In the Matter of the Interest Arbitration

between Kitsap County Corrections Guild ("Guild")

and

Kitsap County, Washington ("County")

Findings, Discussion and Award.

Case Numbers:	Washington Public Employment Relations Commission cases No. 24021-1-11-0568 and 2363-M-10-7203. Arbitrator's M93.
Representing the Guild:	James M. Cline and Christopher J. Casillas, and Cline & Associates, 2003 Western Avenue, Suite 550, Seattle, WA 98121.
Representing the County:	Russell D. Hauge, Prosecuting Attorney, by Jacquelyn M. Aufderheide, Chief Civil Deputy Prosecuting Attorney, and Deborah A. Boe, Prosecuting Attorney, 614 Division Street, MS-35-A, Port Orchard, WA 98366.
Party-appointed Arbitrators:	Kelly M. Turner, Cline & Associates, 2003 Western Avenue, Suite 550, Seattle, WA 98121, appointed by the Guild; and Nancy Buonanno Grennan, King County Human Resource Division, 500 4th Avenue, Room 450, Seattle, WA 98104, appointed by the County.
Neutral Arbitrator:	Howell L. Lankford, P.O. Box 22331, Milwaukie, OR 97269-0331.
Hearing held:	In the offices of the County in Port Orchard, Washington, on February 6, 7, 8, & 9, 2011.
Witnesses for the Guild:	Terry Cousins, Stan Finkelstein, and Dennis Henneman.
Witness for the County:	Amber D'Amato, Stephanie Hettema, Commissioner Josh Brown, Eric Baker, Kate Cummings, Sue Wohleb, Fernando Conill, Ned Newlin, and Commissioner Robert Gelder.
Post-hearing argument received:	Original Post-hearing Briefs received from both parties by email on April 9, 2012; and Second Round Post-hearing Briefs received from both parties by email on April 26, 2012.
Date of this award:	June 1, 2012.

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

PERC certified these issues to arbitration: wages for 2010, 2011, and 2012 (II A 1, II A 2, and II A 3), longevity (II C), health insurance for 2011 and 2012 (II F 1 b), dental and life insurance (II F 3), compensatory time (II I 3), holiday compensation and premium holidays (III A 2 and III A 3), annual leave accrual (III B 1), and sick leave cashout (III C 13).

The County's Corrections personnel currently encompass a Chief of Corrections reporting directly to the elected Sheriff, two Corrections Lieutenants, nine Sergeants, 73 Corrections Officers, and five support staff. Both the Sergeants and the Lieutenants have separate bargaining units and are covered by the interest arbitration statutes.

Background: **Kitsap County**: Most of the County's 1,142 total personnel (full and part-time together) are divided among 19 different bargaining units and covered by 13 different CBAs (Collective Bargaining Agreements). The Corrections Guild's most recent CBA covered 2007 through 2009, with COLA escalators for calendar 2007 (100% of the Seattle-Tacoma-Bremerton First half semi-annual CPI with a 2% floor and 4% cap) and 2008; and in March, 2009, the parties agreed to a flat 4% increase for calendar 2009 under a third-year wage reopener. The County includes four incorporated cities: Port Orchard, Bremerton, Poulsbo, and Bainbridge Island. Silverdale, the largest retail shopping area in the County, is not part of an incorporated city, and the population of such unincorporated urban growth areas (with East Bremerton and South Kitsap) is about equal to that of the County's four incorporated areas. The US Navy is by far the County's largest employer. The Navy's over 14,000 civilian and 11,000 military personnel account for well over half of all economic activity in the County. After the US government, the largest employers are the County itself and its several school districts.

Background: **A Recent Economic History.** For some years before the national economic downturn around 2008, the County had maintained a general fund ("GF") reserve of around $15-$16 million. Around 2001 an initiative measure made a

catastrophic change in the finances of the County, and of every city and county in Washington: I-747 limited property tax *income* growth to taxes on new construction plus 1% on existing improvements. That measure followed a rocky path to its final effective date, and it took some time for some cities and counties to appreciate the new fiscal reality. By 2005 the GF ending fund balance (EFB) had declined to just over $12 million. It shrank to about $9 million for 2006 and 2007 and by the end of 2008, the County had spent itself down to an EFB of about $6.6 million. Worse, by the middle of 2008, the County realized that its annual sales tax revenue was likely to be almost $2.2 million below estimate and its criminal justice sales tax revenue was likely to be $0.3 million below the projections in the budget; and all the while its fuel costs were rising sharply.[1] The County's response included a program for voluntary reductions in employee hours. 2009 began with a hiring freeze, but the economic picture darkened even further. Christmas period sales tax receipts failed to meet projections; and the County laid off 17 employees in November and December of 2009. Near the end of April, the County amended its budget to reflect a $3 million reduction in revenues. The amended budget reduced expenditures by almost $4.25 million (including over half a million from the Jail and almost $0.7 million from the Sheriff). As part of the reduction in expenditures the County closed the jail's work release facility and closed the County administrative building on Fridays (impacting primarily the licensing, permitting, assessment/taxation, and roads departments). The Administrative Building has not reopened to date. The EFB at the close of 2009 was down to about $5.1 million.

2010 saw the end of many of the County's three-year CBAs, including the contract with its Corrections Officers. The 2010 budget, unlike its predecessors, was built without any COLA funding; and the County required each department to budget for a 2%-3% overall reduction in expenditures and to absorb any area of cost increase within each departmental budget. In mid-December of 2009 the County had extended the previously voluntary furlough program (allowing employees to reduce their work time by up to ten hours per week or five days per month and still receive full-time benefits) and had added involuntary reductions in hours for some employees. It had also allowed elected officials— whose compensation was subject to state law—to pick up the cost of their 2010 health benefits through payroll deductions. County elected officials have had no pay increase since 2009. The 2010 budget was built on the assumption of no net economic improvements over 2009; and it reduced the GF budget by an additional $5.7 million. Nonetheless, the EFB at the close of 2010 had risen to almost $8 million, in part due to the total elimination of some services (partly detailed below) and in part due to the reduced level of services caused by layoffs and by reducing the hours of the remaining workforce.

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1. By September, the General Fund could not meet payroll without borrowing $2.5 million from other funds. And that pattern repeated twice in 2009—a total of $6 million—and twice again in 2010—another $6 million. All of those were short-term loans, quickly repaid, but the interest costs for the GF totaled $56,000 over the three years.

In 2011 the County's actual revenues finally more or less matched its budgeted projections and revenue rates had ceased to drop. Pay rates for all non-represented employees remained frozen. At the time of hearing (in February, 2012) the estimated EFB for 2011 had risen to over $10.1 million.

The 2012 Budget Call Letter assumed a modest increase in both property and sales tax revenues. But it also reflects an announced 28% increase in PERS costs and an anticipated 5% increase in health insurance costs. At the time of hearing, the County's estimate for the 2012 EFB anticipated an increase of less than $100,000, to just over $10.2 million. The County announced its intent to contract out custodian work (and is now bargaining with the affected union over the impact of that cost-saving decision).

Over the three years at issue, the County had closed its District Court offices in North Poulsbo and in Silverdale and had closed the Secure Crisis Residential Center (for runaways and seriously dysfunctional families) in addition to the Friday closure of the County's Administrative Building. This is the County's layoff history since 2008 (listing only 'bodies out the door' layoffs, and not including elimination of vacant positions): In 2008, 13 employees were bumped out; in 2009, 28 additional employees including four Corrections Officers,[2] were bumped out; in 2010, eleven more were RIFed, and three were bumped out; and in 2011, there were another 12, and one more was bumped out. After 2008—when all but one of the layoffs were in Community Development— these layoffs have been distributed throughout the County's operations: at least nine from the courts, plus a deputy prosecutor and nine staff, four from the Commissioners' Office, and about six from the juvenile department in addition to all nine staff of the Crisis Residential Center. To repeat, since 2008, Community Development has lost a total of 16 FTE;[3] Juvenile has lost 15; and the County Prosecutor has lost nine, including the entire Records division. That does not count the reductions in hours, voluntary or not, which added up to the equivalent of almost 40 FTE over only 2009 and 2010. For 2012, the County has decided to subcontract the custodian function, resulting in the layoff of ten custodians and one supervisor.

Like every county in Washington, Kitsap County's economic future is always subject to possible revenue losses due to annexations and incorporations. The County's sales tax income is reduced by about 85% in any area that becomes part of an incorporated city. There are genuine hazards of annexation of the communities of Gorst, Bethel/Sedgwick, Bethel North, and Mill Hill Drive. If all of those annexations

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2. Two of these four RIFed CO s were subsequently recalled, when the jail population and income temporarily increased throughout most of 2011, and were then RIFed again at the end of 2011.

3. Community Development operated substantially on an enterprise fund—not the General Fund—which was substantially reduced.

happened, the County's expectable income would be reduced by about $357,000 in 2012, by almost $1.1 million in 2013, and by over $1.4 million in 2013. On the other hand, from the jail's point of view, any community that incorporates becomes a potential new customer for the contract services that the jail provides to several other jurisdictions. Actual annexations reduced the County's sales tax revenues by over $0.2 million in 2009 and 2010 and will reduce it by about $650,000 in 2012. Silverdale— the sales tax sparkplug of the County—has been the subject of three incorporation votes to date. Two of those attempts failed at the polls and the third was invalidated due to a boundary error. On the other hand, Silverdale presents a real world example of *jail* income which would fall out of the sales tax side and come back in on the contract services side: The prior proponents of Silverdale's incorporation have proposed that the new city contract with the County for police and other services, so the overall impact of the potential revenue loss is not quite clear. (The immediate revenue loss of the earliest possible incorporation would begin at over $3.5 million in 2013 and would jump to about twice that in 2014.)

Background: **The County's General Fund.** Over half of the County's GF revenue comes from a combination of property tax (36%) and sales tax (22%). The rest comes primarily from other taxes (12%), charges for services (11%) and inter-governmental fees (11%). Property tax income divides into taxes on existing properties and taxes on new construction, which is not limited to the 101% cap. New construction income peaked in 2007 at not quite $800,000, declined sharply through the next three years and bottomed out in 2011 at not quite $200,000. It will increase slightly in 2012. Criminal justice services account for over 61% of GF expenditures: 24% for courts, 22% for the Sheriff, and 15% for the jail. And jail costs are a steadily rising part of those expenses. Slicing the expenditure numbers another way, salaries and benefits make up 67% of general fund expenditures.

Besides the General Fund, the jail has substantial income from contracting jail services for other jurisdictions (mainly the State, Bainbridge Island, Bremerton, Port Orchard, Poulsbo, Skokomish, and Suquamish). Until October, 2011, the County's contract with the State included a minimum population guarantee of 40 beds; but the State—which has fiscal problems of its own—ended that guarantee at the close of 2011 and the State will now pay only for beds actually used. Total contract revenues hovered around $3 million per year for 2009 and 2010; they rose by about $700,000 in 2011;[4] but the jail budget for 2012 anticipates only about $2.77 million, not counting the possible loss in contract income from the State.

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4. SCORE—the South CORrectional Entity—consists of seven cities in the South Puget Sound area which have combined to deal with their jail bed needs. SCORE contracted with Yakima County in 2010 but decided to build its own facility. Between the expiration of the Yakima contract and the opening of the new SCORE facility in September, 2011, SCORE rented beds from the County, increasing the jail's 2011 income by just over $1 million and avoiding County corrections layoffs for the duration of that contract.

Background: **The Corrections Bargaining Units.** The current typical prisoner population of the jail is around 370-380[5] (although the total capacity is 510 since a $30 million expansion was completed in 2004). In order to keep that population secure 24/7/365, the County has three bargaining units in its jail operation. This one—Corrections Officers—has about 73 employees; the Corrections Sergeant's unit has 9; and a Lieutenants Union covering both sheriffs (5) and corrections Lieutenants (2) has a total of seven. The County has entered into "me, too" agreements with the Sergeants and Lieutenants: Corrections Sergeants will receive any COLA in the Corrections Officers contract, and Lieutenants will receive any COLA in the Deputies contract. The approximately 93 Deputies and 12 Sergeants in the Sheriff's Department are scheduled for interest arbitration before arbitrator Howell Lankford (NAA) on October 23-26, 2012.

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

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

"*The constitutional and statutory authority of the employer.*" The elected Sheriff is the appointing authority for Corrections Officers; and the County has budgetary responsibility for them. The Sheriff is not alone, of course, in operating under the budgetary authority of the County. Eleven judges and the prosecutor are among the 19 elected officials who exercise the same dual responsibility as the Sheriff in this regard, being dependent on the County as the governmental entity responsible for their budgets and for managing the attendant taxation and

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5. The jail's total capacity is 510. A $30 million jail expansion was completed in 2004 after a successful 1999 proposition providing funding for fund jail construction in order to increase the capacity of the inadequate, 250 bed jail.

expenditure functions. The statute does not say "...authority of the employer *with respect to the employees at issue*," and this part of the statute requires an interest arbitrator to take into account the fact that public employers almost always have constitutional and statutory authority—and therefore responsibility—which extends beyond the bargaining unit involved in the interest arbitration. It would be strange for an interest arbitration panel to turn a blind eye to such additional responsibilities. On the other hand, this is only one of the factors which the panel is required to consider: We are not directed to defer to the economic prioritizations chosen by the employer, and doing so would make the entire interest arbitration process quite pointless.[6]

"*Stipulations of the parties.*" These parties agree in five particulars. First, they agree that, subject to explicit contrary agreements made during the bargaining process, all provisions of the prior agreement which are not at issue in this case will continue unaltered into the successor agreement. Second, they agree that the agreement at issue here will cover the three contract years 2010, 2011, and 2012. Third, they agree to continue their established practice of measuring changes in the cost of living on the basis of the Seattle-Tacoma-Bremerton CPI-U index for the period six months prior to whatever period is at issue.[7] Fourth, they agree on the specific changes in that index over the contract period at issue (which is addressed below). And finally, they agree that Thurston, Clark, and Whatcom Counties are appropriate comparables for Kitsap County, although each of the parties proposes other comparables which the other party contests.

"*The average consumer prices for goods and services, commonly known as the cost of living.*" Because the parties agree on how the changing cost of living is to be measured, they agree on just what those changes have been during the period at issue here. The Seattle-Tacoma-Bremerton first half semi-annual index increased by 0.9% in 2009, by 0.3% in 2010; and by 2.0% in 2011.

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

Recruitment and retention—i.e., the employer's ability to hire and to hold employees in the bargaining unit—is sometimes a compelling factor in interest arbitration cases; but those are usually the cases in which there have been substantial *problems* in hiring or holding onto

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6. The Guild is certainly correct in arguing (Reply Brief at 7) that that "is simply not what was intended in the State law requiring the panel to consider the employer's 'constitutional and statutory authority.'"

7. The County's Initial Post-hearing brief (at 24) would cavil with that stipulation, arguing that Kitsap County was harder hit than Seattle. There is no support for that claim in the record, and the stipulation forecloses it.

employees.[8] When, as in the case at hand, there have been no problems with recruitment or retention, that simply deprives the union of what might otherwise be a substantial driver of salary increases.[9] Recruitment and retention deficiencies tend to be somewhat self-limiting since employers usually pay some attention if they find that they cannot hire and hold qualified employees. No reasonable interpretation of the statutory interest arbitration scheme can exalt that minimum pay rate to become the statutory standard.

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

"Ability to pay" may be the least helpful and most confusing analytical tool in public sector interest arbitration. The term was borrowed from private sector labor law where it is part of case law which is quite foreign to the public sector. In the private sector, there is a well established legal consequence of an employer's claim of an *in*ability to pay for the union's proposal: An employer who claims an inability to pay is required to open his books to inspection by the union. Private sector employers hate that. So private sector employers dance very carefully around any claim of inability to pay. In the public sector, of course, the prize at issue in the private sector—the employer's financial records—is already a public document, so private sector ability to pay analysis is severed from its fundamental significance in bargaining and becomes quite unhelpful. Public sector employers seldom if ever claim a technical inability to pay the cost of a union's proposal in the private sector sense. And if a public employer ever did make that claim, so what? The union already has "the books."

In an attempt to salvage something out of the resulting analytical shambles, public sector terminology sometimes shifts to "ability to afford," the term that private sector employers usually

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8. The County opened recruiting for male COs at least once every year from 2001 through 2009—but not in 2010—and the average number placed on the registry (after passing written and physical agility exams) was 29.2 per year. In 2009—the last year in the record with recruitment—that number was 44. Similarly, for female COs, the average (including a recruitment in 2010) was 6.4, and there were four in 2009 and eight in 2010. The overall scores of applicants making it to the register dipped in 2008 but came back sharply in 2009 (and 2010 for females). Similarly, the record suggests that only one CO left the County for other Corrections work between 2009 and 2011 (moving to the SCORE program addressed in footnote 4), although two moved to police agencies (one in Kansas).

9. The Guild points out (Reply Brief at 10) that recruitment and retention reflect the general state of the economy and the unemployment rate, so the absence of problems in hiring and keeping employees is, if possible, even less significant during periods of high unemployment.

shift to in bargaining in order to avoid the legal consequences of a claim of inability to pay. But that term on its face is unhelpful.

"Financial responsibility" might be a better term for this traditional factor. The basic economic argument offered by public sector employers in interest arbitration cases amounts to a claim that the union's proposed allocation of the employer's financial resources would be irresponsible, i.e., that funding the union's proposal would deprive the employer of its ability to fund its other statutory responsibilities at a responsible level or would leave the employer in a fiscally irresponsible condition either immediately or in the future.[10] That consideration, too, is a factor normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment.

Comparability is best addressed in terms of the record in the case at hand. There is some overlap in the parties' proposed comparables. The Guild proposes Whatcom, Snohomish, Thurston, and Clark Counties. The County agrees that Whatcom, Thurston and Clark Counties are appropriate comparables, but it objects to Snohomish and proposes to add three counties in eastern Washington, i.e., Yakima, Benton, and Spokane. In a nutshell, the County argues that Snohomish county is too big (in terms of population and assessed valuation); and the Guild argues that Yakima, Benton, and Spokane Counties are too far and are on the other side of what arbitrator Jane Wilkinson (NAA) has characterized—tongue in cheek—as the "Cascade Curtain."

The statutory language provides only limited help in resolving a dispute over comparables: We are to "take into consideration...comparison of wages, hours, and conditions of employment of personnel involved in the proceedings with wages, hours and conditions of employment of like personnel of *like employers of similar size on the west coast of the United States*." Here, both parties offer only counties, and all the offered counties are within the State of Washington, which certainly satisfies the "like employers...on the west coast" part of the requirement. That leaves the restriction that comparison be with employers "of similar size." Once we have honored that restriction, the potential comparables may be winnowed down by comparisons on the basis of a variety of other characteristics, including, traditionally, proximity, revenue streams, average family income, etc. But that must be the *second* step of analysis: that step is limited, by the express terms of the statute, to counties "of similar size."[11]

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

11. One very important consideration in the choice of comparables is What jurisdictions have these parties looked at in the past? Or, What jurisdictions have interest arbitration panels found to be appropriate comparables in the past? The Washington courts have made it clear that interest arbitration is a part of the collective bargaining process; and

No one ever proposes to interpret "size" in geographic terms, because that makes no sense in this statutory scheme. Far the most widely accepted measures of "size" are population and assessed valuation—or assessed valuation per capita—which is commonly accepted as a measure of economic "size" under the statute, although the figurative assessed valuation approach to "similar size" threatens to stretch that statutory term too far out of its ordinary usage.

If we consider the populations of *only* the three *agreed* comparables, the result is well balanced: In 2011, Kitsap's population of 253,900 was pretty much indistinguishable from Thurston's 254,100, while Whatcom—at 202,100—was 80% of Kitsap, and Clark—at 428,000—was 169%. In Assessed Valuation, too, according to County figures for 2011, Whatcom and Thurston Counties are "smaller" than Kitsap—83% and a nearly equal 95% respectively—and Clark County is larger at 134%.

Snohomish County, on the other hand, simply cannot be shoehorned into the statutory term "of similar size."[12] Kitsap County's population is just over a third of Snohomish County, and Kitsap's assessed valuation is right at a third of Snohomish County's. No commonly

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that process is best served by the removal of disputes over comparability. In the case at hand, that is not quite easy to do because two interest arbitrators have addressed the identification of proper comparables in the relatively recent past and have come up with substantially different answers. The Counties now proposed by the Guild were adopted by arbitrator Roger Buchman in 1998; and all seven counties—the joint three, the Guild's Snohomish, and the County's three Eastern Washington Counties—were adopted by arbitrator Amedio Greco (NAA) in 2004. There were six years between those two analyses, and if it were possible to do so, I would extend great deference to arbitrator Greco's conclusion. But on the record before me I cannot fit some of those Counties into the statutory "of similar size" restriction.

12. The Guild argues (Post-hearing Brief at 6) that "the statutory language suggests that selecting comparables is a nuanced process;" but it seems to me that the "similar in size" language is reasonably clear and admits of only limited nuance. Unions frequently argue that the better application of such language is as a product rather than a sum, i.e. 'twice of half' rather than '+/- 50%;' but I know of no implementation of the phrase "of similar size" that stretches it to cover jurisdictions almost three times as populous and fully three times as great in assessed valuation as the jurisdiction at issue. Arbitrator Roger Buchanan found Snohomish County an appropriate comparable in his 1998 interest arbitration between the County and the Deputy Sheriffs' Guild: "though its size, though substantially larger that Kitsap County in population, is not so much larger as to cause it to be eliminated as a reasonable 'comparable.'" (Award at 8.) I quite agree that the relative size of Snohomish County "is not so much larger as to cause it to be eliminated as a *reasonable* comparable;" but it seems to me that Washington interest arbitrators get to address the issue of "*reasonable* comparables" only after they get past the preliminary, statutory limitation of "employers of *similar size*;" and I cannot accept a county almost three times as populous, with more than three times the assessed valuation, as being "of similar size" to Kitsap County.

recognized implementation of the statutory term "of similar size" will extend that term to Snohomish County.

Once Snohomish County is out of the picture, however, it is necessary to reach across to the far eastern side of the State in search of potential comparables.[13] Washington interest arbitrators have sometimes recognized an economic distinction between the two sides of the Cascades, although that line by no means insulates the two sides of the State from comparability comparisons. More important, the eastern Washington Counties are far away (182 miles from Port Orchard to Yakima and 231 miles to Prosser). There is no reason in this record to suppose that employees of Kitsap County consider themselves well or ill compensated by reflecting on employees in far Spokane, Yakima or Benton Counties, or to suppose that Kitsap County considers itself to have a community of economic interest with those Counties except to the extent that they are all in Washington.[14]

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13. It is sometimes helpful to look at an employer's own prior choices of comparables. This is not such a case. In the relatively recent past, Kitsap County has conducted or authorized several compensation studies. In 2000-2003 it was involved in studies for the AFSCME Courthouse Employees unit and for the Executive Managerial, Professional and Technical staff; and that study looked at the City of Bremerton and at Clark, Thurston, Whatcom, and Yakima Counties. It "added Snohomish County as an acceptable comparable" for a 2004-05 study of Professional, Technical and Managerial Staff; and it kept that same group of comparables for another study under a 2006 MOU between the County and the Courthouse Employees. And it used those five counties for a 2009 survey of Commissioners' compensation. So the County has never used Benton or Spokane Counties at all and has looked to Yakima only when that use was balanced by consideration of the City of Bremerton—not a County—or Snohomish County, which is not reasonable "similar in size."

14. Washington courts have made it clear that interest arbitration is to be a continuation of the collective bargaining process, not a departure from it. In the absence of statutory interest arbitration, employers most commonly rest their economic arguments on what similar employees are paid in the area, and unions most commonly rest their economic arguments on what the employees could make elsewhere without having to relocate. Even though corrections officers are not commonly a very mobile class of employees, and may well retire where they first went to work, there is always more punch to economic arguments about what similar employees make more or less in the geographic neighborhood; and there is always potentially a "so what" response when either party brings in data about what similar services go for very far away. Unless interest arbitration is to be fundamentally removed from its collective bargaining foundation, proximity counts. In the case at hand, a survey done by the Guild found only one current Corrections Officer with prior corrections employment in Eastern Washington (and one with WSP) and only one who had applied for a corrections position in Eastern Washington while employed as a CO in Kitsap County.

But the three eastern Washington counties are reasonably balanced with respect to both population and assessed valuation. Benton County's population is 70% of Kitsap's; Yakima County is 96%; and Spokane County is 186%. And Benton County's assessed valuation is 49% of Kitsap's; Yakima County is 53%; and Spokane is 134%.[15]

Some interest arbitration cases require the consideration of distant comparables. An interest arbitration panel, like any judicial or quasi-judicial body, operates under the fundamental requirement that it decide the case before it. When the evidence in a record is not very appealing in a collective bargaining context, it is still the evidence in that record. The agreed comparables in the record here may be barely adequate to determine overall comparability without the inclusion of far Spokane, Yakima, or Benton Counties. But we would, obviously, rather have more data points even when the only available candidates are quite distant. This would not be the first interest arbitration panel to use only three comparables, but a data base that small is inherently more susceptible to error than a larger data set.[16] The best way through this quandary, it seems to me, is to accept two sets of comparables, a primary set consisting of only the three near by agreed comparables and a secondary set which adds to those three the more distant eastern Washington counties. Taken together, those two sets of comparables should provide a reasonably clear picture.[17]

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15. Assessed valuation is too figurative an implementation of "similar in size" to require the exclusion of Benton County at 49% of Kitsap County rather that the usual 50% cutoff.

16. The Guild points out that the late arbitrator Carlton Snow (NAA) used only three comparables in *City of Ellensburg* (1992), and I used only four—with the later concurrence of arbitrator Mike Beck (NAA)—in *King County Transit* (2005 and 2008 respectively).

17. All six comparables pass the traditional secondary tests, although some only squeak by. For example, looking at the second leg of income support, the County notes that its taxable retail sales for 2010 were just larger than those of Yakima, Benton (both at 90%), and Whatcom Counties (at 96%) and smaller than Thurston (at 125%) and Clark Counties (at 133%), and massively smaller than Spokane County, which, the Guild points out, had 223% the taxable sales of Kitsap County in 2010, or Snohomish County, which had 321% the taxable sales of Kitsap County. Those sales translated into these sales tax revenues—as percentages of Kitsap County's sales tax income for 2010—for Yakima at 43%—substantially less than the 50% cutoff, as the Guild points out— Benton at 51%, Whatcom at 55%, Thurston at 63%, Clark at 109%, Spokane at 113% and Snohomish at 191%. The Guild offers data on sales & use tax income to the GF; and, once again, Snohomish County would be outside a ±50% selection criterion and barely inside a "half or twice" criterion (at 1.95). And the Guild's data comparing the size of all GF revenues shows that Snohomish is outside even a "half or twice" selection criterion (at 253%). The County also offers comparability data in terms of median household income, population density, and median home prices. In terms of median household income, Kitsap County is in the middle of the six possible comparables: less than Snohomish (which is second in the State to King

WAGES

Wage changes—usually increases—are mostly driven by three factors: changes in the cost of living, problems with recruitment and retention, or comparability. In the case at hand, the County has experienced no substantial problems of recruitment or retention. And there is no dispute that the agreed measure of the CPI change shows increases of 0.9% in 2010, 0.3% in 2011, and an anticipated 2.0% for 2012. That leaves comparability.

The parties offer differing numbers for the compensation paid by the comparable counties, and each finds fault with the other's system of calculation. Neither party completely shows its work, so it is not easy to choose between the two presentations. The County calculates "total compensation," adjusting for educational incentive, longevity pay, cash comp, hours of work, vacation and holidays (and premium holidays). Using the County's numbers, we get this picture of comparability with respect to the nearby, primary comparables:

	2010 Base	2010 Top	2011 Base	2011 Top	2012 Base	2012 Top
Clark	3,626	4,865	3,626	4,565	3,626	4,865
Thurston	3,999	5,103	3,999	5,103	4,107	5,242
Whatcom	3,567	5,028	3,638	5,127	3,711	5,229
Average	3731	4999	3754	4932	3815	5112
Kitsap	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
% difference	**6.50%**	**6.49%**	**7.17%**	**5.06%**	**8.90%**	**8.91%**

County), Thurston, and Benton Counties and greater than Clark, Whatcom, Spokane, and (very substantially less than) Yakima Counties. In terms of population density, Kitsap County is the third most dense in the State, behind only King and Clark Counties and denser than Thurston (56% of Kitsap), Snohomish (53%), and Spokane (42%) and massively denser than Whatcom (15%) and Yakima (9%) (another common manifestation of the "Cascade curtain"). Finally, in terms of median home prices, Kitsap County ranks third with respect to all six possible comparables, behind Snohomish (115%) and Whatcom (104%) Counties, but ahead of Thurston (96%), Clark (89%), Benton (74%), and Yakima (63%) Counties.

The picture changes substantially when we add the more distant eastern Washington Counties:

	2010 Base	2010 Top	2011 Base	2011 Top	2012 Base	2012 Top
Benton	3,474	4,504	3,543	4,594	3,614	4,686
Clark	3,626	4,865	3,626	4,565	3,626	4,865
Spokane	3,311	4,468	3,311	4,468	3,311	4,468
Thurston	3,999	5,103	3,999	5,103	4,107	5,242
Whatcom	3,567	5,028	3,638	5,127	3,711	5,229
Yakima	3,529	4,633	3,564	4,668	3,721	4,881
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
Average	3,584	4,768	3,614	4,804	3,682	4,895
Average/Kitsap	2.31%	1.58%	3.17%	2.34%	5.11%	4.28%

The County belongs somewhere between the average of the near comparables and the average of the broader comparables and, to repeat, in a traditional collective bargaining context the nearby comparables have a somewhat greater appeal. If we consider the average of the 2012 Base and 2012 Top numbers, the final picture on the County's version of the numbers, puts its Corrections Officer compensation somewhere between 4.70% (the average against the broader comparables) and 8.90% (the average against the nearby comparables) behind the pay in comparable jurisdictions assuming that none of the currently unsettled 2012 contracts includes any pay increase.

The Guild presents quite different numbers. Part of the difference is a product of the "snapshot" problem: When pay rates change during a year—as they sometimes do in a variety of ways—what rate is properly representative of that year's rate of compensation? It is not entirely clear what approach the County has taken to that question; but the Guild uses maximum compensation throughout the year (which makes sense here from an *advocacy* point of view since the County's COs have not changed pay rate at all during the three years at issue), regardless of the initial date of an increase. The Guild also counts any "premium" which is received by all employees in the bargaining unit (such as deferred compensation in Yakima County). Here are the Guild's numbers for the nearby comparables, for a five year employee with no degree (which is *near* the base), for a 10 year employee with an AA, and for a 25 year employee with a Bachelor's degree:

Total Monthly Wage Comparison[18]	2010			2011			2012		
	5/0	10/AA	25/BA	5/0	10/AA	25/BA	5/0	10/AA	25/BA
Clark	4,628	5,148	5,148	4,628	5,148	5,148	4,628	5,148	5,148
Thurston	5,103	5,154	5,256	5,103	5,154	5,256	5,241	5,293	5,398
Whatcom	4,495	5,008	5,127	4,585	5,108	5,230	4,585	5,108	5,230
Kitsap	**4,470**	**4,694**	**4,694**	**4,470**	**4,694**	**4,694**	**4,470**	**4,694**	**4,694**
Average	4,738	5,051	5,105	4,753	5,068	5,122	4,799	5,114	5,169
% difference[19]	5.99	7.61	8.76	6.33	7.96	9.12	7.36	8.95	10.13

Once again, adding the more distant comparables changes the results substantially, although the Guild's final difference is substantially larger than the County's:

Total Monthly Wage Comparison	2010			2011			2012		
	5/ none	10/ AA	25/ BA	5/ none	10/ AA	25/ BA	5/ none	10 yr AA	25/ BA
Benton	4,444	4,624	4,674	4,532	4,724	4,764	4,622	4,816	4,856
Clark	4,628	5,148	5,148	4,628	5,148	5,148	4,628	5,148	5,148
Spokane	4,333	4,554	4,554	4,333	4,554	4,554	4,333	4,554	4,554
Thurston	5,103	5,154	5,256	5,103	5,154	5,256	5,241	5,293	5,398
Whatcom	4,495	5,008	5,127	4,585	5,108	5,230	4,585	5,108	5,230
Yakima	4,226	4,633	4,633	4,454	4,882	4,882	4,454	4,882	4,882
Kitsap	**4,470**	**4,694**	**4,694**	**4,470**	**4,694**	**4,694**	**4,470**	**4,694**	**4,694**
Average	4,538	4,854	4,899	4,606	4,928	4,972	4,644	4,967	5,011
% difference	1.53	3.40	4.37	3.04	4.99	5.93	3.89	5.81	6.76

18. Clark County Corrections Officers work a substantially longer work year. The Guild's numbers deal with this distinction by adjusting down to a 2080 basis for purposes of "monthly wage."

19. Curiously, the Guild's exhibits express the difference as a percentage of the *average* (which is inevitably the larger number in this case) rather than as a percentage of the number for the County. The percent difference numbers here show what percentage of the number for Kitsap is required to come up to the average.

If we consider the benchmark ten year employee, these numbers show the County to be behind somewhere between 5.81% (for the broader comparables) and 8.95% (for the nearby comparables), assuming, once again, that none of the unsettled comparable contracts includes any increase in compensation.

But all but one of the comparables have unsettled contracts for 2012, and several are open retroactively for the prior year. The percent difference between Kitsap County and the comparables seems almost certain to increase, and it may increase quite substantially

Wage increases—driven by comparability, increasing cost of living, and, sometimes, problems with recruitment and retention—are usually resisted by considerations of financial responsibility. The current dispute arises at a particularly complex time for such analysis because it is clear that the County's financial picture in 2012, the final year at issue, is somewhat improved from the two prior years.

Taking the earlier years first, in 2010 the general fund had to borrow from other funds in order to meet payroll (as it had in 2008 and 2009). Every one of the unions representing the County's non-interest-arbitrable bargaining units agreed to wage freezes in 2010 and 2011 on top of their prior agreements to moderate the impact of bargained COLA clauses for 2008 and 2009 and their agreements first to voluntary, and then to involuntary reductions in hours of work throughout that period. Even though those unions did not have access to interest arbitration, that sort of unanimity is significant and persuasive.[20] More importantly, those years were marked not only by hiring freezes and eliminations of vacant positions, but by successive layoffs of current employees and by reductions in working hours for those who remained. And they were marked by the closure of County facilities, reductions in service hours, and the complete elimination of a significant program. Elected officials did not escape the fiscal impact: The County rescinded a scheduled 2010 2% increase for elected officials and allowed them to self-pay the County's part of their insurance costs, and those pay rates remained frozen through 2011. Indeed, the Guild "does not question...that severe economic recessions has strained [the County's] revenues and caused budgetary difficulties" (Reply Brief at 9).[21] The County points out that arbitrators Wilkinson (NAA) and Williams (NAA) both awarded wage freezes during that period (*City of Vancouver and OPEIU Local 11* (2011) and *State - Social and Health Services v. SEIU Local 775 NW* (2010), respectively).

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20. See, e.g., arbitrator Alan Krebs' (NAA) discussion in *Pierce County Captains Assn.* (2010).

21. The Guild insists on an analysis of that fact in terms of "ability to pay" rules which, to repeat, really make no sense and usually mischaracterize the employer's claims in the public sector.

In short, the comparability drivers for 2010 and 2011 are substantial, although the CPI increases over that period were modest. But the reasonableness of a pay increase must be measured at least in part against the financial conditions of the County at that time and against the compensation shifts experienced by other County employees.[22] The comparability numbers for those years are not so great as to justify pay increases for Corrections Officers for a period when their co-workers were suffering reduced hours and the County was reducing its level of services and eliminating programs. I must agree with the County's proposed pay rate freeze for 2010 and 2011.[23] The Guild argues strenuously that "ability to pay" should be addressed only in terms of the employer's *current* ability to fund increases for prior years, regardless of its financial condition during those years. Without addressing that question in the abstract, I cannot grant the Corrections Officers pay increases that would have been essentially paid for by give backs and reductions in hours suffered by other County employees during those difficult years.

2012 looks somewhat better than the two prior years, although ERFC reported a 3% decrease in the County's third quarter taxable retail sales (while all the comparables except Thurston County recorded increases). There are catch-up consequences of the prior years, such as several years of unfunded depreciation on County vehicles. More importantly, the County's current financial improvement is built on multiple years of service reductions, layoffs, staffing reductions, foregone bargained wage increases, and reductions in paid time, and the County faces the prospect of a 28% increase in PERS costs.

But the keystone of the County's argument for continuing the pay freeze into 2012 is its claim of its need to achieving a 16% unrestricted fund balance—about two months of operating expenses—in the general fund. The County has never carried such an extensive reserve. In 2006 and 2007, before the financial downturn of 2008, the reserve was less than 11%. (It dropped to just over 7% in 2008 and dropped again, to about 6% in 2009.) During the period at issue here, it recovered to under 10% in 2010 and rose again to about 12.5% in 2011. As the County costs the parties' proposals here, the GF unrestricted Fund Balance in 2012 would be about 11.5% on the Guild's proposal and more than 13% on the County's.

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22. The testimony of the Guild's financial expert was impressive. But this is not the usual case in which the element of financial responsibility is fought out in terms of budget numbers. Here, the *actions* of the County in program elimination, layoffs, service level reductions, and facility closures—and the actions of its other unions in agreements to defer or eliminate bargained increases and to reduce hours of work—outweigh any purely numerical argument.

23. The Guild suggests that the County might have more income if only it asked the voters and that its "limited ability to pay argument would fail through a lack of self-help" (Reply Brief at 5). That claim finds little traction in this record: A 2002 proposed levy lid lift failed by more than 60%; similar proposals in 2008 and 2010 by the Regional Library both failed; and a 2011 proposed levy for veterans and human services failed. With that history, and in light of the current economic climate, there is no good reason to suppose that voters would have changed their tune at any time during the period at issue here.

The County offers two supports for its claim that it would be irresponsible to seek less than a 16% UFB. First, it offers this "Best Practice" recommendation, approved in 2009 by the Government Finance Officers Association (GFOA):

> The adequacy of unrestricted fund balance in the general fund should be assessed based upon a government's own specific circumstances. Nevertheless, GFOA recommends, at a minimum, that general-purpose governments, regardless of size, maintain unrestricted fund balance in their general fund of no less than two months of regular general fund operating revenues or regular general fund operating expenditures. *** Furthermore, a government's particular situation often may require a level of unrestricted fund balance in the general fund significantly in excess of this recommended minimum level. ***

The Guild's financial expert testified to the contrary, that two months of operating costs is an excessive UFB for a Washington county.

That brings us to the County's second offered support for its claim, the County's credit agencies' ratings—and to their explanations of those ratings. The County's points to the testimony about the basis for the County's credit rating (Reply Brief at 12-15); but the rating documents themselves are in the record, and they do not entirely help the County's cause. Moody's rated the County's General Obligation bonds Aa3 both in 2010 and in 2011. The County does not claim to be dissatisfied with that rating. The 2010 rating assignment included this explanation:

> County reserve levels remain satisfactory, but have steadily weakened over the last five years. Between 2005 and 2008...the county's unreserved general fund balance averaged...11 ½ % of general fund revenues. ***[24] In fiscal 2009 the county's total general fund balance was...6.8% of revenues...with an unreserved general fund balance...6.2% of revenues... Positively, the county's general operations are supported by a relatively diverse revenue stream including property taxes (35%), sales taxes (26%), intergovernmental revenues (12%), and charges for services (12%). Moody's notes the county's reserve levels have been historically lower than similarly rated Washington counties, a credit weakness. Management notes conservative budgeting is expected to result in a slight improvement to general fund reserves for the current fiscal year and in fiscal 2011.

That pattern of analysis and conclusion was repeated in the 2011 report:

> *** Fiscal 2009 reserves were a very thin 6.8%... Fiscal 2010 reserves improved to an adequate but still thin 10.1%... County management indicates $1 million in reserves improvement in fiscal 2011, with a $2.4 million gap currently being addressed for fiscal 2012 ***

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24. The document refers to a significant 2009 accounting change which is not detailed or explained elsewhere in the record, so this portion of the Moody's account is too cryptic to be useful.

S&P's report adds no support at all to the County's proposal to maintain a 16% unrestricted reserve, noting, in 2010, a "[g]ood ending unreserved fund balances at 6.3% of expenditures in audited fiscal 2009" as a "credit strength." S&P also noted that "management expects to keep reserves basically level with 2009, raising the find balance on a percent of expenditures basis. Management further intends to make additional cuts and keep reserves at least where they are for fiscal 2011." In 2010, and again in 2011, S&P rated the County AA- Stable. In 2011, S&P notes a "Strong ending unreserved fund balances at 10.2% of expenditures in 2010, which management is working to increase." S&P noted, too, that "It is our understanding that the county is working toward keeping future reserve levels at around two months of operating expenses..." But that does not mitigate the huge gap between the GF % balances which underlay the satisfactory bond ratings in 2010 and 2011.[25]

In short, the County offers two supports for its claim that it needs a 16% cushion in order to be financially responsible, the GFOA "Best Practice" paper and its credit rating agency explanations for its GO bond ratings for 2010 and 2011. It is difficult to reconcile the two. If it were generally recognized that a county should have a minimum of 16%—two months—in unrestricted fund balance in order to be financially responsible, it is hard to imagine that these two credit rating agencies would have given the County such high ratings based on unreserved fund balances which were far, far less than 16%.[26]

Even on the County's version of the comparability numbers, it is behind the comparables by somewhere between 4.7% to 8.9% for 2012 and behind the nearby comparables by that 8.9%. And it is extremely important to remember that this is a pernicious "rosy scenario" from the County's point of view, because many of the comparables are not yet settled for 2012. The CPI has increased, over the entire period at issue, by about 3.2%. 2010 and 2011 taken together—the years during which this award will freeze pay rates—account for only a 1.2% increase in the CPI. But for 2012 increasing cost of living becomes more significant, with a 2% increase.

We are left with these considerations for 2012 wages: The County is still operating at a reduced level of services and with a reduced workforce, and many of its employees are still working reduced schedules. On the other hand, two of the explicit statutory factors clearly favor a pay increase, and one of those—comparability—is quite eloquent in its argument, particularly if we pay any serious attention to rate of pay here in comparison to other nearby comparables. The

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25. Fortunately, neither party addresses the possible long-term consequences of S&P's downgrade of the United States credit rating. S&P itself considered whether some states' ratings had to be reduced as an immediate consequence and decided that they did not. But there may well be a prospect of long-term trickle down impact. See, *Governing the States and Localities*, August 11, 2011, at http://www.governing.com/columns/public-finance/state-local-credit-rating-risks-ahead.html.

26. The S&P notes the County's *aspiration* to a 16 % UFB without any mention of that percentage being a commonly agreed minimum standard or even a common goal.

County's goal of a 16% UFB is not well supported by the discussions of its credit rating agencies. And, finally, the comparability picture is likely to get worse as more of the comparable employers reach contracts for 2012 (and, in some cases, even for 2011). The statutory scheme expressly includes comparability and the changing cost of living; and it is difficult to avoid the conclusion that employees subject to that statutory scheme should not fall terribly short of *both* of those curves over the long haul. Under those circumstances, I cannot justify a failure to at least hold Corrections Officer compensation steady in real terms by granting them a third year cost of living adjustment equal to the 3.2% CPI increase. There is not much room for doubt, on this record, that if the Corrections Officers do not at least keep up with the lesser of the two increase drivers—changes in the CPI—they will come out of 2012 massively behind the Corrections Officers of comparable jurisdictions. The problem, or course, is the cost of that increase in the face of the County's still precarious financial condition. That concern required delaying the increase in order to reduce its cost. The first, 2% increase shall be effective on July 1, 2012; and the remaining 1.2% shall be effective on December 1, 2012. That will bring the parties into negotiations for the next successor agreement with a less unmanageable comparability problem to deal with.

The County insists that the cost of any rate increase here should reflect the County's agreement to a "me, too" provision in the Corrections Sergeants CBA. I agree that such an additional cost may be a proper consideration for an interest arbitration panel. But such consideration must be limited by the terms of the statute. Comparability is expressly listed for the consideration of the panel; and the consequences of substantial failures of comparability cannot be avoided by artificially inflating the cost of keeping up. I will forbear to parade the possible horribles here, but on the County's version of how costing should work, a sweeping "me-too" which attached a large wall-to-wall bargaining unit to the cost of any increase for a small unit of interest arbitrable employees would clearly defeat the overall purpose of the statutory scheme. Those are real costs, but they are costs the County volunteered for.

LONGEVITY

The Guild proposes to add to the contract an annual "Longevity Bonus" which would begin at 1% after 10 years and would go up by 1% every five years until it reaches 4% after 25 years. That would leave the Corrections Officers slightly behind the County's Deputies, whose longevity provision begins at 1.5% after seven years, 2% after 10, and increases one percent every five years ending at 5% after 25 years. The Sheriff's Lieutenants also have that longevity benefit. In fact, most County employees have some form of longevity benefit: 911 Employees begin at five years and top out at 2.5% after 20; Sheriff's Support employees (hired after 5/1/94) begin at 1.5% at five years and top out at 3% after 20; Deputy Prosecutors begin at 1.5% after five years and top out at 3% after 20; so do Courthouse employees and Courthouse Supervisory employees (those hired after 1/1/98 receive slightly less), and the Public Works Utility Union, and Facilities, Parks and Recreation employees, and OPEIU employees in Juvenile Detention, and Operating engineers (hired after 11/1/97).

Of the six possible comparators, Whatcom and Yakima Counties have no longevity pay; Thurston County has a 1% longevity bonus after ten years, but only if the Officer is not receiving an education bonus (1% for AA and 3% for BA/BS); Spokane County pays 5.12% after 10 years; Clark County pays 5.84% after ten years; and Benton County pays $50/month after five years, $100/month after ten years, and $120/month from the 15th year.

The Guild argues that after a CO tops out on the salary schedule—after ten to eleven years—there is no further financial incentive to remain without some form or longevity pay. The Guild also points out that the extensive experience of senior Officers—with 15+ years of service—is particularly valuable to the jail overall because those Officers are particularly expert in talking down fights and are particularly familiar with the frequent repeat offenders who make up some 60% of the average inmate population.

The County objects to the addition, pointing out that the Guild traded a prior longevity provision for the current seventh step of the salary schedule in the 1999 contract:

> As part of the agreement to add the seventh step to the wage schedule referenced in Article X above, the existing longevity bonus provisions set forth in Article XIII, shall be discontinued as follows:
> 1. The following longevity steps shall be eliminated effective January 1, 1999:
>
> | | |
> |---|---|
> | After 10 years | 2.0% |
> | After 15 years | 3.0% |
> | After 20 years | 4.0% |
> | After 25 years | 5.0% |
>
> * * * * *

The County argues that the 1999 agreement reflects a pattern among the comparables, with those employers with less than seven steps also having longevity bonuses and those with more than seven not having them.

I agree with the County on this issue. The Guild traded away a longevity bonus quite similar to the one it now proposes and got a seventh salary step in return. That trade is now a little over a decade old; and 85% of the current Corrections Officers are now at the top step, and the Guild would, quite understandably, like its longevity bonus back. The Guild certainly is not stuck with its 1999 trade forever, but in light of the County's still somewhat precarious financial condition the record here does not justify the return of the longevity bonus at this time.

INSURANCE (HEALTH, DENTAL, AND LIFE)

The County has a Joint Medical Benefits Committee which includes representatives of all its bargaining units and of the unrepresented employees. In the past, the Guild actively participated in that Committee; and the parties' prior, 2007-2009 CBA adopted an agreement by that Committee on plans and premiums for 2007. That CBA established 2008 cost sharing by a provision that "the County will pay the first 10% increase over the 2007 County premium

contributions for employee-only and dependent coverage under the KPS PPO 1 and PPO 2 plans, and the Group Health Select $15.00 co-pay Plan...with employees paying the remaining share through payroll deductions."

It also provided that the "County will provide a County-selected dental plan providing substantially similar benefits to those provided in the Washington Dental Plan Option 4 ($2,000 a year maximum benefit). The County will pay on behalf of each full-time regular employee the equivalent of the premium cost of the County-selected dental plan providing substantially similar benefits to those provided in the Washington Dental Plan Option 2 ($1.000 a year maximum benefit).... The County will deduct from employees, through payroll deduction, the difference in the cost from the Option 4 plan and the Option 2 plan."

2010 premiums for the prior coverage were slated to increase by 18.3%, but the Committee worked out a combination of increased co-pays and deductibles that reduced the increase to 11.8%.[27] The County announced that it would increase its premium contribution for 2010 by only 5%, and the non-interest arbitrable groups accepted that proposal for allocation of premiums in 2010; but the interest arbitrable groups, including the Corrections Officers, did not.

After the expiration of that CBA, the parties agreed that the County was obliged to maintain the status quo during negotiations for a successor, but they disagreed on what that was. The extension agreement covering 2009 had stated a laundry list of premiums contributions by both the County and the employees. For example, that agreement stated that the County would pay $1,160.92 for full family coverage under Premera Blue Cross and the employee would pay $46.40. The County argued that the status quo was its $1,160.92 liability; and the Guild argued that the status quo was the employee's $46.40 liability. In the face of that disagreement, the parties entered into a Memorandum of Understanding (MOU) which allowed the County to implement its proposed insurance benefit program while ultimately reserving that issue for this interest arbitration procedure:

> This MOU is a temporary solution on the issue of health benefits. The parties preserve the right to continue to advance their protected proposals, or modified proposals consistent with each side's good faith obligation, through any mediation or arbitration necessary in 2011, and any future year's benefits. The parties further agree that both side's proposals can be retroactive, with an arbitrator having the authority to order retroactive adjustment. The arbitrator shall have all authority vested in him/her under the Public Employees Collective Bargaining Act (PECBA), RCW Chapter 41.56, to decide the health benefits issue...

The Lieutenants Association filed a ULP, alleging that the County had unilaterally altered the status quo without completing negotiations. PERC decided that dispute in August of 2010. Prior case law made it clear that where *one party's* contribution is set out—in dollar amount or in

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27. These numbers come from the written decision of the PERC Hearings Officer in the subsequent ULP filed by the Lieutenants bargaining unit, which is addressed below.

percentage increase—and the other party is left to pick up the remainder of any increase, that stated amount or percentage becomes the status quo. The peculiarity of the facts before PERC in the Lieutenants Association case was that the prior agreement set out *both* parties' liabilities in specific dollar amounts but the sum of those amounts came up substantially short of covering the increased premium costs. PERC concluded that the prior agreement established a proportional liability for insurance premiums and that that proportional liability was the status quo which could not be changed without completing negotiations. That decision does not technically apply to the case at hand, because the MOU executed by these parties makes no reference to a status quo approach to premium sharing and leaves the premium sharing issue to be resolved here. (It does, however, address the Guild's claim—Initial Post-hearing Brief at 77—that "the 'status quo' is unclear [and] unsustainable...")

The County now proposes an award of the interim health and dental insurance provisions that were in effect under the MOU, including what amounts to a 5% increase in the County's premium liability caps for 2011 and again for 2012. The coverages proposed by the County are those adopted by the Benefits Committee in order to keep down the 2010 premium increases, i.e., the Group Health Classic and Value Plans and the Premera Classic and Value Plans, with dental coverage in WDS Plan C or Plan D or in Willamette Dental. The Guild proposes that for both 2011 and 2012 the County pay the entire employee-only premium, and 90% of dependent premium, for the Group Health Classic Plan or the Premera Classic Plan and pay those same percentages for dental and life insurance coverage "under the County's insurance plans."

There is some dispute about the scope of the medical insurance issue in this interest arbitration proceeding. The County argues that only the premium division is at issue; and the Guild argues that the choice of plans is also before the interest arbitration panel. The Guild argues (Post-hearing Brief at 82) that "The system that exists presently also serves to benefit the County by encouraging the MBC to endorse diminishments in the plans themselves that reduce the overall premium increases year-to-year by shifting more costs for service over to the employees and their families." The facts established in the ULP decision provide one recent example of that sort of cost shifting and benefit reduction. But that is hardly a peculiarity of the Guild's experience with insurance costs. On the contrary, it is a very general characteristic of medical insurance price and benefit changes over at least the last decade.[28] Insurance companies themselves have notoriously increased so-called "gate" costs—such as co-pays and deductibles—in order to resist their own tide of cost increase and to keep premiums down, and employers and employee groups alike have been repeatedly driven to make similar changes.

On the other hand, internal comparability and administrative efficiency are compelling argument in favor of continuing the same coverages as the rest of the County workforce.

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28. The Guild argues (Initial Post-hearing Brief at 88) that "... Kitsap has been more aggressive in watering down its plans than have ... other agencies" and that that fact must be considered in determining an appropriate premium cost allocation. But the total premium cost of the County's insurance programs cast some doubt on that claim.

Arbitrator Jane Wilkinson (NAA) particularly stressed internal parity in her *Pierce County Deputy Sheriffs* award in February of 2012; and FJ Rosenberry reached a similar conclusion in his September, 2011 award for *Bellevue Firefighters,* quoting a 1982 award by Howard Block (NAA) addressing proposals for special medical benefit packages: "Deviations from a uniform benefit pattern can be disruptive to employee morale. In short, comparison among employee groups of the same employer are no less important than comparisons with other employers." The record here does not justify such a departure for Guild Corrections Officers.[29]

That leaves the issue of allocation of premium costs for 2011 and 2012. Comparison of medical benefits is notoriously problematic. It is particularly tough here because not only do some comparators have tiered coverage and some composite, but some also offer the combination of very large deductible plans paired with medical savings accounts. Here are the Guild's *maximum* numbers for total employer contributions to full family health care coverage for all the proposed comparables for 2012 (showing whether the premium base is composite or tiered):

County	C/T	Employer	Employee	Ee %
Benton	C	1049.00	56.00	5.07%
Clark	T	1773.00	221.00	11.08%
Spokane	T	1708.00	80.00	4.47%
Thurston	T	1690.00	0.00	0.00%
Whatcom	C	1138.00	0.00	0.00%
Yakima	C	694.00	77.00	9.99%
Average		1342.00	72.00	5.51%
Kitsap	T	1408.00	395.00	21.9%

The average full family employer contribution of the full, wide-spread group of comparators is $1,342, which is about 5% more than Kitsap's contribution. The average full family employer contribution of the nearby comparables, Clark, Thurston and Whatcom Counties is $1,533, which is about 9% more. On the other hand, the cost to the Corrections Officers in Kitsap County is substantially greater than among the comparables, as is their percentage of total premium

29. The Guild points out that arbitrator Roger Buchanan in his 1998 interest arbitration award for the County's Deputy Sheriffs bargaining unit expressly found that employees "employed in high risk employment...should be in a health insurance plan that presents top quality, easily available medical care." With due respect to arbitrator Buchanan, it seems to me that arbitrator Block states the majority view and the better view on that issue.

liability. Looking closer to home does not improve the County's standing. The average employer contribution of the three western Washington comparables is $1,534, almost 9% less than Kitsap County's $1,408; and the average employee contribution is $74 (only Clark County requiring any employee contribution at all) against Kitsap's $395, which allocates less than 5% to the employee, against Kitsap's 21.9%. In the face of an additional cost of over $320/month, it is difficult to ignore the Guild's argument that high employee insurance costs exacerbate the Corrections Officers' trailing in compensation.

On the other hand, the additional premium cost from the Guild's proposal would be about $225,000 for 2011 and 2012. In light of the additional wage increase costs of this award and the still somewhat precarious financial conditions, I agree that the Guild's proposal is unacceptable. But that does not mean that the County's own proposal should be adopted in full. Each party argues that the proposal made by the other would create a future disincentive for full participation in the Medical Benefits Committee. And both parties are probably right in that claim. The Committee system seems to have worked fairly well when the County's common pattern was a year-to-year percent increase which covered most but not all of its medical insurance premium costs. That gave everybody in the Committee "a dog in the fight" to keep premium increases in check every year. I therefore award for 2011 the 5% County increase that has already been paid under the interim MOU and for 2012 the following contract language on the pattern of the 2007-2009 CBA:

> Effective with the January 2012 premiums, the County will pay the first 10% of any increase over the 2011 County premium contributions for employee-only and dependent medical coverage under the plans in effect in 2011,with employees paying the remaining share through payroll deduction. The parties shall participate in a joint labor-management Medical Benefits Committee, that will make every effort to devise plan changes that will keep rate increases below 10% for 2013. Because insurance providers' dual carrier rules may place restrictions on the County's ability to allow differentials between employee contribution rates for similar levels of coverage provided by different carriers, the Medical Benefits Committee may consider adjusting employee contribution rates when devising plan changes under this paragraph.[30]
>
> The County shall continue to pay 100% of the premium cost for employee-only dental coverage in 2012; and, effective with the January 2012 premiums, the County will increase its contribution to the cost of dependent dental coverage (previously $25 per month) by 10%.

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30. Paragraph d shall continue into the new contract with this change: "~~During the final year for which the contract establishes medical contributions the~~ **The** Guild's representative on the joint labor-management Medical Benefits Committee may participate..." etc. The point of that continuation is the negative pregnant: If the Guild *does not* vote for a MBC majority recommendation, the Guild is not bound by that proposal even to the extend of a tentative agreement and is free to bargain the entirety of the medical benefit issue directly with the County.

That language intentionally establishes a 10% annual increase in the County's medical and dental insurance premium responsibility as the status quo if the parties have not reached a 2013 contract before the 2012 CBA expires. The approach to the 10% is somewhat different for medical and for dental premiums. If medical premiums increase by 12.5 % under this approach, for example, the County would be responsible for the first 10% of that increase and the employees would be responsible for the remaining 2.5%. But the County pays quite a small share of dependent dental costs, so the dollar liability of the County for any increase in dependent dental premiums shall increase by 10%, i.e., for 2012, from $25 per month to $27.50 per month. There are to be no other changes in the allocation of costs for medical, dental, or life insurance for 2011 or 2012.

The drawback of this 10% approach—compared to the County's announced 5% increase for the other bargaining units—is that it will somewhat disconnect the Guild from the rest of the County's premium structure (though not coverage structure). But the compensation comparability picture of the Corrections Officers should not be further eroded by shifting to them an ever greater percentage of medical insurance costs.

COMP TIME CAP

The contract allows Corrections Officers to take overtime compensation in the form of cash (at time and a half) or comp time at an hour and a half for every overtime hour worked. The prior CBA capped the accumulation of comp time at 60 hours; and the Guild now proposes to increase that cap up to 80 hours. Three of the group of six comparables cap comp time at 80 hours (Clark, Spokane, and Whatcom Counties); two are at 60 (Thurston and Yakima Counties); and Benton County's cap is at 36 hours. The County's other bargaining units mostly have a 40 hour cap, except the Deputy Sheriff's unit, which has an 80 hour cap. The County points out that the highest current comp time account stands at 32 hours and the average is only two hours, so this language "ain't broke" and should not be fixed. And the Guild observes that such a track record eliminates any possible financial objection to extending an unfunded liability. On this record, comparability barely favors the Guild's proposal, and there is no substantial economic argument to the contrary, and I award the Guild's proposed change of the cap to 80 hours.

PREMIUM HOLIDAYS

The prior CBA listed ten holidays (and one floating holiday). In general, a Corrections Officer required to work on one of the listed holidays can choose between double time and straight pay plus eight hours of annual leave. But four of the listed holidays—New Years Day, Independence Day, Thanksgiving Day, and Christmas Day—were designated "premium" holidays; and a CO required to work one of those days could choose to receive eight hours of annual leave and time and a half for the eight hour shift (and double time for overtime). The Guild proposes to move three more of the listed holidays into the "premium" class: The Friday after Thanksgiving, Veteran's Day, and Memorial Day.

The Guild's proposal would bring the Corrections Officers about in line with the seven premium holidays in the Deputy Sheriff's Guild CBA. The definition of "premium holiday"

shifts from employer to employer and some employers use no such term at all. I therefore take as the defining characteristic of "premium holiday" for the sake of comparison, pay or leave accrual that totals 2 ½ times normal rate.[31] No other County employees receive such pay. On the other hand, Benton County has 11 such "premium" holidays; Clark County has five;[32] Spokane County has ten; Thurston County has ten; Whatcom County has six; and Yakima County has two. The average for that whole group is nine days; and the average for the three nearby counties is seven, as compared with four for Kitsap County.

The County is certainly correct in arguing (Initial Post-hearing Brief at 41) that "the whole practice of premium holidays [is just] another way to increase pay." And this particular pay increase would cost about $80,000. In light of the County's current financial condition and the less than certain prospects for a near-term economic recovery, I cannot justify catching the Guild up in this respect during the term of the 2010-2012 contract.

ANNUAL LEAVE ACCRUAL

With a few exceptions, the Guild proposes to add 16 hours per year to the annual leave accrual rates. There are the proposed changes:

Employment.	~~80~~	96 hours per year
After 3 years	~~96~~	112 hours per year
After 5 years	~~120~~	136 hours per year
After 10 years		160 hours per year
After 15 years		200 hours per year
After 20 years		216 hours per year

And for employees hired on or before July 1, 1997:

After 10 years	200 hours per year
After 20 years	216 hours per year

The current accrual rate for Corrections Officers matches the rate for almost all of the County workforce except Deputies (who get 160 hours after five years and thirty hours more at ten years and fifteen years). The Lieutenants also accrue annual leave at a higher rate. Looking

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31. I reviewed the holiday provisions of each of the six comparables' current or most recent contracts in order to come up with the numbers that follow in the body of the text (because the parties sharply disagreed about them). These are basically the numbers alleged by the Guild.

32. Clark County rolls vacation time and holiday time into Paid Days Off, but it pays time and a half for actually working on one of five listed holidays. Taken together with the PDO, that makes 2 ½ times normal rate.

at comparable employers, the County is not out of line in vacation accrual as measured against the broader six comparators.[33] Although Kitsap begins quite low—at 80 hours against an average of 105—it noses into the lead at ten years—160 against an average of 157—and stays there until 25 years, when its 200 hours of accrual is just behind the average of 209 hours. Against the nearby primary comparables, the result is no more compelling: Kitsap County is behind at hire (80 hours to 101) and at five and ten years (120 hours to 141 and 160 hours to 165), slightly ahead at fifteen and twenty years (200 hours to 186 and 200 hours to 197), and slightly behind again at 25 years (200 hours to 202). In short, the record simply does not provide convincing support for the Guild's proposal to increase annual leave accrual, and I award no change in the language of the prior agreement.

SICK LEAVE CASHOUT

The Guild proposes this change to the prior contract's provision for sick leave cashout at retirement:

> Upon retirement, employees ~~who are members of the Public Employees' Retirement System (PERS) or Public Safety Employees' Retirement System (PSERS)~~ will receive payment for fifty (50) percent of all sick leave ~~accrued prior to January 1, 1985~~, based upon the rate of pay at the time of retirement. ~~Any use of sick leave accrued prior to January 1, 1985, during the employment period beyond January 1, 1985, shall reduce the total accrued sick leave eligible for retirement payments and that balance shall not be replenished at any time.~~

County employees in the Deputy Sheriffs' bargaining unit may cash out 50% of all sick leave accrued at retirement (and all sick leave at death). Almost all other County employees are limited to 50% of sick leave accrued before January 1, 1984 (at retirement or death) and annually may convert 10 hours of sick leave to one hour of annual leave. The Deputies are a significant exception and may cash out 50% of all accrued sick leave on retirement or 100% at death. The comparables are not very consistent on this topic. In general (and omitting some details): Benton County, 25% and annual conversion of 24 hours to 8 hours SL; Clark County, 25% of hours over 300, 50% of hours over 600, 75% of hours over 900; Spokane County, 50%; Thurston County, 50% to 360 hours; Whatcom County, 25%; Yakima County, 25% (with some conversion rights).

The Guild's proposal here does not have significant current costs. Although there is no history of this provision in the record, it has every appearance of resulting from a (not at all unusual) determination, around 1984 or 1985, to reduce unfunded liabilities. But the comparability data has no significant current economic argument to stand against it, and I therefore award the following change to the prior contract's sick leave cashout provision from the beginning of the contract period at issue, i.e., January 1, 2010:

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33. The following summary uses the County's numbers (County Ex. 4.4) for the comparables, which are actually more favorable to the Guild (Guild Ex. 388) in several minor particulars.

Upon retirement, employees who are members of the Public Employees' Retirement System (PERS) or Public Safety Employees' Retirement System (PSERS) will receive payment for fifty (50) percent of all sick leave accrued prior to January 1, 1985, based upon the rate of pay at the time of retirement **and for 25 (25) percent of all remaining sick leave**. Any use of sick leave accrued prior to January 1, 1985, during the employment period beyond January 1, 1985, shall reduce the total accrued sick leave eligible for retirement payments and that balance shall not be replenished at any time.

AWARD

Wages. Article II shall include this language:

There shall be no change in salaries rates for 2010 and 2011. Effective the first full pay period following July 1, 2012, the 2011 salary schedule shall be increased by 2%; and effective the first full pay period following December 1, 2012, the resulting salary schedule shall again be increased by 1.2%.

Longevity. No longevity provision shall be added to the language of the prior contract.

Health, Dental and Life Insurance. The insurance article shall be changed to include this language:

The County's premium contribution for 2011 and the first half of 2012 shall be the rate it has already used for that period.

Effective with the January 2012 premiums, the County will pay the first 10% of any increase over the 2011 County premium contributions for employee-only and dependent medical coverage under the plans in effect in 2011,with employees paying the remaining share through payroll deduction. The parties shall participate in a joint labor-management Medical Benefits Committee, that will make every effort to devise plan changes that will keep rate increases below 10% for 2013. Because insurance providers' dual carrier rules may place restrictions on the County's ability to allow differentials between employee contribution rates for similar levels of coverage provided by different carriers, the Medical Benefits Committee may consider adjusting employee contribution rates when devising plan changes under this paragraph.[34]

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34. Paragraph d shall continue into the new contract with this change: "~~During the final year for which the contract establishes medical contributions the~~ **The** Guild's representative on the joint labor-management Medical Benefits Committee may participate..." etc. The point of that continuation is the negative pregnant: If the Guild *does not* vote for a MBC majority recommendation, the Guild is not bound by that proposal even to the extend of a tentative agreement and is free to bargain the entirety of the medical benefit issue directly with the County.

The County shall continue to pay 100% of the premium cost for employee-only dental coverage in 2012; and, effective with the January 2012 premiums, the County will increase its contribution to the cost of dependent dental coverage (previously $25 per month) by 10%.

There shall be no other changes in the allocation of costs for medical, dental, or life insurance for 2011 or 2012

Article II, SECTION F, subsection 1,d d shall continue into the new contract with this change:

"~~During the final year for which the contract extablishes medical contributions the~~ **The** Guild's representative on the joint labor-management Medical Benefits Committee may participate..." etc.

Comp Time Cap. The cap shall be changed from 60 hours to 80 hours as per the Guild's proposal.

Premium Holidays. The language of the prior agreement shall continue without change.

Annual Leave Accrual. The language of the prior agreement shall continue without change.

Sick Leave Cashout. The language of the prior agreement shall be changed as follows:

Upon retirement, employees who are members of the Public Employees' Retirement System (PERS) or Public Safety Employees' Retirement System (PSERS) will receive payment for fifty (50) percent of all sick leave accrued prior to January 1, 1985, based upon the rate of pay at the time of retirement **and for 25 (25) percent of all remaining sick leave**. Any use of sick leave accrued prior to January 1, 1985, during the employment period beyond January 1, 1985, shall reduce the total accrued sick leave eligible for retirement payments and that balance shall not be replenished at any time. **In January of each year, any employee may convert his or her sick leave accrued during the previous year to annual leave at a 10 to 1 ratio.**

Respectfully submitted on June 1, 2012,

Howell L. Lankford	Kelly M. Turner	Nancy Buonanno Grennan
Neutral arbitrator.	Appointed by the Guild*	Appointed by the County*

* The neutral arbitrator is the principal author of this discussion and award, and the party-appointed arbitrators do not necessarily agree with it in every particular.