BEFORE THOMAS F. LEVAK, ARBITRATOR

STATE OF WASHINGTON
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest
Arbitration Between

MASON COUNTY,
WASHINGTON and its
SHERIFF'S OFFICE

The County

and

WOODWORKERS LOCAL
LODGE W38, INTERNATIONAL
UNION OF MACHINISTS
AND AEROSPACEWORKERS

The Union

CASE NUMBERS 1856-I04-0430
and 18438-04-6087

ARBITRATOR'S AWARD

This matter, an RCW 41.56.450 interest arbitration, came for hearing before the Arbitrator on October 12, 2004. The County was represented by Otto Klein, III and the Union by Bert Larson. The parties waived the appointment of partisan arbitrators and also waived the recording of the hearing and agreed that the documentary evidence and this award would constitute the record of the proceedings. Sworn testimony and documentary evidence were received. Larson was the Union's sole witness and Skip Wright was the County's only witness. Post-hearing briefs were received on November 8, 2004. Based upon the evidence, the arguments of the parties, and an application of the statutory criteria thereto, the Arbitrator decides and awards as follows.

INTRODUCTION.

Mason County is populated by approximately 50,000 persons. The Sheriff's Office consists of two divisions: (1) deputy sheriffs, who provide police protection to the unincorporated areas of the County, and (2) Jail Operations, which includes the County's jail facilities and is staffed by corrections officers. Both deputy sheriffs and corrections officers are represented by the Union in separate collective bargaining units. This case concerns the deputy sheriffs division, whose 36

sergeants and deputies are covered by the terms of the parties' January 1, 2002 – December 31, 2003 deputy sheriffs collective bargaining agreement (the "2002 Agreement"). Following the expiration of the 2002 Agreement, the parties were able to agree upon the terms of a successor 2004 – 2006 collective bargaining agreement (the "2004 Agreement"), except for two items: (1) the maximum contribution to health care insurance, and (2) a County proposal to eliminate compensatory time off ("comp time") for holidays. Those two remaining items were submitted to the Arbitrator for resolution.

Regarding the statutory comparability factor, the parties stipulated that the following counties comprise the agreed-upon comparables: Grays Harbor, Lewis, Clallam, Jefferson and Island.

THE STATUTE.

RCW 41.56.465(1) provides that, in deciding an interest arbitration case, an arbitrator shall take the following criteria (a.k.a. "factors") into account:

(1) the constitutional and statutory authority of the employer;

(2) stipulations of the parties;

(3) comparison of the wages, hours, and conditions of employment of like personnel of similarly-sized public employers;

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

(5) changes in any of the above factors during the pendency of the proceedings; and

(6) such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in a determination of wages, hours, and conditions of employment.

RCW 41.56.430 sets forth the legislative purpose that an arbitrator must be mindful of when deciding an interest arbitration case:

> The intent and purpose of * this 1973 amendatory act is to recognize that there exists in public policy of the state of Washington against strikes by uniformed personnel as a means of settling the labor disputes: that the uninterrupted and dedicated service of these classes of employees is vital to the welfare in 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. (Revisor's note omitted.)

EXHIBITS.

Union Exhibits.

1. April 16, 2004 PERC request for mediation
2. April 29, 2004 PERC mediation letter
3. May 20, 2004 County bargaining offer
4. Lewis County/Teamsters 252 collective bargaining agreement
5. Grays Harbor/Teamsters 252 collective bargaining agreement
6. Clallam County/WSCCCE 1619-D collective bargaining agreement
7. Island County/ICSG collective bargaining agreement
8. Jefferson County/Teamsters 589 officers collective bargaining agreement
9. Jefferson County/Teamsters 589 sergeants collective bargaining agreement
10. Medical comparables summary
11. Washington Teamsters Welfare Trust preliminary rates
12. Washington County Insurance Pool 2004 medical plan rates
13. November 2003 Washington Teamsters Welfare Trust memorandum
14. Washington Teamsters Welfare Trust 2003 Plan A benefits highlights
15. Washington Teamsters Welfare Trust 2003 Plan B benefits highlights
16. August 1, 2004 Machinists Health & Welfare Trust plan options
17. Machinists Plan 9 comparison of plans
18. September 15, 2004 email re dental and vision benefits rates
19. September 16, 2004 email re dental and vision benefits rates

County Exhibits.

1. September 28, 2004 Klein letter
2. The 2002 Agreement
3. The July 19, 1999 County/Union Michael Beck interest arbitration award, and the September 12, 2001 County/Union Gary Axon interest arbitration award.
4. Chain of Command chart
5. Sheriff's Office policies and procedures, operational component responsibilities
6. Sheriff's Office policies and procedures, organization structure
7. Sheriff's Office policies and procedures, responsibilities of sergeants
8. Sheriff's Office policies and procedures, responsibilities of detectives
9. Sheriff's Office policies and procedures, responsibilities of deputies
10. Seniority list
12. Agreed upon wage adjustment
13. Negotiated increases

14. 2004 base monthly wage, excluding longevity
15. Wages vis a vis CPI
16. U.S. Department of Labor statistics
17. U.S. Department of Labor statistics
18. Longevity Pay
19. Shift Differential
20. County health & welfare proposal
21. Insurance contributions
22. Other County settlements
23. County insurance benefits
24. Monthly health & welfare contributions
25. Kaiser bulletin
26. Recent arbitrator awards re medical premium cost sharing
27. County holidays proposal
28. Holidays comparables summary
29. Banked holiday time
30. Holiday pay cashouts, and reserve for accrued leave fund provision

ISSUE NO. 1. ARTICLE VII, SECTION 11, HEALTH CARE INSURANCE.

Article VII, Section 11 of the 2002 Agreement provides:

Section 11. Health Care Insurance: The employer shall pay a maximum of five hundred fifty-five dollars ($555.00) per month during 2002 for each eligible employee for medical dental, vision, and life insurance coverage through the I.A.M. Northwest Welfare Fund. Effective June 1, 2002 those insurance coverages will be through the Machinists Health and Welfare Fund. Eligible employees are those working eighty (80) hours or more per month during the calendar year. Any monthly premium contribution required above the County's contribution shall be paid by a reduction of the necessary amount from each employee's salary. Time missed from work due to a worker's compensation claim will be considered as time worked for employee group insurance and vacation purposes for a maximum of twelve (12) months.

The transition from the I.A.M. Northwest Welfare Fund to the Machinists Health and Welfare Fund for insurance coverage effective June 1, 2002 will require a premium payment to each Fund based on May hours. The County's contribution, not to exceed $555 per employee, for May hours shall go toward premiums for both Funds. Any additional premium payments due to the Funds for May hours shall be funded by the reduction of the amount necessary from the retroactive pay increase and insurance contribution increase of each employee and shall be considered a County contribution toward premiums. In the event the retroactive pay increase and insurance contribution increase of an employee is insufficient to cover the amount of the premiums due, the

County will pay the remaining premium due.

The employer shall provide an Employee Assistance Program benefit (EAP) for all bargaining unit members.

County Proposal:

The County proposes that the maximum health & welfare contribution of the County be $645 in 2004, $680 in 2005 and $720 in 2006. Specifically, it proposes that Section 11 be modified to read, with the underlined language constituting the disputed contribution cap:

> Article VII, Section 11. Health Care Insurance: The employer shall pay a maximum of six hundred forty-five dollars ($645) per month effective December 2003 for each eligible employee for medical, dental, vision, and life insurance coverage through the Machinists Health and Welfare Fund. The maximum employer contribution shall increase to six hundred eighty dollars ($680) beginning with December 2004 hours, and to seven hundred twenty dollars ($720) beginning with December 2005 hours. Eligible employees are those working eighty (80) hours or more per month during the calendar year. Any monthly premium contribution required above the County's contribution shall be paid by a reduction of the necessary amount from each employee's salary.
>
> Time missed from work due to a worker's compensation claim will be considered as time worked for employee group insurance vacation purposes for a maximum of twelve (12) months.
>
> The employer shall provide an Employee Assistant Program.

The balance of the quoted proposal is not in dispute.

Union Proposal:

The Union proposes that Section 11 be amended to require the County, throughout the term of the 2004 Agreement, to make any contribution necessary to maintain the level of health & welfare benefits in existence at the time of the expiration of the 2002 Agreement. While the Union did not propose specific language, it referenced various "maintenance of benefits" provisions in existence in some comparable counties.

County Contentions.

First, with regard to both items in dispute, the Arbitrator is reminded that the Washington Supreme Court has recognized that interest arbitration is not a substitute for collective bargaining, but rather an extension of the bargaining process. *City of Bellevue v. Int'l Ass'n of Firefighters, Local 1604*, 119 Wn.2d 373 (1992). Interest arbitrators have therefore recognized that the parties must not

be allowed to view interest arbitration as a panacea for unrealistic proposals that would not be acceptable in the underlying negotiation process, that an award must reflect the relative bargaining strengths of the parties, and that an award should therefore never simply "split the difference." Rather, an arbitrator should try to render an award that will, as nearly as possible, approximate what the parties would have reached had they continued to bargain in good faith. When all statutory factors are considered, the application of those principles should result in an award that favors the County.

Second, with regard to the health & welfare issue, the Arbitrator should adopt the County's proposal for a number of reasons.

First of all, as Wright's testimony established, since the late 1990s the County's contribution plan has generally been the same for all of the County's ten different units, both organized and unorganized, with all unit employees paying a portion of the health & welfare premium, and currently all nine of the other units have agreed to the caps now proposed by the County. Wright explained that the County's overriding interest was to maintain that parity. In 1999 Arbitrator Beck, in adopting the County's cap proposal, recognized the fact that all other units had been covered by that cap. The Union is now trying to alter the status quo by proposing language that would require the County to pay 100% of the premium. The County, on the other hand has proposed a reasonable alternative.

Second, regarding comparability, the comparability evidence must be considered in context; that is, as Wright explained, comparables were analyzed prior to mediation to arrive at the "market-based" increase in wages that ultimately was agree upon, increases that not only were COLA based but also provide for an additional 4.6% "catch-up" increase in pay spread out over three years, specifically: 2004 – 3.1%, 2005 – 3.5%, and 2006 – 4.0%. That agreed upon increase specifically incorporated and recognized a $66.00 differential between the County and comparables in the health & welfare contribution. In fact, Wrights's calculations somewhat overstated the difference between the County and its comparables since in the final year of the 2004 Agreement, assuming the average increase in comparables is 2% in 2005 and 2.5% in 2006, County deputies will be $85.00 ahead of comparable deputies.

Third, the Union suggestion that all comparables have a "maintenance of benefits" clause simply is not the case. In fact, most comparable employees, under a variety of strategies, pay a portion of their benefit premium and/or take reduced benefits. Moreover, interest arbitrators have awarded shared premium provisions in county cases. *See, e.g.*, Arbitrator Gaunt's Whitman County 2004 award and Arbitrator Krebs' Walla Walla 2003 award. Further, as Employer Exhibit 24 demonstrates, shared pay plans are the national trend.

Union Contentions.

First, the County's current contribution level is $615.00. The premium cost was $748.71 per month from July 1, 2003 through June 30, 2004. Effective July 1, 2004, the premium rate rose to $812.70 and that rate will be in effect through June 30, 2005. The rate of increases has been running 10% to 12% yearly, and at that rate, the premium for major medical only will be $785.00. The County argued no inability to pay the Union's proposal, which would provide for those increases.

Second, the County's proposal would place deputies below all comparables, and it offered no justification or explanation why it should not pay an amount equivalent to what comparables pay. Wright's argument that survey adjustment wage increases took into account comparables' health & welfare premiums fails because the agreed upon wage adjustment is just that, a wage adjustment that, considering both the CPI and an additional 1.5%, will allow County deputies to "catch up" with the comparables. What the County is trying to do is take credit twice for the $63.00, something that it can only properly do once.

Third, the County's "internal" comparability argument necessarily fails because the statute does not allow for internal comparisons, only external comparisons.

Finally, if the Arbitrator rules in favor of the County on its holiday proposal, employees should be allowed to share in some of the savings through the Union's health & welfare proposal.

Arbitrator's Discussion and Analysis.

Some preliminary remarks are appropriate regarding generally accepted principles applicable to Washington State interest arbitrations. First of all, this is a statutory proceeding, so it is the obligation of an arbitrator to apply the facts in evidence to the statutory criteria, not to develop criteria of his or her own. Second, this is an adversarial proceeding, so it is the responsibility of each party to provide definite proposals and to provide evidence and argument in support of those proposals. It is not the responsibility of an arbitrator to go outside the record and arguments made. Third, interest arbitration is a continuation of the bargaining process, so ideally, an arbitrator's award should place the parties in the same position they would have reached in unrestricted bargaining. Thus, it is not appropriate for an arbitrator to "split the baby" in an attempt to accommodate both parties. Fourth, the legislature has given arbitrators no direction as to how to apply the statutory criteria or what weight they should give each criteria, and has not directed them to decide the criteria in any particular order. Therefore, absent specific stipulations made under the second criterion, an arbitrator has the discretion to apply the criteria he or she deems relevant in a particular case; that is, criteria are "case specific." That being said, however, the third criterion, that of "external" comparability ordinarily is given the greatest weight. Fifth, a party espousing a new provision or proposing a change, modification or deletion, has the burden of persuasion; that is, it carries the burden of proving that its position is supported by the weight of the evidence and by the most reasonable arguments.

Moving then to the specifics of the first issue in dispute, the Arbitrator would first remark that because the Union is seeking to move away from a capped provision — the type of provision that has been in existence for the past six to seven years — to a provision which would require the County to provide the full premium necessary to fund existing benefits for the life of the 2004 Agreement, it is the Union that has the burden of persuasion. The Arbitrator finds that the Union has not met that burden. Furthermore, the Arbitrator further finds that even assuming *arguendo* that the County had the burden of persuasion, it more than established that the weight of the evidence supports its position.

The Union's position is further compromised by the fact that it failed to make a specific proposal. While it generally argued that a 100% "maintenance of benefits" provision should be

awarded, it failed to provide the Arbitrator with a specific written proposal. Its reference to "maintenance of benefits" provisions in existence in comparables' collective bargaining agreements only amplifies the problem since even where comparable have such provisions, those provisions differ somewhat, and all but one of the comparables health & welfare provisions provide for some type of cost sharing. The absence of a specific written proposal creates somewhat of a problem since it is not the responsibility of the Arbitrator to speculate what specific type of provision the Union desires, nor is his responsibility to attempt to draft language that would accommodate the Union's very general unwritten proposal, particularly since the language in all the comparables' collective bargaining agreements is different.

Turning then to the statutory criteria, the Arbitrator generally agrees with the Union that external comparability is the most important criterion and that it ordinarily takes precedent over so-called "internal" comparability or parity. External comparability is a specific criterion, while internal comparability merely falls under the sixth "other factors" general criterion. As Arbitrator Axon pointed out in his 2001 decision involving the parties, an interest arbitrator has no control over what is implemented or agreed upon in other units, and the goal of an interest arbitrator ordinarily should be "to provide consistency [among internal units], not complete uniformity." That being said, the Arbitrator can only find that evidence the Employer provided concerning external comparability strongly supports its position.

In the first place, the Arbitrator agrees with the County that the external comparability criterion must be analyzed with reference to the overall wage/fringe benefit packages in existence at the County and at comparables; that is, the comparability evidence must be considered within the economic context of all relevant collective bargaining agreements. When such reference is made, the Arbitrator finds that the County proved that the agreed upon market base wage increases agreed upon by the parties did in fact take into account increases in the CPI, increases necessary for the County to "catch up," and increases that specifically incorporated and recognized the $66.00 differential between the County and comparables in the health & welfare contribution. Moreover, the County's evidence convincingly established that, in all likelihood, in the last year of the 2004 Agreement County deputies will be $85.00 ahead of comparable deputies.

In the second place, even when the County's health & welfare proposal is viewed by itself vis a vis comparables' health & welfare provisions, the County argument must be agreed with because, as already stated, all but one of those provisions provide for some type of cost sharing.

The evidence provided by the County regarding "internal" comparability, evidence properly given secondary consideration by the Arbitrator under the statute's sixth criterion, also strongly supports the Employer's position. Since the late 1990s the County has been successful in reaching its goal of providing all of its units with the same health & welfare package, and it has been successful in reaching that goal because it has been able to negotiate the same package with each unit, and in the case of the Deputies unit, has been aided by the 1999 Beck interest arbitration decision, albeit involving a different bargaining representative, a case in which Arbitrator Beck specifically relied upon the fact that other represented units had agreed upon the health & welfare package then urged by the County.

Based upon all of the foregoing, the Arbitrator will award the County's proposed language.

ISSUE NO. 2. ARTICLE IX, SECTION 3, HOLIDAYS.

Article IX, Section 3 of the 2002 Agreement provides:

> Section 3. When a recognized holiday falls on Saturday, the day preceding it will be allowed; and when it falls on a Sunday, the day following will be allowed as a regular paid holiday. It is expressly understood between the parties that the system of receiving a compensatory day in lieu of the holiday shall continue. The floating holiday is to be at the discretion of the employee with the approval of the supervisor, requiring one week's advance notice which may be waived by the supervisor.

County Proposal:

The County proposes deletion of the sentence: "It is expressly understood between the parties that the system of receiving a compensatory day in lieu of the holiday shall continue." In lieu of that provision, the County proposes that Deputies be paid time and one-half of those holidays that they are assigned to work. Specifically, Section 3 would read, with the underlined language representing the County's proposed change:

> Article IX, Section 3. When a recognized holiday falls on Saturday, the day preceding it will be allowed; and when it falls on a Sunday, the day following will be allowed as a regular paid holiday. Any employee working on a holiday will be paid 1.5 times their regular pay for all hours worked that day. The floating holiday is to be at the discretion of the employee with the approval of the supervisor, requiring one week's advance notice which may be waived by the supervisor.

Union Proposal.

The Union proposes to maintain current language.

County Contentions.

First, unlike other County employees, who generally do not work holidays, Deputies are on a 24/7 schedule and therefore regularly work holidays. The 2002 Agreement requires the County to maintain the "existing" practice of compensation, a practice which has required the County to credit eight hours of holiday pay for each of the eleven fixed holidays into a holiday bank for each bargaining unit member. Because Deputies historically have kept holiday hours in their banks, allowing them to accrue, the value of the overall holiday bank prior to the 2004 wage increases was about $475,000.00, a huge and largely unfunded liability. In this era of financial accountability, the County is very concerned about the impact of the bank because, if several Deputies were to leave in one year, it

would have a very significant impact. Recently, the County made an effort to reduce the size of the bank by initiating a program which allows Deputies to cash out $10,000 from their bank. It has also begun a long term program of funding the bank, but it will likely take until 2015 to accomplish that goal. The County's proposal will significantly reduce the continued escalation of the holiday bank.

Second, the County's proposal is straightforward, easy to understand, and will have a favorable impact on Deputies since Deputies ultimately will receive more compensation than they currently receive.

Third, the County's proposed change is supported by the comparability factor since none of the comparables have a system in place in which an employee is able to indefinitely bank holiday time. In most cases, those employees get paid a premium for work on a holiday, and in those cases where time is banked, it must be used within a specific, definite time.

Fourth, the County has, in essence, made an offer that "buys out" the existing practice.

Finally, the County recognizes that it has the burden of persuading the Arbitrator that the status quo should be changed but believes that it has satisfied that burden through the comparability evidence and through the evidence that the existing practice has a detrimental effect on the County.

Union Contentions.

The County's proposal was not made in mediation and is not supported by the evidence.

Arbitrator's Discussion and Analysis.

For the following reasons, the Arbitrator finds that the County satisfied is burden of showing that the status quo should be changed.

First of all, the comparability criterion supports the County. At Clallum County deputies who work on a holiday are paid 2.5 times their regular pay (including holiday pay); at Grays Harbor County deputies receive 1.5 times pay for all time worked; at Jefferson County deputies receive 1.5 times pay for all time worked, in addition to straight time holiday pay. At Island County each deputy receives 12 days of additional leave, which must however be used during the year or cashed out; a deputy who works on one of seven specified holidays receives 1.5 times pay for time worked. At Lewis County a deputy receives 80 hours of additional pay and 16 hours is put in the vacation bank; no additional pay is paid for working the holiday. None of the comparables have a system in place in which an employee is able to indefinitely bank holiday time.

Second, the sixth statutory criteria supports the County. Under that criteria, the Arbitrator properly may consider the effect the parties' proposals have on the general interest and welfare of the County and the persons it serves. Here the County proved that the existing language and the existing practice have had a significant detrimental effect on the County and will continue to do so in the future. The County finds itself in the virtually unsupportable position of having an enormous, almost

unfunded, liability of about $475,000.00, a liability which increases every year. Eleven deputies have banks in excess of $10,000.00 Another three have banks in excess of $20,000.00. Four have banks of over $30,000.00. One has banked over $42,000.00. Those are very large amounts indeed, unbudgeted amounts that the County, under the existing program, will mostly have to pay from the general fund. Even with the positive steps that the County has already taken, persuasive evidence established that it will most likely take at least until 2015 for the County to achieve its objective of getting a handle on its liability. In the opinion of the Arbitrator, the evidence presented by the County clearly established that the continuance of the existing open ended program would be contrary to the best interests and welfare of the County and the persons it serves.

For both reasons, the Arbitrator will award the County's proposal.

AWARD

Article VII, Section 11 shall read:

Article VII, Section 11. Health Care Insurance: The employer shall pay a maximum of six hundred forty-five dollars ($645) per month effective December 2003 for each eligible employee for medical, dental, vision, and life insurance coverage through the Machinists Health and Welfare Fund. The maximum employer contribution shall increase to six hundred eighty dollars ($680) beginning with December 2004 hours, and to seven hundred twenty dollars ($720) beginning with December 2005 hours. Eligible employees are those working eighty (80) hours or more per month during the calendar year. Any monthly premium contribution required above the County's contribution shall be paid by a reduction of the necessary amount from each employee's salary.

Time missed from work due to a worker's compensation claim will be considered as time worked for employee group insurance vacation purposes for a maximum of twelve (12) months.

The employer shall provide an Employee Assistant Program.

Article IX, Section 3 shall read:

Article IX, Section 3. When a recognized holiday falls on Saturday, the day preceding it will be allowed; and when it falls on a Sunday, the day following will be allowed as a regular paid holiday. Any employee working on a holiday will be paid 1.5 times their regular pay for all hours worked that day. The floating holiday is to be at the discretion of the employee with the approval of the supervisor, requiring one week's advance notice which may be waived by the supervisor.

Dated this 19th day of November, 2004,

Thomas F. Levak, Arbitrator,
Portland, Oregon.