

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION
BEFORE SANDRA SMITH GANGLE, ARBITRATOR

In the Matter of the Interest Arbitration)
between)
)
YAKIMA COUNTY,)
)
)
Employer,)
)
and)
)
YAKIMA COUNTY LAW)
ENFORCEMENT OFFICERS GUILD,)
)
Bargaining Representative.)
_____)

PERC Case No. 17918-I-03-0422

OPINION AND AWARD



Hearings Conducted: April 14, 15 and 16, 2004

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Date of Decision: October 15, 2004

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I. BACKGROUND

This matter comes before the arbitrator pursuant to the Washington Public Employees' Collective Bargaining Act, RCW Chapter 41.56. The public policy of the State of Washington prohibits a bargaining unit of uniformed public safety personnel from engaging in a strike to settle a labor dispute with a public employer. RCW 41.56.430. When the process of collective bargaining between the parties reaches impasse, the law provides that the disputed issues, as certified by the Executive Director of the Washington Public Employment Relations Commission ("PERC"), will be resolved through interest arbitration. RCW 41.56.450.

The Yakima County Law Enforcement Officers Guild ("the Guild") is the exclusive bargaining representative of the Deputy Sheriffs employed by Yakima County, Washington ("the County" or "the Employer"). The parties reached impasse during bargaining for a successor contract to their 2000-2002 collective bargaining agreement and were unable to resolve the impasse through mediation. On October 15, 2003, five unresolved issues were certified for interest arbitration by Order of Marvin L. Schurke, Executive Director of Washington PERC.

The parties mutually selected Sandra Smith Gangle, J.D., of Salem, Oregon, through PERC appointment procedures and pursuant to RCW 41.56.450 and WAC 391-55-210, as the impartial Panel Chairperson of an arbitration panel that would conduct a hearing and render a decision in the matter. The Employer appointed Attorney Rocky Jackson to serve as its partisan arbitrator and the Guild appointed Attorney Christopher Casillas as its partisan arbitrator.

A hearing was conducted on April 14, 15 and 16, 2004, in a conference room of the Yakima County Court House in Yakima, Washington. The parties were thoroughly and competently represented by their respective attorneys throughout the hearing. The County was

represented by Anthony Menke, Attorney at Law, of the Yakima law firm of Menke Jackson Beyer Elofson Ehlis & Harper. The Guild was represented by James M. Cline, Attorney at Law, of the Seattle law firm of Cline & Associates.

The parties were each afforded a full and fair opportunity to present testimony and documentary evidence in support of their respective positions. A voluminous record was produced, consisting of four volumes of Guild documentary exhibits (Guild Ex. 1 through 157) and three volumes of County documents, which were divided in separate sections according to issue (Vol. 1: Section 1, *Inability to Pay*, Tabs 1-31; Section 2, *Comparables*, Tabs 1-15; Section 3, *Internal Equity*, Tabs 1-17; Vol. 2: Section 4, *Wages*, Tabs 1-11; Sec. 5, *Insurance*, Tabs 1-5; Section 6 (re: certified issues withdrawn; see footnote #1, *infra.*); Sec. 7, *Other Factors*, Tabs 1-10; Sec. 8, *Pleadings*, Tabs 1-47; Vol. 3: *Collective Bargaining Agreements*).

All witnesses who appeared at the hearing, including the parties' attorneys (each of whom offered some evidence on behalf of their respective clients), were sworn and were subject to cross-examination by the opposing party. The Association's witnesses were James Cline, Mike Russell, Dave Hilton, George Town, Guillermo Rodriguez, Lloyd George and Eric Wolfe. The County's witnesses were Anthony Menke, Craig Warner, Sheriff Kenneth Irwin and Linda Dixon. A court reporter, Deanna Shoemaker, was present and made a verbatim record of the testimony of all the witnesses. She subsequently prepared a typed transcript in three volumes, which she mailed to the parties and the arbitrator following the hearing. The transcript and the exhibits offered by both of the parties constitute the official record of the hearing.

During the arbitration hearing, the parties advised the arbitration panel that three issues, which were previously certified by PERC Executive Director Schurke, were being removed from

the panel's jurisdiction by stipulation of the parties.¹ The only issues that remain before the panel for resolution, therefore, are *Wages* and *Insurance*. The panel has jurisdiction to determine the statutory factors, including comparability and other factors traditionally considered by interest arbitrators, such as internal equity and ability-to-pay, as related to those two issues.

At the beginning of the hearing, the County made a Motion in Limine regarding a number of exhibits which the Guild had provided to the County a few days before the hearing began, yet was intending to offer in evidence at the hearing. The County contended that the recently-produced evidence was untimely, and, if it were admitted to the record, there would be unfair prejudice to the County. After hearing argument by both parties, the arbitration panel declined to grant the Motion in Limine, ordering instead that the County have a reasonable opportunity to submit supplemental exhibits to rebut the Guild's recently-provided documents following the completion of the hearing, but no later than May 7, 2004. Pursuant to the Order, the County presented a number of supplemental declarations and exhibits to the arbitrators on May 7, 2004.

Both parties submitted written Briefs of final argument to the arbitration panel on July 28, 2004. Each of the parties raised objections to the opposing party's Brief. The neutral arbitrator conducted a telephone conference with the advocates regarding the objections and resolved the matter by allowing both parties to submit Reply Briefs by August 18, 2004.

The arbitrators met for a preliminary caucus in Olympia, Washington on September 2, 2004. The impartial arbitrator informed the partisan arbitrators of her preliminary analysis at that time and invited them to respond with comments or objections. She also urged the partisan

¹ Article 18, Discipline; Article 19, Disciplinary Procedures; and Article 20, Grievance Procedure.

arbitrators to suggest to the respective parties that they attempt to negotiate a settlement during the following two-week period. The parties were unable to reach a settlement.

Telephone conferences were subsequently conducted by and between the neutral chairperson and the partisan arbitrators on September 23 and October 15, 2004. The chairperson informed the partisan arbitrators of the findings and conclusions that she intended to incorporate in this Award.²

The neutral arbitrator has considered all of the testimony and evidence that the parties offered at the hearing. She has weighed all the evidence, in the context of the legislative purpose set forth in RCW 41.56.430 and the relevant factors established in RCW 41.56.465. She has carefully considered the argument of both advocates and the helpful comments of the partisan arbitrators in reaching her findings and conclusions.

II. RELEVANT STATUTORY PROVISIONS

RCW 41.56.030. Definitions. As used in this chapter:

(1) "Public Employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body * * * *

(2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution * * * or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship * * * or (d) who is a court commissioner or a court magistrate * * * or (e) who is a personal assistant to a * * * judge * * * or (f) excluded from a bargaining unit under RCW 41.56.201(2)(a). * * * *

(3) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

² RCW 45.56.450 requires the neutral chairperson to draft the interest arbitration award, including findings of fact and determinations of the issues in dispute.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

* * * * *

(7) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of * * * any county with a population of ten thousand or more * * * .

RCW 41.56.430. Uniformed personnel—Legislative declaration.

The intent and purpose of chapter 131, Laws of 1973 is to recognize that there exists a public policy of the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

RCW 41.56.450. Uniformed personnel—Interest arbitration panel—Powers and duties—Hearings—Findings and determination.

* * * * * The issues for determination by the arbitration panel shall be limited to the issues certified by the executive director. * * * * * Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chairman shall be shared equally between the parties. * * * * * The neutral chairman shall consult with the other members of the arbitration panel, and, within thirty days following conclusion of the hearing, the neutral chairman shall make findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on the Commission, on each of the other members of the arbitration panel, and on each of the parties to the dispute. That determination shall be final and binding on both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious.

RCW 41.56.465. Uniformed personnel—Interest arbitration panel—Determinations—Factors to be considered.

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

- (a) The constitutional and statutory authority of the employer;
- (b) Stipulations of the parties;

(c)(i) For employees listed in RCW 41.56.030(7)(a) through (d), comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States; * * * * *

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

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

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

(2) Subsection (1)© of this section may not be construed to authorize the panel to require the employer to pay, directly or indirectly, the increased employee contributions resulting from Chapter 502, Laws of 1993, or Chapter 517, Laws of 1993, as required under Chapter 41.26 RCW. [1005 c 273 Section 2; 1993 c 398 Section 3.]

III. STATEMENT OF THE FACTS

The following facts are either stipulated or undisputed by the parties:

Yakima County is located in the south-central area of the State of Washington, on the eastern side of the Cascade mountain range. Covering 4,296 square miles, it is the second largest of Washington's 39 counties in total land area. One-third of the County land is owned by the Yakama Nation, however, and roughly another third is owned by the United States Forest Service and the Department of Defense. One large city (Yakima) and a number of small cities are located within the County's boundaries and those cover 55 square miles. The rest of the county consists of taxable land (about 1,117 square miles) that is largely devoted to agricultural and rural residential uses.

For purposes of RCW 41.56.465, it is clear that Yakima County has constitutional and statutory authority to employ the deputy sheriffs and sergeants who provide law enforcement

services. The Sheriff's Department provides such services mostly in the unincorporated areas of the County, as the Yakama Nation and each of the cities provide their own police forces. Mutual aid agreements are in place between the County and the various police forces, however. Therefore, the Sheriff and deputies sometimes provide assistance on tribal lands and in cities.

This is the first time that the County and Guild have gone to interest arbitration. They have successfully negotiated their collective bargaining agreements in the past. The jurisdictions that the parties have used historically as comparables are Spokane, Benton, Clark, Cowlitz, Kitsap, Thurston and Whatcom Counties.

There are ten separate collective bargaining units of represented County employees. Those units, which include the Law Enforcement Officers' Guild unit, are as follows: WSCCCE Council 2 Local 87 and 87P, AFSCME, AFL-CIO; WSCCCE Council 2 Local 2658 - Yakima County Appraisers AFSCME; General Teamsters Local 760 - Animal Control employees; Yakima County Public Works/ Clerical, Technical and Professional Employees; Teamsters Local 524 Corrections Office - Clerical, Pre-Trial and Supervisors Unit; General Teamsters Local 524 Security Officers and Sergeants; Yakima County Public Works Department - Maintenance and Operations; General Teamsters Local 524 - Sheriff's Office Clerical and Dispatch employees; Sheriff's Office management Group; General Teamsters Local 524 Corrections Managers; and Teamsters Local 524 Corrections Officers. There is also a non-bargaining-unit group and some employees in an unclassified pay plan.

The County has raised a strong inability-to-pay argument during negotiations with all of its bargaining units for 2003 and 2004. At the time of the hearing in this matter, all of the units except the Deputy Sheriffs and Corrections Officers and Managers had reached agreement on the

terms of their labor contracts for both years. All units who have settled, except the Sheriff's Department Management Group, have accepted an offer by the County that is essentially the same as the offer that the County is making to the Deputy Sheriffs in this proceeding, that is, a wage increase of 2.25% on the 2002 salary schedule, to be effective as of July 1, 2003, and another increase of 2.25%, also computed on the 2002 schedule, to be effective on January 1, 2004, as well as a freeze of the employees' regular step increases for 2003 and 2004. Those units also accepted to continue throughout 2003 and 2004 the cap of \$420/month per employee that the Employer paid in 2002 toward health insurance coverage.

Based on principles of internal equity, as well as inability-to-pay, the County proposes to grant a 2.25% raise on the Guild's 2002 wage, effective July 1, 2003 and another 2.25% raise, computed on the 2002 wage, effective January 1, 2004. The County also proposes to freeze the Guild's health insurance cap of \$470/month per employee in both 2003 and 2004.

The Guild's demand on wages is that the County increase deputies' wages by 4.5% on January 1, 2003 and then grant a second increase of 4.5% on January 1, 2004. The Guild also seeks full-family insurance coverage. The Guild contends the increases it seeks in both wages and insurance benefits are justified by comparability with other similarly-situated bargaining units of deputy sheriffs. The Guild does not accept the County's inability-to-pay argument.

IV. RELEVANT CRITERIA FOR AWARD

The Washington Public Employees Collective Bargaining Act prescribes the criteria that an arbitration panel should use in making an award in a public sector interest arbitration case. See RCW 41.56.465, cited herein at p.6-7. The Act does not give guidance as to the relative

weight that should be given to the factors. Therefore, the neutral arbitrator has discretion to decide how to weigh the various factors and the evidence supporting the factors. This is not an exact science. However, it is incumbent on the arbitrator to use principled reasoning in drawing conclusions.

There has been considerable case authority in Washington, by which various distinguished interest arbitrators have analyzed and applied the statutory criteria. Each of the parties has referenced some earlier awards in their briefs. To the extent that the reasoning of those arbitrators is relevant to the facts of this matter, the arbitrator will refer to those cases.

V. DETERMINING COMPARABLES

A. The Law: The threshold factor the arbitrator must determine is comparability. The statute requires, in subsection (c)(1), that the arbitrator draw “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”. (Emphasis added). The significant inquiry, therefore, is:

What are the “like personnel of like employers of similar size” that should be compared to the Yakima County Law Enforcement Guild?

It is generally agreed that counties are “*like employers*” to other counties, especially where units of deputy sheriffs are concerned. City police departments are not comparable to county sheriffs' departments for a number of reasons. Their funding sources are different and the kinds of work the officers perform in the two types of agencies are different. *See, e.g., Whatcom County (Gangle, 2001)*. Neither party has disputed that fact in this proceeding. The Guild has

asked the arbitrator to consider certain facts about the City of Yakima, without attempting to call the City a "like employer".

Also, arbitrators generally agree that heavy weight should be given to any list of comparable jurisdictions that the parties have agreed upon in previous contract negotiations. *See, City of Wenatchee (Savage, 2002); see also Walla Walla (Levak, 1996)*. Arbitrator Levak clarified that past comparators should not become a "tail that wags the dog", however; he said a list that has been used in the past can be changed if conditions warrant a change. A party wishing to discontinue an historical comparator bears the burden of proving the loss of that jurisdiction's comparability, according to Arbitrator Levak. *Id.*

Arbitrators generally agree that geographical proximity of proposed comparables to the subject employer is an important factor in the determination of "*like employers*". Employers who are competing in the same local labor market for similarly-qualified employees seek to maintain wage rates and other terms and conditions of employment that are competitive, that is, that do not vary significantly. Otherwise, they may have problems with recruitment and retention of qualified employees. *See, City of Pullman (Gaunt, 1997)*.

Some arbitrators have found that Eastern Washington and Western Washington constitute separate and distinct labor markets, because the two regions differ markedly in their economic and demographic factors. Western Washington jurisdictions are primarily urban and industrial and enjoy high tax revenues, while Eastern Washington communities are generally rural and agricultural and take in less tax revenue. Some arbitrators have gone so far as to say that a "Cascade Curtain" segregates Washington into the Eastern and Western geographic areas, and that jurisdictions from the two areas should only be considered as potential comparables when

there are insufficient numbers of comparable communities on the same side of the Cascade mountain range as the location of the subject community. *See, e.g., City of Aberdeen (Axon, 2000); Kitsap County (Buchanan, 1998)*. Other arbitrators consider cross-Cascade comparators when they conclude it is appropriate to do so, based on demographic or economic factors. *See, e.g., City of Camas (Wilkinson, 2003)*.

As for the requirement that comparables be of "similar size", one arbitrator has stated that a comparison of the population figures alone of various jurisdictions would be sufficient for making that determination. *See, Snohomish County (Krebs, 1987)*. That case has not generally been followed, although Arbitrator Axon noted, in *City of Everett (Axon, 1997)*, that he believed the "greatest consideration should be given to size of the population". Most arbitrators have looked at population and assessed valuation as two essential factors that should be compared, along with geographic proximity. *See, e.g., Kaplan, "Interest Arbitration and Factfinding", Univ. of Oregon LERC Monograph No. 13 (1994); see also, City of Kennewick (Krebs, 1997)*. Many arbitrators use a "multi-factor" analysis, however, by which they draw demographic and economic comparisons beyond the three essential factors. For example, Arbitrator Axon relied on the factors of population-per-square-mile and income-per-capita, in addition to total population and assessed valuation, in *City of Everett (Axon, 1999)*. Arbitrator Levak considered per-capita income, median family income, and assessed valuation per-capita in *City of Pasco (Levak, 1990)*. Arbitrator Buchanan considered geographical size, nature of the economy, crime rate and total tax income in *Kitsap County (Buchanan, 1998)*. Arbitrator Greer, who stated he believes labor market considerations are "paramount", considered population-per-square-mile and the character of jurisdictions as urban or rural. *Walla Walla Deputies (Greer, 2000)*.

Arbitrator Wilkinson has opined that the final list of comparable jurisdictions should be "balanced in terms of population, wealth, degree of isolation and the like." *City of Pasco (Wilkinson, 1994)*; *King County Fire District (Wilkinson, 2000)*; see also, *Mason County (Axon, 2001)*. The goal of achieving balance seems to have acquired more acceptability among arbitrators in recent years, particularly where the jurisdictions that the parties have proposed are found to be comparable in some respects, but different in other respects. See, e.g., *City of Camas (Wilkinson, 2003)*; *City of Kennewick (LaCugna, 1985)*. Arbitrator Axon, in *City of Everett (Axon, 1997)*, stated that what was important was to leave the parties with a list of jurisdictions that would "serve as a solid base for future negotiations". In *City of Kennewick (Krebs, 1997)*, the arbitrator determined that necessary balance would be created by selecting equal numbers of cities from Eastern Washington and Western Washington as comparables.

Arbitrator Wilkinson stated, in *City of Camas (Wilkinson, 2003)*, that a band of 50% to 150% of the target jurisdiction is the appropriate standard that an arbitrator should apply when comparing the comparability of various factors, especially population and assessed valuation. She found that the 50%-150% band had been used in five out of seventeen Washington interest arbitrations over a six-year period and a band that was very close to 50%-150% (60%-150% or 75%-160%) in six other cases. She acknowledged that a band of 50%-200% had been used in five cases, however, where the arbitrators had determined there were not enough comparables available within the 50%-150% band to make a just award. In her award in the *Camas* case, Wilkinson included two jurisdictions as comparables to Camas, whose populations exceeded 150% of Camas's, including Pasco, whose population was 250% of the subject city.

Arbitrator McCaffree preferred the 50%-200% band in choosing comparables. He explained:

"This range of measurement [50% to 200%] is statistically symmetrical and provides equal weight to units smaller or larger than the unit at issue. . . . This range holds 'size' within reasonable bounds where similarities of actions and responsibilities will be relatively similar and comparable among various employers." *Thurston County (McCaffree, 1999)*.

Some arbitrators have determined that a "relative ranking" among comparables is appropriate, when the statistics show that one or more of the jurisdictions merits more weight than the others. *See, Walla Walla Deputies (Greer, 2000); Cowlitz County (Lehleitner, 1996)*.

B. The Parties' Arguments: The parties have mutually relied on seven Western Washington counties in their past negotiations -- Benton and Spokane in Eastern Washington and Clark, Cowlitz, Kitsap, Thurston and Whatcom in Western Washington. The Guild asserts there is no reason to change the prior list at this time, except to eliminate Cowlitz County, because that jurisdiction's population has dropped to 94,400, which is only 42% of Yakima County's population of 226,000. All of the other historic comparables fall within the band of 50%-200% of Yakima County's in population and should be retained, according to the Guild.

The County, however, contends that the parties' prior list of comparables is no longer appropriate and should be changed. The County asserts that Yakima County used to be a "big dog", able to compete fairly with "big dog" counties of Western Washington. Now it is more like its neighbors in the Eastern Washington labor market, which may be smaller in terms of population, but are more similar in terms of economic and demographic factors. The County proposes to reject Clark, Kitsap, Thurston and Whatcom Counties as comparables and use Grant, Franklin, Chelan and Walla Walla Counties instead. The County disagrees with the Guild that Cowlitz County should be eliminated, because that county has a rural agricultural economy much like Yakima County's, even though it is located in Western Washington. The County agrees to

retain Benton and Spokane Counties as comparables, but proposes to discount Spokane County's wages and benefits by a factor of nine percent, because Spokane County's population is now nearly twice the population of Yakima County, its assessed valuation is more than twice that of Yakima County and its workforce of deputy sheriffs is more than double that of Yakima County. The County alleges that the difference between the salaries paid to elected officials in the two counties (18%) should be split in order to find an appropriate measure of difference (9%) between the wage levels of the two counties.

C. Findings and Conclusions: This arbitrator has followed the rationale of Arbitrator McCaffree in previous interest arbitrations in Washington, relying on a 50%-200% band for determining comparability. *See, Whatcom County (Gangle, 2000); City of Poulsbo (Gangle, 2002).* For consistency, she will use that same band here. She agrees, however, that it is reasonable to consider a "relative ranking", as proposed by arbitrators Greer and Lehleitner, where there are marked differences between the comparables in some respects.

Since the parties have both designated Benton and Spokane counties as comparables to Yakima County, the arbitrator considers their mutual choice to be a stipulation. She is obliged under the interest arbitration statute to honor such stipulations. In looking at the population and assessed valuations of the three counties, the arbitrator notes that Benton County's population is 65% of Yakima's and its assessed valuation is 77% of Yakima's, both of which percentages are close to the lower end of the band of comparability. The population of Spokane County, on the other hand, is 188% of Yakima's and its assessed valuation is 170% of Yakima's, both of which percentages approach the upper limits of comparability. Spokane County's bargaining unit has more than three times as many deputies as Yakima County's unit and the total amount of taxes

collected in Spokane County in 2002 was 275% of Yakima's tax collection. In spite of these findings, the arbitrator does not agree with the County that Spokane County's wages and benefits should be discounted by nine percent. There does not appear to be any arbitral authority for such discounting. Instead, the arbitrator will rank Spokane County in accordance with its high numbers and will seek balance on the list of comparables, by ensuring that the number of less highly populated, less affluent, counties balances the higher populated, more affluent ones.

The County's other five historic comparables are all located in Western Washington. Their respective populations and assessed valuations, as compared to Yakima County's, are as follows:

<i>County</i>	<i>Population</i>	<i>Assessed Valuation</i>
Clark	161% of YC	246% of YC
Kitsap	104% "	156% "
Thurston	94% "	135% "
Whatcom	76% "	123% "
Cowlitz	42% "	64% "

This arbitrator believes that it is important to choose comparables within the local labor market, to the extent that is possible. However, she does not subscribe to the "Cascade Curtain" theory, in a case like this one especially, where the target jurisdiction is located near the geographical center of the state and the parties have relied on western comparables in the past, even though the County is on the east side of the Cascades, and the evidence shows that job applicants from both Eastern and Western Washington seek employment as sheriff's deputies in the County. It would be unreasonably draconian to exclude all Western Washington jurisdictions under such facts. Nevertheless, a list that includes five Western and only two Eastern Washington comparables seems curiously unbalanced, since Yakima County is on the East side.

Clark County, which is one of the five prior Western Washington comparables, no longer meets the statutory requirement of "similar size", and should be stricken from the list. Clark County's assessed valuation is about 246% that of Yakima County. Although Clark County's population is within the acceptable band (160%) of Yakima's, it is a densely-populated county (592 persons per square mile) with a bustling commercial-based economy, while Yakima County is sparsely populated (52.6 persons per square mile) and has an agricultural economy. Clark County's total tax revenue in 2002 was 250% of Yakima County's total revenue.

The remaining western historic comparables, Cowlitz, Kitsap, Thurston and Whatcom Counties, all fall within the 50%-200% band in assessed valuation, and the populations of all except Cowlitz County are within that band. Cowlitz County's population has dropped below 50% of Yakima County's, but it still merits inclusion to balance the other western counties, all of whom have greater than 100% of Yakima's assessed valuation. None of the four exceeds 175% of Yakima County's total tax revenue. For these reasons, they all merit continued use.

The arbitrator finds that the list of comparables would not be sufficiently balanced if there were only two Eastern Washington comparables, one of which is on the high end in population and assessed valuation, and four in Western Washington, three of which (Kitsap, Thurston and Whatcom) have considerably higher assessed valuations than Yakima County has. It would make more sense to have an equal number of comparables from the Eastern and Western regions, with half of the total number on the lower end of the comparability band and the other half on the upper end. In order to achieve that balance, the arbitrator has carefully considered the relative populations and assessed valuations of the County's proposed comparables on the east side.

The evidence shows that three of those, Franklin, Kittitas and Walla Walla Counties, are too far below the lower limit of comparability to be placed on the list, even to achieve balance. All three of those counties have less than 25% of Yakima County's population. The assessed valuations of Franklin and Kittitas Counties are about 25% of Yakima County's as well, while Walla Walla County has only slightly more than 25% of Yakima County's assessed valuation.

Grant and Chelan Counties, on the other hand, have populations close to one-third of Yakima County's population. The assessed valuations of those two counties are 42% and 47% of Yakima County's assessed valuation, respectively, and the total tax revenues of both counties are about 50% of Yakima County's total tax revenue. Since the relevant factors of Grant and Chelan Counties are reasonably close to 50% of Yakima's and both of them are located in close proximity to Yakima County and are characterized by rural agricultural economies, the arbitrator finds that there is reasonable balance and symmetry in a list that includes both of them, along with Spokane and Benton in the east, and Cowlitz, Kitsap, Thurston and Whatcom in the west.

The parties have used seven comparables in the past, and the County argues that seven is the appropriate number now, with more from the east side than the west. The Guild has asked for six comparables, based on its contention that all the old Western comparables should be retained except Cowlitz County. The arbitrator finds that it makes more sense to choose an equal number of comparables than an odd number, for geographical balance, since Yakima is situated near the center of the state of Washington. The list of eight counties that has been identified includes four that are smaller, or about equal, in population to Yakima County, while being less well-funded than Yakima, and four counties that are larger and/or wealthier than Yakima County. The list should be useful to the parties in their future negotiations.

VI. THE ISSUES

A. Wages: The Guild proposes increasing the 2002 wage scale by 4.5% in 2003, and an additional 4.5% in 2004.

The County proposes increasing the 2002 wage scale by 2.25%, effective July 1, 2003, and then increasing wages by an additional 2.25% on the 2002 wage scale, effective January 1, 2004. The County proposes to maintain all step increases in both years.

(1). *The Guild's Arguments:* The Guild contends that Yakima County deputies' wages have fallen about 8.6% behind the average of the wages that have been paid to deputies in the historic comparables over the past ten years. The Guild asserts that a generous increase is needed in 2003 and 2004 in order to close the wage gap. The County's offer would merely increase that gap, in the Guild's view. The Guild contends its offer is the minimum that is necessary to allow the deputies to stay reasonably apace with their colleagues in the historic comparable jurisdictions.

The Guild contends there is already a shortage of qualified applicants in the statewide labor market for law enforcement officers. If Yakima County continues to lag behind in wages, the County's ability to recruit and retain qualified officers will be seriously jeopardized. To substantiate that argument, the Guild offered as a witness at the hearing Officer Rodriguez of the Selah Police Department, who testified that he had decided against accepting a position in the Yakima County Sheriff's Department, after he realized he would have to take a cut in take-home pay of \$500 per month and, in addition, would have to pay \$200 per month in family medical insurance costs that are now paid by his employer.

The Guild points to the recent settlement that the City of Yakima reached with its police bargaining unit, which included a wage increase of 7.75% over two years, plus new premiums

for education and longevity, as support for its argument that the County must make an effort to catch up with other law enforcement units in the labor market to remain competitive. There are currently four openings for city police officers in Yakima. A sales tax measure is going before the County voters in November, the purpose of which is to raise money to hire even more police officers in Yakima, as well as fourteen additional deputies in the County. If the ballot measure passes, the County will be competing with the City to recruit the best officers, says the Guild, and it may lose out if its wage structure remains significantly lower than the City's.

The Guild denies that the County has an "inability to pay" the wage increase that the deputies deserve. The County's contention that it is too poor to meet the Guild's offer is merely an "unwillingness to pay", which is unacceptable. The Guild believes the County may have exaggerated its poverty in the past. The Guild also believes that the County's present economic health is good and its long-term economic prospects are positive. The Guild points to a document entitled "Yakima County Labor Economy (December 2003)" and a recent Chamber of Commerce report to support that argument, as well as a March 17, 2004 newspaper article showing that 1,100 new jobs had been added in the County between February of 2003 and February of 2004, including more than 400 jobs at a new Wal-Mart distribution center.

The Guild asserts that the County's reliance on its high unemployment rate, high rate of welfare, food stamps and other social program enrollments as evidence of a poor economy is misplaced. The Guild points out that over 30% of the county population speaks a primary language other than English and that many of the immigrants who are attracted to the County work in agricultural businesses, which are seasonal and pay low wage rates. While the people who work as farm laborers may be poor, that does not mean that the County itself is poor.

Even if the County can prove that its tax revenues are down from past years, the Guild asserts that the County has not done all it can to raise new revenues. The Guild contends that much of the County's farmland is assessed at low value, yet the agri-businesses that use the land for production of crops are financially successful and the landowners are very wealthy. Those taxpayers should be paying a higher amount of tax than they now pay, argues the Guild. The County could go to the voters to seek a levy lid lift, pursuant to RCW 84.55.050, to increase its property tax revenues. Also, the County could divert more of its Road Fund levy to the Sheriff's Department budget than it currently does. The Roads Budget has risen 89% from 1997 to 2004, while the Sheriff's budget has only grown 21% during the same period. The County could initiate action to authorize Special Improvement Districts that would raise new tax revenue to support construction of roads to serve the County's agri-businesses, while freeing up some of the current road budget for the Sheriff's budget.

The Guild points out that the County's actual revenues have exceeded its revenue projections for several years. At the end of each year, the left-over funds have been labeled as "carryout" monies and those have been split between the County Commissioners and the departments that experienced the savings. At the end of 2003, the "carryout" from the Sheriff's Budget was \$534,000. In addition, there was \$586,000 in "Commissioners' Carryout". The Guild believes all that money is like an undesignated savings account that should be available to pay for the wage increase that the Guild seeks in this proceeding.

The Guild contends that the County's reliance on the fact that some of its other bargaining units have agreed to a wage settlement that is essentially the same as the offer it is making to the Guild for 2003 and 2004 is inappropriate. Under the public sector interest arbitration statute, the

wages and benefits of law enforcement officers are to be compared with those of law enforcement personnel in the comparable jurisdictions, not with employees in other bargaining units within the local jurisdiction. To the extent that internal equity considerations might be relevant, however, the Guild points out that the County offered a significant wage increase to Sheriff's Department Management Employees in 2004, in the form of a new longevity increase, and, in effect, management employees got a significantly higher wage increase than the offer the County has made to the Guild in this proceeding.

(2) *The County's Arguments:* The County has budgeted for the wage increases it has offered to the Guild for 2003 and 2004 and it acknowledges its resources are sufficient to pay for that offer. The County believes its offer is reasonable and in keeping with the wages that are paid to Sheriffs' deputies in the comparable jurisdictions within the local labor market. Also, the County wishes to maintain internal equity with its other bargaining units, who have accepted essentially the same wage offer that the County has made to the Guild, based on a recognition by those units that the County's financial condition does not allow any higher wage increases.

The County argues strongly that it is unable to pay the wage offer that the Guild is seeking. Yakima County is the second largest county in Washington in square miles, but is near the bottom in terms of wealth. The County has been enduring severe economic hardships, not only from the depressed agrarian economy, but from events beyond the Employer's control, such as changes in the tax structure due to legislation, flat annual sales tax revenues, frequent annexations of valuable County property by the City of Yakima and some unanticipated decreases in the County's investment income due to reduced interest rates. The County is classified as a "distressed area" under RCW 43.165.010(3), because its density is below 100

persons per square mile and its unemployment rate has been at least 20% above the statewide average for three or more years. Its population is largely involved in seasonal farm work. About two-thirds of school students in the County qualify for free lunches at school, whereas the statewide average is about one-third. Approximately 17 1/2% of County residents received food stamps in 2002, as compared about 11 1/2% in other eastern Washington counties proposed by the County as comparables and only 8.8% in Washington state as a whole. Almost 20% of the population lives below the poverty level, nearly twice the statewide percentage of 10.6 percent.

In an effort to deal with its fiscal hardships, the County Board of Commissioners has been implementing significant General Fund budget reductions each year since 2000. The Board has cut \$6.5 million worth of county programs since 2000. It has eliminated positions, laid off employees and implemented a hiring freeze. It has frozen elected officials' salaries, including the salaries of the Commissioners themselves, in 2002, 2003 and 2004. In spite of these efforts, the County's reserves at the end of 2003 were at \$1,587,579, or 2.91% of the total budget, which is perilously low, according to Government Finance Officers Association (GFOA) guidelines. As a result, the County's bond rating is at risk of dropping into the "B" range, and if that happens, there will be dire financial consequences for the County, including a requirement that it go on registered, interest-bearing warrants for payment of its bills. Some of its bonds may have to be sold at a discount, as well, because of stipulations that require the County to maintain "A" rates.

The County asserts that the Road Fund budget is not discretionary, as the Guild suggests, but is governed by a statutory framework with restrictive criteria. Only a small portion of road funds can be used by the Sheriff for traffic control purposes. The County has been diverting the maximum that it believes it can legitimately divert for traffic control, the equivalent of the cost

of two full-time sheriff's deputies. Serious penalties would result if more money were diverted from the fund than Washington law authorizes.

The County has tried various ways of raising revenue without success. It tried to pass a criminal justice sales tax levy in 1995 and another in 1997. Both of those were soundly defeated by the voters. If it were not for the County's entrepreneurial venture of selling jail beds to outside counties who lack sufficient jail space to house their own inmates, the County would not have brought in enough revenue to meet its budget requirements in recent years.

For those reasons, the County asks the arbitrator to award the wage offer it has made in this proceeding.

(3). Discussion and Findings of Fact: Each of the parties relies on its own list of proposed comparables in asserting that its wage offer is in keeping with the average wage among "the comparables". Therefore, the arbitrator will begin by looking at the wages in the new list of comparables that has been established in this report, to determine whether the Guild's proposal or the County's proposal is more in line with the wages paid in the current comparables.

Contracts are in place through 2004 in four of the comparable counties: Benton, Chelan, Cowlitz and Thurston Counties. Contracts through 2003 are in place in Grant and Spokane Counties. Kitsap, Spokane and Whatcom Counties are all involved in interest arbitration at the present time. Grant County has negotiated a proposed contract for 2004, but that contract remains unsigned as of this writing. Using wage information in the record for the eight comparable counties, based on their current contracts, the arbitrator has determined that the wages that were paid in those jurisdictions in 2002, 2003 and 2004, to ten-year deputies and sergeants, with a longevity premium included, if available, were as follows:

<u>Comparable</u>	<u>2002 deputy</u>	<u>2003 deputy</u>	<u>2004 deputy</u>	<u>2002 sgt.</u>	<u>2003 sgt.</u>	<u>2004 sgt.</u>
Benton (E) ³	4178	4424	4532	5030	5203	5331
Chelan (E)	3935	4014	4094	4781	4876	4974
Cowlitz	4187	4208	4345	4730	4754	4919
Grant (E)	3797	3962	(NS) ⁴	4235	4617	(NS)
Kitsap	4530	(NS)	(NS)	5239	(NS)	(NS)
Thurston	4482	4616	4755	4997	5147	5302
Spokane (E)	4353	4515	(NS)	5582	5637	(NS)
Whatcom	4434	(NS)	(NS)	5529	(NS)	(NS)
Average	4237	4290	4432	5015	5039	5132
(All Comps)						
<u>Yakima</u>	<i>Actual</i> 4160	<i>(Guild offer)</i> (4347) ⁵	<i>(Guild offer)</i> (4543) ⁶	<i>Actual</i> 4957	<i>(Guild offer)</i> (5180)	<i>(Guild offer)</i> (5413)
	<i>Actual</i> 4160	<i>(County offer)</i> (4206) ⁷	<i>(County offer)</i> (4347) ⁸	<i>Actual</i> 4957	<i>(County offer)</i> (5012)	<i>(County offer)</i> (5180)
<i>(All Comps)</i>	<i>Actual</i>	<i>C</i> ⁹ <i>G</i>	<i>C</i> <i>G</i>	<i>Actual</i>	<i>C</i> <i>G</i>	<i>C</i> <i>G</i>
Difference	-77/mo	(-84)(+57)	(-85)(+111)	-58/mo	(-27)(+141)	(+48)(+281)
Average	4065	4229	4313	4907	5083	5153
(4 Eastern Comps)						
<i>Labor Mkt</i>	<i>Actual</i>	<i>C</i> <i>G</i>	<i>C</i> <i>G</i>	<i>Actual</i>	<i>C</i> <i>G</i>	<i>C</i> <i>G</i>
Difference	+95	(-23)(+118)	(+34)(+230)	+50	(-71)(+97)	(+27)(+215)

The chart shows that the average wage in 2002 for a ten-year deputy in all eight of the comparables was \$4,237. In the four Eastern Washington comparables, the average was

³ "(E)" notes that the County is located in the Eastern Washington labor market.

⁴ "(NS)" notes that the contract is not settled.

⁵ 4.5% increase estimated, per Guild's offer for 2003.

⁶ 4.5% increase estimated, over Guild's 2003 offer, per Guild's offer for 2004.

⁷ 1.125% net increase estimated, per County's offer (2.25%, as of 7-1-03 only)

⁸ 4.5% increase estimated, over 2002 wage, per County's offer for 2004.

⁹ "C" and "G" indicate County and Guild respectively.

\$4,065.¹⁰ Yakima County's wage for a ten-year deputy that year was \$4,160/mo, or \$77/mo below the "All-Comp" average, and \$95/mo above the "4-Eastern-Washington-Comp" average. A Yakima sergeant was paid \$4,957/mo in 2002, which was \$58/mo below the "All-Comp" average of \$5015 and \$50/mo above the "4-Eastern-Washington-Comp" average of \$4,907. The arbitrator concludes from these facts that Yakima deputies were slightly behind their colleagues in the eight comparable jurisdictions with respect to wages paid in 2002, but slightly above the average that was paid to deputies and sergeants in the local labor market jurisdictions.

If the Guild's offer were awarded, a ten-year deputy in Yakima would earn \$4,347/mo in 2003 and \$4,543/mo in 2004. Those figures would be \$57/mo above the "All-Comp" average in 2003 and \$111/mo above that average in 2004. The figures would be above the "4-Eastern-Washington" average by an even greater sum each year, by \$118/mo in 2003 and \$230/mo in 2004. A sergeant would earn \$5,180/mo in 2003, or \$141/mo above the "All-Comp" average and \$97/mo above the "4-Eastern-Washington-Comp" average. That sergeant would earn \$5,413/mo in 2004, or \$281/mo above the "All-Comp" average and \$215/mo. above the "4-Eastern-Washington-Comp" average. In other words, under the Guild's offer, County deputies and sergeants would *exceed* the averages in the comparables by a substantial sum each year.

If the County's offer were awarded, a ten-year deputy in Yakima would earn \$4,206/mo in 2003 and \$4,347/mo in 2004. Those figures would be below the "All-Comp" average in both years, by \$84/mo in 2003 and by \$85/mo in 2004. The deputy would lose a few more dollars each month, relative to the comparability he had with the All-Comp average in 2002. The deputy's monthly earnings would also be \$23/mo below the "4-Eastern-Washington-Comp"

¹⁰ The arbitrator offers the "4 eastern comps" average figures for illustration purposes. The average figures for all

average, in 2003, but \$34/mo above that average in 2004. A sergeant would earn \$5,012/mo in 2003, or \$27/mo below the "All-Comp" average and \$71/mo below the "4-Eastern-Washington-Comp" average. That sergeant would earn \$5,180/mo in 2004, or \$48/mo above the "All-Comp" average and \$27/mo. above the "4-Eastern-Washington-Comp" average. In other words, under the County's offer, deputies and sergeants alike would lose some ground as compared to their rankings among the eight comparables in 2003, but they would regain their position relative to those comparables in 2004.

The County does not allege it is totally unable to pay *any* wage increase whatsoever to the deputy sheriffs and sergeants in either 2003 or 2004. It does, however, raise a strong argument that it is unable to pay the wage increase that is sought by the Guild. According to County evidence, the Guild's increase would cost \$426,795. The County asserts it is able to pay the wage increase it is offering and the evidence shows it has already built the cost of that offer into the County's budgets for 2003 and 2004.

The arbitrator concludes, based on the evidence, that the County's offer is reasonable. The arbitrator has drawn that conclusion without having to reach the ability-to-pay issue. The Guild's offer would put the deputies significantly *above* their colleagues in the comparable jurisdictions and would be excessive. Under the County's offer, however, the deputies will earn a small amount per month less than the average of the comparables in 2003, but their wages will increase to an amount reasonably close to the average wages paid in the comparables in 2004. The arbitrator will therefore analyze the evidence on ability to pay in the next section of this report.

eight comparables have been accorded their full weight by the arbitrator in reaching the award.

B. Insurance: Guild proposes that County pay 100% of full-family medical, dental, vision and life insurance coverage.

County seeks to retain the status quo, paying \$470 per month maximum toward each bargaining unit member's insurance coverage.

(1) *The Guild's Arguments:* The Guild asserts that virtually all of its proposed comparable jurisdictions provide full-family medical insurance coverage to their law enforcement officers. The only jurisdiction that has a cap on the employer contribution, Kitsap, required a small co-payment of \$29/mo by the employee toward full-family coverage in 2003, according to the Guild. Yakima County, by contrast, offers to maintain the same Employer-paid cap that was in place in 2002, \$470 per month, for both 2003 and 2004, even though medical insurance costs have increased dramatically. If the County's offer were awarded, those deputies who have maintained family coverage would have to make ever-increasing co-payments out of their wages.

The Guild asserts that full-family coverage is essential, if the County wishes to maintain its ability to recruit and retain qualified officers. The cap system is simply out of step with the practice in other jurisdictions, in the Guild's view, and is unreasonable. The Guild asserts that it gave notice to the County when it agreed to the \$470 cap in its 2002 labor contract that it would return with a firm demand for full-family coverage in the successor agreement.

The Guild relies on the 2003 award by Arbitrator George Lehleitner in *Kittitas County* to support its position. In that case, the arbitrator found the Employer's proposed contribution cap to be unacceptable, even "troubling". The proposal in the *Kittitas* case would have required an employee to contribute \$441 per month more than that county's comparables for full-family coverage. The arbitrator directed that the contractual insurance benefit be converted to a system whereby the Employer would split the cost of full-family coverage with the employee on a

90%/10% basis. Then the arbitrator ordered a specific dollar contribution that apparently equalled the 90% contribution to be made by the employer.

The Guild states that Yakima County has recently made adjustments to the costing of the four-tier system¹¹ that had been in place for establishing the deputies' insurance costs in 2002. As a result of the rating change, more of the cost of coverage for single employees is now being passed on to the dependents' tiers of coverage. The employees who need coverage for their spouses and dependents have actually been paying more for their dependents' insurance than they would have paid if the old rating system had been continued. The Guild believes that the County's action in changing the system without negotiating with the Guild was an improper unilateral change under public sector collective bargaining law, as the rate cap of \$470/mo had been bargained within the context of the rate structure that was in place in 2002 and that structure would have required a lesser co-pay for full-family coverage, if it had been retained.

The Guild asks the arbitrator to award 100% of full-family coverage for both the 2003 and 2004. If, however, the arbitrator should choose to require some sort of co-pay by those employees with dependents, the Guild asks for an order setting a defined level of benefits with a defined maximum-dollar contribution by the employee, rather than a percentage of the premium.

(2) *The County's Arguments:* The Employer acknowledges that some counties pay 100% of full-family insurance coverage. The Employer contends that the majority of jurisdictions pay only for employee-only coverage, however, leaving employees with families responsible for covering their own dependents, or at least a portion of their dependents' coverage.

¹¹ The four tiers are "employee-only", "employee-plus-spouse", "employee-plus-dependents" and "full-family".

The Employer does not deny that it has made some adjustments to the costing of the four tiers of insurance coverage for its employees. The Employer asserts that the changes were made, based on internal equity and pursuant to recommendations that were made by the County's workers themselves, in their answers to a questionnaire that was sent out to all employees in August of 2001. The general consensus of the employees who responded to the questionnaire was that they wanted full coverage to be provided for employees first and, if there were money left over from the Employer-paid cap, after paying for employee-only coverage, that the excess should go toward dependents' coverage. The respondents indicated they did not wish to continue the previous tiering system, whereby the cost of employee-only coverage was weighted in such a way as to absorb part of the cost for the dependent insurance that other employees might need.

The County relies most heavily on its inability-to-pay argument, as set forth in the previous section (wages) of this report. See pages 22-24, *supra*. The County contends it cannot afford to pay for the full-family coverage that the Guild is asking for, the cost of which would be \$75,048 for 2003 and \$117,323 for 2004, or an aggregate total of \$192,370 for the two years, based upon the coverages that Guild members have selected during those two years.

(3) *Discussion and Findings of Fact:*

The arbitrator agrees with the Guild that the medical insurance benefit must be commensurate with the average level of medical insurance benefit that is offered elsewhere in the comparable jurisdictions, in order for the County to continue to compete for good officers. If the County's insurance benefit requires an employee with a family to pay substantially more out-of-pocket for the coverage of his or her spouse and dependents than he or she would have to pay in the comparable jurisdictions, it is highly likely that that deputy will look for a job elsewhere.

Recruitment and retention of qualified officers with families will suffer. Nevertheless, the benefit that is awarded must be within the reasonable limits of the County's financial condition.

Let us begin by looking at what percentage and/or dollar contribution toward full-family insurance is provided by the eight comparable jurisdictions that have been selected by the arbitrator, and how those figures compare with the County's proposal for a \$470 cap. In compiling the following chart, the arbitrator has relied on the information that was provided by the County, for the reason that the County made a reasonable effort to assemble, through telephone calls with representatives of the various counties directly, an "apples-to-apples" comparison. The caller asked each county how many dollars it was contributing as a maximum in 2002, 2003 and 2004 toward full-family coverage, under that county's "high plan", and what percentage of the cost of the plan was covered by the employer's maximum contribution.

<u>Comparables</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
<i>Benton</i>	<i>\$500 (100% FF)</i>	<i>\$572 (100% FF)</i>	<i>\$694 (98% FF)</i>
<i>Chelan</i>	<i>\$1331 (100% FF)</i>	<i>\$1238 (100% FF)</i>	<i>\$1370 (100% FF)</i>
<i>Cowlitz</i>	<i>\$576 (74% FF)</i>	<i>\$619 (65% FF)</i>	<i>\$661 (65% FF)</i>
<i>Grant</i>	<i>\$1029 (100% FF)</i>	<i>\$970 (100% FF)</i>	<i>\$973 (100%FF)</i>
<i>Kitsap</i>	<i>\$625 (96% FF)</i>	<i>\$935 (74% FF)</i>	<i>\$763 (83% FF)</i>
<i>Spokane</i>	<i>\$709 (100% FF)</i>	<i>\$1,053 (100% FF)</i>	<i>\$977 (100% FF)</i>
<i>Thurston</i>	<i>\$1002 (100% FF)</i>	<i>\$1002 (100% FF)</i>	<i>\$1201 (100% FF)</i>
<i>Whatcom</i>	<i>\$624 (100% FF)</i>	<i>\$681 (100%FF)</i>	<i>\$734 (100FF)</i>
<u><i>Average</i></u>	<u><i>\$800 (96%FF)</i></u>	<u><i>\$884 (92%FF)</i></u>	<u><i>\$922 (93%FF)</i></u>
<i>Yakima</i>	<i>\$470 (70% FF)¹²</i>	<i>\$470 C. offer (62%FF)</i>	<i>\$470 C. offer (55%FF)</i>

¹² The percentages of Yakima County's insurance costs were computed by using the Blue Cross Premera "High Plan" which has been the most popular plan among the deputies, but is not the County's most expensive plan. The evidence shows that, in all three years, the \$470 cap would cover employee-only coverage. In 2002, \$470 also paid

The Guild argues that its evidence on insurance, a summary of benefits compiled by the Washington State Association of Counties (WSAC), is better evidence than the County's information, especially regarding Cowlitz and Kitsap Counties. The Kitsap County 2002 collective bargaining agreement provides for 100% of the "lowest-cost" medical plan, plus 60% of dental and vision coverage.¹³ Also, the "low plan" was the most popular plan selected by deputies in Cowlitz County and 100% FF coverage under that plan was provided by the employer. The percentages shown in the arbitrator's chart would be different if the "low plan" figures had been used for Cowlitz and Kitsap County.

The arbitrator has chosen not to use the WSAC summary, for the reason that there seem to be many unexplained discrepancies between that summary and the County's summary. It is impossible to determine from the WSAC summary whether the costs of "high plans" or "low plans" were used by the information-gatherers for the report. Arbitrators prefer "apples-to-apples" comparisons. Nevertheless, the arbitrator does note that the current Cowlitz County collective bargaining agreement provides for an Employer-paid contribution of 95% of the increase in the "lowest cost" insurance plans in 2004 and the 2002 Kitsap County agreement, which would have been continued in 2003 and 2004, while negotiations were underway for a successor, provided for 100% of the "lowest-cost" plan, with a co-payment of \$29/mo for vision and dental only. These facts tend to support the arbitrator's conclusion that the trend among the

for 100% of employee+dependents coverage and 97% of employee+spouse coverage. In 2003, the \$470 would only buy 91% of employee+dependents coverage and 86% of employee+spouse coverage. In 2004, the \$470 would buy even less, only 81% of employee+dependents coverage and 72% of employee+spouse coverage, under the Premera Blue Cross "High Plan".

¹³ The parties stipulated that Kitsap County paid \$625/mo, or 96% of full-family coverage, in 2002; the percentages that are shown in the arbitrator's chart for 2003 and 2004 would be higher, if the cost of the "low plan" were used for those two years.

comparables has been to require a small co-payment by deputies in comparable counties for family coverage, regardless of whether they choose a "high" plan or "low" plan.

The arbitrator is persuaded that Yakima County paid the least amount, in terms of dollars, of all the comparables for insurance premiums in 2002 (\$330/mo below the average \$800/mo), and well below the average percentage that the comparables paid for full-family coverage under "high plans" (70%, as compared to 96%). Nevertheless, Yakima County's cap of \$470 per-employee paid not only for 100% of employee-only coverage, but also 100% of employee+dependents coverage and 97% of employee+spouse coverage in 2002, under the Premera "High Plan", apparently because of the way in which the costs of the various tiers were computed.

If the County's offer were awarded here, the percentage contribution that the County would be making toward deputies' full-family coverage would decrease substantially, from 70% in 2002 to 62% in 2003 and 55% in 2004. In addition, the County's contributions toward employee+dependents coverage and employee+spouse coverage would diminish and require co-payments by the deputies, as shown in footnote 12. This situation is "troubling" to the arbitrator, just as the offer that Kittitas County made to its deputies in 2003, regarding freezing that county's insurance contribution, was "troubling" to Arbitrator Lehleitner.

Although the trend has been to shift some of the cost of full-family (FF) coverage to the employee, the amount of the employee's co-pay has been very small. For example, in 2004, Benton County paid 98% of its deputies' FF coverage, leaving the employee's share at only 2%. The average maximum dollar contribution by employers toward FF premiums in the

comparables actually increased, from \$800 in 2002 to \$884 in 2003 and to \$922 in 2004.¹⁴

None of the comparables has frozen its per-employee insurance contribution in 2003.

Yakima County proposes freezing its contribution toward deputies' insurance at \$470 for both 2003 and 2004. In addition, Yakima County has changed its system of costing for the various coverage tiers. As a result, its employees would have to pay 38% of FF coverage, 14% of employee+spouse coverage and 9% of employee+dependents coverage in 2003, and 45% of FF coverage, 23% of employee+spouse coverage and 19% of employee+dependents coverage in 2004 under the County's proposal. This is entirely out-of-step with the pattern among the comparables. It shifts an ever-increasing burden for payment of dependent coverage onto the deputy-employee. If awarded, the proposal would effectively reduce or eliminate any pay increase that those employees with families would receive. It could even reduce the monthly take-home pay of such employees below 2002 levels. Such an outcome would be disastrous to the employees' morale. Therefore, the arbitrator finds that the County's offer is unreasonable.

The Guild's demand for 100% full-family coverage is closer to the pattern among the comparables. However, it is excessive, in that it would place the full burden for all insurance rate increases, for families as well as individual employees, on the County. This would be inconsistent with the current trend of requiring a small co-payment for dependent coverage and it would not follow the pattern that the Yakima deputies had accepted in their 2002 contract.

The arbitrator finds that there is a compelling need to increase the Employer's contribution for insurance in 2003 and 2004 to match the average level of coverage that was provided by the comparable jurisdictions in 2003 and 2004. The County should pay, as a

¹⁴ Curiously, the maximum premium was lower in 2004 than it had been in 2003 in two counties, Spokane and

maximum, an amount that would cover 100% of employee coverage, 100% of employee+spouse coverage, 100% of employee+dependents coverage and 90% of FF coverage, in the Premera Blue Cross "High Plan", which has been the most widely-selected plan by the deputies¹⁵, assuming the arbitrator finds that the County has sufficient ability to pay and there are no other countervailing issues.¹⁶ The arbitrator does not agree that the employee's contribution should be expressed as a maximum dollar amount per month, as the Guild requested. There is no precedent among the comparables for such an award.

Ability to Pay: The County has raised a serious argument that it is unable to pay for *any* insurance benefits beyond its offer of \$470/mo per employee. The arbitrator will now analyze the law and the evidence on the inability-to-pay issue, in order to determine whether or not the Employer can pay what the arbitrator has found to be the appropriate percentage of insurance premiums (90%) and, if not, then what shall be the appropriate award on insurance.

In a well-known article, entitled "***Ability to Pay: A Search for Definitions and Standards in Factfinding and Arbitration***", *U of O LERC Monograph No. 3 (1984)*, the authors summarized the analysis and findings of a number of interest arbitrators in Oregon cases. The authors distinguished cases in which public employers alleged a *total inability to pay* a wage increase above current level from those who demonstrated a *limited or impaired ability* only. The authors concluded, in order to prove *limited ability to pay*, that an employer must produce

Kitsap. The reductions may have been due to changes in the insurance plans or reductions in the claims histories.

¹⁵ A Blue Cross "Low Plan" and a "Group Health Plan" are available as well. In 2002, 47 deputies chose the Blue Cross "High Plan", six chose the "Low Plan" and four chose "Group Health". Two of the deputies are LEOFF I employees; the rest are LEOFF II employees.

¹⁶ There was no ability-to-pay issue in *Kittitas County*, while there is an ability-to-pay issue before the arbitrator here. Arbitrator Lehleitner opined in *Kittitas County* that a composite rate system might be less expensive than the tiered system that Kittitas County was using. He suggested strongly that Kittitas County consider changing to a

evidence of a current precarious financial condition that mandates a conservative approach to salaries, not simply a fear of future uncertainties regarding revenue losses or adverse legislative action. The employer need not be bankrupt, however. Evidence might include a dramatic downturn in regular revenue receipts, a showing of severely depressed economic conditions, or high unemployment. Other evidence could include prior levy defeats, layoffs, program reductions, absence of a contingency fund or other discretionary fund in the budget, or achievement of a wage freeze with other bargaining units. The employer must offer clear, authoritative evidence, by experts, said the authors, regarding the negative status of the budget. The situation must be beyond the employer's control. The employer must convince the arbitrator that it is unable to raise sufficient revenues to meet an established need for a raise, especially where there is compelling evidence shown by comparability or cost of living factors. If the Union disagrees with the employer regarding the employer's stated limited ability to pay, the Union must produce credible expert testimony to support its refutation.

Another article on ability to pay issues in interest arbitration appeared in 2003. *See, Widenor and Stinson, "Interest Arbitration in Oregon's Public Sector", U of O LERC Monograph No. 17 (2003)*. The authors of the 2003 article again distinguished between *total inability to pay*, which they determined is rare, and *relative inability to pay*, which is more common and easier to prove. The authors recognized that internal equity considerations are more significant in a relative inability to pay case, because there is often a "*me too*" effect of an award to one bargaining unit on the other bargaining units, thereby further aggravating the public employer's financial constraints.

composite system. There was no evidence offered by the parties in the instant case as to whether the overall cost of

Evidence on Ability to Pay: In the instant case, the County alleges it has a *limited ability to pay*, not complete inability to pay any increase whatsoever in wages or insurance. The County has not sought to freeze wages at the 2002 level, as it would have if were raising a complete "inability to pay" defense. The County does, however, seek to freeze its 2002 level of insurance contribution (\$470/mo) in 2003 and 2004. The County points out that most of its bargaining units have accepted a similar freeze on insurance in 2003 and 2004, thereby indicating that those units believed the County's contention that it was in a precarious financial condition and could not pay any more for insurance than it had paid in 2002. And most of the County's other bargaining units were frozen at \$420/mo., or \$50/mo less than the amount it is offering to the Guild in this proceeding. The County believes that internal equity is a serious consideration, therefore, as it relates to the insurance issue.

The Guild asserts that the County is simply unwilling to pay for an appropriate increase in insurance benefits. If, to the contrary, the facts show that the Employer is in a precarious financial condition and is not simply fearful of economic uncertainty, then the arbitrator must determine whether the compelling need to increase the Guild's insurance contribution to 90 percent of full-family, based on comparability, outweighs the County's limited ability to pay. If it does, the arbitrator must determine whether there is money available in the County budget to fund the increased contribution without putting the County at serious financial risk.

County's Bond Rating: The County's expert witness was its Chief Financial Officer Craig Warner. Warner testified credibly that Yakima County's ordinary policy regarding reserves is to retain 5-7% of general operating revenues in reserve, to cover irregular cash flow

insurance might be reduced under a composite system, however.

needs in the months between October and April, when much of the County's tax revenue is received. He said the GFOA recommends that public entities keep in five to fifteen percent of operating revenues in reserve. Yet in 2003, Yakima County's reserves fell below the five percent floor, to 2.62% (\$1.4 million) at the beginning of the year and 2.91% (\$1.5 million) at the end of the year. If the County were to drop any lower, testified Mr. Warner, it would risk losing its "A-" or "A3" bond ratings, which are the lowest "A" ratings available from Fitch and Moody's, two respected rating companies. A reduction into the "B" category with either Fitch or Moody's would put the County in financial jeopardy, because the County could be required to pay higher interest rates on bonds and it might go on registered warrants to pay its bills. Also, some current bond-holders might have to divest themselves of County bonds at a loss, thereby causing those investors to lose confidence in the County for future investing. In its post-hearing brief, the Guild acknowledged the risks the County could face if it lost its "A-" or "A3" bond rating.

The evidence shows that two of Yakima County's comparables had "A3" bond ratings from Moody's. Those were Spokane and Cowlitz Counties. Also, Benton County had an "A2" rating. However, all three of those counties have paid higher premiums for deputies' health insurance coverage in 2003 and 2004 than they paid in 2002. Therefore, it appears those counties have met their employees' insurance needs, in spite of a risk that they might drop into the "B" bond-rating category.

History of Problems with Legislation and Tax Levies: Mr. Warner testified that, as the result of a recent property-tax-limitation initiative in Washington, the maximum annual increase in assessed valuation of real property was reduced from 6% to 1%. That change has greatly reduced the annual property tax revenue in Yakima County. Warner also testified that a 1995

Criminal Justice Sales Tax levy was defeated by 60% of the vote in the County, and a similar sales tax levy was defeated in 1997. Both of those, if passed, would have generated additional revenue for the Sheriff's Department budget. Thirdly, a Motor Vehicle Excise Tax amendment has reduced the fee for auto license tags in Washington to \$30. Yakima County has actually lost \$14.5 million from this change in auto license-tag fees alone since 2001, said Mr. Warner. The State issued a temporary relief payment to replace some of the losses that counties have incurred due to the loss of previously-anticipated motor vehicle tax funds. That make-up provision produced \$1.9 million for Yakima in 2002, but only \$342,000 in 2003 and nothing in 2004, since the relief measure has been gradually phased out and has now expired.

The Guild offered no evidence to contradict the testimony of Mr. Warner regarding the revenue reductions that Yakima County has been experiencing. The arbitrator finds that the revenue reductions have indeed been dramatic. Nevertheless, the property tax assessment lid of 1% per year, as well as the reduction in revenue due to the change in motor vehicle tag prices were likely statewide concerns in recent years. Therefore, it seems reasonable to assume that other counties in Washington, including the County's comparables, have been experiencing similar reductions in those revenue sources to Yakima County's reductions.

The Guild also did not deny that the County went to the voters in the past with levy requests, and that those levies failed heavily. The Guild alleges, however, that the County should go to the voters with a request for a property tax "levy lid lift" to recoup some of the property tax that has been lost since 2001. The arbitrator does not see that such an effort would have any likelihood of passing, based on the history of tax levy defeats in the county. Besides,

The County is submitting a special sales tax levy request to the voters in November of 2004, the purpose of which is to generate additional funds for law enforcement purposes. The Sheriff is actively promoting this sales tax levy, which would raise \$6 million, of which 60% would go to the County. If the levy passes, both the County and the City of Yakima will hire new officers with the new money. The County plans to hire fourteen new deputies with its share. *Tr. 682-83.*

Reduction in Interest and Sales Tax Income: Mr. Warner demonstrated that Yakima County's interest income has dropped dramatically since 2001, due to low interest rates. In 2001, the County's interest income was \$2.6 million, but in 2004, it was expected to be only \$730,000.

Warner also demonstrated that sales tax revenue in Yakima County has been very flat since 1995, ranging from \$6-7 million per year. The City of Yakima routinely annexes income-producing properties from the County, thereby removing lucrative sales-tax sources from the County's tax rolls. Examples include the annexations of West Valley, which Warner said had cost the County \$235,000 a year, and Sunfair Chevrolet, a large car dealership.

It is likely the County's reduction in interest income over the past few years was felt in all of the comparable jurisdictions. The County's flat sales tax revenue, however, is likely unique to Yakima County, as it probably derives from the general poverty level of the County's residents, as well as the annexation problem. The arbitrator notes that the overall tax revenue in the County was \$104 per capita, the lowest of all the comparables and about one-third less than the average of \$162 per capita. If income-producing commercial property continues to be annexed into the City of Yakima, the County may continue to have a difficult time increasing its sales tax revenue in the foreseeable future, even though, as the Guild demonstrated, the general level of economic activity in the County is beginning to grow.

Program Reductions: The evidence shows that between 2000 and 2004, the County reduced or eliminated \$6.5 million worth of programs in order to save money for its remaining programs. Lower Valley District Court was eliminated, one juvenile pod was eliminated, county-wide training was eliminated, extension services were reduced, parks were closed or open hours reduced, health funding was reduced, and customer service activities have been cut back. Some general fund positions have been eliminated, including seven deputy sheriffs and a dispatcher. During 2002, the Board of County Commissioners implemented a hiring freeze. Nearly \$1 million has been cut from the Sheriff's Budget since 2000. The 2003 final budget shows that \$400,000 was reduced from the Law and Justice and Public Safety Departments to balance the budget in that year. The Sheriff's Department is now short-staffed. The arbitrator is persuaded by this evidence that the County has taken aggressive action in a variety of ways to minimize its expenses and operate within its limited revenue, while avoiding the reduction of its bond rating below the "A-" level.

Poverty level in the county: The evidence shows that the County is "rural" because of its low population density, its agricultural nature and its economic status as a "distressed" county pursuant to RCW 43.165.010(3). Statistics show that 17.85% of Yakima County's residents are eligible for Medicaid benefits, 19.7% of its residents live below the poverty level, as compared to the statewide average of 10.6%, and there is a high percentage of food stamp eligibility and subsidized lunches. Significantly, Yakima County's unemployment rate was 10.3% in 2003, the highest among the comparable jurisdictions except Cowlitz County.

The Guild argues that the County places too much emphasis on the poverty of its residents, many of whom are migrant laborers who work only seasonally and for low wages.

The Guild points out that Census Bureau has characterized the county as "metropolitan". Also, Guild says much of the agricultural land is actually very valuable and should be taxed at a higher rate than the special assessments for such property allow. The Guild says many of the farmers are actually very wealthy and should be paying a greater share of the tax responsibility than they now pay. The Guild points out that the County has a large quantity of taxable land within its boundaries, but a low overall assessed valuation, relative to many of the comparable jurisdictions. The Guild contends the County should utilize the authority given by RCW Chapter 84.34 to create "special improvement districts" in order to generate more tax revenue from the valuable farm lands. The Guild did not offer any expert testimony, however, on how such "special improvement districts" could be developed or whether, if developed, the funds could be used for deputy sheriffs' salaries and benefits.

The arbitrator finds, based on the evidence, that the County is indeed "rural" and "distressed" economically. The Census characterization of "metropolitan" does not adequately rebut the statistical evidence offered by the County, nor does it override the statutory criteria defining "rural" and "distressed", which accurately describe the demographics of Yakima County. While it does seem that the County could consider using its statutory authority to attempt to levy property tax "lid lifts" to increase its property tax revenue in future years, it is unlikely that such levies would pass, based on past history. As for creating "special improvement districts" that might increase the revenue from high-producing agricultural lands, the arbitrator finds that the idea may have merit. However, it would be speculative to comment on the feasibility of such action, based on the record.

The County Budget: According to the County's 2003 Final Budget and testimony of Mr. Warner, expenditures were expected to exceed revenue by \$467,715, so that amount was taken from reserves to balance the budget, leaving only 2.62% in the "Available Fund Balance". Because of the double-selling of jail bed space, however, a surplus of \$597,253 was actually generated in 2003 and that money was put into the "Available Fund Balance", increasing it from 2.62% to 2.91%. In spite of that surplus, the County anticipates a deficit of \$235,000 in 2004.

The Guild asserts the County had \$5.8 million in "savings accounts" at the end of 2003, including approximately \$1.3 million in "Department Carryout" and \$586,052 in "Commissioners Carryout". *See Ex. E-1-1-8.* The Guild points out that the County had identified the Commissioners' Carryout fund as available for "Anticipated Budget Adjustments"; therefore, those funds should be available to pay for deputies' insurance increases. The Guild believes the \$1.3 million that is shown as Department Carryout is also available to fund any award that is issued in this interest arbitration.

The County persuaded the arbitrator that most of the "savings accounts" that the Guild refers to are "designated funds" that cannot be used for deputies' salaries and benefits. Those include a loan payable account, investment accrual fund, inmate trust, debt retirement, computer replacement and jail reserve funds. The "petty cash" account, however, was \$47,075 at the beginning of 2003 and only \$240 was deducted during that year, leaving \$46,835 at the end of the year. The County did not show that that fund was needed for any specific purpose.

Mr. Warner testified that the Department Carryout and Commissioners Carryout are funds that have gradually been accumulated through frugal spending habits by the Sheriff and the

directors of other County departments over the past decade. He testified as follows with regard to the adoption of those funds in the mid-1990's:

"... Yakima County Commissioners realized that we had departments that were --- that were buying supplies five or six years out in advance [in order to use up budgeted funds at the end of each year]. So, what the commissioners did was, they established a carry-out policy, which basically takes whatever monies that -- that -- and there's a process of calculation we have to go through -- whatever expenditure dollars they don't spend, and we split those 60/40: 60 percent the Commissioners get back; 40 percent that the departments get to keep. And those 40 percent dollars are for one-time expenditures only. In the Sheriff's Office, as an example, I mentioned earlier that's how the Sheriff's vehicles, their radios, their equipment replacement monies, their laptops, all of that stuff got funded. That's how we did it. Tr. 504-5; See also, Tr. 655.

Although Mr. Warner indicated that the carryout monies cannot be spent for repeated expenditures like wages and benefits, he offered no explanation as to why that is so and he cited no statutory authority to support the argument. While it is indeed admirable that the County has been able to buy extra equipment, like vehicles and laptop computers, with funds that were saved in past years due to frugal spending practices, it would not be appropriate for the County to require its deputies to sacrifice their demonstrated need for insurance, simply because the County has established a practice of using its excess funds to buy material goods.

On the other hand, the arbitrator is not persuaded that the \$1.3 million in "Department Carryout" was fully available to pay for deputies' insurance premiums, as the Guild contends. According to Mr. Warner, the County still had expenses due at the end of 2003, which had not yet been billed and paid, under the accrual system of accounting. After those expenses were paid, only about \$250,000 was left in January 2004. Tr. 631-3. Then, a \$55,000 adjustment had to be made, because the actual revenue that had been produced from Airport Services in 2003 was less than had been expected. Warner acknowledged that \$195,000 remained in Department

Carryout fund, however, and that amount had been divided 60%/40% between the Commissioners' Carryout and the Department Carryout. *Tr. 636-7.* The arbitrator concludes from that testimony that \$195,000 of the \$1.3 million carryout fund remained available as a type of contingency fund at the end of 2003.

It also appears from the evidence that at least some of the "Commissioners Carryout" of \$586,052 remained available at the end of 2003, even after certain "Anticipated Budget Adjustments" were accounted for. *See Ex. 1-1-8.* Mr. Warner explained that the County had allocated most of that fund for needs that had been identified, including its LEOFF I fiscal obligation to provide nursing home care for retired deputies, estimated to cost between \$100,00 and \$150,000; unexpected expenses of the county prosecutor, estimated at between \$50,000 and \$100,000; District Court, estimated at \$70,000; Public Defender, estimated at \$150,000; and small amounts for the Coroner and other unidentified recipients, adding up to \$16,000. *See Tr.507; also Tr. 521.* The arbitrator concludes from that testimony that there still was at least \$100,000, and possibly as much as \$200,000 (depending on how much was actually needed for the nursing home expenses and the prosecutor) available for other needs, like an Award granting higher insurance premiums in this interest arbitration.

Adding together the unspent "Department Carryout" of \$195,000 and "Commissioners Carryout" of at least \$100,000, plus petty cash of \$47,000, the arbitrator concludes that the County had at least \$342,000 in undesignated funds at the end of 2003. Also, the "Available Fund Balance" was \$160,000 higher than it had been at the beginning of 2003 and, as a result, the percentage of total budget being held in reserve had increased from 2.62% to 2.91%. This shows that the County was inching its way out of its financial crisis.

The County demonstrated that the cost of providing full-family coverage under the Premera Blue Cross "High Plan" would total approximately \$192,000 more than it has already paid for insurance during 2003 and 2004. The arbitrator has found, based on external comparability, that 100% of employee-only, employee+spouse and employee+dependents coverage, and 90% of full-family coverage, should be awarded. The arbitrator has also determined that the County has been dealing with a precarious financial condition for several years and that it has taken aggressive steps to cope with its financial crisis, including reducing programs and laying off staff. At the end of 2003 the County had enough money in its reserve funds to pay for a full award on insurance, as determined to be reasonable herein. However, the County would be left with less than five percent in reserve and the County would still be at risk of losing its "A-" bond rating, should any new financial crisis arise, such as loss of contracts for sale of jail bed space.

There also are "other factors" in this case that are normally considered by interest arbitrators and that affect the propriety of an award that would be fully in keeping with the external comparables. The arbitrator will explain those factors now.

Internal Equity. The County raises a strong argument that internal equity should be considered by the arbitrator in this case. The County demonstrated that Yakima County Commissioners have frozen their salaries at \$67,692/year through 2006, in order to save money and to set an example for county employees, who have been asked to share the County's financial pain. The County Assessor, Auditor, Clerk, Coroner, Treasurer and Sheriff have all accepted wage freezes since 2001. Also, most of the other bargaining units in Yakima County have accepted the same offer regarding wage increases for 2003 and 2004 that the County is offering

to the Guild in this proceeding. In addition to the freezes, those units have agreed to forgo their regular step increases for the two years, while the deputies will get their step increases under the County's offer to the Guild. Also, eight of the eleven represented bargaining units have accepted in their 2003-4 collective bargaining agreements the County's proposal to retain the insurance cap of \$420/mo that was in place in 2002 as the maximum County contribution toward full family medical, dental, vision and life insurance premiums. Of the three remaining units, two do not have agreements in place beyond 2002; the third, which is the Sheriff's Office Management Group, has accepted full payment of employee-only medical and vision plus \$243.90/mo toward dependents coverage in 2004 and a cap of \$485/mo in 2005.¹⁷

The Guild argues that internal equity is irrelevant in interest arbitration, because the relevant issue is comparability with other bargaining units of deputy sheriffs. The arbitrator agrees that internal equity is usually irrelevant in interest arbitration, because the relevant comparability, according to the statute, is with "like employees of like employers". For the Guild, "like employees" means other bargaining units of sheriff's deputies in comparable jurisdictions. It has been held, however, that internal equity is relevant in cases like this one, where the evidence shows that the public employer has been dealing with reduced revenues for several years and the employer's other bargaining units have agreed to assist the employer to meet its tight budget situation by accepting reduced benefits in their labor agreements. In *IAM and Mason County (Arb. Axon, 2001)*, at 14, for example, the arbitrator stated that, even though "[t]here is no statutory obligation to award what the other bargaining units in the County have

¹⁷ There is a reopener provision in that agreement which could allow renegotiation of the insurance benefit. The Guild also points out that the Management unit negotiated a substantial longevity provision in its current contract.

negotiated in the way of insurance benefits, . . . an award for one group of employees should not be so different as to be out of touch with the other bargaining units." *See also, City of Pasco and Pasco Police (Arb. Krebs, 1990) at 11; Cowlitz County and Teamsters (Arb. Lehleitner, 1996) at 15.* In an Oregon case, *Multnomah County and Corrections Officers Assn. (Arb. Wilkinson, 1993) at 52-3*, the arbitrator opined that internal comparators carry considerably more weight in determining medical benefits than wage benefits. Also, in *City of Grants Pass (OR) and IAFF Local 3564 (Arb. Brown, 2000)*, an Oregon firefighters' interest arbitration, the arbitrator recognized that there would be a "me too" effect on other employees outside the firefighters' bargaining unit by an award that would differ substantially from their agreements. She said she could not "turn a blind eye to the [Public Employer]'s other legitimate needs" in that situation. One monograph author made a similar observation, when he wrote that "internal comparability exerts powerful influence at the bargaining table. . . . The conventional wisdom, that internal comparators are of secondary importance in interest arbitration, does not comport well with the notion that interest arbitration serves as a surrogate for the traditional bargain-and-strike model of labor relations." *Kaplan, "Interest Arbitration and Factfinding: Some Principles and Perspectives," Univ. of Oregon LERC Monograph No. 13 (1994) at 45.*

Based on the facts and arbitral authority, the arbitrator finds that morale among County employees is likely to suffer if the deputies do not share in the belt-tightening that other County employees have accepted with respect to insurance premium payment for family coverage. Also, there will likely be requests for similar increases in insurance contributions by the other bargaining units the next time they have the opportunity to bargain with the County, and the

County's financial constraints will be further exacerbated by such requests. Therefore, the County's internal equity concern must be given reasonable consideration here, in order to justify a fair and reasonable award.

Recruitment and Retention: Another factor that arbitrators consider in deciding interest arbitration cases is whether the public employer may incur difficulty with recruitment and retention of qualified applicants if a particular award is made. The Guild argues here that the County is now recruiting from the bottom of its eligibility list and that there is a serious risk the County will lose qualified officers if it fails to keep pace with the comparable jurisdictions in wages and insurance benefits. The County, however, points out that the average seniority of deputies in the department is 11.66 years, and of sergeants 17.52 years, and that there is very low turnover in the department, in spite of the County's financial constraints. The officers who have left in recent years have done so for personal reasons unrelated to wages and benefits.

The evidence shows that the number of applicants for openings in the Department in recent years has indeed been smaller than it was in the past. However, the decrease stems from the extensive testing requirements and background checking that are done to weed out inappropriate deputies before they are hired. A similar reduction in qualified applicants is being noticed by law enforcement officials throughout the state.

The evidence also shows that the deputies who are recruited by the Sheriff's Department often come from small police departments in cities within the County, that is, from the local labor market. Those officers have been very good officers. Officer Rodriguez, who testified for the Guild, however, demonstrated that he would be unwilling to leave his position with the Selah

Police Department because of the pay cut that he would suffer and because he would have to pay \$500/mo for his family's medical insurance.

Even if the County's offer on insurance were awarded, it does not appear there would be an immediate mass exodus of deputies to other sheriffs' departments or police departments. However, the County and the City of Yakima may soon be competing for new hires of law enforcement officers. Even though the City of Yakima is not a comparable jurisdiction, the practical reality is that the two public employers will be competing for a gradually shrinking pool of qualified applicants as time passes. That competition may become acute if the November 2004 law enforcement tax levy proposal passes. The practical reality is that good officers will be attracted to the employer that offers the most competitive benefits in the labor market.¹⁸ Therefore, the County must pay a higher amount in family insurance premiums than it pays to members of its other bargaining units.

The difficult question for the arbitrator is how to balance the finding on external comparability with the internal equity issue and the need to protect the County's ability to recruit and retain qualified officers. The arbitrator will look at one more "other factor" before reaching a final resolution.

Road Funds: The Guild argues that the County seems to have an unlimited availability of money for road projects. The Guild argues that road funds are discretionary and can be diverted to the General Fund for deputies' wages and benefits. The Guild identified RCW Chapter 36.82, as statutory basis for its argument, but did not offer any expert testimony.

¹⁸ The 2004-5 collective bargaining agreement between the City of Yakima and Yakima Police shows that the maximum contribution of a police officer toward health insurance for his/her dependents will be 1.5% of the officer's monthly pay.

The County persuaded the arbitrator, through testimony by Gary Ekstedt, who is responsible for administering the County Roads Budget, that the Road Fund is a dedicated fund, which must be used for road construction, bridge building and maintenance of roads and bridges. While the road fund does include a very large amount of money from property tax, gas tax and state and federal grants, much of it is premised on a matching basis, whereby the County must spend a certain amount of its own money in order to qualify for the state or federal dollars. Furthermore, only a limited portion of the money in the Road Fund can be diverted to use by the Sheriff's Department -- and that is restricted to traffic patrol purposes. The Sheriff already funds two traffic patrol officers, about 5-6% of the 32 deputies assigned as road deputies, with those funds. The Sheriff acknowledged, however, that Thurston County, one of Yakima's comparables, funds nine officers with road funds.

If the County were to divert more road funds than the law allows for patrol purposes, the penalty, which is imposed by the state Constitution, would be loss of eligibility for Rural Arterial Trust Account (RATA) funds. Even if the cost of only one additional deputy could be justified, however, that would make about \$70,000 available in the budget for funding increases to the cost of the deputies' medical insurance in the future.

Conclusions: For the reasons stated in the foregoing sections, the arbitrator concludes that the trend among the County's external comparables is that employers and employees share the cost of full-family coverage, with employees paying no more than 10% of the premium. The evidence has shown that the County has a limited ability to pay an increase in insurance premiums to match the 90% contribution paid by the comparable counties. The County has been taking aggressive, responsible measures to deal with its precarious financial condition for at least

four years and its reserves are very limited. Furthermore, the County's elected officials, as well as members of at least eight bargaining units of County employees have accepted a freeze on their health insurance benefits in 2003 and 2004. This shows that the County is not unwilling to pay; its limited ability to pay is genuine and has been recognized by its overall workforce.

Nevertheless, the County must use some of its limited available resources to bring the insurance benefit of its deputies more closely in line with the benefits offered to other sheriffs' deputies. If it does not, recruitment and retention of qualified officers will suffer. In the interest of public safety, it is critical to maintain recruitment and retention of qualified officers.

The arbitrator concludes, based on the unusual circumstances of this case, that an award of employee-only, employee+spouse and employee+dependents coverage, all fully paid by the County under the Premera Blue Cross "High Plan", and 78% of full-family coverage under the same plan, is reasonable. The arbitrator does not agree that the "tiering" system that was in place in 2002 should be restored at this time, however, as part of the award.

AWARD

Based upon the statutory criteria in **RCW 41.56.465** and the rationale set forth in the foregoing report, the arbitrator makes the following Award:

(1) The County's proposal on wage increases for 2003 and 2004 is granted. The following language shall be included in *Article 32-Pay Plan*:

A pay plan structure exclusively applicable to employees of this unit is established in Exhibit "A", which reflects, beginning July 1, 2003, a 2.25% across the board increase over the 2002 pay plan levels for Deputy Sheriffs and Sergeants; and, beginning January 1, 2004, a 4.5% across the board increase over the 2002 pay plan levels for Deputy Sheriffs and Sergeants. (see also attached Exhibit "A")

(2) Article 34-Medical Benefits shall provide as follows:

34.1 LEOFF I Employees: Effective January 1, 2003, the employer shall pay for the medical and vision coverage of employees enrolled in the LEOFF I pension system covered under the Yakima County Employee Benefit Trust (Medical).

Effective January 1, 2003, the Employer shall pay for medical, vision, dental and life insurance coverage of the spouse or children of active duty employees enrolled in the LEOFF I pension system and shall contribute 78% of the premium for full family coverage.

Effective January 1, 2004, the Employer shall pay for medical, vision, dental and life insurance coverage of the spouse or children of active duty employees enrolled in the LEOFF I pension system and shall contribute 78% of the premium for full family coverage.

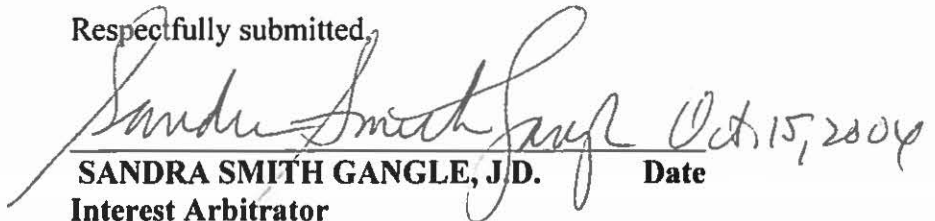
34.2 Effective January 1, 2003, for non-LEOFF I employees, the employer contribution shall be 100% of the premium cost for employee only, employee and spouse, and employee and child coverage, and 78% of the premium cost for full family coverage, all based on the costs of the Premera Blue Cross "High Plan", for medical, vision, life and dental insurance. Non-LEOFF I employees may select from all plans and use such contribution for themselves and their dependents.

Effective January 1, 2004, for non-LEOFF I employees, the employer contribution shall be 100% of the premium cost for employee only, employee and spouse, and employee and child coverage, and 78% of the premium cost for full family coverage, all based on the costs of the Premera Blue Cross "High Plan", for medical, vision, life and dental insurance. Non-LEOFF I employees may select from all plans and use such contribution for themselves and their dependents.

34.3 Employees are not entitled to receive any funds not applied to coverage for themselves and their dependents under the available plans.

(3) The parties shall share equally in the neutral chairperson's fee and expenses.

Respectfully submitted,


SANDRA SMITH GANGLE, J.D. **Oct 15, 2004**
Interest Arbitrator **Date**

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**Yakima County and Yakima County Law Enforcement Officers' Guild
2003-2004 Collective Bargaining Agreement
EXHIBIT "A"**

**YAKIMA COUNTY SHERIFF'S DEPARTMENT
DEPUTY SHERIFF'S PAY PLAN
Effective July 1, 2003
(2.25% increase over 2002 Pay Plan)**

Class Title	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6
Deputy Sheriff	\$36,282.00	\$38,847.00	\$41,632.00	\$44,552.00	\$48,135.00	\$50,541.00
	\$3,023.53	\$3,237.24	\$3,469.34	\$3,712.70	\$4,011.27	\$4,211.68
	\$17.44	\$18.68	\$20.02	\$21.42	\$23.14	\$24.30
Deputy Sergeant	\$56,270.00	\$59,056.00				
	\$4,689.19	\$4,921.29				
	\$27.05	\$28.39				

**YAKIMA COUNTY SHERIFF'S DEPARTMENT
DEPUTY SHERIFF'S PAY PLAN
Effective January 1, 2004
(4.5% increase over 2002 Pay Plan)**

Class Title	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6
Deputy Sheriff	\$37,081.00	\$39,702.00	\$42,548.00	\$45,533.00	\$49,194.00	\$51,651.00
	\$3,090.07	\$3,308.47	\$3,545.69	\$3,794.40	\$4,099.54	\$4,301.30
	\$17.83	\$19.09	\$20.46	\$21.89	\$23.65	\$24.83
Deputy Sergeant	\$57,508.00	\$60,355.00				
	\$4,792.37	\$5,029.59				
	\$27.65	\$29.02				