BEFORE THE NEUTRAL ARBITRATOR

In the Matter of the Interest Arbitration Between	)	
Energy Northwest	)	
the Employer	)	**ARBITRATOR'S AWARD**
and	)	
United Steel Workers' Union, Local 12-369	)	PERC No. 19012-I-04-0442
the Union	)	

Appearances:

For the Employer:
Otto Klein
Summit Law Group
315 Fifth Ave. S., Suite 1000
Seattle, WA 98104

For the Union:
Ken Pedersen
Reid, Pedersen, McCarthy and Ballew, L.L.P.
101 Elliott Ave. W., Ste 505
Seattle, WA 98119

Neutral Arbitrator:
Jane Wilkinson
Attorney and Arbitrator
PMB 211
3 Monroe Pkwy., Ste. P
Lake Oswego, OR 97035

Date of Award: March 6, 2006

WITNESS LIST

For the Union:

Leon Howard, NSO and Union Steward
Richard Mack, Professor of Economics at Central Washington University
Randy S. Long, NSO and Union Steward

For the Employer:

Vic Parrish, Chief Executive Officer and Chief Nuclear Officer of ENW
David Orcutt, Labor Relations Program Manager,
Julie Marboe, HR staff employee
Jim Fisher, Security Captain
Chuck Forrester, Security Force Supervisor
Jeff Gloyn, Supervisor Security Support

EXHIBIT LIST

Union Exhibits:

1. Collective Bargaining Agreement, 1999-2002
2. Columbia Generating Station information
3. Site maps and photographs (17 documents)
4. List of qualifications for the NSO position
5. 10 C.F.R. §73.1 and 73.2 , NRC regulations
6. Professor Richard Mack resume
7. Timothy Dittmer resume
8. Wage Comparability Study for United Steelworkers Local 12-369/Energy Northwest Interest Arbitration, prepared by Dr. Richard Mack and Dr. Timothy Dittmer
9. Collective Bargaining Agreement between AKAL Security, Inc and UGSOA, Local 133
10. Historical Perspective for Energy-Northwest Nuclear Security Force
11. Energy Northwest Administrative Procedure Manual, on "Personal Time and Disability Management," October 23, 2003
12. Videotape: "Systems Under Fire Protecting Facilities in the Age of Terrorism"
13. 2000 Labor Agreement between Fluor Hanford, Inc. and Hanford Guards Union, Local 21
14. CCO, RPO and Watchperson Security Collective Bargaining Agreement between Energy Northwest and PACE Local 8-369
15. Collective Bargaining Agreement between Energy NW and IBEW Local 77, 2001-04 (excerpts)
16. Incentive compensation received by exempt employees of ENW, 2000-2003
17. Collective Bargaining Agreement between WPPSS and IBEW Local 77, 1985-1988
18. Article from TriCity Herald on Umatilla Depot, December 16, 2005
19. Security Force 12-Hour Shift Schedule for 2003

Employer Exhibits:

Unnumbered:

- Expired Collective Bargaining Agreement (1999-2002) (Same as Exh. U-1)
- PERC Certification & Ruling for Interest Arbitration (also included with Union's proposals submitted prehearing)
- RCW 41.56
- Energy Northwest Proposals
- Agreed (TA'd) Items
- Collective Bargaining Agreements
    - ENW and CCOs, 2005-2008

- ENW and CCOs, 2003-2005
- ENW and IBEW Local 77, 2001-2004

Exhibit A Series - Bargaining Unit Information

A.1. Staffing roster showing the four squads and employees on each squad
A.2 Letter of Agreement with Union on temporary employees with more than six months but less than two years of service
A.3. Bargaining unit seniority list
A.4. Chart showing number of NSOs, 2000 - 2005
A.5. (No Exhibit)
A.6. NSO Turnover (2000-2005) showing two resignations
A.7. NSO Voluntary resignations by year, showing one in 2004 and one in 2005
A.8. NSO New Hires since 9/11/01
A.9. 2002 NSO Total Compensation
A.10. 2003 NSO Total Compensation
A.11 2004 NSO Total Compensation
A.12. Potential Incentive Payouts to bargaining unit
A.13. Actual Incentive Payouts, 2002-2004
A.14. 2002 NSO Incentive Pay by employee
A.15. 2003 NSO Incentive Pay by employee
A.16. 2004 NSO Incentive Pay by employee
A.17. Historical Data on Employee Incentive Plan Payouts
A.18. 2003 Employee Incentive Program Plan Document
A.19. Memorandum on 2004 Employee Incentive Program Plan Document, August 20, 2003
A.20. 2004 Employee Incentive Program Plan Document (Draft)
A.21. 2005 Employee Incentive Program Plan Document

Exhibit B Series - Need to Reduce Costs

B.1. FY05 Budget Status and Actions, March 10, 2003
B.2. Cost Competitiveness Project - Designed to Identify and Realize Cost Reduction Opportunities, January 26, 2005
B.3. Slides on cost cutting objectives shown to BOD and employees
B.4. Memorandum from A.E. Mouncer, VP Corporate Services/General Counsel/CFO, November 1, 2005 re: FY-07 Budget Call Letter and Schedule
B.5. Energy Northwest Reductions in Force graphs showing a reduction of 203 positions between April 2004 and July 2005
B.6. Graphs showing changes in labor costs as a result of 9/11
B.7. Fy06 Budget Challenges
B.8. Tri-City Herald, April 7, 2005, articles on ENW layoffs

Exhibit C Series: Wages

C.1. Bargaining Unit Comparisons
C.2. Historical Comparisons between NSOs and CCOs
C.3. CCO Compensation by job title
C.4. 1998 Interest Arbitration Award involving “nuclear” bargaining unit, “Me, Too” Agreement, August 7, 1995
C.5. NSO Wage vs. CPI Increases (assuming management’s proposal is adopted) (assumes 100% US and Seattle CPI-W)
C.6. Timeline, 1994-2001
C.7. Table of interest arbitration awards since 1997
C.8 [Blank]
C.9. Impact of USW Proposal ($2,465,760 total over 3 years)
C.10. Occupational Employment and Wage Estimates for March 2005, Security Guards

C.11. Medical Insurance Premium Rates and Energy Northwest Contribution

Exhibit D Series: Other Employers

D.1. List of other employers:Diablo Canyon, Fluor Hanford, Idaho National Lab, Palo Verde, Umatilla Army Depot
D.2. Top Step Comparison, 2002
D.3 Top Step Comparison, including Incentive Pay, 2002
D.4. General Wage Increases (among comparators), 2003-2004
D.5. ACCRA Cost of Living Index, 1st Quarter 2005
D.6. Top Step Comparison Taking Into Account ACCRA Cost of Living, 2002
D.7. Top Step Including Incentive Comparison Taking Into Account ACCRA Cost of Living, 2002
D.8. Cost of Living Difference Between Jurisdictions as Measured by Homefair.com
D.9. Comparison Between Energy NW Nuclear Security Officer (NSO) and Fluor Hanford Security Police Officer 2 (SPO2), 2005

Exhibit E Series: CPI Data

E.1 Consumer Price Index by Average Annual % Increase
E.2. US Department of Labor, BLS, CPI information, November 16, 2005, U.S. City Average
E.3. US Department of Labor, BLS, CPI information, November 16, 2005, Seattle-Tacoma-Bremerton
E.4 US Department of Labor, BLS, News, December 15, 2005, CPI data

Exhibit F Series: Overtime

F.1 Employer Proposal
F.2 Internal Double Time Comparison - Language in other ENW Contracts

Exhibit G Series: Paid Time Off

G.1. Energy Northwest position on Personal Time Off
G.2. Total Annual Personal Time Days Accrued Per Year (IBEW, CCO and NSO compared)
G.3. Personal Time Off Annual Required Usage

Exhibit H Series: CAS/SAS Guidelines

H.1 Energy Northwest proposal
H.2. CAS/SAS - Need for Energy Northwest Proposal

Exhibit I Series: Stipends

I.1. Stipends: Current and ENW Proposal

Exhibit J Series: Shooting Pay

J.1 Energy Northwest's Proposal
J.2. Average Qualifications Scores, 1999-2002
J.3. 2004 Qualifications
J.4. Handgun Night Fire Course, 80%
J.5. Various e-mails

Exhibit K Series: Hours of Work

K.1. Employer proposals
K.2. [Blank]
K.3. Letter to R.L. Webring from NRC, October 23, 2003, on fatigue rules

I. PROCEEDINGS

This dispute, between Energy Northwest (ENW or the Employer) and United Steel Workers Union, Local 12-369 (the Union), concerns certain terms of a three-year labor agreement to take effect on November 1, 2002, and ending three years hence. The Union represents a bargaining unit of Nuclear Security Officers (NSOs). Although the parties tentatively agreed to most provisions of their new contract, they reached an impasse in their negotiations on several remaining proposals. Pursuant to RCW 41.56.450, those issues were certified for interest arbitration by the Public Employment Relations Commission (PERC)[1] and submitted to neutral Arbitrator Jane R. Wilkinson for resolution. The parties waived the RCW 41.56.450 provisions for a tri-partite panel. The Arbitrator conducted evidentiary hearings, in Richland, Washington, on December 21 and 22, 2005. Each party had the opportunity to present evidence, examine and cross-examine witnesses and argue its case. The Arbitrator received the parties' post-hearing briefs on February 10, 2006, and thereupon closed the hearing.[2]

II. ISSUES FOR DETERMINATION

The issues before the Arbitrator, as certified by the Executive Director of PERC, are as follows:

A. Wages (Section 9.1)

The Union proposed wage increases of twelve percent (12%) effective November 1,

---

[1] PERC Executive Director Marvin Schurke removed three bargaining issues from interest arbitration: NSO Disability/Access to CCO positions, Letter of Agreement: CCOs, RPOs, Watchpersons, and NSO Salary Continuance. These issues are not part of these proceedings.

At hearing, the parties agreed to a three-year term for its Collective Bargaining Agreement, thus removing that issue from the Arbitrator's consideration.

At the Union's request, the Arbitrator also notes for the record that the Union withdrew its proposal on Nuclear Security Officer salary continuation. The proposal was withdrawn without prejudice by the Union pending determination by the Executive Director of PERC on other removed issues.

[2] The Arbitrator reopened the hearing, by stipulations of the parties, to receive the Employer's argument on one issue (Hours of Work, Section 7.2.3), which the Employer submitted in the form of a letter dated February 28, 2006.

2002; ten percent (10%) effective November 1, 2003; and eight percent (8%) effective November 1, 2004.[3]

The Employer proposed a wage increase of three percent (3%) the first year of the contract, and two and one-half percent (2.5%) for each succeeding year of the three-year contract.

B. Personal Time – Hours (Section 5.1.1)

At present, an employee with more than ten (10) years of service is required to take at least one hundred sixty (160) hours of Personal Time per payroll year. The Union has proposed lowering the mandatory one hundred sixty (160) hours per payroll year for employees with more than ten (10) years of service to one hundred twenty (120) hours per payroll year.

The Employer opposes the Union's proposed change, and would leave the prior Collective Bargaining Agreement language on Personal Time unchanged.

C. Overtime (Section 7.2.2)

Section 7.2.2 (a)(1) provides that overtime be paid at one and one-half (1-1/2) times the straight time rate until total overtime hours exceed two hundred (200) in a payroll year. Hours over 200 are paid at double time. However, double-time compensated hours are not included in calculation of the 200 hour threshold. The Union proposes to include double-time compensated hours in calculation of the 200 hour threshold.

The Employer opposes this change and would retain the status quo.

D. Hours of Work (Section 7.2.3)

The Union has proposed that, in the event a Nuclear Security Officer works overtime due to an emergency or operational necessity (whether on a mandatory or volunteer basis) in a

---

[3] The prior Collective Bargaining Agreement expired on November 2, 2002. Therefore the Arbitrator assumes that the Union meant the effective dates to be November 3rd of each contract year.

situation in which the officer working would violate applicable Nuclear Regulatory Commission maximum hours, then said officer should be paid at his or her full regular pay, or the applicable overtime rate for time missed on the officer's next scheduled shift, without the officer being required to utilize personal time off or other benefit.

The Employer does not agree to this proposal and would retain the status quo.

E. CAS/SAS, RTL, OJT, SCC Stipends, Right of Selection (Section 9.1 Annotations)

The Union has proposed duty differentials as follows:

- CAS/SAS (Central Alarm Station/Secondary Alarm Station): five percent (5%);
- RTL (Response Team Leader): five percent (5%);
- OJT (On-The-Job-Trainer): five percent (5%);
- SCC (Security Communication Center): five percent (5%);
- Shooting Qualification Stipend —
  - Expert: three percent (3%);
  - Sharpshooter: two percent (2%);
  - Marksman: one percent (1%)
- Attachment CAS/SAS Guidelines: The Union proposes no change in this attachment.

The Employer opposes these increases and would retain the status quo, except that it:

- Would increase the CAS/SAS stipend to 2%, condition on receiving its "Right of Selection" language (below)
- Proposes the following language change (no change in pay) to the Section 9.1 language on shooting pay:

Handgun Day	50 rounds	
Handgun Night	20 rounds	
Rifle Day	20 rounds	
Rifle Night	20 rounds	
Rifle Night (Night Vision)	20 rounds	
Rifle Night (Thermal)	20 rounds	
TOTAL	150 rounds	
		Payout
Expert	95% 142-159 hits	$260
Sharpshooter	90% 135-141 hits	$208
Marksman	85% 127-134 hits	$156

In addition, the Employer proposes that language in the CAS/SAS Guidelines be deleted and the following "Right of Selection" language be inserted:

> In cases of promotion, transfer, and demotion of personnel, some or all of the following factors shall be considered in making an award: the employee's seniority, capabilities, physical and technical ability, previous work experience and work performance, performance in training programs, ability to direct and/or perform work in an efficient and productive manner, compatibility with other workers.

The Employer also proposes to delete "CAS/SAS Guideline Option 1" which is an addendum to the 1999-2002 labor agreement.

III. STATUTORY AUTHORITY AND CRITERIA

RCW 41.56.030(7), read in conjunction with RCW 41.56.430-.450, states that unresolved disputes concerning the terms and conditions of a collective bargaining agreement must be settled by interest arbitration when the affected bargaining unit is composed of "uniformed personnel," including (emphasis added):[4]

> (a) … (ii) beginning on July 1, 1997, law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more; (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(5), 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; (c) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; **(d) security forces established under RCW 43.52.520**; (e) fire fighters as that term is defined in RCW 41.26.030; (f) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other fire fighting duties; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer.

[4] RCW 43.52.520 authorizes a joint operating agency such as ENW to establish a nuclear security force:

> An operating agency constructing or operating a nuclear power plant under a site certificate issued under chapter 80.50 RCW may establish a security force for the protection and security of each nuclear power plant site exclusion area.

RCW 41.56.450 specifies the powers and duties of the interest arbitration panel:

> Uniformed personnel--Interest arbitration panel--Powers and duties--Hearings--Findings and determination. If an agreement has not been reached following a reasonable period of negotiations and mediation, and the executive director, upon the recommendation of the assigned mediator, finds that the parties remain at impasse, then an interest arbitration panel shall be created to resolve the dispute. The issues for determination by the arbitration panel shall be limited to the issues certified by the executive director. Within seven days following the issuance of the determination of the executive director, each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chairman of the arbitration panel. Upon the failure of the arbitrators to select a neutral chairman within seven days, the two appointed members shall use one of the two following options in the appointment of the third member, who shall act as chairman of the panel: (1) By mutual consent, the two appointed members may jointly request the commission, and the commission shall appoint a third member within two days of such request. Costs of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or (2) either party may apply to the commission, the federal mediation and conciliation service, or the American Arbitration Association to provide a list of five qualified arbitrators from which the neutral chairman shall be chosen. 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 arbitration panel so constituted shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice thereof to the parties to the dispute. A hearing, which shall be informal, shall be held, and each party shall have the opportunity to present evidence and make argument. No member of the arbitration panel may present the case for a party to the proceedings. The rules of evidence prevailing in judicial proceedings may be considered, but are not binding, and any oral testimony or documentary evidence or other data deemed relevant by the chairman of the arbitration panel may be received in evidence. A recording of the proceedings shall be taken. The arbitration panel has the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the panel to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitration panel, or refuses to be sworn or to make an affirmation to testify, or any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held hereunder, the arbitration panel may invoke the jurisdiction of the superior court in the county where the labor dispute exists, and the court has jurisdiction to issue an appropriate order. Any failure to obey the order may be punished by the court as a contempt thereof. The hearing conducted by the arbitration panel shall be concluded within twenty-five days following the selection or designation of the neutral chairman of the arbitration panel, unless the parties agree to a longer period.

> The neutral chairman shall consult with the other members of the arbitration panel, and, within thirty days following the conclusion of the hearing, the neutral chairman shall make written 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 upon 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. [1983 c 287 § 2; 1979 ex.s. c 184 § 2; 1975-'76 2nd ex.s. c 14 § 2; 1975 1st ex.s. c 296 § 29; 1973 c 131 § 4.]

RCW 41.56.452 states that an interest arbitration panel is a state agency and specifies

> An interest arbitration panel created pursuant to RCW 41.56.450, in the performance of its duties under chapter 41.56 RCW, exercises a state function and is, for the purposes of this chapter, a state agency. Chapter 34.05 RCW does not apply to proceedings before an interest arbitration panel under this chapter. [1983 c 287 § 3; 1980 c 87 § 19.]

In RCW 41.56.465, the Washington Legislature specified that the following criteria must be applied by interest arbitrator in a dispute over the terms of a new collective bargaining agreement:

> (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, 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 or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. For those employees listed in RCW 41.56.030(7)(a) who are employed by the governing body of a city or town with a population

of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living.

In resolving the issues in this dispute, whether or not fully articulated herein, the undersigned Arbitrator has been mindful of these criteria and has given consideration to all of the evidence and arguments presented by the parties relative to these criteria.

IV. BACKGROUND INFORMATION

A. The Energy Northwest Mission and Operation

Energy Northwest (ENW) is organized as a municipal corporation that functions as a joint operating agency for 19 public utilities located in the State of Washington. It operates the Columbia Generating Station (CGS), a 1157-megawatt nuclear powered boiling water reactor. In addition, ENW operates smaller power generation projects, including a wind farm (and another one whose construction has been approved) and an hydroelectric project. The power generated by ENW is sold to the Bonneville Power Administration (BPA), a federally organized entity that in turn sells power in the Pacific Northwest to local utilities and large private industrial users.

ENW is governed by three boards: a 19-member Board of Directors, a Participants' Review Board (they ultimately pay the bills), and an Executive Board composed of five members from the Board of Directors, three gubernatorial appointees, and three outsiders with utility experience.

The CGS is located within the boundaries of the Hanford reservation north of Richland, Washington. It comprises a larger "owner-controlled area (OCA)" and "a restricted area" within that larger perimeter.

Security, of course, is a major consideration at the CGS and this concern rose greatly after the events of September 11, 2001 (9/11). After 9/11, the Employer increased the security manpower hours significantly, resulting in approximately 65,000 hours of overtime for NSOs

until additional NSOs were added in 2002. The Employer has approximately doubled the number of NSOs since 9/11; presently, there are about 124 NSOs in the bargaining unit.

The Employer made capital improvements for security and purchased more robust new equipment and technology. NSOs were given additional equipment and training and procedures were changed. Exh. U-10 (at 4-9) describes 37 changes that affected NSOs training, skills and duties. These are discussed further below.

After 9/11, ENW made a number of physical changes to the CGS site, including the construction of a double concrete wall around the approximate five-mile perimeter of the OCA. A checkpoint (sometimes referred to by witnesses as a roadblock) was constructed just outside of the OCA barrier, along with an area where the barrier can be removed for emergency escape. Prior to 9/11, there was no barrier to entering the OCA. Employees simply parked in the parking lot and went to the walk-in security area.

Although no significant incident has occurred at the CGS and one hopes there will never be one, the security operation at the CGS always must be vigilant.

B. The Mission of NSOs

The primary mission of the NSOs is to prevent radiological sabotage; they are responsible for the safety of 250,000 people in the region. They control access to the CGS site and patrol the property and plant. They must be prepared for an attack, which means interposing themselves between the attackers and their objective. They are expected to risk their lives in the event of an attack in order to keep the facility safe. Because there has never been an attack, NSOs must avoid complacency. NSO Leon Howard testified NSOs play “mind games” to avoid the tedium, and they engage in practice drills and simulations of coordinated, serious attacks (called force on force drills). Both Howard and NSO Randy Long testified that the NRC conducted simulation exercises in 1998 and the defenders performed very well; as a result, the NSOs received the highest rating. In 2003, the Nuclear Regulatory Commission

(NRC) issued a Design Basis Threat directive to all nuclear power plants, resulting in an additional 120 to 160 training hours. The new training included such things as comprehensive firearms qualifications, tactical training and night training. ENW NSOs volunteered to be tested by the NRC on its new directives in May 2004. The ENW security force passed this graded exercise. The NSOs engaged in a similar exercise with the Fluor Hanford security guards in October 2005. This was a force-on-force exercise involving all security squads.

NSOs do not have the power of arrest, but they have detention powers. They are authorized to shoot to kill if necessary.

C. NSO Duties

NSOs work 12-hour shifts from 6 a.m. to 6 p.m., and from 6 p.m. to 6 a.m. NSOs change from day to night shift work, and vice-versa, every 28 days. The NSOs are organized into four working squads and about 25 or 26 employees are on duty on a shift.

All employees and visitors are first checked in at the roadblock checkpoint, which is staffed by three to six NSOs at the start of a shift; the number declines after that. NSOs check entering vehicles for explosives, use search mirrors for under-carriage inspection, do a random check of employee vehicles, and check employee badges. NSOs also must search delivery trucks. Regular delivery drivers are “badged” for the site and the date and time of deliveries is known in advance. Deliveries that include items for other customers are escorted by NSOs onto the site. The NSOs are not allowed to open the packaging for non-Energy NW customers; therefore the access of these kinds of delivery vehicles is closely monitored.

Before entering the facility itself, employees and visitors must go through a search area known officially as the Protected Area Access Point (PAAP). This area includes an explosives detector, a metal detector, and an airport-style x-ray machine for bags and shoes. The area is segregated from the rest of the facility by floor to ceiling turnstiles. Employees must present

their badges and hand geometry technology is used to open the turnstile. The security area is staffed by NSOs, with peak staffing occurring when employees arrive for work.

The NSOs maintain a primary monitoring station through a Central Alarm System (CAS) and Secondary Alarm System (SAS). NSOs are specifically assigned and trained to work as CAS/SAS operators. Since 9/11 the technology has changed considerably. Although the new technology was supposed to cut down on false alarms, in fact the number of false alarms has increased, while the CAS/SAS staffing has decreased. This contributes to a high stress level for employees assigned to the monitoring locations. CAS/SAS operators must obtain an initial certification and must re-certify annually. NSOs volunteer for this assignment; if there are insufficient volunteers (and this apparently occurs), then mandatory assignments are made to employees having more than a year of experience, in reverse order of seniority.

The communications center responsible for responding to a radiological event is called the Security Communication Center (SCC). Special training is given to NSOs assigned to this center. Volunteers are assigned to this duty, unless they are insufficient in number. These centers, however, are primarily staffed by a different bargaining unit, known as Communication Center Operators (CCOs).

Other duties of the NSOs include:

- Searching the two trains that go through the OCA each year.
- Searching and inspecting the spent fuel storage casks when delivered to the site and providing continuous monitoring of these casks with a combination of patrolling and watching monitors in the CAS/SAS center. This duty has existed since the first "outage" (when reactor fuel became spent fuel) in about 1985.
- Performing fire watches, which is something NSOs have always done, but the job has changed since 9/11, mostly in terms of equipment carried.
- Conducting foot patrols and vehicle patrols.
- Conducting 'fixed' controls within a BRE (bullet resistant enclosure), i.e., guard stations and towers.

The evidence was the fundamental duties of the NSO position did not change significantly after 9/11, but the equipment was upgraded, new technology was purchased, and new procedures were implemented, all of which affected the training and expected skill level for the position.

D. NSO Gear

In 2003, NSOs began to carry semi-automatic assault rifles, ammunition for those rifles, and a gas mask. They also continued to carry a side arm, a radio, pepper spray, an ammunition pouch (more ammo than pre-9/11), a flashlight, handcuffs and a Camelbak water pouch in warm weather. NSOs wear a camouflage uniform, helmet, safety glasses, and since 9/11, have had the option of wearing protective vests. The weight of the NSOs gear increased from 12 pounds pre-9/11 to 28 pounds post-9/11. Prior to 9/11, NSOs were allowed to wear shorts in hot weather. That is no longer the case.

E. NSO Training, Leadership Roles and Certifications

To be hired to the NSO position, one does not need a previously acquired skill-set or related experience. Instead, the Employer trains new hires in large part with on-the-job (OJT) training provided by experienced NSOs. The burden of OJT has been significant since 9/11 because the size of the security force has doubled since that date. Most OJT training takes place within 30 days of hire.

Some NSOs engage in another leadership role, that of Response Team Leaders, whose responsibly is to direct a team of NSOs in training exercise and in the event of an attack on the Columbia Generating Station. This is a volunteer assignment.

NSOs must meet the following criteria, some of which are recertified annually. Of the list below, most have been in existence since 1983, unless otherwise noted.

1. Respiratory written exam and a mask fit. There are other employee classifications that also are required to wear masks.

2. Annual physical medical, vision and hearing exam
3. Annual physical agility exam
4. Weapons Qualifications. Before 9/11, NSOs had “fixed” qualifications: 25 yards for a handgun, and 100 yards for a rifle. Since 9/11, they must undergo a “tactical” qualification that includes both day and night fire, with night vision and thermal siting, and a tactical qualification course (running and shooting). They have received additional training for these qualifications
5. Defensive tactics
6. CAS/SAS training for officers assigned to these duties (post 9/11 technology changes have occurred)
7. Security Communication Center (SCC) training for NSOs assigned to this job. (These officers deal with radiological events).
8. Psychological testing and background checks every three years. The qualification was enhanced after 9/11. Other employees are similarly qualified every five years.
9. In addition, as with all employees of the Employer, NSOs must undertake an annual written test, general employee training, general radiation training, RAD worker training, random urinalysis checks for drugs, and since 9/11, environmental protection training.

F. The Employer’s Financial Objectives

The parties disagree as to whether the Employer has the ability to pass through increased cost to the rate payer.

Vic Parrish, the CEO of ENW, explained that pursuant to contract, the BPA owns the output of ENW and that agency maintains intensive financial oversight of the ENW operation. The BPA has a continued presence at ENW. It must approve all expenditures over $500,000 and it observes what staff does and participates in the budgeting process.

Parish testified that he was hired because of his operating experience with Entergy, a large utility that operates a fleet of nuclear power plants. When he became CEO in 1996, ENW’s cost output was about $40 per megawatt hour. The BPA asked it to reduce those costs to $20 (which would place it on par with the best single unit nuclear power operations), and that still remains a target. Although ENW cut several hundred positions in about 1996 and has made other cost cutting efforts, it still had one of the higher cost operations. Under pressure

from BPA and retail utilities that deal with the ultimate ratepayers, it reduced staffing again over the past three years. Exhibit E-B.5 shows that it cut 203 positions between April 2004 and July 2005. It has cut costs in other ways also. Its output cost is now about $30 per megawatt hour, and the BPA is pushing strongly for it to get to $27. In the mid 1990s, according to Parish, BPA's position was to shut down ENW. It hasn't made that threat lately because it would be difficult to more economically replace the 15% of BPA's power that ENW provides. However, BPA has raised the question of moving ENW out of the picture and contracting the operation of the CGS to another nuclear operator that has a better track record on costs.

ENW retained a contractor, MCR, to identify other cost reduction opportunities, and Exhibit E-B.2. reflects that effort. MCR stated that ENW must cut operating costs by $25 million just to become closer to an average performer, and it must slash costs by another $7 million to place itself among the better single-unit operations. ENW also is trying to increase its output from 80% capacity to 92% capacity in order to lower its per megawatt hour operating costs.

Parrish testified that 9/11 had a substantial impact on costs, both capital and operating. The capital and operating costs for security increased significantly. Neither the Department of Homeland Security nor other agencies made any funds available for ENW's security enhancements as the result of 9/11. It recaptured some of those costs through BPA, but not all. The ENW had to defer certain needed projects because of these increased costs. BPA's attitude about taking into account ENW's post 9/11 costs was that its customers wanted reduced costs, and that hasn't changed, although BPA is well aware that ENW had no choice about the increased security costs—the NRC made these expenditures mandatory.

Parrish testified that ENW has not reduced salaries across the board for any exempt employees, but some employees have moved to positions having lesser responsibility with a reduction of salary. He has considered salary reduction, but "it is one of the last things I would do," he testified. The incentive program for management remains in place. He has reduced some benefits, including car allowances and business cell phone allowances. On exempt

employees' salaries, he stated that every year ENW does salary surveys and makes adjustments for exempt employees. The goal is to be competitive in the marketplace. (He considers ENW's labor market generally to be other nuclear power plants.)

Summarized, Parrish testified that ENW operating costs are higher than other single unit operators because (1) it has more staffing; (2) the design of the plant was post-Three Mile Island giving it higher operating costs; and (3) Washington state has a regulatory body with oversight of the CGS; other plants are in states that do not have state regulations to comply with. Parrish doesn't know how to compare security numbers and costs with other single unit plants. He added that a significant segment of the nuclear industry contracts its security services to private security providers. Energy Northwest has not considered contracting out security because he believes in-house security is better. Contracting out would cause him to lose control of training and other operational aspects of security, Parrish believes.

V. THE ISSUE OF WAGES

A. General Considerations

As set forth in full above, RCW 41.56.465 requires the Arbitrator to set wages after considering the legislative purpose of the statute, the compensation paid by comparators, employees' cost of living, any stipulations and legal concerns over the employer's authority, and "other factors … that are normally or traditionally taken into consideration in the determination of wages, …" Such "other factors" typically include turnover, increased duties, the fiscal health of the employer, general economic considerations, and considerations relating to internal parity or equity. The statute does not specify the relative weight to be assigned to each consideration, nor how they are to be measured. These matters are left to the determination of the arbitrator.

With respect to legislative purpose, arbitrators often write that interest arbitration is an extension of the collective bargaining process, and not a substitution for it. Therefore, an arbitrator will not award a proposal that could not reasonably be gained in bargaining. E.g., *City*

of Omak (Omak Police Officers Guild), PERC No. 17803-I-03-416 (Reeves, 2004); *Spokane Airport (IAFF L. 1789),* PERC No. 15834-I-01-364, (Wilkinson, 2002); *Spokane Transit Authority (ATU L. 1015),* PERC No. 15129-I-00-337 (Snow, 2001); *Whatcom County (Deputy Sheriffs' Guild),* PERC No. 15395-I-00-347 (Gangle, 2001); *Kitsap County Fire Protection District No. 7 (IAFF Local 2876)*, PERC No. 15012-1-00-333 (Krebs, 2000); *Kitsap County (Deputy Sheriffs' Guild)* (Buchanan, 1999); *City of Centralia (IAFF Local 451),* PERC No. 11866-I-95-253 (Lumbley, 1997).

The Union, however, takes issue with the implication from that view, arguing that interest arbitration is a substitute for the right to strike. Arbitrators, therefore, should fashion an agreement that would approximate what employees would have received had they gone on strike.

The Union presents a theoretically interesting argument. *City of Bellevue v. Int'l Ass'n of Firefighters, Local 1604*, 119 Wn.2d 373 (1992) is often cited as support for the prevailing arbitral view. There, the court somewhat ambiguously stated:

> As the foregoing discussion illustrates, the Legislature did not intend statutory interest arbitration to displace the negotiating process; it intended it to be used to promote uninterrupted and dedicated service by uniformed personnel and to avoid strikes. RCW 41.56.430. Thus, it is more appropriate to view interest arbitration not as a substitute for collective bargaining, but as an instrument of the collective bargaining process that displaces certain economic tactics.

Id., at 381.

In this Arbitrator's opinion, neither view gives much practical assistance to the arbitrator. Arbitrator McCaffree wrote that interest arbitration is:

> [An] attempt to ascertain what the parties would have done in the absence of the prohibition of strikes and lockouts and in the presence of an open private sector free labor market environment. As I wrote elsewhere, "at best a decision (under these circumstances) will seldom be more than a rough approximation of this goal" (Thurston County, McCaffree, 1999, p-4). Most subject to error are judgments on the relative 'holding power" or "bargaining strength" of each party and its relative feelings of importance on particular issues. But be that as it may be, the arbitrators are required, within the standards and guidelines of the statutes, to mold the objective evidence of "market" (comparable) conditions, the relative weight of pieces of that evidence, and a good faith evaluation of

> bargaining strength and staying power of the parties on particular issues, into a reasonable package of wages, hours and conditions of employment.

Port of Seattle (Teamsters Local 117), PERC No. 15432-1-00-348 (McCaffree, 2000). An attempt to determine what parties would obtain in the event of a purely hypothetical strike or lockout would be an exercise in speculation. An educated guess under the facts of the instant case would require a great deal more information than was provided at hearing. Moreover, the Union's view would not displace the maxim that an arbitrator should not expect a party to agree to something to which no reasonable employer or union, having a modicum of bargaining strength, would agree.

The ensuing discussion covers the various statutory factors, starting with the most difficult and disputed topic of comparator selection. Matters pertaining to the constitutional and statutory authority of the Employer are not addressed because no pertinent evidence was presented on that criterion. The Arbitrator received no formal stipulations regarding the issues ultimately submitted to arbitration, but implicit agreements are noted as appropriate.

B. Selection of Comparators

The selection and use of comparables is inexact, at best. As the parties recognize, the usual considerations that go into an arbitrator's selection of comparators (e.g., population, assessed valuation) are not applicable here. Further, the universe of even partially "like" employers of similar size on the U.S. "west coast" that employ "like personnel" is exceedingly small.

1. The Parties' Proposed Comparators

The Union proposed six "primary" comparators: Hanford Patrol, Port of Seattle Police, Richland/Yakima Federal Court Security Officers, Diablo Canyon NSOs, Diablo Canyon ASOs, and San Onofre NSOs. It also proposed six "secondary" comparators: Kennewick Police Department, Benton County Sheriff, Umatilla Army Ordnance Depot, Richland Fire/EMT, Kennewick Fire Department, and Port of Seattle Controllers.

The Union's consultant and expert witness, Dr. Richard Mack, a professor of economics at Central Washington University, testified to considerations that went into the selection of comparators. He believed it is appropriate to place particular emphasis on the local labor market, given that such things as cost of living, the available labor pool, and the local economy are the same.

The Union's consultant selected the Port of Seattle police because the employing department also is a municipal corporation that guards a facility of similar bargaining unit size. The differences are that the Port does not guard a nuclear facility and there are geographic considerations, he testified. Dr. Mack also testified as to why he considered the other jurisdictions he selected to be suitable comparators. Recognizing the geographic dispersion of the comparators and their location in areas with different local costs of living, Dr. Mack performed a cost of living wage adjustment for comparators outside of the Tri-Cities. He found, however, obstacles in calculating a COLA for the California communities in which the Diablo Canyon and San Onofre (San Luis Obispo and San Clemente, respectively) nuclear power plants are located. (See Attachment V to Exh. U-8). In addition, he noted that gross disparity in housing costs between California and the Tri-Cities area. He therefore performed additional adjustments to better reflect the cost of living in San Luis Obispo and San Clemente.

In Dr. Mack's opinion, an appropriate wage increase for this bargaining unit would be 20% for the first year. He believed that this would bring the bargaining unit to the average of the comparables. He also looked at the wage increases of the comparators for 2004 and 2005, and based on that information, he opined that a 4% increase in the remaining two years of the contract is appropriate.

The Employer would de-emphasize the use of comparators in this proceedings, contending that there are no suitable comparable employers. However, if comparators must be considered, it proposed using the security guards employed by Fluor Hanford, the Idaho National Laboratory, the Umatilla Army Depot, the Palo Verde (AZ) nuclear generation facilities,

the Diablo Canyon nuclear generation facilities, and possibly the San Onofre facility. It agrees that cost-of-living adjustments should be performed on the out-of-region comparators, but it disagrees with the methodology used by Dr. Mack for making an adjustment.

The Employer vigorously disputes the use of any fire or police agency, including the Port of Seattle police as comparators, even secondary comparators, noting there are significant differences between the jobs in these putative comparator groups and that of the NSO. It further contends that the Richland/Yakima Federal Courthouse guards are not comparable, and disputes using this group as a comparator.

It contends that if the cost-of-living adjustment is properly done, and if the Arbitrator adopts ENW's proposed first-year increase, NSO wages will be 5.2% ahead of the comparables. There is no basis for any sort of "catch-up" wage increase, the Employer asserts.

2. The Arbitrator's Determination of Appropriate Comparators

RCW 41.56.465(1)(c)(i) requires a neutral arbitrator to consider the wages, hours and working conditions of "like personnel of like employers of similar size on the west coast of the United States." In this case, there are no other nuclear energy employers in the State of Washington, and only two others in the states that are commonly considered to comprise the west coast of the United States. The statute, however, does not require the consideration of identical employers. A significant part of nearly every interest arbitration proceeding is the selection of comparators with the closest fit

A prime candidate for comparison purposes are the nuclear security officers (SPOs) who work for Fluor Hanford on the Hanford Nuclear Reservation. In addition, there are two nuclear power generation sites in California, the San Onofre reactor in San Clemente, and the two Diablo Canyon reactors in San Luis Obispo. Both are owned and operated by private utilities. In addition (if considered a "west coast" state), Arizona has a nuclear power generation site (which has three reactors) at Palo Verde, near Phoenix, which is privately owned and operated. One or both parties considered these and other proposed comparators, discussed below. They

implicitly agree that when using non-regional employees as comparators, one must make cost of living adjustments to their wages to make an appropriate comparison, and making such adjustments accurately is problematic.

a) Fluor Hanford Security Police Officers (SPO IIs)

One employer stands out as closely comparable: Fluor Hanford, a private sector contractor with the Department of Energy (DOE), employs security officers to guard nuclear materials on the Hanford reservation.

The Employer, which like the Union, proposed Fluor Hanford as a comparator, protests that Fluor Hanford is a private entity, whereas ENW is not, and contends this is an obviously significant difference. The Employer did not, however, explain what impact this difference should have on wages. In the Arbitrator’s view, the similarities far outweigh the differences. This Arbitrator has heard a number of grievance arbitration cases involving Fluor Hanford and its predecessor DOE contractor. That operation in some ways resembles a public sector mission because it operates in a highly regulated environment with fairly intensive DOE oversight. Likewise, ENW operates in a highly regulated environment. In the U.S., electrical power generators (including nuclear) are as often private companies as they are public. Whether public or private, they are highly regulated.

More to the point, Fluor Hanford employs a security force that is very similar in size, function, mission, and training to ENW’s security force. It is particularly significant that both Fluor’s and ENW’s security forces operate in the same local labor market (indeed, the same location), thus obviating the need to make a cost-of-living adjustment, which the parties agree is difficult to do with a high degree of accuracy. As Arbitrator Lankford stated:

> [C]ompensation data is much more impressive if it reflects what other employees are getting paid for the same work just down the block and is only marginally interesting if it reflects what similar employees are paid somewhere far away.

City of Mukilteo (IAFF L. 3482), PERC No. 16378-1-02-0382 (Lankford, 2002)

Nevertheless, the Employer protests that the Fluor Hanford force is different because: (1) its SPOs are federally commissioned officers with the power of arrest and the authority to pursue attackers; (2) they protect weapons-grade plutonium, something sought after by terrorists; (3) the physical requirements for SPOs are more onerous; (4) the SPOs have a higher security clearance; and (5) the training program is more extensive.

These are indeed differences, in the Arbitrator's view, and one can reasonably argue that their wages should be somewhat above the NSOs' wages at ENW. Nevertheless, the differences are insufficient to substantially discount the importance of Fluor Hanford's SPOs as a comparator.

Regarding the personal risk factor, although certainly the security of the weapons-grade plutonium stored at Hanford is of obvious importance to the nation, so is the security of its nuclear power plants. Americans have a history of being particularly jittery about nuclear power. Even if the chances of an attack-generated Chernobyl-style meltdown are remote, the psychological impact of any attack could be huge. I also note that with both NSOs and Fluor Hanford guards, the personal risk is more theoretical than actual. Neither facility has been attacked, and with the presence of well trained, armed and vigilant security forces (and one cannot overstate the importance of these security precautions), the actual likelihood of attack is small. The very presence of a sizeable, highly trained and armed security force at a nuclear reactor serves as a formidable deterrent to any individual or group bent on nuclear sabotage.

A review of the parties' other proposed comparators yields no employers as satisfactory as Fluor Hanford in terms of being "like personnel of like employers of similar size on the west coast." Although other employers will be considered, they will be given less weight. The following discusses each of these proposed comparator employers.

b) Federal Courthouse Security Guards, Richland and Yakima

Commissioned officers guard the federal courthouses in Richland and Yakima. Akal Security, Inc., a private contractor to the federal government, employs them. The courthouse

guards share some duties in common with bargaining unit NSOs. In particular, both jobs entail the screening of persons seeking to enter a facility. Another significant consideration is the fact that the courthouse guards operate in the same local labor market.

On the other hand, the Employer points out that unlike ENW's NSOs, the courthouse guards are commissioned police officers with the power of arrest. As a practical matter, in the Arbitrator's view, the courthouse job is more hazardous. From time to time there have been attacks on judges, lawyers and litigants around the country. The perpetrators usually have been deranged individuals acting alone whom, when armed, pose great danger to anyone in their path. It is not inconceivable for such an attacker to make a suicidal assault on the guards, killing or injuring them. There is less likelihood, however, of a terrorist-style attack on a federal courthouse since a courthouse attack would not be the showstopper that a nuclear site attack would be.

The Arbitrator will consider the federal courthouse guards as a comparator, largely because they are located in Richland, but recognizes that they are different sort of policing operation - arguably riskier - and that the guards are commissioned police offers.[5]

3. Diablo Canyon Nuclear Power Generation Facility

The security guards at the Diablo Canyon nuclear power facilities clearly perform similar work, have a similar mission, and nearly identical training to the bargaining unit in this case. They operate under the same federal regulatory scheme, which limits job variables. The Arbitrator considers this to be a suitable comparator. Although the Union more vigorously advanced Diablo Canyon as a comparator, the Employer agrees that it meets the statutory criteria.

As both parties are aware, the significant difficulty with using the nuclear generating facility at Diablo Canyon as a comparable is the cost of living differential, which is significantly

[5] As the Employer notes, the Union's expert, Dr. Mack, erroneous set the Akal security officers' wages at $23.21 which it the lead pay. The non-lead pay is $21.40, effective October 1, 2002. See Exh. U-9.

skewed by the considerably higher cost of home ownership in San Luis Obispo, as compared to Richland or the Tri-Cities area. (According to an attachment to Exh. U-8, the average price of a three bedroom home in Richland is $166,000; the average price of a comparable home in San Luis Obispo is $593,400).

The Union's expert, Dr. Mack, made a valiant and arguably a good attempt to adjust the Diablo Canyon wages downward because of the cost of living differential. The problem he encountered was that the relative cost of owning a home in San Luis Obispo is far greater than the cost of renting. Homefair.com (www.homefair.com), which the Employer concedes is a suitable data source, separately calculates the equivalent wage based on home ownership and on renting.[6] To account for this discrepancy, he assumed that 50% of the hypothetical Diablo Canyon workforce purchased a home before the recent run-up in prices there, a quarter of these putative NSOs would opt to rent, and the remaining quarter would take the plunge and buy a home anyway. Using weighted averages, he determined that the 2003 cost-of-living adjusted hourly wage for Diablo Canyon employees is $19.69.

---

[6] Homefair.com is a site maintained by the National Association of Realtors. It compiles raw data from several sources to produce a cost of living proxy for any given area. Unlike the ACCRA reports (*see* following footnote), it produces cost of living information for numerous smaller communities, with housing prices supplied by its local members and updated quarterly. It does not display its raw data to the user. According to its website:

> The cost of living data is provided as part of the Center for Mobility Resources® service. The formulas are based for the most part on those adopted by the Bureau of Labor Statistics. The five major categories for U.S. data are housing costs (33%), utilities (8%), consumables (16%), transportation (10%), and other services (33%).

See, http://www.homefair.com/homefair/servlet/ActionServlet?pid=187&cid=homefair&art=faq. Elsewhere on the Homefair.com website the following information is provided:

> Much of the data on our site is collected specifically by our research staff. For example, the school data is obtained by our research department, which contacts thousands of local school officials. House prices, which are a critical factor in the cost of living indexes, are obtained by contacting thousands of local real estate professionals.
>
> In addition to our own data collection efforts, we license data from companies that have a strong focus on data integrity.
>
> For example, one of our main information sources is the Center for Mobility Resources, which has over ten years' experience in data collection and cost of living analysis. CMR's reference material is the definitive source of local cost of living information for libraries and many recruiting firms.

See, http://www.homefair.com/homefair/readart.html?cid=homefair&art=aboutdata.

The Employer criticized aspects of Dr. Mack's assumptions and methodology, making some valid points. Dr. Mack himself admitted there were problems. In particular, it is curious that the Homefair.com website inferentially states the cost of living for a renter in San Luis Obispo is approximately 22% lower than for a renter in Richland. Yet, in actual dollars, it costs 19% more to rent a two-bedroom apartment in San Luis Obispo. Dr. Mack could not explain this discrepancy. The Homefair.com web site provides no explanation.

The Employer would prefer using the ACCRA cost of living index (published quarterly by the American Chamber of Commerce Research Association) to adjust wages, and indeed, this index has widespread acceptability.[7] The problem with the Employer's approach is that there is no ACCRA index published for San Luis Obispo, and using Fresno as a surrogate is less than satisfactory. The Employer calculated that the cost-of-living adjusted wage for Diablo Canyon was $15.57.

Ultimately, it is safe to say that given the available data, there is no methodology that would yield an entirely satisfactory result, but the Arbitrator believes Dr. Mack's analysis is a reasonable approximation. Although she believes he probably overstates the cost-of-living adjusted wage for 2003 for Diablo Canyon, she notes that employees there received increases during the subsequent two years of their contracts of between 4% and 8%,[8] an amount that exceeded the Consumer Price Index increases over the same period. She also notes that employees of Diablo Canyon, being private sector, cannot avail themselves of interest arbitration. This could be a singular disadvantage when changes in the area cost of living are significantly outpacing wage increases. In sum, the Arbitrator will consider the security guards

---

[7] The Employer notes that the ACCRA analysis is compiled by comparing a market basket of goods and services that was put together based upon data extracted from the U.S. Consumer Expenditure Survey, the Bureau of Labor Statistics. *See* Exh. E-D.5.

[8] The Employer asserts that the increases were 4%, while the Union states these employees received 8% increases. To add to the confusion, the parties worked off different base figures. The Employer asserted the top wage for a Diablo Canyon NSO was $23.94, while the Union used a significantly lower figure.

at Diablo Canyon as comparable. A discussion further below addresses the use of this and other comparators.

4. San Onofre Nuclear Power Plant

Both parties explored the usage of this power plant as a comparator, but they found obtaining satisfactory data was difficult. The Union produced a figure of $21.32 as the 2003 base wage, which the Employer stated it later verified. (The Union's cost-of-living adjusted wage was $20.11). The parties could not produce any other wage and benefit information concerning the San Onofre nuclear security officers. Although the Union presented San Onofre as a comparator, in its post-hearing brief it recommended that it not be used because of the paucity of information. The Employer, on the other hand, supports its usage. These positions are not surprising given that San Onofre wages, with a cost of living differential, better supports the Employer's proposal.

Recognizing the limitations of the information on San Onofre, the Arbitrator will use it as a comparator.

5. Umatilla Army Depot

Both sides brought up the civilian guards at the Umatilla Army ordnance and chemical weapons depot as possible comparators, but the Union ultimately opposes using these employees as a comparator group. The evidence submitted at hearing on the duties and responsibilities of the civilian guards took the form of a job description found in Exh. U-8, Att. 8. The duties and responsibilities seemed to be quite similar to those of the bargaining unit at issue here. No evidence, however, was provided as to their training or as to how they interface with the soldiers who also perform guard duties at Umatilla. Since 9/11, the number of civilian guards employed at Umatilla has increased from about 10 to over 200, according to the Employer. The Umatilla guards may be unionized, but as federal employees, they do not bargain wages and of course are not subject to interest arbitration. Although they are located in the same general region as Richland, they are in a less populated area, which suggests that

wages generally would be lower. Homefair.com indicates about a 3.7% cost of living differential, using Hermiston, Oregon as a proxy for Umatilla. (A distance of seven miles separates the two). The Arbitrator rejects the Employer's cost-of-living adjusted figure, which was based on the assumption that the cost of living in Umatilla was higher than in the Tri-Cities. The Employer apparently (and inappropriately) used the Portland MSA figures to determine a cost of living adjustment for Umatilla.

With reservations, the Arbitrator will consider this employer as a comparator.

6. Port of Seattle Police and Controllers

The Arbitrator agrees with the Employer that Port of Seattle Police and Port of Seattle Controllers are not suitable for comparison purposes. The dissimilarities of the positions greatly outweigh the similarities. In addition, they are located in a labor market where the cost of living and wages are much different than in Richland.

7. Idaho National Laboratory

The Employer proposed this employer as a comparator because its security force also guards nuclear assets, and it is located in an adjacent state. The insurmountable problem with this comparator, in this Arbitrator's opinion, is the fact that Idaho is not a "west coast" state, as that term is commonly understood.

The parties did not present any case authority, arbitral writings, or legislative history on the meaning of this statutory limitation. The Employer did not even argue that comparators in Idaho and Arizona are within the ambit of the governing statute.

The Arbitrator believes that the commonly accepted definition of a "west coast" state would be a state that is on the Pacific coast. If the Washington Legislature had intended the interest arbitrator to consider western non-coastal states, it could have so stated. The Arbitrator found only two arbitration awards that directly addressed the question. In *City of Pullman (Police Officers' Guild)*, PERC No. 12399-I-96-296 (Gaunt, 1997), Arbitrator Gaunt refused to use Moscow, Idaho as a comparator to Pullman because Idaho is not a west coast state. In

another Pullman case, Arbitrator Axon likewise stated that Moscow is not a “West Coast city” by statute. *City of Pullman (Police Officers’ Guild),* PERC No. 9223-I-91-204 (Axon, 1992). According to Arbitrator Levak in 1986:

> The term "West Coast" has been defined in a number of cases as the coastal states of Washington, Oregon, California and Alaska. See, e.g., Everett, Abernathy, 1981. Only where the parties have, through stipulation, defined West Coast in a different fashion has the result been any different. See, Kent, LaCugna, 1980; Renton, Snow, 1978.

City of Walla Walla (Walla Walla Police Guild), PERC No. 06213-I-86-00139 (Levak, 1986). Arbitrator Levak reviewed a number of these now older cases, and indicated that some arbitrators have used nearby Idaho comparators (e.g., Lewiston, ID. for Clarkston, WA) under the “such other factors” criterion of the statute.

The Arbitrator believes that the “west coast” limitation forecloses her ability to consider an Idaho employer. She is unwilling to consider the Idaho National Laboratory under the “such other factors” criterion because it is not so closely comparable as to make a compelling case.

8. Palo Verde (Arizona) Nuclear Power Plants

The Arbitrator would consider this employer to be a suitable comparator were it not for its location in a state that is not on the west coast. As discussed previously, she believes the Legislature has foreclosed her consideration of this comparator. Since it is in a somewhat distant locale, she also is unwilling to consider the Palo Verde power plant employer under the “such other factors” criterion.

9. Various police and fire jurisdictions

The Union’s expert looked at certain neighboring police and fire jurisdictions for comparison purposes. The Arbitrator does not consider these jobs to be sufficiently similar for comparison purposes.

10. What the Data Shows:

The approximate cost-of-living adjusted top step base wage of comparable employees working for the comparator employers selected by the Arbitrator are as follows:[9]

Employer	2003 Hourly Wage
Fluor Hanford SPO IIs	$22.83
Akal federal courthouse guards	$21.40
Diablo Canyon Nuclear Security Officers	$19.69
San Onofre Nuclear Security Officers	$20.11
Umatilla Army Depot civilian guards	$17.16
Average (Fluor Hanford Double Weighted)	**$20.70**

The Arbitrator believes it appropriate to give the Fluor Hanford employees a greater weight than the remaining comparators because it is the only comparator that is both closely comparable and for which a comparable wage can be stated with a high degree of confidence. She realizes assigning a double weight to Fluor Hanford is arbitrary, but any other weighting factor also would be arbitrary. The Employer has not convinced her to forego a comparator analysis altogether, but she does not believe using Fluor Hanford as the sole comparator is appropriate either.

C. Total Compensation – The Matter of the Incentive

1. Whether the ENW Incentive Should Be Considered

The top step base wage for bargaining unit NSOs going into the first year of the contract (November 2002-03) was $19.91. However, in each of the contract years at issue, the bargaining unit members received a substantial incentive payout through ENW's Employee Incentive Plan (EIP). In the Arbitrator's opinion, this incentive, to which the Union agreed for most of the contract term, should be factored into the base wage.[10]

---

[9] The Arbitrator escalated the Umatilla wage by 3.7%, per her previous discussion of that comparator.

[10] This discussion encompasses only the general performance incentive paid by the Employer under its EIP. It does not include personal or other incentive pay, awards, or premium pay.

The parties presented little evidence and almost no analysis concerning the total compensation of its proposed comparators, although the Employer presented evidence of the total compensation of bargaining unit members. In the Arbitrator's opinion, an analysis based on total compensation is the preferable method for looking at comparators. Benefits can vary significantly from employer to employer, and this is particularly true when a public-private sector mix is being utilized. Lacking this information on the comparators, a true total compensation analysis cannot be performed. The Arbitrator must proceed with the evidence she has before her. As Arbitrator Axon stated in *City of Pullman*, *supra*:

> [I]t is important to note that this Arbitrator is responsible for applying the evidence to the statutory factors even if the evidence submitted by the parties is incomplete, misleading, selective or manipulative. Recognizing these problems, it still remains the obligation of this Arbitrator to apply the record evidence to the criteria set forth in the statute.

As stated, the ENW general performance incentive was a significant percentage of the bargaining unit's total compensation during the years 2002-2004. If the Arbitrator were deciding future contract terms, this matter would be more problematic because the incentive program is based on the fulfillment of certain conditions and because the program changes from time to time. However, since the Arbitrator is making a retroactive determination of contract terms, she believes it is appropriate to consider the actual payout to employees during the contract period at issue (November 2002 to November 2005) as part of the bargaining unit's base compensation.

The Arbitrator wants to make it clear that she recognizes that considering the incentive as an element of base pay works to the Union's disadvantage when negotiating future pay increases because that incentive is not figured into the base from which future pay increases are given. Therefore, bargaining unit members would not enjoy the compounding effect that would occur if the incentive was included in the base each year. Moreover, with respect to future increases, she recognizes that the incentive is not guaranteed, and in fact the maximum incentive was reduced for 2005. The Arbitrator also recognizes that an incentive bonus can

hardly be considered an incentive if it forms part of base pay. These drawbacks will not preclude her from considering the incentive pay but she will take the drawbacks into account when formulating her award on wages.

No information was presented on any general performance incentive programs of the comparator employers. She presumes that if such a program in any of the comparators existed, one party or the other would have pointed this out. Therefore, she assumes the comparator employers do not offer their employees any significant amount of incentive pay.

In conclusion, given the substantial size of this EIP bonus, the Arbitrator has determined that she will take the incentive pay into account in some form.[11]

2. The Problem of Quantifying the Incentive

The Arbitrator encountered certain obstacles to quantifying the incentive pay received by the bargaining unit during the relevant period. Specifically, the Employer's representation of the amount of incentive pay (when expressed as a percentage of base wage) does not correlate to the raw data it provided at hearing.

For example, for 2004, the Employer asserted that the *actual* payout was 3.81% + $1250 of base pay, or 6.83% of base pay. Exh. E-A.17. The exhibit does not state whether this is an average or maximum, but the Employer's brief, at 14, states that the "average pay out was 6.83 percent."[12]

An Employer exhibit, Exh. E-A.16, lists the Employer Incentive Plan payout to each employee, and also lists other bonuses designated as "awards," a (shooting) "stipend" and "other." The "other" apparently pertains to attendance. The amount of these other bonuses was generally small when compared with the EIP. Exh. E-A.16 totals those amounts for each

[11] As to whether or not the incentive should be considered, the Arbitrator notes that the Union presented no argument, but it did not include the incentive in its calculation of top step base pay.

[12] The Employer's brief asserts that the actual payout for fiscal year 2002 was 7.67% of the employee's base rate of pay. In fiscal year 2003, the average actual pay out was 4.17%, primarily because the Union chose not to participate in the plan for some of the year, the Employer asserts. In fiscal year 2004, the average payout was 6.83%.

employee. The list is not presented in alphabetical order by employee; the Arbitrator surmises it may be in order of seniority. This exhibit does not display the base compensation for each employee listed. A different exhibit, Exh. E-A.11 lists the base compensation and the total incentive bonuses paid to each employee. The incentive bonuses paid includes all incentives, not just the EIP payment. It does not separate show the EIP payment to each employee. The list is presented in alphabetical order by employee initial. The employee list is not identical to the one shown on Exh. E-A.16, although both lists are for 2004.

In reviewing these figures, the Arbitrator cannot duplicate, by any methodology, an actual payout of 3.81% + $1250, or 6.83% of base pay, whether expressed as an average or a maximum.

The Arbitrator performed time-consuming calculations for 2004. (The selection of 2004, as opposed to 2002 or 2003, was somewhat random). The Arbitrator first had to scan and convert the two relevant exhibits, Exh. E-A.11 and Exh. E-A.16 to a format readable in a spreadsheet, and verify the resulting figures. Both exhibits were needed for a complete set of data, but although both were labeled 2004, they did not include the exact same set of employees. Moreover, one document showed the employees (by initial) in alphabetical order, and another placed them (also by initial) in a different order, so she did not attempt to match most of them up. She did, however, match up a random sampling.

The Arbitrator first calculated that the average 2004 EIP payment, when expressed as a percent of total wages, was 4.73%. This calculation was based on the sum of the total EIP payouts shown on Exh. E-A.16, divided by the sum of base pay derived from Exh. E-A.11. But, as stated, the two employee lists are <u>not</u> identical; in particular, there are more names on the Exh. E-A.11 list. Therefore, she again calculated a ratio, this time by dividing the average incentive paid as calculated from Exh. E-A.16 by the average base pay as calculated from Exh. E-A.11. This calculation produced an average incentive of 4.84% of base pay.

In an effort to duplicate the Employer's results, the Arbitrator tried two other methods, both of which eliminated all the obvious incentive payout aberrations (employees who received zero or an amount highly disproportionate to their pay, indicating that they worked much less than a full year). The highest average payout that the Arbitrator could calculate was 5.11% for the EIP payout only, and 5.75% when all bonuses were included.[13] These figures were still substantially below the Employer's claimed average of 6.83%.

The Arbitrator also examined the dispersion of EIP payments to the bargaining unit. She found that a number of employees received small amounts or nothing at all, and she presumes they were ineligible, probably because they were employees (e.g., new hires or retirees) who worked only a small part of the fiscal year. Turning to the group whose total pay indicated they worked close to full year, the lowest incentive paid (to about four employees) was $1044 on a base pay of about $29,271; this incentive is 3.57% of base. The highest EIP payout (per Exh. E-A.16) was $2259, and about 38 of the 123 bargaining unit members received this amount. The Arbitrator did not attempt to align all the employees receiving $2259 (as shown on Exh. E-A.16) with base pay as shown on Exh. E-A.11. But, a spot check indicates that this EIP payment amounted to about 5.2% of base. The remaining employees received amounts between $1044 and $2259.

The following summarizes the calculations the Arbitrator made for 2004 as described in the preceding paragraphs:

---

[13] The Arbitrator does not believe it is appropriate to disregard Exh. E-A.16 altogether because it is the only exhibit showing only the 2004 EIP payment to employees. Exh. E-A.11 shows the total amount of the bonuses paid to bargaining unit members, which includes other contractual incentives. She does not believe it is appropriate to consider other contractual incentives when comparing the bargaining unit wages to other comparators because she does not know what contractual incentives are paid by the comparators. Given that security and law enforcement employers frequently offer small incentives, it is likely that some or all of the comparators offer small incentives as well.

Despite this misgiving, the Arbitrator calculated the ratio of the average *total* bonus payouts to base pay, which produced a figure of 5.47%. She also sampled about 20 specifically identified employees that appear on both the Exh. E-A.11 and Exh. E-A.16 lists (matching their initials), and found that of the total bonuses paid, the EIP comprised 90%, on the average. So, another way of estimating the average bonus would be to take 90% of 5.47%, which produces a figure of 4.92%—-a result not far from the 4.84% produced by a different method of calculation, as described above.

Arbitrator's 2004 Employee Incentive Payment Calculations

Ratio of average EIP incentive to average base pay	4.84%
Ratio of average EIP incentive to average base, 'zeros' & other aberrations removed:	5.11%
Ratio of average *total* bonus (including EIP) to average base pay	5.47%
Lowest and highest EIP for employees appearing to be full-year eligible:	$1044 to $2259
Lowest and highest EIP, as percent of base, for full-year employees	3.57% to about 5.2%

For fiscal year 2003, when the Union chose not to participate for part of the year, the average payout was 4.17%, according to the Employer. Oddly, the Arbitrator's figures for 2003 were slightly higher, in the vicinity 4.38%.

As to fiscal year 2002, the Employer claimed the average payout was 7.67% of the employee's base rate of pay. This figure presumably includes all bonuses paid.

The Arbitrator's calculation of the average 2002 EIP, by percent of base wage, was 4%. Subtracting the 'zeros' yields an average 2002 EIP, by percent of base wage, of 5%. In 2002, it appears there were a higher proportion of employees who received no EIP payment or a small payment. The amount of the bonus paid the remaining employees was more closely dispersed towards the top (maximum payout in 2002 was $2228) than in 2004. Some apparently full-year employees, however, received less than $1000, which was only about a 3% bonus. See Exh. E-A.9 and Exh. E-A.14.

In sum, the Arbitrator agrees with the Employer's contention that this incentive pay component should be factored in as a component of the negotiated pay package. The incentive has been regularly paid over time, and most importantly, was paid during the contract years at issue here. However, she will not credit the bargaining unit with the figures claimed by the Employer, which appear to be overstated.

Ultimately, this Arbitrator has decided to add on 3% to the bargaining unit top step base for the purposes of comparison. This is admittedly a very arbitrary figure, but it is geared to the lowest payout to what appears to be a fully eligible employee. In selecting the 3% figure, she also considered uncertainties over the data and the arguments against considering incentive pay under the EIP.

Accordingly, top step NSO compensation with a 3% EIP incentive factored in for 2002 was $20.51. As stated above, for the comparators, the weighted average hourly wage was $20.70 for 2003. This amounts to a bargaining unit lag of about 1%. Without the 3% factored in, the bargaining unit top step base wage would be about 4% behind its comparators.

D. Changes in the Cost of Living Data

According to the Employer's data, the average annual consumer price index (CPI) changes over the relevant period were as follows:

CPI Data

	Seattle MSA CPI-W	Seattle MSA CPI-U	US CPI-W	US CPI-U
2000*	3.6%	3.6%	2.7%	2.8%
2002	1.8%	1.9%	1.4%	1.6%
2003	1.5%	1.6%	2.2%	2.3%
2004	1.6%	1.2%	2.6%	2.7%
Ave. 2001-3	*2.3%*	*2.4%*	*2.1%*	*2.2%*
Ave. 2002-4	*1.6%*	*1.6%*	*2.1%*	*2.2%*
Cum. 2001-3	6.9%	7.1%	6.3%	6.7%
Cum. 2002-4	4.9%	4.7%	6.2%	6.6%

*The figures denote the annual change from the end of the previous year to the end of the year stated.

The parties expressed no preference as to the applicable index and there was no evidence of historical usage. They also did not express a preference as to measurement period that would correspond to any given year of the contract. (When a contract contains a CPI-based wage escalator, it must be based on a defined trailing period that ends before the date the escalator takes effect). Since the parties' proposals are not explicitly tied to the CPI, the choice

of index is not critical in this case. Further, because the Employer's proposal exceeds the CPI changes, at least for the first two years of the contract, no matter which index is used, the Arbitrator does not need to make a selection.[14]

Finally, the Employer presented evidence that historically, NSO wages have increased at a rate higher than the CPI. See Exh. E-5. Thus, there is no reason to award a wage increase to compensate for the loss of purchasing power over time.

The Union did not present evidence or argument countering the Employer's position on this criterion.[15]

E. "Other" - Internal Parity

The Employer vigorously contends that internal parity should be the driver when setting wages for this bargaining unit, in particular because appropriate comparators do not exist. Because of this, internal comparability has been the driving force in bargaining between parties for many years. The parties have historically looked to the negotiated wage increases in the four bargaining units represented by the IBEW. In fact, during the mid-1990's, NSO contract had a "me too" clause tied to the IBEW contract.

During the three-year period at issue in this proceeding, the IBEW and the unit of Control Center Operators (CCOs) increases were as follows:[16]

IBEW Increases	Base	Incentive	Total
2002-03	3%	1%	4%
2003-04	3%	1%	4%
2004-05	3%		

[14] The Arbitrator notes, however, that the current ENW-IBEW Collective Bargaining Agreement uses the US CPI-W, from the August through July preceding its late September increases. Exh. U-15.

[15] Exh. U-8, Dr. Mack's report, stated at Table 3, page 20, that the US CPI increase from 2003-04 was 3.53%. The Arbitrator confirmed the Employer's figures from the Bureau of Labor Statistics web site.

[16] During the late 1990s, the Public Employment Relations Commission removed the CCOs from the bargaining unit, placing them in a separate bargaining unit. Since 1999, the CCOs have bargained on their own. They are represented by the USW. There was testimony that the Employer is phasing out that position. Incumbents are grandfathered, but as they retire or resign, they will be replaced by NSOs.

CCO Increases	Base	(Incentive not wrapped into Contract)
2002-03	3.5%	
2003-04	3%	
2004-05	3%	

The 1% incentive figure shown is that portion of the IBEW incentive that was negotiated as an increase to base pay.

The Employer notes that even the Union's witness, Randy Long, agreed that the goal of the Union was to "be in line with the CCOs and the IBEW." It contends that internal equity is important for employee morale across-the-board. Parity shields the employer from the unenviable position of having other bargaining units demand any higher increases received by the unit that went to interest arbitration. It notes that other arbitrators have emphasized internal party, citing *City of Kennewick (IAFF L. 1296),* AAA No. 75 300 00225 96, (Krebs, 1997) and *Cowlitz County (Corrections Officers Association*, Teamsters L. 38), PERC No. 11948-I-95-257 (Lehleitner, 1996).

The Union disagrees that internal parity with the IBEW should be compelling in this case, contending that other factors outweigh this consideration.

Given the problems with comparator evidence and for the other reasons cited by the Employer, the Arbitrator believes that internal parity is an important consideration in this case, although not the only one.

F. "Other" - Changes in NSO Duties

The Union would attach significant weight to the evidence that the skills and duties of the NSOs have been greatly enhanced since 9/11, and this calls for increased compensation beyond mere cost-of-living increases. The Employer disagrees with the Union's assessment and its argument.

The Union summarizes the post-9/11 changes as follows:

1. In the immediate aftermath of the 9/11 attacks, the site was “locked down” and ENW increased patrols of inside and outside the plant facilities. Officers began working significant overtime, sometimes as much as 15 hours on in a shift, with no days off.

2. In approximately the spring of 2002, ENW began a workforce expansion, which approximately doubled the workforce of NSOs by the date of the hearing.

3. ENW installed barriers around the “Owner Controlled Area” outside the Restricted Area, consisting of jersey barriers, with sand and gravel supports.

4. ENW installed a “Roadblock” at the perimeter entrance to the Owner Controlled Area, manned 24 hours per day by NSOs. The Roadblock includes new electronic equipment including an Itemizer, an electronic bomb detection system. NSOs search all non-employee entering vehicles including the undercarriage of the vehicles for explosives, and they do photo-face” comparisons of those seeking to enter the Owner Controlled Area. They search employee vehicles on a random basis. Prior to 9/11, NSOs did not routinely search employee vehicles.

5. In October 2004 the Employer established multiple Bullet Resistant Enclosures (“BREs”) at the CGS site. These enclosures serve as overwatch for the checkpoints near the Roadblock and elsewhere around the CGS. The BREs include gun ports and are outfitted with assault rifles fitted with night vision and thermal sighting devices.

6. Since 9/11, NSOs have been trained and fitted with new equipment. In addition to the sidearm they carried prior to 9/11, NSOs are daily fitted with AR15 assault rifles, gas masks, and an additional 100 rounds of ammunition during their rounds. They are also provided optional bulletproof vests. This equipment, in addition to their sidearm, radio, ammunition pouch, handcuffs, pepper spray, and flashlight, increased the load on NSOs from approximately 12 pounds prior to 9/11 to 28 pounds. The increased load is a significant burden while conducting foot patrols in the buildings located within the Restricted Area.

7. Previously, NSOs conducting “fire watch” duties inside the Reactor Building were not required to be fully outfitted. Rather, workers could perform these functions in the overheated building wearing shorts. Since 9/11, NSOs must be outfitted in the full array of NSO equipment, with the exception of the AR-15 assault rifle, while performing these functions.

8. The evidence showed that the system previously used by SCC officers has been replaced and that training requirements have been significantly ramped up, and that officers must re-qualify on a yearly basis. In addition, ENW has reduced the manpower serving in the SCC function from four to three officers. As of the date of the hearing, the systems were imperfect and resulted in frequent false alarms, increasing the stress of serving in the SCC position.

9. NSO Randy Long testified that the weapons qualifications requirement have changed since 9/11. Previously, NSOs qualified on a range with a single weapon, and on a single course, with a requirement of 70% accuracy. Since 9/11, the Employer has installed new courses, new weapon systems, new sighting systems, a “night fire” qualification, and a “tactical” qualification, involving use of a sidearm, the assault rifle and gasmask. In addition, the Employer is adding a tactical qualification involving “shoot don’t shoot” drills.

10. The nature of the tactical threats to which NSOs are now expected to respond are shown in the videotape training which NSO Pat Hamilton attended at the HAMMER training facility at Hanford. The video presupposes a coordinated and sophisticated attack by motivated terrorists bent on sabotage or theft of nuclear material. The video makes plain that the nature of the threat to which NSOs must be continuously alert is anticipated to be highly skilled and willing to use deadly force against NSOs.

11. NSOs are required to monitor Off Site Spent Fuel Storage, train and utilize additional video surveillance systems in the CAS/SAS facility, and undergo extensive new training based upon the Nuclear Regulatory Commission's (NRC) development of a new "Design Basis Threat" implemented by that agency since 9/11.

The Union also points out that the significantly increased demand for security guards since 9/11, coupled with the increased training and skills required for the position, will naturally push the wages for this group higher.

The Employer does not dispute that changes have been made since 9/11, but disputes their significance, particularly as it impacts the individual employee. Although the total workload has increased, so has the size of the workforce. The Employer emphasizes that it appreciates the work and efforts of bargaining unit members, but it asserts that the fundamental job of NSOs has not changed. Specifically, it contends:

1. Much of the new training that the Union cited was done prior to 9/11. The post-9/11 training has generally been required of most or all ENW employees, such as the "General Employee Training" and "General Radiation" training cited by the Union. Similarly, the "fitness for duty" test is the same that is required of all employees

2. The Union offered into evidence many procedures and requirements that are included as part of the Code of Federal Regulations. Again, these are not procedures unique to security guards at Energy Northwest. Security Guards at other nuclear plants are subject to the same procedures. Since the Union's own data verifies the equality in compensation between nuclear security officers at those plants and the security guards at Energy Northwest, it is clear that there is no basis for an extraordinary raise.

3. Other job changes have been the result of modifications made in security at the plant. Prior to 9/11, while many vehicles were searched, there was no requirement that all vehicles entering the site be searched. Currently, most vehicles are searched.

4. While the BRE posts are different, the duties performed by the NSOs are essentially the same as at the posts utilized prior to 9/11. Further, the Union offered no explanation how a change that took place in 2004 should affect 2002 wages.

5. The screening equipment is much like at airports; and is certainly a vast improvement over what was previously used. Nevertheless, the employees are not performing a new and different job.

6. Although a NSO on each shift daily calibrates the electronic screening equipment, in fact, this calibration takes somewhere between 30 seconds and two minutes to perform.

7. Although NSOs must now search the train that enters the site, this occurs only twice a year.

8. The Employer acknowledges changes in the personal protective equipment utilized by NSOs. They now carry more ammunition and a different weapon, and their gear weighs more. But these are not changes that warrant additional pay. Analogies can be made to police, fire, office and many other kinds of workers who are frequently given new technology. Employees in these fields are expected to use the technology to perform their job, which has not otherwise changed, and they do not received increased pay because of the changes.

To this Arbitrator, the Union is delving into a very subjective area, and it is difficult to assign a value to increased job requirements. As to how much the NSO job has changed, the Union probably overstates the case, and the Employer probably understates it. There have been some changes made to the burden of the job and the skill level, and an argument can be made for increased compensation. But determining the amount based on the record evidence is not possible. It will be considered when deciding to slightly nudge a likely target wage upwards or downwards, but nothing more. .

G. "Other" - Hiring and Turnover

The Employer contends that data pertaining to hiring and turnover shows that it has no difficulty attracting qualified applicants for the NSO position - even during its stepped up recruiting after 9/11. Further, it has suffered very little turnover—only two resignations in five years. The Employer notes that during the past five years, the size of its NSO workforce doubled. If the Employer's pay was too low, its significant recruiting efforts would not have been successful. The evidence shows that it did not have difficulty attracting qualified applicants.

The Union presented evidence that one worker left to work at Fluor Hanford, and another one is considering the move.

The evidence on hiring and turnover has persuaded the Arbitrator that this is not a significant issue with the Employer. The wage it pays is sufficient to attract a qualified applicant pool and to retain the employees it has. This is a consideration in the Employer's favor.

H. "Other" - ENW's Competitiveness Mandate

The Employer would place secondary emphasis (after internal parity) on the BPA mandate given to ENW to cut costs at the CGS. The Employer's evidence was summarized in Part IV.F, above.

The Union contends that ENW has the ability to pass increased costs along, making this 'competitiveness mandate' a red herring.

The Arbitrator does not belittle the Employer's evidence and the importance to management of cutting costs, but she notes that in response to her question, CEO Vic Parrish testified that the CGS continues to be a high cost facility (relative to other nuclear power plants in the U.S.) because (1) it has more staffing, which it has been endeavoring to reduce; (2) the design of the plant was post-Three Mile Island giving it higher operating costs; and (3) it operates in a more costly State regulatory environment than nuclear power plants elsewhere in the country. Further, as the Union noted in its brief, Parrish conceded that although the BPA at one point threatened to shut the CGS down if costs were not reduced, the likelihood of this occurring in the present energy environment is exceedingly slim. Finally, although ENW does not wish to pass through its costs, as the Union contends, it has the ability to do so.

The Employer's cost cutting objective is not a specifically enumerated statutory factor. Arbitrators are not apt to attach a high importance to an employer's financial objectives absent evidence of the employer facing dire financial straights that is having an impact on all of its employees (such as in the form of an across-the-board salary freeze) or large layoffs. Although ENW has had layoffs, this has not affected its ability to supply its product, nor is it the result of

reduced demand for its product. CEO Parrish testified that ENW's continuing objective is to pay a competitive wage at all levels of the organization.

Accordingly, the Arbitrator is not persuaded that a less than appropriate or competitive wage increase is indicated because of the Employer's financial goals.

I. Arbitrator's Discussion of the Evidence and Award on Wages

After taking into account the above-discussed considerations, the Arbitrator finds that the Union's wage proposal is wildly out-of-bounds. On the other hand, the Employer's proposal, which doesn't even give parity to the CCO and IBEW increases, is not high enough. (The Employer stated it was willing to match the non-incentive linked increase given to the IBEW (3% for each year), but only if its 'Right of Selection' offer was accepted by the Union. This offer was withdrawn when the Union would not accept this condition).

If three percent of the incentive is considered an element of base wage, then a comparator analysis does not support any increase beyond that indicated by changes in the CPI and by the increases the Employer has given to other bargaining units. The Arbitrator cautions, however, that it is in neither the Employer's nor the Union's future interest to unhesitatingly roll the incentive into the base wage calculation. If the Employer were to eliminate or reduce the incentive payments, or if the Union were to opt out, the Union would have an excellent argument for rolling the 3% figure assumed here into the base wage. The Arbitrator, therefore, also kept in mind that the base wage without the incentive is roughly 4% behind the weighted average of the comparators.

The Arbitrator agrees with the Employer that internal parity is a significant consideration in this case. Yet, the Employer refused to unconditionally match the increase given to the IBEW bargaining units, and it did not explain why the NSOs wages should not match the CCO increase, given the close relationship between the two units. (The CCOs received a 3.5% first year increase, while the IBEW bargaining units received a 3% increase). The Arbitrator

believes a 3.5% increase will help boost the bargaining unit base wage, which the EIP payments do not do, and takes into consideration the somewhat increased job requirements of the NSOs since 9/11. The evidence does not support any larger increase than this, in the Arbitrator's opinion.

Everything considered, the Arbitrator has determined that the bargaining unit wages should be increased by the same amount as the CCO unit, as follows:

Effective November 3, 2002: 3.50%
Effective November 3, 2003: 3.00%
Effective November 3, 2004 3.00%

VI. SECTION 5.1.1 - PERSONAL TIME

At present, an employee with more than ten years of service is required to take at least 160 hours of Personal Time Off (PTO) per payroll year. The Union has proposed lowering the mandatory 160 hours per payroll year for employees with more than ten years of service to 120 hours per payroll year. The Employer opposes the change.

Randy Long, testifying for the Union, explained that more senior employees (those who accrue more than 160 hours of PTO) must take at least 160 hours or lose that time. They cannot be "banked" for later usage or sold back to the Employer. He stated that because only three employees are allowed to schedule PTO at the same time, it is difficult for employees to obtain time off on their preferred dates. Also, because NSOs work seven days straight on a rotation, they get about a week off to rest up. Therefore, they do not need as much time off as workers working a more typical shift schedule.

The Union contends that unrepresented employees with 11 years of service are required to use or lose only 126 hours of PTO, those with 12 years 132 hours, 13 years 138 hours, and so on. Exh. U-11, Section 3.1.2(a). Only when a non-unit employee reaches 17 years of employment is he or she required to take 160 hours of Personal Time off per year. The Union finds it difficult to understand why ENW would resist a schedule of paid time off for bargaining

unit personnel that it already has in place for its non-unit employees. Thus, it also justifies its proposal on internal equity grounds. In its brief, the Union proposed changing the language on paid time off to match that found in Company's Personal Time and Disability Supplement, Section 3.1.2 (a), which pertains to unrepresented employees.

The Employer opposes this change to the contract because of the increased costs it would incur. David Orcutt, for the Employer, testified that the Employer believes it is important for employees to have paid time off away from the job; further, its paid time off benefit is very generous. There was no evidence that employees could not use their accrued PTO hours. The status quo reflects the language in the IBEW and the CCO agreements.

The Arbitrator rejects the Union's proposal for the reasons cited by the Employer. The evidence is that the NSO agreement has been closely aligned to the IBEW and CCO agreements and not to the wages and benefits given unrepresented employees. Further, by proposing to match the language for unrepresented employees, the Union has changed the terms of its final offer. The Arbitrator's authority to entertain such a change is questionable. The language of Section 5.1.1. will remain as written in the parties' 1999-2002 Collective Bargaining Agreement.

VII. SECTION 7.2.2 - OVERTIME

The prior agreement stated that once an employee works over 200 hours of overtime in a year, all additional overtime will be paid at double time. Only overtime hours worked at 1.5 times pay (as opposed to double time) are included in this 200-hour threshold. Employees can receive double time pay (prior to meeting the 200 hour threshold) under four circumstances set out in the agreement. The current scheme is that employees must work at least 200 hours of overtime at 1.5 times their regular rate of pay before the mandatory double time pay clause is invoked for all additional overtime. The Union is proposing that double time hours, in addition to

time and one-half hours, count towards the 200-hour threshold. The Employer opposes this change.

NSO Randy Long testified that under the current IBEW Local 77 agreement, all overtime hours worked count toward the 200-hour threshold. The collective bargaining agreement between ENW and the CCOs contains the IBEW language as it applies to RPOs and watchpersons.

The Union notes that the Employer's position (as testified to by David Orcutt at hearing) ties this proposed change to the Union accepting its Right of Selection language, which the Union was unwilling to do.[17]

The Union, noting the extraordinary amount of overtime NSOs have worked since 9/11, believes there is no reason for the Employer to refuse parity with the IBEW and CCO collective bargaining agreements on this issue.

In its brief, the Employer explained that NSOs have an extremely favorable schedule. While working a 12-hour shift, they have a substantial number of days off. During each 28-day cycle, NSOs receive eight consecutive days off at one point during the cycle. In addition, the NSOs also receive overtime for some of their regularly scheduled work. The way things work out, NSOs receive an annual 104 hours of overtime pay for work performed during their regularly scheduled work time.

The Employer contends that to claim the IBEW benefit, the Union should show that the IBEW shift schedule is substantially similar. But, Section 7.1.1 of the IBEW agreement provides that "a standard work week schedule shall consist of five (5) eight (8) hour days with two (2) consecutive days off during a period." The Employer also contends that the CCO language for

[17] At hearing, the Employer stated that the Union should not be allowed to pick and choose which IBEW and/or CCO contract terms it will agree to. The Union must agree to all, or have none, since those contracts were negotiated with quid pro quos in mind.

the 2003-2005 and 2005-2008 agreements (Section 7.2.2) is exactly the same as proposed by the Employer for the NSOs.

The Arbitrator notes that under the Union's proposal, employees would accrue the right to double time under the 200-hour threshold more quickly, which would result in increased cost to the employer and increased pay to the employees. As an economic item, the Union cited none of the criteria set out in the statute. It implicitly relies only on the "other factors" clause, under which arbitrators will consider internal parity. The Employer's arguments have merit, in the Arbitrator's opinion. The Union's proposal on overtime will not be awarded.

VIII. HOURS OF WORK (SECTION 7.2.3)

The Union has proposed that when a Nuclear Security Officer works overtime due to an emergency or operational necessity, whether on a mandatory or volunteer basis, and that overtime causes the employee to be laid off for all or part of his or her subsequent shift (because of the Nuclear Regulatory Commission's "fatigue rule"), then the officer should be paid at his or her full regular pay, or the applicable overtime rate for the time not worked, without the officer being required to utilize personal time off or other benefit.

The Employer does not agree to this proposal and would retain the status quo.

The Union explained that in October 2003, the Nuclear Regulatory Commission (NRC) issued a "fatigue order" setting an upper limit on the number of hours an NSO could work over a prescribed period. It also included a requirement, according to NSO Randy Long, that NSOs have eight hours off between certain shifts. This rule means that an NSO volunteering for additional hours after the end of his or her normal shift will be required to delay his or her arrival at work the following day for his or her regularly scheduled shift. The perverse result was that an NSO volunteering to work additional hours would be denied the ability to work regularly scheduled straight time hours on his or her following shift.

The Union proposes that an NSO denied the ability to work his or her regularly-scheduled shift by the NRC "fatigue order" be paid at his or her regular rate, or the applicable overtime rate, for the hours he or she is required to remain away from work. It contends that an NSO who volunteers for overtime, or who is required to remain at work beyond his or her normal shift, should not be penalized for that extra duty. Requiring an NSO to miss all or part of his or her next scheduled shift diminishes the value of the overtime worked, and unfairly penalizes the NSO for the extra duty. Thus, the Union contends, at a minimum, an NSO forced to remain at work following the expiration of his or her regular shift should not be penalized by loss of hours on his or her following regularly-scheduled shift.

Opposing the Union's proposal, the Employer notes that Section 7.2.3(c) of the current agreement crafted a system for working through issues of overtime and compliance with NRC regulations. Any employee unable to comply with the NRC regulations will already have received a significant amount of overtime. Depending upon the circumstances, much of that will have been paid at the double time rate.

The Employer objects to employees being able to volunteer for overtime and then collecting pay (presumably on an overtime basis) for not working, just to avoid violating the NRC regulations. Given the substantial accumulation of personal time off, the ability to use that personal time is not a burden to employees, the Employer contends. It would be patently unfair to penalize Energy Northwest and require payment for time not worked.

The Employer also argues that the Union already agreed to the existing hours of work limitation in a separate section of the contract, citing the T.A.'d portions of the agreement at page 38. Inclusion of the Union's proposal would create an inappropriate ambiguity.

If the Arbitrator correctly understands the bearing the "fatigue order" has on current working conditions, she does not see how the employee is harmed. If the employee volunteers to extend his or her shift, then he or she must not work an equivalent amount of time on the next shift to the extent required by the eight-hour no-work requirement. Essentially, the employee

has volunteered to change his or her shift schedule; there has been no loss of pay. In fact, the employee may have received double time or time and a half for the extended shift. If the employee doesn't like the idea of shift adjustment, there is no requirement to volunteer. The Arbitrator would be more sympathetic to the Union's position if the Employer required the NSO to work beyond the last shift. But the Union's proposal does not distinguish between the two situations and the Arbitrator is not willing to rewrite the proposal. As it stands, the Arbitrator is not convinced that the Union's proposal has merit.

IX. SECTION 9.1, ANNOTATIONS - RTL, OJT SCC STIPENDS; CAS/SAS STIPENDS; AND RIGHT OF SELECTION

The Union has proposed adding the following pay differentials to the Collective Bargaining Agreement, as follows:

- CAS/SAS (Central Alarm Station/Secondary Alarm Station): five percent (5%);
- RTL (Response Team Leader): five percent (5%);
- OJT (On-The-Job-Trainer): five percent (5%);
- SCC (Security Communication Center): five percent (5%);
- Shooting Qualification Stipend –
  - Expert: three percent (3%);
  - Sharpshooter: two percent (2%);
  - Marksman: one percent (1%).
- Attachment CAS/SAS Guidelines: The Union proposes no change in this attachment.

The Employer opposes these increases and would retain the status quo, except that it:

- Would increase the CAS/SAS stipend to 2%
- Would rewrite the shooting pay language as follows:

Handgun Day	50 rounds	
Handgun Night	20 rounds	
Rifle Day	20 rounds	
Rifle Night	20 rounds	
Rifle Night (Night Vision)	20 rounds	
Rifle Night (Thermal)	20 rounds	
TOTAL	150 rounds	
		Payout
Expert	95% 142-159 hits	$260
Sharpshooter	90% 135-141 hits	$208
Marksman	85% 127-134 hits	$156

In addition, the Employer proposes that the existing language in the CAS/SAS Guidelines be deleted and the following language on "Right of Selection" be inserted:

> In cases of promotion, transfer, and demotion of personnel, some or all of the following factors shall be considered in making an award: the employee's seniority, capabilities, physical and technical ability, previous work experience and work performance, performance in training programs, ability to direct and/or perform work in an efficient and productive manner, compatibility with other workers.

The Employer also proposes proposing to delete "CAS/SAS Guideline Option 1" which is an addendum to the 1999-2002 labor agreement.

A. Discussion - New Stipends

The Union proposes to add 5% annual pay stipends to employees serving as Response Team Leaders, On-the-Job Trainers, and in the Security Communications Centers. The Employer opposes any premium pay.

1. Union on RTL/OJT/SCC Stipends

The Union asserts that the Response Team Leader (RTL) is responsible for directing a team of NSOs in training exercises and in the event of a sustained attack on the Columbia Generating Station. NSO Pat Hamilton serves as an RTL and was sent to the training exercise with the Fluor Hanford SPOs and others that included the videotape entered as Union Exh. 12. It is a voluntary position imposing substantial responsibilities upon the individual agreeing to take on the position.

The Union contends that on-the-job trainers are responsible for teaching newly hired officers the intricacies of their position once their training has concluded. These trainers teach new hires the various denial positions inside the plant and evaluates them in their performance of the requirements of the NSO position. Since 9/11, the security force at the CGS has doubled, imposing substantial burdens on the volunteers for the OJT position.

Individuals working in the SCC position work in the Security Communication Center alongside individuals in the CCO bargaining unit (which is being phased out, to be replaced by NSOs). Thus, in addition to their responsibilities as NSOs, individuals volunteering to work in the Security Communication Center must learn the systems used for connecting the Columbia Generating Station to outside authorities and regulatory agencies. NSO Randy Long testified that individuals volunteering for the SCC position undergo a one-month period of training, and must annually re-qualify for the certification.

The Union notes that the collective bargaining agreement of one comparator, the Hanford Patrol, contains pay differentials. Canine handlers receive a $60 a week premium, the Union points out.

Each of these positions impose responsibilities on NSOs which are presently uncompensated by ENW. The Union contends that a five percent pay differential for these positions is appropriate, given the additional responsibilities and training required by these three positions

2. Employer on New Stipends

The Employer contends that the only responsibility of the Response Team Leader is to keep track of where other NSOs on the squad are in the event of a critical incident; however, no critical incidents have occurred during the CGS's 20 years of operation. Unlike a traditional lead position, which has regular responsibilities that must be performed on a daily basis, the RTL assignment only "kicks in" in the event of an attack or a training exercise. There is no basis for establishing a RTL stipend.

Regarding on-the-job trainers, the Employer states that it appreciates the importance of having good on-the-job trainers, but is opposed to creating on-the-job trainer premium pay. It notes that little on-the-job training will occur in the foreseeable future. Given the very low turnover, and the fact that the CGS is now staffed up to meet the NRC requirements, little on-the-job training will be done.

Witnesses (NSO Randy Long and Captain Mark Fisher) agreed that on-the-job training generally takes about one month. The Union, however, proposes that the premium be paid on an annual basis, regardless of how much work the trainer does. Moreover, the Union's proposal is not clear as to whether that premium continues in perpetuity, once the NSO becomes qualified as a trainer.

On the proposed SCC Stipend, the Employer observes that most of the work in the Communications Center is performed by the CCOs. Those employees are paid substantially less than NSOs. The SCC position is assigned to one or two members of the NSO bargaining unit on each squad in order to assist the CCOs in performing the required tasks. Inexplicably, since it is a position that the parties have mutually agreed is worth less than the NSO position, the Union proposes NSOs be paid a premium for performing as an SCC. Energy Northwest is opposed to the institution of such a premium. Significantly, the evidence was that there has not been any real change in the position or its responsibilities since 9/11.

3. Arbitrator's Determination on New Stipends

The Union cited none of the statutory criteria in support of its proposals, except for the fact that Fluor Hanford pays bargaining unit members a premium for canine handling, which is a different function. Its proposals are not well defined either, as the Employer points out. Moreover, the Union's proposed premiums, even if warranted, are quite high, in the Arbitrator's opinion. She therefore rejects the Union's proposal for RTL, OJT and SCC premium pay.

B. Discussion - CAS/SAS Stipend

The Union proposes increasing the CAS/SAS stipend to 5% from its current .8%. The Employer proposes that the CAS/SAS stipend be increased from .8% to 2%, but it specifically conditions this increase on having the "Right of Selection," discussed below.

1. The Union on the CAS/SAS Stipend

The Union points out that alarm station operators are responsible for the central alarm system and the secondary alarm systems at the CGS. CAS/SAS positions require training of at least one month in the sophisticated computer systems, alarm responses, and contingency responses required. Employees are initially certified and then annually tested and recertified in the requirements of their position. They serve, in essence, as the "eyes and ears" of NSOs in the field, and assist in directing tactical responses to any security threat to the reactor and other facilities.

Randy Long testified that the CAS/SAS position is stressful and exposes the operator to job jeopardy in the event of error. The present system in place is highly unstable, and results in frequent "false positive" alarms. Long and NSO Leon Howard both resigned from the CAS/SAS positions because of stresses brought on by the "false positive" alarms, and the fact that the stipend for the position—which has remained at eight-tenths of one percent of pay since 1999 – does not cover the increased responsibilities. The Union therefore believes that the differential should be increased to five percent of the annualized "top step" of the NSO.

2. Employer on the CAS/SAS Stipend

The Employer agrees that the CAS/SAS is the hub of security at the site and it understands the importance of getting the right individuals in CAS/SAS. It is willing to pay a premium in order to do that.

In evaluating the appropriate premium, it is important to keep in mind that the CAS/SAS assignment is not full time. Rather, employees often do it for only part of their shift. Similarly, CAS/SAS qualified NSOs will sometimes not perform that function at all on a particular day.

Under the established system for paying the CAS/SAS premium, which is currently .8 percent, the NSO receives the premium regardless of whether they are actually performing the duty. It is important to keep this in mind in terms of determining an appropriate increase in the premium.

The Employer contends its proposal of 2%, which is over double the previous incentive, is a sufficient incentive and reward for working this assignment. The Union has offered little evidentiary basis for its proposal of 5%. The Employer's willingness to pay an increased incentive is also conditioned on it obtaining only well qualified individuals to perform this duty. Should it be awarded this language, it would be amenable to a premium greater than 2%.

3. Arbitrator's Determination on CAS/SAS Stipend

The only comparator information that the Arbitrator has is that Fluor Hanford began paying its Central Alarm Station Operators a premium of $30 a week in 2003. Adjusting its base wage to 2003, the Arbitrator calculates that this works out to about a 3% a year premium. (Prior to 2003, the premium was $25 a week). See Exh. U-13.

The evidence convinced the Arbitrator that this position is stressful and the Employer may lose well-qualified volunteers with its current premium. It is a contentious point with the parties, which could be alleviated with higher premium. The Arbitrator will award the 2% proposed by the Employer, but for the reasons discussed below, will not tie it to the Employer's "Right of Selection" proposal.

C. Discussion - Shooting Pay

The expired Collective Bargaining Agreement read as follows:

> **Shooting Qualification Stipend** . Nuclear Security Officers who maintain shooting qualifications shall receive a stipend for achieving the following shooting performance ratings:

Marksman	225 pts - 257 pts	$156.00
Sharpshooter	258 pts - 278 pts	$208.00
Expert	279 pts - 300 pts	$260.00

The Union's proposal would change the stipend from a fixed dollar amount to a percent of wages. The Employer would change some of the language, but retain the status quo on pay.

1. Union on Shooting Pay

The Union contends that the requirements for NSOs to be fully qualified in the use of firearms in both offensive and defensive situations have increased dramatically over the period covered by the Collective Bargaining Agreement. NSOs are now responsible for training in night fire situations, shooting from height (such as from the Bullet Resistant Enclosures established after 9/11), for running a tactical course or shooting while outfitted with a gasmask, and further pursuing a "shoot don't shoot" qualification. They are now responsible for qualifying both with a sidearm and with rifles fitted with night vision and thermal scopes. Prior to 9/11, NSOs qualified only with handguns and without the additional requirements, including night fire, shooting from heights, and running a tactical course.

The flat dollar amounts have remained unchanged in the contract for many years. Given the more stringent qualification requirements, the Union believes an annual premium of 1% to 3%, depending on proficiency, is justified.

2. Employer on Shooting Pay

The Employer does not propose an increase to shooting pay. It asserts that while the new test is different, it has not resulted in less pay for NSOs. The evidence was that when, in 2005, ENW utilized the new test, despite all the changes emphasized by the Union, the average score received by NSOs was 97%, which is two points higher than the score required for expert qualification. In other words, the vast majority of NSOs would be qualified as an "expert" under the Employer's proposal of Energy Northwest.

The mere fact that a test is changed should not require or result in a pay increase. The Union has offered little else to support its significant increase in shooting pay. Under the Union's proposal, individuals who are an "expert" would receive a premium of three percent of base pay, or about $1,200 a year, which is a five-fold increase over the current pay.

Shooting pay has been in the Agreement for many years as a flat dollar amount. The impact of the Unions' proposal would be to increase the pay of the bargaining unit by close to three percent, since so many of the NSOs qualify as an expert. There is no basis in the record to support such an increase.

For all the above reasons, Energy Northwest would propose that the shooting pay stipend not be increased, and that its proposal be awarded.[18]

3. Arbitrator's Determination on Shooting Pay

Although neither side pointed to the Fluor Hanford shooting pay in its argument, I note that the premium paid under that contract ranges from $50 to $260, with four levels; thus it is similar to pay currently received by NSOs. However, this contract went into effect before 9/11 and the Arbitrator notes that there is a provision allowing the Employer to change the requirements to meet changes in federal regulation.[19] Another clause states that if the handgun qualification course is revised and the result is lower scores by a margin of 10%, the parties will "meet and discuss" a different schedule for premium pay. Exh. U-13.

The Arbitrator observes that the premium pay for the NSO bargaining unit has been the same since at least 1999. A percentage premium arguably is preferable, in the Arbitrator's opinion, because it does not lose value with changes in the cost of living. A consideration favoring the Union also is the increased qualifications requirements imposed since 9/11. In my opinion, an increase in the shooting premium is in order, but the Union's proposal is excessive. It would, as the Employer points out, result in about 3% pay increase for most of the bargaining unit.

---

[18] The Employer also states that if any increase is awarded, it should be prospective only, since NSOs only began taking the revised test in 2005.

[19] The Fluor Hanford contract took effect on December 24, 2000 and had an expiration date of October 29, 2005. It contained, however, an evergreen renewal clause. Article XXV, page 152, Exh. U-13. There was testimony that the parties are currently in negotiations for a new contract.

In 1999, the "expert" premium amounted to about .68% of top step base pay, according to the Arbitrator's calculations. By 2002, it had gone down to .63%. With the wage increases awarded herein, the same premium will have deteriorated to .46% of base wage by the start of the contract's third year (November 3, 2004). The Arbitrator believes it appropriate to convert the fixed dollar amount to a percentage, as the Union proposes, and she will increase the percentage slightly (to .9%) for "expert" to reflect the increased requirements since 9/11. The "sharpshooter" and "marksman" increases will be prorated according to their prior ratio to "expert" pay. She agrees with the Employer that this increase should take effect in the third year of the contract, when the increased requirements went into effect.

Accordingly, the Arbitrator's award is as follows:

Effective November 3, 2004, the shooting qualification stipend will be:

- Marksman: Five-tenths of one percent (0.5%) of base pay
- Sharpshooter: Seven-tenths of one percent (0.7%) of base pay
- Expert: Nine-tenths of one percent (0.9%) of base pay

The Arbitrator notes that effective November 3, 2004, top step base pay will be $21.86 according to her calculations. Annualized (assuming 2080 paid hours), this amounts to $45,472.53. Nine-tenths of one-percent (0.9%) of this amount is $409.25. If the parties' practice is to use a different multiplier when computing the annual base, then the Arbitrator's calculation should be adjusted accordingly.

The Employer also proposed adding new language to this article that delineates the requirements for receiving these stipends. The Union did not object to this language. Therefore, it will be included in the parties' new Collective Bargaining Agreement, effective November 3, 2004.

D. Discussion - Right of Selection

The Employer proposes "modified seniority" language, set forth above, that would allow it to select from among volunteers for certain specialty assignments largely on the basis of merit, rather than strict seniority, which is the status quo.

The Union opposes this language, and asserts that the current method of taking volunteers, and then assigning in inverse order of seniority is satisfactory. The Employer's language would infringe upon bargaining unit member's seniority rights.

1. Employer on Right of Selection

Energy Northwest seeks to include in the NSO bargaining agreement the exact same language that is in each of the IBEW agreements. The reason for the change involves selection for certain specialty assignments. Some NSOs periodically work as a CAS/SAS operator, an On-the-Job Trainer (OJT), at the Security Communications Center (SCC), and as a Response Team Leader (RTL). While there is language in the Agreement on the selection of CAS/SAS operators, and assignment to the SCC, there is no language in the Agreement concerning selection of OJTs or RTLs. Energy Northwest seeks the ability to select employees to perform these various assignments based on factors in addition to seniority.

Historically, the assignments have been filled utilizing volunteers, and when there were not enough volunteers, through seniority (inverse seniority). Energy Northwest still intends to seek volunteers, and will only require that NSOs fill positions if there are still vacancies. At the same time, Energy Northwest needs the ability to reject a volunteering NSO who is not appropriate for the position. For example, one of the positions at issue is the On-The-Job Trainer. As Union witness Leon Howard readily admitted, while testifying on behalf of the Union, there is a big difference between NSOs in their capability to train. At the hearing, Captain Mark Fisher described some of the problems Energy Northwest has had with the current selection system.

Similarly, the CAS/SAS operations center is in many ways at the "hub" of security protection at the site. Employees assigned to CAS/SAS must display a confidence and aptitude representative of both experience and professionalism. The CAS/SAS operators must watch computer video monitors, which display the results of video surveillance cameras around the site. While some squads have many volunteers, others (such as the B Squad) have none. This results in those with among the very least experience at Energy Northwest working in this command and control position. Not surprisingly, Energy Northwest finds that result unacceptable.

The right of selection that the Employer seeks is the kind generally found in uniformed services agreements. This language proposed by Energy Northwest is the same language that is contained in the IBEW agreements, and has stood the test of time. It should be incorporated into the NSO agreement.

2. Union on Right of Selection

Individuals volunteering for CAS/SAS position, or being assigned to it by inverse seniority, must remain in the position for a minimum of two years.

The Union proposes no change to this system, which has been in place since 1983. The Employer's proposal would allow it to choose employees on the basis of wholly subjective factors.

The importance of a traditional seniority clause to the Union cannot be overstated. Seniority serves as an objective measure of qualifications for advancement, and protection from layoff. Equally important, it serves as protection from arbitrary appointments of favored candidates.

At a minimum, an employer seeking to abandon a long-standing seniority system should be required to identify with particularity the operational problems which a seniority system such as that applicable to CAS/SAS operators has presented. Neither David Orcutt, ENW's

negotiator, nor security Captain James R. Fisher was able to identify a single operational problem that the current method of selection of CAS/SAS operators has presented. While Fisher expressed a desire to have the "best people available" to fill the positions, he could not cite a single instance where a CAS/SAS operator was placed into a position beyond his or her capabilities by the present seniority system.

In that regard, it is important to note that the CAS/SAS operator must undergo a rigorous training regiment often exceeding a month in duration, and pass a qualification examination before being appointed to the position. Further, CAS/SAS operators must re-qualify for the position by means of an examination on a yearly basis. There is, therefore, little justification for the claim that the seniority system has not served ENW's needs in filling the CAS/SAS operator position.

The IBEW contract does contain a "modified seniority" article in cases of promotion, transfer, demotion and layoff. However, there is no showing that IBEW members bidding on an advanced position must undergo the same training and testing requirements as NSOs seeking the CAS/SAS operator job. That training and testing is sufficient to ensure that ENW gets trained NSOs in its CAS/SAS operator positions. It has the ability, in other words, to reject unqualified NSOs through its training and testing program. There is no evidence that IBEW members must undergo similar training and testing to advance within their positions.

In addition, the "right of selection" language found in the IBEW contract has been there since at least 1985. This is not, then, a situation in which ENW recently obtained a concession from the IBEW that it wishes to bring to the NSO contract. The IBEW language was in fact in place during the negotiations that led to the NSO 1999-2000 collective bargaining agreement, and the evidence was that the Employer did not seek "right of selection" language in those negotiations.

Finally, the Union would note that seniority is important enough to represented employees to frequently be a strike issue in collective bargaining. The Union requests that the

Arbitrator consider the importance of seniority systems to unions and their members in collective bargaining and to weigh that factor under the policy considerations set forth by the legislature in RCW 41.56.430.

3. Arbitrator's Determination on Right of Selection Language

Although the Arbitrator is sympathetic to an employer position that seeks to screen candidates for premium-pay positions, particularly positions such as CAS/SAS operators' positions, several aspects of the Employer's proposal and arguments puzzle her.

First, its proposed language is so broad that it would apply to any selection made under the Collective Bargaining Agreement, including selections made for trainers and RTLs. Testimony at hearing touched on selections beyond CAS/SAS operators. Yet, its argument focuses largely on the CAS/SAS operator positions, and the placement of the language would be in Article 9, "Annotations (1)", which pertains to the CAS/SAS stipend. The Union confined its argument to the CAS/SAS positions, indicating its belief that the Employer's proposal was limited to those positions.

Second, the first paragraph of its proposal states that it would delete the CAS/SAS guidelines, and insert instead its proposed language. The proposal's third paragraph states that it would also delete the 1999-2002 addendum labeled "CAS/SAS Guideline Option 1." The Arbitrator, however, can find only one part of the contract that references CAS/SAS "guidelines," and that is the previously referenced Option 1, which covers mandatory CAS/SAS assignments. (There is no Option 2). Therefore, the Arbitrator does not know precisely what language the Employer would eliminate when it states, in its proposal's first paragraph, that it would delete the CAS/SAS guidelines. Perhaps it means it would delete all of the CAS/SAS language found in Article 9, save for the clause on premium pay. But this is far from clear to the Arbitrator.

Third, the Employer's argument focuses on the need to pick qualified employees (or the best qualified employees) for the CAS/SAS position. It implies that it cannot do this under the

current contract. However, the current contract contains language explicitly stating, in Article 9 (emphasis added):

> Energy Northwest will determine the number of CAS/SAS officers needed to be qualified and available and will select officers for training. Seniority will be one of the factors considered by Energy Northwest in making this determination. The senior qualified volunteer (based on criteria established by Energy Northwest) shall be assigned within each squad.

Although the Employer identifies its proposed language change as a very important issue, holding it out as a quid pro quo in negotiations, it has failed to make clear to the Arbitrator exactly what contract revisions it wants and why the current language fails. Further, as noted by the Union, the Employer's witnesses were unable to identify specific problems with the current system. The only real issue it identified was that the CAS/SAS operators have a practice (it was not clear how many times this "practice" has occurred) of resigning en masse during negotiations. But this evidence, coupled with the Union's evidence on the stress of the position outweighing the small premium paid to that position, suggests that the Employer would not face this dilemma, and would have more volunteers from which to choose, if it simply paid a higher premium, as awarded above.

For the reasons stated, however, the Arbitrator cannot award this language.

X. ARBITRATOR'S FINAL AWARD

The neutral Arbitrator's final award in this proceeding is as follows:

A. Wages

The bargaining unit base hourly wage will be increased as follows:

Effective November 3, 2002: 3.50%
Effective November 3, 2003: 3.00%
Effective November 3, 2004 3.00%

B. Personal Time – Hours (Section 5.1.1)

The Union's proposed language on personal time will not be included in the parties' new Collective Bargaining Agreement.

C. Overtime (Section 7.2.2)

The Union's proposed language on overtime will not be included in the parties' new Collective Bargaining Agreement.

D. Hours of Work (Section 7.2.3)

The Arbitrator's award is that the Union's proposed language on hours of work will not be included in the parties' new Collective Bargaining Agreement.

E. CAS/SAS, RTL, OJT, SCC Stipends, Right of Selection (Section 9.1 Annotations)

1. New Stipends

The Union's proposed premium pay for employees holding RTL, OJT, and SCC assignments will not be included in the parties' new Collective Bargaining Agreement.

2. Shooting Pay

Effective November 3, 2004, the previous Article 9, "Annotations" shooting pay language will be stricken and the new language will read as follows:

> Shooting Qualification Stipend - Nuclear Security Officers who maintain shooting qualifications shown below shall receive the indicated stipend for achieving the following shooting performance ratings.

Handgun Day	50 rounds	
Handgun Night	20 rounds	
Rifle Day	20 rounds	
Rifle Night	20 rounds	
Rifle Night (Night Vision)	20 rounds	
Rifle Night (Thermal)	20 rounds	
TOTAL	150 rounds	
		Payout
Expert	95% 142-159 hits	Nine-tenths of one percent (0.9%) of annual base pay
Sharpshooter	90% 135-141 hits	Seven-tenths of one percent (0.7%) of annual base pay
Marksman	85% 127-134 hits	Five-tenths of one percent (0.5%) of annual base pay

> Payment will be made at the end of the Bargaining Unit Agreement year in a lump sum payment. It shall be based on the rating in effect at the time of entitlement, i.e., the payment will be at the same rate for the entire period of eligibility.

The language of the expired Collective Bargaining Agreement on shooting pay will be included in the new agreement, applicable to the first two contract years.

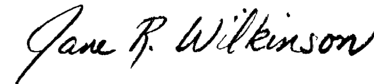
3. CAS/SAS Stipend

Effective November 3, 2002, the CAS/SAS stipend will be increased to 2%.

4. Right of Selection

The Arbitrator will not award the Employer's proposed language on "Right of Selection".

Date: March 6, 2006



Jane R. Wilkinson
Labor Arbitrator