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PUBLIC EMPLOYMENT  
RELATIONS COMMISSION

**IN THE MATTER OF**

**PIERCE COUNTY**

**AND**

**PIERCE COUNTY CAPTAINS ASSOCIATION**

**PERC No.: 22679-I-09-0539**

**Date Issued: May 17, 2010**

**INTEREST ARBITRATION OPINION AND AWARD**

**OF**

**ARBITRATION PANEL**

**Alan R. Krebs, Neutral Chair  
Denise Greer, Pierce County Partisan Arbitrator  
Jody Smith, Captains Association Partisan Arbitrator**

**Appearances:**

**PIERCE COUNTY**

**Otto Klein**

**PIERCE COUNTY CAPTAINS ASSOCIATION**

**Ed Smith**

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**IN THE MATTER OF  
PIERCE COUNTY  
AND  
PIERCE COUNTY CAPTAINS ASSOCIATION**

**OPINION OF THE NEUTRAL CHAIR**

**PROCEDURAL MATTERS**

In accordance with RCW 41.56.450 an interest arbitration hearing involving certain uniformed personnel of Pierce County, Washington was held on January 27 and 28, 2010, in Tacoma, Washington. Denise Greer was selected by the Employer and Jody Smith was selected by the Association to serve on the Arbitration Panel. The Neutral Chair of the Arbitration Panel selected jointly by the parties is Alan R. Krebs. Pierce County was represented by Otto Klein of the Summit Law Group. Pierce County Captains Association was represented by Captain Ed Smith.

At the hearing, witnesses testified under oath and the parties presented documentary evidence. There was no court reporter, and therefore, the Neutral Chair tape recorded the proceedings. Opening post-hearing briefs were received by the Neutral Chair on March 1, 2010. Reply briefs were received on March 31, 2010.

**APPLICABLE STATUTORY PROVISIONS**

When certain public employers and their uniformed personnel are unable to reach agreement on new contract terms by means of negotiations and mediation, RCW 41.56.450 calls

for interest arbitration to resolve their dispute. The parties agree that RCW 41.56.450 is applicable to the bargaining unit of Sheriff's Department captains involved here. Arbitrators are generally mindful that interest arbitration is an extension of the bargaining process. They recognize those contract provisions upon which the parties could agree and decide the remaining issues in a manner which would approximate the result the parties would likely have reached in good faith negotiations considering the statutory criteria. A party proposing new contract language has the burden of proving that there should be a change in the status quo.

RCW 41.56.465 sets forth certain criteria which must be considered by the Neutral Chair in deciding the controversy after consultation with the other Panel members:

(1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, the panel shall consider:

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

(b) Stipulations of the parties;

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

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

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

(2) For employees listed in RCW 41.56.030(7) (a) through (d), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.

\* \* \*

The statute does not provide guidance as to how much weight should be given to any of these standards or guidelines, but rather leaves that determination to the reasonable discretion of the Panel.

## **NATURE OF THE EMPLOYER**

The bargaining unit involved in this dispute consists of only the five captains employed by the Pierce County Sheriff's Department. The Department is headed by a sheriff, who is assisted by an undersheriff. Organizationally, the Department is divided into three bureaus: Operations, Services, and Corrections, each of which is led by an appointed bureau chief. Three captains work in the Corrections Bureau: Marvin Spencer, who is the operations captain at the main jail, Brian Sutherlin, who is the operations captain at the new jail, and Pat Kelly, who is the program services captain for the jails. Two captains work in law enforcement: Brent Bomkamp is the CID captain who leads the Department's investigations function and Ed Smith is the administrative services captain who provides leadership for a number of units, such as training, court security, IT services, and the property room.

The Sheriff's Department has about 744 employees. On the law enforcement side, the entry level uniformed position is the deputy. The entry level uniformed position on the corrections side of the Department is the corrections officer. Sergeants serve as first-level supervisors. Lieutenants are the next higher level of supervision and are just below the captains in rank. The collective bargaining agreement at issue here is for the successor to the first labor contract which covered the Department's captains and had a duration from January 1, 2006 through December 31, 2008.

## **ISSUES**

On September 1, 2009, the Executive Director of the Public Employment Relations Commission certified for interest arbitration the following issues which were at impasse following mediation.

1. Mandatory topics for bargaining – Article 3, Section 1
2. Wages – Article 5
3. Uniform and clothing allowances – Article 5
4. Pay for command duty officers – Article 5
5. Call-out pay for CID call-outs – Article 5
6. Educational incentive pay – Article 5
7. Cash-out of holiday pay – Article 9
8. LEOFF II disability leave supplements – Article 10
9. Correctional captain disability leave supplement – Article 10
10. Extended sick leave loan bank – Article 10
11. Employee rights to due process – Article 18
12. Determination of comparable jurisdictions under RCW 41.56.450 et. seq.

The parties agree that the new collective bargaining agreement should have a duration of three years, commencing on January 1, 2009.

## **COMPARABLE EMPLOYERS**

One of the primary “standards or guidelines” set forth in RCW 41.56.465 upon which a panel must rely in reaching a decision is 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 County contends that four Washington counties should be utilized as comparable employers: Clark, Kitsap, Snohomish, and Spokane. It reasons that Clark, Snohomish, and Spokane Counties each fall within a population band of between 50% and 150% of the population of Pierce County. While recognizing that Kitsap County has a population which is too small to fit into this population band, the County nevertheless contends that it should be considered as a comparator because it is adjacent to Pierce County and is part of the Puget Sound metropolitan area that includes both Snohomish and Pierce Counties. It further notes that the assessed valuation per capita in Kitsap County is well within 50% of Pierce County. The County provided statistical information that the median household income, average home price, and per capita income of its suggested comparables on average, were reasonably close to those of Pierce County. The County suggests that if the Panel believes that additional counties should be added to the list of comparable employers, then the Oregon counties of Multnomah and/or Washington should be utilized. The County reasons that both of these Oregon counties fall well within 50% of Pierce County’s population. The County urges that California counties not be utilized as comparable employers because of the significant differences between Washington and California jurisdictions, differences which have been recognized by other arbitrators.

The Association contends that the comparable employers are Snohomish County, Washington; two Washington cities, Tacoma and Seattle; and seven California counties: Contra

Costa, Fresno, Ventura, Kern, San Joaquin, and Sonoma.<sup>1</sup> The Association asserts that it has based its proposed comparables on the following factors: population, median home sales prices, assessed value, state tax burden, consumer price index, government total revenue, similarity of captain's position, the availability of collective bargaining and interest arbitration, and the complexity and size of department. The Association urges that Kitsap County should not be considered because it is too small in both population and total assessed value in comparison with Pierce County. It argues that Spokane County should not be considered as comparable to Pierce County because Spokane County is located in Eastern Washington, it has assessed value which is 41% of Pierce County, its captains do not have civil service protection, and there is no captain position in its corrections bureau. The Association would exclude Clark County as a comparable based on a comparison with Pierce County with regard to retail sales, land area, sales tax revenue, staffing size, violent crime rate, and organizational structure. The Association adds that since Clark County does not employ captains, it provides no basis for comparison. The Association points out that all of the counties it has proposed have a population and assessed property values which are within 50%, plus or minus, of Pierce County's except that Contra Costa falls outside of this band for assessed value. The Association urges that Oregon counties should be excluded from consideration as comparables because captains in Oregon do not have a statutory right to collective bargaining or interest arbitration. In addition, the Association maintains that Washington County, Oregon is too small in assessed value and size of land area, and does not have a comparable position to a Pierce County captain. The Association argues that

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<sup>1</sup> In its post hearing reply brief, the Association asserted that it was no longer contending that San Mateo County is a comparable employer.



Multnomah County, Oregon is not comparable to Pierce County because of its relatively small size in unincorporated population, land area, and number of employees.

The applicable statute requires a comparison of “like employers.” Like employers to Pierce County are other counties. While the governing statute requires a comparison with “like employers of similar size on the West Coast,” it does not specify how similar size is to be determined. The reference to similar size has generally been interpreted by interest arbitrators to refer to population. The parties in this matter generally agree that comparable counties should contain a population which is between 50% and 150% that of Pierce County.<sup>2</sup> This is a population band which is frequently utilized by interest arbitrators and will be followed here.

In order to make a reasonable comparison, there must be an adequate number of comparable jurisdictions. If too few are chosen, then the significance of the situation in individual jurisdictions is unreasonably magnified, particularly when information from one or more of the comparables on a particular issue in dispute is either unavailable or inapplicable. On the other hand, if the population band chosen provides more comparables than are needed for a reasonable comparison, it is appropriate to narrow the number utilized by considering other factors, such as assessed valuation, which would provide comparables which are more like the jurisdiction in dispute, and therefore would make more relevant comparisons. For obvious reasons, it would be best to utilize counties in proximate or comparable labor markets.

Arbitrators are reluctant to utilize comparables from other west coast states, namely Oregon and California, because of the significant differences between those states and Washington. As

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<sup>2</sup> The County has proposed that an exception be made for Kitsap County, which has a smaller population.

Arbitrator Jane Wilkinson observed in Snohomish County Corrections, PERC No. 20802-I-06-0488 (2007), at page 10:

This Arbitrator prefers Washington jurisdictions to those from other states because of the difficulty of comparing collective bargaining law, statutory benefits, labor markets, and cost of living.

For instance, in Oregon, law enforcement captains do not have the statutory right to bargain collectively. Both California and Oregon have significantly different taxing regimes than does Washington. Each state has their own retirement system for law enforcement personnel. In recognition of the many differences, arbitrators generally will utilize Oregon or California jurisdictions as comparables only if there is a good reason, such as an insufficient number of comparable Washington employers of similar size which could be utilized.

The four Washington counties proposed as comparables by the Employer have the following populations:

Clark	431,200
Kitsap	247,600
Snohomish	704,300
Spokane	465,000
Pierce	813,600

I have determined to utilize Snohomish and Spokane Counties as comparable employers, since each of them has a population which is within 50% of the population of Pierce County. While Spokane County is on the east side of the state, it is much closer in proximity than are the California counties proposed by the Association. There is insufficient evidence that Spokane County does not employ corrections personnel which are like the captains employed by Pierce

County. According to the job description for the Spokane County corrections lieutenant, that position “[m]anages the daily affairs of the detention facilities” and “functions as assistant to the Jail Commander.” The Spokane County corrections lieutenant participates as part of the management team in union negotiations and labor management meetings. I find that the Spokane County corrections lieutenants are similar to the Pierce County captains who manage individual jails under the direction of the corrections bureau chief. I shall exclude Kitsap County as a comparable employer because it has less than a third of the population of Pierce County. While its proximity to Pierce County does warrant some flexibility in whether it meets the “similar size” standard in order to be compared with its neighbor, Pierce County, the disparity is just too great to meet the standard required by the statutory language. While I consider Clark County to be sufficiently of similar size to Pierce County for purposes of comparison, it cannot be utilized as a comparator because it does not employ “like personnel.” Clark County does not employ captains. The County maintains that the commanders employed in Clark County are comparable to the Pierce County captains. I agree with the Association’s contention that the Clark County commanders are more like Pierce County lieutenants. While there was a lack of sufficient testimony on the matter, according to the commander’s job description and the organizational chart for the Clark County Sheriffs’ Department, commanders are precinct commanders and shift supervisors at the jail, which are certainly not at the same level of responsibility as the division or jail command responsibilities of the Pierce County captains.

The two Washington counties I have determined to be of “similar size” to Pierce County are not sufficient in number to make a reasonable comparison. Presumably, the legislature extended the parameters for comparables to include the entire west coast of the United States so that there could be a sufficient number of comparables for the largest Washington employers. On

the other hand, as previously discussed, there are significant differences between the states, particularly in taxing authority, retirement plans, cost of living, statutory framework, etc. Therefore, the Association's position that the list of comparables should consist entirely of California jurisdictions and Washington cities, except for Snohomish County, is unrealistic, unreasonable, and contrary to the views of respected arbitrators that the focus of the comparison should be on in-state like employers, if possible. City of Everett, PERC No. 12476-I-96-272 (Axon, 1997); City of Tacoma, PERC No. 20867-I-07-0489 (Gaunt, 2008). I have determined to limit the number of out-of-state comparables to two, one in Oregon and one in California, so that the out-of-state comparables are not weighted more heavily than Washington jurisdictions.

From the State of Oregon, I have determined to use Multnomah County, but not Washington County, as a comparable. Multnomah County has a population of about 715,000. This is of "similar size" to Pierce County's population of about 786,000. Both Multnomah and Pierce County encompass large cities. Portland, Oregon is situated within Multnomah County. Thus, Multnomah County is part of a metropolitan area, just as Pierce County is part of the Seattle-Tacoma metropolitan area. According to statistics provided by the Association, per capita income and medium home prices in Pierce County and Multnomah County are very close.<sup>3</sup> I am not persuaded by the Association's argument that Multnomah County is not a like employer because such a small fraction (3.25%) of its population resides in unincorporated areas, and therefore it has only 32 deputies assigned to patrol, while Pierce County has 131 patrol deputies. Like Pierce County, Multnomah County employs personnel in both law enforcement and

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<sup>3</sup> According to those statistics, the per capita income in Multnomah County in 1999 was 107.91% that of Pierce County. The median home prices in Multnomah County in 2008 was 107.75% that of Pierce County.

corrections. According to figures provided by the Association, Multnomah County employs 324 commissioned corrections officers. Thus, the total number of commissioned law enforcement and corrections officers employed in Multnomah County is within 50% that of the 639 commissioned officers employed in Pierce County. That is sufficiently close to be deemed, overall, a similar sized employer, despite the differences in size in their patrol units. That Multnomah County commanders (which are comparable in function to Pierce County captains) are not allowed collective bargaining by Oregon's collective bargaining statute, does not alter this conclusion. The Association, in effect, argues that because of this Oregon law, in Oregon there cannot be like personnel to Pierce County captains. Washington statute does not contain a provision which would require such an exclusion.<sup>4</sup> Moreover, captains and commanders in Oregon supervise or manage employees who are eligible for collective bargaining. It is likely that the salaries and benefits of the captains and commanders in Oregon are influenced by the collective bargaining involving those under their command.

I have excluded Washington County as a comparator. I agree with the Association's argument that the evidence presented by the County fails to establish that Washington County has employees who perform similar duties to those performed by Pierce County captains. Based on the documentary evidence the County provided, it appears that Washington County does not utilize the rank of captain. In fact, the County concedes that it found no functional match on the law enforcement side of its operations. On the corrections side, the County suggested the Washington County lieutenant as comparable to the Pierce County captain. However, it provided

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<sup>4</sup> In fact, the Association itself has proposed certain California counties as comparable to Pierce County, even though their captains are unrepresented.

insufficient evidence to establish that Washington County lieutenants have equivalent duties to those of Pierce County captains. Pierce County correctional captains each manage a jail or a division. It is not clear that Washington County lieutenants have such broad authority. Rather, according to evidence presented by the County, lieutenants in Washington County “[p]lan, assign and supervise activities in assigned area.”

Just as I have selected one Oregon comparator, I shall select one California comparator. The Association’s selection of California comparators relied heavily on their population and assessed valuation compared with those of Pierce County. As the Association recognizes, different states have different ways of calculating assessed valuation. Therefore, I am not convinced that a comparison of published data about assessed valuation is the best method of determining California employers which are like Pierce County. Rather than assessed valuation, I shall rely on the data provided by the Association for 2007 median household income. Of the California counties proposed by the Association, only one has a population between 80% and 120% of that of Pierce County and median household income that is between 90% and 110% of that of Pierce County. It is San Joaquin County.<sup>5</sup> Moreover, San Joaquin County, like Pierce County, contains a city of significant size, Stockton.<sup>6</sup> The County points out that the cost of living is significantly higher in some parts of California than it is in Pierce County, relying on statistics published by the American Chamber of Commerce Research Association (ACCRA). Those statistics indicate that some of the Union’s proposed California comparables do have a

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<sup>5</sup> The Association represented that San Joaquin’s population is 86% that of Pierce County and its median household income is 93% that of Pierce County.

<sup>6</sup> Stockton, in San Joaquin County, has a population of about 286,000 while Tacoma, in Pierce County has a population about 202,000.

much higher cost of living than does Pierce County. However, these statistics indicate that San Joaquin County is significantly closer to Pierce County in cost of living than are most of the other California counties proposed by the Association as comparables, and are close enough for purposes of comparison here.<sup>7</sup> Thus, the comparators selected in accordance with RCW 41.56.465 (2) are the following counties: Snohomish, Spokane, Multnomah, and San Joaquin.

The Association further contends that the wages and benefits provided by the cities of Tacoma and Seattle to their police captains should be considered as “secondary” comparables. In this regard, the Association points to evidence that Pierce County law enforcement personnel work side by side with Tacoma police personnel on a shared dive team, a K9 unit, a communication center, on numerous committees at major events, and at the jail. It further points out that Pierce County and Tacoma compete for new hires at joint recruiting events. The Association observes that the County has utilized Tacoma and Seattle as comparables in health care negotiations with its various unions, and referenced city of Tacoma executive salaries when determining salaries for its own upper management.

Most arbitrators agree that cities and counties are not like employers within the meaning of the governing statute. Cities and counties have different functions and different sources of revenue. Moreover, the statute requires a comparison with employers of similar size, and there has been no contention that Seattle and Tacoma are of similar size to Pierce County. The Association appears to recognize that Seattle and Tacoma are not like employers within the

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<sup>7</sup> According to the ACCRA published statutes, San Joaquin has a cost of living index of 116.6, while Pierce County’s is 107.7.

meaning of the statute, arguing instead that each should be considered as a “secondary comparable.” The governing statute does not provide for two different types of comparable jurisdictions. RCW 41.56.465 (1)(e) does require consideration of “other factors . . . that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment.” One such factor is turnover. If there was excessive turnover in this bargaining unit because members were leaving to take similar jobs for the cities of Tacoma and Seattle, then the reasons for this could be explored. However, there was no indication that this was the case. In these circumstances, in order to consider the cities of Tacoma or Seattle as comparators, one must put aside the statutory specification of the type and size of employers that may be considered as appropriate for comparison. Accordingly, the cities of Tacoma and Seattle shall not be designated as comparable employers for purpose of determining wages, hours, and working conditions.

## **COST OF LIVING**

RCW 41.56.430(1)(c) requires consideration of “[t]he average consumer prices for goods and services, commonly known as the cost of living.” RCW 41.56.465(d) requires consideration of any changes in this regard during the pendency of the proceedings. According to the U.S. Department of Labor, Bureau of Labor Statistics, the consumer price index (CPI-U) for the Seattle-Tacoma-Bremerton area rose by an annual average of 4.2% during 2008. For the 12 month period ending in June 2009, the CPI-U for the Seattle-Tacoma-Bremerton area fell by 0.4%. For the 12 month period ending in December 2009, it rose by 1.4%.



## **OTHER CONSIDERATIONS**

In addition to the specific criteria set forth in RCW 41.56.465(a)-(d), Subsection (e) of that statute directs the Panel to consider “[s]uch other factors, not confined to the factors under (a) through (d) . . . , that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. . . .” Accordingly, the factors discussed below have been considered.

### **Ability to Pay**

A factor frequently raised in contract negotiations and also considered by arbitrators is the ability to pay wage and benefit increases. Clark County, PERC No. 11845-I-92-252 (Axon, 1996); King County, PERC No. 21957-I-08-0519 (Lankford, 2009). The severe recession this country has experienced over the past several years has had a particularly adverse effect on the County’s finances. Property taxes are obviously negatively affected by the decreases in assessed valuations and new construction which the County has experienced in recent years. The County’s interest income has diminished considerably as interest rates plummeted. The County’s sales tax revenues have decreased by over 15% over the past two years. The Association points out that prior to this dip, sales taxes had risen during the previous ten years. That does not detract from the problem the County now faces in having to reduce expenditures to match revenues. The County is obligated to balance its budget. In order to deal with its fiscal problems, the County has reduced its reserves from 13.4% to 8.1%, according to Patrick Kenney, the County’s budget and finance director. Mr. Kenney testified that the recommended standard reserve for counties is 15% or about two months of expenditures. He testified that if the County’s reserves dropped any further, it would not have enough money to pay its bills. Mr. Kenney testified that since 2008, the County has cut about 424 full-time employee equivalent

positions from its budget, including 54 in the Sheriff's Department. These were either positions that were budgeted and not yet filled, or positions that had become vacant. The County implemented furloughs in a number of departments, whereby employees were required to take unpaid leave periodically throughout the year. In addition, the County has had to lay off 194 employees. As Arbitrator Lankford observed in King County, *supra*, "[f]or an interest arbitrator, no indicator of economic distress is more compelling than layoffs." Undersheriff Eileen Bisson testified that in the Sheriff's Department, 17 vacant positions have not been filled, and seven professional staff employees have been laid off. Undersheriff Bisson further testified that by July 1, 2010, an additional seven positions must be cut, whether by attrition or by layoff. Mr. Kenney testified that as of the date that he testified, the County's finances continued to remain "bleak."

The County's poor financial condition, particularly its falling revenues and resulting layoffs, must be considered when determining the appropriate compensation levels for the captains. The Association's argument that the County's difficult financial situation does not impact the County's ability to pay in this matter because it involves only a very small percentage of the County budget is not persuasive. It should be expected that its membership would be affected by the County's budget woes as are other County employees.

### **Recruitment and Retention**

Arbitrators often consider employee turnover, or lack thereof, when determining appropriate compensation rates. A high level of turnover or difficulties in recruitment may signify that the compensation levels are inadequate. Debbie Young, the County's assistant labor relations manager, testified that the County has had no problem with turnover among its captains.

The Union argues that this factor should not be considered because it takes many years for an employee to reach the rank of captain, and people do not leave near the end of their careers.

The recognized fact that there is minimal turnover among captains and no indication of a recruitment problem is a consideration here. Certainly, if there had been such a problem, it would be raised at the bargaining table as justification for a compensation increase.

### **Internal Equity**

As the Neutral Chair has held in other interest arbitration proceedings, the settlements reached by the employer with its other bargaining units are significant. While those settlements are affected by the peculiar situation of each bargaining unit, still there is an understandable desire by the employer to achieve consistency. From the union's standpoint, it wants to do at least as well for its membership as the employer's other unions have already done. At the bargaining table, the settlements reached by the employer with the other unions are likely to be brought up by one side or the other.

In 2009, each of the Department's other interest arbitration eligible groups, the deputy sheriffs, the corrections officers, and the correctional lieutenants, received the same 5.5% wage increase. These increases were negotiated prior to the recent severe economic downturn. The 2010 and 2011 increases for these bargaining units have not yet been settled. All of the County's other bargaining units received a 5.22% increase in 2009, a 2.5% increase in 2010, and are due to receive a cost of living increase in 2011 based on 90% of the Seattle-Tacoma-Bremerton CPI-U increase reported in July 2010 for the prior 12 months, but not less than 2.5%, nor greater than 5.5%.

Both parties agree that it is important to maintain an appropriate wage differential between the captains and the next lower rank, the lieutenants. It is customary for higher ranking

employees to be compensated at a higher rate than those they supervise. The County asserts that that wage rate differential should be about 15%, as that has been the historical practice. From 2003 through 2007, captains' wages have been set at 15% above the top step wages for the lieutenants who they supervise. This included the years 2006 and 2007, for which the parties agreed upon wages in their initial collective bargaining agreement. In 2008, correctional captains received wages that were 15.03% higher than the top step wages received by corrections lieutenants. That same year, the wage rate received by law enforcement captains was 14.45% higher than the top step wage rate for law enforcement lieutenants.

The County argues that based on the historical practice this differential should remain at about 15%. The Union contends that the wage differential should be increased to reflect the additional 8% of base pay for which the County's law enforcement lieutenants and other lower ranks are eligible based on the Career Progression Officer (CPO) Program which was implemented on January 1, 2008. According to the CPO Program, law enforcement lieutenants can receive between 1 and 8% added to their base wage based on a formula which takes into account education degree, years of service and assignments. A lieutenant could reach the 8% level upon completing 18 years of service with the Department, 4 years of service as a lieutenant, and service in a "core or special assignment"<sup>8</sup> The record presented does not clearly reveal the actual percentage increases that each lieutenant has received as a result of the CPO Program. Ms. Young testified that not everyone is eligible for CPO pay, and those that are eligible are on various incentive levels of the program.

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<sup>8</sup> The core or special assignment requirement may be waived under certain circumstances.

The Association argues that CPO pay should be considered as part of lieutenants' base pay for purposes of comparison with captains' base pay because CPO pay is automatic. However, the evidence presented does not support this contention. In the absence of evidence regarding the actual application of CPO pay to lieutenants, it would not be appropriate to add CPO pay to the lieutenants' base wages for purposes of determining the wage differential between lieutenants and captains. Moreover, the majority of lieutenants employed by the Department are assigned to corrections, and those lieutenants are ineligible for the CPO Program. The new CPO Program for law enforcement personnel beneath the rank of captain is relevant to whether or not the law enforcement captains should be eligible for incentive or longevity pay themselves, so as to diminish the overall compensation compression that has been caused by implementation of the CPO Program.

The Association presented evidence which established that some lieutenants are receiving more gross pay than are captains. This is explained, in large part, by the lieutenants being eligible for overtime pay, while the captains are considered to be salaried management who are not eligible for overtime pay. Captain Bomkamp testified that he took home more pay in 2008 when he was a lieutenant than he did in 2009 as a captain. Captain Bomkamp testified that while his assignment as captain for the Criminal Investigation Division (CID) requires that he work extra hours responding to homicide scenes, he probably worked more hours when he was a lieutenant. Captain Bomkamp testified that in 2009, while he made \$110,000, the two CID lieutenants who he supervised, made \$123,000 and \$132,000. Captain Smith, in his testimony, agreed that it is appropriate for lieutenants who work more hours to receive more pay, even if that may mean that certain lieutenants receive more total pay than do captains. Overall, I find that there is insufficient reason to find that the 15% wage rate differential between lieutenants

and captains, which has been the historical practice and in 2006 was the negotiated agreement, is no longer sufficient.

The Association argues that captains are compensated at a rate below that of other County managers. In this regard, the Union relied on a compensation study performed by a private contractor at the request of the County in 2004. That compensation study put the captain's position in the same pay band as the County's pharmacy coordinator, accounting manager, special assistant to the director of Public Works, clerk of Superior Court, and Wastewater Utility manager. Ms. Young testified that the County never implemented this compensation study because it determined that it had not been done well. I find that the 2004 compensation study has no value in this proceeding, not only because it was never implemented and its underlying methodology is not clear, but also because the governing statute requires a comparison with like personnel, and a captain is not like a pharmacy coordinator or the other managerial positions referenced in the study.

## **MANDATORY SUBJECTS FOR BARGAINING**

The Association proposes the addition of the following language to Article 3:

The employer further recognizes that the Civil Service Rules for Sheriff's Employees, Pierce County Administrative Guidelines for the Career Service, the Pierce County Sheriff's Department Manual and all subordinate Sheriff's Department Bureau and Unit rules, policies and procedures that affect wages, hours, and working conditions of Association members are subject to collective bargaining.

The County argues against the inclusion of this new language.

Captain Smith testified that in the past, before the captains organized, the County has changed its civil service rules and the captains had no standing to object. The Association asserts

that its members' working conditions and rules regarding seniority are governed by the County's rules and policies. The Association maintains that the Agreement should contain an acknowledgment of its rights to bargain. Ms. Young testified that the County has repeatedly demonstrated that it is aware of its legal obligation to bargain by negotiating prior to implementing any rule changes that impact wages, hours or working conditions. She testified that no County contract has such a broad and general statement of the County's duty to bargain as the Association has proposed. She further testified that the proposed language would allow the Association two bites at the table, pursuing both a grievance and an unfair labor practice, with potentially inconsistent results. The County argues that this potential for inconsistent results is significant because arbitrators may not be well-versed in determining what constitutes a mandatory or permissive subject of bargaining. The County points out that the Association has offered no evidence of problems, language from comparable employers, or other support for its proposal.

I find that there is insufficient support for the proposed addition to Article 3. A party proposing the addition of new language to a labor agreement has the burden of establishing that the statutory factors support its position. Regarding its proposal to amend Article 3, the Association has not demonstrated any need to change the status quo and has not relied upon any of the statutory criteria.

## **WAGES**

The Association proposes that the following wage proposal replace the existing language in Article 5, Section 2:

Captains and Correctional Captains shall maintain an equal hourly two (2) step wage rate based on the greater of:

- Step one at 112.5% and Step 2 at 120% of the hourly wage rate for a top step lieutenant including current and future top step CPO3 pay as defined in the Guild Local 1889 Career Progression Officer Program incentive pay, and any future incentive pays that may be agreed to by the County and Guild Local 1889, or;
- Step one at 112.5% and step 2 at 120% of the hourly wage rate for a top step corrections lieutenant including any current or future incentive pay programs in the agreement by and between the County of Pierce and the Correctional Lieutenants Union, Local 3752LT.

Such pay increase to the Captain's Association members shall immediately follow any pay increase negotiated by and between the Pierce County and the Guild Local 1889 and Pierce County and the Correctional Lieutenants Union, Local 3752LT, to be effective in the next full pay period after the effective date of the Local 1889 or Local 3752LT contracts.

Should Pierce County not reach a wage settlement in December 2009 Guild Local 1889 or Local 3752LT negotiations or any subsequent negotiation occurring in any year of the Captain's Association agreement, Pierce County shall grant the Association members a wage adjustment effective in January of the following year equal to 100% of the bi-monthly Seattle-Tacoma-Bremerton CPI-U report for July of the preceding year, but not less than 3.5%, or greater than 5.5%. At such time as the County reaches agreement with Guild Local 1889 or Local 3752LT, the County shall immediately apply the formula of 112.5% for step one and 120% for step 2 based on the newly negotiated Guild Local 1889 or Local 3752LT rates with retroactivity to match that agreed to the Guild Local 1889 or Local 3752LT agreements.

Effective with the ratification of the January 2009 to January 2012 agreement by and between the Pierce County Captain's Association and Pierce County, the County shall increase Captain and Correctional Captain rates in accordance with the above wage proposal and shall thereafter maintain a step one rate at 112.5% of the highest wage rates listed above and step 2 at 120% of the highest wage rate listed above.

The County's wage proposal is as follows:



January 1, 2009 at 5.5% increase for all Captains. For 2010 and 2011 all Captains would receive a wage adjustment equal to 90% of the Seattle-Tacoma-Bremerton CPI-U but not less than 2.5% or greater than 5.5%.

In addition, after five years and ten years as a Law Enforcement Captain, employees would receive an additional 4% for a total of 8% after ten years. This pay would not be available to any employee hired prior to December 1, 1982, (as longevity pay is available to employees hired prior to this date).

The Association argues that its proposal is justified because it is necessary in order to avoid salary compression and because captains' compensation is below like positions in comparable agencies. The Association contends that correctional captains should be compensated at the same rate as law enforcement captains since there is essentially no difference in job duties and responsibilities.

The County urges the adoption of its wage proposal since it is consistent with the increases received by other County employees, is supported by analysis of the comparables, will maintain the 15% differential between lieutenants and captains, and is supported by the change in consumer prices and the lack of turnover. The County urges that the overriding principle should be to determine what is a fair resolution given the County's dire economic situation. The County maintains that it is appropriate to pay law enforcement captains at different rates than are paid to correctional captains. The County argues that these two types of captains have different duties, powers, and certifications, and in most jurisdictions, law enforcement is paid more than corrections.

As previously discussed, the governing statute requires consideration of a comparison of the wages, hours, and conditions of employment with "like personnel of like employers." While

the parties agree that Snohomish County law enforcement captains are comparable with law enforcement captains in Pierce County, they disagree about which Snohomish County position is comparable to a Pierce County correctional captain. The County maintains that it is the Snohomish County detention manager while the Association's position is that it is the Snohomish County major.

Sherry Hieb is a human resources analyst for the County. Ms. Hieb testified that she determined that the appropriate match in Snohomish County for the correctional captain is the detention manager. She testified that she spoke to Chief Baird of the Snohomish County Sheriff's Office, who formerly was an employee of the Pierce County Sheriffs' Office, and he had advised her that the detention manager and the correctional captain were similar positions and that the major position was equivalent to a deputy director. She testified that she confirmed this in her review of the job descriptions. My review of the job descriptions leads to the same conclusion. The Snohomish County "major" job description specifically designates that as an exempt position. The applicable job descriptions indicate that both the Pierce County correctional captain and the Snohomish County detention manager are responsible for planning, supervising and managing the operations, and developing division objectives and the budget. The detention manager develops policies and procedures while the correctional captain assists in their development. Overall, I find that the functions of the correctional captain and the detention manager are essentially comparable.

Monthly compensation provided by the comparable employers is set forth below. Clothing allowance is included because it is a monetary benefit which is routinely provided.

<u>Law Enforcement</u>	<u>Wages</u>	<u>Clothing allowance (÷12)</u>	<u>Total</u>
Snohomish County	\$10,095	\$ 83	\$10,178
Spokane County	8,198	75	8,273
Multnomah County	9,345	0	9,345
San Joaquin County	10,583	92	<u>10,675</u>
Average (2009)			\$ 9,618
Pierce County (2008)	\$ 8,869	0	\$ 8,869
<u>Corrections</u>	<u>Wages</u>	<u>Clothing allowance (÷2)</u>	<u>Total</u>
Snohomish County	\$ 9,293	\$ 0	\$ 9,293
Spokane County	7,235	75	7,310
Multnomah County	9,345	0	9,345
San Joaquin County	N/A <sup>9</sup>	N/A	<u>N/A</u>
Average (2009)			\$ 8,649
Pierce County (2008)	\$ 8,810	0	\$ 8,810

The Association has proposed that a compensation comparison should include the maximum total compensation that a captain in the comparable jurisdictions could receive in wages, longevity pay, deferred compensation, clothing allowance, educational incentive, and sick leave incentive. It cannot be assumed that all or even that a substantial number of employees in the comparable jurisdictions receive those maximum amounts, except for the clothing allowance. Absent such evidence, it would not be accurate to base a compensation comparison on those amounts.

The Association contends that the law enforcement captains and the correctional captains should be compensated at the same rate, rather than with the small disparity that now exists. It relies on a PERC decision which placed the law enforcement captains and the correctional

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<sup>9</sup> This information was not available since the Association focused its evidence on the comparators' compensation paid to law enforcement captains, rather than to corrections captains.

captains in the same bargaining unit. The Association also points to the fact that both types of captains receive the same state-required training for the management portions of their jobs.

I am not persuaded that the County's historical practice of paying law enforcement captains and correctional captains at different wage rates is inappropriate based on the statutory criteria. While these positions have some similar responsibilities, there are obvious differences in their jobs and in their work environments, and there has been no crossover in assignments. Law enforcement captains are subject to state certification pursuant to RCW 43.101.095, a statute which does not apply to corrections. Law enforcement employees have broader arrest authority than those working in corrections. The hearing officer in the PERC case referenced by the Association, Decision 8892-PECB (2005), did not deal with the question of whether law enforcement captains and correctional captains should be paid at the same rate. Rather, that decision focused on whether these positions had a sufficiently similar community of interest to be included in the same bargaining unit. Snohomish County and Spokane County each pay law enforcement captains more than their correctional captains (or equivalent). Multnomah County pays them at the same rate. No information in this regard was provided for San Joaquin County. Thus, the comparability factor does not support the Association's position that law enforcement captains and correctional captains should be paid at the same rate.

I conclude that, consistent with the County's wage proposals, bargaining unit employees shall each receive a 5.5% wage increase retroactive to January 1, 2009, and an additional 2.5% wage increase retroactive to January 1, 2010. For 2011, all captains shall receive a wage adjustment equal to 100% of the bi-monthly Seattle-Tacoma-Bremerton CPI-U report in July 2010 (for information from June 2010 compared to the 12 months beginning June 2009), with a minimum of 2.5% and a maximum of 5.5%. The awarded 2010 wage increase of 2.5%

corresponds to the County's offer of a minimum wage increase for 2010, inasmuch as the applicable cost of living 2009 was less than 2.5%. The 2011 cost of living wage increase which is awarded is the same formula as the one that the parties themselves negotiated in their previous collective bargaining agreement. These wage increases will essentially maintain the 15% differential over a top step lieutenant's wage rate. Moreover, the wage increase awarded will maintain the captains' position in relation to the comparable jurisdictions, which is behind the average for law enforcement captains, and above the average for correctional captains. Most significantly, the extremely difficult economic situation experienced by the County, which has resulted in many layoffs, strongly suggest that higher wage increases at this time are just not reasonably affordable or justified. Moreover, the increases awarded are consistent with the modest increases in the cost of living, as well as the lack of any problem in recruiting or retaining captains. In addition, they are largely consistent with the increases provided by the County to its other bargaining units.

The County's wage proposal includes a new longevity benefit for law enforcement captains which would pay an additional 4% at five years, and 8% at ten years of service as a captain. This new benefit serves to reduce the level of compensation compression between law enforcement captains and lieutenants which has resulted from the implementation of the CPO Program in the Deputy Sheriffs' Guild bargaining unit. It shall be part of the compensation increase which shall be awarded. However, it is insufficient to fully address the salary compression problem, inasmuch as law enforcement lieutenants may receive the maximum CPO Program benefit after 18 years of service with the Department. This compression problem would be lessened if the longevity benefit for captains also recognized years of service with the Department. Therefore, it shall be ordered that captains are eligible for the longevity benefit of

4% after five years service as a captain or 20 years service with the Department, whichever occurs sooner, and 8% after 10 years service as a captain or 25 years service with the Department, whichever occurs sooner.

## **UNIFORM AND CLOTHING ALLOWANCE**

Currently, Section 5.5 of the parties' collective bargaining agreement provides:

Section 5 – Uniforms. Employees required to wear a uniform as their regular clothing will be provided two issues upon employment which will be replaced on an “as needed” basis as determined by the Sheriff or designee.

The Association proposes the addition of the following sentence to this section:

Captains shall be provided an annual clothing allowance of \$200.00 payable during the first full pay period of the year.

The Association maintains that its proposal for a clothing allowance “is for cleaning and civilian clothing offset,” and is a small amount compared to the benefit provided by the comparables.

The County opposes the addition of this new benefit. According to Ms. Young, the unions representing the law enforcement officers and the correctional officers each, in the past, gave up their clothing allowances in exchange for a pay increase. The County argues that the existing pay differential between lieutenants and captains already incorporates the clothing allowance. The County further argues that the captains do not need a clothing allowance because the County provides them with uniforms. The County maintains that to the extent that captains wear civilian clothes to work, they should not be treated differently than other non-commissioned employees of the Sheriff's Department who are required to wear professional attire without a clothing allowance.

Snohomish County provides its captains with a clothing allowance of 1% of the top step lieutenant base wage per month. Spokane County's captains receive a clothing allowance amounting to \$900 per year. Multnomah County provides no clothing allowance. San Joaquin County provides a clothing allowance of \$1,100 per year.

No new clothing allowance shall be awarded. While the payment of a clothing allowance is supported by the practice among the comparables, other factors lead me to conclude that it is not warranted at this time. The captains are not required to pay for their uniforms, but rather are issued them as needed. Lower ranks in the Sheriff's Department receive no such benefit. Most significantly, in view of the substantial wage and longevity increase which has been awarded in the context of the County's dire economic condition, now is not the time for an additional compensation benefit.

## **PAY FOR COMMAND DUTY OFFICERS**

The first two sentences of Section 5.10 currently read:

Effective January 1, 2007, a Correctional Captain who is designated and serves as Command Duty Officer (CDO) shall be entitled to a flat \$250 bonus for such week served as CDO, regardless of the number of hours worked. Only one bargaining unit employee will be able to receive such a bonus per week and there will be no weekly guarantee or entitlement to such assignment. . . .

The Association proposes that this language be modified to read:

Effective January 1, 2009, Captains and Correctional Captains who are designated and serve as Command Duty Officer (CDO) for their respective bureaus shall be entitled to

- (1) One (1) hour straight-time wage on work nights, Monday through Friday, for sixteen hours CDO.
- (2) Four (4) hours of straight-time wage for each of the two (2) twenty-four (24) hour weekend CDO, starting Saturday morning through Sunday, and Sunday morning through Monday morning.

(3) Any on-call shift which starts on a paid County holiday will be paid at six (6) hours straight time wage for on-call duty for twenty-four (24) hours.

Only one Captain and one Correctional Captain bargaining unit employee will be eligible to receive such a bonus per week and there will be no weekly guarantee or entitlement to such assignment. . . .

The County proposes to retain the current language with a \$25 per week increase (from \$250 to \$275) in the Command Duty Officer (CDO) pay for correctional captains only.

Each week the Department designates one CDO for law enforcement and one for corrections. An employee in CDO status must, during their off duty hours, remain within the County, sober, and capable of being reached by beeper, radio, or phone. Usually, the call involves a subordinate officer passing information about a particularly significant event up the chain of command. Occasionally, a CDO must actually go to an event. Captain Smith testified that he is limited in the things that he can do while he is the designated CDO, such as hiking and skiing, and it is disruptive to his sleep. The CDO responsibility is rotated among the command staff. In essence, CDO pay is compensation for being on call. Each correctional captain serves as CDO about one week per month. Each law enforcement captain is assigned as CDO during eight or nine weeks in a year. Currently, the correctional captain receives \$250 for each week assigned as a CDO. The law enforcement captains are ineligible for CDO pay.

Prior to the establishment of the captains' bargaining unit, captains did not receive any additional pay for their CDO responsibilities. Ms. Young testified that during the negotiations leading to the captains' initial 2006-2008 collective bargaining agreement, the Association proposed CDO pay for correctional captains, justifying it as being a replacement for the personally assigned County vehicles which had been taken away from the correctional captains, while law enforcement captains retained theirs. Ms. Young testified that based on this argument,



and inasmuch as only the correctional captains may have to drive into work in their own car while off duty in order to respond as the CDO, the County agreed to provide CDO pay only for them.

The Association maintains that a County car assigned to a law enforcement captain is not compensation, but a required tool, and that in any event, it is of limited benefit to the two law enforcement captains who each have a commute of less than six miles. The Association points out that its proposal is the same as the standby pay benefit which is currently received by lower ranking Department employees. The Association further points out that San Joaquin County pays “standby pay” equal to 20% of the regular hourly rate. However, Captain Smith acknowledged that standby pay is different than on call pay. Standby pay requires an employee to be available to immediately respond to a scene, in uniform, when called. Snohomish, Spokane, and Multnomah Counties do not provide CDO pay, and I am not persuaded that San Joaquin County does either.

The County’s proposal to increase CDO pay for correctional captains from \$250 a week to \$275 a week shall be awarded. This provides a 10% increase to the benefit which was just newly negotiated in the last agreement. Any additional extension or increase in this benefit is not supported by the practice among the comparators. The difference in treatment between the law enforcement captains and the correctional captains is explained by the parties’ bargaining history. The testimony of Ms. Young in this regard was not contradicted by the Association. Otherwise, the captain’s position has been considered a salaried management position which does not provide additional pay for work outside of regular working hours. Moreover, the current difficult economic circumstances mitigate against any additional increase in this monetary benefit.

## CALL OUT PAY

The Association proposes that the following new provision be added to the Agreement, as Section 5.12:

A “call-out” is defined as an employee assigned to CID returning to duty from an off-duty status to respond to an incident which is not scheduled in advance, excluding CDO duties. CID Captains shall be compensated for a minimum of three (3) hours straight time wage or the actual time from notification to leaving the incident, dispatch area, precinct or office whichever is greater.

The County opposes adding this provision to the Agreement.

The Association argues that it is proposing call out pay for the CID captain only because that employee is more burdened by call outs from off duty status than any of the other captains. CID Captain Bomkamp, during 2009, responded while off duty to major crime scenes on nine occasions. Lower ranking employees of the Department who are called out from off duty status receive a minimum of three hours of overtime.

In the comparable jurisdictions, Snohomish, Multnomah and Spokane Counties do not provide call out pay to their law enforcement captains. The situation in San Joaquin County regarding call out pay was not made clear.

The County argues against the addition of a call out benefit because call outs have been rare, the CID captain has control over whether he is to respond to an incident, and a review of the comparables does not support such a benefit.

No new call out benefit shall be ordered. As previously observed, the captain’s position has historically been considered a salaried management position which does not provide additional pay for work outside of regular working hours. The Association’s position is not

supported by the practice in the comparable jurisdictions. In these circumstances and considering the County's poor economic situation, the addition of this new benefit is not sufficiently justified.

## **EDUCATIONAL INCENTIVE PAY**

The Association proposes the following new education incentive pay provision to be inserted into the contract as Section 5.13:

Captains are encouraged to attain post graduate education. In recognition of this commitment to higher education, the County shall provide for salary increases above the bargaining unit member's set rate of pay for any bargaining unit employee who holds or attains a Master's Degree at an additional 2% above his/her base rate of pay.

The County is opposed to this proposal.

The Association argues that the continual learning and self-development associated with a master's degree should benefit a large complex organization such as the Sheriff's Department. The County responds that there is no evidence or basis to conclude that a captain holding a master's degree will provide any benefit to the County. It further argues that it does not understand why a captain that hired on as a deputy sheriff, should receive a pay premium for a degree obtained decades earlier.

None of the County's other employees receive an additional payment for receipt of a master's degree. None of the selected comparable employers pay a premium to a corrections captain or its equivalent for having a master's degree. Multnomah County and San Joaquin County do not pay a premium to its law enforcement captains for having a master's degree. Snohomish County pays its law enforcement captains a 2.5% pay premium for having a master's degree. Spokane County pays its law enforcement captains a 9% premium for a master's degree.

No new educational incentive shall be awarded. No other County employee receives a pay premium for having a master's degree. The overall practice of the selected comparable jurisdictions in this regard is mixed as to law enforcement captains, and provides no support for providing this benefit to correctional captains. There is insufficient support for this new compensation benefit, particularly in the context of the County's poor financial condition.

### **CASH OUT OF HOLIDAY PAY**

The Association proposes that the following new section be added to Article 9 of the Agreement:

Effective January 1, 2009, employees may elect to convert up to sixteen (16) hours of holiday leave to a cash payment annually (minus normal payroll deductions). The request for this election must be made in writing on or before January 31 for the year in which the holiday leave will be accumulated. Payment will be made no later than March 31 of that year. Any employee who elects this option and terminates employment during the same calendar year will receive credit for the holidays recognized in this contract prior to his/her separation, but will have any remaining totals subtracted from final compensation.

The County is opposed to this proposal.

The Association argues that its proposal would allow its members to cash out its two personal holidays. It maintains that it is often difficult for some members to get time off due to workloads. The Association observes that this is a benefit currently enjoyed by the County's Corrections Union and the Corrections Lieutenants Union.

The County maintains that there are reasons why the corrections unions have this benefit, and those reasons do not apply to the captains. Ms. Young testified that jails are a 24/7 operation and it saves money for the County to permit corrections officers and lieutenants to convert

holiday leave into cash rather than having to pay overtime to employees who fill in for them.

Ms. Young testified that all captains work a standard workweek, Monday through Friday, and they are able to take most holidays as they occur. She testified that captains can take their personal holidays in the same manner as their vacation days, and that she is unaware of any captain being unable to take all of their holidays. Ms. Young testified that none of the County's managerial employees are allowed to convert any holiday leave to cash payment.

The County argues that the comparables do not support the Association's proposal. Multnomah County does not provide a holiday leave cash-out benefit. There is no evidence that San Joaquin County provides such a benefit. Snohomish County does not provide such a benefit for its corrections captains, but does allow its law enforcement captains to sell back up to 72 hours of holiday comp time in October of each year, but only if funding is available. Spokane County does allow its law enforcement captains and corrections lieutenants to be compensated for unused personal holidays.

I find that there is insufficient support for a new benefit of allowing captains to cash out their two personal holidays. The evidence presented does not indicate that captains have been unable to take these holidays. Their situation is different than that of other corrections employees who may have to be replaced if they elect to utilize an accrued holiday leave day. The captains are treated regarding their holiday leave in the same manner as other County employees and managers who work a traditional work schedule. The existing practice does not conflict with the practice of a majority of the comparable employers.

## LEOFF II DISABILITY LEAVE SUPPLEMENT

The Association proposes the following language be added to the Agreement.

Article 10, Section 11 LEOFF II Disability Leave Supplement. This section applies to LEOFF II employees who suffer an injury or illness in the line of duty, which qualifies the employee for Worker's Compensation. Disability leave supplement shall be granted under the authority of RCW 41.04.500 through 41.04.535; PROVIDED, HOWEVER, that the parties agree to modify and enhance the statutory disability leave supplement as follows:

10.11.1 Supplemental disability leave benefits during the first six months of a disability incurred in the line of duty shall include the following: (1) the disability leave supplement shall begin on the first day of absence from work caused by the injury or illness which entitles the employee to benefits under RCW 51.32.090; (2) in determining the employee's contributions under the Act, charges shall only be made against the accrued paid sick leave of the employee; (3) notwithstanding the provisions of RCW 41.04.510(3), if the employee has no accrued sick leave at the time of an injury or illness which entitles him to benefits under RCW 41.32.090, or if the employee's accrued paid sick leave is exhausted during the period of disability, the Employer shall pay the entire amount of the disability leave supplement (i.e., the difference between the Worker's Compensation benefits and the employee's base monthly salary net of federal income and social security taxes) plus all Employer contributions to benefits provided by the Employer under Article 13 of this Agreement up to a maximum of six months from the date of the injury or illness; and (4) if an employee is required to perform light duty tasks under the provisions of RCW 41.04.520, the employee shall continue to accrue all fringe benefits during any such period of light duty.

The County opposes this proposal.

The Association points out that the County's collective bargaining agreement with its lower ranking law enforcement employees contains similar provisions. It argues that law enforcement captains should be treated the same inasmuch as they have a duty to respond to incidents they encounter on the street where they are subject to the same dangers rank and file members face.

The County contends that there has not been any need shown for this provision and no showing that it is supported by reference to the comparables. None of the comparable employers has this type of disability leave supplement for its law enforcement captains. Ms. Young testified that the captains are not required to use sick leave if they are absent for part of a day in order to attend a doctor's appointment. She testified that one of the law enforcement captains has over 1400 hours of accrued sick leave, and the other has almost 1100 hours. She testified that a review of County records over the last ten years reveals that no law enforcement captain has had an injury which would qualify for a disability leave supplement, a period during which lower ranking employees suffered 822 on the job injuries. She further testified that each captain is eligible for one-time use of a 480-hour catastrophic leave bank, and that benefit has never been utilized by a captain. The County further observes that during the contract negotiations preceding this interest arbitration, it had already agreed to an Association proposal for a new supplemental long-term disability insurance program, with the County contributing \$32.75 per month.

I find that the Association has not provided sufficient justification for its proposed new benefit. It has not been demonstrated that law enforcement captains have such dangerous jobs so as to justify a need for additional protection for on the job injuries. There was no evidence of any dangerous situation encountered by a captain. The comparability factor provides no support for the Association's position. Moreover, it is significant that the County has already agreed to a costly new related benefit, the supplemental long-term disability insurance program.

## **CORRECTIONAL CAPTAIN DISABILITY LEAVE SUPPLEMENT**

The Association proposed the following new benefit:

Article 10, Section 12. Correctional Captain's Disability Leave Supplement. Effective January 1, 2009, and for all succeeding years, each Correctional Captain of the bargaining unit shall be provided one-hundred and sixty (160) hours of industrial injury leave to supplement the difference between the time-loss payments made through the County's Worker Compensation program and the employee's straight-time base hourly wage for qualifying injuries sustained as a direct result of an intentional act of aggression by another person or as a result of responding to such an incident, as determined by the Sheriff or designee, or if the employee contracts a serious communicable disease (i.e. tuberculosis, HIV, etc.) due to exposure on the job as determined by Pierce County Risk Management. Such industrial insurance leave shall be non-accumulating, non-transferable and shall not be payable in any form upon separation of the employee from Pierce County employment. This shall expire and the leave shall be withdrawn when persons are no longer represented by this bargaining unit.

The County opposes adding this new benefit.

The Association argues that its proposal for disability leave supplement for correctional captains is justified because they face many potential risks on the job that other County workers do not face. The Association points out that the corrections officers, sergeants, and lieutenants have in their contracts similar provisions to the one it is proposing. It maintains that it is simply asking to be treated in the same manner.

The County responds that there has not been shown any convincing reason for this proposal and that it is not supported by the comparability factor. It relies on the testimony of Ms. Young that correctional captains, on average, have accumulated about 1180 hours of sick leave, are eligible to receive a 480-hour catastrophic sick leave bank, and are not required to use sick leave for partial day absences. She further testified that the offices of two of the three correctional captains are located outside the jail, and the other one works in the booking area, so



that it is unlikely that they would be involved in an incident with an inmate. She testified that a review of records for the past ten years reveals that while there have been 64 corrections employee injuries during that time span which qualified for industrial injury leave, none involved a correctional captain. The evidence presented indicates that of the comparable employers, only Spokane County provides an additional industrial injury leave benefit for its similar personnel.

I find insufficient basis for adding a new benefit to the contract which would provide a disability leave supplement to correctional captains. The Association has not proven that correctional captains have such dangerous jobs so as to justify the need for such a provision. While corrections officers have such a benefit, they have different responsibilities involving daily contact with inmates. The practice of the comparable employers does not support the addition of a new disability leave supplement benefit. Moreover, it is significant that the County has already agreed to a costly new related benefit, the supplemental long-term disability insurance program.

## **EXTENDED SICK LEAVE LOAN BANK**

The Association proposes the following new benefit:

Article 10, Section 13. Extended Sick Leave Loan Bank. Effective January 1, 2009, a special "extended" sick leave loan bank of 21 calendar days (i.e. 15 working days, or 12 working days if on a 4/40 schedule) shall be established for each bargaining unit employee. This benefit shall be in addition to the supplemental disability leave benefit plans established in Article 10, Section 11 and Article 10, Section 12 above. Bargaining unit employees may borrow from their individual sick leave loan bank following their return to active service from a duty-related disability subject to the following conditions:

- (1) The loan must be requested within one (1) year following the employee's return to active service; and
- (2) At the time of the loan the employee must have exhausted all of their accrued sick leave; and

- (3) At the time of the loan the employee's accrued vacation and furlough leave, respectively, may not exceed their annual entitlement; and
- (4) All such sick leave shall be used as set forth in Article 10 of this contract; and
- (5) Although an employee may borrow from their special sick leave loan bank as often as necessary during the year following their return from a duty-related disability, the net aggregate loan may not exceed 21 calendar days (with credit for all interim loan repayments); and
- (6) The employee must stipulate in writing that they will fully repay all special sick leave loans and that the special loan bank shall have no cash surrender value or other compensable at the time of the employee's separation, notwithstanding any interpretation of Article 10.6 or 10.7 of this labor agreement to the contrary. When the employee returns to work, such repayment shall be made out of current sick leave earnings at the rate of four hours per month (i.e. one-half of the employee's monthly sick leave accrual). The employee may also elect to accelerate repayment by surrendering to the Employer accrued vacation leave, furlough leave, sick leave, or any combination thereof designated by the employee. In the event an employee terminates active service without having fully repaid the Employer for all sick leave loans, the Employer shall deduct the actual cost of any payments made under this section from compensation or other money payable to the employee.

The County opposes this proposal.

The parties' arguments regarding this proposal are essentially the same as their arguments for and against a disability leave supplement.

I find that there is insufficient support to add a new extended sick leave loan bank benefit. The Association has neither demonstrated a need for such a benefit, nor any support among the comparable employers. Moreover, it is significant that the County has already agreed to a costly new related benefit, the supplemental long-term disability insurance program.

## **EMPLOYEE RIGHTS TO DUE PROCESS**

The Association proposes that the following provision be added to the Agreement:

Article 18, Section 5. Employees are entitled to due process in all internal investigations and hearings and all rights granted under *Garrity v. New Jersey*, 385 U.S. 493 (1967). Such rights include, but are not limited to, full disclosure of the nature of any complaint, including the identity of any complainant, and all information necessary to reasonably understand the allegations which are being investigated.

The County opposes this proposal.

The Association argues that in asking for full disclosure of any complaint against one of its employees, including the identity of any complainant, and of all information necessary to reasonably understand the allegations which are being investigated, it is only requesting rights which are given to jail inmates by the County. The Association further argues that its proposed language will clearly put the Department and the Civil Service Commission on notice that they must bargain any changes to working conditions.

The County contends that the proposed protections of employee due process and “Garrity” rights are unnecessary because they already exist as a matter of law, and are encompassed by the Collective Bargaining Agreement’s just cause provision. The County points out that the Association has not offered evidence of any problems with the existing practice and procedures utilized during investigations, or even that any captain has ever been subject to an internal investigation. The County also questions whether “full disclosure” is potentially inconsistent with good investigatory practices, such as in an harassment investigation where the investigator may want to first hear from the employee about his perspective before the investigator discloses everything.

Ms. Young testified that no other County contract has a provision like the one the Union has proposed. There is no evidence that any of the comparable employers have such a contract provision.

I find that the Association has not provided sufficient justification for its proposed new language. There is no evidence that there has been any problem or dispute regarding the fair treatment of captains during internal investigations. In fact, there is no evidence that there has been any such internal investigations. Captains already have certain rights regarding fair treatment in the Contract's just cause protections and in Department rules. There is just no support for the need for additional protections for captains, either by reference to the comparable employers or to the treatment of other County employees, or by any showing that there are problems that need to be remedied.

### **AWARD OF THE NEUTRAL CHAIR**

It is the determination of the Neutral Chair, following consultation with the other Panel members, that the Collective Bargaining Agreement between Pierce County and the Pierce County Captains Association shall include the following:

- I. There shall be no change to Article 3 regarding mandatory subjects for bargaining.
- II. Base wages shall be retroactively increased as follows:
  - Effective January 1, 2009 – an increase of 5.5 %
  - Effective January 1, 2010 – an increase of 2.5%
  - Effective January 1, 2011 – an increase equal to 100% of the bi-monthly Seattle-Tacoma-Bremerton CPI-U report in July 2009 (for information from June 2010 compared to the 12 months beginning June 2009), but not less than 2.5% or greater than 5.5%.

In addition, after five and ten years as a law enforcement captain, employees shall receive an additional 4% for a total of 8% after ten years. In the alternative, the law enforcement captains shall receive an additional 4% after 20 and 25 years of

uniformed service with the Department for a total of 8% after 25 years. These longevity increases shall be retroactive to January 1, 2009. There shall be no duplication of longevity pay benefits. This pay would not be available to any employees hired prior to December 1, 1982 who are already eligible for longevity pay.

- III. There shall be no change to Section 5.5 regarding uniform and clothing allowance.
- IV. Section 5.10 shall be modified to reflect an increase in Command Duty Officer Pay from a flat \$250 bonus for each week served by a correctional captain as Command Duty Officer to a flat \$275 bonus for each week served in that capacity by a correctional captain.
- V. There shall be no change to Article 5 regarding call out pay for the CID Captain.
- VI. There shall be no change to Article 5 regarding educational incentive pay for captains.
- VII. There shall be no change to Article 9 regarding cash out of holiday pay.
- VIII. There shall be no change to Article 10 regarding LEOFF II disability leave supplement.
- IX. There shall be no change to Article 10 regarding correctional captain disability leave supplement.
- X. There shall be no change to Article 10 regarding an extended sick leave loan bank.
- XI. There shall be no change to Article 18 regarding employee rights to due process.

Sammamish, Washington

Dated: May 17, 2010

/s/ Alan R. Krebs  
Alan R. Krebs, Neutral Chair

