IN INTEREST ARBITRATION BEFORE
MICHAEL E. CAVANAUGH, J.D.,
INTEREST ARBITRATOR

ISLAND COUNTY,	:	
	:	INTEREST ARBITRATION
Employer,	:	DECISION AND AWARD OF
	:	THE ARBITRATOR
and	:	
	:	PERC NO. 131049-1-18
ISLAND COUNTY DEPUTY SHERIFFS GUILD, CORRECTIONS DIVISION,	:	
	:	
Union.	:	
	:	
	:	

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I. INTRODUCTION

This is an interest arbitration proceeding convened under RCW 41.46.430-.450 to establish the terms of a replacement for the parties' most recent collective bargaining agreement, a CBA which expired in 2016. The issues before me are the terms to be included in a contract which will run from January 1, 2017 through December 31, 2022. In their negotiations, which

continued to some extent even during the pendency of this interest arbitration, the parties resolved many of the outstanding issues. The primary issues remaining are wages, which include the Guild's proposals for an education premium, shift differentials, and retroactive pay for Corrections Deputies who left employment following the expiration of the old CBA. The Guild also proposes that removal from specialty assignments, as well as removals or transfers based on "fitness," be explicitly subject to a showing of just cause so as to be arbitrable. By letter dated October 23, 2018, PERC Executive Director Michael P. Sellars certified the issues for arbitration, although as noted, the parties subsequently reached agreement on some of those certified issues. *See*, e.g. Guild Exh. I.A.1 and County Brief at 1-2.

The Island County Corrections Unit is a Division of the County Sheriff's Office, and the Guild contends that unit members' wages have fallen far behind comparator jurisdictions since 2008, while at the same time facing a widening disparity between their wages and the wages of their Road Deputy counterparts within the Sheriff's Office. The County disagrees, and in resolving the remaining disputes I must apply the following statutory analysis:

> 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.

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

RCW 41.56.465 (emphasis supplied).

II. COMPARABLE JURISDICTIONS

I begin with a consideration of an appropriate collection of like jurisdictions for the required comparison of wages and working conditions. The parties agree that the following jurisdictions are appropriate comparables: Cowlitz, Skagit, Lewis, and Mason Counties. *See*, Guild Exhibit II.A.1. The Guild seeks to add Whatcom County, however, which the County opposes as not being of "similar size" within the meaning of the statute, while the County says that Grays Harbor County should also be included in the comparisons. *Id*.[1]

As a general matter, I apply the 50% to 200% screen in determining "similar size" within the meaning of the statute. As I explained in *Cowlitz County Corrections* (Cavanaugh, 2016) at 5-6, the sometimes applied "50% to 150%" screen results in an illogical "one way comparability." That is, a county half the size of another is regarded as an appropriate comparator in a proceeding regarding the *larger* county (i.e. the smaller county is 50% of the larger), but in a proceeding regarding the *smaller* county, the larger county (200% of the smaller) exceeds the 150% element of the 50% to 150% comparability equation. In my view, the two counties, all else being equal, may properly be considered "of similar size" within the meaning of the statute in either situation.[2]

[1] It appears that in their most recent interest arbitration, a 2013 proceeding before Arbitrator Boedecker, Grays Harbor County had been an agreed comparable. *See*, Guild Exh. I.B.2 at 5. The Guild now contends that demographic changes in the interim call for a different conclusion here.

[2] In arguing that Whatcom should not be among the comparables, the County invokes the 50% to 150% approach in its Brief at 7. For reasons already outlined, I cannot accept that formula under the statute. The County also argues,

After carefully considering the Guild's proposal to add Whatcom County here, I reach the same conclusion Arbiter Boedecker reached in 2013, i.e. on several of the relevant areas of comparison, Whatcom exceeds 200% of Island County—not the least of which is in population (the most elemental component of the "similar size" criterion).[3] While conceding that Whatcom County "falls slightly outside traditional selection bands," *Id*., the Guild nevertheless argues that "proximity" and the "need for balance" weigh in favor of including Whatcom in the analysis. But while I agree with the Guild that labor market considerations, for example, could potentially make Whatcom relevant—it is certainly not out of the question that a corrections officer, resident on Whidbey Island, could commute to Bellingham for work, and thus Whatcom should be considered in determining an appropriate Island County wage—the other size factors militate against its inclusion, as does the prior rejection of the Guild's proposal to add Whatcom in the last proceeding in 2013.

With respect to Grays Harbor County, the Guild concedes that Grays Harbor was an agreed comparable in the 2013 proceeding but contends that "shifting demographics requires a reconsideration of that decision." Guild Brief at 9. Interest arbitrators are usually reluctant to interfere with the parties' "historical" lists of comparables because continuing the use of those mutually recognized groups tends to lend stability to collective bargaining. But the fact that Grays Harbor County was an appropriate comparable roughly a decade ago for these parties does not necessarily mean that it continues to be so today. In the end, I find that Grays Harbor is no longer sufficiently comparable to Island County. In reaching that conclusion, I have noted in particular the considerable disparities in assessed valuation, assessed valuation per capita, sales

however, that even utilizing the 50% to 200% screen, Whatcom is not an appropriate comparable, and notes that Arbiter Boedecker reached that conclusion in her 2013 Award. *Id*. at 6-7.

[3] *See*, e.g. Attachment A to the County's Brief, summarizing the comparative data.

tax revenues, and other financial data. *See*, Guild Exhs. II.A.4-.10. I also believe the relative geographic isolation of Grays Harbor County, three-plus hours from Coupeville to Aberdeen (with a ferry ride—which at least in recent times has not been reliable because of the pandemic and other factors), militates against including Grays Harbor as a comparable jurisdiction here. Again, labor market considerations are appropriate at some level in the analysis, even if not at the same level as the more explicit statutory criteria. It would be a stretch, however, to include Grays Harbor here, especially when there are already a sufficient number of agreed jurisdictions to reliably conduct the statutory analysis.

In sum, I find that the comparable jurisdictions for analysis here will be the five the parties agreed were appropriate comparators: Clallam, Cowlitz, Lewis, Mason, and Skagit Counties.

III. ISSUES

A. Wages

As noted, the wages for each year beginning with 2017 to and including 2022 are at issue. The parties' respective proposals for base wage increases as of January1 each year are set forth in the following table:

Year	**County**	**Guild**
2017	2.0%	3.5%
2018	2.25%	3.5%
2019	2.25%	3.5%
2020	2.25%	3.5%
2021	2.25%	3.5%
2022	2.0%	6.0%
Total:	13.0%	23.5%

1. The Parties' Respective Methodologies

The Guild supports its wage requests with a detailed analysis of the comparator's wages at various stages of longevity—e.g. 5, 10, 15, 20, and 25 years. *See*, Guild Exhs. III.A.1-61.[4] The County argues instead for a "total compensation" approach, attempting to capture a "net hourly wage with benefits" which it contends provides a more accurate "apples to apples" comparison of the differing compensation schemes of the various jurisdictions. That is, there are varying approaches to employee compensation—including wages, time off such as vacation or PTO schemes, contributions to benefits (who contributes and in what amounts), etc. While the Guild suggests that this total compensation form of analysis might fall outside the statutory criteria, *see*, Guild Brief at 35-36, it has always struck me that the analysis fits within the "catch all" criterion set forth in RCW 41.56.465, i.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.

And I agree with the County that individual bargaining units may choose various forms of "compensation," including benefits, additional vacation, etc. that fit within the overall budgetary or other constraints that govern the level of costs an Employer is able or willing to pay.[5]

But it is one thing to recognize that total compensation is a valid approach, and another altogether to say that the information the County has put before me utilizing that approach is persuasive. First, as the Guild notes in its Brief, the relevant items included in a "total

[4] I have analyzed the data only as to the five agreed comparable jurisdictions, although the Guild has provided information as to all proposed comparables, not just those I have selected for the analysis.

[5] I take arbitral notice of the fact that during bargaining, parties often calculate the "cost" of each other's proposals to determine how much the Employer will need to pay to meet them, and Employers are often open to varying elements of a compensation package so long as the result fits within whatever monetary commitment to wages and benefits the Employer can be persuaded to accept. If the parties have "costed" their proposals here, however, perhaps I overlooked that data in the exhibits.

compensation" analysis—and those that should be excluded[6]—are not necessarily uniformly recognized. Brief at 36. In addition, the total compensation form of analysis is extremely detailed and complicated. On that score, the Guild notes a series of errors in the County's Exhibits which set forth the data and calculate the required comparisons between the jurisdictions, *See*, Brief at 37-40. I have no doubt that these errors were inadvertent, perhaps at the data entry stage of preparing the exhibits, but they call into question the overall accuracy of the comparisons, even though the impact of the errors and omissions run in both the County's favor and against its interests.[7]

2. Wage Rates Analysis

In the end, however, the choice of methodology here is not the determinative factor in the wage analysis. That is so because an interest arbitrator's task is not simply to find the average wages of the comparables and issue an award setting forth that average for the parties' CBA. If that were the case, as I have observed previously, there would be no need for a human decision-maker:

> In my view, the statistical averages of an appropriate list of comparables, while no doubt providing the interest arbiter with a rational and "objective" basis of comparison, are not intended to establish an equation from which appropriate wages and working conditions can be derived with mathematical exactitude. If that were the case, the best "interest arbitrator" would be a computer. Instead, statistical computations simply reflect *one* of the elements the [Arbitrator] is directed to consider in arriving at an award consistent with the overall policies of the Legislature.

Cowlitz County, supra, at 7, fn. 11. I turn, then, to a consideration of what I find to be the most important of those "other elements."

[6] *See*, e.g., Guild Brief at 41-42 (noting the lack of retirement benefits, dental & vision coverage, etc. in the County's calculations of comparative total compensation).

[7] For example, an error in the County's base wage rate entries in the Mason County portion of the analysis *overstate* the wage rates, which had the effect of *raising* the average wages of the comparables the County might be required to meet. Guild Brief at 37.

a. ability to pay

The parties dispute whether the County has sufficient sources of revenue to fund wage increases beyond the County's proposal. According to the County, because of a levy lid, its total additional revenue is limited to approximately $80,000 per year. County Brief at 8. Lifting the lid, which the Guild points out as a potential source of revenue, would require voter approval, which is by no means certain. I considered a similar issue, however, in *Cowlitz County*:

> The County's arguments seem to suggest that if the voters refuse to authorize tax increases, the County should be judged "unable to pay" increases in wages and benefits that might be awarded by the Panel applying the statutory criteria. While I appreciate the difficult financial constraints to which the County is subject, I find the logic of this argument somewhat problematic—as if the County and its voters are separate legal entities with respect to the rights of interest arbitration-eligible County employees under the statute.

Id. at 15, fn. 28. In sum, while the voters might be expected to be hesitant to raise their own taxes to fund essential County operations, I do not presume that they would fail to do so if necessary to meet the terms of an interest arbitration award based on statutory fairness to employees who serve the County in an extremely important County function.[8]

b. internal comparators

But, going beyond the "comparability math," i.e. the comparisons of Island County to like Counties, I find the issue of internal comparability (comparing the wages and working conditions of this bargaining unit to another unit within the same Department, the Sheriffs Road Deputies) to be a critical factor in my analysis. According to my calculations (from the data on chart Guild III.B.2), the gap between Road Deputies and Corrections Deputies at the 25 Year mark, for example, was 18.3% in 2006, rose to 25.5% in 2011, and stood at 24.4% in 2016, the

[8] That is particularly the case given the evidence of the County's difficulties with staffing levels and turnover in Corrections—including arguably overworking Corrections employees by requiring regular overtime, for example, and numerous recent transfers from Corrections to Road Deputy. *See,* e.g. Guild Exh. III.E.7.

final year of the most-recent Corrections CBA bargained between the parties. A major cause of that increasing disparity is the fact that Road Deputies received wage increases in each of the years 2008-2010, and again in 2015—years in which the Corrections Deputies received zero in increased wages. *See*, Guild Exhibit III.B.4. In 2007, for example, the last year before a four-year hiatus in wage increases for Corrections, the differential between the two units had been 19.6% *Id*. After four years of no increases for Corrections, the gap had risen to 29.2%. As I will describe in a moment, under the County's wage proposals, it would continue to increase.

The Guild does not dispute that it is the norm for Road Deputies to receive a higher wage, in general, than Deputies in Corrections. *See*, Guild Brief at 72. But the size of the current differential, says the Guild, is inconsistent with "industry trends and standards," noting the contractually established fixed differentials of 15% in Clallam County and 17% in Grays Harbor County (which the County had proposed as an appropriate comparable here). *Id*.

Against that background, under the parties' respective wage proposals, the differentials between Road and Corrections Deputies would be as follows:

Contract Year	Guild Proposal	County Proposal
2017	18.2%	27.5%
2018	16.7%	24.7%
2019	19.3%	29.1%
2020	18.5%	29.7%
2021	17.6%	30.3%

I agree with the Guild that the County's wage proposal is inconsistent with the parties' history of wage differentials between these two groups, and also that it is moving in the wrong direction. That does not necessarily justify a conclusion that the Guild's wage proposals should be adopted wholesale, but it does convince me that the County's wage proposal is inadequate. That is, internal comparability here—as it often does—offers a strong piece of evidence, utilizing the

statutory factors, which justifies a conclusion that this unit deserves higher wages than the County has put on the table.

c. settlement trends

The pandemic has decreased the usefulness of this factor for recent years, i.e. considering the wage increases comparable jurisdictions have agreed to grant for the relevant periods. Utilizing the data in Guild Exh. III.D.1, and limiting the analysis to the five agreed Counties, I calculate the following trends in wage settlements among the comparable jurisdictions:

Contract Year	Average Settlements
2017	2.63%
2018	2.46%
2019	2.50%
2020	2.45%
2021	2.35%
2022	2.33%

I note that the County's wage proposals lag the settlement trend of the comparables in each of the contract years at issue in this proceeding.[9]

d. cost of living

I agree with the County that inflation was low in the years 2017-2020, but rising prices gained steam in 2021,[10] and the CPI-U (all items) finished the year at 7.0% year-over-year from December 2020 to December 2021. *See*, BLS News Release January 12, 2022 (USDL-22-0018). As I look into the individual items, it appears that a number of essential categories led the way,

[9] In addition, the 2022 average settlement consists of just three jurisdictions—Clallam, Cowlitz, and Lewis Counties—and each CBA appears to have been negotiated in 2020, prior to increased inflation in 2021-2022. *See*, Guild Exhs. II.C.3, II.C8, and II.C.16. Thus, I do not find the 2021-2022 data to be particularly helpful in applying this criterion to the wage proposals of the parties for 2021-2022, but the data for 2017-2020 tend to set a floor for across-the-board wage increases for this unit—subject, of course, to the need for upward adjustment applying the internal comparability factor.

[10] Even in the years 2017-2020, however, and as suggested in the prior footnote, I find that wage increases above inflation—and above the settlement trends—are appropriate given the deterioration of wages in this unit as compared to the Road Deputies.

e.g. food (6.3%); gasoline (48.9%); fuel oil (49.6%); electricity (10.4%); and shelter (4.1%). A chart at page 2 of the release shows that inflation started the year 2021 at a relatively low level, rose in April through June, leveled off during the summer months, and then rose again in October through the end of the year. *Id*. at 2.

These increases in the cost of living, particularly in categories of goods workers must purchase irrespective of price hikes, e.g. food, shelter, gasoline (for commuting to work, for example), and heating oil and electricity for home heating, all call for increased wages to help meet the rising costs of living. Thus, I will award an increase of 3.25% for 2021 to account for the fact that inflation did not rise until several months into the year, and also to account for the uncertainty of the County's ability to convince the voters to raise the levy lid, if necessary. Forecasting inflation for 2022, of course, is problematic. That is, some economists favorable to the Administration argue that current inflation will be "transitory" and will dissipate with improvements in supply chain issues, return to historic levels of labor force participation, etc. Others trace the inflationary pressures primarily to increased government spending resulting from, for example, stimulus payments, the infrastructure bill, and the potential for even more spending if Congress were to pass the President's BBB Plan. In the absence of certainty about 2022, I will award a 4.0% increase, an amount almost double the existing (although incomplete and pre-inflation) settlement trend.

e. Taking all these factors into account, I will award the wage increases set forth in the table appearing on the next page:

Year	Across-the-Board Wage Increase
2017	2.75%
2018	2.75%
2019	2.75%
2020	2.75%
2021	3.25%
2022	4.00%[11]

AWARD ON ACROSS THE BOARD WAGE INCREASES

I hereby award the following across-the-board wage increases effective January 1 of each year:

Year	**Across-the-Board Wage Increase**
2017	**2.75%**
2018	**2.75%**
2019	**2.75%**
2020	**2.75%**
2021	**3.25%**
2022	**4.00%**

B. Educational Incentive

The Guild proposes an educational incentive of 2% for an AA Degree, 4% for a BA, and 6% for a MA. *See*, Guild Brief at 86; Guild proposed Appendix B.3. The Guild would strike Article 18.2.2 of the Agreement, which currently provides a 1% wage increase to all unit members "in recognition of continuing education and training as an element required of the job." The County proposes to continue the 1% premium in the 2017-2022 contract, while suggesting it is open to considering changes in educational premiums upon data establishing that general formal educational attainment translates into superior performance as a Corrections Officer. County Brief at 13.

[11] After independently calculating these wage increases, I realized that they total 18.25% over the contract years, precisely the mid-point between the parties' respective total wage proposals (13% and 23.5%). I assure the parties that result was not an intended "splitting of the difference." It just worked out that way applying the factors to the best of my ability.

Guild witness Lt. Bingham testified that college education benefits CO's in "dealing with the ever-changing social dynamics that drive and influence the Island County community, and that a more well-rounded workforce would serve as a benefit not only to the agency, but the community as a whole." *See*, Guild Exh. IV.5 (Bingham Statement). The County notes, however, that only three unit members would apparently be affected at this time by the proposed incentive (Brief at 13) and thus "the evidence actually supports the fact that [lack of?] educational attainment does not impair the ability of the Guild members to do their jobs." *Id*.

Greater education is good for all workers—indeed, for all of society. But the contention that general formal studies will inherently result in better CO's strikes me as unproven on this record—and on the records in previous interest arbitrations where this issue has been joined. If the proposed incentive were designed to encourage greater education in areas directly relevant to corrections work (e.g. the A.A. degree in criminal justice former Guild President Evans testified about at the hearing), I would be more inclined to seriously consider the Guild's incentive proposal. But even in that situation, as I said in denying a similar request in *Cowlitz County*, "[a] fundamental change in compensation philosophy . . . should be negotiated by the parties, not imposed by an interest arbitrator." *Cowlitz County* at 25.

I suggest the parties continue the 1% premium as originally provided in 2016, and as modified by the County in its final draft proposal on Article 18.2.2. I will not award the Guild's educational incentive proposal at this time.

AWARD ON EDUCATIONAL INCENTIVE PROPOSAL

The Guild's proposal for an educational incentive as proposed in a new Appendix B.3 is not awarded. **The County's proposed changes to Article 18.2.2 are awarded.**

C. Shift Differential

The Guild proposes that swing shift employees receive a 1.25% premium, and that the graveyard premium be 2.50%. Guild Final Proposal, Proposed Appendix B.4. The County has indicated a willingness to provide a premium of $0.50 per hour to employees working those shifts. County Brief at 12. The parties thus agree, and I concur, that shift differentials are appropriate given the hardships that working those shifts, necessary in a 24/7/365 operation, impose on CO's and their families. In determining the appropriate premium, I note that two of the agreed comparables have premiums of $0.50/hour (Lewis and Mason), one pays $0.60/hour (Cowlitz), and Skagit pays $2.50/ hour. Guild Exh. IV.7.[12] It appears to me that while $0.50 is the more common benefit, the median benefit is the $0.60/hour provided by Lewis County. Therefore, an award of $0.60/hour as a shift differential for swing and graveyard shifts is consistent with the benefit provided by the comparable jurisdictions taken as a whole, and that has been the case since 2016. *See,* Guild Exh. IV.6. I will award that amount.

AWARD ON SHIFT DIFFERENTIALS

I award a shift differential of $0.60 per hour for swing and graveyard shifts.

D. Just Cause For Non-Disciplinary Discharges

The current CBA language requires just cause for "discipline," Article 6.1, and although it does not expressly include "discharge" among the "disciplinary" actions subject to the just cause provision, there appears to be no dispute that a *disciplinary* discharge is grievable and must be supported by just cause.[13] But nevertheless the Guild proposes to add "discharge" to the just

[12] Apparently, Clallam County does not pay a premium for non-dayshift work.

[13] For example, the County's Brief focuses on the "*non*-disciplinary terminations and assignment changes, including *non*-disciplinary transfers" and argues that the County's management prerogatives should be maintained *in that context*. Brief at13 (emphasis supplied).

cause provision because of an ancillary concern—it seeks to explicitly add "discharge" to the language to establish that a "non-disciplinary separation," e.g. one based on "fitness for duty" standards, is arbitrable. Currently, says the Guild, the only available challenge to the County's actions in those cases is the Civil Service Commission, whose members are appointed by the County. That fact, says the Guild, deprives its members of fairness and the appearance of due process.

In explaining its proposal, the Guild points to an arbitration award by Arbiter Ennis some years ago (1994) that allegedly refused to apply just cause in a fitness for duty discharge case. *See*, Guild Brief at 92. On the other hand, no more recent examples have been cited of the County's alleged refusal to arbitrate non-disciplinary separations from employment.

It seems to me that "discharge" for disciplinary reasons is inherently included in contract language requiring just cause for "discipline," and the parties do not appear to dispute that conclusion. Based on that understanding, I do not see a need to change the language for that situation. Whether *non*-disciplinary terminations are subject to just cause is less clear, however. The parties have newly-agreed language (as of June 2018 for inclusion in the 2017-2022 CBA now before me) establishing an Employee Bill of Rights. And as part of that new language, in Article 21.5, the parties have agreed to the required procedures for "Medical or Psychological Examinations." Those procedures include the following provision:

> Should an employee *grieve* a disciplinary *or* discharge action taken as a result of an examination, the employer shall make the employee's medical records available to the Guild with the employee's consent.

Id. (emphasis supplied). This language strongly implies, in my view, that the parties have already agreed that "fitness" discharges may be grieved, and that in the processing of such grievances, the Guild is entitled to certain medical history information with the Grievant's consent. The

implication, it seems to me, is that the parties have agreed that the Guild should have access to medical information for use in processing the grievance. And tellingly, the existing grievance procedure language of Article 5, which neither party proposes to change, contemplates that a "grievance" *will* be subject to arbitration. *See*, Article 5.4 ("If the grievance is not withdrawn, the parties *shall* immediately thereafter select an arbitrator to hear the dispute") (emphasis supplied).

Given this implied agreement that fitness-based discipline or discharge is both grievable *and* subject to arbitration, I will not award the Guild's proposal at this time to add language to the just cause provision for the purpose of accomplishing what the parties appear to have accomplished elsewhere. If the parties continue to disagree on this issue, or on what standards should apply to such grievances (e.g. just cause or some modified principle – *see*, e.g. Guild Brief at 89-94)—the appropriate venue for resolving any such issues, in my view, would be in a grievance arbitration arising in a specific fact pattern in which the bargaining history and other indicators of mutual intent could be thoroughly considered. That process also provides the best context for a consideration of what precise standards of due process and just cause should apply in those cases.

AWARD ON GUILD'S JUST CAUSE PROPOSAL

I do not award the Guild's proposal to add "discharge" to the just cause provision of Article 6.1.

E. "Disciplinary" Transfers and Just Cause

The Guild also proposes language in Appendix B.2 that would modify the existing recognition by the Guild of the Sheriff's "absolute authority" to assign employees to special assignments. The Guild proposes to add the following condition: "Subject to the requirements that discipline be only for just cause." In sum, the Guild proposes to recognize the County's authority to assign or remove employees from specialty assignments based on "operational

need," for example, at the sole discretion of the Sheriff. While at the same time proposing that if a removal/transfer is actually a form of "discipline," it should be subject to the just cause provisions of the contract. The County seeks to maintain the Sheriff's management authority to be the sole judge of specialty assignments and removals. *See*, County Brief at 13-14.

But as I read the County's stated objections to the proposal, they seem to focus on its opposition to the concept that just cause principles could apply to "non-disciplinary matters," matters said to be reserved to the County by the management rights clause. That argument is summarized, for example, in the County's observation that "for decades just cause has not been applied to non-disciplinary decisions of the employer that are not otherwise violations of the CBA." Brief at 14. No doubt the County's statement is true, but actually, that argument begs the question before me. Logic and experience suggest that at least *some* transfers/removals from coveted positions within the bargaining unit could be based on reasons that are fundamentally "disciplinary" in nature even if they are not described that way by the employer.

In the end, if the County does not object to the arbitration of matters that are in reality "disciplinary," as the Brief suggests, then I believe the language of the CBA should explicitly reflect that mutual understanding of the parties. And if, as applied, there is a dispute arising under this language about whether a particular reassignment/transfer is actually "disciplinary" rather than for "operational" or other "non-disciplinary" considerations, the parties' grievance and arbitration procedure provides an appropriate and timely forum for resolving that issue.

I agree with the views of Arbiter Axon stated in *City of Everett Police* (Axon, 1997), summarized as follows:

> The language . . . is not intended to restrict the prerogative of the [County] to appoint officers to specialty assignments or to make changes for operational reasons. The single exception created is to allow for a grievance when the

> [County] seeks to impose discipline on an officer in the form of removal from a specialty position.

I will award the Guild's proposed language in the first sentence of Appendix B.2, i.e. inserting the language "subject to the requirement that discipline only be for just cause" and "based on operational need."

AWARD ON MAKING DISCIPLINARY TRANSFERS SUBJECT TO JUST CAUSE

I award the Guild's proposed language changes to the first sentence of Appendix B.2, i.e. the insertion of "subject to the requirement that discipline only be for just cause" and "based on operational need."

F. Retroactivity

The parties dispute the extent to which the interest arbitration decision here should have retroactive effect, although it appears that the dispute may be limited to whether former employees should receive retroactive wages to the extent they were employed during a portion of the years covered by this Agreement, i.e. the 2017-2022 CBA that will result from this interest arbitration. The County proposes to maintain current language on retroactivity, i.e. that it applies to "[e]mployees currently employed on the date of the Arbitrator's Award." County Proposal, Article 18.2; *see also,* Appendix B.1.1 ("officers employed on the date of adoption will receive a lump sum, etc.").

Based on this language in the County's proposals, I need not analyze the issue of retroactivity for current employees as of the date of this Award—at least as to employees still working in the jail.[14] Retroactivity to that extent is entirely appropriate and apparently not in dispute. Consequently, my Award will include retroactivity for current employees. The issue of retroactivity for former employees is in dispute, however. Current CBA language does not

[14] It is unclear to me how the County proposes to treat former jail employees who now work for the County in a different capacity, e.g. as Road Deputies within the same Sheriff's Department.

provide for retroactive wages for employees who had worked in the jail during the contract period but who left County employment for some reason before the CBA covering that period had been agreed by the parties or awarded in interest arbitration.

In considering this issue, I agree with most interest arbitrators that the party suggesting a change in current language—the Guild here—bears the burden of establishing good reason to make the change.[15] In its attempt to meet that burden, the Guild points to what it labels "dilatory" conduct by the County during the lengthy negotiations/unfair labor practice proceedings, etc., while at the same time observing that "it is generally unproductive to engage in arguments as to which side was more 'dilatory.'" I agree. In bargaining, parties tend to utilize the economic and other weapons at their disposal in attempting to reach a contract each would prefer, in the end settling for one it can live with—a process that often takes time to play out to a conclusion.

In any event, for whatever reasons, the parties bargained over the course of several years, and employees who worked during those years, even if they are no longer in the County's employ, would have received increased wages (as I have already determined above) for the services they provided the County. It is a matter of simple fairness, not a matter of punishing one party or the other for delays, that employees be compensated at what I have now determined was an appropriate wage when they provided their services.[16] Nor am I convinced by the County's argument that as former employees, the Guild has no legal or other obligation to the former

[15] It is unclear on this record what led to the inclusion of the limited retroactivity language in the old contract, e.g. what the Guild received in exchange for agreeing to that limitation. If there were significant benefits to the Guild that continue into this contract, that fact would urge caution in striking the agreed language without a clear showing of current necessity, public interest, etc. that differs substantially from the circumstances when the parties reached the 2016 agreement on limited retroactivity.

[16] And, as the Guild points out, the lack of retroactive wage payments would not only deny the former employees appropriate compensation for the services they have already performed, accepting the County's position on this issue would also reduce their pensions. *See*, Brief at 107-08. Thus, the County's proposal to retain the 2016 language would not only deny these former employees the wages they should have received at the time, but also deny the employees, well into the future, the pension benefits they have earned through that service.

employees because they are not currently "members." The employees were County employees and members of the Guild *at the time*,[17] and thus the Guild has an interest in ensuring that they are properly compensated for the work they performed while in that capacity.

I will award the Guild's proposal for retroactivity of wages for former as well as current employees in the bargaining unit.

AWARD ON RETROACTIVE WAGES FOR FORMER UNIT EMPLOYEES

I award the Guild's proposal to eliminate the language of Appendix B.1.1 that limit retroactive wage payments to Officers employed on the date of this Interest Arbitration Award.

G. Agreements of the Parties During the Pendency of the Proceedings

The parties requested that I include in this Interest Arbitration Award several agreements they reached on issues that had been subject to interest arbitration. As requested, I will make those agreements part of the formal award as follows:

INCORPORATION OF AGREEMENTS BETWEEN THE PARTIES INTO THIS FORMAL INTEREST ARBITRATION AWARD

I hereby award certain agreements reached by the parties, specifically:

Prior to commencement and during the course of arbitration, the parties resolved several of the issues certified for arbitration. The following agreements are hereby incorporated into this Interest Arbitration Award:

1. The amount the County will pay into the medical pool will increase in the same proportion (percentage amount) as the premium increase. All other terms of Article 16 of the expired Agreement will apply. The exact language agreed upon is: "16.1.1 For 2017, the County shall credit the Pool an amount of $1,164 each month for each Bargaining Unit member employed during the month into The Pool to be used for Bargaining Unit benefits as setout herein. For the years following 2017, the County pool contribution shall be increased in direct proportion (percentage) to the increase in the LEOFF Trust Plan F rates."

[17] As noted, several "former" employees, in fact, are *still* County employees, just in a different Division of the Sheriff's Office, i.e. they are not presently "Officers" (which I assume was intended to mean "Corrections Officers" as included in the County's proposed revision to Appendix B.1.1). If that was the intent of the County's proposal, I can think of no rational justification—other than a reduction in the County's monetary obligations—to deny retroactive wages to these *current* employees simply because they now serve the County in a slightly different function within the Sheriff's Office.

2. The parties agree that the language in Article 8 of the expired Agreement will continue to apply.

3. The parties agree that premium pay for FTO and PREA positions will be made year-round while performing those functions as required by the Jail Chief.

4. The vacation policy, light duty and hours of work and overtime issues remain as in Articles 9, 10 and 15 of the expired Agreement.

INTEREST ARBITRATION AWARD

Having carefully considered the evidence and argument in its entirety, I hereby Award as follows:

1. I Award each of the Awarded items set forth in the body of the discussion above (in bold, single spaced, and labeled as an "Award" of the Interest Arbitrator or as an "incorporation" into this Interest Arbitration Award of agreements between the parties); and

2. I will retain jurisdiction to resolve any disputes about 1) appropriate contract language to be added or deleted to incorporate this Interest Arbitration Award into the parties" 2017-2022 Collective Bargaining Agreement; or 2) to complete the Award in the event some items in dispute have been overlooked or incompletely resolved. Either party may invoke this reserved jurisdiction by email sent or letter postmarked within 90 (ninety) days of the date of this Interest Arbitration Award (original to the Arbitrator, copy to the opposing party) or within such reasonable extensions as the parties may mutually agree (with prompt notice to the Arbitrator), or that the Arbitrator may order for good cause shown; and,

3. Consistent with the statute, RCW 41.56.450, the parties will share the fees of the Interest Arbitrator in equal proportion.

Dated this 28th day of January, 2022

Michael E. Cavanaugh, J.D.
Interest Arbitrator