county with a population of ten thousand or more; [2002 c 99 §2].

RCW 41.56.430. Uniformed personnel--Legislative declaration. The intent and purpose of chapter 131, Laws of 1973 is to recognize that there exists a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these

chapter 502, Laws of 1993 or chapter 517, Laws of 1993 as required under chapter 41.26 RCW. [1995 c 273 § 2; 1993 c 398 § 3.]

A. THE CONSTITUTIONAL/STATUTORY AUTHORITY OF THE EMPLOYER

Neither party has made any allegation that the proposals of the other party exceed or are otherwise affected by the constitutional and statutory authority of the County.

B. STIPULATIONS OF THE PARTIES

Stipulations that relate to particular proposals are discussed in the sections of this decision that deal with those proposals.

C. COMPARABLE EMPLOYERS

One of the statutory criteria which this Arbitrator must consider is the comparison of wages, hours and conditions of *"like personnel of like employers of similar size on the west coast of the United States."* The statute requires the use of comparable employers within the state of Washington if an adequate number of in-state comparable employers exists. Both sides further agree that comparators should be chosen from jurisdictions located in Eastern Washington State.

The governing statute does not define how "similar size" is to be determined. To select its proposed comparators, the Association focused on population and geography, and used a range of 50% to 200% of the County's population. The County used a range of 50% to 150% for both population and assessed value.

sometimes used by arbitrators in making a comparability analysis. The Association looked only at population and geography, but assessed valuation should be included. For both population and assessed valuation, Asotin falls within the range advocated by the Association. Moreover, Asotin directly borders the County so that close geographic proximity further supports inclusion.

The Association's economic analyst admitted that the applicable numbers for Grant County in the comparability analysis are "a little large." Grant County exceeds the 50-150% range for both population and assessed value, and should be rejected for that reason. There is no statutory requirement to have the same number of jurisdictions below the 100% threshold as are above it. So long as a jurisdiction falls within the 50% to 150% threshold, it is a sufficiently "like employer" for comparison purposes.

Discussion and Findings: The selection of comparable jurisdictions is a process fraught with imprecision. As one of my colleagues has accurately observed: "The interest arbitrator faces the problem of making 'apples to apples' comparisons on the basis of imperfect choices and sometimes incomplete data." City of Pasco and Pasco Police Officers Association, 10 (Wilkinson, 1994). Five comparable jurisdictions is generally considered the minimum number necessary to make valid comparisons. My own preference is to have at least seven, but not at the expense of adding inappropriate jurisdictions.

There are certainly some interest arbitration awards that have focused on population and not assessed valuation when selecting comparable jurisdictions, but it is far more common to use both population and assessed valuation.

There are so many arbitration awards that have considered only population and assessed valuation as a measure of size that no citation is needed. These awards have spanned many decades without any correction from the Legislature or the courts. Thus, I emphasize that it is both usual and appropriate to confine one's inquiry to the population and assessed valuation indicators (with consideration also given to geographic proximity), as is seen from many interest arbitration adjudications.

Okanogan	39,600	97%	2,002,586	111%
Stevens	40,600	99%	2,059,430	114%
Walla Walla	55,800	136%	2,805,931	156%
Whitman	41,000		1,802,335	

a. Asotin County

As can be seen from the foregoing chart, Asotin County falls below 50% of the County's assessed valuation. It is also strikingly smaller than the other agreed comparables for both population and assessed valuation. Asotin borders on Whitman County and thus falls within the County's local labor market. It will be kept in mind under that "other factors" criteria, but I conclude Asotin should not be included in the set of prime comparators.

b. Grant County.

Grant County clearly exceeds the 50-150% range for both population and assessed valuation. In fact, for assessed valuation it exceeds Whitman County by more than 228%. That is too much of a disparity, even to achieve a balanced list of comparators. As further explained below, limiting the comparators to just the agreed list of six, results in a list that is sufficiently balanced to achieve the statutory purpose.

index is identified in the BLS reports and commonly referred to as the "CPI-W." For the CPI-W, the parties have used West Area, Size Class B/C.

Although the CBA refers to the "July to July" index, both parties have submitted data using June to June comparisons. That data indicates that for the year ending June 30, 2001, the applicable increase was 3.3%. For the year ending June 30, 2002, that index increased by 1.0%. The increase was 1.9% for the year ending June 30, 2003. Ex. A-6.

E. INTERIM CHANGES

Another specified statutory consideration is changes in the cost of living during the pendency of this proceeding. The latest release by the Bureau of Labor Statistics only goes through May 2004. For the period May 2003 to May 2004, the CPI-W increased by 3.2%. So far this calendar year (2004), the CPI-W has increased by 2.08%. Inflation has thus been increasing since 2002 but still remains low.

F. TRADITIONAL FACTORS

RCW 41.56.465(f) directs the Panel to consider "such other factors . . . which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment." A variety of factors are typically considered by interest arbitrators, including the fiscal condition of the employer,

that Commissioner's Fund is currently \$460,000. Tr. 433. The Fund was created to cover capital expenses over \$5000, and cannot be used for the payment of wages and benefits. However, this fund does provide a source of money for expenditures that might otherwise be expenditures from the General Fund. To the extent that the General Fund is not used for those capital costs, additional monies become available for other discretionary uses. The same is true of monies returned to the Department of Solid Waste. That Department received a \$100,000 refund of excise tax overpayments. That money went to Solid Waste, not into the General Fund, but represents dollars that Solid Waste can use instead of drawing upon the General Fund.

Potential revenue for the Sheriff's department comes from CRABS funds that the County receives for the maintenance of roads and public road law enforcement. The County currently receives about \$300,000 per year. Of that amount, the Sheriff's department has been allocated approximately \$60,000, but County commissioners have the discretion to use more of the CRABS funding for the Sheriff's budget. The Association also established that in recent years the Sheriff's department has returned a significant amount of unused funds back to the County's general fund. \$85,000 was returned in 2002 and \$65,000 in 2003.

Although there are discretionary funds available to pay a reasonable pay and benefit award, the County is justifiably concerned about a trend of declining revenue in the face of steadily increasing expenses. The County historically received funding from the State as a result of the motor vehicle excise tax. With the passing of Initiative 695, that tax was reduced to \$30 per vehicle. As a result,

savings, the County switched coverage from Washington Counties Risk Pool to the Rural Counties Risk Pool, but that change triggered retroactive assessments by the Washington Counties Risk Pool that has the County paying \$90,000 per year through 2008. Tr. 413-417.

Employment costs continue to increase. The Department of Retirement Systems rates are based on a percentage of each employee's income and have steadily climbed. Costs associated with social security and unemployment insurance have continued to rise and industrial insurance rates have jumped roughly 36% in the past two years. As discussed more fully later in this decision, a major cost has been health insurance premiums. The annual increase for Options Health Care Plan A in 2002 through 2004 has been 19%.

2. Workload Changes.

Whitman County encompasses 2250 square miles. There is safety in numbers so it is preferable to have two officers respond to calls for assistance. Due to the size of the County, and the fact that the Sheriff's Department has only thirteen officers covering 7 days a week, deputies frequently have to respond on their own. The County offered evidence that Whitman County has less crime per thousand than other comparators, but the County relies upon statistics that do not include all crimes, including DUI's. The crime statistics are not indicative that deputies in Whitman County have a lesser workload. Deputies handle everything from driving infractions to serious assaults, and do their own burglary

4. Internal Parity. Settlements reached by an employer with its other bargaining units is also a factor commonly considered under RCW 41.56.465(f).

The reasons for this have been well described by Arbitrator Alan Krebs:

From the standpoint of both the employer and the union, the settlements reached by the employer with other bargaining units are significant. While those settlements are affected by the peculiar situation of each individual bargaining unit, still there is an understandable desire by the employer to achieve consistency. From the union's standpoint, it wants to do at least as well for its membership as the other employer's unions have already done. At the bargaining table, the settlements reached by the employer with the other unions are likely to be brought up by one side or the other. Thus, it is a factor which should be considered by the arbitrator.

City of Kennewick and IAFF Local 1296, AAA No. 75 300 00225 96 (Krebs, 1997).

The weight given to internal parity will vary depending on the issue involved and the economic situation. During difficult economic times when it becomes necessary to ask all employees to make sacrifices, internal parity will often merit more weight. "Obviously, it does nothing for the morale of one employee segment to accept, for instance, a wage freeze, and then see another group receive a whopping increase, not matter how deserving the latter group is of that increase."

City of Redmond and Redmond Police Association, PERC No. 16791-5-02-00387

(Wilkinson 2004)

At times when an employer is financially able to pay for increases, internal parity considerations become more problematic because settlements are affected by concerns unique to each bargaining unit. One unit may give a higher priority to achieving step adjustments in a wage schedule than to gaining a higher across the board increase. For another unit, the reverse may be true. One unit may

rates and benefits. The consideration of a subject jurisdiction's local labor market is thus fully sanctioned by RCW 41.56.465(f). The reasons for this have been well described by UCLA Professor Irving Bernstein:

[Local labor market] comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the union because they provide guidance to its officials on what must be insisted upon and a yardstick for measuring their bargaining skill. In the presence of internal factionalism or rival unionism, the power of comparisons is enhanced. The employer is drawn to them because they assure him that competitors will not gain a wage cost advantage and that he will be able to recruit in the local labor market. . . . Arbitrators benefit no less from comparisons. They have "the appeal of precedent and ... awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.

Arbitration of Wages, Publications of the Institute of Industrial Relations, 54 (Berkeley: University of California Press, 1954). As discussed later in this decision, I have kept the County's local labor market in mind

III. THE RESOLUTION OF OUTSTANDING ISSUES

A. ARTICLE 8 (OVERTIME)

Article 8.01 of the CBA addresses the issue of overtime pay and currently reads:

"Overtime pay shall be at the rate of one and one half (1½) times the regular hourly rate for such bargaining unit employee for hours worked in excess of a forty (40) hour workweek. For the purposes of this Agreement, *paid leave shall count as hours worked*"

(Emphasis added by italics.) Article 8.05.2 reads as follows:

negotiations with the Corrections bargaining unit, and ultimately dropped its proposal. Thus, in the Corrections unit, paid leave still counts as "hours worked."

The current contract language provides an advantageous overtime calculation. Take backs are not favored by arbitrators, and no compelling reason for granting one has been established in this case. The Association further objects because it believes that in prior bargaining, the parties reached tentative agreement to maintain the status quo. The County's proposal should therefore be rejected, and current contract language in Article 8.01 and 8.05 should remain.

Discussion and Findings:

As this Arbitrator has noted in prior decisions, interest arbitrators generally expect the party proposing a reduction in a previously gained benefit to bear the burden of persuasion. The County failed to satisfy that burden, primarily because of the impact its proposal would have on deputies who are called out on scheduled days off. Such callouts are a significant intrusion on the deputies' family lives and can cause them to incur unreimbursed personal costs such as for childcare. Being paid for the called out hours at an overtime rate helps to compensate the deputies for those incidental expenses and the personal inconvenience. That no doubt explains why the current practice of counting paid leave as time worked for overtime purposes has been the prevailing practice for at least ten years.

The County sought the same change in its bargaining with the Corrections unit, and ended up withdrawing the proposal. There seems insufficient justification to treat deputies less advantageously than those other law enforcement employees. The County's proposal is therefore not adopted.

contribution has not changed in three years. In 2001, employees were paying 72% of their dependent premium costs. Because of intervening premium increases, they are now paying 85% of the dependent premium.

1. Dependent Health Care Premiums

Association Proposal: The Association seeks to change the County's contribution towards dependent health care premiums from a flat dollar amount to a percentage of 80%, beginning on the first day of the month following the Arbitrator's award. Over the past three years, the County has saved a substantial amount of money because its monthly contribution has remained fixed at \$150. Health care costs are soaring and Association members have been paying the majority of dependent premium cost increases. The premium costs have become so expensive that some Deputies cannot avoid to cover a spouse or include their children on full family plans.

In 2001, Deputies paid about \$395 per month for full family coverage. In 2004, they pay more than double that amount, i.e., \$856. When insurance costs are deducted from the take home pay for a top step five year Deputy, the take home pay for a Deputy with a wife and two children is near poverty levels, with insurance representing approximately 33% of an officer's monthly income. Some Deputies now qualify for state assistance programs, including medical coupons and WIC (Women Infants and Children). County officers should not have to rely on state medical assistance for their families.

The Association's goal is to both reduce the employee dependent premium cost to the market average, and to use a percentage basis for contributions so both the County and Deputies share the burden of increasing premiums. The Association's proposal is supported by the practice of comparable jurisdictions. Not every jurisdiction handles insurance premiums the same, but Whitman Deputies pay more than their counterparts in the comparators. In a 2003 interest arbitration award involving Kittitas County, sharing the burden of cost increases was considered fair and 90% of the full family premium cost was shifted back to that County. Douglas County currently pays 75% of dependent costs, and that contribution will increase to 80% in 2005. Okanogan used to pay approximately 57% but has increased its contribution in 2004 to 70% of dependent medical/vision and 80% of dependent dental. Walla Walla pays 50% of dependent

The Association's economic analyst conceded that the Association's insurance proposal is on the "high end." Tr. 259. The proposal cannot be justified by any delay in implementing the Agreement. Numerous arbitrators have concluded that retroactive payment of actual healthcare costs is not appropriate. Consideration of internal parity likewise supports the County's proposal. Except for the corrections officers and support staff bargaining unit, no County employees receive dependent healthcare coverage by the County. Moreover, Association members receive a greater contribution towards health insurance from the County than any other County employees.

The County's total contribution towards dependent health insurance is actually not that far off the comparable jurisdictions. A number of different formulas are used by comparable jurisdictions for dependent healthcare coverage, but for employee and dependent coverage combined, Whitman County's premium cost is more than Asotin and Franklin Counties, nearly the same as Okanogan and Stevens and only \$128.36 per month less than the average for all comparables. Ex. A-10, C-21 (pp. 18-19).

The Association fails to consider the difference in benefits offered by the County's "Cadillac" health insurance plan compared to the plans offered by comparable jurisdictions. The Options Health Care Plan A requires no deductible and has only a 5% copay. The comparable plan in Douglass County has a \$200 deductible and \$10 copay. Okanogan's comparable plan requires a \$100 deductible (\$300 per family) and \$10 copay. Ex. C-48, p.2. Since Whitman County offers better health insurance coverage, the premium costs are naturally more expensive.

The County pays the full premium cost for bargaining unit members and that cost has been increasing 17-19% every year. The County recently added an insurance plan that is considerably cheaper than the other four alternatives. Association members could reduce their monthly premium cost to \$424.71 if they chose a less costly insurance option. Most choose to participate in one of the two most costly plans, saying they must pick what is best for themselves. The County should be entitled to do the same.

A recent interest arbitration decision involving Kittitas County should not be the benchmark for an award impacting Whitman County. Kittitas presented no evidence of an inability to pay. Despite a smaller population, Kittitas County has substantially greater tax revenues than Whitman County. Unlike the situation in Kittitas County, there is no evidence that employees have left Whitman County because of health insurance coverage. In an interest arbitration award involving the deputy sheriffs in Walla Walla, that county did not argue that

<u>Jurisdiction</u>	<u>Employee Contribution</u>
Douglas	\$264.40
Franklin	\$479.88
Kittitas	\$225.64
Okanogan	\$509.33
Stevens	\$157.00
Walla Walla	\$464.50
<i>Comp. Average</i>	<i>\$350.13</i>
Whitman	\$856.19

Ex. A-19. Even Asotin employees pay \$100 less per month than Whitman deputies.

One reason the disparity has become so great is the fact that the County's contribution has been a set dollar amount that has not changed since 2001. Deputies have therefore borne the burden of all the intervening premium increases which have been substantial. To avoid this kind of result in the future, the Association seeks to change the contribution to a percentage of the applicable premium. The prevailing practice of the comparables supports this change.

As shown below, the practice of the comparables is not uniform. I have used the Association's data, but noted where the County offered different figures. Franklin and Stevens have a pooled insurance system called a VEBA. The employer contributes a certain dollar amount for an employee's health insurance, and any amounts not used or necessary for the employee's health insurance is assigned to the VEBA. Any amounts in the VEBA are then pooled out and divided evenly among the employees to assist those for whom the employer's contribution does not provide full insurance. Tr. 246-47. Pooled VEBAs can greatly reduce

a specified percent removes the inequity that can arise when bargaining for future contracts is delayed. I agree with the Association that percentage contributions are a more equitable method of cost-sharing. Since that is a prevailing method of the comparables, the Association's proposal to use a percentage basis for contributions is adopted.

The remaining question is what percentage should be adopted. The Association seeks an 80/20% split with the County paying the 80%. Only one comparator is going to that high an employer contribution, and that does not occur until 2005. However, the comparable jurisdictions do generally pay a greater share of the dependent premiums than their employees.

The average dependent contribution for the comparable jurisdictions is roughly a 70/30% split.

County Year		Total Premium	Employer Contrib.	Employee Contribution
Douglas	2004	\$1144.27	\$879.87	\$264.40
Franklin	2004	\$964.88	\$485.00 ¹⁰	\$479.88
Kittitas	2004	\$1335.04	\$1109.40	\$225.64

¹⁰ Whitman County uses \$519.19 as Franklin County's payment, but agrees with the Association about the employee contribution. The \$34 difference has little impact on the comparison, so I have used the Association's data.

I am further mindful of the fact that most other county employees receive no contribution towards the cost of dependent health insurance and had their wages frozen in 2003. Weighing those considerations, the County's overall financial condition, and the subsequent wage increases awarded later in this decision, I conclude that effective July 1, 2004 the County should pay 60% of the premium for dependent medical, dental, and vision insurance. A premium share of 40% still leaves deputies paying a higher amount (\$577.25) than like employees at any of the comparables, but it represents a considerable improvement from what they are paying now.

2. *Insurance Reopener (Articles 11.04/ 11.05)*

Article 11.04 currently reads:

11.04 As soon as possible after execution of this Agreement, the County and Association bargaining teams shall meet to discuss the implementation of a Section 125 Cafeteria Plan for medical savings; health care cost pre-tax deductions and child care reimbursements.

A Section 125 Cafeteria Plan has already been implemented, so the parties agree that Article 11.04 should be revised to indicate that the County will *continue* to make a Section 125 Cafeteria Plan available for medical savings, health care cost pre-tax deductions and childcare reimbursements.

A remaining issue is the following reopener language that appears in Article 11.05:

Discussion and Findings: A reopener provision is existing language in the collective bargaining agreement, so County bears the burden of persuasion regarding its deletion. That burden has been met for a number of reasons. First, there is a practical one. The term of this contract will be ending on December 31, 2004, so negotiations over the term of a successor contract, including its health insurance provisions, will be starting in the near future.

There is also a historical reason for deleting the reopener. The existing reopener clause is worded in a way that can easily cause disagreements. In recent years, its invocation by the Association culminated in the filing of a ULP against the County. That charge was ultimately dismissed but only after the County had to incur legal fees to defend itself. Any employer would be understandably leery of retaining the language in Article 11.05 after that experience.

As currently worded, the insurance reopener can be invoked if the Association finds a plan or plans "that provide(s) substantially comparable benefits . . . for less cost than the County is currently paying." There is no consideration for whether the insurance provider can handle the plan administration. The County employs only two people in its Human Resources Department, which is not sufficient personnel to handle all the administrative tasks associated with providing insurance benefits. Thus, looking solely at premium cost is impractical.

experience. There is no additional wage premium for longevity. Deputies are paid at Grade 12 of the schedule. Sergeants are paid at Grade 14. Grade 12 currently ranges from \$15.83 per hour at the lowest step to \$19.24 per hour at the highest step. The range for Grade 14 is \$17.45 to \$21.21.

For each year of the prior CBA (1999-2001), the pay rates and salary step classifications for members of the bargaining unit were increased by 3% *plus* 90% of the Consumer Price Index for Urban Wage Earners and Clerical Workers, West Size Class B/C, July to July (hereinafter referred to as "CPI-U"). Effective October 1, 1999, the total combined increase was 5.47%. An identical increase, 5.47%, was implemented on January 1, 2000. The increase effective January 1, 2001 was 6.17%.

Association Proposal: Retroactive to January 1, 2002, the Association seeks a 3.3% increase in the pay rates and salary step classification for all bargaining unit members. Retroactive to January 1, 2003, the Association proposes a 3% increase, and retroactive to January 1, 2004, a 3% increase. The Association's proposal combines a market adjustment and CPI increase with a slower phase-in adjustment that softens the cost obligation for the County. The Association's proposal represents less of an increase than the bargaining unit has historically received since 1996.

The base wage for Whitman deputies falls approximately 13% behind the comparator jurisdictions for the various years of employment. In addition to base wage, an appropriate comparison should factor in longevity, education incentive, insurance costs, and paid leaves to get an "adjusted base wage." When adjusted base wages are compared, a Whitman deputy at five years of service is at least 32% behind the market. Ex. A-10.

RCW 41.56.465(d) permits the consideration of the average CPI increase to be a factor considered in setting a fair wage. The average CPI increase for calendar years 2001 through 2003 was 2.53%. The CPI part of the Association's proposal averages out to 2.1% over three years, an amount lower than the

ment. The County currently receives about \$300,000 per year. Of that amount, the Sheriff's department receives approximately \$60,000, but that allocation is discretionary. County commissioners could transfer more of the CRABS funding to the Sheriff's budget if they wanted. The Association also established that in recent years the Sheriff's department has returned a significant amount of unused funds back to the County's general fund. \$85,000 was returned in 2002 and \$65,000 in 2003. That is a significant amount of money returning to the general fund that could be used now to cover the cost of salary and benefit increases.

Despite concerns about the impact of various voter initiatives, the County has still managed to exceed its budget expectations by over \$900,000 in the past three years. In minutes of one of the County Commissioner meetings, one of the commissioners is quoted as believing 2005 will be a better year with the economy rebounding. Ex. A-37, p.3. The estimated cost of the Association's wage proposal is \$108,776 for the three year contract term. That figure includes estimated overtime. It is unlikely all deputies would switch to full family medical coverage, but even if that were to occur, the total cost of the Association's proposal with health insurance changes would be approximately \$131,547; an average cost of \$43,849 a year. The County has failed to show an inability to pay this amount or a detrimental impact on providing essential County services.

County Proposal: Effective upon the date of the Arbitrator's Award, the County proposes specific wage increases for the salary schedule steps. Those increases equate to approximately a 1% increase for each year of the CBA. The County's proposal would thus total approximately 3% for all employees over the life of the Agreement. The Association's contention that the County's proposal amounts to only a 1.2% increase over the life of the CBA is incorrect.

Wage increases in interest arbitrations are frequently tied to a selected cost of living index. Since expiration of the prior CBA, the applicable cost of living index has increased by 1% in 2002, 1.9% in 2003 and only .6% as of January 31, 2004. The County's proposal of a 3% increase over the life of the CBA is much closer to the CPI change of 3.5% over the same years than the Association's proposal of 9.3%. The Association's proposal is thus not warranted based upon consideration of the intervening CPI change. The award sought by the Association is also not warranted based on consideration of the local labor market. There has been little turnover in the Sheriff's Department, and there is no evidence that any Association member has left because of wages, working conditions or benefits. The County has not been experiencing a heavy workload or inadequate staffing that warrants special consideration by the Arbitrator. The County is actually

The Association has made prior proposals, but never bargained either compensation element into the CBA. Those elements should therefore not be included when making comparisons to comparable jurisdictions. By including them, the Association has inflated the "market average comparable." Comparability analysis must include, as near as possible, an "apples to apples" comparison. To achieve that result, the Arbitrator should evaluate only wages (for an employee of five years service), health insurance, and paid leave.

Since Whitman deputies have not had a wage increase since 2001, their compensation clearly falls short of that presently in effect at the other comparables. However, the top step deputy wage still exceeds that in Asotin County. Two recent interest arbitrations have recognized that if an arbitrator awards an increase in health insurance, the arbitrator should "err on the side of being conservative" when fashioning a wage award. By awarding the County's offered 1% per year, or even the 1.25-1.5% awarded other County employee, the Arbitrator will maintain the County's relative ranking in comparison to the comparable counties. The local labor market, lack of turnover, and ability to attract qualified applicants do not justify a wage increase greater than that.

The County has not budgeted funds necessary to pay retroactive wage increases and has no funding source to fund a retroactive award. The Commissioners Special Revenue Fund was created in 1995 "for Capital Expenditures in Whitman County." Capital expenditures cannot include payment of wages and benefits. Excise tax overpayments apply to the County's solid waste budget and provide no relief for general fund expenditures. CRAB grant money was budgeted to the County's Public Works Department for roads.

Any delay in finalizing a labor contract has not been the fault of the County. The bargaining process and interest arbitration was held up by unmeritorious unfair labor practice charges filed by the Association. The County requested twice that the parties begin bargaining before January 2002, and the Association refused. Negotiations did not commence until February 2002, and little was accomplished until the Association's bargaining representative was replaced. The County spent thousands of dollars successfully defending against two unfair labor practice charges, and has not been the reason it has taken so long to finalize a collective bargaining agreement. Given all the attendant circumstances, the Arbitrator should refrain from awarding retroactive wages.

has neither degree, so the comparisons detailed herein do not include that type of pay. Both the County and Association agree that an appropriate wage comparison should include paid leave. The cost of insurance is appropriately factored in as well.

2. *The Adjusted Base Wage Comparison*

Using a 10 year top step deputy as the benchmark, the chart below shows the Association's bargaining unit is considerably behind their counterparts at comparator jurisdictions, even using 2003 data for Franklin County. The data shown for Okanogan County has been revised to reflect a 2.5% increase deputies received in a recently finalized contract for 2004.¹²

County	Base Wage	Longevity Pay	Paid Leave	Ee Ins. Payment	Er Ins. Payment	Adjusted Base
Douglas	3753.81	75.08	389.82	-264.40	879.87	4834.18
Franklin (2003)	3727.67	74.55	401.44	-479.88	485	4208.78
Kittitas	3480	39.5	408.23	-225.64	1109.40	4811.49
Okanogan	3632	72.64	376.98 ¹³	-509.33	676.56	4248.85
Stevens	3697.43	0	412.41	-157	663.20	4616.04

¹² The copy of the 2004 collective bargaining agreement between Okanogan County and the Okanogan County Sheriff Employee Association that was provided to this Arbitrator did not have signatures. I have presumed the text accurately reflects the finalized agreement because Whitman County received a copy and did not dispute its authenticity.

¹³ Since data provided at the arbitration hearing did not factor in the 2.5% increase Okanogan deputies are receiving in 2004, I have taken the data provided for 2003 and increased that by 2.5%.

totaling 9.3% would bring the 10 Year Deputy's Adjusted Base Wage to 3.8% below the market average.

County	Base Wage	Longevity Pay	Paid Leave	Ee Ins. Payment	Er Ins. Payment	Adjusted Base
Douglas	3753.81	75.08	389.82	-264.40	879.87	4834.18
Franklin (2003)	3727.67	74.55	401.44	-479.88	485	4208.78
Kittitas	3480	39.5	408.23	-225.64	1109.40	4811.49
Okanogan	3632	72.64	376.98 ¹⁴	-509.33	676.56	4248.85
Stevens	3697.43	0	412.41	-157	663.20	4616.04
Walla Walla	3836.87	40	457.47	-464.5	986.76	4856.60
Average						4595.99
Whitman (#9.3%)	3644.06	0	478.64	-597.25	895.87	4421.32
% below average						-3.80%

The Association's request for a "catch-up" increase is therefore supported by the comparator data.

3. *Other Considerations.*

The inquiry does not end at this point. One must next consider if other considerations merit an upward or downward adjustment in the wage increase being considered. The first consideration is fact that when substantial disparities

¹⁴ Since data provided at the arbitration hearing did not factor in the 2.5% increase Okanogan deputies are receiving in 2004, I have taken the data provided for 2003 and increased that by 2.5%.

use of 90% becomes even more appropriate when the County is assuming a larger share of those expenses, as it will with this Award.

If the historical bargaining pattern had been followed to arrive at a 2002-2004 CBA, the CPI-W for the year ending June 30, 2001 would have been used to adjust the 2002 base rate. Ninety percent of that reported CPI-W change is 2.97%. Rounding that up to 3% helps to compensate for the fact that the Association's bargaining unit has waited two and a half years to begin receiving a wage increase for 2002. For 2003, a COLA adjustment based on 90% of the CPI-W would amount to .9%. For a bargaining unit that is so significantly behind its comparator wages, that is too small an adjustment. I am mindful that most County employees have their wages frozen in 2003, but the corrections bargaining unit received an increase of 1.5%. The record is persuasive that Whitman County deputies should receive at least that much.

A 90% COLA adjustment for 2004 would amount to 1.7%. If that COLA is compounded with a 3% increase for 2002 and a 1.5% increase for 2003, the resulting base wage in 2004 for a 10 year deputy would become 3544.78. As shown below, the adjusted base wage (with a 60% dependent insurance contribution by the County) would bring this benchmark position to within 6.24% of the comparator average.

County	Base Wage	Longevity Pay	Paid Leave	Ee Ins. (40%)	Er Ins. (60%)	Adjusted Base
Douglas	3753.81	75.08	389.82	-264.40	879.87	4834.18
Franklin (2003)	3727.67	74.55	401.44	-479.88	485	4208.78

4. *Retroactivity*

The County has tried to characterize its final interest arbitration proposal as amounting to 1% each year of the contract. That is certainly not how the proposal reads. The County's proposal changed each existing wage on the salary schedule by different amounts that averaged out to slightly over 1%. The proposal expressly states that these one time changes would be effective only upon ratification of the CBA, and no further increases are specified. I fail to understand how the County proposal equates to 1% each year when the County has sought to have this Arbitrator refrain from making any awarded increases retroactive to the years when they would normally have applied.

The County's final offer to the deputies did not even equate to the kind of increases other County employees were receiving. Individual members of the Association's bargaining unit have continued to provide their services in good faith ever since the prior labor contract ended. Whatever the ill will that may have developed between negotiators at the bargaining table, and irregardless of where the blame may lie for the fact that this interest arbitration was delayed until 2004, the purpose of the statutory process is to ensure that arbitration eligible employees receive fair and equitable wages and benefits. Whitman deputies have been adversely affected enough by the fact that during the intervening period of time, they have borne the full weight of dependent premium insurance increases. There is no justification for denying them a retroactive wage adjustment with increases for each year that are compounded.

frequently than before. Tr. 172 (Myers). FTO's receive no extra compensation unless their duties cause them to work extra hours that become overtime.

Association Proposal: The Association is seeking to add new language to the CBA that would provide 5% incentive pay for officers who serve as FTO's. As modified at the arbitration hearing, the new article would read: "Field Training Officer (FTO). Officers who are assigned to serve as a Field Training Officer (FTO) shall receive a five percent (5%) incentive pay based on their current step for the time spent in the actual training of new full time regular deputies." The Association agreed at the hearing that its proposal would not require incentive pay for training reserve officers or lateral hire officers. Tr. 178-181, 216-218, 475-476.

The Sheriff supports premium pay because FTO's act in a supervisory capacity and must spend extra time evaluating trainees and completing paperwork. There is also potential liability that arises from failing to train a new deputy properly. The Association equates FTO pay to working out of class pay, and feels it is justified to compensate for increased duties and liability, especially since the increased cost associated with this premium is not significant. The Department is fairly small and the training does not occur that often.

County Proposal: The County seeks to maintain the current status quo of no FTO incentive pay. Training has always been part of the job duties for Association members, as it is for most County employees. No other County employee receives premium pay for that training. Maintaining internal parity is an important priority for the County.

The County provided FTO pay in a prior collective bargaining agreement, but the bargaining unit opted to bargain that benefit away. Without a showing that circumstances have changed to warrant the reintroduction of FTO pay, the Arbitrator should not grant a take back of something the County gained through bargaining.

The Sheriff testified that the Association's proposed 5% premium would equate to at least an additional \$500 per trained employee. That is an additional cost the County should not be required to incur. Contrary to the Association's claim, comparable jurisdictions do not use FTO pay. Only Asotin County and Stevens County have any form of FTO pay and the premium they provide is substantially less than what the Association proposes.

Discussion and Findings: The burden of persuasion rests upon the Association regarding its FTO premium. Even though other County employees do

members a regular right to change their representation if they so choose. A change of bargaining representative cannot occur while a labor contract is still in effect. Adopting the County's proposal would thus violate both public policy and state law.

The Association should not be penalized for the fact that ULP's were filed and certification to arbitration was suspended for awhile. Regardless of who can be blamed for the fact that the resulting contract will now be close to expiration, it would be patently unfair to extend the labor contract for one or more years when the Association presented no wage proposals for any subsequent years. Moreover, in anticipation that new negotiations would occur for a successor 2004 contract, the Association made choices as to which issues to take to interest arbitration and which could wait until the parties were back at the bargaining table. New issues have also arisen that were not raised in time for certification to interest arbitration. For all the foregoing reasons, the Arbitrator should adhere to the intent of RCW 41.56.070 and continue the status quo of a three year term.

County Proposal: The County seeks a contract whose term would extend at least through December 31, 2005. The County contends that despite the three year limitation in RCW 41.56.070, arbitrators have crafted awards longer contracts in situations where a shorter term leaves the parties right back at the bargaining table. Finalizing a contract that ends in six months is inefficient and not a sensible solution. The Arbitrator should find some creative way to fashion an award that results in a contract extending through December 31, 2005.

Discussion and Findings: There would certainly be a benefit from giving the Association and County a break from negotiations. Finalizing the current contract has been a long, arduous and expensive process; one that has generated hard feelings on both sides. However, there are countervailing considerations, that make a three year contract the better option.

RCW 41.56.070 contains a directive that collective bargaining agreements negotiated under Chapter 41.56 be limited to a three year term. The reasons have to do with ensuring a periodic right for employees to change their bargaining representative if a majority so chooses.

RCW 41.56.070 Election to ascertain bargaining representative.

legal challenge over the Arbitrator's authority to ignore a governing statute. Further litigation is the last thing the County and Association's bargaining relationship needs. The Association's proposal for a three year term is therefore adopted.

IV. THE INTEREST ARBITRATION AWARD

After considering the applicable statutory factors described in RCW 41.56.465, and with due regard for the County's financial situation, the Arbitrator makes the following award:

Article 8 (Overtime and Shift Differential): The County's proposal to modify this Article is not adopted.

Article 11 (Insurance): The current text of Article 11.02 shall be deleted as obsolete, and the text of Article 11.03 shall be changed to read: "The County shall contribute 60% of the cost of dependent coverage for medical, dental and vision insurance effective July 1, 2004. Article 11.04 shall read: "The County shall continue to make available the Section 125 Cafeteria Plan for medical savings, health care cost pre-tax deductions and childcare reimbursements." The reopener language contained in Article 11.05 shall be deleted.

Article 16 (Wages): The salary steps set forth in the CBA's Salary Schedule shall each be increased by 3% effective January 1, 2002, 1.5% effective January 1, 2003, and 1.7% effective January 1, 2004. The increases are to be retroactive and compounded in their application.

New Article (FTO Premium): The Association's proposal for FTO incentive pay is not adopted.

Article 23 (Duration): the term of the CBA shall be from January 1, 2002 through December 31, 2004.

Dated this 18th day of June, 2004 by



Janet L. Gaunt, Interest Arbitrator