

BEFORE THE ARBITRATOR

In the matter of the interest arbitration
of a dispute between

LEWIS COUNTY

and

TEAMSTERS LOCAL 252

CASE 23148-I-10-544

INTEREST ARBITRATION AWARD

Reid, Pedersen, McCarthy and Ballew, by *David W. Ballew*, Attorney at Law,
appeared on behalf of the union.

Michael Golden, Lewis County Prosecuting Attorney, by *J. David Fine*, Civil
Deputy Prosecuting Attorney, appeared on behalf of the employer.

PROCEDURAL MATTERS

On April 7, 2010, the Executive Director of the Public Employment Relations Commission certified that Teamsters Local 252 (union) and Lewis County (employer) were at impasse over certain issues that had arisen in negotiations for a collective bargaining agreement concerning a bargaining unit of Correctional Sergeants, and that those issues should be advanced to interest arbitration for resolution. On April 22, 2010, the parties waived their right to appoint partisan arbitrators and, pursuant to WAC 391-55-210(2), asked the Commission to appoint a staff member to serve as arbitrator in the dispute. Kenneth J. Latsch was appointed to serve as interest arbitrator.

After consultation with the parties, and responding to their availability, an interest arbitration hearing was conducted on September 28 and 29, 2010, in Chehalis, Washington. At the hearing, witnesses testified under oath and the parties presented documentary evidence. A court reporter was not present at the hearing, so the Arbitrator tape-recorded the proceedings. The parties filed post-hearing briefs on October 26, 2010.

APPLICABLE STATUTORY PROVISIONS

When certain public employers and their uniformed personnel cannot reach agreement on new contract terms through negotiations and mediation, RCW 41.56.450 calls for interest arbitration to resolve their dispute. The parties stipulate that RCW 41.56.450 applies to the instant dispute.

An Arbitrator must remember that interest arbitration is an extension of the bargaining process. The Arbitrator recognizes those contract provisions upon which the parties agree and decides the remaining issues in a manner that approximates the result that the parties would likely have reached in good faith negotiations considering the statutory criteria.

RCW 41.56.465 sets forth certain criteria which must be considered by the Arbitrator in deciding the issues in dispute:

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

- (a) The constitutional and statutory authority of the employer;
- (b) Stipulations of the parties;
- (c) The average consumer prices for goods and services, commonly known as the cost of living;
- (d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and
- (e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. . . .

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

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

ISSUES

In the Executive Director's April 7, 2010 letter, the following issues were certified for interest arbitration:

1. Article 8.2.3 – Overtime Assignment
2. Article 8.10.1 – Specialty/Trainer Pay
3. Article 9.4 – Health and Welfare
4. Article 12.1 – Seniority Standing
5. Article 12.2 – Layoff

6. Article 16.1 – Duration of Agreement
7. Article 17.1 – Appendix A, Seniority Dates
8. Article 18.1 – Appendix B, Salary Schedule

Prior to hearing, the parties resolved several of the certified issues. The employer agreed to the union's proposal concerning Article 8.2.3, and further agreed that the Washington Teamsters Welfare Trust would be retained for bargaining unit employees. While resolving the issue of which insurance plan would be available for bargaining unit employees, the parties could not agree on the appropriate rate of insurance plan contribution, and that issue was presented at hearing. The parties also reached agreement on seniority issues in Article 12 (both Article 12.1 and 12.2) and in Article 17.1. Accordingly, the hearing was limited to the following contractual articles:

1. Article 8.10.1 – Specialty/Trainer Pay
2. Article 9.4 – Health and Welfare (pertaining to the contribution amount)
3. Article 16.1 – Duration of Agreement
4. Article 18.1 – Appendix B, Salary Schedule

POSITIONS OF THE PARTIES ON ISSUES IN DISPUTE

Article 8.10.1 – Specialty/Trainer Pay

Employer – Reject Specialty/Trainer Pay for Correctional Sergeants

Union – Pay Specialty/Trainer Pay for Correctional Sergeants at same rate as other uniformed bargaining units receive

Article 9.4 – Health and Welfare

Employer – Cap amount to be paid for medical insurance at a fixed amount and have the employees absorb all cost increases above the fixed contribution.

Union – Maintain existing formula with the employer paying 95% of all insurance premium increases and employees picking up 5% of all increases.

Article 16.1 – Duration

Employer – Two year agreement.

Union – Allow the Arbitrator to determine the appropriate length of the agreement based on terms set in the award.

Appendix A – Salaries

Employer – No increase in compensation for term of the agreement.

Union – Maintain existing CPI formula, as supported by the union's comparables.

THE LEWIS COUNTY CORRECTIONAL FACILITYLewis County's Organization and Budget Issues

Lewis County provides a number of municipal services for its residents. Under the general policy direction of an elected three member Board of County Commissioners, services are provided through a number of county departments. Each department is under the direction of a department head and provides specific programs within respective jurisdictions.

The employer receives its operating funds from a variety of sources, including licensure and permitting, charges for services, taxes, and intergovernmental payments. Once funds are received, they are directed to specific portions of the employers' budget in such areas as capital improvements. Operating funds dealing with general expenditures such as salaries and benefits are derived from the employer's current expense fund.

Lewis County has experienced a decrease in revenue. The employer presented evidence that the 2009 budget was constructed with estimated revenue of approximately \$34 million. As the year progressed, it was determined that the actual revenue would be closer to \$32 million. The revenue shortfall occurred from the decline of such revenue sources as the forest excise tax, sales and use tax, investment interest, and jail inmate revenue.

At the same time that the county's revenue decreased, its expenditure obligations remained constant. In the 2009 budget cycle, the employer took steps to reduce expenditures, but it was required to use reserves to meet its financial obligations. Among other steps taken to reduce expenditures, the employer eliminated 17.88 positions from its payroll. Expenditure reductions continued in the 2010 budget, including the elimination of another 10.34 positions.

The Correctional Facility

Of particular interest to these proceedings, the employer operates the Lewis County Correctional Facility. Built in 2004, the county jail can hold as many as 356 inmates. The jail was built with extra capacity to absorb inmates from nearby counties and the state corrections system. Those inmates would be housed in the Lewis County facility at a contract rate reached between the employer and the entities needing to transfer inmates to Lewis County. For a short time after the Lewis County facility opened, the jail operated near capacity, but census figures have steadily declined, and in October 2010, the facility's daily census stood at 196 inmates.

At the time of hearing, the corrections facility budget was \$6.1 million dollars, of which \$4.2 million was directed toward personnel costs. Under the command of Corrections Chief Kevin Hanson, 46 uniformed personnel serve in the county's correctional facility: 40 Corrections Officers and six Corrections Sergeants. The Corrections Officers are represented for purposes of collective bargaining by the Lewis County Corrections Guild. Corrections Sergeants are represented by Teamsters Local 252.

Subject to civil service rules, corrections officer candidates go through written, oral, and physical tests as well as background checks before they are employed. Once employed with Lewis County, corrections officers serve a one-year probationary period. During the first six months of employment, new corrections officers attend a four-week corrections officer academy, offered in Burien, Washington. In addition to the corrections officer academy, new corrections officers receive additional training while on the job at the Lewis County Corrections Center through a 12 week "FTO" (Field Training Officer) program.

Corrections Officers and Corrections Sergeants may serve as FTOs, but at the time of hearing no Corrections Sergeants held an FTO position. The FTOs instruct on subjects including defensive tactics, first aid, defensive driving, and firearms safety. The FTO program familiarizes new corrections officers with department policies and practices, and gives the new officers a detailed introduction to the kind of work that they will be performing. FTOs drawn from the Corrections Officers bargaining unit are paid a premium for their FTO work. Corrections Sergeants serving as FTOs do not receive a premium.

The bargaining unit involved in this dispute consists of supervisory employees of the Lewis County Corrections Department holding the rank of Corrections Sergeant. Sergeants are typically promoted from the Corrections Officer bargaining unit. A successful applicant for the sergeant position must have a two-year degree or the equivalent number of college credits. Within the first six months of their promotion, sergeants undertake a 40 hour "First Level Supervisor Course." The record reflects that the sergeants are not required to take any other formal training after the 40 hour course is completed.

The sergeants direct corrections officers under their command, and they, in turn, report to Corrections Lieutenants. The lieutenants report to Corrections Chief Kevin Hansen. At the time of hearing, there were six sergeants in the correctional facility. Each sergeant supervises the work of six to eight officers. Chief Hansen testified that the employer has had difficulty filling officer positions, but has never had difficulty recruiting for the position of sergeant. In most cases, the sergeant position is filled by promotion from the officer ranks. Four of the six sergeants live in the geographic boundaries of Lewis County.

COMPARABILITY AND OTHER ECONOMIC ISSUES

One of the primary "standards or guidelines" found in RCW 41.56.465 upon which an Arbitrator must rely in reaching a decision is a "comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States."

In this case, both parties presented sets of jurisdictions deemed to be "comparable" to Lewis County. However, the employer also presented a number of other factors that it wanted the Arbitrator to consider in determining comparability and fashioning an award. These factors included concern about internal comparability between the sergeants bargaining unit and the rest of the employer's workforce, as well as the County's ability to pay for any increase in wage or insurance compensation. Given the nature of the arguments presented, it is necessary to present each party's assessment of comparability, internal equity, and ability to pay before analyzing the issues in dispute.

The Employer

In developing its arguments concerning its economic condition, the employer engaged the services of Dr. Kenneth Duft, Professor Emeritus of Economics at Washington State University and Visiting Professor at the University of Idaho. Professor Duft provided a detailed analysis of Lewis County's general economic condition, using the indicators of population, total personal income, per capita income, employment, total industry earnings, average earnings per job, derivation of personal income by major component source and employment by industrial sector. Applying these economic factors, Professor Duft concluded that Lewis County's economy has been in a downward spiral since 1980. In fact, Professor Duft stated that the county's total employment base has been eroding since 1980, and has never recovered to pre-1980 levels.

Professor Duft noted that a third of personal income in Lewis County is derived from some kind of government assistance, either in the form of food assistance or direct monetary payments. No other county in western Washington has such a high percentage. Professor Duft also noted that the county's overall population has been stagnant since 1980, while the rest of western Washington has continued to grow at a steady pace during the same period. Dr. Duft concluded that the county's lack of economic opportunities directly impacted population growth. Turning to the issues presented in this matter, Dr. Duft concluded that the lack of solid economic and population growth directly affected the employer's ability to raise revenue through the collection of taxes.

This assessment of the County's economic health explains why the employer believed that it could not grant wage increases in the latest round of collective bargaining. It also helps explain the employer's argument that comparable jurisdictions could not be found in western Washington alone and that the Arbitrator must consider several jurisdictions in eastern Washington.

Comparable Jurisdictions –

The parties have profoundly different views of what jurisdictions should be considered "comparable," as well as how much weight should be given to "external" comparables. The

County contends that the parties have never had an agreed list of comparable jurisdictions, and proposes to use the following counties:

1. Clallam County
2. Cowlitz County
3. Franklin County
4. Grant County
5. Grays Harbor County
6. Mason County
7. Okanogan County
8. Stevens County
9. Walla Walla County

In determining which jurisdictions to include as “comparable,” the employer applied seven economic indicators:

- assessed property values,
- population,
- median household income,
- median home price,
- cost of living,
- unemployment rate, and
- State of Washington *per diem* expense reimbursement allowance in the different counties.

In addition, the employer analyzed two factors dealing specifically with the operation of a jail facility; Jail capacity and actual jail population.

The employer maintained that the nine above-listed jurisdictions fall in a range of 50% to 150% of Lewis County in the application of the seven economic indicators. Five of the employer’s proposed comparable counties are located in eastern Washington (Franklin, Grant, Okanogan, Stevens and Walla Walla). The employer argued that it is necessary to “pierce the Cascade Curtain” to find jurisdictions that are more comparable to the economic situation found in Lewis County.

The employer maintained that it could not find truly comparable jurisdictions by limiting its analysis to western Washington. The employer rejected the list of comparables put forward by

the union because those jurisdictions did not face the serious economic conditions found in Lewis County. The employer noted the union's reliance on western Washington jurisdictions created an artificial set of comparables that did not correlate with Lewis County in a number of important categories including assessed property values, per capita income, unemployment rate, and median home prices.

Ability to Pay –

Regardless of which jurisdictions are found to be “comparable” to Lewis County, the employer argued that it did not have the ability to pay for any salary or benefit increases. The employer noted that it must keep a balanced budget and cannot run a deficit. Given the difficult economic times, the employer maintained that it had limited resources to maintain essential services, let alone grant increases in wages and medical premium payments.

Emphasizing the factors set forth by Dr. Duft, the county's Budget/Financial Director Dawna Truman testified that the employer has made a number of deep expenditure cuts. She noted that despite the cuts, Lewis County was spending money at a faster pace than its revenue sources could support. Truman estimated that the employer would soon have to reduce its cash reserves below the \$5,000,000 mark, which would put the county in the position of needing to take out “tax anticipation loans” every year.

In addition, Truman testified that the employer's overall personnel expenditures were rising, despite efforts to reduce such costs. To support this conclusion, Truman noted that Lewis County spent 62% of its current expense budget on salaries and benefits in 2007, and spent 67% of its current expense budget on salaries and benefits in 2009. At the same time, overall expenditures from the current expense budget decreased by approximately \$2,000,000.

While other county departments funded from the current expense account have been cut, the Correctional Facility's budget actually rose over two percent. Given the continuing shortfall in revenue, the employer argues that it must take steps to control expenditures in the Correctional Facility's budget. Since personnel costs amount to more than two-thirds of the facility's budget, the employer contends that it must curtail such costs if it is to remain solvent.

Given the poor economic climate and its difficulty raising new revenues, the employer concluded that its ability to pay arguments are not speculative or theoretical, but are real and immediate. In its closing brief, the employer noted that arbitrators have routinely rejected an ability to pay argument where it can be shown that the public employer has not "drawn down" reserve funds. In this case, Lewis County has used reserve funds, and this bolsters the employer's contention that its financial condition is dire.

Internal Comparability –

In addition to the Corrections Sergeants unit, the employer negotiates with at least 11 other bargaining units. The Deputy Sheriffs unit and the Correctional Officer unit are both eligible for interest arbitration. The remaining nine bargaining units are not. The employer noted that the nine non-interest arbitration eligible units have already settled on collective bargaining agreements that do not contain any cost of living or other pay increases in 2011. The Deputy Sheriffs unit voted to defer a negotiated 2% cost of living increase for 2010 because of the employer's difficult economic position.

With respect to insurance premium increases, the employer noted that all non-interest arbitration eligible bargaining units have agreed to convert from a "percentage of premium" approach to a "fixed dollar" model. Under the "percentage of premium" approach, the employer generally was responsible for 95% of insurance costs, with employees picking up the remaining five per cent (in several bargaining units, the percentages worked out to be 97% for the employer and three per cent for the employees). Following the "fixed dollar" approach, the employer's insurance contribution was "capped" at a set amount, with employees paying the remaining premium costs.

The employer maintained that the Arbitrator must acknowledge these employee contributions and economic sacrifices in fashioning an award in this matter. The employer argued that the other units' acceptance of a 0% increase should be considered the best evidence of what the parties would have bargained for, and must be considered dispositive in the fashioning of an award in this case. The employer concluded that it would be unfair for so many employees to take affirmative steps to help correct the budget problem while other groups did not.

Field Training Officer Pay –

The employer argued that it could not justify Field Training Officer (FTO) pay for several reasons. First, the employer contended that it would not make sense to increase compensation by creating this specialty pay while trying to maintain a very conservative fiscal position. Second, the employer maintained that FTO pay would be almost meaningless because Corrections Sergeants very rarely perform training that would be eligible for FTO pay. The County noted that the Corrections Sergeants do a variety of staff training work as a regular part of their duties, and it would not be appropriate to create a specialty pay for work already being performed as a regular part of their job duties.

Duration –

The employer argued that the collective bargaining agreement should be two years in duration, with no monetary increases in wages or insurance benefit payments. The employer maintained that it needed the stability of a two year contract to deal with the difficult economic times that it was experiencing. The employer concluded by arguing that there was really no logical end in sight for its economy to improve, and that a two year “no-new costs” contract was appropriate in the setting presented here.

The Union

Comparable Jurisdictions –

The union disagreed with the employer’s list of proposed comparables and the employer’s methodology for selecting them. The union noted that the parties have discussed comparability through the course of numerous collective bargaining agreements, and proposed that the following jurisdictions met the statutory requirements for comparability:

1. Island County
2. Clallam County
3. Grays Harbor County
4. Cowlitz County
5. Mason County
6. Skagit County

The union noted that its proposed set of comparables fit within the "50/150%" range in the core areas of population, assessed valuation and per capita sales tax. The union further argued that its reliance on these comparables was in line with the historical pattern followed by the parties in earlier negotiations. Each of the proposed comparables is located near a large metropolitan economic center. While Lewis County may be rural in nature, its cost of living is impacted by its proximity to Thurston, Pierce, and King County to the north and Clark County to the south.

Reliance on western Washington comparables also focuses the proceedings on the labor market that Lewis County must compete in to find employees. The union noted that the employer did not make any connection in its proposed list of eastern Washington counties to recruitment for Correction Sergeants. In addition, the union challenged the employer's list of proposed jurisdictions by noting that four of them do not qualify for interest arbitration because their population does not meet the statutory minimum set forth in RCW 41.56.030.(14)(b): Okanogan County, Mason County, Stevens County, and Walla Walla County.

The union further contended that the employer never presented any of the collective bargaining agreements in effect for any of the eastern Washington counties, so it would be impossible for the Arbitrator to determine how much, if any, weight should be given to any of the disputed jurisdictions. Mere listing of wages and insurance benefit rates from the eastern Washington counties is not instructive because those factors cannot be analyzed without understanding what other terms and conditions are found in the various collective bargaining agreements.

The union also questioned the validity of information provided by the employer. The union noted that in several instances, the employer's summary wage and benefit document did not contain the same amounts found in the actual collective bargaining agreements from other counties. For example, the employer represented that the monthly base wage for a 10 year officer in Mason County was \$4,514.00. The wage addendum from the Mason County collective bargaining agreement sets the base wage as \$4,803.00 per month. A similar discrepancy was noted for salaries in Skagit County. The employer stated that the base wage for a Skagit County officer was \$4,615.00 while the collective bargaining agreement sets the base wage as \$5,564.00. In addition, the union noted that the employer did not present accurate information about

insurance benefit payments, sometimes comparing the amount to be paid for a single employee against the amount that the employer would have to pay for full family insurance coverage.

The union urged the Arbitrator to adopt its set of comparable jurisdictions and to reject the employer's proposed comparables because the employer did not present the kind of reliable and meaningful information needed to resolve the present dispute. The union noted that it used comparables from the immediate geographic area that reflected the reality of Lewis County's place in the local labor market.

The union noted that comparison of Corrections Sergeants in Lewis County with similar positions in the comparable counties presented showed that Lewis County personnel are last among comparables in wages paid. The same result occurred if the analysis focused on wages alone, or as part of the "total cost of compensation" model. The union argued that the employer's attempt to impose a wage freeze was inconsistent with a long history of cost of living increases negotiated between the parties. The union also argued that all of its proposed comparables granted some kind of cost of living increase, as evidenced by the collective bargaining agreements presented as evidence at hearing as follows:

- Clallam County – 90% of CPI-W
- Cowlitz County – 80% of CPI-W
- Grays Harbor County – 100% of CPI-U, within a range from two to five percent
- Skagit County – 4% COLA
- Mason County – No specific amount but a commitment to re-open the contract to "keep salaries current"
- Island County – The parties have not finalized a collective bargaining agreement for several years, but have improved wage rates by separate letter of understanding.

Ability to Pay –

The union asked the Arbitrator to reject the employer's ability to pay arguments. The union asserted that the employer had the burden of proving that it had an inability to increase wage rates and insurance contribution, but failed to do so. The union argued that the employer's attempt to tie its difficulty in balancing its budget to a general downturn in the nation's economy is simplistic and misguided. The union pointed out that the employer's economic expert Dr. Duft testified that the national economic downturn affected all counties, regardless of geographic location.

The union asserted that since the national economic downturn began in 2008, several interest arbitration awards have been issued that referred to difficult economic times but did not rely on the economic downturn to deny wage increases. The union contended that the Arbitrator must follow the statutory criteria to determine the appropriate award in this case.

Turning to the employer's arguments concerning its budget, the union noted that Lewis County is still above its self-imposed budget minimums. The union urged the Arbitrator to reject the employer's arguments about its budget and to focus on the statutory criteria for interest arbitration cases.

Internal Comparability –

The union made similar challenges to the employer's arguments about internal comparability. As an example, the union argued that the employer's position concerning medical insurance premium payments did not show that there was a real "internal comparable" that should be considered in this case. The union noted that the employer had traditionally agreed to a "95/5" benefit payment increase formula, with the employer absorbing 95% of an increase, and employees paying 5% of any increase. The employer would now change that arrangement by setting a dollar limit on its contribution with employees paying any and all amounts above the set amount. While agreeing with the employer that a majority of bargaining units have agreed to the "hard cap," the union noted that the interest arbitration-eligible bargaining units did not agree to such a limitation on insurance premium payments. Accordingly, the union contended that the Arbitrator should not give weight to the non-interest arbitration settlements, but should focus on the interest arbitration-eligible units as the only "comparable" groups within the employer's various bargaining relationships. The union asks the Arbitrator to maintain the traditional 95/5 formula for insurance premium increases.

Field Training Officer Pay –

The union maintained that its request for increasing Field Training Officer (FTO) pay from 80 cents per hour to \$2.00 an hour for its bargaining unit members was actually a matter of internal equity. The union noted that the employer's other interest arbitration eligible bargaining units already receive FTO pay at the \$2.00 rate, and that the instant request would bring the Sergeants'

unit to a level of parity among its other Lewis County law enforcement colleagues. As to the employer's argument that very few training opportunities would qualify for payment, the union argued that this would indicate that the proposal would be "cost neutral," and that the employer should not have economic concerns in implementing FTO pay.

Duration –

The union did not specify any particular duration for the collective bargaining agreement that would go into effect as a result of this award. The union noted that duration is often determined by the terms of the agreement, with lower wage and benefit improvements often balanced by a shorter contractual term. The union concluded by asking the Arbitrator to set an appropriate contract duration based on the contents of the award issued.

ANALYSIS

The parties have presented two very different cases for the Arbitrator to consider. The union presented a "traditional" case, relying primarily on a set of external comparables to prove that the Corrections Sergeants should be granted a cost of living adjustment, an increase in a specialty pay, and maintenance of the existing formula for insurance benefit payments. The employer, while providing a set of proposed comparable jurisdictions, relied primarily on an "ability to pay" argument, noting that internal comparables supported its position that it could not grant any wage increase, it could not provide any additional funds for specialty pay, and it had to adjust the existing medical insurance premium payment from a formula to a "hard cap" for county contributions. I have reviewed a number of interest arbitration awards issued in Washington State, and it is evident that this case represents a profound difference of opinion concerning the use of traditional comparables as balanced against an employer's ability to pay for any changes to a collective bargaining agreement.

Ability to Pay

Arbitrators have been asked to consider an employer's "ability to pay" in a number of reported arbitration awards. See *Clark County*, PERC Case 11845-I-92-252 (1996, Axon) and *King County*, PERC Case 21957-I-08-519 (2009, Lankford). As noted in *Pierce County*, PERC Case 22679-I-09-539 (2010, Krebs), ability to pay is of particular interest during the current economic

difficulties faced by cities and counties. As Arbitrator Alan Krebs explained about Pierce County's situation:

The severe recession this country has experienced over the past several years has had a particularly adverse effect on the County's finances. Property taxes are obviously negatively affected by the decreases in assessed valuations and new construction which the County has experienced in recent years. The County's interest income has diminished considerably as interest rates plummeted.

While Lewis County's particular situation is different from the economic situation experienced in Pierce County, it shares the effects of a serious economic downturn. The Arbitrator acknowledges that the employer must balance its budget and has faced expenditure reductions involving a number of county departments and programs. As noted by Budget/Financial Director Truman, Lewis County is nearing the \$5,000,000 reserve level, and falling below that level would create further uncertainty as to whether the employer would be able to meet its financial obligations. Lewis County's situation is exacerbated because its local economy is supported by outside sources, such as state and federal grants and subsidies. For the foreseeable future, Lewis County is going to suffer the effects of the national economic downturn, and it appears that it will recover at a slower rate than other counties in western Washington.

Lewis County's poor economic condition, particularly its falling revenues and resulting layoffs, must be remembered when determining the appropriate compensation levels for the Corrections Sergeants. However, analysis cannot stop at that point. The employer would have the Arbitrator acknowledge its difficult economic circumstances and use that unfortunate turn of events as the primary, if not only, factor in fashioning an award. Such an analytical model is not appropriate, and would not meet the comparability requirements set forth in RCW 41.56.465. While the Arbitrator should consider the employer's economic condition as a factor to be applied, it is not the only factor to be considered and must be analyzed in light of the statutory factors. As Arbitrator Timothy Williams stated in *City of Longview*, PERC Case 21899-I-08-515 (Williams, 2009):

Ultimately, the Arbitrator set aside his trepidation, focused on the statutory criteria and notes that for most all of the comparators wages and benefits are already set through the year 2011. This award is, in the arbitrator's view,

consistent with the terms and conditions set forth in labor agreements of the comparators. Hopefully actions taken at the national and state level will continue to have a positive impact on the economy and business can return to a more steady state. Clearly this award contains some of the optimism found in that statement.

Comparable Jurisdictions

The interest arbitration process anticipates that awards will be issued on the basis of comparability. The interest arbitration process anticipates that comparability should be analyzed as one of the major factors in determining an award. The award must make sense in the context of wages, hours and conditions of employment enjoyed by other jurisdictions found to be “comparable” to the employer at issue in the immediate proceeding. As noted by Arbitrator Krebs in *Pierce County*:

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

Examination of many interest arbitration awards clearly shows that arbitrators have followed the instructions found in RCW 41.56.465(2) when determining an appropriate interest arbitration award:

For employees listed in RCW 41.56.030(14) (a) through (d), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of *like personnel of like employers of similar size* on the west coast of the United States.

(emphasis added).

The statute requires an arbitrator to make two separate inquiries: how to determine who are “like personnel” and which jurisdictions are “like employers of similar size.” Given the arguments presented in this case, it is appropriate to analyze the second element first. Traditionally, “like employers of similar size” focuses on such factors as assessed valuation, population, and proximity to metropolitan centers. While those factors are important, there is a statutory requirement that must be discussed first. In relevant part, RCW 41.56.030(14) defines employees eligible for interest arbitration in the following terms:

“Uniformed personnel” means . . . (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(9), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates. . . .

In this case, the employer asks that Okanogan County, Mason County, Stevens County and Walla Walla County be considered to be comparable. The union also provided Mason County as a proposed comparable. I must conclude that those counties are not comparable because they do not meet the population threshold needed to invoke interest arbitration.

It is not enough to share similar economic factors. To be comparable, jurisdictions must also have common dispute resolution procedures available to them. Trying to compare interest arbitration-eligible jurisdictions to non-interest arbitration-eligible jurisdictions does not allow meaningful analysis of wages, hours and working conditions found in collective bargaining agreements in either type of jurisdiction. Collective bargaining relationships are influenced by the presence of interest arbitration, and bargaining results can vary dramatically between interest arbitration-eligible and non-interest arbitration-eligible jurisdictions.

If jurisdictions are to be considered comparable, they must also be comparable in their access to interest arbitration. Given that Okanogan County, Mason County, Stevens County and Walla Walla County are not eligible for interest arbitration, they will not be considered as comparables

in this case. Having eliminated the non-interest arbitration jurisdictions, the remaining jurisdictions provide an appropriate basis for comparability:

- Clallam County
- Cowlitz County
- Franklin County
- Grant County
- Grays Harbor County
- Island County
- Skagit County

All of these counties fall within the range of 50 – 150% of Lewis County in population, assessed valuation, median household income, and cost of living. While the union opposed using any eastern Washington jurisdictions, the inclusion of Franklin County and Grant County is appropriate, given their similarity in the comparability factors listed above. The comparables reflect proximity to larger population centers while acknowledging their rural and suburban roots.

Comparison of the listed comparable jurisdictions reflects that a cost of living increase is appropriate for the Corrections Sergeants. While the employer argues that it does not have funds to award any wage increases, analysis of the statutory criteria shows that granting the Lewis County bargaining unit a cost of living increase is supported by wage increases granted in comparable jurisdictions. In addition, the Corrections Sergeant bargaining unit would not change in its relative position within the comparables by granting a cost of living increase.

Accordingly, I will award a cost of living adjustment based on the same formula that has been used by the parties in the past. I must emphasize that this is not a salary increase over and above what has been negotiated in the past, and is in line with the range of increases found in the comparable jurisdictions. The proposed cost of living adjustment is also in line with the increases granted by comparable jurisdictions, and does not move the Lewis County group within the comparables' list.

In making this award, I am aware of the internal equity arguments made by the employer. I acknowledge that a number of groups have settled for "no increase" contracts, but it should also be noted that those units are not eligible for interest arbitration, and the only other interest arbitration-eligible jail unit has just begun the hearing process and a final award has not yet been received. The employer's argument concerning internal arbitration would have been much more persuasive if the other interest arbitration-eligible jail unit had settled for no monetary increase.

In addition to the wage issue, medical insurance increases must be analyzed in the context of the comparable jurisdictions. While none of the jurisdictions approach the insurance issue in an identical way, none of the approaches are markedly different from the approach proposed by the union in this case. Maintenance of the formula used to determine how the parties must pay for insurance coverage is not out of line with any of the comparable jurisdictions and should be continued for the term of the new collective bargaining agreement.

Turning to the issue of Field Training Officer (FTO), the comparable jurisdictions do not have precise matches with the situation presented in Lewis County. The union argued that its proposed increase in FTO rates would be appropriate in light of a higher rate already enjoyed by the Correctional Officer bargaining unit. Absent some showing that the Correctional Sergeant bargaining unit is falling behind its comparable jurisdictions, an increase in compensation is not called for, and it will not be ordered here. In addition, the employer presented substantial evidence that the Correctional Sergeants have always performed training duties as part of their normal work. It appears that the denial of increasing FTO pay would not create any meaningful hardship for the Correctional Sergeants and an increase will not be awarded.

Finally, the issue of duration must be addressed. While the Arbitrator acknowledges that the parties face uncertain economic times, a shorter contract duration will allow them to address those uncertainties in a more timely manner. Accordingly, a two year contract shall be awarded in this case, to be effective from January 1, 2010, through December 31, 2011.

AWARD

Based on the foregoing and the record as a whole, the Arbitrator makes the following Interest Arbitration Award:

Wages: Effective January 1, 2010, the 2010 salary schedule shall be increased by an amount equal to the August 2008-2009 All U. S. Cities CPI-W. Such salary increase shall be a minimum of 1% up to a maximum of 3%.

Effective January 1, 2011, the 2011 salary schedule shall be increased by an amount equal to the August 2009-2010 All U. S. Cities CPI-W. Such salary increase shall be a minimum of 1% up to a maximum of 3%.

Medical Insurance: Medical premiums shall be paid using the existing formula with the employer paying 95% of any premium increase and employees paying 5% of any premium increase.

FTO Pay: Field Training Officer pay will be maintained at existing amounts.

Duration: The collective bargaining agreement will be in effect from January 1, 2010 through December 31, 2011.

DATED at Olympia, Washington this 23rd day of February, 2011.



KENNETH J. LATSCH, Arbitrator