BEFORE THE NEUTRAL ARBITRATOR

In the Matter of the Interest Arbitration Between

Pierce County

the County

and

Pierce County Deputy Sheriffs Independent Guild

the Guild

ARBITRATOR'S OPINION AND AWARD

PERC No 23825-I-11-0565

Appearances:

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Date of Award: February 7, 2012

WITNESS LIST

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Wyatt Armstrong, Sheriff's Deputy
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Sean Lemoine, Attorney, Mackler, Lemoine and Goldberg

For the County
Eileen Bisson, Undersheriff
Aaron Bemiller, Pierce County Budget Manager
Debbie Young, Assistant Labor Relations Manager

EXHIBIT LIST

Guild Exhibits:

Exh. U-1	2005 Renewal Report - charts of historic premiums to 1999
Exh. U-2	CBA 2001-02, Article 15 and Appendix B
Exh. U-3	CBA, 2003-05, Article 15
Exh. U-4	MOU for 2004
Exh. U-5	MOU for 2005
Exh. U-6	CBA 2006-08, Article 15 and Appendix B
Exh. U-7	MOU for 2008
Exh. U-8	CBA 2009, Article 15 and Appendix B
Exh. U-9	CBA 2010, Article 15 and Appendix B
Exh. U-10	MOU for 2010
Exh. U-11	2011 Teamster increase
Exh. U-12	Email string and attachments between L. Paluck, J. Carrillo and C. Fajardo on cost of 2.5% wage increase with attachments, various dates.
Exh. U-13	Tacoma News Tribune article on County pay raises, November 7, 2010
Exh. U-14	Spreadsheet on cost of 2011 Teamster increases and cost of Guild proposal
Exh. U-15	2011 Teamsters plan increase
Exh. U-16	2010 Pierce County average premium chart (prepared by County)
Exh. U-17	Pierce County Medical Benefits Outline, with census of usage, proposal dated November 1, 2010
Exh. U-18	History of County contribution towards premiums
Exh. U-19	County's proposal on health care premiums for 2012
Exh. U-20	Chart of 2009 to 2010 increases and 2010 to 2011 increases
Exh. U-21	Fax to L. Paluck from M. Gocke, November 29, 2011, with economic issue analysis and C.V.
Exh. U-22	Collective Bargaining Agreement, 2010-2011
Exh. U-23	Guild's final proposal
Exh. U-24	Guild's comparables
Exh. U-25	Premiums paid by Guild's comparables

County Exhibits:

Exh. C-A	Collective Bargaining Agreement, 2010-11
Exh. C-B	RCW 41.56, relevant provisions
Exh. C-C	PERC certification
Exh. C-D	County Proposal as submitted to Arbitrator, November 18, 2011 with MOU format attached
Exh. C-E	Letter from L. Paluck to J. Carrillo, Guild proposal, December 15, 2010
Exh. C-F	Pierce County Deputy Sheriff Voluntary Resignations breakdown
Exh. C-G	Organization Chart
Exh. C-1	Change in budgeted FTEs, 2008-2011
Exh. C-2	Change in budgeted FTEs, 2008-2012

Exh. C-3	List of employees actually laid off between 2008 and 2011
Exh. C-4	General Fund, Difference Between Revenues and Expenditures
Exh. C-5	Reduction in General Sales Tax Collections.
Exh. C-7	Revenue from New Construction and Improvements since 2007
Exh. C-7a	General Fund Mid-Year Required Expense Reductions 2008-2010
Exh. C-8	Tacoma News Tribune article, September 22, 2011
Exh. C-9	Press Release on 2012 budget
Exh. C-10	County's proposal
Exh. C-11	Guild's proposal
Exh. C-12	Comparison of the 2011 County Health Insurance Proposal versus the Guild's
Exh. C-13	Heath Insurance Premiums Annual Percentage Increases
Exh. C-14	Washington Teamsters Welfare Trust Summary and Benefits Update, December 2010
Exh. C-15	Washington Teamsters Trust Rates and Plans, January 1, 2011
Exh. C-16	Internal Comparison of Health Insurance Costs 2003-2005
Exh. C-17	Internal Comparison of Health Insurance Costs 2006-2007
Exh. C-17	Internal Comparison of Health Insurance Costs 2008-2009
Exh. C-19	Internal Comparison of Health Insurance Costs 2010
Exh. C-20	Internal Comparison of Health Insurance Costs 2011
Exh. C-21	Internal Comparison of Health Insurance Costs 2012
Exh. C-22	2010 Health Insurance Premiums Paid by the County on County Plans
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Exh. C-31	Pierce County Proposed Comparables, 2009 Per Capita Income
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Exh. C-39	Clark County Contribution Information 2011
Exh. C-40	Snohomish County Contribution Information Oct. 2011-Mar. 2012
Exh. C-41	Spokane County Contribution Information, Feb. 2011-Jan. 2012
Exh. C-42	Multnomah County Contribution Information, 2011
Exh. C-43	Washington County Contribution Information, July 2011-June 2012
Exh. C-44	King County 2011
Exh. C-48	Medical Costs Reported in the 2011 "Milliman" Washington Public Counties Salary Survey, Employee Only Coverage
Exh. C-49	Medical Costs Reported in the 2011 "Milliman" Washington Public Counties Salary Survey, Employee Plus Family Coverage
Exh. C-50	County Health Care Benefits 2011, Kaiser Family Foundation Annual Survey

I. PROCEEDINGS

The 2010-11 Collective Bargaining Agreement between Pierce County (the County) and the Pierce County Independent Deputy Sheriffs Guild (the Guild or Union) contains a reopener provision for the County's contribution to bargaining unit members' medical care and vision premiums. The Guild represents a bargaining unit of about 300 deputy sheriffs employed by the County. The parties reached an impasse on the afore-referenced issue and pursuant to RCW 41.56.450, that issue was certified for interest arbitration by the Public Employment Relations Commission (PERC) and submitted to neutral Arbitrator Jane R. Wilkinson for resolution. The parties waived the RCW 41.56.450 provisions for a tri-partite panel. The Arbitrator conducted evidentiary hearings, in Lakewood, Washington, on December 1, 2011. Each party had the opportunity to present evidence, examine and cross-examine witnesses and argue its case. The Arbitrator received the parties' post-hearing briefs on January 6, 2012, and thereupon closed the hearing.

RCW 41.56.030(13)(a), read in conjunction with RCW 41.56.430 and.450, states that unresolved disputes concerning the terms and conditions of a collective bargaining agreement must be settled by interest arbitration when the affected bargaining unit is composed of "uniformed personnel," which includes "Law enforcement officers ... employed by the governing body of any county with a population of ten thousand or more[.]"

RCW 41.56.450 specifies the powers and duties of the interest arbitration panel, which may consider only the issues certified by PERC's executive director. RCW 41.56.450 states that the arbitration panel's determination "shall be final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious."[1]

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[1] RCW 41.56.450 requires an arbitrator to issue an award within 30 days following the conclusion of the hearing. In this case, the hearing concluded upon the receipt of the parties' briefs on January 6, 2012. The award due date therefore was February 5, 2012. Both parties agreed to extend the due date for the Arbitrator's award to February 8, 2012.

In RCW 41.56.465, the Washington Legislature specified that the interest arbitrator must apply the following criteria when determining the disputed terms of a new collective bargaining agreement:

> (1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, 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.
>
> * [Code] Revisor's note: RCW 41.56.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (7) to subsection (14). RCW 41.56.030 was subsequently amended by 2011 1st sp.s. c 21 § 11, changing subsection (14) to subsection (13).

"Such other factors" referenced in RCW 41.56.465(e) typically includes turnover, the fiscal health of the employer, general economic considerations, and considerations relating to internal parity or equity. The statute does not specify the relative weight to be assigned to each enumerated consideration nor how they are to be measured. These matters are left to the discretion of the arbitrator. I have kept in mind all of the statutory considerations set forth above, whether or not specifically articulated in this opinion.

II. PARTIES' FINAL OFFERS ON HEALTH CARE PREMIUMS

During 2010, the County contributed $989.88 monthly to the medical/vision premium of each bargaining unit member, which included dependents. This covered 100% of the premium for that year. For 2011, the premium increased by $64.87, which is just under 7%, to $1054.75. The parties could not agree on how this increased 2011 premium would be paid.

The final proposal of the Guild was that the County pay 75% ($48.65) 2010 to 2011 premium increase and that bargaining unit members pay the remaining 25%, or $16.22. Thus, under the Guild's proposal, bargaining unit members would pay about 1.5% of the total premium if enrolled in the Teamsters Welfare Trust Plan A, and about 0.8% if enrolled in Group Health Options.

The County's final proposal was to contribute the same amount, $989.88, as it did in 2010, so that employees would pay the entire increased premium for 2011. Under the County's proposal, bargaining unit members would pay about 6.2% of the premium if enrolled in Teamsters Welfare Trust Plan A, and about 3.2% if enrolled in the Group Health Options.

The allocation of premium increases for 2012 is not part of this dispute. It is worth noting, however, that for 2012, the County proposed to pay 100% of the first 10% of the premium increase, and anything over that would be split 50-50. The increase for 2012 was about 7%, meaning that bargaining unit employees would not pay any of the increase for that year under the County's proposal. In addition, the County proposed that there be no cost of living increase in 2012. Subsequent to the hearing in this matter, the Guild accepted this offer

III. ARBITRATOR'S DISCUSSION AND DETERMINATION

A. Historical and Current Context of the Issue

This dispute occurs in a context that is somewhat unusual. As previously noted, the parties already had the underlying Collective Bargaining Agreement in place. The dispute is solely over the amount of the County's contribution to the 2011 medical/vision premium. Also as stated, the parties have agreed that the County will pay the increased premium for 2012. However, whatever contribution to premium that the Arbitrator awards in this case will carry forward to 2012.

The evidence showed that for at least the past two and one-half decades, until 2010, the parties' have negotiated the terms of their Collective Bargaining Agreement separately from health care costs. Health care insurance (including vision) was negotiated jointly with all of the County's labor groups in a joint labor-management committee on health care. In other words, there was a strict uniformity regarding the County's contribution to health care premiums across all groups of employees. Further, during those years preceding 2010, the County paid 100% of employees' premiums and 100% of their dependent premiums with one exception. The exception was for the enhanced Regence Preferred Plan, where employees who elected that plan made a contribution to the premium. Implicitly or explicitly, the County's contribution to premium was not linked to wages. All employees received the same benefit, regardless of earnings.

During the years preceding 2010, the County offered employees a choice from among four medical care plans: Regence Preferred, Regence Select, Regence FourFront, and Group Health Options.

Each year saw significant increases to premium costs. Between 2001 and 2011, premium costs rose over 116% (not a compounded rate) for the popular Regence Select plan, compared with a 27.48% increase in the Consumer Price Index. Each year the County continued to pay the increases.

In 2009, when again faced with increases for 2010, the County decided it could no longer afford to pick up the premium increases for County employees. A severe economic recession had seriously affected County revenues and it was looking at ways to lower expenditures. It proposed that employees start paying a portion of medical premium. The joint labor-management committee on health care examined alternatives that would lower premiums so as to allow employees to avoid or minimize employee contributions. Ultimately, the County, the Guild and a number of other represented employee groups agreed to change plans, to the Teamsters Welfare Trust Plans. Each interested bargaining unit, however, had to apply to join the Teamsters Trust. The County agreed to pay $989.88 monthly per employee in bargaining units that joined the Teamsters' Plan A, and the same amount for employees in those bargaining units that elected Group Health Options, which also was a Teamsters' Plans offering. Thirteen of the County's bargaining units, including the Deputy Sheriffs Guild, migrated to the Teamsters' Plan A/Group Health configuration at the outset of 2010. Six bargaining units and the County's non-represented employees stayed with the traditional four-plan option.

The agreed-upon premium allocation breakdown for all plans in 2010 was as follows:[2]

Table 1

PLAN	2010 Monthly Contribution to Premium			
	Premium	**County Portion**	**Employee Portion**	**Employee Percentage**
Regence Preferred				
Employee Only	$1189.45	$1063.23	$ 126.22	10.6%
Employee Plus Family	$1189.45	$1023.23	$ 166.22	14.0%
Regence Selections				
Employee Only	$1101.44	$1051.44	$ 50.00	4.5%
Employee Plus Family	$1101.44	$1011.44	$ 90.00	8.2%
Regence FourFront				
Employee Only	$1045.59	$ 995.59	$ 50.00	4.5%
Employee Plus Family	$1045.59	$ 955.59	$ 90.00	8.6%
Group Health Options				
Employee Only	$ 921.40	$ 871.40	$ 50.00	5.4%
Employee Plus Family	$ 921.40	$ 831.40	$ 90.00	9.8%
Teamsters Trust Plans				
Plan A w/Vision	$ 989.65	$ 989.88	$ (0.23)	0%
Group Health Options w/ Vision	$ 989.65	$ 989.88	$ (0.23)	0%

During 2010, the County began the process of becoming a self-insurer with the objective of replacing the traditional plans with self-insured offerings in 2011. Meanwhile, additional bargaining units migrated to the Teamsters Welfare Trust for 2011. Two bargaining units and

2 Note that the actual premium for each type of employee is the same, that is, it is a composite rate. However, for the purpose of working out what the County believed would be a fair allocation of premium payments between itself and its employees, it was able to obtain tiered rates from Regence and the non-Teamsters Group Health Options with two categories: employee only and employee plus dependents. The Teamsters premiums are not tiered because the Teamsters Welfare Trust would not provide a breakdown for employee only and employee plus dependent categories.

the County's nonrepresented employees joined the County's new self-insured plans. Those plans were designated "PPO 1" and "PPO 2." The County continued to offer a Group Health Options plan. These three offerings will be referred to collectively herein as the "County Plans."

The following chart breaks down the 2011 premium allocations for those plans. The employer-employee allocation figures for the Teamsters' Plans reflects the County's proposal, which was accepted by about 13 bargaining units, and rejected by four bargaining units, including the Guild. Three of those units are interest arbitration eligible.[3]

Table 2

PLAN	2011 Monthly Contribution to Premium			
	Premium	**County Portion**	**Employee Portion**	**Employee Percentage**
PPO 1				
Employee Only	$1166.01	$1076.01	$ 90.00	7.7%
Employee Plus One	$1166.01	$1026.01	$ 140.00	12.0%
Employee Plus Family	$1166.01	$ 986.01	$ 180.00	15.0%
PPO 2				
Employee Only	$1114.00	$1044.00	$ 70.00	6.3%
Employee Plus One	$1114.00	$1004.00	$ 110.00	9.9%
Employee Plus Family	$1114.00	$ 974.00	$ 140.00	12.0%
Group Health Options				
Employee Only	$1001.04	$ 946.04	$ 55.00	5.5%
Employee Plus One	$1001.04	$ 911.04	$ 90.00	9.0%
Employee Plus Family	$1001.04	$ 866.04	$ 115.00	11.5%
Teamsters Trust Plans: County proposal				
Plan A w/Vision	$1054.75	$ 989.88	$ 64.87	6.2%
Group Health Opt w/ Vision	$1022.52	$ 989.88	$ 32.64	3.2%
Teamsters Trust Plans: Guild proposal				
Plan A w/Vision	$1054.75	$1038.53	$ 16.22	1.5%
Group Health Opt w/ Vision	$1022.52	$1014.36	$ 8.16	0.8%

This table shows that for the first two tiers of employees on the PPO plans, the County contributed more than it does for employees on the Teamsters' Plans. An employee without dependents on the PPO 1 plan received a $1076 contribution from the County and a $1044

[3] The premiums on the County's Plan remained composite premiums, but the County was able to set forth a three-tiered structure (employee only, employee plus one dependent, and employee with two or more dependents) for the purpose of allocating the premium payments.

contribution if on the PPO 2 plan. The employee with one dependent received $1026 and $1004 respectively on the PPO 1 and PPO 2 plan. Only employees with families on the PPO plans and employees enrolled in Group Health Options received a smaller contribution from the County as compared with employees on the Teamsters' Plans. The evidence indicated that the County decided to contribute more to those who select the employee-only option because the probability is that those employees will utilize medical services less (that is, cost the self-insured plan less) than employees with dependents. On the other hand, all employees on the PPO plans as well as all Group Health enrollees with dependents made a larger contribution to the premium than would any employee on the Teamsters' Plans, under either the Guild's or County's proposal.

The parties disputed the weighted average cost to the County per employee on the County's Plans in 2011. According to Michael Gocke, an expert witness for the Guild, the County spent, on average, $1006.94 monthly for employees in the County's Plans, compared with $989.88 monthly for employees in the Teamsters' Plans. Thus, it spent $17.06 more per month on employees participating in the County's Plans. Mr. Gocke also calculated that the average 2011 County contribution to premium for employees in the County's Plans increased by $31.37 per employee per month, compared with no increased contribution to the Teamsters Plans (under the County's proposal). Mr. Gocke based his analysis on a November 2010 participation census. Mr. Gocke's report further noted:

> PPO 1 and PPO 2 coverage in 2011 places a higher cost on the employee than does the Group Health and Washington Teamster coverage when deductibles, coinsurance, copays, and out-of-pocket maximums are considered.
>
> In summary, for 2011 Pierce County is spending more for medical insurance coverage per employee per month for PPO 1 and PPO 2 when compared to Group Health and Washington Teamster coverage. Moreover, PPO I and PPO 2 coverage in 2011 places a higher cost on the employee than Group Health and Washington Teamster coverage.

Exh. U-21.

The County disputed the Guild's evidence. It maintained that during 2010, while there were very slight deviations each month, the average premium paid over the course of the year was $975.57 per employee per month on the County's Plans. See Exh. C-22. Debbie Young, Assistant Labor Relations Manager, stated that the County sought to keep its average rate per employee at the same level in 2011, or about $975 per employee per month. It in fact achieved this goal -- its weighted average employee contribution per month during the first 11 months of 2011 was $974.20 for employees on the County's Plans, or $15.68 less than its Teamsters' Plans per employee contribution. See Exh. C-23. Employee contributions to the County's Plans ranged from $55 to $180 per month, depending on plan selection and family/dependent enrollment. Exh. C-20. The County explained the Mr. Gocke's analysis was based on inaccurate assumptions. After November 2010, some bargaining units migrated to the Teamsters' Plans, leaving only two bargaining units and the unrepresented employees in the County's self-insured plans. Additionally, the County averred that for the employees remaining on the self-insured plans, there has been a migration to the Group Health Options because of its lower cost to the employee and the fact the Group Health Options included a network of doctors outside of the Group Health HMO.

This Arbitrator agrees with the Guild on one of its responses to the County's evidence. There has not been a large migration to Group Health, at least when one compares the only distribution evidence of record: Exh. U-21 and Exh. E-20. The increase in the Group Health participation within the County's Plans, according to the Guild's post hearing brief, was a relatively modest 10.3% between late 2010 and late 2011. However, the Guild's analysis regarding the migration between 2010 and 2011 within the County's non-Group Health Plans was not convincing because it arbitrarily assumed equivalency between employees in the various Regence plan categories to 2011 PPO categories, without adequately explaining its methodology. In any event, the principal migration between early 2010 and late 2011 was away from the County's Plans to the Teamsters' Plans.[4]

The migration patterns do not explain satisfactorily why the parties produced different weighted average premium contribution figures for employees remaining on the County's Plans. Therefore, the Arbitrator examined the calculations of both parties and found a significant error in Mr. Gocke's calculation. On page 3 of Exh. U-21, he transposed the County's monthly contribution in the three tiers, as follows:

Table 3

Plan and Tier	Gocke's figures per Exh. U-21	Correct figures per Exh. C-20
PPO I		
Employee Only	$986.01	$1,076.01
Employee Plus One	$1,026.01	$1,026.01
EE Plus Family	$1,076.01	$986.01
PPO2		
Employee Only	$974.00	$1,044.00
Employee Plus One	$1,004.00	$1,004.00
Employee Plus Family	$1,044.00	$974.00
Group Health Options		
Employee Only	$866.04	$946.04
Employee Plus One	$911.04	$911.04
EE Plus Family	$946.04	$866.04

Mr. Gocke used the correct sequence of figures in the preceding page of the exhibit, however, showing he did have the correct figures in hand.

A simple spreadsheet correction of Mr. Gocke's analysis, using his distribution figures, shows that the weighted average 2011 County contribution to premium for employees in the County's non-Teamsters' Plans to be $980.37, which is fairly close to the County's assertion that

4 The County's evidence showed that in January 2010, 2645 employees were enrolled in the non-Teamsters plans (Regence or Group Health). By November 2010, the number was 1712 (which was close to the number used by Mr. Gocke), a 35% decrease. And by November 2011, only 1182 employees were enrolled in the County's non-Teamsters plans (the PPOs and Group Health), a 31% decrease from the previous November, and a 55% decrease from January 2010. Some of the decrease might be attributed to layoffs and attrition, and perhaps some was from opt-outs. Nevertheless, logic indicates that most of the decrease was due to migration of additional bargaining units to the Teamsters Plans.

its weighted average contribution was $974.20. Faulty distribution assumptions on the part of Mr. Gocke might account for this smaller difference. The following analysis, therefore, will assume that the County's 2011 weighted average contribution to the premiums in the County's Plans was as claimed by the County: $974.20.

B. Analysis Pursuant to the Pertinent Statutory Considerations

The following addresses the pertinent statutory considerations in this proceeding, which I am discussing in an approximate reverse order of importance. The order of importance I have assigned here is unique to this dispute. It is not necessarily one that I would use in a case that also involves wages and wage-related items.

1. Employee turnover

The County presented evidence that during the recent past (2009-2011), it has not lost any sheriff's deputies to other local law enforcement agencies. Four deputies resigned because there was discipline pending, two resigned to relocate out of the area, one resigned to stay at home with a newborn child, and one resigned to go on active military duty. This evidence was not challenged by the Guild. This consideration favors the County's position.

2. Cost of Living

In recent years, pursuant to contractual commitment, the County provided COLA increases to bargaining unit members (and other employees) as follows:

2009 -- 5.5%
2010 -- 2.5%
2011 -- 2.5%.

These COLA increases exceeded the cost of living increases during those years because of "floor/ceiling" language in the parties' contract.

The Guild objected to considerations extraneous to the health care premium itself, since the health care premium has always been negotiated separately (in joint labor negotiations) from wages and COLAs. The Guild also objected to any suggestion by the County that the COLA increases somehow offset the increased premium burden it seeks for employees in 2011. The Guild noted that the COLA increases were freely negotiated and agreed to by the County.

The problem with the Guild's objections is that the statute itself requires the arbitrator to consider changes in the cost of living. Further, as the County noted in its brief, the Guild is no longer participating in the joint labor-management negotiation for contributions to the health care premium.

Although I am not attaching a great deal of weight to the cost of living evidence, I am giving it some, and find it to be a consideration in the County's favor.

3. County's Fiscal Status

Although the County does not claim an inability to pay, its general fund has been operating in the red since fiscal year 2008, which means it has been drawing down its reserves. In 2007, general fund revenues exceeded expenditures by $5.1 million. In 2008, expenditures exceeded revenues by $7.8 million. This was followed by operating deficits of $4.6 million in 2009, $3.2 million in 2010, and $0.8 million projected for 2011. Since 2007, the County has lost substantial sales tax, interest, and new construction/improvements revenues. There has been a sizeable reduction of FTEs throughout the County as a consequence: 441.05 FTEs, including 40.7 FTEs in the Sheriff's department lost between 2008 and 211. This FTE reduction has resulted in 243 layoffs County-wide. Additional FTE loss is projected for 2012.

The Guild advanced arguments that highlight the County's ability to pay the Guild's proposal. For instance, the County could have contributed more towards Guild members' health care premiums in 2011 by reducing the 2.5% COLA it gave to nonrepresented employees that same year. The Guild further observes that despite the County's claimed fiscal austerity, it reversed course for 2012 and essentially agreed to pay 100% of the premium increase for all employees.

The County, however, has never disputed its ability to pay the Guild's proposal. Rather, to fund an increased premium contribution, it must cut expenditures elsewhere. Its resources are already very stretched. Nonrepresented employees received the 2.5% COLA in 2011 in order to maintain parity with all represented employees. The County agreed to absorb the full increase for 2012 (up to 10% of the 2011 premium), but with a quid pro quo: an agreement to forego any cost of living increase.

The point of considering an employer's fiscal means is not to examine its absolute ability to pay. Such an exercise would make little sense because all solvent employers have the ability to pay a bargaining representative's demands simply by making an offsetting cut elsewhere. Public sector employers, however, provide many services and programs. A number of services, including law enforcement, are deemed essential. However even those services sometimes have to be reduced. Further, even unessential programs (such as running parks) are important to taxpayers. When fiscal problems arise, such as during a recession, the governing body has to make difficult and painful choices about what to cut.

An employer's fiscal health is not an enumerated statutory consideration, but it has long been something that arbitrators, in the words of the statute, "normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment." RCW 41.56.465(1)(e). Since the start of the recession in 2008, the County's revenues have not been sufficient to cover expenditures. The rapidly escalating cost of health care insurance has been particularly burdensome. Thus, in this Arbitrator's opinion, the County's currently less than robust financial health is something that should be taken into consideration in this dispute.

4. Comparables

The County proposed as comparables the Washington counties of Clark, Snohomish and Spokane and the Oregon counties of Multnomah and Washington. The Guild proposed Clark, Snohomish, Spokane and King counties. All of the proposed comparables, except King County, have a population that is within 50% of Pierce County's. King County's population is well over double that of Pierce County. Therefore it is not an appropriate jurisdiction for comparison. The appropriate comparable jurisdictions are Clark, Snohomish and Spokane counties (as proposed by both parties) and Washington and Multnomah counties (as proposed by the County, but not the Guild). It is worth noting that among these comparables, both the employer's and the employees' contributions to health care premiums do not correlate closely to the size or relative wealth of the jurisdiction. For example, of the selected comparables, Snohomish County is relatively affluent. It also is nearly equal in size to Pierce County. Yet the employer's contribution to the premium is the lowest of the comparables and its deputy sheriffs' contributions are the highest. It also has the lowest premium structure overall.

The following table shows each comparable county's total premium and the employer/employee allocation for all plans offered to sheriff's deputies:

Table 4

County	Employee share - %	Employee share - $	County share	Total premium
Clark*	0.0%	$ 0.00	$1427.85	$1427.85
Snohomish	9.6%	$100.00	$ 939.59	$1039.59
Spokane	5.7%	$ 74.79	$1236.65	$1311.44
Multnomah, OR	5.0%	$ 71.20	$1353.10	$1424.30
Washington, OR*	0.0%	$ 0.00	$1044.20	$1044.20
Average	**4.06%**	**$ 49.20**	**$1200.28**	**$1249.48**
Pierce - County proposal	6.15%	$ 64.87	$ 989.88	$1054.75
Pierce - Guild Proposal	1.5%	$ 16.22	$1038.53	$1054.75

(Source: Exh. C-33)

*For 2012, Clark County would like all employees to pay 7% in 2012. However, law enforcement employees have not settled with that county. Also in 2012, Washington County employees will be paying 5% of the premium for non-HMO plans.

This information shows that the County's proposal would place the employees' contribution at slightly over 2% (or $15.67) above the average of the comparables. The Guild's proposal would place their contribution at a little over 2.5% (or $32.98) below the comparable average.[5] The County's proposal would have itself contributing 18%, or $210, less than the average

5 The Guild's proposed comparables (Clark, King, Snohomish and Spokane counties) produce a result that is not a great deal different. The average employee contribution of the Guild's comparables is $43, or 3.89% of premium.

comparable employer contribution. The Guild's proposal would have the County paying 13%, or $162, less than the comparable average employer contribution. These below average County contributions result from the fact that the premium for Teamsters' Plan A is 16% ($194) less than the comparable average.

The County also presented information on the employer-employee contributions to plans most similar to Teamsters' Plan A. The analysis tilts the balance slightly towards the County's position:

Table 5

County	Employee share - %	Employee share - $	County share	Total premium
Clark* (Regence)	0.0%	$ 0.00	$1641.14	$1641.14
Snohomish (Regence Select)	9.6%	$100.00	$ 939.59	$1039.59
Spokane (Premera)	5.7%	$ 88.09	$1448.29	$1636.38
Multnomah, OR (Performance PPO)	10.0%	$187.32	$1685.88	$1873.20
Washington, OR* (Providence)	0%	$ 0.00	$1075.14	$1075.14
Average	**5.06%**	**$ 75.08**	**$1358.01**	**$1453.09**
Pierce - County proposal	6.15%	$ 64.87	$ 989.88	$1054.75
Pierce - Guild Proposal	1.5%	$ 16.22	$1038.53	$1054.75

(Source: Exh. C-34)

*Again, for 2012, Clark County would like all employees to pay 7% in 2012. Law enforcement employees have not settled with Clark County, however. Also in 2012, Washington County employees will be paying 5% of the premium for non-HMO plans.

The above table shows that the County's proposal would place the employees' contribution at slightly over 1% above the average of the comparables. However, the dollar contribution would be $10.21 below the comparable average. (Again, this is because the total premium for the Teamsters' Plan A is 27% ($398) less than the comparable average for similar plans). The Guild's proposal would place its member contribution over 3.5% (or $58.86) below the comparable average. The County's proposal would have itself contributing 27% ($368) less than the average comparable employer contribution. The Guild's proposal would have the County paying 24% ($319) less than the comparable average.

The analysis of comparables gives the County's proposal slight edge. When comparing the employee contribution under each proposal to the comparable average of like plans, the County has a significant edge. The employee contribution is an important consideration, because given the trend to increased premium sharing, one has to keep in mind the overall affordability for the employee. The strength of the County's position increases when one considers the trending of the comparables. Washington County employees will be increasing their contribution in 2012, and it is possible Clark County employee will also.[6]

On the other hand, the burden on the employer should receive some consideration. Under either analysis (comparison with all plans and comparison with similar plan), the burden on the County would be significantly lower under either proposal than the comparable average because of the relatively low cost of the Teamsters Plans. One can argue that employees should be rewarded, not penalized, for agreeing to change to a lower cost plan. Because of this counterbalancing consideration, I have concluded that the County's proposal has only a small edge. In fact, were my ruling based only on a comparable jurisdiction analysis, I would attempt a balance between the employee contribution and the County's contribution to premium by setting the employee contribution at a level somewhat below the average of the comparables (in terms of a percent of premium) on a similar plan.

5. Internal Equity

The County has a history of treating its employees equally when it comes to health care costs. It historically has not wanted to drive a wedge between employee groups by having some groups getting a better deal than others. In the past (through 2009), the County has simply paid 100% of the premium, regardless of plan, with the exception of a contribution from employees electing an enhanced program (Regence Preferred).

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[6] As the County observed in its brief, this Arbitrator has previously noted that the trend is towards requiring some employee contribution to the cost of the health care premium. See Appendix A to *King County Fire District #44* (Wilkinson, 2002). This was true in 2002 and with the continued high rates of premium increases, this trend continues.

The County's contribution to the premium under each plan, however, has not been the same. For instance, in 2009, the County paid $1012.98 monthly per employee on the Regence Preferred plan (with the employee contributing $76.22), $1009.19 monthly for the Regence Select plan, $961.27 for the Regence FourFront plan, and $857.93 for Group Health Options. Exh. C-18. The evidence indicated, not surprisingly, that the Regence Select plan had the largest enrollment since it was the most expensive plan requiring no employee contribution. In 2010, employees on all Regence plans and the Group Health Options began making a contribution to the premium. The amounts are shown on Table 1, page 5, above. Employees on those plans contributed between 4.5% and 14.0% of the premium in 2010. However, Guild members and other employees who migrated to the Teamsters' Plans did not contribute to the premium because the Teamsters' Plans' monthly premium was less than the $989.88 the County was willing to contribute towards the premium in 2010.

Both sides agree that internal equity is the most important statutory consideration in this case. It is not an enumerated consideration, but like the employer's fiscal health, it is a consideration to which arbitrators have normally and traditionally given weight, particularly when it comes to benefits. I will give it extra weight in this proceeding because the parties agree it is a very important consideration and also because of the County's history of treating employee groups the same when it comes to benefits.

Both parties maintain their respective positions are supported by the internal equity consideration. The Guild argued that the County should contribute to the Teamsters' Plans something that approximates its contribution to the equivalent PPO 1 plan.[7] The County maintained that its offer exceeds the weighted average it pays per employee on its other plans. It also contended that its offer has been accepted by 13 of its bargaining units, including one

[7] There appears to be no dispute that the County's PPO 1 Plan is most similar to Teamsters' Plan A.

interest arbitration eligible unit. (There are three holdouts, two of them interest arbitration eligible, in addition to the Guild.)

The difference in the parties' positions stems from how one views the numbers. The Guild's analysis is based on the County's actual contribution to an employee who enrolls in one of its self-insured plans, particularly the PPO 1, which it maintained is closest to the Teamsters' Plan A. In 2011, an employee with no dependents on the PPO 1 plan received a monthly contribution of $1076.01 from the County. A bargaining unit employee with no dependents in Teamsters' Plan A received only a $989.88 contribution from the County, under the County's proposal. Similarly, an employee with one dependent on the PPO 1 plan received a $1026.01 contribution from the County, compared with $989.88 under the County's proposal. Only an employee with two or more dependents receives a lesser contribution from the County on the PPO 1 plan - $1.87 less than a bargaining unit member would with the County's proposal.[8] The Guild's analysis also shows that the County increased its contribution between 2010 and 2011 to employees with fewer than two dependents on the PPO 1 plan. The evidence was that the increase was $24.57 for employee only, and $14.57 for an employee plus one dependent. The County's contribution for the employee with two or more dependents decreased, however, by $25.43 between 2010 and 2011.[9]

The County's position, on the other hand, is based on the average contribution it made per employee overall on the County's Plans. Its position thus takes into account the employee distribution in the various categories of its plan. To obtain this average, it simply added up all the premiums paid in a month on plans and divided that figure by the number of insured employees. The result was an average monthly per employee premium contribution of $975.57 in 2010 and

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8 The simple average County contribution for 2011 (ignoring employee distribution on the PPO 1 plan) among the three PPO 1 plan categories was $1029.34. By comparison, the Guild's proposal would have the County paying $1038.53 to Teamsters Plan A members, while the County would have its contribution remain at $989.88.

9 In making this calculation, this Arbitrator compared both the PPO 1 plan's Employee + 1 and Employee + Family categories with the full family coverage category under the Regence Select plan, since there was no premium category for Employee + 1 under the Regence plan.

$974.20 in 2011, according to Exh. C-22 and Exh. C-23. Thus, the County's average contribution per employee on its self-insured plans was lower than what it is willing to make to Guild members and other employees covered by the Teamsters' Plans. The reason its average per employee premium cost was lower than its premium contribution for the employee with one or fewer dependents on its PPO plans is because of the distribution of employees in the various plan categories. The Arbitrator's calculation, using data in Exh. C-20, shows that as of November 2011, 63% of employees on the County's Plans were enrolled in options and tiers where the County's premium contribution was less than $989.88. (Those categories where the premium was under $989.88 were all of Group Health Options, and the full family category for PPO 1 and PPO 2. See Table 2, page 6, above.) The County also asserted that there are cost differentials between its self-insured plans and the Teamsters' Plans that are not reflected in the monthly premium, and those differentials make the County's Plans relatively less costly than the premium structure of the two plans would indicate. The largest differential stems from the ability of employees to "opt out" of the County's Plans and simply not take advantage of any medical benefits offered by the County. The County's evidence was that 4.3% of employees have opted out. It projected that if the same percentage of Teamsters' Plans members could opt out, it would save about $156,000 per year. to the County because it would no longer have to pay any premiums on those employees' behalf.[10] Exh. C-22. A higher cost associated with the Teamsters' Plans is its requirement for an additional month of premiums, sometimes referred to as the "lag month," whenever a member leaves the plan. This lag month is not required under

[10] The Guild argued that this savings should not be considered because there is no evidence that a similar percentage of employees on the Teamsters Plans would opt out, if they could. I agree that the number of potential opt-outs cannot be known. A better vantage point would be the savings realized by the self-insured plans because of the 4.3% opt out rate. The County did not provide this number. It would be less than $156,000 because fewer employees were on the County's Plans in 2011. By November 2011, about 42% of insured employees were enrolled in the County's plans, by this Arbitrator's calculations.

the self-insured plans. (The County did not attempt to quantify this cost - it simply notes the extra cost is there whenever a member leaves the plan).[11]

Both parties view the data from a reasonable perspective. The cause of their difference is what at first glance appears to be a peculiar premium contribution structure in the County's Plans. If one views the structure from the perspective of the County's contribution to premium, one might say that the County is rewarding employees without dependents and also rewarding employees who select the highest priced plan. If, on the other hand, one takes the perspective of the employees' contribution to premium, one sees that employees in the highest priced plans are not rewarded since they have to pay more. But among the three tiers in the County's Plans, employees with no dependents fare best, and those with one dependent fare second best. The County did not provide a detailed explanation of how it came up with its premium sharing structure, but it did say it was the result of a complicated formula devised with the assistance of a broker. Debbie Young explained that this was the only way the County could find to have tiered premium sharing while at the same time using a composite rate. The reason employees with one or no dependents fare better is that they are less apt to cost the plan as much in actual medical expenditures than a full family. In other words, even though the actual total premium cost for a family of four is the same as for an employee only (see Table 2, page 6, above), the family of four is likely to require more medical services than the employee only. It is not clear how the County arrived at the exact premium allocation figures, but the County did present evidence that it worked off the average 2010 per employee contribution of $975 as a starting point, along with the distribution figures it had in hand. The County has not tried to utilize a similar premium sharing structure for employees on the Teamsters' Plans because the Teamsters Trust would not provide it with a breakdown of composite rates.

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[11] The County also cited a third cost difference. It had to do with the Teamsters requiring the same premium contribution to its Group Health plan as to the Teamsters Plan A, even though Group Health actually costs the Teamsters' trust less. However, the Arbitrator notes that this only occurred in 2010. In 2011, the year in question in this dispute, has a lower premium for the Teamsters Group Health Options. See Table 2, page 6, above. Therefore, this cost consideration is irrelevant to this analysis.

At first blush, after viewing the premium sharing data for 2011, it appeared to this Arbitrator that the Guild had the better case. However, after learning more about what the structure means and the actual employee utilization (i.e., distribution), it became evident that trying to compare the Teamsters' Plans premium sharing structure with the categories in the County's Plans categories is like trying to mate apples with oranges. Instead, the County's weighted average per employee contribution on its self-insured plans is the more appropriate point of comparison. As explained previously, the County has convincingly shown that its average contribution is under $975. If one compares the County's offer to contribute $989.88 monthly to the Guild members' premium to its average self-insured contribution for 2011, then the County's offer becomes quite reasonable.

The Guild complained that the County was willing to increase its contribution to premium for some employee groups in 2011, but it was unwilling to increase its contribution to the bargaining units' premium. In the interest of internal equity, there should be some sort of equivalency, the Guild maintained. However, the data shows that the County increased its contribution in some County Plan categories and decreased it in others. After factoring in the utilization distribution among categories, its average contribution to premium did not increase at all. In fact, it decreased slightly.

The Guild also argued that the average monthly premium shown on Exh. C-22 and Exh. C-23 failed to include the employees enrolled in the Teamster Plans, which is a larger group than enrolled in the County's PPO Plans. However, the internal equity analysis necessarily compares the Teamsters' Plans' premium sharing allocation to the County's Plans. Therefore, the Arbitrator is unable to see the merit of the Guild's argument on this point.

In sum, with respect to the consideration of internal equity, the Arbitrator finds that the County has the stronger position.

IV. FINAL AWARD OF THE ARBITRATOR

In the preceding discussion, the Arbitrator examined the evidence and argument of the parties in the context of the statutory considerations for interest arbitration. In all of those categories, the County's position turned out to be the better one, although when it came to comparables, it was a close question. The Arbitrator considered a premium sharing allocation that would be somewhere between the County's proposal and the Guild's proposal. An analysis of the comparables could support this result. This was rejected because it would effectively nullify the internal equity consideration, which the parties agree is a very important consideration in this case. As a result, it is the decision of award of this Arbitrator that for the 2011 contract, bargaining unit employees should make a contribution to the monthly premium that is equal to the premium increase in their respective Teamsters' Plans, as per the County's proposal.

Throughout 2011, Guild members have been paying the full $64.87 for Teamsters' Plan A, and a lesser amount for those enrolled in Group Health Options. Therefore, the award of the County's position will not require employees to reimburse the County with a lump sum payment.

Date: February 7, 2012

Jane R. Wilkinson

Jane R. Wilkinson
Labor Arbitrator