In the Matter of the Interest Arbitration

between Clark County Deputy Sheriffs' Guild ("Guild")

and

Clark County, Washington / Clark County Sheriff's Office ("County").

Findings, Discussion and Award.

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Case Numbers:	Washington Public Employment Relations Board case No. 23615-I-10-0559. Arbitrator's M16.
Representing the Guild:	Sean Lemoine and Maker, Lemoine & Goldberg, PC, 515 MW Saltzman Road, Suite 811, Portland, OR 97229.
Representing the County:	Bruce L. Schroeder and Summit Law Group, PLLC, 315 Fifth Avenue South, Seattle, WA 98104.
Arbitrator:	Howell L. Lankford, P.O. Box 22331, Milwaukie, OR 97269-0331.
Hearing held:	In the offices of the County in Vancouver, Washington on May 22, 2012.
Witnesses for the Guild:	Robert Mullikin, Christopher Luque, Edward Bysma, Missy Skeeter, Bill Sofianos, Keith Kilian, Debera Feagler, Mark Makler, Chuck Atkins, and Ronald J York.
Witness for the Union:	Jim Dickman, Darin Rouhier, Kathy Meyers, Candy Arata, and Mike Evans.
Post-hearing argument received:	From both parties by email on July 20, 2012.
Date of this award:	July 30, 2012.

This is an interest arbitration authorized by and conducted under the provisions of RCW 41.546.465 *et.seq*. The parties stipulate that the statutory requirements leading up to this proceeding have been satisfied, as have the preliminary steps of the interest arbitration proceeding itself. No objection was raised to the scope of the issues presented at the hearing. The hearing was orderly. Both parties had the opportunity to present evidence, to call and to cross examine witnesses, and to argue the case. Testimony was taken down by a court reporter, and the parties, and all three members of the arbitration panel, have had the benefit of a full transcript in preparing and considering the written post-hearing briefs. The parties agree that the County shall be the official custodian of the record of this proceeding after the issuance of this Award (and shall hold the arbitrator harmless in that regard).

This dispute was initially set for hearing on July 7 & 8, 2011; but the parties worked out a tentative agreement on the morning of July 7, and the case was suspended pending ratification of that TA. Ratification failed; and the dispute returned to hearing on May 22, 2012. Both parties offered evidence of the terms of the failed TA; and neither party objected to the receipt of such evidence. Many of the issues initially certified to interest arbitration by PERC have been resolved. PERC certified:

- Article 7 Paid Days Off
- Article 10 Hours and Overtime
- Article 11 Rates of Pay
- Article 12 Other Pay Provisions
- Article 13 Health and Welfare
- Article 14 Uniforms and Equipment
- Article 19 General Provisions
- Article 22 Duration

By the date of hearing the unresolved issues was pared down to five: In Article 7, the parties disagree only about the County's proposal to restrict paid days off (PDO) sell-back by adding the expression, "if funds are available." In Article 10 the parties disagree only about the Guild's proposed Safety Release language, although this is a particularly significant dispute in this case. There are two economic disputes in Article 12. First, the parties agree on a 0% increase for 2009 and 2010; and they agree on a 2% increase for 2011; but for 2012 the County proposes another 2% increase and the Guild proposes 2.5%. Second, the County resists the Guild's proposal to increase shift differential by $0.10 per hour for both swing and graveyard shifts. There are no remaining disputes in Article 12. In Article 13, the parties agree to institute cost-sharing in the health insurance provision, but they disagree about the exact division, with the County proposing to pay 93% of the weighted average premium costs and the Guild proposing that the County pay 95% of dependent premiums and 100% of employee premiums. The parties also agree, prospectively, to include the Deputies unit under the same insurance coverage as the rest of the County workforce. There are no outstanding disputes under Articles 14 or 19; and the parties agree—under Article 22—that the contract at issue here shall cover the period from January 1, 2009 through December 31, 2012.

Background: Clark County and the Guild. The Guild represents about 130 sworn Deputy Sheriffs and Sergeants employed by Clark County (whom I will refer to collectively as "Deputies). Clark County lies just across the Columbia from Multnomah County, Oregon and from the City of Portland. Until the economic downturn of 2008, Clark County was one of the fastest growing counties in Washington.

Clark County, A Recent Economic History. About 39% of the County's General Fund comes from property taxes.[1] New construction is particularly significant under Washington's system of county finance: there is a 1% annual cap on the increase in tax rates for *existing* structures, but new construction is taxed at actual value. Since 2008, new construction in the County has declined so precipitously that the County now must cover about $1M of the $4.7M annual debt service previously covered by real estate excise tax collections. Over that same period, housing values have also declined to the point that the existing tax rate is narrowly approaching the statutory cap of $5.9 per $1,000 valuation.

About 17 % of the General Fund comes from sales taxes. Sales taxes have been partially driven by construction spending in the past, so the construction slump since 2009 has impacted General Fund income through sales tax as well as through property tax.[2] The construction related percentage of sales tax revenues has declined from about 38%—from 2001 to 2008—down to only about 20%. There is no reason, on this record, to anticipate a return to higher construction rates any time in the near future.[3]

The third and final substantial source of General Fund revenue is intergovernmental grants. But that source, too, is in decline and is expected to exhibit an 11% decline in 2012 compared with 2010.

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1. It is appropriate to limit the discussion here to the General Fund. A small percentage of the Sheriff's Office funding comes from a Narcotics Task Force fund, and the County characterizes road Deputies in a manner that allows the diversion of a small percentage of Road Fund moneys to the Sheriff's Office. But the overwhelming majority of funding comes from the General Fund.

2. An economist witness for the Guild suggested that the 2008 economic downturn was overstated because it focused on construction, which represents only about 5% of the DGP. But new construction plays a far more important and double barreled role in county finance in Washington than in the national economy generally. The Guild argues that the national economic downturn was followed by a prompt return to increasing per-capita GDP; but crucial construction activity has not recovered, either nationally or in Clark County.

3. The County points out that, unlike comparable Washington counties, its residents need only drive across the Columbia in order to avoid sales taxes altogether in Oregon. The County claims that it loses about $14M per year in sales tax revenue to Oregon purchases.

The County's response to the sharp income decline since 2008 has included substantial layoffs throughout the workforce. The Sheriff's Office sworn staffing reached a high point of 157 positions in 2008. Over the next two years, staffing declined through three separate layoffs to about 136 (including seven outside the bargaining unit). The final 2010 layoff included seven filled positions. At the end of those layoffs, there were no vacant positions; and the staffing has remained essentially unchanged since then. In dollar terms, the three budget reductions totaled almost $9M from the Sheriff's Office alone. Over the same four year period as the 13% decrease in sworn staff, the service population of the County increased about 3%, from 202,000 to 208,000.

The County has seen three consecutive years in which its expenses have grown by about 5% per year and its revenue by only about 3%. And it is difficult to support the general claim that economic recovery is just around the corner in Clark County. The County's unemployment rate rose to almost *11% in February of 2012*, which was 3% above Portland and substantially above the state-wide averages for both Washington and Oregon.

The factors to be considered under RCW 41.546.465. Before beginning an analysis of the particular record here, it is useful to review in general the analytical tools which the statutory scheme makes available to an interest arbitration panel. The Washington interest arbitration statutory scheme—and particularly RCW 41.546.465—directs an arbitration panel to "be mindful of:"

> (1)...the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, the panel shall consider
> (a) The constitutional and statutory authority of the employer;
> (b) Stipulations of the parties;
> (c) The average consumer prices for goods and services, commonly known as the cost of living;
> (d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and
> (e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment...
> (2) For employees listed in RCW 41.56.030(7) (a) through (d), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.

"*The constitutional and statutory authority of the employer*." The elected Sheriff is the appointing authority for Corrections Officers; and the County has budgetary responsibility for them. The Sheriff is not alone, of course, in operating under the budgetary authority of the County. Other elected officials are dependent on the County as the governmental entity responsible for their budgets and for managing the attendant taxation and expenditure functions. The statute does not say "...authority of the employer *with respect to the employees at issue*," and this part of the statute requires an interest arbitrator to take into account the fact that public

employers almost always have constitutional and statutory authority—and therefore responsibility—which extends beyond the bargaining unit involved in the interest arbitration. It would be strange for an interest arbitration panel to turn a blind eye to such additional responsibilities. On the other hand, this is only one of the factors which the panel is required to consider: I am not directed to defer to the economic prioritizations chosen by the employer, and doing so would make the entire interest arbitration process quite pointless.

"*Stipulations of the parties*." Most importantly, these parties agree to the issues remaining for resolution through interest arbitration. They also agree that all the provisions of their prior contract will continue into the new contract except for the agreements initialed during negotiations and the items in dispute here. And they agree that the period covered by the agreement at issue will be 2009 to 2012.

"*The average consumer prices for goods and services, commonly known as the cost of living*." The Guild notes that the CPI-U All Cities index increased by over 7% from June 2008 to June 2011, which is substantially more than the total increase proposed by the Guild for the 2009-2012 contract. The County notes that the Deputies have almost exactly kept pace with increasing cost of living over the last decade.

"*[O]ther factors...that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment.*" The relevant "other factors" here include recruitment and retention, internal comparability, and the economic condition of the employer, which is often---and unfortunately---labeled "ability to pay."

Recruitment and retention—i.e., the employer's ability to hire and to hold employees in the bargaining unit—is sometimes a compelling factor in interest arbitration cases; but those are usually the cases in which there have been substantial *problems* in hiring or holding onto employees. When, as in the case at hand, there have been no problems with recruitment or retention, that simply deprives the union of what might otherwise be a substantial driver of salary increases. Recruitment and retention deficiencies tend to be somewhat self-limiting since employers usually pay some attention if they find that they cannot hire and hold qualified employees. No reasonable interpretation of the statutory interest arbitration scheme can exalt that minimum pay rate to become the statutory standard.

Internal comparability is not traditionally restricted to other units with access to interest arbitration. Unions representing interest arbitrable employees sometimes propose an analytical wall separating those employees with access to interest arbitration from those without. It is certainly appropriate to recognize the inherent difference in the bargaining dynamics of those two sorts of units; but internal comparability, even across that dividing line, is a significant and sometimes compelling factor in wage determinations.

"Ability to pay" may be the least helpful and most confusing analytical tool in public sector interest arbitration. The term was borrowed from private sector labor law where it is part of case law which is quite foreign to the public sector. In the private sector, there is a well

established legal consequence of an employer's claim of an *in*ability to pay for the union's proposal: An employer who claims an inability to pay is required to open his books to inspection by the union. Private sector employers hate that. So private sector employers dance very carefully around any claim of inability to pay. In the public sector, of course, the prize at issue in the private sector—the employer's financial records—is already a public document, so private sector ability to pay analysis is severed from its fundamental significance in bargaining and becomes quite unhelpful. Public sector employers seldom if ever claim a technical inability to pay the cost of a union's proposal in the private sector sense.[4] And if a public employer ever did make that claim, so what? The union already has "the books."

In an attempt to salvage something out of the resulting analytical shambles, public sector terminology sometimes shifts to "ability to afford," the term that private sector employers usually shift to in bargaining in order to avoid the legal consequences of a claim of inability to pay. But that term on its face is unhelpful.

"Financial responsibility" might be a better term for this traditional factor. The basic economic argument offered by public sector employers in interest arbitration cases amounts to a claim that the union's proposed allocation of the employer's financial resources would be irresponsible, i.e., that funding the union's proposal would deprive the employer of its ability to fund its other statutory responsibilities at a responsible level or would leave the employer in a fiscally irresponsible condition either immediately or in the future.[5] That consideration, too, is a factor normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment.

Comparability is best addressed in terms of the record in the case at hand. The County and the Guild resorted to the interest arbitration process in 1996; and in that proceeding they *agreed* that the appropriate comparables were Kitsap, Spokane, Thurston and Yakima Counties in Washington and Clackamas, Washington, and Marion Counties in Oregon. Both the 1996 agreement of the parties and the prior use of those comparables in interest arbitration argue strongly for their continued use here. The County admits that all seven of those counties fall within the traditional ±50% range in terms of population; but it claims that both Marion and Yakima Counties now fall outside that measure of similarity in terms of assessed valuation and that they therefore should be excluded. But the County's 2011-2012 assessed valuation numbers

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4. In the words of the Guild's financial witness, "the County is not going to go broke" even with the Guild's economic proposals. But that is a virtually inevitable feature of statutory interest disputes, and it is therefore not very helpful as a decisional factor.

5. The standard, wrote arbitrator Gary Axon (NAA) in *ATU 587 v. King County* (2006), "is not whether the Employer has the complete inability to fund the Union's proposal. The standard is one of fiscal constraints that limit the ability of an employer to pay the proposed wage increase." I submit that "financial responsibility" captures that consideration far better than "ability to pay" with its private sector analytical baggage.

are $38,036,000 for Clark County, $20,053,000 for Marion, and $15,057,000 for Yakima. 50% of Clark County is about 19,018,000, and Marion County is inside that cutoff. Yakima County, however, is indeed below the 50% cutoff; it is even barely below a 40% cutoff.[6] It is not clear whether the statute *allows* the use of a comparable which is so dissimilar in "economic size."

The Guild proposes to continue the use of the seven comparables from the prior interest arbitration and to add Multnomah County, Oregon, and the City of Vancouver. The County objects to the addition of Vancouver because Vancouver is not a county and therefore not a "like employer" under the statute. There are obvious similarities in the policing work done in a city and the policing work done in a county. But RCW 41.546.465 limits the comparison process in two distinct ways: "like personnel" and "like employers." City police officers and county deputies may very well be like personnel; but that does not show that cities and counties are like employers. Arbitrator Janet Gaunt (NAA) summed it up in her 1997 award in *City of Pullman* (at 11): the "better approach is to avoid mixing city police departments and county sheriff's departments on the list of prime comparators, at least when enough other comparators can be found without doing so."[7] Even though the record shows that the parties used the City in their interest-based bargaining, on the record before me, the City of Vancouver is not an acceptable comparable for Clark County. With respect to Multnomah County, the obvious difficulty is a difference in size. Multnomah County is more than 70% larger than Clark County in population and almost 65% larger in assessed valuation. On the record before me, I cannot conclude that the two counties are "of similar size" under the statute.[8] That leaves six comparators, which are those agreed on by the parties in the course of arbitrator Gary Axon's 1996 interest arbitration less Yakima County, which appears to have fallen outside the "similar size" statutory limitation.

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6. It can be argued that assessed value per capita is at least as significant as simple assessed value in determining the "economic size" of a potential comparable; but the record here does not include data showing assessed value per capita.

7. Arbitrators must always honor the prime directive of any judicial or quasi judicial body, i.e., find a permissible basis to decide the case at hand. In light of the language of this statute, however, it is not clear whether mixing cities and counties is ever permissible under the comparability portion of the statute. The parties did not address that issue in the case at hand, and it is not appropriate for me to do so either. The Guild's financial expert argued that the local "market drivers" for police officer pay are the City of Vancouver, Multnomah County, and the Cities of Portland and Hillsboro. I do not disagree with that suggestion; but the moral is simply that the language of RCW 41.546.465(2) does not aim at the identification of a classic labor market as part of the interest arbitration process.

8. There is a respectable minority body authority arguing that the proper mathematical implementation of "similar" in such statutes should be in terms of a product rather than a sum, i.e., 'half or twice' rather than '±50%.' The parties did not address that issue, and I must agree with the County's adoption of the traditional additive approach, ±50%.

COMPENSATION

Pay rate. The parties agree that there shall be no change in the existing rate for 2009 and for 2010, and that there shall be a 2.0% increase for 2011. The only disagreement is the 0.5% separating the County's 2% proposal for 2012 and the Guild's 2.5% proposal.

Pay raises are most often driven by comparability (including, occasionally, internal comparability) data or by an escalating cost of living. The Guild offers a total compensation analysis which reflects hours of work, base pay, longevity, employee and employer insurance contributions, and the value of the total leave available. Here are the resulting "adjusted base" numbers, according to the Guild as a snapshot as of the date of hearing:[9]

	5 years	10 years	15 years	20 years	5+BA	10+BA	15+BA	20+BA
Kitsap Co.	7,847.63	8,351.95	8,492.28	8,549.74	7,847.63	8,351.95	8,492.28	8,549.74
Spokane Co.	7,079.52	7,223.97	7,395.63	7,648.93	7,351.67	7,414.47	7,477.27	7,648.93
Thurston Co.	8,341.07	8,544.36	8,652.71	8,786.56	8,534.55	8,697.26	8,775.03	8,878.30
Clackamas Co.	8,014.89	8,132.23	8,227.56	6,322.88	8,142.95	8,260.30	8,355.63	8,450.95
Marion Co.	6,571.70	7,733.66	7,127.76	7,301.56	6,934.53	7,279.92	7,619.46	7,802.80
Washington Co.	7,379.17	7,443.75	7,508.33	7,572.91	7,603.05	7,835.54	7,956.09	8,020.67
AVERAGE	7,539.00	7,904.99	7,900.71	7,697.10	7,735.73	7,973.24	8,112.63	8,225.23
Clark County	7,642.52	8,286.36	8,329.82	8,373.94	7,642.52	8,286.36	8,329.82	8,373.94
% Difference	-1.35%	-4.60%	-5.15%	-8.08%	1.22%	-3.78%	-2.61%	-1.78%

The numbers for Clark County include the agreed 2% increase for 2011 but no increase for 2012. The Guild also offers AA numbers, which are more or less mid-way between these two sets. On the basis of the Guild's own data, therefore, the Deputies are, on average, 3.26% ahead of the average of the comparables.

The County offers a simple ten year benchmark top step approach to comparability (without Marion County). The Guild takes issue with the simplicity of that analysis in several particulars and offers the "corrected" numbers at the right.

Thurston Co.	6,238.32
Kitsap Co.	5,886.50
Washington Co.	5,737.00
Clackamas Co.	5,453.00
Spokane Co.	5,633.51
AVERAGE	5,789.67
Clark County	5,827.00
% difference	-0.64%

9. Clark County Deputies work an unusual 2,184 hour work year; and both sets of numbers below have adjusted in one way or another for that difference.

The Guild fares a bit better on the County's "corrected" numbers than on the Guild's more detailed analysis. But either way, as far as this record shows, the Deputies are *currently above the average* comparable compensation; and the comparability factor under the statute cannot justify an increase over the 2% which the County proposes. Even adding in the inherent limitations of a "snapshot" approach to comparability does not much help the Guild. It was not uncommon for interest-arbitrable units to sit out the post-2008 economic downturn without a new contract, so many such units are now in bargaining or in interest arbitration. In particular, Kitsap County Deputies are scheduled for interest arbitration in late October; and Spokane County Deputies began mediation in June; so the averages may well go up during the life of the contract at issue here. But that contract now has less than half a year to run, so the Guild and the County will have an opportunity to revisit the comparability issue quite soon in light of whatever rates Kitsap and Spokane Counties agree to by the end of 2012.

If comparability is not an effective driver of the additional 0.5% rate increase for 2012, neither is the recent change in the cost of living. The County points out—once again using the top step as a point of reference—that its 2.0% proposal for 2012 would keep the Deputies almost exactly even with inflation over the past twelve year period at an overall increase of 31.75%.

Internal comparability does not demand a 2.5% increase in 2012. Rather, the County's other bargaining units have generally accepted the 2.0% which the County proposes here, although the Guild points out that some other units received increases over 2009 and 2010, which are years for which the Guild has agreed to no increase.[10] Similarly, the record does not suggest a substantial problem with recruitment or retention of Deputies.[11] There were no voluntary separations at all during 2011 and the first half of 2012l; and the County's record of six separations for personal reasons over the last five years is enviable rather than threatening for a department of this size.

The *only* substantial evidence in this record in support of the Guild's rate proposal is the difference between Deputy pay rates and pay rates for City of Vancouver Police Officers. The Guild's data shows that Vancouver pay is greater by somewhere between roughly $200 and $1,200 per month. Even assuming that Vancouver Police compensation is a permissible consideration at all as an "other factor" (RCW 41.546.465(1)(e)), that difference alone is not enough to justify the additional increase proposed by the Guild.

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10. The record does not show whether those increases were required by contracts which began before the 2008 economic downturn.

11. Any suggestion of substantial problems with recruitment and retention over the period of the current economic downturn would be a serious problem indeed due to the very high unemployment rate and low job mobility during this extended period.

In short, particularly in light of the County's current financial condition and problematic income outlook, the record does not support the Guild's proposal for an additional 0.5% rate increase in 2012.

Shift Differential. The Guild also proposes a $0.10 per hour increase in shift differential, from $0.30 for swing and $0.40 for graves up to $0.40 and $0.50 respectively. The Guild's task in justifying this proposal is complicated by the fact that *none* of the comparable counties has any shift differential at all for its Sheriff's Department bargaining unit. Indeed, the limited record on this issue suggests that even the City of Vancouver pays a rate of only $0.25 for swing shift. Instead, the Guild points to the County's CBAs with its custody officers and with the Records/Support personnel, which call for differentials of $0.40/$0.50 and a flat differential of $0.90 respectively. But the County points out that custody officers' overall compensation is still significantly less than that of Deputies, and overall, particularly in light of the overwhelming comparability data, the record gives me no way to justify an award of the Guild's proposed increase in shift differential.

PDO Sellback. Two of the remaining items share a common driver: the bargaining unit is now near a bare minimum as measured by the Sheriff's own staffing standards. That means that it is harder to take vacation time—at least, it is harder to take *desirable* vacation time—and it means that more overtime is required, which increases the chance of a Deputy getting insufficient rest between shifts. The Guild therefore proposes new language addressing "safety release" time; and the Guild resists the County's proposal to restrict the sell-back of "PDO."

Paid Days Off (PDO) is "vacation, illness, holidays or personal business time off" all combined. Each Deputy is credited with an amount of PDO each year based on completed years with the Department. For example, an employee who has completed five years accrues 351 hours, and an employee who has completed ten years accrues 394 hours. The contract sets an accumulation cap at 1.33 times a Deputy's annual accrual rate. PDO is used, first in the annual seniority-based scheduling vacation scheduling of "at least ten shifts of PDO." After that process is concluded, PDO leave applications are addressed on a first-come-first-served basis within a shift or unit and are granted or not depending on the established staffing minimums for that shift or unit. The contract also allows a Deputy to sell back up to 60 hours of PDO each year (with some conditions). If a Deputy has not used down or sold down his PDO by the time of the next accrual, and the new accrual would put him or her over the cap, the PDO over the cap is lost.

In the face of the reduced staffing of the Department, some Deputies have lost PDO accrual when their accounts overflowed the contractual cap on accumulation. Such a loss may result from another Deputy's extended sick leave or administrative leave in the same assignment unit—making it impossible to get additional PDO due to staffing minimums—or such a loss may result from a Deputy's voluntary training time; or such a loss may result from a Deputy's working so much overtime that he or she finds it difficult to use down the PDO. In some cases, Deputies have lost PDO even after they donated some of their accumulated PDO to other officers.

Nevertheless, the County proposes to make the following addition to Section 7.7, which addresses the sell-back of PDO and would bring the Guild contract into step with every other CBA in the County (changes not shown here have been agreed to by the Guild):

> 7.7 Employees may sell back a maximum of sixty (60) hours of accrued PDO time per year, provided the employee has taken a minimum of eighty (80) hours of PDO time in the twelve (12) months preceding the sell back request.
>
> 7.7.1 Two (2) opportunities to sell back PDO hours shall be offered per year in June and December. Requests must be submitted by May 15 and November 15, respectively on forms designated by the payroll office.
>
> 7.7.2 The total of PDO sold back may not exceed the maximum hours limitation may be apportioned according to the employee's choice between the June and December periods.
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> **7.7.3 The PDO sell-back option is subject to availability of adequate funds. PDO sell backs may be restricted or suspended by the County. In the event PDO sell back requests exceed available funds, procedures will be developed to equitably apportion PDO sell backs among employees with pending requests.**

The Guild's argument here is eloquent (Post-hearing Brief at 5): "It does seem inequitable that the County has the ability to limit an employee's ability to use a benefit that was bargained for by the Guild, due to the County and Sheriff's decision not to hire additional staff creating low staffing levels, while at the same time the County has the power to establish shift minimums, which makes it difficult for deputy sheriffs assigned to patrol to use PDO and get time off." The Guild points out that 3% of the Deputies were at the maximum accumulation by May 15; another 3% would join then on May 30; another 3% on June 15; and yet another 4% on June 30.

The County replies, first, that PDO buy-back is expensive at a time when the County can ill afford it. Second, unrestricted PDO sell-back is not to be found in either external comparables or in any other County bargaining unit. And finally, PDO sell-back is often required because Deputies do not take "undesirable" vacation time even when they should realize that they will hit the accrual limit in the near future: In essence (Post-hearing Brief at 21-22), "the County requires deputies to utilize PDO when they approach the accrual maximum. As long as minimum staffing levels are satisfied, the County liberally grants time-off requests..."

The stumbling block for the Guild's argument here is the following provision in Section 7.3 of the *existing* PDO Article:

> Exceptions to the maximum accrual shall be allowed by the Sheriff or his/her designee where the Sheriff's reasonable operating needs do not allow an employee to use PDO prior to reaching the maximum accumulation, provided the employee agrees to a plan to reduce his accumulated PDO below the ceiling within sixty (60) days and the employee has complied with the minimum usage requirements under Section 7.6.

There is no sign in the record here of any grievance history under this provision, although some of the Guild witnesses testified that they had made similar requests without success. The thrust of the Guild's argument against the County proposal here is that the reduced staffing has made it impracticable for Deputies to take enough PDO to stay below the accumulation cap, but this language of Section 7.3 appears to address exactly that sort of situation, and the record does not explain why the 7.3 approach is not adequate. The lack of a record of grievances under Section 7.3 seems to support the County's claim that Deputies own failure to take PDO at "unattractive" times—even though they should know that they are at risk of going over the accumulation cap—plays a major role in the loss of PDO accrual. Combining that problem with the County's observation that none of the comparable counties—and none of the other Clark County bargaining units—have unrestricted PDO sellback, the record does not support the Guild here, and I will award the County's proposed limitation.

Safety Release. The current staffing shortage sometimes makes it difficult for a Deputy to get adequate rest between shifts. The Guild proposes this new provision to address that problem:

Safety Release Leave.

A. An employee who is assigned to patrol and who is required by the County to work sixteen (16) or more hours in any twenty-four (24) [hour] work day and who is required by the County to work in the next contiguous twenty-four (24) hour work day shall be guaranteed at least eight (8) hours off duty before being required to return to active duty status.

B. Prior to working sixteen (16) hours or more hours in any twenty-four (24) hour work day the employee assigned to patrol shall make the on-duty shift sergeant aware that the employee believes their current work assignment may result in the employee working sixteen (16) or more hours in the twenty-four (24) hour work day and such work may result in safety release leave.

C. In order to effectuate how safety release leave is to be provided, the following example[s] demonstrates how the employee will be compensated:

   1. A Graveyard shift employee works 19:00 to 07:00 hours (12 hours worked). The Graveyard shift employee is then required to be in court from 08:30 to 12:30 (4 hours worked). A total of 16 hours was worked within a 24-hour work day.
   2. To ensure that the employee gets 8 hours off duty from 12:30 to 20:30, the employee is not due back to work until 20:30 and the employee will be compensated for their regular work hours from 19:00 to 20:30 as safety release leave with pay and the employee will work from 20:30 until 07:00.

There is no serious dispute that the public interest is not well served by requiring police officers, whom we entrust with the exercise of deadly force, to go on-shift essentially drunk with fatigue from the prior shift. The County's objection to the Guild's proposed language focuses less on the idea of an assured eight hour break than on the issue of where the funding for that

time should come from. This case was first set for hearing in July of 2011; but the parties worked out a tentative agreement before that date. The Guild later rejected that TA, in part because of the funding it included for Safety Release Leave.[12] That part of the TA would have replaced "guaranteed" in paragraph A with "offered an opportunity," thus leaving the Deputy with an *option* to work his or her regular upcoming shift; and it would have added this funding provision near the end of the proposal, after "...safety release leave...:" "...by the employee choosing to use any of their accrued paid leave, except sick leave or Kelly time leave..." The core of the dispute remaining in the case at hand, therefore, is not the addition of a safety release leave provision but the allocation of costs for such leave.

Neither party addresses that limited issue in much detail. The County argues that the Guild's proposal—which would allocate the cost to the County—borders on an impermissible gift of public funds. But everyone agrees that it is in the interest of the public that armed Deputies should not be going on duty in a sleep-deprived state, and it is not clear why the avoidance of that consequence would not be a legitimate, and even compelling expenditure of public funds. On the other hand, with respect to the issue of allocation of costs, the Guild mainly points to the City of Vancouver, which pays for the equivalent of safety release time. But the City of Vancouver is not a comparable here; and the Guild does not claim that any of the legitimate comparables provide such a benefit on an employer-paid basis. (The problems resulting from short staffing may reasonably be assumed to be pretty widely spread throughout the State.)

On the basis of this limited record, therefore, I must conclude that the TA once reached by the negotiators is the most reasonable first attempt at a solution to this very serious problem. My only misgiving is that that language could be interpreted to deprive supervisors of the discretion to *assign* safety release time if a Deputy chooses not to expend his or her accumulated leave in order to take it. I therefore add a paragraph D to the awarded language as follows:

Safety Release Leave.

A. An employee who is assigned to patrol and who is required by the County to work sixteen (16) or more hours in any twenty-four (24) hour work day and who is required by the County to work in the next contiguous twenty-four (24) hour work day shall be offered the opportunity for at least eight (8) hours off duty before being required to return to active duty status.

B. Prior to working sixteen (16) hours or more hours in any twenty-four (24) hour work day the employee assigned to patrol shall make the on-duty shift sergeant aware that the employee believes their current work assignment may result in the employee working sixteen (16) or more hours in the twenty-four (24) hour work day and such work may result in safety release leave.

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12. The Guild did not object to the introduction of this part of the TA, and both parties address it in argument.

C. In order to effectuate how safety release leave is to be provided, the following example[s] demonstrates how the employee will be compensated:

1. A Graveyard shift employee works 19:00 to 07:00 hours (12 hours worked). The Graveyard shift employee is then required to be in court from 08:30 to 12:30 (4 hours worked). A total of 16 hours was worked within a 24-hour work day.
2. To ensure that the employee gets 8 hours off duty from 12:30 to 20:30, the employee is not due back to work until 20:30 and the employee will be compensated for their regular work hours from 19:00 to 20:30 as safety release leave by the employee choosing to use any of their accrued paid leave, except sick leave or Kelly time leave, and the employee will work from 20:30 until 07:00.

D. If an employee in such a situation chooses not to take safety release time out of his or her leave balance and is assigned safety release time by the shift sergeant, that safety release time shall be paid by the County at the straight time rate.

HEALTH & WELFARE

The parties have agreed that the County would continue to pay 100% of the premiums for both employees and dependents for the first three years of the contract at issue; and they agreed that the Guild would shift coverage for 2012 from the prior enhanced coverage to the County's standard medical, dental and vision plan and that the Deputies would accept some cost sharing during that final year. The only remaining dispute is over the magnitude of that cost sharing. The County proposes that this unit follow the pattern of most of the rest of the workforce and pay 7% of the overall premium cost for both employee-only and dependent coverage. The Guild proposes to continue the fully-paid allocation for employees and to accept only 5% of the cost of dependent coverage, a proposal which the County calculates to be equivalent to only about 3% of the total premium costs.

The County's proposed 7% was the percentage agreed on by the Multi-Party Health Committee which includes all the County's employees who are not eligible for interest arbitration and the Juvenile Detention Guild, and Sheriffs' Administrators Guild.[13] The Committee had adjusted benefit costs in order to reduce employee contributions down to zero in 2010 and 2011; but premium cost increases for 2012 defeated that attempt, and the Committee ended up with an average 7% out-of-pocket employee contribution.[14]

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13. Prosecuting Attorney's Guild employees pay only 5% of premium costs for 2012.

14. The Guild argues that the County proposal contemplates a "complicated and convoluted formula" in order to get to the average 7% contribution. The record does not address that formula in any significant detail; but it was apparently the product of the Committee's discussions, and the County has had seven months' administrative experience to get the rough spots smoothed out.

The County points out that its medical insurance cost has skyrocketed over the last decade. The per-employee monthly cost of the standard coverage—which the Deputies have agreed to move to—has risen from $664 in 2003 up to over $1,400 in 2012. But the Guild has already taken two substantial steps to help with those costs: it has agreed to shift to the less expensive general County plan, with its decreased benefit levels, and it has agreed conceptually to give up the requirement that medical benefits be fully paid by the County.

Unfortunately, the record before me details *internal* comparators—virtually all at 7% employee contribution except for some units pending interest arbitration—but does not detail the employee insurance contributions of Deputies in the comparable counties. The Guild has provided some data. That data shows that Deputies in four of the six comparable Counties contribute to health insurance costs; and the average percentage appears to be roughly 5% of total premium costs.[15] When parties bargain to end a 'fully employer paid' medical benefits provision, it is not uncommon for the initial year of the new agreement to require relatively modest employee contributions. And I will award what appears to be about the average employee contribution among comparable counties, i.e., 5%. The new contract shall provide:

> 13.2.4.2 For the Plan Year 2012, each employee will contribute five (5) percent of the weighted average medical/vision rate and five (5) percent of the weighted average dental rate based on the tier elected. Weighted average rates will be determined based on DSG enrollment and insurance provider rates.

The Guild proposes that any such award be only prospective, since retroactive contributions will otherwise have to be collected from the Deputies; but the Guild certainly would not argue that *all* compensation changes awarded in interest arbitration should be merely prospective; and the record really does not include a convincing argument that the award of insurance contribution percentage should be a special case here.[16] On the other hand, the parties also have not agreed on the effective date of the change from prior special coverage over to the County's general insurance program; and I agree with the Guild that the newly agreed coverage should begin with the first premium date on or after September 1, 2012. That gives the Deputies a full calendar month to make plan and level of coverage decisions.

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15. This is the total of the "Ins EE" costs for those four Counties divided by the total of "Ins EE" and "Ins ER" combined for those counties set out in Exhibits G21 et. seq.

16. In particular, this is not a case in which the employer's actions have resulted in an inordinate delay in bargaining or in the completion of the interest arbitration process.

AWARD

With respect to pay rates in general, I award the language proposed by the County (for a 2.0% increase for 2012). With respect to shift differential, the language of the prior contract shall be carried over without change. With respect to PDO sell-back, the County's proposed section 7.7.3 shall be added to the new agreement. With respect to Safety Release Leave, the language set out above on pages 13-14 shall be added to the new agreement. With respect to Health and Welfare, the County's proposed section 13.2.4.2, set out immediately above, shall be added to the contract; and the change in medical plans shall be effective on the first premium date on or after September 1, 2012.

I retain jurisdiction for the limited purpose of resolving any issues that may arise out of the interpretation or implementation of this Award. That jurisdiction shall end 30 days from the date of the award unless it is extended for good cause shown.

Respectfully submitted,

Howell L. Lankford
Arbitrator