

In the Matter of the Interest Arbitration

between Washington State Council of County and City
Employees, AFSCME, AFL-CIO (“WSCCCE” or “Union”)

and

Snohomish County, Washington (“County”).

Findings,
Discussion and
Award.

Case Numbers:	Washington PERC Case No. 128225-I-16. Arbitrator’s R62.
Representing the Union:	Audrey Eide, WSCCCE General Counsel, PO Box 750, Everett, WA 98206-0750.
Representing the County:	Steven J. Bladek, Snohomish County Deputy Prosecuting Attorney, 3000 Rockefeller, M/S 504, Everett, WA 98201-4060.
Arbitrator:	Howell L. Lankford, P.O. Box 22331, Milwaukie, OR 97269-0331.
Hearing held:	In the County offices in Everett, Washington, on February 28, 2017.
Witnesses for the Union:	Phillip Thompson, Dustin Gannon, Gerald Casey, Mark Murphy, and James Eastman.
Witnesses for the County:	Brian Haseleu, Rob Beidler, and Rob Sprague.
Post-hearing argument received:	From both parties by email on April 21, 2017.
Date of this award:	May 16, 2017.

This is an interest arbitration under the authority of RCW Chapter 41.56. I am the sole arbitrator by agreement of the parties. There are no preliminary issues of statutory compliance, and the parties stipulate that they properly complied with the preliminary requirements of the Chapter. The hearing was orderly. Each party had the opportunity to present evidence, to call and to cross examine witnesses, and to argue its case. Both parties filed timely post-hearing briefs, which have been carefully considered.

WSCCCE represents most of the employees of the County, in eighteen separate bargaining units. The Marshal Unit (Local 109-E) is one of the eighteen. The Deputy Sheriff's Association (DSA) is not represented by AFSCME. Most of the terms of the wages, hours and other conditions of employment of the County's workforce are covered by an AFSCME Master Agreement, which the eighteen locals bargain as a group; but many of the locals, including the Marshals' local, also bargain some matters in separate addenda.

That was the pattern of the parties' negotiations for the 2015-2018 Master Agreement; but during the course of those negotiations the 2015 Legislature amended the definition of "Uniformed Personnel" set out in RCW 41.56.030(13) by adding a new sub-subsection (i): "court marshals of any county who are employed by, trained for, and commissioned by the county sheriff and charged with the responsibility of enforcing laws, protecting and maintaining security in all county-owned or contracted property, and performing any other duties assigned to them by the county sheriff or mandated by judicial order." That amendment had the effect of making the County's Marshals eligible for interest arbitration under the Chapter RCW 41.56. This appears to be the first interest arbitration under that new statutory provision.

At the end of two-party negotiations, the parties had resolved every issue but one, compensation. On that issue they were and are far apart. AFSCME proposes to move the Marshals from grade 237 to grade 239—about a 10% increase—at the beginning of the contract period, with additional 2% increases on January 1, 2015 and 2016 and 2.5% increases on January 1, 2017 and 2018. AFSCME also proposes to establish a salary for a Lead Marshal classification and to require out of class pay "when an employee is assigned by the supervisor to be an acting lead." That pay rate would be one grade higher than the Marshals, at grade 240. The Lead Marshal classification does not currently exist. The County proposes no change in pay grade and a 2% increase for each of the first three years and an increase of 90% or the CPI-W (Seattle-Tacoma-Bremerton), with no cap or floor, for the final year.

The County's Marshals are specially "commissioned by the county sheriff"—as the new amendment requires—and their authority is limited to the courthouse¹ and to their duty

¹The exact geographical area of authority at issue usually exceeds the courthouse itself but is peculiar to each County. I will use the general term "courthouse" to include the various other areas.

hours. Some Counties assign courthouse security to regular Deputy Sheriffs; and the parties' sharp dispute over compensation arises from their disagreement about whether the Marshals are "like personnel"—the statutory term—to such regular Deputies. AFSCME insists that they are like personnel and has expressly chosen proposed comparable counties that assign courthouse security to regular Deputies. The County insists that they are not like personnel and has expressly chosen proposed comparable counties that do not assign courthouse security to regular Deputies.

STATUTORY FACTORS

Most of the factors to be considered in this case are specified in RCW 41.56.430 and RCW 41.56.465:

RCW 41.56.430: Uniformed personnel—Legislative declaration.

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

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

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

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

The apparent hole in the statutory language. None of the factors listed in subsection (1) is determinative in the case at hand. This case turns on issues of comparability, and that factor is set out in RCW 41.56.465(2). For court marshals, the comparability language of

subsection (2) is problematic.² The types of employees eligible for interest arbitration are set out in RCW 41.56.030(7); and the Legislature added court marshals as sub-subsection (I) under RCW 41.56.030(7). But the comparability provisions of 42.56.465(2) make a distinction between, essentially, police and corrections cases on the one hand and fire cases on the other. Police and corrections cases are referenced as “41.56.030(7) (a) through (d);” and for those cases the interest arbitrator “shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.” Fire cases are referenced as “RCW 41.56.030(7) (e) through (h);” and the comparability requirements for those employees is slightly different. But the Legislature added court marshals a new sub-subsection (I); and with respect to that new sub-subsection, the comparability language of RCW 42.56.465(2)—which divides employees into “(a) through (d)” and “(e) through (h)” —is silent. Both parties here assume that the police and corrections language of the statute should be applied to these Marshals despite the statutory silence;³ and I shall consider that shared assumption to be a stipulation of the parties.

CONSIDERATION OF THE STATUTORY FACTORS

RCW 41.56.265(1) (a): The constitutional and statutory authority of the employer. No dispute in this case is illuminated by consideration of this factor.

RCW 41.56.265(1) (b): Stipulations of the parties. There are three important stipulations: All the procedures set out by the statutory scheme have been properly satisfied and I am authorized by that scheme to decide the issues in this case. The parties’ tentative agreements should be included in the terms of the Award issued here. And the police and corrections language of RCW 41.56.265(2) should be applied to Marshals in this case.

²The language has long been murky because the comparison Factors statute—RCW 41.56.465—divides most IA disputes into two classes, those involving police or corrections and those involving fire; and the statutory instructions for those two classes are slightly different. Unfortunately, RCW 41.56.465 refers to police or corrections cases by reference to “employees listed in RCW 41.56.030(7) (a) through (d)” and to fire cases by reference to “employees listed in RCW 41.56.030(7) (e) through (h);” but RCW 41.56.030(7) is the definition of “Family child care provider” and does not have eight lettered subsections. The Factors statute makes sense only if we substitute “(13)” —the definition of “Uniformed Personnel”—for “(7),” since (13) has the necessary lettered subsections.

³Even if the police provisions of the statute do not literally apply to marshals, the “other factors” subsection, RCW 41.56.465(1)(e), demands consideration of comparability. It makes no sense to venture into interest arbitration without considering comparability.

RCW 41.56.265(1)(c): The average consumer prices for goods and services, commonly known as the cost of living. AFSCME does not argue that the real income of the Marshals has been eroded by increases in the cost of living. The County's data (Post-hearing Brief at 16) is puzzling on this factor: it offers compensation/CPI comparisons going back to 2003 for a classification that did not exist until 2008. Taking the figures from 2008 forward, the best numbers in the record show that the CPI-W (Seattle/Tacoma/Bremerton) has increased by about 13.5% and Marshal's pay rates have increased by about 17.5%. Loss of real purchasing power is not a pay rate driver in this case.

RCW 41.56.465(1)(d): Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings. Neither party argues that there are any such relevant changes in this case.

RCW 41.56.465(1)(e): Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. The parties point to three such factors.

First, the County points out (Post-hearing Brief at 16) that there have not been any difficulties in recruiting or retaining Marshals and that no such difficulties are contemplated. There is no contrary evidence.

Second, the Union argues that the County's proposed compensation would degrade the Marshals' internal comparability with the County's Deputies. That argument is addressed below in the discussion of comparability (below at p. 12).

Finally, we come to what is informally known as ability to pay. The County does not claim either a technical inability to pay the Union's proposed compensation or even an inability to reasonably afford to do so. AFSCME's analysis of the County's budget and fiscal condition shows that there are funds reasonably available to pay the differential cost with respect to this nine person bargaining unit.⁴ On the other hand, the County points out that a levy lid increase tied to law and justice expenditures recently failed leaving a projected budget shortfall of \$5.2 million for the Sheriff's office for fiscal 2016. The Sheriff was forced to eliminate a Work Release program and an Electronic Home Monitoring program and to eliminate or demote 14 positions. In short, the County is far from financially flush, but it could certainly afford the cost of AFSCME's proposal if the other statutory factors provide a sound reason for awarding that proposal.

⁴AFSCME estimates the differential cost at about \$81,700 including a 20% roll-up for "other personnel costs;" but that estimate inaccurately treats the initial 10% pay grade increase as only a first year cost.

*RCW 41.56.465(2): *** a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.* This is the heart of the dispute in this case.

The analysis required by the statutory language. The statute requires comparison of the “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.” There are three variables. The “like employers” requirement is relatively straightforward. It has traditionally been taken to require comparison of counties to counties, cities to cities, etc.⁵ The third one is not so straightforward but has developed a traditional literature: “of similar size” is commonly understood to require comparison with counties that are either $\pm 50\%$ of the county in question—or “half or twice” the county in question—with respect to population, assessed valuation, assessed valuation per capita, and/or workforce size. (Other plausible characteristics of “size” are sometimes considered.)

The final variable, “like personnel,” is usually the least problematic of the three. Usually, “like personnel” simply instructs the arbitrator to compare police with police, corrections with corrections, and fire with fire. That is because both the legal authority and the actual work of most interest-arbitrable classifications do not vary much from employer to employer. Unfortunately, as far as this record shows, there is no widespread agreement that courthouse security should be assigned to commissioned court marshals. There are many answers to the question “How shall we assure security in and around the courthouse?”

There is one point of commonality: Counties generally use entrance scanners to keep weapons out; and many counties staff those perimeter scanners (and after hours security patrols) with subcontracted workers. The employees we are interested in here are not the perimeter scanner operators.

There is wide divergence in methods of dealing with security inside the perimeter. At one extreme, some counties simply call on the city police in the county seat. At the other extreme, many counties assign regular Sheriff’s Deputies to court house duty. In either of those two extreme cases, the local Police Officers or the Deputies already have access to interest arbitration, and there are no commissioned court marshals, so the court marshals statute would increase access to interest arbitration. In Snohomish County, on the other hand, courthouse security is addressed by specially commissioned Marshals, which is the focus of the statutory change. The problem is finding other counties with “like personnel.”

⁵That restriction is sometimes circumvented under the “other factors” part of the statute. Where city police and county deputies work closely together, those employees may consider themselves well or ill compensated by day to day comparisons that do not respect the statutory language.

The County sent a multi-page questionnaire to potential comparables. The rate of return was not very good, but based on that return and on the class specifications identified by those potential comparables, the County picked Yakima, Kitsap, and Thurston Counties in Washington, and Multnomah County, Oregon. One defining feature of these proposed comparables is that they *do not* use regular Deputies for court house security. AFSCME, on the other hand, insists that the Marshals here *should* be compared with regular deputies. It appears that courthouse security work is assigned to regular Deputies more often than not, so AFSCME could pick and choose among a wider field and could afford to use the traditional $\pm 50\%$ range for “similar size.” The resulting proposed comparables are Pierce, Spokane and Clark Counties in Washington and Washington, Clackamas and Lane Counties in Oregon. The “like employees” question is whether the regular Deputies responsible for courthouse security in all these proposed comparables are actually “like personnel” to the Marshals.

Characteristics of the Marshals bargaining unit and its work. There are currently nine Marshals. Five of them are retired Snohomish County Deputies. They work for the Sheriff and wear uniforms that are indistinguishable from those of the regular Deputies—including side arms—except for the “Marshal” title on the badge. They are supervised by a Deputy Sergeant who is a member of the DSA. County ordinance 2.38.050 provides their legal authority:

(1) The sheriff shall appoint and assign to the facility security unit security marshals to provide security services for the county campus and Denney Juvenile Justice Center in Everett...

(2) The Sheriff shall deputize security marshals as limited commission special deputy sheriffs⁶ with such qualifications, training, and authority as the sheriff determines appropriate, which shall be stated in writing, provided that security marshals shall at minimum have authority to:

(a) conduct lawful searches of individuals and tangible items in furtherance of county facility security;

(b) make lawful arrests or detentions of individuals and seizures of tangible items (including but not limited to firearms and other weapons) that are illegal to possess or that may pose a security threat on or about county facilities; and

(c) maintain and restore order during court proceedings or other events on or about county facilities.

(3) The appointment and assignment of security marshals shall not affect the authority of other deputy sheriffs or law enforcement officers.

⁶Apparently the term “*limited commission* special deputy sheriffs” was intended to point to RCW 10.93.020(5) which defines a “*Specially commissioned* Washington Peace officer” as “any officer, whether part-time or full-time, compensated or not, commissioned by a general authority Washington law enforcement agency to enforce some or all of the criminal laws of the state of Washington, who does not qualify under this chapter as a general authority Washington peace officer...”

The “Essential Job Duties” listed in the Marshal’s class specifications are:

1. Patrols and inspects the grounds and buildings...
2. Enforces laws applicable to assigned jurisdiction.
3. Maintains order during court proceedings and other events occurring on County Campus...
4. Searches individuals and packages, seizes weapons, contraband and potential explosives to prevent such items from entering county facilities...
5. Responds to and investigates reported incidents, crimes and suspicious situations within jurisdiction; controls and/or secures scene, gathers evidence and interviews witnesses and victims when necessary.
6. Arrests individuals with warrants as directed by court order, arrests individuals on county property with warrants and makes on-view arrests; transports and books individuals into jail, completes and submits appropriate reports...
7. Responds to phone, fire and duress alarms; assists in the evacuation of the building...
8. Monitors security entrances and contracted security staff.
9. Interacts with the media by providing general information during events occurring on the County Campus...
10. Assists and directs the public to appropriate county offices...

On the basis of their legal jurisdiction and express job description, the Union argues (Post-hearing Brief at 3) that regular Deputy Sheriffs in the Union’s proposed comparable jurisdictions “perform the same duties of security enforcement as the Snohomish County Marshals,” the *only* difference being the Marshals’ limitation to the court house area and to their time on the clock. During that on duty time, and within those geographic boundaries, the Marshals’ *authority* is just the same as that of the regular Deputies who do court house security for the Union’s proposed comparables.⁷

Skimming. In labor law, skimming is the practice of removing some of the work that has traditionally been performed by one bargaining unit and reassigning that out of the unit.

⁷There are some differences among AFSCME’s proposed comparables. In Pierce County, five regular Deputies and one Sergeant bid into the coveted court house assignment, and Deputies who manage to bid into it seldom bid out of it. Their authority is virtually identical to the Marshals, except, of course, that they carry their authority wherever they may be in the County, even when they are off the clock. In Washington County, Oregon, the Corrections Officers and the Deputies are paid the same and courthouse security is left to the Corrections Officers with the occasional assistance of retired Deputies working part-time after retirement. In Clark County courthouse security is a two-year assignment of three regular road Deputies, with the rest of that work filled on overtime by regular Deputies in other assignments. Unlike Marshals, the courthouse Vancouver Deputies also rotate through civil process (posting writs and evictions) and they do some prisoner transport and extradition work.

Analytically, it is a species of subcontracting.⁸ The County argues strenuously that if what the Marshals actually *do* were indistinguishable from what the County's Deputies do, except for the Marshals' jurisdictional limitations, the very existence of the Marshals might very well constitute skimming work from DSA. Moreover, as the Union's witnesses made clear, in Counties where regular Deputies do court house security, that assignment is a plum, involving substantially indoor work, during regular business hours, with weekends off.⁹

The Deputy Sheriff's Association is well aware of the potential hazard to their bargaining unit work. The County has had ongoing discussions with the Association on this topic since the Marshals were created in 2008.¹⁰ The current Under Sheriff was the bureau chief of administrative services at the time the unit was created, and he explained that history:

[W]e negotiated with the DSA to cover any potential skimming issues. That's why today I can -- the data exists, and we can show that here somewhere on the campus most days of the week, a commissioned deputy responds and takes a complaint of some sort. It can be assault, drugs. We've had violation of orders. We've got rape investigations, obviously some in corrections and some around campus.

But -- and -- and as recently as when I was the chief in the jail, which was a year and a half ago roughly, I attempted to negotiate that away from the Deputy Sheriff's association, and they stood firm we are not going to give up our work as deputy sheriffs to anybody. So they're still called for all of those complaints or they're supposed to be. [Tr. 201:17ff.]

[W]hat we have attempted -- what we did do with the Deputy Sheriff's Association initially is try to define that line of where it is, and it -- it's just -- in only this middle it's a little bit grayer probably than I certainly would like, but I don't think it's possible to get more clear cut.

⁸The Deputy Sheriffs' CBA (County Ex. 11, at §13.1.5) addresses subcontracting. It allows only non bargaining unit Crime Prevention Officers and Crime Analysts as long as "such utilization is in addition to and does not supplant any bargaining unit personnel." Any other use of non bargaining unit employees "would be subject to mutual agreement."

⁹If a county had *unrepresented* Deputy Sheriffs, it could create court marshals with the same duties as its Deputies within the limits of their jurisdiction, simply because there would be no Deputy Sheriff's Association to challenge that allocation. But such a change—removing those plum assignments from the Deputies—might also be an effective way for that county to organize its Deputies.

¹⁰The bureau chief of administrative services at the time the unit was created testified to that obvious problem: "[o]ne of the major landmines [in the creation of the Marshals] is labor agreements with the Deputy Sheriff's Association and skimming." Tr. 200:13-14.

If we have a significant assault, I -- felony drugs, allegations of sexual misconduct, all of those things, yes, they're not all the way at murder, but they're still clearly on [the Deputies'] side. So you ask for that clear line of delineation, and it's pretty difficult to give I would say. I wish I could do better. [Tr. 202:20 to 203:6].

The “Basic Function” of a Marshal, according to the job description is to “provide area security and public safety within limited jurisdiction ... and to provide assistance and information to the public, law enforcement and court officials.” In fact, the vast majority of the Marshals’ time is spent in security checks. That activity accounted for almost 84% of their calls in calendar 2016, while all the more substantial law enforcement activities accounted for less than 12%. The administration of the fuzzy line between work to be assigned to the Marshals and work to be assigned to the Deputies is the responsibility of the Deputy Sergeant—a member of the DSA—who supervises the Marshals and serves on the Duty Desk.

Definitely when -- some issues that arise at the duty desk, it is a deputy. That deputy at the duty desk will decide if he needs to call a special investigations unit, which is DSA, Deputy Sheriffs' Association. Or if it's a warrant subject, that's a marshal call. They have -- they have those powers of arrests. I don't have -- I don't have all the rules that they have sitting right there at the duty desk, which is a lot of the law enforcement function that they do.

As far as the ones that we've had most recently that come -- off the top of my head are violations of protection orders. Those are Deputy Sheriffs' Association. Again, possession -- felony possession of drugs, narcotics, Deputy Sheriffs' Association. [Tr. 203:13-25.]

In short, the Marshals are not performing the work of the Deputies, because the County and the DSA have in effect agreed that the Deputy Sergeant who supervises the Marshals will take care to assign significant law enforcement activities around the court house to regular Deputies rather than to Marshals. Because the express goal of that arrangement is to keep regular Deputy work from being eroded by the Marshals, the Marshals are not “like employees” to the regular Deputies that are assigned court house security in AFSCME’s proposed comparable counties, and those counties are not appropriate comparables.

It is important to note that claim that other counties’ regular deputies are “like employees” to the Marshals is the *primary* driver behind AFSCME’s proposed compensation increases. AFSCME does not argue that such rate increases are also justifiable on the basis of problems in recruitment and retention or substantial loss of real purchasing power to rising costs of living (which are the other two most common ‘drivers’ of compensation increase proposals).

If the Union's proposed comparables do not have "like employees," do the County's? AFSCME objects particularly to Multnomah and Kitsap Counties. With respect to Multnomah County, the employer proposes as "like employees" the Facility Security Officers (County Exhibit 38) who are, as the Union points out (Post-hearing Brief at 7) non-sworn, unarmed, civilian employees. The terms of the statute itself identify "court marshals of any county who are ... *commissioned* by the county sheriff..." and on the basis of that language it seems to me that holding a commission of some sort is a minimum requirement for a "like employee."

Turning to Kitsap County, AFSCME argues (Post-hearing Brief at 6) that the Security Officers "do not carry guns... They do the screening in the courthouse..." But the job descriptions in the record include (Union Ex. 41) a requirement for "a Peace Officer's certification (RCW 43.101.095)" and (Union Ex. 43 & 44) a requirement "to obtain and maintain a valid and current Sheriff's Office limited commission..." Moreover, the Kitsap Courthouse Employees are represented by AFSCME Local 1308, and their CBA distinguishes between "Security Screeners" and "Security Officers" (County Ex. 20 at 57). The pay difference is substantial. That same CBA (at 59) requires the employer to provide any required "uniforms and individual equipment" and to "maintain one (1) armed security officer at each secured public entrance..." On the basis of the limited record before me, the Kitsap Security Officers appear to be "like employees."

That leaves us with only three comparables counties, Kitsap, Yakima, and Thurston. Three is a terribly small number to establish a reasonable, objective salary expectation; but neither party offers other counties who assign similar work to their courthouse security staff. The Union points out that none of these three is within the traditional $\pm 50\%$ of the County in population (Kitsap is 35%, Yakima is 33%, and Thurston is 36%) or in annual budget (where Yakima is a mere 27% of Snohomish). The only traditional measure of "similar size" met by these comparables is assessed value per capita.

That means that either "similar size" or "like employees" must stretch to apply to this record. When, as here, no similar employers within the traditional limits of "similar size" employ like employees, it seems to me that it makes more sense to reach outside that size limitation than to compare substantially dissimilar employees or employers of *any* size.

Here are the County's numbers for average compensation for those comparables. They show the County's calculation of net hourly wages for the first three years of the period at issue. (The final year is not shown because it depends on a CPI increase.) The calculations reflect longevity bonuses, if any, and differing annual hours of vacation and holiday leave. Given the seniority of the nine Marshals, it appropriate to focus on the five and ten year marks. (Seniority is spread broadly in the Marshals unit, but five and ten years give a reasonable perspective on the unit overall.)

	Kitsap	Yakima	Thurston	Average	County Proposal	% of Average	AFSCME Proposal	% of Average
End of 2015								
5 yrs	\$21.80	\$26.65	\$24.55	\$24.33	\$34.11	140.2%	\$37.61	154.6%
10 yrs	\$22.39	\$29.61	\$28.73	\$26.91	\$34.56	128.4%	\$38.11	141.6%
End of 2016								
5 yrs	\$22.52	\$26.94	\$25.05	\$24.84	\$34.79	140.0%	\$38.37	154.5%
10 yrs	\$26.16	\$29.90	\$29.30	\$28.45	\$35.25	123.9%	\$38.88	136.7%
End of 2017								
5 yrs	\$22.98	\$27.50	\$25.54	\$25.34	\$35.49	140.0%	\$39.32	155.2%
10 yrs	\$26.70	\$30.52	\$29.89	\$29.04	\$35.96	123.8%	\$39.85	137.2%

Considerations of external comparability do not justify putting the Marshals more than the 23% to 40% ahead of comparable jurisdictions, which they will be under the County's salary proposal.

The Union's only other argument in favor of its proposal is an appeal to internal comparability. The Marshals classification was created in 2008 and was initially more than 20% behind the County's Deputies in compensation. Since then Marshals have never been less than about 12.4% behind Deputies (in 2010 and 2011) and have averaged almost 15.5% behind them. The Deputies' new contract advances Deputy pay by 3.25%, 3%, 2%, and a 2018 CPI increase of 2.0% to 3.5%. That is more rapid growth than the general employee contract increases (2%, 2%, 2.5% and 2.5%) which the County proposes for the Marshals, so the Marshals would fall to about 19.5% behind the Deputies at the end of the three years at issue; but the County points out that the pay similarity between its Marshals its Deputies would still be closer than the similarity at comparable counties. On the other hand, AFSCME's proposal would bring the difference down to an average of 7.8% over that three year period.

The County would argue that reducing the difference to that extent would actually put most of the Marshals bargaining unit at hazard of adverse action by the pension board. The problem with that argument is that the Union, not the County, is the exclusive representative of the Marshals and is conclusively presumed to be acting in their best interest as a bargaining unit. On the other hand, given the very substantial difference in the actual activities assigned to the Marshals and the actual activities reserved to the Deputies, the record does not show that a return to nearly the original pay differential between the two makes the County's proposal unreasonable in light of the budgetary constraints that led the

Sheriff's Department to eliminate two programs and demote or eliminate 14 positions in FY 2016.¹¹

In short, the record includes a very minimal collection of true comparables; but that seems to be because Snohomish County has chosen to deal with court house security by an assignment pattern that is not quite unique but not very common either. From the perspective of the few other counties that have made that same choice, Snohomish County's proposed compensation for the period at issue is far from deficient, and there is no adequate reason to exceed it.

Lead Marshal pay. The Union proposes to establish a pay rate for a nonexistent classification and to add language for situations in which a regular Marshal is working out of class as the Lead. Changing the usual order of business seems to me to be fraught with potential mischief, and I decline to put the cart before the horse and establish a rate for a nonexistent classification. On the other hand, I will add contract language that would give the Union access to interest arbitration both for pay rate and for out-of-class language if such a classification is added during the period of the contract.

¹¹It is difficult for budgetary analysis to overcome a recent record of program elimination and 'bodies-out-the-door' layoffs.

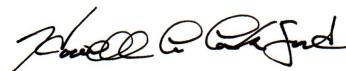
AWARD

The parties' 2015-2018 Marshal's Addendum shall include all the language that the parties have tentatively approved to date. The compensation rates under that agreement shall include an across the board increase of 2% on every January 1 of the first three years (2015, 2016, and 2017) and an increase on January 1, 2018 equal to 90% of the June 2016 to June 2017 increase in the CPI-W (Seattle-Tacoma-Bremerton).

The Marshal's Addendum shall also include this provision:

If the County creates a classification or pay incentive during the period of this Agreement that is essentially a Lead Marshal classification or incentive, the parties shall bargain a compensation rate for that new classification or incentive; and, if they cannot reach agreement on that issue, they shall submit the dispute to final and binding interest arbitration applying the procedures set out in Article 25, Section 2, Step 5, subsections (a) through (c). The parties shall divide evenly the arbitrator's fees and costs. Similarly, if the parties cannot agree on contract language to apply when a Marshal is assigned by the supervisor to be an acting lead, that dispute shall be submitted to binding interest arbitration under those same provisions.

Respectfully submitted,



Howell L. Lankford
Arbitrator