BEFORE THE ARBITRATION PANEL

In the Matter of an Interest Arbitration
Between

KITSAP COUNTY SHERIFF'S GUILD

and

KITSAP COUNTY

PERC Case 17687-1-03-0411

Appearances:
Cline and Associates, by Mr. James M. Cline, on behalf of the Guild.
Summit Law Group, by Mr. Bruce L. Schroeder and Ms. Jacquelyn M. Aufderheide, Senior Deputy Prosecuting Attorney, on behalf of the County.

ARBITRATION AWARD

The above-captioned parties, herein "Guild" and "County," selected the undersigned to serve as Chair of a three-member interest arbitration panel. The Guild selected Christopher J. Casillas to serve as its arbitrator and the County selected Bert H. Furuta to serve as its arbitrator. A hearing was held in Port Orchard, Washington, on October 11-15, 2004. Thereafter, a telephonic conference call was held on November 10, 2004, at which time additional exhibits were introduced into the record and Labor Relations Manager Robert Gudmundson testified. The parties subsequently filed briefs that were received by January 31, 2005.

BACKGROUND

The Guild represents for collective bargaining purposes a unit of law enforcement personnel employed by the County consisting of about 97 deputy sheriffs, 11 sergeants, and one corporal. The parties engaged in negotiations for a successor collective bargaining agreement, ("agreement"), to replace the prior agreement which expired on December 31, 2002, and the

parties subsequently reached an impasse in their negotiations after an investigation was conducted by the Public Employment Relations Commission, ("PERC"). PERC on September 22, 2004, certified the issues listed below for interest arbitration as provided for in RCW 41.56.450.

Thereafter, the Guild on October 7, 2004, presented its Final Proposal and the County on October 11, 2004, submitted its Final Proposal.

At the hearing, the parties jointly agreed to Articles IV and V of the agreement relating to future negotiations and to a three-year term for the agreement, [1] and that the Guild's proposal relating to "Call out duties" was not before the panel. [2] The Guild then also dropped its proposal relating to physical fitness, and the Guild in its post-hearing brief dropped its proposal relating to deferred compensation. Because of the lengthy record, the parties agreed at the hearing to waive the statutory requirement that the award be issued within 30 days following the conclusion of the hearing.

A draft of the Award was sent to panel arbitrators Christopher J. Casillas and Bert H. Furuta on March 17, 2005.

The following certified issues remain before the arbitration panel:

Article I, Section B (1)	Release Time For Guild Activities
Article I, Section O	Discipline & Discharge – Grievability Of Transfers
Article II, Section A	Wages
Article II, Section B	Step Increases – Sergeants' New Step
Article II, Section D	Longevity Bonus
Article II, Section E	Assignment Pay

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[1] The parties disagree over whether all or part of the new agreement should be retroactive to January 1, 2003, the beginning date of the successor agreement. That is why this part of the Term of the agreement is still open and why retroactivity is addressed for each issue in dispute.

[2] Transcript, at 95-96.

Article II, Section H	Health Insurance
Article II, Section J	Hours of Work
Article II, Section K(3), (5)	Overtime – Compensatory Time Cap, Subpoena Report Pay And Pyramiding
Article II, Section L	Liability Coverage
Article II, New Section	Educational Incentive

. . .

Article II, New Section	Shift Differential
Article III, Section A	Holidays – Premium Rate For All holidays
Article III, Section B, New	Annual Leave – Approval Process
Article V	Term

. . .

APPLICABLE STATUTORY PROVISIONS

RCW 41.56.465 Uniformed personnel—Interest arbitration panel—Determinations—Factors to be considered. (1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:

. . .

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c) (i) For employees listed in RCW 41.56.030 (7)(a) through (d); comparison of the wages, hours, and conditions of employment of 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;

. . .

(d) The average consumer prices for goods and services, commonly known as the cost of living;

(e) Changes in any of the circumstances under (a) through (d) of this subsection during the pendency of the proceedings; and

(f) Such other factors, not confined to the factors under (a) through (e) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment.

. . .

RCW 41.56.430, in turn, states:

> RCW 41.56.430 Uniformed personnel—Legislative declaration. The intent and purpose of this 1973 amendatory act is to recognize that there exists a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

DISCUSSION

It is first necessary to determine the appropriate set of comparables because that will help determine which proposals should be selected under RCW 41.56.465 which, as related above, provides for the:

> 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.

Establishing comparables here is somewhat difficult in part because of the County's unique geographic area. It is bordered on the west by the Hood Canal and on the east by Puget Sound, and it is part of the Puget Sound area even though it is somewhat apart from other contiguous counties. The Kitsap Peninsula also stands between Seattle which is the most heavily populated city in the state and the Olympic Peninsula which is one of the least populated areas in

the state. In addition, the County only has a handful or so of incorporated cities with the rest being large, unincorporated areas. The County also is to the west of the Cascade Mountains, thereby separating it from counties to the east of the Cascade Mountains.

The parties disagree over what counties constitute proper comparables with the County proposing one county which has a total population of about 155,100 (Benton County), and the Guild proposing another county with a total population of about 744,000 (Pierce County). Hence, while both parties agree that comparables must be of "similar size," they disagree over how that statutory term must be applied.

The term "similar size" is not defined in RCW 41.56.465. Nonetheless, it is well established that that term is to be measured in part by a county's total population and total assessed valuation. A number of other factors are sometimes considered which relate to geographic proximity, labor market, size of the bargaining unit, etc.

Ascertaining what constitutes a "similar size" in this case involves much more than a precise mathematical formula. The parties recognize this because the County wants to use Spokane County as a comparable even though its population is about 192,500 greater than Kitsap County's population, and the Guild wants to use Pierce County as a comparable even though its population is about 504,500 greater than Kitsap County's population. The term "similar size" in this proceeding thus has a unique meaning which may not be applicable to other situations.

The parties have previously litigated what comparables are appropriate in the prior interest arbitration proceeding heard by Arbitrator Rodger Buchanan who found that the following counties constituted the appropriate pool of comparables: Whatcom County, Thurston

County, Clark County, and Snohomish County.[3] In doing so, he ruled against the County's claim that Yakima County and Benton County represent appropriate comparables, and he also ruled against the Guild's claim that Spokane County represents a "secondary" comparable. He stated:

. . .

> Since the weight of the evidence presented in this case indicates that Eastern Washington, which includes Spokane, Benton and Yakima Counties has a substantially different type of economy than does Western Washington, it is concluded that all three Eastern Washington Counties be eliminated from use as comparables in this case.

Id., at 12-13.

. . .

He found merit to the Guild's claim that Snohomish County is an appropriate comparable because:

. . .

> The inclusion of Snohomish County is a reasonable inclusion as a "comparable" as its size, though substantially larger than Kitsap County in population, is not so much larger as to cause it to be eliminated as a reasonable "comparable". In addition Snohomish County is included in the same geographic area as is Kitsap County, the same urban area (Seattle) and located in what is defined as the same "labor market" area.

. . .

> Snohomish County, proposed by the Guild is located in Western Washington and inside the Puget Sound labor market, as is Kitsap County, and is an appropriate jurisdiction for use as a "comparable" in this case.

Id., at 13.

. . .

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[3] See Kitsap County and Kitsap County Deputy Sheriff's Guild, Case No. 13261-1-97-283, (1998).

Here, the parties agree that Whatcom County, Thurston County, and Clark County are appropriate comparables. Those comparables therefore are adopted.

However, the Guild wants to retain Snohomish County as a comparable and it wants to add Pierce County. The County wants to add Benton County, Yakima County, and Spokane County and claims that Snohomish County should be dropped as a comparable.

The Guild states that its proposed method for selecting comparables should be adopted because the prior "selection method adopted in the parties' prior interest arbitration decision should be controlling in this case," and because the "Guild's remaining demographic factors justify its list of comparables." It contends that the local labor market should be given special consideration in selecting comparables because "Arbitrators have recognized labor market and geographic proximity as a factor in selecting comparables," and because "Kitsap County is part of the central Puget Sound labor market which should be awarded special consideration in selecting comparables." It also asserts that "A strict variance range advocated by the County should be rejected," and that the Guild's proposed comparables are "more reasonable than the County's."

The Guild adds that the County has not met its burden of proving that Arbitrator Buchanan's set of comparables should be overturned, and that: "A shift in the demographic factors" in the last several years has pushed Kitsap and Pierce closer together "so that the new circumstances now, through the application of Buchanan's principles, call for adding Pierce County." The Guild also claims that comparables should be based in part on an unincorporated basis because "The predominant service area of a County's sheriff office is the unincorporated area" since local municipalities must provide law enforcement services to their own citizens, and because "The revenue available to pay for Deputy Sheriff services predominantly arises from the

unincorporated sections of the County." The Guild also asserts that geographic proximity is particularly important because Arbitrator Buchanan "heavily relied" on it, [4] and that "the number of officers is a good measure of comparability," particularly the number of officers who work in unincorporated areas.

The County maintains that its proposed comparables "are similarly sized as required under RCW 41.56.465 and constitute 'like employers'"; that its proposed comparables "satisfy the population and assessed valuation tests and are not result oriented"; and that they "are similarly situated to Kitsap County and should be utilized as comparables." It also argues that the arbitration panel should follow a "principled approach" in applying RCW 41.56.465 rather than relying upon Arbitrator Buchanan's "summary and unsupported conclusions," and that the Guild's proposed comparables should be rejected because its data is "unreliable" and because the Guild's reliance "on the population and assessed valuation for unincorporated area of the County only is without precedent." The County also asserts that Pierce County and Snohomish County "are not comparable to Kitsap in terms of population, assessed valuation and size of department . . .," and that "The Guild's comparables place too high an emphasis on the Central Puget Sound area."

The County adds that "The standard tool used by interest arbitrators in comparing population and assessed valuation is the 50% up and 50% down rule," but that this standard "did not produce a sufficient number of comparable jurisdictions . . .," which is why it "broadened the

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[4] The Guild cites the following arbitration cases where arbitrators have given special consideration to close geographic proximity and where they have ruled that it offsets dissimilarities in size: See City of Renton (Police), 71 LA 271 (Snow, 1978); City of Pasco (Police), (Krebs, 1990); City of Seattle (Police), (Kienast, 1984).

upper band to include counties that were up to 100% larger than Kitsap County to derive a more inclusive list of comparables." [5] The County also maintains that the Guild errs in trying to exclude all counties on the eastern side of the Cascade Mountains because: "Eastern Washington jurisdictions are routinely compared to jurisdictions in the western part of the state," as it cites a number of prior cases where arbitrators have selected comparables from both parts of the state including one where Kitsap County and Yakima County were compared to Spokane County. [6] It further claims that Arbitrator Buchanan's decision to include Snohomish County is no longer binding because it "is not within the 50% down and 100% bandwidth discussed above," and because his decision is "no longer consistent with RCW 41.56 . . .," as it cites Arbitrator Alan R. Krebs' decision in City of Bothell, (Krebs, 2000), where he found that changing circumstances and the statute required rejection of a prior comparable. It also cites Arbitrator Krebs' decision in City of Anacortes, (Krebs, 2003), where he found that jurisdictions having twice the population of a county are not comparable.

As a general proposition, it is well recognized that comparables established in a prior arbitration proceeding between the same parties should not be lightly disregarded because parties need the stability and predictability that fixed comparables bring over time. That is why I ordinarily am very reluctant to overturn previously-established comparables.

Here, though, both parties agree that I should not adopt all of Arbitrator Buchanan's comparables because, according to the Guild, Pierce County should be added and because,

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[5] The County cites a number of cases where such an upper band has been adopted. See Yakima County, (Gangle, 2004); Whatcom County, (Gaunt, 2004); Thurston County, (McCaffee, 1999); City of Poulsbo, (Gangle, 2002); City of Pullman, (Gaunt, 1997).

[6] See Spokane County, (Krebs, 1999). See also City of Kennewick, (Krebs, 1997); Yakima County, (Gangle, 2004); City of Camas, (Wilkinson, 2003); Thurston County, supra.

according to the County, Snohomish County should be deleted and Spokane County, Yakima County, and Benton County should be added.

A comparison of the total population and the assessed valuations of the disputed comparables establishes the following: [7]

Jurisdiction	Estimated Population	Assessed Evaluation
	2004	2044
Pierce	744,000	$49,371,343
Snohomish	644,800	$54,029,572
Spokane	432,000	$22,148,161
Clark	383,300	$27,461,074
Kitsap	239,500	$17,409,451
Yakima	227,500	$10,615,866
Thurston	218,500	$15,351.292
Whatcom	177,300	$13,069,730
Benton	155,100	$8,911,084

Since Yakima County's population is only about 12,000 less than Kitsap County's population, it certainly is of "similar size" to Kitsap County. Indeed, it is closer in population than any other proposed comparable.

The parties also agree that Whatcom County is a comparable even though its population is about 62,200 less than Kitsap County's population. Hence, it is hard to see why Benton

[7] This data is compiled from County Exhibits B.5 and B.7 and Guild Exhibits 19 and Guild Replacement Exhibits 20 and 21.

County is not a comparable since its population is about 84,400 less than Kitsap County's population.

In addition, the Guild states that Snohomish County is a proper comparable even though its population exceeds Kitsap County's population by about 405,300 and its assessed valuation exceeds Kitsap County's assessed valuation by about $36,620,121. That being so, it is hard to see why Spokane County – which the Guild proposed as a "secondary" comparable before Arbitrator Buchanan - is not a proper comparable since its population is only 192,500 more than Kitsap County's population and its assessed valuation is only about $4,738,710 more than Kitsap County's evaluation.

The Guild cites City of Aberdeen (Police), (Axon, 2000), and City of Bremerton (Police), (Axon, 1998), in support of its claim that only Western Washington state comparables should be used. Those cases involved cities, which are much more numerous than counties, thereby making it much easier to find similarly situated cities in Western Washington State. If there were a sufficient number of similarly sized counties in Western Washington, I would select them. The much smaller number of available counties, however, makes it necessary to look throughout the state for counties which can be compared to Kitsap County because the three agreed-upon comparables of Clark County, Thurston County, and Whatcom County constitute too small a pool to provide an ample basis for comparison.

The Guild also asserts that Yakima County, Spokane County, and Benton County are not proper comparables because Arbitrator Buchanan rejected them on the ground that they have a "substantially different type of economy than does Western Washington," and because there "is no information in this record that would suggest that the nature of the eastern Washington economy or these agencies have changed since this time" that would warrant revisiting this issue.

Arbitrator Buchanan did not cite any record evidence in support of his finding that the Eastern Washington State economy is so different from the Western Washington State economy so as to automatically warrant the exclusion of Spokane County, Yakima County, and Benton County as comparables.

The economics are somewhat different because the area east of the Cascade Mountains is generally more agrarian than the area west of the Cascade Mountains, and because the wages and housing prices east of the Cascade Mountains are generally lower than the wages and housing prices west of the Cascade Mountains.

The fact that there are some differences, however, does not mean that those differences, standing alone, are sufficient to warrant the automatic exclusion of Eastern Washington jurisdictions under RCW 41.56.465.

Given the need to find more than the three comparables which the parties have agreed to, I conclude that possible comparables cannot be discounted merely because they are on the eastern side of the Cascade Mountains, particularly since the record establishes that 10 deputies have transferred from jurisdictions east of the Cascade Mountains, thereby showing that region represents a recruiting area, (Guild Exhibit 106). This finding is consistent with other arbitration awards where arbitrators have ruled that employers from both parts of the state represent proper comparables. [8]

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[8] See Yakima County (Gangle, 2004), where, in agreement with another Guild local, Arbitrator Sandra Smith Gangle ruled that Kitsap County and Yakima County were comparables. Arbitrator Krebs earlier determined that Kitsap County and Yakima County represent proper comparables when compared to Spokane County. See Spokane County, (Krebs, 1999). Arbitrator Kenneth M. McCaffree ruled that Benton County, Kitsap County, Spokane County, and Yakima County and several other counties represent proper comparables when compared to Thurston County. See Thurston County, (McCaffree, 1999). He also found that Pierce County and Snohomish County did not represent proper comparables.

The Guild also asserts that "The County's approach misses the mark because of its overemphasis on total population and assessed valuation at the expense of the unincorporated members which better reflect that the nature of the Kitsap County Sheriff's Department . . ." The Guild therefore relies upon data showing there is a significant difference between the unincorporated population and unincorporated assessed valuation of the disputed comparables versus the total population and total valuation referenced about, (Guild Replacement Exhibits 20-21).

The Guild, though, has not cited any prior interest arbitration case where unincorporated population and unincorporated valuation figures took precedence over total population and total valuation figures. There thus does not appear to be any arbitral support for the Guild's claim.

Furthermore, RCW 41.56.465 does not refer to partial population size. It, instead, mandates that comparables must be based upon "like employers of similar size" which can only mean total population size regardless of whether that population lives in incorporated or in unincorporated areas. I therefore find that it is only proper to consider a county's total population and total assessed valuation in determining which comparables are appropriate. [9]

I thus conclude that Benton County, Spokane County, and Yakima County are comparable because their total population figures and total assessed valuations are closest to Kitsap County's total population figures and total assessed valuations.

Turning now to Snohomish County and Pierce County, the County argues that they "are not comparable to Kitsap in terms of population, assessed valuation, and size of department and thus should be excluded." It claims that they "fall outside the 50% down and 100% up rule on

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[9] See Mason County, (Axon, 2001), where Arbitrator Gary L. Axon rejected a union's claim that unincorporated areas should be used to determine population and assessed valuations.

both of the critical factors of population and assessed valuation"; that they "skew" the comparables; and that they "are simply off the charts . . ." regarding department size because they respectively have 256 and 277 members, as opposed to the 109 members in this bargaining unit.

The Guild argues that both comparables are appropriate because they are part of the same Central Puget Sound labor market as Kitsap County, and because they are in close geographic proximity to Kitsap County. It adds that "There is no need to use a precise one-to-one or two-to-one band . . . because a balanced list can be obtained through other means; that the County has not put forward any evidence showing that Arbitrator Buchanan erred when he ruled that Snohomish County is a proper comparable; that Pierce County is a comparable because it is "an immediate neighboring County and the only other comparable within the Central Puget Sound labor market . . ."; and that Kitsap County has grown so dramatically since the issuance of Arbitrator Buchanan's Award so that its population is now much closer to Pierce County's population.

As related above, Kitsap County's population is about 239,500 as opposed to Snohomish County's population which is about 644,800, and Kitsap County's assessed valuation is about $17,409,451 versus Snohomish County's assessed valuation of about $54,029,572. These are very large differences.

But, those differences must be weighed alongside Arbitrator Buchanan's ruling that Snohomish County is a proper comparable because it is "included in the same geographic area as is Kitsap County, the same urban area ("Seattle") and located in what is defined as the same 'labor market' area." [10] The record here establishes that all of this is still true today.

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[10] Buchanan Award, at 13.

Kitsap County, King County, Pierce County, and Snohomish County thus comprise the Puget Sound Regional Council which coordinates regional planning and development. There is considerable commonality among these counties regarding population growth; population density; housing market; the relatively higher wages they offer; job opportunities; and local economic conditions, (Guild Exhibits 41-42, 46-49, 50-54, 76). All of these factors establish the interconnectedness of these counties regardless of their size, as the Central Puget Sound area serves as a common labor market. Thus, about 48 of the current deputies lived in Kitsap County at the time of their hire, and about another 23 came from elsewhere within the area, (Guild Exhibit 102).

Moreover, even though Snohomish County's population is greater than Kitsap County's, the County itself has not rigidly adhered to its own 50% down – 100% up band since it acknowledges that Benton County falls outside that band.

The need for balance also supports Snohomish County's inclusion as a comparable. Whatcom County borders Canada; Clark County and Benton County border the State of Oregon; and Spokane County borders the State of Idaho. Given the wide geographic dispersal of these other comparables, it is necessary to find another comparable closer to the County in order to make sure that there is sufficient data to reflect local economic conditions.

The deputies here, after all, must buy and maintain houses in the Puget Sound area as opposed to some of the other far-flung comparables, which means that they must be able to afford to do that. House prices are generally lower in most of the other comparables as seen in Guild Exhibits 88, 97-98 which show the following medium home prices in the second quarter of 2004:

County	Median Home Prices
Benton	$147,400
Clark	$182,500
Kitsap	$204,000
Pierce	$195,500
Snohomish	$248,000
Spokane	$127,100
Thurston	$184,000
Whatcom	$212,700
Yakima	$125,600

Kitsap County's medium home price of $204,000 is much greater than the median home prices for Benton County, Spokane County, and Yakima County which are $147,400, $127,100, and $125,600 respectively. Newspaper Columnist Tom Kelly testified about Kitsap County's escalating housing prices, a trend he stated will continue for the indefinite future because of the County's growth and because "builders have discovered Kitsap." [11] Deputies here thus need to earn more than some of their counter-parts elsewhere in the state in order to simply buy a house. That is why it is important to select at least one comparable in the Puget Sound area to reflect local economic conditions. [12]

I therefore conclude that Snohomish County represents a proper comparable.

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[11] Transcript, at 178.

[12] See City of Kennewick, (Krebs, 1997), where Arbitrator Krebs gave special consideration to geographic proximity because "it is particularly understandable that the employees of each would be aware of the contractual benefits paid by their neighboring cities, and that such awareness would affect their expectations," which is why he added: "Neighboring jurisdictions are often given special consideration when determining comparables." The need for geographic balance also was addressed in Yakima County, supra, where Arbitrator Gangle ruled that Clark County, Kitsap County, Thurston County, and Yakima County represented proper comparables even though they were separated by the Cascade Mountains. It also was addressed in City of Pasco (Police), (Wilkinson, 1994).

Pierce County also is in the Puget Sound labor market and it would constitute an appropriate comparable if its population were closer to Kitsap County's population. However, Pierce County's population is about 505,000 greater than Kitsap County's population, and about 99,200 greater than Snohomish County's population.

It is true, as the Guild correctly points out, that Kitsap County's population has grown from the time of Arbitrator Buchanan's Award and that Thurston County was recently recognized as being comparable to Pierce County.

Nevertheless, I conclude that Pierce County does not constitute a proper comparable because its population is simply too much larger than Kitsap County's population and because Snohomish County's inclusion as a comparable helps provide the kind of balance that would come from having Pierce County as a comparable.

Based upon the above, I thus conclude that the following counties represent the proper comparables: Benton County, Clark County, Snohomish County, Spokane County, Thurston County, Whatcom County, and Yakima County.

Having determined the comparables, it is now time to address each of the issues in dispute. They are as follows:

RELEASE TIME FOR GUILD ACTIVITIES

The prior agreement did not specifically address which Guild activities qualify for paid release time.

The Guild wants to add the underlined phrase to this part of the agreement to identify which Guild activities would be covered by paid release time:

SECTION B – GUILD ACTIVITIES

1. The Employer shall allow reasonable time off with pay for Guild members conducting official business relating to the Guild's function as a collective bargaining representative; provided such time off shall be taken at the consent of the Sheriff or his designee or by the authority of the Board of County Commissioners and provided further that such consent shall not be unreasonably withheld (Emphasis in original).

The County proposes that only certain Guild activities be covered by paid release time via the following language:

SECTION B – GUILD ACTIVITIES

1. The Employer shall allow reasonable time off with pay for Guild members conducting official business that is vitally connected with the Employer's business; provided such time off shall be taken at the consent of the Sheriff or his designee or by the authority of the Board of County Commissioners and provided further that such consent shall not be unreasonably withheld. Examples of appropriate uses of release time include participation in labor-management meetings, representing employees in grievance meetings and other contract administration matters. Guild officers and members will be charged annual leave or leave without pay, if no accrued annual leave is available, when they are absent from work to perform internal Guild business. In all instances, before leaving the work area or otherwise devoting on-duty time to the performance of Guild business, the Guild officers shall notify their supervisor, obtain approval and notify their supervisor when they return (Emphasis in original).

The Guild states that this part of the contract must be clarified "to comport with the Washington State Public Employees Collective Bargaining Act, (PECBA), and the standard adopted by PERC for permitting union release time" because the County in 2002 notified the Guild that the prior language allowed for some "illegal activity" and because the County has unilaterally changed the way the agreement has been applied. That led the Guild to file an unfair labor practice complaint with PERC which is why it now asserts that "the appropriate forum for

this issue to be resolved is through PERC." The Guild alternatively argues that its proposal should be accepted because it is in line with "the current PERC standard"; because the County's proposal would not allow Guild members to meet ahead of time to prepare for contract negotiations or to attend arbitration hearings; because "None of the comparables have such restrictive release time . . ."; and because the pertinent release time language found in other County bargaining units has no "bearing or relevancy in these proceedings."

The County states that its proposal should be adopted because "The current contract language has led to abuse"; because "PERC precedent supports the reasonable limits set forth in the County's proposal"; because its proposal "promotes internal parity"; and because the Guild's own "comparability analysis supports the County's proposal."

In addressing this issue, it is first necessary to point out that the arbitration panel is not being asked to determine what the prior contract language means and whether the County had the legal authority to effectuate certain changes as to how that language should be implemented and interpreted. It also is unnecessary to decide whether that prior language can be harmonized under applicable state law since that is now a matter pending before PERC.

The parties' conflicting proposals nevertheless are properly before the arbitration panel for adjudication because both parties have the right to propose changes to the disputed language at the expiration of the prior agreement regardless of what PERC does or does not do regarding the prior language, and because PERC has expressly declined to remove this issue from this proceeding, (County Exhibit A-11). As a result, and because PERC's determination is not needed to determine the merits of the newly proposed language, it is proper to do so here.

The County asserts that the current language has led to abuse because deputies in the past took time off for Guild business without management's approval or knowledge, and that they

have taken time off to attend Guild executive board meetings; to meet with the Guild's attorney; to attend training; and to testify for other bargaining units and to engage in other activities.

Regardless of whether any such "abuse" has occurred – an issue the arbitration panel need not decide – it is clear that there is a wide gulf between the parties over the proper scope of paid release time. It therefore must be stressed that the dispute herein does not involve unpaid release time, as the County's proposal provides for that.

Hence, the choice is between selecting the Guild's wide open language providing for paid leave time for any official business "relating to the Guild's function as a collective bargaining representative," or the County's more limited language which the County's Brief, at 19, states covers such matters as investigating possible grievances, attending contract negotiations, and participating in investigatory interviews or Loudermill hearings. Undersheriff Dennis Bonneville also testified that the County's language provides for paid release time to attend collective bargaining negotiations. [13]

There are no internal comparables supporting the Guild's proposal because six of the other collective bargaining units do not even have any release time language, (County Exhibit 1.3). Moreover, the agreements for the County's Deputy Prosecutors and Juvenile Detention only provide for paid release time to attend contract negotiations, and the Sheriff Support and Sheriff Lieutenant agreements only allow partial release time for activities which are vital to the Guild and the County. While the Guild claims that these internal comparables should not be considered, they represent one of the factors normally considered in ascertaining whether new contract language should be adopted.

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[13] Transcript, at 938. Given the County's representations that its language allows for paid release time to attend contract negotiations, its language is construed in that manner.

There also are no external comparables supporting the Guild's broad language, (Guild Exhibit 212). Benton County and Yakima County have no contract language on this issue and the remaining comparables do not provide for partial release time off for all union activities, or for paid release time off to attend hearings relating to other bargaining units, or for paid release time off to attend training. They instead have, to one degree or another, more limited language governing when paid release time will be granted.

Since neither the internal nor external comparables support the Guild's open-ended proposal, and since the County's proposal provides for ample paid release time with the opportunity to also receive unpaid leave time, I conclude that the County's proposal should be adopted and that it shall become effective upon the issuance of the Award.

DISCIPLINE AND DISCHARGE – GRIEVABILITY OF TRANSFERS

The prior agreement did not specifically address whether disciplinary transfers could be grieved.

The Guild wants to grieve disciplinary transfers by adding the word "transfer" to the following language so that it reads:

> **SECTION O – DISCIPLINE AND DISCHARGE**
>
> Discipline is defined to include written reprimands, suspensions without pay, disciplinary demotions to a lower paying classification, transfers and discharge (Emphasis in original).

The Guild states that the term "discipline" must encompass "transfers" so the County "does not have unlimited discretion to remove a deputy from a specialty assignment for whatever reason . . ." it sees fit "despite the harmful consequences, both to one's professional reputation and pocket book." It also claims that this is mainly a "housekeeping item" because other parts of

the contract state that all discipline must be for just cause and that the contract must be cleared up because Ned Newlin, the Chief of Detectives and Support Services, testified at the hearing that transfers represent a fundamental management right over which the County must exercise exclusive control.

The County contends that the Guild has not met its burden of proving a "compelling need to modify the contract"; that the Guild's proposal "inserts ambiguity into the contract where none previously existed"; and that its proposal would "substantially erode the Department's right to 'designate the work functions to be performed' as provided for in the management rights clause of the parties' agreement."

In order to modify existing contract language, it is well established that a moving party has the burden of proving that there is a need for change and that its proposal reasonably addresses that problem.

The Guild has failed to meet this burden because it has not cited one example of where an officer was improperly transferred because of disciplinary reasons. In addition, no internal comparables support the Guild's proposal and, with the possible exception of Benton County, none of the external comparables expressly provide for the grieving of transfers, (Guild Exhibit 213; County Exhibits 2.2 and 2.3). Hence, it is not clear whether transfers can be grieved under those agreements. Furthermore, the Guild's proposal could lead to grieving all transfers even though they may not involve discipline, thereby interfering with the County's legitimate need to effectuate transfers for legitimate operational reasons which are unrelated to discipline.

I therefore conclude that the Guild's proposal should be rejected.

DISCHARGE AND DISCIPLINE: GRIEVING WRITTEN REPRIMANDS PAST THE SECOND STEP

The prior agreement allowed employees to grieve written reprimands through all steps of the grievance procedure including arbitration.

The County wants to discipline employees for violating the Employer's Code of Conduct and it also wants to prevent employees from grieving written reprimands after the second step by proposing the following language:

> **SECTION O – DISCIPLINE AND DISCHARGE**
>
> Discipline is defined to include written reprimands, suspensions without pay, disciplinary demotions to a lower paying classification, and discharge. Employees may be disciplined, among other reasons, for violating the Employer's Code of Conduct, set forth in Appendix C of this collective bargaining agreement. Written reprimands may only be grieved through Step 2 of the grievance procedure (Emphasis in original).

The County states that its proposal is needed to incorporate the parties' agreed-upon Code of Conduct, and that written reprimands should not be grieved past the first two steps because "the first two steps of the grievance procedure include a thorough investigation and review by the Undersheriff." That, claims the County, "provides a sufficient mechanism . . ." and thus "reserves the full arbitration procedures for more serious disciplinary actions that involve loss of pay or property rights."

The Guild, while not objecting to the first two sentences in this proviso, [14] objects to the third sentence because "the Undersheriff would have the final say in the matter"; because a letter of reprimand "could, and likely would be relied upon in a later more serious disciplinary action,"

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14 Transcript, at 1019.

thereby preventing the arbitrator from determining whether "the letter of reprimand was truly given for just cause"; and because Chief Newlin testified that the Department would rely on written reprimands in determining whether to impose more severe discipline.

Again, it must be pointed out that the County as the proponent of this change bears the burden of proving that it is needed. It has failed to meet its burden because this record is barren of any evidence showing that grieving past the second step of written reprimands has ever posed a problem in the past. In addition, progressive discipline presupposes that an employer has just cause for imposing all disciplinary measures particularly where, as here, written reprimands can ultimately lead to termination. That is why it is essential under the just cause standard to allow affected employees to grieve and possibly arbitrate all actions that can lead to that result.

The County therefore is wrong claiming that its proposal "reserves the full arbitration procedures for more serious disciplinary actions that involve loss of pay or property rights." Written reprimands, if left unchallenged, also can lead to the "loss of pay or property rights" even though that may not be immediately the case. That is why deputies who receive written reprimands are entitled to have their discipline reviewed by a neutral decision maker under the just cause standard.

In addition, the County cannot point to any external comparable which limits the grievance procedure in this fashion.

For all these reasons, this part of the County's proposal is rejected. The new agreement therefore shall only contain the first two sentences of the County's proposal, as the Guild does not object to them.

WAGES

The Guild proposes 4% across-the-board retroactive step increases in the salary schedule for all bargaining unit members effective January 1, 2003, January 1, 2004, and January 1, 2005.

The County's wage proposal, as modified, does not provide for retroactivity. It, instead, provides for a 4.9% wage increase upon the issuance of the Award which will be paid for the remainder of 2005. Its proposal reads: [15]

. . .

> 1. 2003 wage adjustment. Effective with the first full pay period following Guild ratification of this Agreement, all steps in the 2002 salary schedule shall be increased across the board by 2.1%, which is equal to one hundred percent (100%) of the first half Semi-Annual, Seattle – Tacoma-Bremerton Area, CPI-U, for 2002 as compared to the first half Semi-Annual index, Seattle-Tacoma-Bremerton Area, CPI-U, for 2001. Effective July 1, 2003, add an additional step 7 to the Sergeants pay grade, set 2.5% above Step 6.
>
> 2. 2004 wage adjustment. Effective with the first full pay period beginning on or after January 1, 2004, all steps in the 2003 salary schedule shall be increased across the board by ninety percent (90%) of the first half Semi-Annual, Seattle-Tacoma-Bremerton Area, CPI-U, for 2003 as compared to the first half Semi-Annual index, Seattle-Tacoma-Bremerton Area, CPI-U, for 2002.
>
> 3. 2005 wage adjustment. Effective with the first full pay period beginning on or after January 1, 2005, all steps in the 2004 salary schedule shall be increased across the board by ninety percent (90%) of the first half Semi-Annual, Seattle-Tacoma-Bremerton Area, CPI-U, for 2004 as compared to the first half Semi-Annual index, Seattle-Tacoma-Bremerton Area, CPI-U, for 2003. (Emphasis in original).

The Guild states that its 4% wage proposal for each year of the new agreement should be adopted because it is supported by the external comparables and the "settlement trends"; because the CPI should be given less consideration that usual; because internal wage comparisons should

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[15] The County explained at the hearing that its written proposal must be read in conjunction with its September 28, 2004, cover letter stating that the retroactive feature of its written proposal should be disregarded. Transcript, at 91.

be considered and serve as a "base line"; and because economic and fiscal conditions "support its proposals as do deputy retention and recruitment." The Guild also contends that "Wage comparisons cannot be fairly made just by taking one point in the pay scale," and that it is necessary to look at other factors such as education and longevity premiums. It claims that the deputies here with five year's experience "find themselves considerably behind their market" because they are 9.33% behind at the A.A. mark and 10.31% behind at the B.A. level" and that, "Even at the 10 year mark, the County's preferred point of comparison, the deputies still find themselves almost 5.5% behind the comparables at the A.A. level and 6.33% behind the B.A. mark."

The Guild adds that adoption of the County's wage proposal would widen the wage gap and lead to "catastrophic results" because it would still leave deputies at the five year mark about 5.63% behind at the AA level and 6.6% behind at the BA level. It also claims that the County's own comparables show that the deputies here at the five year level are about 6.5% and 7.33% behind Spokane County, Yakima County, and Benton County (Guild Replacement Exhibit 119). The Guild also states that the County's "net hourly wage" methodology is flawed because of errors; because of its over-reliance on the eastern Washington comparables; because the County's analysis only looks at a one-year interval; and because the County has not performed any similar analysis for the Guild's proposed comparables. The Guild also contends that while a "net hourly wage analysis has been adopted in fire arbitration decisions because of the variations in the work periods and leave arrangements," it is improper to use such an analysis in police arbitrations because police follow fairly set schedules.

The County states that the Guild's 4% across-the-board retroactive wage increases represent an additional cost of $1,592,738 over the base wages alone, (County Exhibit 3.5.2),

which is much more than its own projected $455,122 wage increase. It adds that "The overall cost of the Guild's proposal cannot be justified" because the Guild did not perform a cost analysis of its own proposal; because its overall cost is "overwhelming"; and because all of the Guild's proposals would increase the County's expenditures over a three-year period by $3,907,803, a 50% increase, (County Exhibit 3.5.2). The County's estimate includes $751,500 which it states is the cost of converting to the Guild's mandatory 4-10 work schedule. The County adds that for comparison purposes it has used the top step for a deputy who has an AA degree and 10 years of service; that the net hourly compensation rates in 2002, 2003, and 2004 were higher than its six comparables; and that its proposal would result in keeping that rate ahead of the comparables. The County also asserts that the Guild's comparability data is "seriously flawed."

It adds that its proposal – which provides for a 2.1% lift in 2003, a 1.8% lift in 2004, and a 1.2% lift in 2005 - is supported by the external and internal comparables and the Seattle CPI-U. It also maintains that "The fiscal resource factor does not support the Guild's wage demand because the County's reserve budget reflects past "difficult cost-cutting measures"; because its current budget "reflects a fair and reasoned approach given the competing demands of the budget"; because the County must be "conservative in budgeting given the likely loss of the significant Silverdale revenue contribution"; and because the Guild's evidence "does not justify deviating from the budget or reducing the reserve balance." The County also states that the turnover evidence does not support the Guild's wage proposal and that serious crime is down.

Both parties thus claim that their respective wage offers are supported by employee turnover and the number of new applicants. The Guild states that the County's recruitment numbers are down from a decade ago and that the County over the last few years has had fewer

qualified candidates for openings which it claims is caused by the County's low wages, (Guild Exhibits 185-186). The County asserts that it has experienced very low employee turnover and that it has not experienced any difficulties in recruiting, thereby showing that it's current wage and benefits package is adequate, (County Exhibit 3.6.1).

The record shows that while there were 154 test applicants in July 1995, there were only 57 applicants in 2003. But, there may be other reasons for that drop since Detective Roger Howerton acknowledged that "it also appears that law enforcement may not be as high on some people's list anymore as others," and that "we found a shift in the amount of people that are getting into the public sector, especially in law enforcement." [16] County Personnel Analyst Dan Darling, who administers the civil service examinations for the Sheriff's Department, added that the County is still getting quality candidates from the civil service registers being developed. [17] In addition, 12 out of the County's last 17 hires transferred from other departments. [18]

The County has the better argument on this point because there is no sign that any deputies left County employment as a result of low wages, and because the record shows that the County has been able to hire new hires under its current wage package even though there are fewer job applicants than a decade ago.

The wage proposals here must be considered within the larger context of the parties' other economic proposals involving step increases, longevity, assignment pay, educational

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16 Transcript, at 294.

17 Transcript, at 624.

18 Transcript, at 622-623.

incentive, shift differential, court-time pay, etc., in order to know the overall costs of each party's economic package; to see how they measure up against the CPI, external and internal comparables; and whether the County should pay for all that is being sought.

The County has costed out each of the Guild's following proposals as follows, (Replacement County Exhibit 3.5.2):

. . .

Cumulative Costs

	1st Year	2nd Year	3rd Year	Total
Deferred Compensation (2% annual wage)	$ 129,166	$ 134.333	$ 139.706	$ 403,205
Shift Differential (1.5% base pay)	$ 45,141	$ 46,947	$ 48,825	$ 140,913
Step Compression	$ 35,470	$ 43,220	$ 35,072	$ 113,762
Longevity Bonus Increase (0.5% - 1.0%)	$ 26,120	$ 27,165	$ 28,251	$ 81,536
Assignment Pay Increase (0.5%)	$ 7,394	$ 7,690	$ 7,998	$ 23,083
Assignment Pay for Traffic Unit	$ 22,794	$ 23,706	$ 25,640	$ 72,140
Premium Pay for all Holidays (add 6)	$ 41,463	$ 43,122	$ 44,847	$ 129,432
Mandatory 4 x 10 Schedule*	Proposal is not retroactive		$ 808,738	$ 751,500
Education Incentive (2%**)	$ 129,166	$ 134,333	$ 139,706	$ 403,205

. . .

The Guild has not costed out its proposals. It questions the County's figures and asserts that its 4-10 work schedule actually could save money rather than costing $750,000 as the County claims. It also claims that since it has dropped its deferred compensation proposal, the County will not have to spend the $403,000 it claims will have to be spent on this item, and that the remaining difference in costs is "exacerbated" by the County's refusal to make its wage offer retroactive, and that if the County's offer were retroactive, that alone would generate an additional $698,271.

But even when these matters are considered, it still appears - in the absence of any rebuttal evidence to the contrary - that the Guild's proposals relating to shift differential, longevity, assignment pay, and education incentives call for about 1.5%, 0.5% - 1.0%, 0.5%, and

2% increases which total about 4.5% - 5.00% a year. That does not include the percentage increases for step compression, assignment pay for the Traffic Unit, and premium pay for all holidays which appear to total about another 1.5% a year. All of these separate economic proposals thus total about 6% - 6.5% a year and about 18% - 19.50% over the term of the agreement.

When those proposals are added to the 12% across-the-board wage increases the Guild is proposing over the term of the agreement, it appears that the Guild's total economic package for three years is about 30%.

That is well in excess of the CPI which was 2.1% in 2002, 1.8% in 2003, 1.3% in 2004, and the estimated 0.1% in 2005, (County Exhibit 3.3.2).

The County's proposal, though, is less than the CPI because while it lifts wages by 4.9% upon the issuance of the Award, [19] it does not provide for any retroactivity for 2003 and 2004 when the CPI rose about 3.1% without compounding. Deputies under the County's proposal therefore would not receive any wage increases for those two years and the first quarter of this year.

The Guild claims that the CPI "should be heavily discounted or entirely disregarded . . ." because the CPI "numbers are clearly out of line with the average settlements among the proposed comparables," and because the County's wage proposal does not match the CPI over the years of the new agreement.

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[19] Since at least one quarter of the year will be over by the time the Award issues, and since the County's proposal does not provide for retroactivity, this 4.9% lift does not represent the actual increase that will be paid out in 2005. The actual wage increase paid out in 2005 will be about three quarters of that figure – i.e., slightly below 4%.

Since RCW 41.56.465(d) mandates consideration of the CPI, it cannot be "entirely disregarded."

The Guild correctly points out that the County's financial situation has greatly improved over the last several years since it had $12,960,0000 in its General Fund Balance in 2004 which Budget Manager Rich Hanna was quoted as saying in a local newspaper could rise up to $15,500,000 by the end of 2004, (Guild Exhibit 262). He also was quoted as saying that the County's revenues were coming in faster than the County could spend it.

The County claims that Hanna's comments were contrary to the evidence adduced at the hearing, and it points out that some of the people who heard his comments state that he was joking when he said the County was taking in money faster than it could spend it. See Affidavits of Patty Lent, Chair of the County's Board of Commissioners, and Barbara Stephenson, County Treasurer, (County Supplemental Exhibit 3.8).

But, while the Guild depicts the County as a cash cow, that does not necessarily mean that the County can pay for all of the Guild's economic demands.

County Administrator Malcolm Fleming explained that the County faced severe financial problems in 2003 and that it has built up its reserves through considerable fiscal discipline and fiscal sacrifice. That is why, said he, it implemented about $5,000,000 in cost savings measures which included eliminating about 41 positions through layoff and attrition; imposing a hiring freeze; reducing hours; and freezing salaries for commissioners, elected officials and department directors. The County also extended the replacement cycle on its equipment and vehicles, and it reduced spending on travel, training and supplies. The County's fiscal problems led to a referendum in November 2002 where voters were asked whether their property taxes should be raised. The referendum was defeated.

Fleming added that the County also has faced, and is facing, very difficult economic pressures from unfunded state mandates; higher health insurance costs; the loss of funding created by Initiative 747 which capped property tax increase for existing homes and businesses; the loss of funding created by Initiative 695 which eliminated the motor vehicle exercise tax, thereby costing the County about $800,000 a year in lost revenue; increasing the staffing for law enforcement; and paying higher pension contributions of $1,200,000 in 2005. In addition, the County can eventually lose about $12,100,000 in annual revenues if Silverdale, the largest commercial center in the County, ever decides to incorporate.

This larger picture shows that the County must be extremely careful in how it spends its revenues, and that it is of the utmost importance that the County not needlessly spend the money it currently has. In addition, the County properly adds that the inquiry here must focus on the County's economic condition throughout the term of the 2003-2005 agreement rather than on what the future may hold. Hence, little weight can be given to the Guild's claim that recent "settlement trends" for 2005 support its offer, as those "trends" do not reflect the prior fiscal climate that existed in 2003 and 2004 when the County was facing greater fiscal pressures.

Turning now to the comparability data, it shows that the deputies at the five year mark are about 6.5% behind the average comparables, (excluding Snohomish County), at the AA mark and 7.33% behind the average external comparable at the BA mark, (Guild Replacement Exhibit 119). Deputies in 2004 thus received $266.94 less than the average comparables at the 5 year, no degree mark; $290.78 less than the average comparables at the 5 year, AA degree mark; and $335.28 less than the average comparables at the 5-year, BA degree mark.

The Guild's data also shows that deputies at the ten year mark in 2002 received $97.73, $106.71, and $151.20 less at the no degree, AA, and BA marks, (Guild Replacement Exhibit 119).

The County claims that the "Guild's base data is incorrect and misleading . . ." because it "compares 2002 wages for the bargaining unit with wages provided in 2003 and 2004 for the comparable employers . . .," and that "it is more appropriate to compare wages for the County with wages awarded in the same year by the comparables as the County has done."

While the Guild's figures are not as precise as possible because they co-mingle 2003 and 2004 wage rates for the same year, they are accurate enough to establish that deputies at the five year mark were, and are, behind the external comparables. Indeed, they were behind the County's own comparables of Benton County, Spokane County, and Yakima County, all of whom paid their deputies more than the County at the five year mark. In addition, deputies will not be receiving any actual wage increases for those years under the County's proposal, and it is fair to compare how far deputies were actually behind in those years and whether retroactivity is needed.

The County does not focus on the five year mark and, instead, looks at the top deputy step with an AA degree at the ten-year mark for benchmark wages via a chart which does not include Snohomish County, (County Exhibit 3.2.1). That chart does not compare hourly wages. It, instead, uses a "net hourly compensation rate" which is based upon the number of annual scheduled hours minus vacation and holiday time, which the County claims is an "apples-to-apples" comparison. The County thus claims that the deputies here were receiving 3.57% above the average of the comparables in 2002. The County repeats this exercise for 2003, 2004, and

2005, (County Exhibits 3.2.2, 3.2.3, and 3.2.4), which reveals that the deputies here were 2.74% above the average comparables in 2003; 1.76% above the average comparables in 2004; and that they will be .67% above the average comparables in 2005.

In support of this methodology, the County cites two cases where it has been adopted in the past: King County Fire District #44 (Wilkinson, 2002); City of Kelso (Lankford, 2001).

Those cited cases involved firefighters who, as the Guild points out, often have irregular work schedules which make it very different to compare their hourly wages with the hourly wages paid to other firefighters. Here, though, law enforcement personnel have more regularized work schedules which make it much easier to compare hourly wage rates, and that is the way hourly wage rates have been traditionally determined for law enforcement groups.

In addition, Labor Relations Manager Gudmundson acknowledged that he did not use the actual wage figures which were ultimately established for several comparables which were unsettled when he prepared the data. He, instead, decided "to make a guess on where other people would settle . . .," and he used the 1.6% and 2.1% figures the County is using here for 2003 and 2004. He also used those numbers in extending out the 2005 wages. He agreed that using the actual wage figures for Thurston County and Whatcom County would have raised the comparability figures higher. [20]

A comparison with the external wage settlements, (Guild Exhibits 131, 135, and the recently issued Yakima Award [21]), shows the following:

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[20] Transcript, at 548-549.

[21] The Yakima County wage increases were effective on July 1, 2003, and January 1, 2004.

County	2003	2004	2005
Benton	3.50%	2.50%	N.S.
Clark	3.50%	N.S.	N.S.
Spokane	3%	N.S.	N.S.
Snohomish	N.S.	N.S.	N.S.
Thurston	3%	3%	6.50%
Whatcom	4%	3%	3.00%
Yakima	2.25%	4.5%	

All of these wage increases, obviously, are greater than the County's zero across-the-board wage increases for 2003 and 2004.

The County asserts that these wage increases are not reliable because "standing alone" they do "not tell the Arbitration Panel anything that would constitute a reasonable wage increase in Kitsap County" because such increases "must be analyzed in the context of the comparability of the current wage increase in the cost of living, department turnover, labor market conditions, and the other terms of the parties' agreement, etc.," particularly when the County "is already at or near the comparables."

Wage increases often are influenced by the kind of factors listed by the County which is why it is difficult to ascertain at a distance why wage increases – and many other bargaining items for that matter – have been agreed upon.

Nevertheless, by selecting the comparables above, we do know that the CPI for all the comparables was generally the same and that the other comparables have faced the same kind of fiscal pressures caused by the passage of Initiative 749 and Initiative 695, and some of the other matters alluded to in Fleming's testimony. In addition, it is unnecessary to know the precise details of how something has come about in a particular collective bargaining relationship because it is the whole picture that counts, not just one small piece of the picture. That is why comparables, despite whatever shortcomings they may have, are so valuable in the composite.

A comparison with the internal wage settlements, (County Exhibit 3.4.2), shows the following:

UNIT NAME	2004	2003
AFSCME 1308-Courthouse (includes Security	2.00%	2.75%
OPEIU Juvenile Detention/CRC	2.00% (1/12/04) 1.00% (7/12/04)	2.00%
AFSCME 1308-Supervisors (Formerly AFSCME)	2.00%	2.75%
911 Employee's Guild/CENCOM (Formerly AFSCME Courthouse)		
Teamsters 589 Facilities, Parks & Recreation	2.00%	2.10%
Sheriff's Lieutenants-IUPA (Formerly Non-Represented)	2.00%	2.10%
Sheriff's Support Guild	2.00%	2.75%
Corrections Officers Guild (Formerly AFSCME)	7.00%	0.00%
AFSCME 1308-Corrections Sergeants (Formerly Corrections Sergeants Association)	2.88%	2.10%
Non-Represented Employees	2.00%	2.75%
AFSCME 1308-Deputy Prosecuting Attorneys	2.00% (1/12/04) 1.00% (7/12/04)	2.75%
Council Public Works-Laborers + IAM & AW	2.00%	2.10%
. . .		
Teamsters 589 Public Works-Wastewater	2.00%	2.10%

The County claims that no wage increases are warranted here for 2003 and 2004 because the deputies already are near the top of the market comparables and because they received

greater wage increases than the CPI and almost all of the other internal bargaining units between 1994 and 2002, (County Exhibit 3.4.1).

As related above, deputies in fact are below the external comparables at the five year mark, and I also find that they are below the external comparables at the ten year mark, (Guild Replacement Exhibit 119).

As for the past, the County's data shows that the deputies' wages between 1994-2005 would exceed the CPI by $1.38 per hour or 24.7% if the County's proposal is granted, (County Exhibit 3.3.3). In addition, the deputies over the last three contract periods increased their pay by 37.58% and those increases were 7.87% higher than the wages paid to the Courthouse unit, the County's largest bargaining unit, (County Exhibit 3.4.2).

However, that data does not reveal the whole story because the deputies in 1995 gave up shift differential pay and shooting pay in exchange for higher wage increases which the County's data does not show. Measured from 1995 as opposed to 1994, wages therefore out-paced the CPI by only 2.8%. In addition, the County's data does not include reclassifications which can generate considerable wage increases and which are far more prevalent in the other internal bargaining units, and it also does not show how much money was added to the top of the wage scale. [22] Moreover, Fleming acknowledged that about $600,000 was awarded to the Courthouse bargaining unit because of a market wage study and that that figure, which may be increased in the future, is not reflected in the County's data. The wage figures for some of the County's bargaining units therefore may be too conservative.

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[22] Transcript, at 613-614.

This wage issue thus boils down to whether the Guild's 4% across-the-board wage increases should be granted when they exceed the CPI; when they exceed the wage increases granted to most of the internal comparables; and when they stretch the outer limits of what the County can afford.

While these factors weigh against the Guild's wage proposal, the record also shows that there is a need for catch-up, and that the County's failure to offer a wage increase in 2003, 2004, and for at least the first quarter of 2005 does not keep up with the CPI for that time period. The issue of no-retroactivity is particularly important because all of the external and internal comparables which have reached agreements have granted wage increases in those years and because the County has not offered a persuasive case as to why retroactivity should not be granted. As a result, I conclude that these latter factors outweigh the former and that the Guild's wage proposal should be adopted.

Those wage increases, which shall be compounded, therefore will become effective in the first full pay period following the issuance of the Award.

STEP INCREASES: SERGEANTS NEW STEP

The wage schedule in the prior agreement had six steps.

The Guild wants to compress the time it takes to obtain Step 4 and 5 increases via the following language:

SECTION B – EXPERIENCED BASED PAY INCENTIVES

1. Experienced based pay increases shall be given based on length of employment.

2. An employee shall be advanced into step level two (2) through step level ~~four (4)~~ six (6), twelve (12) months after the initial hiring date and twelve

(12) months after the preceding advancement ~~and into step level five (5) through step level six (6), twenty four (24) months after the preceding advancement.~~ (Emphasis in original).

3. Length of employment required for step advancement shall be based on compensable hours only.

The County proposes to add a Step 7 to the Sergeant's pay scale which is 2.5% over Step 6, and to make it retroactive to July 1, 2003, [23] via the following language:

SECTION B. EXPERIENCED BASED PAY INCENTIVES

1. Experienced based pay increases shall be given based on length of employment.

2. An employee shall be advanced into step level two (2) through step level four (4), twelve (12) months after the initial hiring date and twelve (12) months after the preceding advancement and into step level five (5) ~~through step level six (6)~~ and above, twenty-four (24) months after the preceding advancement.

3. Length of employment required for step advancement shall be based on compensable hours only.

The Guild states that the data "strongly supports" its proposal because all five of its comparables "now provide for deputies to reach the journeyman level wage after the successful completion of five years," (Guild Exhibit 109), thereby making the County "a marked outlier." It argues that the deputies here "move through their current step system at a slower rate" and that this contributes to the "sizeable" wage gap at the five year level, which is putting the County at a disadvantage in hiring new deputies. The Guild also claims that the County's proposal to add a

[23] Transcript, at 1247, 1281.

step for sergeants pay marks a "wrong direction by extending the time it takes to get to the top step, exacerbating the situation," and that the County's proposal at least recognizes "the existence of a wage gap."

The County states that its comparables support its proposal because that will place it "slightly above the average of its comparables" for the top step sergeant pay. It also objects to the Guild's proposal aimed at compressing in half the amount of time it takes to progress to Steps 5 and 6 on the grounds that "the Guild's proposal is inconsistent with the sergeant pay offered by the comparable jurisdictions," and that the Guild's proposal is also "wholly inconsistent with the internal comparables" because most County step increases are based upon 24-month time periods.

As related above, deputies at the five year mark are behind the comparables. Deputies here also progress through the step schedule at a slower rate than their counterparts within the comparables, all of which provide for a five year journeyman rate.

The Guild's proposal, however, calls for full retroactivity which the County estimates will cost about $113,762 over the three-year agreement, (County Replacement Exhibit 3.5.2). Although the County has not put a percentage price on this proposal, it appears to be a little less than 2%.

That cost must be weighed alongside the County's alternative proposal to retroactively add a Step 7 to the wage schedule for sergeants which the County calculates will cost about $28,568 over the life of the agreement. The problem with the County's proposal is that it will further elongate the wage schedule.

If the deputies were not being granted such a sizeable wage increase, I would adopt the Guild's proposal because the data on comparability is so overwhelming. The 12% wage increase

being granted, however, should help alleviate the wage compression problem. In addition, I am extremely reluctant to not grant the added sergeant's pay requested by the County since it provides for retroactivity and since the Guild acknowledges that sergeants are "slightly behind the market. [24]

On balance, I find that the latter factors outweigh the former and that the County's proposal regarding sergeant's pay should be adopted, and that the Guild's proposal to compress the wage schedule should be rejected. The County's proposal shall be made retroactive to July 1, 2003.

LONGEVITY BONUS

The Guild proposes to increase the amount of the longevity bonus provided for in the prior agreement via the following language:

> **SECTION D – LONGEVITY BONUS**
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> . . .
>
> 2. [~~Effective with the first full pay period beginning on or after January 1, 2002~~ Incorporate terms of MOU…] and upon completion of the following years of employment, Employer shall pay employees, as an annual longevity bonus, the amounts which follow, to eligible employees at the pay period which follows the anniversary date of employment:
>
> 7 years of employment.....1.50% of annual salary
> 10 years of employment.....~~2.00~~ 2.5% of annual salary
> 15 years of employment.....~~3.00~~ 4.0% of annual salary
> 20 years of employment.....~~4.00~~ 5.0% of annual salary
> 25 years of employment.....~~5.00~~ 6.0% of annual salary
>
> . . .

[24] Transcript, at 648.

4. The longevity bonus shall be based upon continuous employment, exclusive of those periods wherein an employee is placed upon a leave without pay status; provided, when an employee is laid off, as a result of a reduction in force (RIF), or placed on permanent medical disability, and rehired and the separation does not exceed one (1) year, the longevity bonus shall be computed from the initial employment date; provided further, when an employee separates from employment and is subsequently rehired and the separation does not exceed thirty (30) days, the longevity bonus shall be computed from the initial employment date. An employee who separates from employment and is subsequently rehired, and the separation exceeds thirty (30) days, shall receive full employment credit for actual past period(s) of active service.

The County does not propose to change the existing longevity payment. It, instead, only wants to delete prior outdated language relating to the 2002 rates as a "house-keeping" measure, which the Guild does not oppose. [25]

The Guild asserts that its longevity proposal should be adopted because the comparability data "strongly supports such an increase," and because "the senior officers who have remained with the department provide a demonstrated value to the County." It argues that the situation "becomes dramatically worse when the total available premiums . . ." of education and longevity are combined because the County does not offer any education premium. And, in response to the County's argument that longevity increased in the last labor agreement and thus should not now be changed, the Guild responds: "Wages and premiums, however are dynamic amounts constantly being adjusted, and the statute requires the arbitration panel to at least bring Kitsap County up to the average of the comparables."

The County argues that the "Guild's proposed increase is not warranted in light of the recent 2002 adjustment" which increased longevity pay up to 2.5% in some areas. It also asserts that the Guild's proposal "undermines internal consistency" and is not supported by the external

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[25] Transcript, at 651-652.

comparables, and that the County already pays between 4% to 11% above the average in comparable jurisdictions. The County estimates that the total cost of the Guild's proposal is $81,536 which represents between a 0.5% - 1% wage increase, (County Replacement Exhibit 3.5.2).

The longevity payments here are tied to a deputy's wages which, as related above, will rise 12% over the term of the agreement. Deputies thus will receive increased longevity pay even if the longevity provision of the agreement is not changed. Given that automatic increase and the 12% across-the-board raises already granted, and given the further fact that longevity pay was increased in 2002, I conclude that the longevity pay should not be increased.

The Guild's proposal is therefore rejected. The County's proposal, which only makes a minor "housekeeping" change, is adopted and it will become effective in the first full pay period following the issuance of the award.

ASSIGNMENT PAY

The prior agreement provided for assignment pay of $135 per month for certain classifications.

The Guild proposes that the County increase its assignment pay from $135 per month to 4% of the employee's base hourly pay, and that assignment pay be paid to members of the Traffic Unit via the following language:

> **SECTION 3 – ASSIGNMENT PAY**
>
> Employees within the classification of deputy sheriff who are assigned to the following job functions shall receive ~~$135.00 per month as assignment pay. Effective January 1, 2001, the rate for this assignment pay shall be changed from $135.00 per month to 3.54~~4.0% of the employee's base hourly pay ~~for the pay period~~.
>
> a. Detective
> b. Investigator

c. K-9
d. Bomb Technician
e. Search & Rescue
f. Field Training Officer
g. Traffic Unit

The County proposes to pay on a non-retroactive basis a flat 3.5% premium in lieu of the current $135 per month, and to add Traffic Collision Specialist to the current list of assignments receiving premium pay conditioned upon them maintaining certification and actually performing that work.[26] It also proposes that only one premium pay be paid at a time, and that the Field Training Officer be paid only for the shifts he/she serves in that capacity via the following language:

SECTION E – ASSIGNMENT PAY

Employees within the classification of deputy sheriff and sergeant who are assigned to the following job functions shall receive ~~$135.00 per month as assignment pay. Effective January 1, 2001, the rate for this assignment pay shall be changed from $135.00 per month to~~ assignment pay equal to 3.5% of the employee's base hourly pay for the per period. No employee shall receive more than one (1) of the premiums set forth below at any given time: (Emphasis in original).

a. Detective
b. OPS Investigator
c. K-9
d. Bomb Technician
e. Search & Rescue
f. Field Training Officer
g. Traffic Collision Specialist

In order to be eligible for assignment pay, employees must be assigned and perform the assignment for a full pay period in order to be eligible for such compensation; provided, however, employees assigned as a Field Training Officer shall receive compensation for each full shift assigned and worked.

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[26] If the Traffic Collision Specialists perform other duties, they would not receive this premium pay for the time they are doing so. Transcript, at 672.

> Effective the first full pay period following Guild ratification of this Agreement, Traffic Collision Specialists are employees who, while assigned to investigate collisions as part of the traffic investigation unit, hold a current Technical Accident Investigation Certificate. In order to maintain current certification, an employee must timely complete any continuing education or recertification requirements established by the issuer. (Emphasis in original).

The Guild states that all members of the Traffic Unit should receive a new specialty premium because of their "high degree of expertise" and training, and because the County's proposal to only award specialty pay to Traffic Collision Specialists is not supported by the record and is "unworkable." It argues that it can take up to two years to receive the Technical Accident Investigation Certificate required for that position even under an accelerated program, during which time deputies without the certification will be required to perform the same work as certified deputies but without receiving the specialty pay. The Guild also objects to the County's proposal that deputies must complete any "recertification requirements established by the insurer" because the identity of any such insurer is unknown and because there is no such recertification program. The Guild also states that its proposal to raise the premium specialty rates from the current 3.5% of the base hourly wage to 4% is warranted because the comparability data supports such an increase and because deputies here have "relatively fewer" opportunities to receive premium pay. It also opposes the County's attempt to limit multiple premium pay.

The County objects to the Guild's proposal calling for premium pay to be paid to all members of the Traffic Unit on the grounds that premium pay is not paid to any of the County's other bargaining units; that its existing assignment premiums are above average when compared to external comparables; that the Traffic Unit is required to perform the same job duties as other deputies; and that Thurston County is the only comparable now providing for such premium pay,

(County Exhibit 6.2). The County also asserts that its proposal for premium pay to the Traffic Collision Specialists is warranted even though there are no comparables supporting it because their advanced training in accident reconstruction and forensic mapping "is far different than the traffic enforcement and basic collision investigation performed by the entire Traffic Unit."

While all members of the Traffic Unit are trained, that alone is not enough to warrant creating a new premium for the entire unit when the record establishes that its members are simply performing the basic elements of their job. In addition, only Thurston County among the comparables provides for such a premium. Hence, law enforcement generally does not recognize a need for such a premium. As a result, the Guild's proposal relating to the Traffic Unit is rejected.

The Guild's request to raise the premium pay to 4% also is rejected because that pay will automatically increase because of the 12% wage increases, and because there is no compelling need to raise it any further.

The County's proposal regarding the Traffic Collision Specialists will cost about an additional $17,895 in 2005 and does not call for retroactivity. The record establishes that they have received advanced training over and above what members of the Traffic Unit have received and that their job duties call for a much higher degree of expertise. They thus receive four separate levels of training which consist of a one week's course involving basic collisions; a two week's course involving advanced collisions; a three week's course involving technical matters; and a four week's course involving reconstruction work. [27]

In addition, since some deputies already have obtained the necessary certification and thus can immediately qualify for this premium pay, it appears that the Guild's concerns about not

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[27] Transcript, at 664.

paying this premium to other deputies while they obtain their certification are overblown, at least in the short term. The same is true for any recertification requirements. If any such requirements presently exist, it is reasonable for the Traffic Collision Specialists to meet them. If none exist, nothing will be lost by the County's language. In addition, any problems arising over this language can be addressed in future collective bargaining negotiations.

Based upon these latter considerations, I find that the County's proposal should be adopted, and that it shall become effective in the first full pay period following the issuance of the Award.

Turning now to the County's proposal to limit the FTO's premium pay, the County asserts that FTO's should only receive such premium pay for the shifts they actually perform such training, as opposed to the prior agreement which required payment for the entire two-week pay period even if deputies only serve as a FTO for one shift in a pay period. The County contends that "The Guild does not offer any justification . . ." for opposing the County's proposal other than its incorrect claim that premium pay for the entire pay period was awarded by Arbitrator Buchanan.

The Guild claims that the current contract language "is the result of a compromise reached . . ." in the aftermath of the Buchanan Award which awarded a new FTO premium. It asserts that "there were some ambiguities in the Award that required the parties to sit down and negotiate some resolutions," and that the County's proposal here "would now undo that compromise and strip away a significant portion of this already watered-down premium . . ."

That compromise was not set in stone, as it represented what the parties thought best at that time. Moreover, the Guild itself acknowledges here that collective bargaining represents a "dynamic" process, which means that everything is on the table.

The County's proposal is more reasonable than the Guild's proposal because it calls for paying premium pay to FTO's only for those shifts where they actually work in that capacity, as opposed to the current practice which pays them a premium for an entire pay period even if they only work as FTO's on one shift.

The County's proposal therefore is adopted and it shall become effective in the first full pay period following the issuance of the Award.

The County claims that its proposal to limit assignment pay to one premium per pay period is supported by its comparables who have some sort of limitation on paying such premium pay, (County Exhibit 6.2). The Guild claims that the comparables support its contrary position, (Guild Exhibit 210).

The external comparables are mixed. Benton County and Snohomish County prohibit some forms of "stacking" and the remaining comparables are silent, thereby making it difficult to ascertain their actual practice.

But, regardless of what the external comparables provide, it makes sense to prohibit the pyramiding of assignment pay since officers can only perform one assignment at a time. Hence, there is no reason to pay them twice for performing one assignment.

The County's proposal is therefore adopted and it shall become effective in the first full pay period following the issuance of the Award.

HEALTH, DENTAL AND DISABILITY INSURANCE

The prior agreement provided for full health insurance for deputies and their families at no cost. It also provided for fully paid dental and vision coverage for deputies, but not for their dependents who paid 40% of the cost of their coverage, and it required the County to pay $10 per month for supplemental disability insurance.

The Guild proposes to maintain the existing health insurance coverage and to obtain full dental insurance for dependents and full supplemental disability insurance via the following language:

. . .

2. ~~For the period January 1, 2001 through December 31, 2002, the~~ The County will provide for County-selected medical and hospitalization coverage, vision care, life insurance and dental coverage for employees and their dependents, subject to the limitations described below. The County retains the right to substitute benefit plans that are substantially similar to those currently in effect.

. . .

b) ~~2001~~ Medical Plan Options: Employees may choose from among options: (1) County's standard $15.00 copay plan with Group Health with the County paying the entire monthly premium for the employee and covered dependents of (2) County's option $5.00 office visit and $5.00 Rx copay provided by Group Health in which the employee pays $25.36 per month, (3) County's optional Health Plus or KPS plan coverage under which the employee pays the difference between the County's contribution described above and the total cost of that coverage.

c) ~~2002 Maximum County Contribution:~~ The County will pay up to an amount that equals 100% of the premium for the lowest-cost County-selected medical, dental, vision and life plans available for ~~2002~~ each year of this agreement providing substantially equivalent benefits to ~~those provided under the Group Health composite $15.00 copay plan in 2001,~~ existing plans.

d) ~~2002 Medical Plan Options: Employees may choose from among 3 available County selected plans that provide benefits substantially equivalent to those available in 2001.~~

3. The Employer shall allow employees to change insurance plans offered by the County and add eligible dependents during the annual November open enrollment period.

4. Employer shall sponsor and provide full paid supplemental disability insurance for all LEOFF II personnel~~; provided, the Employer's contribution shall not exceed one third (1/3) of each individual's monthly~~

~~cost, or ten dollars ($10.00),~~ which ever is lower, ~~provided further participation and subscription shall be voluntary and at the option of the employee.~~

The County proposes no changes in 2003 and 2004 and it proposes the following health, dental, and supplemental disability language for 2005:

1. The County will provide for County-selected medical and hospitalization coverage, vision care, life insurance coverage and dental coverage for regular full-time employees as follows:

   a) For the period January 1, 2005 through December 31, 2005, employees may choose to participate in one of the plans listed below and apply the County monthly contribution towards the monthly premium cost of the plan; employees will pay the difference between the total monthly premium cost and the County's contribution towards the plan.

Alliant Plus Plan 2	County Contribution:
Employee	$289.41
Ee +Spouse	$609.10
Ee+Child(ren)	$582.43
Ee+Family	$905.19

Alliant Select Plan 3	County Contribution:
Employee	$289.40
Ee +Spouse	$609.09
Ee+Child(ren)	$582.42
Ee+Family	$905.18

KPS PP01	County Contribution:
Employee	$351.72
Ee +Spouse	$698.59
Ee+Child(ren)	$594.16
Ee+Family	$944.10

KPS PP02	County Contribution:
Employee	$314.82
Ee +Spouse	$645.36
Ee+Child(ren)	$550.93
Ee+Family	$881.47

b). Regular employees who provide proof of alternate coverage may waive coverage through the County's sponsored medical plans.

2. In addition to the medical contributions set forth above, the County will pay $46.21/month on behalf of regular, full-time employees towards the cost of employee-only dental coverage and life insurance; this sum represents one hundred percent (100%) of the 2005 premium costs for County-selected employee only dental and life insurance coverage. In addition, the County will pay sixty percent (60%) of the total monthly premium cost for County-selected dependent dental, vision and life insurance coverage, up to a maximum of $50.81/month.

3. The Employer shall allow employees to change insurance plans offered by the County and add eligible dependents during the annual November open enrollment period.

4. Employer shall sponsor and provide supplemental disability insurance for all LEOFF II personnel; provided, the Employer's contribution shall not exceed one-third (1/3) of each individual's monthly cost, or ten dollars ($10.00), whichever is lower; provided further, participation and subscription shall be voluntary and at the option of the employee.

These three issues – health insurance, dental insurance, and supplementary disability insurance – are addressed separately below.

HEALTH INSURANCE

The Guild contends that its health insurance proposal should be accepted, and that the County's proposal should be rejected, because the County should not be allowed to go from a defined benefit plan which the Guild wants to maintain to a defined contribution plan with a cap; because the comparability data "strongly supports" the Guild's proposal; and because arbitrators have recently reversed "long standing cap systems." It adds that "Arbitrator Buchanan recognized the superior nature . . ." of the non-Group Health plan the County wants to eliminate; that the County "proposes to eliminate two benefits [plans] that the Deputies have historically

maintained through numerous sacrifices at the bargaining table . . ."; and that, "the trend in the industry is not for the employee to have a cap on how much it contributes . . ." (Emphasis in original).

The County argues that its proposal should be accepted because "Primera Blue Cross eliminated Health Plus as an option in 2004 with no choice on the County's part," and that the KPS Plan A also may be eliminated with no choice on the County's part, thereby making it impossible to guarantee the kind of plans offered in the past. It also asserts that the Guild's proposal "does not address the loss of Health Plus"; that the County has been forced to change its insurance coverage because of "astronomical rate increases"; that the joint management-employee Benefit Committee's proposal which it is offering here "represents a reasoned and fair approach because it will promote internal parity and because it is supported by the comparability date"; and that "Employees in all market segments are contributing to the cost of health care."

The County proposes to cap its contributions by contributing up to a maximum of $944.10 in 2005 towards medical and vision insurance premiums for employees and eligible dependents, and by having deputies pay anything over that amount. The County also proposes to cap its dental and life insurance contributions by paying $46.21 for employee-only dental coverage and life insurance (100% of the 2005 premium costs), and by paying 60% of the premium for the dependent dental, vision and life insurance to a maximum of $50.81. Deputies would have to pay anything over those amounts.

One need not be a graduate of the London School of Economics to understand that health care costs are one of the biggest economic issues facing the country today; that health care costs have risen dramatically; that employers are looking for ways to limit their health care costs; and that they are asking employees to pay more for their health care coverage.

Here, for example, Premera Blue Cross eliminated its Health Plus Plan and there is a chance that the current KPS Plan A may be eliminated in the future because the carrier may find that it no longer is economically viable. Those are matters over which the County has no control. The Guild has not offered any proposal to replace the Health Plus Plan with another plan, and it similarly has not addressed the possible loss of the KPS Plan A.

In addition, every other County bargaining unit has recognized that changes had to be made to their health care coverage, as they all agreed to the very changes the County proposes here. The other 15 or so bargaining units agreed to those changes as members of the Benefits Committee which also has three management members. The Guild chose not to participate in those deliberations.

The ultimate product emerging from the Benefits Committee was fair and reasonable. It required: (1), that the County continue paying 100% of the cost for three different health plans – i.e. Group Health Alliant Select, Kitsap Physicians Services Option I, and Kitsap Physicians Services Option 2; (2), that employees who want the Alliant Plus Plan 2 must pay a monthly contribution of $45 - $60; and (3), that there be premium sharing for spouse and dependent coverage with premiums ranging from $0, $15 - $26, $40.70, and $160.38, depending on which plan is chosen. All the other bargaining units therefore understood that something must be done to help alleviate the County's ever-increasing health care costs which will rise about 9.9% in 2005 over the 2004 rates. That also is why they agreed to prior design changes in the Alliant Select Plan and the Alliant Plus Plan. The Benefits Committee's recommendations were adopted by the County Board on November 15, 2004, (County Supplemental Exhibit 7.5).

Given all this, the County rightfully points out that its "proposal will promote internal parity." Such "internal parity" is particularly important for health insurance because it is unfair to ask one group of employees to make sacrifices, while at the same time excusing another group of employees. [28]

As for the external comparables, it is difficult to get a precise comparison between the benefits offered and even the cost of those benefits because it is almost impossible to ascertain how the benefits of each health care plan match up with another, and because some comparables use composite rates and some use tiered rates.

The record does show that Benton County, Whatcom County, and Yakima County cap contributions for employee and dependent coverage and that employees there can pay between $58 - $139 a month for such coverage, (County Exhibit 7.2; Guild Exhibit 225). This supports the County's proposal because three of the plans being offered here do not require any employee contribution, and because some of those plans do not require any contribution for dependent coverage.

Clark County, Snohomish County, and Thurston County all pay 100% coverage for employees and their dependents, (Guild Exhibit 219), and none of them cap the employer's contribution. In addition, a cap was recently removed in Yakima County, [29] and the cap in Whatcom County for a certain plan is on the employee's contribution, thereby requiring the County to pick up anything over the cap.

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[28] See Clark County at 84, (Axon, 1996), and City of Kennewick, at 50, 54, (Krebs, 1997), where the importance of internal parity on health issues was stressed.

[29] Yakima County, (Gangle, 2004).

The Guild complains that "a cap system would mean that in the year or two following expiration, the rate would stay at the prior year's level and the deputies would be carrying the full burden of any and all increases in health insurance premiums," a situation it calls "intolerable" for people who put their life on the line. (Emphasis in original).

This is a real problem because if health care costs continue to escalate, that can force deputies to pay significantly more for their health care coverage while they await the results of bargaining over a successor contract.

That is why a cap on employer contributions is not ideal, and why percentage premium contributions are a fairer way of dealing with this problem since they split the costs of any premium increases after an agreement expires. However, it also is true that caps on employee contributions, which the Guild proposes here, also cause a problem since they require employers to pick up all health insurance increases after an agreement expires. If I had to select between a cap system on either side or a fixed percentage employer-employee contribution, I therefore would choose the latter.

Arbitrator Gangle addressed this issue in Yakima County, supra. She ruled that while that county's health insurance proposal was "unreasonable" because it attempted to cap contributions for 2003 and 2004, the Guild's proposal for a 100% full family coverage was "excessive" because it would "place the full burden for all insurance rate increases for families, as well as individual employees, on the County." She stated that the Guild's proposal was "inconsistent with the current trend of requiring a small co-payment for dependent coverage . . ." (Id., at 34). She then ruled that the employer should pay 100% for all but full family coverage under a particular plan, and that it should pay 90% for full family coverage. Id., at 35. She

added: "The arbitrator does not agree that the employee's contribution should be expressed as a maximum dollar amount per month, as the Guild requested. There is no precedent among the comparables for such an award." Id., at 35.

Arbitrator Janet L. Gaunt also ruled in Whitman County, (Gaunt, 2004), that the employer should pay 60% of the premium for dependent medical, dental, and vision insurance, thereby requiring deputies to pay 40% of the premium. Id., at 31.

The growing need for employee contributions for health insurance was noted in King County Fire District #44, (Wilkinson, 2001). There, Arbitrator Jane R. Wilkinson found that "more represented employees are sharing in the costs of health care insurance to some degree," and that:

> Arbitration awards from the past several years also have shown a willingness on the part of arbitrators to frame an award that includes some sort of employee contribution to the cost of health care insurance. Appendix A to this award lists all the awards about which the neutral Arbitrator has knowledge from the past four years that have addressed the issue, and the arbitrators disposition. In most of those cases, the employees either were, or ended up making a contribution to the cost of insurance.

Id., at 53-55.

See also City of Burlington, at 49 (Axon, 2002), where Arbitrator Axon stated: "The days of 100% employer payment for insurance benefits are coming to an end."

The Guild cites Yakima County, supra, City of Omak Police, (Revees, 2004), and Kittitas County Deputy Sheriffs, (Lehleitner, 2003) in support of its claim: "Arbitrators have recently faced this question of awarding a defined benefit system as opposed to a defined contribution system, similar to that proposed here. In these three cases the arbitrators actually reversed long standing cap systems." (Footnote citations omitted). (Emphasis in original).

The question of caps, though, is a separate question of whether employees should pay more for insurance coverage and whether all prior insurance coverage must be continued. Hence, it is possible to reject a cap system but still require employees to pay more for their health insurance coverage via fixed percentages and to make changes in that coverage. That is why Arbitrator Gangle in Yakima County, supra, rejected the employer's cap proposal but still required employees to pay 10% of their health insurance premium, and why Arbitrator Gaunt in Whitman County, supra, did the same thing when she required employees to pay 60% for dependent coverage.

As for the City of Omak, Arbitrator Revees rejected a cap system, but he added that the City would only have to pay 50% of the premium increases for dependent coverage after stating: "I note the national trend is towards employees picking up an increasing share of health and welfare premium contributions . . . or for employers to reduce the level of coverage provided to employees." Id., at 22.

The Guild points out that Arbitrator Revees considered the parties' past agreements regarding health insurance and it states that that must be done here because Arbitrator Buchanan in 1998 ruled that the deputies were entitled to "top quality, easily available medical care," rather than the County's proposed HMO which offered "less health coverage than do the Blue Cross and Kitsap Physicians Service Plans." Award, at 21, 20. The Guild therefore contends: "The deputies have historically enjoyed an enhanced level of benefits as compared to other County bargaining units and have made numerous sacrifices in bargaining to meet that important goal."

But that does not mean there cannot ever be any changes regarding the health insurance awarded by Arbitrator Buchanan when the County was not responsible for the dropping of the prior Health Care Plus plan; when the County will not be responsible for the possible dropping of

the KPS Plan A in the future; when the Guild itself did not offer any substitute health plan in negotiations; when the County in 2005 will experience a 9.9% increase in its health care costs; when it appears that health care costs will continue to rise; [30] and when the County simply no longer can afford to pay for all of the health insurance coverage it provided in the past.

In other words, things have changed since the issuance of the Buchanan Award in 1998 when health care costs were a fraction of what they are now. Indeed, the Guild itself no longer feels tied down to what Arbitrator Buchanan decided, as it is now proposing to have the County pay for all dependent coverage even though Arbitrator Buchanan rejected that very proposal.

The Guild also claims that the County's proposal requires deputies to pay more for their health insurance than their counterparts among comparables because they now pay about 5% of the total premium for medical, dental, and vision insurance, whereas deputies among the Guild's comparables only pay 1.37% of the premium, (Guild Exhibit 219). The Guild's data, however, includes Pierce County which is not a comparable, and it excludes Benton County, Spokane County, and Yakima County which are comparables. A look at all of the comparables shows that the County's proposal is in line with what is found elsewhere.

The County's proposal is also supported by the 12% wage increase the deputies will receive over the three years of the agreement. That increase more than covers the added out-of-pocket expense deputies may incur, and it represents the kind of trade-off found in negotiations where substantial wage increases are granted in exchange for employee concessions on health insurance.

When that is coupled with the fact that three of the County's plans – i.e. Group Health Alliant Select, Kitsap Physicians Services Option I, and Kitsap Physicians Services Option 2 - do

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30 Transcript, at 367.

not require any employee contribution and that the costs for dependent coverage are reasonable, I find that the County's health care proposal should be adopted and that the Guild's health care proposal should be rejected.

The County's proposal will become effective as soon as practicable after the issuance of this Award.

DENTAL INSURANCE

Deputies now receive fully paid dental insurance for themselves and they pay $29 per month for dependent coverage.

The Guild wants the County to pay 100% for employee and dependent coverage based upon the comparables, and it objects to the County's proposal to cap its contribution for employees at $46.21 per month and to cap its contribution for dependent coverage at $50.81. It argues that the County is the only jurisdiction among its comparables to require a contribution from its employees on either the employee or dependent side, (Guild Exhibit 221), and that all of the County's own comparables provide for full employee and dependent coverage with the exception of Yakima County which still offers more than what the County is offering here. It also contends that the County's proposal will further erode this benefit.

The County claims that the Guild "has not sustained its burden of demonstrating a compelling need to change the status quo." It argues that Arbitrator Buchanan ruled against the Guild on this very proposal; that the Guild "has not shown any reason to change this . . ."; and that arbitrators have rejected attempts to increase this benefit, citing Walla Walla (Krebs, 2003); City of Camas (Wilkinson, 2003).

Arbitrator Buchanan's decision was issued in 1998 when the data on comparability may have been different. Indeed, Arbitrator Buchanan did not even refer to any comparables in this part of his Award.

Now, all of the external comparables except Yakima County provide for fully paid dental insurance.

All of the internal comparables support the County, as no other internal bargaining unit has what the Guild seeks here.

The external comparables certainly support the Guild's proposal. However, no internal bargaining unit has what the Guild wants here even though all of them bargained over health insurance, at which time they gave up concessions in order to obtain their present coverage. I therefore conclude that this is not the right time to grant the Guild's proposal and that this matter should be left to the parties' future negotiations. The Guild's proposal is therefore rejected.

SUPPLEMENTAL DISABILITY INSURANCE

The County's contribution for supplemental disability insurance is presently capped at $10 per month.

The Guild wants to raise it because the cost of this insurance has gone up from the time it was first negotiated in the 1980's; because the "erosion of this benefit" needs to be addressed; and because the "inherent dangers" of a deputy sheriff's job duties support its proposal.

The County points out that it fully funds a $24,000 life insurance plan and that it provides an additional $20,000 for those wanting disability coverage. The County emphasizes that the issue here concerns supplemental disability insurance and that the Guild's proposal is not supported by either the external or the internal comparables.

With the exception of Whatcom County, no other comparable even provides for employer contributions for this benefit, (Guild Exhibit 223), thereby establishing that the County already is paying more than most of the comparable jurisdictions. When that is coupled with the fact that no internal comparables support the Guild's proposal, I find that it should be rejected.

HOURS OF WORK

The prior agreement provided for a 5-8 work week schedule and it allowed the County to create a 4-10 workday if it so desired. Under that agreement, the County has maintained a 4-10 schedule for its patrol swing shift.

The Guild proposes to change the existing contract language so as to provide for a work week schedule consisting of four ten-hour days for the entire bargaining unit via the following language:

. . .

4. Hours of work shall consist of four (4) consecutive days on, followed by three (3) consecutive days off.

The County opposes that change, and proposes to change the prior language so as to allow it to establish an alternative work schedule via the following proposal:

SECTION J – HOURS OF WORK

. . .

4. The Sheriff shall retain the discretion to implement ~~a four (4) – (10) hour workday week~~ alternate work schedules for an individual unit, (Example: Detectives/Investigation, Patrol, Traffic, Crime Prevention, warrants . . . .) or, the entire membership represented by the Guild. The Sheriff shall also retain the discretion to end an individual unit or the entire membership's participation in the ~~four (4) – (10) hour workday week~~ alternate work schedule and return to the five (5) – eight (8) hour workday week.

> Employees assigned to ~~a four (4) – (10) hour workday week~~ an alternate work schedule shall abide by the terms of this agreement. Employees who are assigned to ~~a four (4) – (10) hour workday week~~ an alternate work schedule and subsequently are reassigned to a five (5) eight – (8) hour workday week shall abide by the terms of the general agreement from the effective reassignment day.

The Guild states that its 4-10 work week proposal should be adopted because it "seeks to restore the benefit of the bargain it believed that it had acquired through previous negotiations" when prior administrators promised not to change the then-existing 4-10 schedule. It argues that a 4-10 schedule "is obviously much more attractive . . . given the decreased frequency of work and the decreased frequency of commuting"; that the County's past failure to properly staff the department is not a sufficient reason for rejecting its proposal; and that its proposal "would decrease the costs to the County, not increase them as suggested." It also contends that the right of management "to unilaterally change work hours is an impermissible waiver of the Guild's right to bargain hours of work," which is why this clause should be either eliminated from the labor agreement or "modified to clarify that it does not constitute a waiver of the Guild's right to engage in collective bargaining."

The County contends that the Guild has failed to meet its burden of proving that the current 5-8 work week schedule should be changed to a 4-10 work week schedule because the Guild has not provided a solution for resolving coverage and overtime issues; because the Department "has unsuccessfully tried a four-ten scheduled in the past"; and because the Guild's proposal "compromises deputy safety." The County adds that a 4-10 schedule "does not make efficient use of the County's resources"; that the "comparability data undermines the Guild's proposal"; and that, "The exorbitant cost of the Guild's proposal cannot be justified."

It is certainly understandable why the Guild wants to switch to a 4-10 schedule. That would eliminate an entire day of reporting for work, thereby giving deputies three full days off as opposed to the two they normally get under the current 5-8 schedule. That would be particularly attractive because of the three-month rotating schedule which causes considerable disruption in a deputy's life.

In addition, Guild Vice-President Howerton testified that he and other Guild representatives were specifically told by then-Undersheriff Charles Wheeler in the 1990's that the then-current 4-10 schedule would remain in effect,[31] and the Guild claims that the 4-10 schedule was subsequently abolished because the Guild did not support the then-Sheriff's re-election bid. The County counters that "This argument is nothing more than pure speculation" because the 4-10 schedule "was not changed until many months after the election," and that it was changed because of the increase in overtime liability and shortage of staffing it caused.

There was extensive, but conflicting, testimony at the hearing regarding the County's staffing and overtime problems under the prior 4-10 schedule. Howerton testified that those problems were exaggerated and that the County itself made those problems worse by not filling vacancies and by not charging outside entities when they used deputies to man their events. Former Undersheriff Wheeler, on the other hand, testified that the prior 4-10 schedule created a number of problems relating to excessive overtime and staffing. Chief Newlin also testified that a 4-10 schedule does not constitute the most efficient use of personnel.

But regardless of what happened in the past, it is clear that switching over to a 4-10 schedule for <u>all</u> bargaining unit personnel would create a considerable overlap of deputies when

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[31] Transcript, at 1090.

they change shifts between 2:00 p.m. – 4:00 p.m. and 8:00 p.m. – 12:00 a.m. every day. It also would reduce the number of deputies on a shift from 13-14 under the current 5-8 schedule to 9-10 deputies under a 4-10 schedule, thereby placing great strains on the County's staffing needs. Chief Newlin thus testified:

> (A four-ten schedule) reduces the number of people that were allowed to have off for training and other things—annual leave, comp time—to a point where there would be only two, and some rare occasion, three people that would be allowed (off). The sergeants, throughout this process, have told us that for a significant period of time (during the year) its (sic) already difficult to juggle the requests for time off or training and those kind of things with the numbers were allowing at four and five. Going to a four ten across the board just exacerbates that problem, twofold at least. Because you have the number of slots available for people to be gone during that day without backfilling, and that then increases overtime if you backfill to do that. [32]

Chief Newlin's concerns are shared by some of the Department's sergeants who also are represented by the Guild. They agreed a 5-9 schedule is preferable over a 4-10 schedule, (County Exhibit 8.4, at 12-13).

In addition, Howerton's personal mock-up of a 4-10 schedule called for having only one supervisor per shift on two days, thereby possibly requiring the County to back-fill that position and pay overtime, and it called for the possible reassignment of other deputies from the Student Resource Staff, the Traffic Unit, and the K-9 staff. Howerton also acknowledged on cross-examination that he does not know whether a 4-10 schedule would increase the County's overtime costs. [33]

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[32] Transcript, at 1123.

[33] Transcript, at 1105 -1106.

Such a schedule would greatly increase the use of the County's dispatch system by having more deputies using the radio at the same time. David E. Magnenat, the Deputy Director of the County's Central Communications which operates the County's dispatch system, testified:

> My assessment at the time and my assessment today is that putting more deputies on the air on that frequency, specifically would be—would have a tremendous impact on our ability to provide a quality level of service to all the deputies.
>
> . . .
>
> when you have a four-ten shift, you have an overlap of shifts. Overlap of shifts means more people. More people on the air means that you are—we're not able to provide as quality services that we need to. And my concern in this e-mail was that, depending on how many more people were talking about, it potentially would cross the threshold of being an officer safety issue, from my viewpoint [34]

This problem cannot be readily alleviated by creating another radio frequency for the Sheriff's Department. Magnenat testified, without contradiction, that no new radio frequency could be readily obtained if the City of Bremerton does not want to split its frequency, and that any new frequencies would require the building of new radio towers.

Furthermore, the Guild's proposal has no support among the comparables. For while some comparables provide for a 4-10 schedule among other schedules, not one comparable has an exclusive, fixed 4-10 schedule for an entire department, (County Exhibit 8.2).

Given all of the above – which shows that a 4-10 schedule would create an overlap of deputies; that it would strain the Department's staffing needs; that it could necessitate the needless reassignment of deputies; that it could dangerously impact the dispatch system; and that it is not supported by any of the comparables – I conclude that the Guild's proposal must be rejected.

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[34] Transcript, at 1172-1173.

Turning now to the County's proposal on hours, it would give the County carte blanc to establish an "alternative work schedule" for any individual unit in the Department. The County claims that its proposal is needed "to implement other alternative work schedules that best maximize the County's resources," and it points out that sergeants have reported that "a five-nine schedule would provide increased staffing during peak hours . . ." and that it would "allow some overlap for paperwork, shift briefings and training and would reduce overtime costs."

That may all be true. However, the County's proposal goes too far because it gives the County the absolute right to establish whatever alternative schedules it wants, anytime it wants, for however long it wants, thereby eviscerating the very concept of a standardized work week. In addition, no comparable jurisdiction has this kind of language.

I therefore find that the County's proposal must be rejected because it is too broad, and that the successor agreement is to keep the current contract language regarding hours of work.

OVERTIME COMPENSATORY TIME, SUBPOENA REPORT PAY, AND PYRAMIDING

COMPENSATORY TIME

The prior agreement provided for a compensatory time bank with a maximum of 40 hours. Deputies who work overtime thus have the choice of receiving overtime pay or having compensatory time which they can bank up to 40 hours.

The Guild wants to increase the overtime compensatory bank from 40 to 80 hours via the following language: "The maximum accrual of compensatory time shall not exceed (80) hours."

The County opposes that change and wants to keep the current maximum of 40 hours.

The Guild states that its proposal to increase the comp time bank from 40 to 80 hours is supported by the comparables, and that there is no merit to the County's claim that its proposal would increase the County's overtime costs.

The County claims that its overtime costs will "significantly increase" because it will force the Department to "pay additional overtime to cover the absences caused by deputies using their comp time bank," and that, "Doubling the comp time bank will undermine internal consistency."

The Guild's proposal is supported by the comparables. Thurston County, Whatcom County, Clark County, Spokane County, and Yakima County respectively allow 60, 80, 110, 80 and 120 hour caps, and Snohomish allows an unlimited accrual rate. Only Benton County has a lower cap of 20 hours, (Guild Exhibits 230-231).

The County claims that "A true 'apples-to-apples' comparison with the comparable jurisdictions is not possible . . . because we do not know the staffing resources available at other departments that could mitigate any adverse consequences caused by a larger comp time bank," which is why it adds that "an internal comparison is a more meaningful 'apples-to-apples' comparison."

I disagree. For while it is true that this record does not establish what effect comp time banks have on staffing in other jurisdictions, there is no reason to believe that they will have any more effect than what will happen here.

The County, though, is probably correct in stating that it will incur some additional overtime costs if the comp time bank is increased because that will allow deputies to take more time off, thereby requiring the County to replace them in some circumstances with deputies who will be paid overtime.

That cost must be weighed alongside the comparability data showing that the County's comp time bank is below all but one comparable. Since the external comparables are so strong in the Guild's favor, I find they outweigh the cost of raising the comp time bank to 80 hours and the internal comparables which support the County's proposal, (County Exhibit 9A.3). The Guild's proposal therefore is adopted and it will become effective in the first full pay period following the issuance of the Award.

COURT TIME

The prior agreement provided for the payment of court time only if deputies are actually called to appear in court. If they do not appear, they do not receive any compensation.

The Guild proposes that court time be paid to all officers who are not told by 5:00 p.m. of the prior day that they are not needed for court on the following date with the following underlined language:

> 7. Employees, who have completed their scheduled work shift or are on vacation or days off, who are subpoenaed to give testimony in court about events arising out of their employment, or are required by the Sheriff, or his designee, to report back to work, shall receive a minimum of three (3) hours pay at the applicable overtime rate. This provision applies to any scheduled court appearance unless the employee is advised by 5 P.M. the previous day that they are released from the subpoena (Emphasis in original).

The Guild states that "A court time threshold should be established to at least partially offset the inconvenience to the personal lives of the deputies" when they are subpoenaed to testify in court and then told to stand by on their off-duty time, as they await word whether they will be needed in court. The Guild points out that Whatcom County and Snohomish County provide for the kind of cut-off pay sought here.

The County argues that it has "done the best it can with a process controlled by the court system"; that the proposal "simply would not work given the court procedures"; that the Guild has not "demonstrated a compelling need to change the status quo"; and that the proposal "is not supported by the comparability data."

This process is largely out of the Department's control because the Sheriff's Department has no say over when deputies will be released from subpoena duty.

Nevertheless, deputies work for the County and the Kitsap County court system and the prosecutor's office are entities of the County. Hence, it is not unreasonable for other entities of the County to help alleviate this problem since they, too, are part of County government. If they fail to do so, it is fair to then require another entity of the County government – i.e. the Sheriff's Department – to compensate deputies for their inconvenience when they are fulfilling a County duty.

Moreover, Whatcom County and Snohomish County have contract language similar to what is being sought here, thereby showing that this kind of proposal can work if there is the will to do so, (Guild Exhibit 232).

The County correctly points out that the Guild's proposal is not supported by any of the other comparables, (County Exhibit 9.B). While this fact must be considered, I find that comparability cannot be given its normal weight for a matter involving off-duty time and off-duty inconvenience. That time is a deputy's free time and if the County wants its deputies to provide any service during that time, it should pay them for doing so. When they are not being paid, it is unreasonable to expect that that state of affairs should continue merely because the majority of other comparables do not properly compensate their deputies.

Furthermore, the County can avoid payment by simply telling deputies at the end of the day whether they will be needed for the next day, as all decisions should be known by that time. If they are not, and if a County entity then insists that deputies must wait around on their off-duty time to see whether they will be called as witnesses, the County should pay them for the inconvenience they will suffer.

The record is unclear whether the present cut-off is 5:00 p.m. as the Guild contends, [35] or 6:00 p.m. as the County contends. [36] I find that the Guild's proposal should be adopted, but that the cut-off time for receiving notification must be 5:30 p.m. because the parties have agreed to that compromise and the Guild's language is hereby changed to reflect that fact.

Given the above, I conclude that the Guild's proposal should be adopted. It therefore will become effective in the first full pay period following the issuance of the Award. [37]

OVERTIME PYRAMIDING

The prior agreement apparently provided for the pyramiding of overtime.

The County wants to halt the pyramiding of overtime via the following new language:

> 7. No pyramiding. Compensation shall not be paid more than once for the same hours under any provision of this article or agreement (Emphasis in original).

The County states that "Paying triple time plus granting annual leave for the same hours worked does not make sense," and that its proposal is needed to clarify the agreement. It claims

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35 Transcript, at 1064.

36 Transcript, at 1077-1078, 1131.

37 The Guild agrees that this proposal should not be retroactive. Transcript, at 252-253.

that its proposal is supported by the comparables because three counties expressly exclude paying double overtime compensation, and because three other counties do not expressly address pyramiding in their contracts. It also argues that the Guild's data on comparability is wrong and "inapposite" because it does not address pyramiding and because it, instead, addresses the separate issue of receiving multiple assignment pay.

The Guild contends that the County's proposal should be rejected because "this bargaining unit is already well behind its comparables on the number of premium days," and because its adoption "would only lead to a further gap in this compensation." It adds that the County's proposal is not supported by the comparables, and that the silence in some of those contracts "does not mean no pyramiding but rather the direct opposite." The Guild also asserts that the "overwhelming weight" of arbitral authority supports its position, and that arbitrators have adopted the "dual inconvenience" theory in allowing for the pyramiding of overtime.

The comparables on this issue are unclear, (County Exhibit 9C.2). For while three contracts are silent on the question of pyramiding, i.e. - Clark County, Whatcom County, and Yakima County - there is no evidence as to whether pyramiding is, or is not, paid under those agreements. Hence, the record establishes for certain only that the County's language is supported by three other comparables -i.e. Benton County, Spokane County, and Thurston County.

In addition, it is hard to see why this part of the agreement should become more restrictive when, as related above, the deputies here already have fewer premium holidays than the comparables. Furthermore, the Guild has cited considerable arbitrable authority showing that the pyramiding of holiday overtime is called for. Bornstein and Gostine, Labor And Employment Arbitration, § 32.04[3], n. 17, thus states:

> Pyramiding of holiday pay and holiday premium pay for work on the holiday should be contrasted with the payment of holiday pay and overtime pay for work on the holiday. An employee otherwise entitled to overtime compensation for work performed on the holiday should receive both overtime pay and the designated holiday pay in the absence of a provision expressly prohibiting such payment. (Footnote citation omitted)

Because of these latter factors, I conclude that the County's proposal should be rejected.

LIABILITY COVERAGE

The prior agreement required the County to defend a deputy when he/she acts "within the scope of the employee's official duties."

The Guild proposes to change that language via the underlined language:

> **SECTION L – LAW ENFORCEMENT OFFICERS' LIABILITY**
>
> 1. If an action or proceeding for damages is brought against an employee arising from acts or omissions made while acting or, in good faith purporting to act, within the scope of the employee's official duties, then the County will provide a defense of the action or proceeding for the employee and indemnify the employee from any damages arising from such an action or proceeding. (Emphasis added). [38]
>
> . . .

The Guild states that its underlined language - which it says represents an "objectively reasonable belief" [39] - is needed because it "mimics" the County's Self-Insurance Liability Policy which is obtained through the Washington Counties Risk Pool which defines the nature of

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[38] The Guild stated at the hearing that its written proposal contained a typographical error and that the word "with" in line 3 should be "within." Transcript, at 783. Its proposal therefore has been corrected to reflect that fact.

[39] Transcript, at 982. Given the Guild's representation that its added language refers to an "objectively reasonable belief," this language is construed in this manner.

available coverage, (Guild Exhibit 217). It also contends that officers should be given the right to grieve over the possible denial of such coverage just like five of the comparables and that: "Ambiguities in the language must be dealt with immediately before a deputy finds themselves in the situation where they need this coverage and there is a question as to what the policy covers."

The County claims that the Guild's proposal should be rejected because the Guild has not sustained its burden of demonstrating a need to change the status quo since the County has never denied about 25 such claims over the last 20 or so years, and because the proposal "inserts unnecessary ambiguity in the contract."

Since the County has always granted such coverage in the past, there is reason to question whether this proposal is needed.

However, if such coverage is ever denied in the future - and no one really knows whether that will ever happen - officers then will not have any mechanism to appeal such a denial, thereby subjecting themselves to a large financial risk. Moreover, the Guild's proposal is hardly unique since five of the comparables – i.e. Spokane County, Thurston County, Whatcom County, and Yakima County - allow officers to appeal the denial of such coverage through the contractual grievance procedure, (Guild Exhibit 214), thereby guaranteeing that there will be a neutral determination of whether coverage has been properly denied.

In addition, the Guild's proposal merely reiterates the very terms of the County's policy with the Washington Counties Risk Pool Joint Self-Insurance Liability Policy which includes the term "or, in good faith purporting to act," thereby showing that the Guild is not trying to expand the terms of the County's liability coverage one wit, (Guild Exhibit 217). Furthermore, it is necessary to clear up this matter because the County's Ordinance which provides for liability

coverage does not include this quoted term, (County Exhibit 10.2). The Guild's proposal therefore clears up any possible confusion over whether the County's Ordinance supersedes the County's policy.

Given these latter considerations, I conclude that the Guild's proposal should be adopted and that it shall take effect upon the issuance of the Award. [40]

EDUCATIONAL INCENTIVE

The prior agreement did not provide for any educational incentive.

The Guild proposes to create a new education incentive via the following language:

M. Educational Incentive

The employer will provide education incentive pay to employees in accordance with the following schedule: (Emphasis added).

AA/90 degrees	2%
BA	4%

The Guild states that its education incentive proposal, which would be paid to officers having at least 90 credits of course work but not necessarily a AA degree, should be granted because it is necessary to look at overall wages. It also argues that its proposal is supported by the comparables because Thurston County and Snohomish County provide educational premiums of 2.5% and 3.5% at the ten year AA level and 4.5% and 7.0% at the ten year BA level; because Benton County provides a 1% premium on the AA and BA levels; and because Spokane County has a 3% and 7% premium at the AA and BA levels, (Guild Exhibit 114). The

[40] The Guild agrees that this proposal should not be retroactive. Transcript, at 252-253.

Guild also claims that "Educational premiums have long been favored as a way of recruiting and retaining well-education officers," and that the County itself recognizes this fact by making an AA requirement part of the job for new applicants.

The County claims that the Guild's proposal "would give a premium pay to deputies for simply meeting the minimum qualifications or taking classes wholly unrelated to law enforcement"; that the comparables do not support the Guild's proposal; that there is no need for such a premium because the County's proposed wages already exceed the wages offered by comparable jurisdictions; and that, "No other employee group within the County has an educational incentive."

The external comparables support the County. Clark County, Yakima County, and Whatcom County do not have an education incentive, (County Exhibits 11.2), and Spokane County and Snohomish County require deputies to choose between educational or longevity pay; they cannot have both, (County Exhibit 11.2). Hence, only Thurston County and Benton County provide for both premiums, (County Exhibit 11.3)

There also is no support for this proposal among the internal comparables since no other County bargaining unit receives an educational incentive.

When these latter factors are combined, I conclude that the Guild's proposal must be rejected.

SHIFT DIFFERENTIAL

The prior agreement did not provide for any shift differential.

The Guild proposes that a differential be created via the following language:

O. Shift Differential

Employees assigned to swing or graveyard shift (any shift starting noon or after) shall receive a shift differential premium equal to one and one half percent (1.5%) of their base wage (Emphasis added).

The Guild states that its proposal should be adopted because shift work "creates substantial hardships . . ." on deputies and their families and that, "Working non-traditional hours of the day is a major disruption, and as such, deserves an additional form of compensation" particularly given the Department's three-month rotating shift. It also points out that Clark County and Snohomish County provide for a shift differential premium, and that Spokane County provides for a shift differential for swing and graveyard shifts, (Guild Exhibit 206). Acknowledging that it gave up shift differential pay in 1995 in exchange for a larger wage increase, the Guild argues that it is now appropriate to recapture it because comparables support it and because the deputies here are falling further behind on wages.

The County claims that the proposal "end-runs" the parties' agreement because the Guild agreed in 1995 to drop shift differential pay in exchange for a larger wage increase and because the proposal is not supported by the comparables, (County Exhibit 14.2).

The comparables are split. Benton County, Thurston County, Whatcom County, and Yakima County do not provide for any shift differential. Clark County provides for a swing shift premium of 30¢ per hour worked and for a grave shift premium of 40¢ an hour; Snohomish County provides for 1% of the base wage on the third watch and 2% of the base rate on the first watch; and Spokane County provides for a swing shift premium of 1% per hour worked and a grave shift premium of 2% per hour worked.

Since there is no clear support among the external comparables for the Guild's proposal, and since none of the internal comparables provide for a shift differential, I find that the Guild's proposal should be rejected.

PREMIUM PAY FOR ALL HOLIDAYS

The prior agreement provided for premium pay of two and a half times the regular rate of pay plus an additional eight hours of leave added to a deputy's annual leave bank for four holidays: New Year's Day, Independence Day, Thanksgiving Day and Christmas Day.

The Guild proposes that such pay be paid for all ten designated holidays in the contract – i.e. New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Independence Day, Labor Day, Veteran's Day, Thanksgiving Day and the day following, Christmas Day, and a Floating Holiday.

The Guild states that "A change in the premium pay for designated holidays is now due . . ." largely based on the data from the comparables, (Guild Exhibit 234).

The County maintains that no increase is needed because the Guild's proposal "is far richer" than the comparables, (County Exhibit 15.2), and because the current language is "far more" than what is provided to other employee groups within the County.

The comparables are mixed. Clark County, Whatcom County, Thurston County, Snohomish County and Spokane County respectively offer 5, 6, 10, 11 and 5 days of premium holiday pay. However, Benton County and Yakima County have no such holiday premiums, and only Thurston County and Snohomish County have 10 or more premium holidays. Hence, the Guild's proposal for 10 days' premium holiday pay is only supported by two external

comparables. In addition, internal comparables show that five bargaining units do not receive any holiday premium pay, and that the other bargaining units receive the same holiday premium pay now provided to the deputies.

The Guild's proposal would be much more attractive if it did not call for paying premium pay on all ten holidays because the deputies here are behind most of the external comparables. However, the Guild's proposal for all ten days is only supported by two of the comparables. Accordingly, and because the internal comparables support the County, I conclude that the Guild's proposal must be rejected.

ANNUAL LEAVE APPROVAL PROCESS

The prior agreement did not address what mechanism is to be used in granting annual leaves, and it did not expressly prohibit the granting of such leave during designed training periods. [41]

The County proposes the following new language to govern the granting of annual leave:

> **SECTION B – ANNUAL LEAVE**
>
> 4. Employees' requests for annual leave shall be made on the Sheriff's Office supplied form and submitted to their immediate supervisor for approval. No leave will be approved unless earned, and to be approved, leave must be taken at a time when it will not impair the efficiency of working units. If the Sheriff or designee determines that the nature of the work is such that no employees or a limited number of employees may be on leave at a given time, the Sheriff or designee may establish non-leave or restricted leave periods. In addition, the Sheriff or designee may designate up to five weeks beginning in middle January in which annual leave use will be restricted for training scheduling purposes. (Emphasis in original)

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[41] The word "expressly" is used because the contractual management rights clause may or may not have allowed the County to restrict leaves during training times, which is an issue the panel need not decide.

The County states that its proposal is needed because the labor agreement does not specifically address leave scheduling; because the parties' disagreement over this issue has led the Guild to file unfair labor practices with PERC; and because the County has the right to schedule leaves under the prior agreement's management rights clause and under the County's 1995 Leave Policy which states that leaves can be taken "at the convenience of the department," (County Exhibit 16.2). It also argues that its proposal "clarifies" its management "right to reasonably restrict leave to insure the efficient operations of the department"; that its proposal "promotes internal consistency"; and that the Guild "offers no reason to reject the County's proposal."

The Guild claims that this issue is now pending before PERC and that there "is no need to change the language before that matter is decided" because: "At the very least, some direction from PERC on this issue is of the utmost importance, given the past practice and the differing views over whether this is a mandatory subject of bargaining." It also asserts that the County has failed to meet its burden of proving its leave proposal is needed because the Guild in the past "has worked with management on this issue," and because the proposal for the first time would allow the County to change the shifts of officers so they could attend mandatory training for a week.

It again must be pointed out – as was stated above relating to the issue surrounding the Guild's activities – that the unfair labor practice filed with PERC centers on the language in the prior agreement, and that that issue is a separate issue of what the new agreement should provide. Since both parties have the right to propose changes to the prior agreement, and since PERC has declined to remove this issue from this proceeding, I find it is proper to address the merits of this issue.

As to that, the record establishes that the Guild in the past has worked with the County in trying to deal with certain leave issue. Nevertheless, there is a need to clarify the contract language because the parties now are at logger-heads over whether the County can restrict leaves when mandatory training is being offered. In addition, there is a need for formally processing leave requests and for obtaining formal management approval because that is provided for in almost all of the other internal collective bargaining agreements, (County Exhibit 16.3).

The proposal adds that leaves cannot "impair the efficiency of the working units," and that the Sheriff or his designee "may establish non-leave or restricted leave periods." That is reasonable because the Sheriff at all times must provide the public safety functions demanded of the Sheriff's Department, which is something that can be achieved only if there are adequate personnel on the job. That is why individual leave requests must be subordinated to the Department's public safety needs.

The last sentence of the County's proposal dealing with mandatory training also is reasonable because the County needs the ability to schedule leaves around such training even if that means switching deputies to another shift, as it is imperative for all deputies to attend the same training at the same time.

I thus conclude that the County's annual leave proposal should be adopted, and that it will become effective upon the issuance of the Award.

Based upon all of the above, it is the panel's

AWARD

1. That the Guild's proposal for Release Time For Guild Activities is rejected, and that the County's proposal for Release Time For Guild Activities is adopted. The County's proposal shall become effective upon issuance of the Award.

2. That the Guild's proposal on Discharge And Discipline and to add the word "transfers" therein is rejected, and that the first two sentences in the County's proposal on Discharge And Discipline is adopted. The rest of the County's proposal which seeks to prohibit the grieving of written reprimands past the second step of the grievance procedure is rejected.

3. That the Guild's proposal on Wages calling for 4% across-the-board retroactive step increases for the three years of the agreement dating back to January 1, 2003, is adopted, and that such increases shall be compounded annually and shall become effective in the first full pay period following the issuance of the Award. Any retroactive payment shall be paid out by June 17, 2005, if possible and, if not, by June 30, 2005, at the latest.

4. That the Guild's proposal to compress the salary schedule is rejected, and that the County's proposal to add a new sergeant's step is adopted. The County's proposal shall be made retroactive to July 1, 2003.

5. That the Guild's proposal on Longevity is rejected, and that the County's proposal to make a "housekeeping" change to that language is adopted.

6. That the Guild's proposal on Assignment Pay is rejected, and that the County's proposal on Assignment Pay is adopted, and that it shall become effective in the first full pay period following the issuance of the Award.

7. That the County's proposal on Health Insurance is adopted, and that it shall become effective as soon as practical following the issuance of the Award.

8. That the Guild's proposal on Dental Insurance is rejected.

9. That the Guild's proposal on Supplemental Disability Insurance is rejected.

10. That the Guild's proposal on Hours of Work is rejected, and that the County's proposal on Hours of Work is rejected.

11. That the Guild's proposal to increase the Overtime Compensatory Bank from 40 to 80 hours is adopted, and that it shall become effective in the first full pay period following the issuance of the Award.

12. That the Guild's proposal relating to overtime for Court Time is adopted with the caveat that the reporting time is to be 5:30 p.m., and that it shall become effective in the first full pay period following the issuance of the Award.

13. That the County's proposal relating to Overtime Pyramiding is rejected.

14. That the Guild's proposal relating to Law Enforcement Officers' Liability is adopted, and that it shall become effective upon the issuance of the Award.

15. That the Guild's proposal relating to Educational Incentive is rejected.

16. That the Guild's proposal relating to Premium Pay For All Holidays is rejected.

17. That the County's proposal relating to the Annual Leave Approval Process is granted, and that it shall become effective upon the issuance of the Award.

Amedeo Greco /s/
Amedeo Greco, Chair
Interest Arbitration Panel

May 12, 2005
Date

Christopher J. Casillas /s/
Christopher J. Casillas
Guild Designee

May 11, 2005
Date

Bert H. Furuta /s/
Bert H. Furuta
County Designee

May 11, 2005
Date