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IN THE MATTER OF THE ARBITRATION

BETWEEN

CLARK COUNTY SHERIFFS' GUILD,)
)
 Union,)
)
 and)
)
 CLARK COUNTY SHERIFFS' DEPARTMENT,)
)
 Employer.)

OPINION AND ORDER

Re: INCENTIVE PLAN
FOR 1992-94 CONTRACT

BEFORE

ERIC B. LINDAUER

ARBITRATOR

August 17, 1993

REPRESENTATION

FOR THE UNION:

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NATURE OF PROCEEDING

The issue before the Arbitrator is a determination of which of the two Incentive Plan proposals submitted by the Guild and the County should be incorporated into the 1992-94 Collective Bargaining Agreement.

Clark County, Washington (the "Employer" or the "County") and the Clark County Sheriffs' Guild (the "Guild" or the "Union") are parties to a Collective Bargaining Agreement (the "Agreement") which at Section 12.3 provides for the creation of a joint labor-management committee to develop a new incentive program to be implement on July 1, 1993. The joint labor-management committee was unable to reach agreement on the terms of the new incentive program and pursuant to Section 12.3.3 of the Labor Agreement, the parties submitted the matter on a last-best-offer basis to arbitration for resolution.

The arbitration hearing was held on June 9, 1993, and July 6, 1993, at the Clark County Sheriff's Offices in Vancouver, Washington. The Union was represented at the hearing by Daryl S. Garrettson, and the Employer was represented by its counsel, Otto B. Klein. At the hearing, the parties represented that the parties had complied with the procedural steps of the Labor Agreement and that the matter was properly before the Arbitrator. The parties further stipulated the Arbitrator would retain jurisdiction in this matter for a period of 60 days following the issuance of the Order to assist the parties in resolving any questions which may arise out of the implementation of the Order.

During the hearing, each party had an opportunity to make opening statements, introduce exhibits, and examine and cross-examine witnesses on all matters relevant to the issue in dispute.

At the conclusion of the hearing, the parties waived oral argument and agreed to submit their closing arguments in the form of written post-hearing briefs, which were received by the Arbitrator in a timely manner. Upon receipt of the post-hearing briefs, the hearing record was closed and the Arbitrator took the matter under advisement. The Arbitrator now renders his Opinion and Order in response to the issue in dispute.

ISSUE

At the commencement of the hearing, the parties stipulated the issue to be decided in this arbitration to be as follows:

Which of the two incentive proposals should the Arbitrator adopt, based on the last best offers of the parties?

RELEVANT CONTRACTUAL PROVISIONS

In the opinion of the Arbitrator, the following provisions of the Labor Agreement are relevant to determining the issue in dispute:

ARTICLE 12 INCENTIVE PROGRAM

12.1 For the period from January 1, 1992 to June 30, 1993, the current incentive plan shall continue as prescribed by the 1989-1991 Agreement for the unit. Each incentive level shall be adjusted by the salary increases which become effective prior to June 30, 1993. Employees receiving incentive compensation under that program shall continue to receive incentive compensation under that

program until the effective date of implementation of a new program as prescribed by Section 12.6.

12.2 Eligibility for incentive compensation under Section 12.1 shall be limited to employees on the program as of March 24, 1993 with the addition of a maximum of three employees with applications for the program currently on file.

12.3 New Incentive Program

12.3.1 The Guild and the Employer agree to create a joint labor-management committee to develop a new incentive program to replace the former program effective July 1, 1993. Factors to be considered include knowledge, skill and contribution to the department and profession in such areas as longevity, education, assignments, job performance and other job related factors. This list of factors is not intended to be exclusive. The program will be designed, in part, to further the department's community policing goals and philosophy. The program may provide for incentive compensation up to the equivalent of twelve percent (12%) over base compensation designed to give levels to strive for past the top step of the current pay scale.

12.3.2 The committee will consist of up to four management representatives and an equal number of employee representatives designated by the Guild. If approved by the Sheriff, Board of County Commissioners and the Guild's Executive Board, the program shall be implemented effective July 1, 1993.

12.3.3 The Guild and the Employer agree to the following schedule for the committee's work.

A. The committee will be formed and shall commence work on the development of the new program. The parties agree to meet on a regular basis beginning on or after May 3, 1993 in an attempt to resolve all issues pertinent to an incentive plan. If the parties are unable to reach agreement on the issue, the matter shall be submitted on a last best offer basis to arbitrator Eric Lindauer for hearing on the dates previously selected by the parties for interest arbitration before arbitrator Lindauer. The last best offers shall be mutually exchanged and submitted 7 days prior to the first day of the hearing. The arbitrator's decision must be made within the confines of this Article and the arbitrator shall have no authority to grant incentive compensation beyond a limit of 10% over base compensation. The arbitrator's opinion shall be

effective July 1, 1993. Except as provided herein, the arbitration shall be conducted under the standards set forth in RCW 41.56.450.

B. Any modification to the time tables herein and approach of the committee shall be mutually agreed in writing.

INCENTIVE PROGRAM PROPOSALS

CLARK COUNTY SHERIFFS' GUILD

1. The following proposed Incentive Program is to be effective July 1, 1993.

2. The purpose of the Incentive Program is to recognize and reward career officers in their contribution to the Department, to the community and to law enforcement profession.

3. Participation in the Program is voluntary and limited to full time employees of the Clark County Sheriff's Department and members of the Clark County Sheriffs' Guild bargaining unit.

4. Employees shall be responsible for providing the documentation necessary to support their entitlement for an incentive under this Program. Documentation will be on the forms provided by the Sheriff or in such other form acceptable to the Sheriff.

5. Qualifying activities may be performed on duty time to the extent the Sheriff determines that such activities do not interfere with the efficient operation of the Department.

6. Procedure for participating in the Incentive Program:

A. Any employee desiring to participate in the Program in any particular calendar year shall give the Sheriff a written notice of intent to participate no later than the preceding March 1. Probationary employees shall give such notice within one hundred and eighty (180) days of the commencement of probation. Said notice shall state the amount of Program credit the employee intends to achieve during the ensuing year and what incentive, if any, the employee would qualify for. Failure to give notice will prevent the employee from participating in the Incentive Program during the year for which notice was required, except an employee already participating in the Program will be entitled to continue participation at the level currently held.

B. Employees who desire credit for prior work experience, education or training must submit a written request to the Sheriff and may do so at any time. The Sheriff will approve the credit that falls within the definitions of this article.

7. The incentives provided for herein shall be based upon work experience, education and training as defined below:

A. Education. Education points are based on either quarter or semester credit units. Units granted by an accredited college or university completed with a grade of "C" or "Pass," or better and under the requirements of the granting institution are applicable toward fulfilling the requirements of a degree. Each such quarter unit shall equal one (1) education point. Each semester unit shall equal one and a half (1.5) education points. College credit may be counted toward training points or education points, at the option of the employee. One (1) education point is equivalent to one (1) training point.

B. Training. Twenty (20) classroom hours of job-related training shall equal one (1) training point. Job related courses including basic, advanced or supervisory, as well as specialized training related to the employee's occupation, which have been certified, sponsored, or presented by the Washington State Training Commission shall be approved. Job related training sponsored by the Clark County Sheriff's Office shall be approved. Training in other states, military police training, and other specialized training may, if job related, receive full or partial approval, at the Sheriff's discretion. Employees certified by the Sheriff as instructors may be receive [sic] training points equal to that of a participant in classes in which they instruct. Credit for repeated instruction of the same class within a twelve (12) month period is not eligible for consideration. Otherwise an employee may receive credit for a specific training activity only once. Job related training points may be counted as either education or training points, at the employee's option. Fitness training does not qualify for training points.

C. Work Experience. A job related experience acquired as a sworn law enforcement officer with a Municipal, County, State or Federal law enforcement agency will be approved. Job related experience in fields other than that in which the employee is currently engaged, may receive partial credit. Such determination of credit shall be within the Sheriff's discretion. Employees who have been previously employed by the County in an occupation other than that currently held, may receive twenty-five percent (25%) of that service with the County in the former occupation which exceeds two (2) years after completion of their probationary period. For example,

an employee who has served as a Clark County Custody Officer for six (6) years prior to becoming a Deputy Sheriff will receive one (1) year of credit for the time spent as a Custody Officer plus one year of credit for the twelve (12) month Deputy probation period.

8. Eligibility for incentive:

A. Employees who meet the following qualifications will be eligible to receive an incentive equal to five percent (5%) of their straight time hourly wage.

i. Employees possessing a Bachelor's Degree with two (2) or more years of work experience, and who have completed the Basic Academy.

ii. Employees possessing an AA Degree or equivalent hours plus four (4) or more years of work experience, and who have completed the Basic Academy.

iii. Employees possessing the following combination of training and education points, plus years of experience.

Years of Experience	Combination of Training and Education Points
4	90
5	76
6	60
7	46
8 or more	30

B. Employees who meet the following qualifications will be entitled to an incentive equal to ten percent (10%) of their straight time hourly wage.

i. Employees possessing a Master's Degree with four (4) or more years of work experience and who have completed the Basic Academy.

ii. Employees possessing a Bachelor's Degree with six (6) or more years of work experience and who have completed the Basic Academy.

iii. Employees possessing an Associate Degree or equivalent hours, plus seven (7) years of work experience and who have completed the Basic Academy.

iv. Employees possessing the following combination of training and education points, plus years of experience.

Years of Experience	Combination of Training and Education Points
8	120
9	90
10	80
11	70
12 or more	60

9. The incentives provided for in this Program do not compound. An employee may be eligible for either a five percent (5%) or ten percent (10%) incentive, but not both.

10. Any dispute concerning the application or interpretation of this Program shall be filed and processed as a grievance beginning at Step 2 of the Grievance Procedure.

11. Any employee receiving incentive pay under this Program who has achieved twenty (20) years of service, shall have, for the purposes of LEOFF I, said incentive converted to longevity pay.

12. Any employee receiving incentive pay under any predecessor to this Program shall continue to receive such pay until such time as they qualify for an equal or greater incentive as provided herein.

CLARK COUNTY

12.1 PURPOSE. The purpose of the program is to recognize and reward career officers for their contributions to the department, the community and the law enforcement profession. To that end, the COP [Career Officers Incentive Program] program provides financial incentives for a variety of accomplishments and achievements.

12.2 PROGRAM ELEMENTS. The COP program recognizes employees in four areas: education, service, specialized skills and special achievement. The department's Career Officer Program is expected to be accredited by the Commission on Accreditation for Law Enforcement Inc. The parties agree to reopen negotiations concerning this program as necessary to continue its accreditation.

12.3 PARTICIPATION AND ELIGIBILITY

12.3.1 Participants must have satisfactorily completed their original probationary period as a Deputy Sheriff to be eligible for any level of incentive. Participation in the COP program shall be on a voluntary basis.

12.3.2 Employees who desire to participate must submit a written application to the Sheriff's personnel unit no later than 30 days prior to the beginning of the first calendar quarter (January, April, July, October) in which they anticipate qualifying for incentive pay. Eligibility must be documented annually.

12.4 PROGRAM STRUCTURE

12.4.1 The program allows employees to qualify for incentive pay based on earning incentive points, earnable in a variety of ways. Points shall be awarded based on levels of qualification in each of the program elements according to the following table:

Points	Education	Longevity	Skills Inventory
2	AS/AA	10 years	1 certification
4	BA/BS	15 years	2 certifications
6	MA/MS	20 years	3 certifications

12.4.2 Total points are based on the level attained in each of the three program elements. For example, an employee with a BA degree, ten years of service and two certifications would receive ten points (4 + 2 + 4).

12.5 TITLES AND INCENTIVE COMPENSATION

12.5.1 The COP program provides for three levels of incentive compensation. The following table describes the levels, "working" job titles, points required for each level and incentive amounts for each eligible classification:

LEVEL	Working Title	Points	Deputy	Sergeant
Level 3	Master Deputy/Sergeant	10	\$300	\$350
Level 2	Senior Deputy/Sergeant	6	\$200	\$250
Level 1	Corporal/Sergeant II	4	\$100	\$150

12.5.2 In addition to the financial recognition, the department shall develop and issue uniform insignia reflecting each incentive rank. Input from the labor relations team shall be solicited prior to finalizing the insignia.

12.6 EDUCATION. Employees may qualify for the points indicated by satisfactorily completing an educational program with a job-related major from an accredited college or university. Job related majors include criminal justice, law and pre-law, public administration, sociology, psychology or other related fields as determined by the Sheriff. At the AS/AA level job relatedness is not required. Non job-related degrees will be awarded 3 points at the BA/BS level and five points at the MA/MS level.

12.7 LONGEVITY. Longevity will be based on all service in a regular position with the Sheriff's Office.

12.8 SPECIAL SKILLS INVENTORY

12.8.1 Employees may qualify for up to six additional points through certification of skills and proficiency in any of the specialty areas in this section. Certification shall be based on completion of one year or more of service in the area, specialized training or demonstrated proficiency. Each assignment shall be worth one point. Assignments qualifying are:

Detectives	Narcotics
Crime Analysis	Gang Unit
Traffic	Child Abuse unit
DARE Unit	SWAT Team
Training Unit	Hostage Negotiator
Internal Affairs	Background Investigator
Evidence Technician	Marine Patrol
Community Relations Unit	K-9 Officer

12.10 SPECIAL ACHIEVEMENT

12.10.1 Up to twelve (12) of the eligible bargaining unit employees may be granted additional incentive compensation by the Sheriff for special merit or achievement. Factors for consideration shall include distinguished job performance, embodiment of community policing ideals and techniques, or other appropriate measures of contribution to the community, department and law enforcement profession. Special achievement awards shall be in addition to incentive compensation achieved through the core program.

12.102. Special achievement recipients shall be awarded an annual bonus of \$800. Awards shall be based on the prior calendar year of service. Criteria for selection and selection of employees shall be at the discretion of the Sheriff.

12.11 PROGRAM ADMINISTRATION. The Sheriff's Office Personnel Division shall administer the COP program. Employees are responsible for maintaining and documenting qualifications for incentives under this program with the assistance of the immediate supervisor and Personnel Division.

STIPULATIONS OF FACT

During the course of the hearing, the parties entered into two stipulations of fact:

1. That the existing incentive plan, as set forth in Article 12 of the Collective Bargaining Agreement, will continue in effect from July 1, 1993, through September 1, 1993, pending the Arbitrator's decision on which proposal should be incorporated into the Agreement.

2. That the Arbitrator's fees and expenses incurred in this proceeding shall be shared equally between the parties.

SUMMARY OF FACTS

The facts of this arbitration are simple and not in dispute. During negotiations for their current Labor Agreement which runs from January 1, 1992, to December 31, 1994, the parties could not agree on the terms of an incentive plan. In an attempt to move ahead with implementation of a new agreement, the parties separated the issue of the incentive plan from the balance of the Labor Agreement. The parties set forth in Article 12 of their new Labor Agreement a settlement agreement which provides for creation of a new incentive plan.

The joint committee created to draft a new incentive plan could not reach agreement on the plan's terms. Therefore, as provided in the settlement agreement, the parties submitted the matter for arbitration on a last-best-offer basis.

The settlement agreement at Section 12.3.3 of the Labor Agreement provides that,

The arbitrator's decision must be made within the confines of this article and the arbitrator shall have no authority to grant incentive compensation beyond a limit of 10% over base compensation. The Arbitrator's opinion shall be effective July 1, 1993.

The parties agreed to delay the effective date of the incentive plan to September 1, 1993, after it became apparent that the parties could not present all of their evidence on June 9, 1993, and would have to continue the arbitration hearing on July 6, 1993.

The terms of the two plans submitted by the parties have been set out above. The County's proposal revises the current incentive plan completely, while the Guild's proposal is basically a continuation of the incentive plan which has been negotiated by the parties over the years. Both plans seek to provide incentive for Guild members to improve their skills and performance.

The County plan provides financial compensation based on a matrix plan which recognizes and rewards education, longevity with the department and skills in a number of specialty areas. The County plan proposes three levels of incentive compensation payable monthly. For deputies, the levels would be \$100, \$200 and \$300. For sergeants, the levels would be \$150, \$250 and \$350. The County also proposes up to 12 Special Achievement Awards of \$800 each to be awarded at the discretion of the County Sheriff. The County would also devise uniform insignias for three levels of achievement known as Corporal, Senior Deputy and Master Deputy.

The Guild plan encourages and rewards education experience and training and it differs in several ways from the County proposal. First, the Guild proposal recognizes and gives compensation for all education credits, not just educational degrees. Second, in a departure from the prior incentive plan, the Guild also proposes to delete the requirement that education be job-related before it is eligible for incentive pay. Third, the County proposal rewards training on a broad basis. The County plan recognizes certain skills for which an employee would receive a certification after "one year or more of service in the area specialized training or demonstrated proficiency." (County Proposal, Section 12.8.1.) Fourth, the Guild proposal rewards experience, not longevity with the Sheriff's Department. The Guild plan calls for incentive pay for all job-related work experience. Finally, incentive pay under the Guild plan is a percentage of the employee's base salary.

Both parties argue that their proposals best promote community policing which the Sheriff seeks to implement in Clark County.

The two plans both seek to encourage and reward skills, knowledge and ability, but they take different approaches to gain that end. The Arbitrator's responsibility is to select the incentive which best serves the interests of the parties and the community based on the evidence introduced during the two days of hearing.

CONTENTIONS OF THE PARTIES

The Union

The Union contends that its incentive plan proposal should be adopted for the following reasons:

1. The plan is substantially similar to the current plan which has worked well. Sixty percent of Guild members participate in the plan and have changed their behavior to meet the requirements of the current plan. Throughout negotiations, the Guild maintained that the new plan would have to contain some form of grandfathering. "The Guild would not abandon the current incentive plan unless those individuals who qualify thereunder were protected." (Union Post-Hearing Brief, page 30.) The settlement agreement does not prohibit the Guild from proposing a plan basically the same as the current plan. The current plan on which the Guild's proposal is based has been proven to work to benefit the Employer and make better deputy sheriffs. Id. There is no reason to fix what is not broken.

2. The real reason the County is proposing to drastically change the current incentive program is to save money. The flat rate incentive pay suggested by the County, instead of a percentage of salary incentive pay, will over time result in less money for plan participants. Further, 58 out of 71 deputies currently receiving the incentive pay would receive a reduction in their pay under the County's plan. The Guild presented evidence that the County would save approximately \$115,000 per year if the County proposal is implemented. Further, the comparable information

offered by the County into evidence is unreliable. In fact, comparisons show that Clark County is still behind comparable counties in average adjusted wages.

3. Several aspects of the County proposal make it more difficult to qualify for the incentive plan and are unfair. The County would change the prior plan by allowing credit or points only for advanced degrees. This requirement ignores the incremental value of education. It also encourages employees to seek two-year rather than four-year degrees. The County also proposes that instead of giving points or credits for training, it will award certification in special skill areas. However, only certain special skills will be awarded certification, and in order to receive certification, an employee must be assigned to a special skill area for at least one year. The evidence is clear that generally the County has given employees special assignments for less than a year. Thus, under the County's proposal, the employees would receive no credit for this prior experience. Finally, the County's proposal emphasizes longevity in the Sheriff's office and ignores prior job-related experience. The Guild believes that the department benefits from experienced employees just as much as from employees who have worked in the Sheriff's department for a long period of time.

4. The Guild disputes the County's argument that its proposal is the only one which promotes community policing. The Guild presented evidence in the form of testimony from deputies that the County's plan would encourage employees to seek special

assignment after special assignment rather than working as road deputies. This is the exact opposite of what the County purports its plan will do. The Guild admits its plan is neutral in community policing, but at least it does not encourage deputies to leave the road.

5. Finally, there are at least two specific problems which are contained in the County's proposal as written. The first concerns employees covered by the LEOFF I retirement plan. Officers employed prior to October 1, 1977, are covered by LEOFF I and those hired after that date are covered by LEOFF II. The only difference between LEOFF I and LEOFF II germane to the incentive plan is that under LEOFF I, the definition of "final average salary" does not include incentive pay, while under LEOFF II, it does. To remedy this inequity, the parties agreed in the prior incentive plan to convert incentive pay to longevity pay upon reaching 20 years of service. Thus, LEOFF I employees would receive credit for longevity for the purpose of calculating retirement benefits. The County's plan does not provide for the conversion of incentive pay into longevity pay after 20 years of service for LEOFF I employees. Therefore, under the County's proposal, LEOFF I officers would receive reduced retirement pay because their incentive pay would not be converted to longevity and counted as part of their final average salary.

The other problem with the County's plan is in its implementation. As written, the County's plan became effective on September 1, 1993, but no employee could be eligible to receive

incentive pay until October 1, 1993. This results in a 30-day gap during which Guild members would receive no incentive pay at all. Such a gap unjustly penalizes employees.

Both of these problems could have been corrected by more careful drafting by the County. However, the County presented its last best offer to the Arbitrator as written. The Arbitrator has no authority to rewrite either party's proposal. The County's proposal is flawed and should be rejected by the Arbitrator.

For all of the above reasons, the Guild asks the Arbitrator to accept and order implementation of the Guild's incentive program proposal.

The County

The County contends that its career officers' incentive program should be adopted by the Arbitrator for the following reasons:

1. The parties spent a great deal of time trying to negotiate a revised incentive plan. They could not. However, they were able to negotiate a settlement agreement whereby they would continue to try to draft an incentive program or submit the issue to an arbitrator on a last-best-offer basis. The agreement as written into the current contract provides the parties will develop a "new" incentive program to "replace the former program." The plan proposed by the Guild is simply a continuation of the prior plan. It is not new and does not conform to the agreement reached by the parties concerning the incentive plan. The parties agree to devise a "new" plan, one that would further community policing.

The Guild's plan ignores the parties' settlement agreement and should be rejected by the Arbitrator on that basis.

2. The settlement agreement reached by the parties specifically required the new program to be designed to further community policing goals and philosophy. The County's proposal does just that. The Guild's proposal contains no provisions to encourage community policing. It maintains the status quo which is exactly what Sheriff Garry Lucas campaigned against when he was elected Sheriff in 1991. The incentive plan is one of the few aspects of the Sheriff's Department that has not been changed since Sheriff Lucas's election. It needs to be changed now, and the County's plan will do so while encouraging community policing by providing incentives for deputies to become generalists rather than specialists. The County's plan does what the parties agreed the new incentive plan should do.

3. The incentive program is a part of the overall compensation plan negotiated by the parties. During the most recent contract negotiations, the County bargained with one purpose in mind: to grant a substantial base pay increase in return for a new incentive plan. The base pay increase was incorporated in the new contract and the County expects a new incentive program to be implemented as well.

The County's incentive program proposal will result in an approximately one percent decrease in the cost of incentive compensation to bargaining unit employees. This decrease is more than covered by the base pay rate increase. Each Deputy Sheriff

will receive an increase in overall compensation even with adoption of the County proposal. The new incentive plan must be viewed in the context of the overall contract negotiations and the overall compensation package.

4. The County's proposal is supported by comparable counties and the CPI. The County's comparisons show that by mid-1994, Clark County deputies will receive a top step base pay of \$3,339 per month as compared to the comparable average of \$3,270 per month. Also, the County's proposed incentive plan compares well with such programs in comparable jurisdictions. When analyzed as a percentage of base pay, the County's incentive pay proposal provides a higher percentage at almost every level. The County recognizes that its proposed plan will pay slightly less than that current plan, but the new plan will still pay substantially more than the comparables. Further, the total compensation package awarded by employees in the new contract including the County's proposed incentive plan far exceeds the increase in the CPI and the cost of living increase.

5. The current plan and the plan proposed by the Guild are wage supplements, not incentive plans. The current plan does not, and the Guild's plan will not, encourage completion of an employee's education by obtaining a degree. Under the proposal by the Guild, it is too easy to qualify for incentive pay and the payments are too high. Because of the changes in the policies and goals of the department under Sheriff Lucas, the incentive plan now rewards the wrong things.

6. The technical problem cited by the Guild with respect to the County's proposal is without merit. The County provided no "grandfathering" provisions because to do so would essentially undercut the incentive element of the new proposal. Even without grandfathering, all deputies will be receiving a substantial increase in their overall wage package during the term of this contract.

The flat dollar incentive pay is reasonable. Flat dollar rates are used in many public safety departments and encourage periodic renegotiation of the incentive plan itself. The \$300 top-level incentive pay under the County's proposal would have no effect on the top-step incentive pay received this year and only a minimal effect next year.

The fact that employees under LEOFF I were unintentionally not mentioned in the new proposal should not be fatal to the plan. Steven Foster, Clark County Human Resources Manager, testified for the County that he did not intend to change the current practice of converting incentive pay to longevity for the purpose of calculating retirement pay. However, even if the practice were not continued, under the County's plan as proposed, employees with 20 years of service will still receive 60 percent of their incentive solely for longevity. Therefore, a retiring employee would not have his or her retirement pay reduced to the extent cited by the Guild. Further, no deputies have indicated their intention to retire within the next year, so there is no evidence that anyone would be prejudiced by the plan as it is now written.

Finally, the Guild's argument that there will be a gap during which deputies will not receive incentive pay is inaccurate. The Arbitrator's award will be effective September 1, 1993, but will be implemented October 1, 1993. Article 12 of the Contract provides that employees will continue receiving incentive pay under the old program until "the effective date of implementation of a new program." Therefore, deputies will be able to apply for the new program 30 days before the beginning of the new quarter (October 1, 1993). As required by the County's proposal, the deputies will continue receiving incentive pay under the old program until implementation of the new program.

For the above reasons, the County requests that the Arbitrator adopt its proposed incentive program.

OPINION

The last-best-offer incentive plans proposed by both parties have certain advantages and disadvantages. The main differences between the proposals reflect the change in philosophy as to the direction the Sheriff's Office should be moving in performing its responsibilities to the citizens of Clark County. The evidence established that the current Sheriff, Garry Lucas, ran for election on a platform of change with community policing as his goal. Sheriff Lucas was elected by a large majority and since taking office in 1990 has made policy and operation changes designed to implement community policing. He intends to make "generalists" rather than "specialists" out of his deputies and believes the

County's proposed incentive plan will assist in accomplishing that goal. As "generalists," deputies possessing a wide range of experience and background will be available to provide services to the community as a whole. Currently deputies serve as "specialists" in certain areas such as road patrol, homicide investigators, detectives, etc., and are available to the public only in their specific areas of responsibility. Accordingly, the County's proposal changes the prior incentive program in almost every aspect.

The Union's proposal is essentially a continuation of the incentive program negotiated by the parties in prior agreements. The parties made it clear in their Agreement at Article 12 of the current Contract that the Arbitrator has no authority to modify either of the last best offers submitted to him. He must take them as they are and choose between them.

After careful evaluation of each proposal and on the basis of the evidence presented at the hearing, the Arbitrator concludes that the Guild's proposal should be incorporated into the new Agreement. The basic reasons for this decision are as follows:

1. The County failed to present persuasive reasons and evidence to establish a basis for the substantial changes proposed in its plan.
2. The evidence showed that incremental education is valuable to job performance and should be rewarded.
3. The County's plan makes rewarding experience difficult.
4. Problems are inherent in the administration of the County's proposal.
5. The evidence is divided on whether the County's plan would in fact further community policing.

Before proceeding to discuss these points in greater detail, the Arbitrator must first address the implications of the settlement agreement reached by the parties and set forth in Article 12 of the current Contract on this decision.

The Arbitrator is well aware that his decision appears to overlook one of the County's most important arguments; i.e., that the Union agreed to a "new" incentive plan "to replace the former plan." Instead, the Union offered simply a continuation of the old plan with some minor changes. Additionally, the Union agreed to design a "new" plan which furthered community policing, but failed to significantly address the community policing issue in its revision of the old incentive plan.

The Arbitrator did not ignore the County's argument that the Union's proposal violates the agreement between the parties as to the next incentive plan. He considered it carefully but could not in good conscience base his decision in this matter solely on the fact that the Union's proposal was not "new." The Arbitrator considered the crux of the issue before him to be which of the two plans submitted is the better plan in terms of content and fairness, not which plan conforms best to the parameters laid out in Article 12. The Arbitrator found several problems with the content of the County's plan and determined that these problems outweighed the fact that the Union had essentially made minor modifications to the old incentive plan at its last best offer. The settlement agreement contained in Section 12.6.3 of the Agreement, as well as the issue stipulated to by the parties,

requires that the Arbitrator decide which of the two plans best serves the interests of the parties, without qualification. Given these constraints, the Arbitrator does not have the latitude to reject a proposal on the basis that it is not a "new" plan or that it does not adequately further the Department's community policing goals. These are subjective determinations which do not outweigh the basic requirement in selecting which of the last best offers should be adopted. The County has strenuously argued in its post-hearing brief that the Union's proposal should be summarily rejected because it was not a "new" program as contemplated by the settlement agreement. I disagree. It does not benefit the parties to reject what the Arbitrator considers to be the better of the two proposals solely on the basis that one was not "new." The issue of whether the Union's incentive proposal is a "new" or simply the "old" program with minor modifications, was not the issue submitted for determination. This decision was based on the substantive content of the proposals, not on whether the proposals were either new or old.

In its brief entitled County Position on Guild Proposal, the County specifically requests the Arbitrator to address the issue of his authority to recommend the Union's proposal in view of its "grandfather clause" which continues all the old incentive pay levels plus whatever additional pay is provided for by the Union's liberalization of educational and training requirements. This section is intended to respond to the County's request and explain the Arbitrator's thought process. Below, the Arbitrator will

explain in more detail why he found the County's plan objectionable.

1. The County Failed to Present Persuasive Reasons and Evidence to Establish a Basis for the Substantial Changes Proposed in Its Plan.

There are several factors which favor the Union's proposal over the County's. First, it has been in place for many years and has been developed through the negotiations of the parties. The current program developed in its present form over the past 20 years. The parties adopted an incentive program initially in 1973, and through negotiations, it reached its present form in 1980. The program has continued essentially in its present form since that time. Obviously, sheriff's deputies have relied on the program over a long period of time.

Arbitrators may require "persuasive reason" for the elimination of a clause which has been in past written agreements.

Elkouri and Elkouri,
How Arbitration Works,
page 843 (4th Ed. 1985).

Second, the Union's proposal has been successful in encouraging deputies to participate in education and training programs to improve their skills, knowledge and ability. Sixty percent, or 71 out of 114 of the deputies in the Sheriff's office, are currently participating in the incentive plan. The evidence established that 25 or more deputies have returned to college in order to qualify for the incentive program.

To support its position that the incentive plan needs a major revision, the County presented evidence that it negotiated a base

wage increase during the most recent contract negotiations with the understanding that the incentive program would be revised to make it harder to qualify for incentive pay. The County admits its base wage was low when compared to other counties. It also contends its incentive program is easier to qualify for and has a more generous pay rate than comparable counties.

The Union counters by questioning the data on comparables supplied by the County. The Union insists the County's figures are skewed because for the comparable Oregon jurisdictions, the County did not include retirement pickup as part of the top salary base.

In the final analysis, the Arbitrator concludes that the deputies have already invested too much in the current incentive program to make a major programmatic change as proposed by the County. Further, the evidence simply did not convince the Arbitrator of the need for such a change.

2. The Evidence Showed the Incremental Education Is Valuable to Job Performance and Should Be Rewarded.

In order to obtain points for education under the County's plan, employees must satisfactorily complete "an educational program with a job-related major from an accredited college or university." The current program and the Union's proposal both give points for class credits, not just degrees. The Union's proposal rewards advanced education whether or not it leads to a degree.

The Union submitted numerous law enforcement articles supporting the proposition that there is a direct correlation between advanced education and job performance. This correlation

cannot be denied. The County argues in its post-hearing brief that the articles also conclude that officers with college degrees perform better than those who do not. Having reviewed the articles, the Arbitrator views the articles as supporting both parties' positions. College education helps performance and that is true whether or not a degree is earned. Also, according to the articles, police officers with degrees perform better than those who do not have degrees.

The problem the Arbitrator has with the County's proposal is that it ignores incremental education which the evidence clearly shows does, in fact, improve job performance. Additionally, by requiring a degree, the County's proposal denies education points to those officers who have previously returned to college specifically to qualify for the current incentive plan. Those officers relied on the current plan, and to now have the plan change so that they will receive no education points appears to the Arbitrator to be unfair.

The Arbitrator recognizes the movement to require law enforcement officers to have college degrees as discussed in the various articles in evidence. However, the Arbitrator believes the County could encourage this result by granting more points for college degrees than credit hours, but still granting some points for credit hours. The plan proposed by the County simply seems too harsh on those deputies who have relied on the current plan and now face losing all the reward promised for their time and commitment in furthering their education.

The Arbitrator cannot ignore the numerous studies which establish that incremental education does improve job performance. The County is to be commended for wanting to employ the best officers possible, but the education component of its plan appears overzealous to this Arbitrator. Surely the County's main goal is to improve the performance of its employees. It can do this by rewarding both incremental education and degrees. To now ignore the value of incremental education would prove discouraging to officers who have consistently relied on the current incentive program. Deputy Steven Shea confirmed this. Deputy Shea is three credits short of obtaining a Bachelor's Degree. He currently receives incentive pay of 10 percent of his base salary. Under the County's plan, he would not receive any points for his education credits and he would not qualify for incentive pay, thus, reducing his salary by 10 percent. The Arbitrator understands the desire on the part of the Sheriff's Office to "incent" Officer Shea and others to complete their degree, but finds the County's proposal for doing so too extreme.

The Arbitrator may agree with the County that the current plan makes it too easy to qualify for the incentive program, but the County negotiated this plan and has had it in place for over 12 years. The deputies have every right to rely on the plan. That does not mean the plan can never be modified; however, the Arbitrator in evaluating the effect of implementing the Union's plan as opposed to implementing the County's plan, finds that the deputies have too much already invested in the current plan to make

the major changes proposed by the County acceptable. If major changes are to be made to the current plan, they should be achieved through the bargaining process, rather than at the hand of the Arbitrator. The Arbitrator is not convinced that the changes in educational requirements for the incentive program proposed by the County will have enough positive effect on the Sheriff's Office to outweigh the unfavorable effects.

3. The County's Plan Makes Rewarding Experience Difficult.

A fundamental difference in the two proposals is that the Union's plan rewards experience while the County's plan rewards longevity. The County argues that its Skills Inventory rewards experience. The Union points out two problems with the Skills Inventory. First, certain skills are not on the list and would not be eligible for certification. Thus, certain skills and experience would be ignored in granting points toward the incentive plan. Second, the County's proposal requires one year of specialized service in each of the skills areas; whereas, in the past, the County has granted special assignments only for less than one year. Therefore, under the County's proposal, many deputies who have had special assignments and gained experience in the skills areas identified would not qualify for points toward the incentive program.

The Arbitrator must agree with the Union that these two factors make the County's proposal less attractive. The County admits in its post-hearing brief at page 24, footnote 17, that a few additional specialties may need to be added to the list. The

Arbitrator has no authority to add the specialties. If the County's proposal were to be adopted, the parties themselves might agree to add certain specialties or they might not. The Arbitrator has difficulty in ordering adoption of a plan which both parties agree needs modifying when no means of modification have been provided other than to wait until the next round of negotiations.

The one-year requirement for special assignments does appear to the Arbitrator to make it difficult for deputies to apply their past experience toward the County's proposed incentive plan. The County assures the Arbitrator and the Union that many deputies will qualify for certification without additional assignments, but offered no hard evidence to support this representation. Once again, the County proposal seems to completely undercut the requirements of the current incentive plan relied upon by the deputies. The Arbitrator would emphasize that this opinion should not be read to endorse the continuation of the present program in perpetuity. Change is often good and necessary. The Arbitrator believes change can be brought about in the incentive plan so that the program is more acceptable to the County, but that change should not so dramatically eliminate the officers' past efforts in complying with the current plan.

Finally, with respect to the issue of longevity versus experience, the Arbitrator finds Section 12.4 of the County's proposal does not provide an incentive for officers to improve their skills, ability, and knowledge. In order to receive incentive points under this section, an employee must have served

in the department a minimum of ten years, regardless of in which department the employee has served. As pointed out in Deputy Erin Allen's letter commenting on the County's proposal, "longevity is an area that some feel should be rewarded, but is merely being employed for a period of time an 'incentive' if you will, to do anything other than show up, it doesn't really seem so."

The County's proposal will award points for longevity regardless of whether the employee was working in the Sheriff's Office as a clerk or as a deputy. The example given by the Union opposing the County's emphasis on longevity is persuasive. Deputy John Armstrong, a road deputy with ten years experience in Washington County, Oregon, testified that he would receive no points for longevity if he came to Clark County under the County's proposal although he brings ten years of experience to the department. The Union argues that Deputy Armstrong's experience as a road deputy is worth more to the department than his hypothetical experience as a records clerk or custody officer, yet had he worked in the Sheriff's Office as a clerk or custody officer, he would receive longevity points. However, because he did not work for the Clark County Sheriff but for the Washington County Sheriff, he would receive no longevity points. The Union contends that its proposal is superior because it rewards experience regardless of where that experience was obtained. In the Union's view, experience benefits the department more than simple departmental longevity.

It is the opinion of the Arbitrator that departmental longevity has a place in an incentive plan. However, the Arbitrator views the County's proposal as inadequate because its provisions for rewarding experience are flawed. Categories of skills have been omitted from the Special Skills Inventory. Experience must be gained for the most part prospectively under the County's plan. Thus, prior experience may not count toward the proposed incentive plan due to technicalities such as the length of the special assignment. The County plan emphasizes longevity in a broad and unrestricted provision. Their plan makes it much easier to gain points for longevity than for experience and skills. The Arbitrator considers this a serious deficiency in the County's proposal.

4. Problems Which Are Inherent in the Administration of the County Proposal.

There are, in the opinion of the Arbitrator, two additional reasons which mitigate against the County's proposal which relate to the administration of the County's proposal. They relate to the lack of coverage under the LEOFF I Retirement Plan and the Special Achievement Award.

The absence of a provision covering deputies under the LEOFF I Retirement Plan and the proposed Special Achievement Award make it difficult for the Arbitrator to endorse the County's proposal.

a. LEOFF I Retirement Plan

The Arbitrator is convinced that the County did not intentionally neglect to continue protection of deputies covered under LEOFF I. However, the County admits that its proposal does

not contain a provision which converts incentive pay to longevity after 20 years of service. Thus, that pay may not be figured into the employee's final average salary and will result in a reduction of retirement pay. Steven Foster, Director of Human Resources, testified he did not intend to change the past practice, but the fact is that that practice is not continued under the County's proposal, and neither the Arbitrator nor the County has the authority to add such a provision at this time. While it is possible that no deputy covered by LEOFF I may choose to retire within the term of this Contract, the Arbitrator is uncomfortable leaving the absent provision up for negotiation in the next round of collective bargaining. The provision should be contained in the County's proposed plan. If this were the only problem the Arbitrator found with the County's proposal, it would not be fatal to the proposal. However, it is one of several concerns, and, in the Arbitrator's opinion, when they are taken together, they are too great to overcome.

b. Special Achievement Awards

The Arbitrator finds the Special Achievement Award provisions of the County's proposal well intended but difficult to administer in view of the conflict that would naturally result from who would and who would not receive the award. In the Arbitrator's view, the award lends itself to the criticism, fairly or unfairly leveled, that the Sheriff was playing favorites. There is simply no way to avoid this criticism when the award is left to the sole discretion of the Sheriff. Despite arguments to the contrary in the County's

post-hearing brief, the Arbitrator finds the standards for making the award broad and subjective. Many of these same concerns were raised in Deputy Erin Allen's comments regarding the County's proposal. The pay-for-performance concept has merit and Special Achievement Awards may be appropriate in certain circumstances. However, the Arbitrator considers the criteria for the award proposed by the County not specific enough, leaving the Sheriff with too much discretion. This has the potential of disrupting the working relationships between the Sheriff and the deputies and among the deputies themselves.

The Union's plan continues protection for deputies under LEOFF I, but does not contain a Special Achievement Award provision. In both particulars, the Arbitrator considers the Union plan preferable.

5. Evidence Is Divided on Whether the County's Program Would, in Fact, Further Community Policing.

It was apparent throughout the hearing that the primary motivation driving the County's proposal was the furtherance of the community-oriented policing goals of the Department. Sheriff Lucas campaigned, and was ultimately elected, on the strength of his promise to make the Sheriff's Department more responsive to the needs of the community by invoking a community-oriented policing policy in his Department. One of the four major components of the policy was the decentralization of operations, with specific reference to the patrol officers.

The County contends that its incentive program is an important factor in transforming the Sheriff's Department to a policing

policy which is community oriented. Sheriff Garry Lucas testified that the cornerstone of community policing is the patrol officer. His intent is to provide the community with generalist officers, not specialists, who can form partnerships with the citizens to solve community problems. The Sheriff and the County want to encourage deputies to accept special assignments to broaden the base of their knowledge and experience and then return to the street as road deputies. Special assignments will earn deputies points toward qualifying for the incentive program, but not premium pay. According to the County, deputies will want to return to the road because deputies would receive a 5.28 percent supplement to their pay over and above other employees in the department.

The Union argues that the County's plan does not encourage community policing because it does not provide incentives for road deputies or community involvement. Deputy Kevin Harper testified that in his opinion, the County's plan encouraged him to leave road duty for special assignment. The plan contained nothing to encourage him to return to the road.

The Union contends that its plan is neutral as far as community policing goes. It has no specific community policing provisions, but it does not encourage good road deputies to leave the road in order to obtain certification for special assignments. Instead, those deputies can use their education, experience, and training to qualify for the Union's incentive program.

The provisions of the County's plan do not convince the Arbitrator that the plan will in fact further community policing.

Specifically, the Arbitrator is not convinced that once a road deputy goes on several special assignments, he will return to the road. The Union's evidence casts doubt on that prospect.

The County's plan may work, as envisioned by the County, to encourage the "generalist" road deputy, but it may not. The evidence is not persuasive on this point. The Arbitrator does not consider the County's arguments and evidence that its plan fosters community policing to be a deciding factor in this matter.

The Arbitrator does appreciate the difficulty of Sheriff Lucas's task in changing the orientation of the Sheriff's Department to a community-oriented policing philosophy. This decision is not meant to make that task more difficult. However, the Arbitrator does believe the task might be better approached through administrative policy rather than a contractually established incentive program.

CONCLUSION

The Arbitrator in drafting this opinion experienced the constant frustration of recognizing that there were clear advantages and disadvantages with both plans. However, the parties have restricted the Arbitrator's decision-making authority by requiring that he select, in total, either the County's or the Union's proposal.

The Arbitrator decided to adopt the Union's incentive program proposal because he found several technical as well as substantive problems with the County's plan. The Arbitrator did not base his

decision on the terms of the settlement agreement or on monetary factors. Looking at the terms of each proposal, he simply found the Union's plan the most workable and the fairest. Therefore, it shall be the order of the Arbitrator that the parties shall adopt the Union's proposed incentive program.

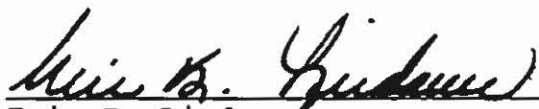
IN THE MATTER OF THE ARBITRATION

BETWEEN

CLARK COUNTY SHERIFFS' GUILD,)	<u>ORDER</u>
)	
Union,)	
)	Re: INCENTIVE PLAN
and)	FOR 1992-94 CONTRACT
)	
CLARK COUNTY SHERIFF'S DEPARTMENT,)	
)	
Employer.)	

The Arbitrator, in arriving at this decision, has reviewed all of the evidence, exhibits, and recorded testimony of the hearing, as well as the arguments of the parties as set forth in the post-hearing briefs. In view of all the evidence and for reasons set forth in this Opinion, the Arbitrator Orders that:

The parties shall adopt the Guild's proposed incentive plan as a part of their 1992-94 Collective Bargaining Agreement.


Eric B. Lindauer
Arbitrator

August 17, 1993