IN THE MATTER OF INTEREST ARBITRATION

BETWEEN

GENERAL TEAMSTERS LOCAL UNION NO. 231
SHERIFF'S DEPARTMENT UNIT

AND

WHATCOM COUNTY, WASHINGTON

ANALYSIS AND AWARD

Arbitration Panel:

Carlton J. Snow, Chairman

Marven K. Eggert

Terry A. Unger

TABLE OF CONTENTS

IN THE MATTER OF INTEREST ARBITRATION	)	ANALYSIS AND AWARD
BETWEEN	)	
GENERAL TEAMSTERS LOCAL UNION NO. 231 SHERIFF'S DEPARTMENT UNIT	)	Marven K. Eggert, Union Appointed Arbitrator
AND	)	Carlton J. Snow, Neutral Arbitrator and Chairman of the Panel
WHATCOM COUNTY, WASHINGTON	)	Terry A. Unger Employer Appointed Arbitrator

I. INTRODUCTION

This matter came for hearing pursuant to RCW 41.56.450. A hearing occurred on June 24, 1986 in a courtroom of the Whatcom County Courthouse located in Bellingham, Washington. The parties presented the matter to an arbitration panel consisting of Marven K. Eggert, Secretary-treasurer of Teamsters' Local No. 231; Carlton J. Snow, Professor of Law; and Terry A. Unger, Acting Director of the Nor-Bell Nursing Home. Mr. Matthew D. Durham, a partner in Donworth, Taylor and Company, represented Whatcom County. Mr. Herman Wacker of Davies, Roberts, Reid & Wacker represented Teamsters Local No. 231.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses and to argue the matter. All witnesses testified under oath. Ms. Margaret Sturtz reported the proceedings for the parties and submitted a transcript of 267 pages. The advocates fully and fairly

represented their respective parties.

The parties stipulated that the matter properly had been submitted to arbitration and that there were no issues of substantive or procedural arbitrability to be resolved; and administrative requirements have been complied with and statutory criteria followed in rendering this report. The parties authorized the arbitrator to retain jurisdiction of the matter for sixty days following the issuance of an award. The parties elected to submit post-hearing briefs in the matter, and the arbirator officially closed the hearing on August 20 after receipt of the final brief.

RCW 41.56.450 states that, if the parties after a reasonable period of negotiation and mediation have been unable to resolve their differences, "an interest arbitration panel shall be created to resolve the dispute." "Interest arbitration" is a dispute resolution procedure in which one or more third party neutrals make a final and binding decision in order to resolve a dispute between the parties with regard to new terms in a collective bargaining agreement. The Washington legislature has mandated interest arbitration for uniformed personnel in the state in an effort to implement "a public policy in the State of Washington against strikes by uniformed personnel as a means of settling their labor disputes." (See, RCW 41.56.430). The statutes has defined "uniformed personnel" as "law enforcement officers as defined in RCW 41.26.030 and now or hereafter amended, of cities with a population of fifteen thousand or more or law

enforcement officers employed by the governing body of any county of the second class or larger. . . ." (See, RCW 41.56.030).

Until July 1, 1985, only uniformed personnel in cities of fifteen thousand or more or in AA counties enjoyed statutory authority to proceed to interest arbitration. RCW 36.13.010 has defined "second class counties" as those counties with "a population of 70,000 and less than 125,000." The statute has defined "Class AA" counties as those with a population of 500,000. With a population of 113,700 or 116,000 (depending on which exhibit is used), Whatcom County meets the statutory definition of a "second class county." (See, Employer's Exhibit No. 3 and Union's Exhibit No. 8).

II. STATEMENT OF THE ISSUES

RCW 41.56.450 states that:

> The issues for determination by the arbitration panel, shall be limited to the issues certified by the Executive Director [of the Public Employment Relations Commission].

On November 13, 1985, Mr. Marvin L. Schurke, Executive Director of the Public Employment Relations Commission, certified the following two issues to interest arbitration:

(1) Wages for 1985 on and after July 1, 1985

(2) Long term disability insurance. (See, Joint Exhibit No. 1).

The parties stipulated at the arbitration hearing that the arbitration panel is to determine wages for the period of July 1, 1985 to December 31, 1985.

III. BACKGROUND

The Employer in this case, Whatcom County, Washington, and members of the bargaining unit in the Sheriff's Department, as represented by Teamsters Local Union No. 231, have been engaged in a collective bargaining relationship for fifteen or sixteen years. (See, Transcript, pp. 31 and 224). Since the relevant statute became effective only on July 1, 1985, this is the first interest arbitration between the parties. In their bargaining relationship, the parties attempted to respond to a number of unique features in this particular county.

It encompasses from Puget Sound to the mountains, includes a port, and is only nineteen miles from the Canadian border. That places it within the metropolitan sphere of Vancouver, British Columbia, and there are three border stations that funnel traffic through Whatcom County. Law enforcement personnel are compelled to deal with felons fleeing to or escaping from another country as well as criminal activities that might arise in the vicinity of a port.

Another unique feature of Whatcom County is the fact that the City of Bellingham, Washington, with a population of

46,010 or 46,360 (depending on the document used) does not maintain a jail and relies on Whatcom County to provide that service. Additionally, the County is responsible for funding the operation of the jail. As one witness stated, "We are the only county in the State of Washington that is not reimbursed by the major city for jail service. Bellingham does not pay us for the use of the jail." (See, Transcript, p. 173).

Another distinctive feature of Whatcom County is its need to maintain a Search and Rescue Unit. The geographical boundaries of the county include considerable mountainous wilderness, and it is necessary for law enforcement personnel to be prepared to assist people off Mount Baker, standing at 10,778 feet. (See, Transcript, pp. 23-28).

The parties have made a good faith effort to resolve their differences, and they met for ten to fifteen negotiation sessions, including three occasions with a mediator. When mediation failed to remove all issues from the table, the parties proceeded to interest arbitration. The parties agreed that the proceeding would resolve only the two narrow issues previously set forth.

Whatcom County employs approximately five hundred full time workers, and there are some seventy-nine employes in the Sheriff's Department. There are thirty-seven members in this particular bargaining unit. In 1986, the budget for the Sheriff's Department was $2.3 million dollars, excluding costs to maintain the jail.

IV. NO AGREEMENT REGARDING COMPARABLE JURISDICTIONS

The parties failed to reach agreement regarding jurisdictions with which Whatcom County ought to be compared. The Employer limited its comparisons to eight counties and made passing reference to one city. The counties were Clark, Yakima, Kitsap, Thurston, Benton, Cowlitz, Clallam, and Skagit. The city was Bellingham. The Union, on the other hand, submitted data from jurisdictions in Washington, Oregon, and California, covering some fifty-three public employers. There was a balanced mixtures of cities and counties, and the Union believed data from cities to be highly relevant in the dispute.

Comparability data are of utmost importance in an interest arbitration proceeding. The Washington legislature has mandated that arbitration panels resolving disputes involving uniformed personnel "shall take into consideration" a number of factors. The statute requires that consideration be given to:

> 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. (See, RCW 41.56.460(c)).

Not only does the statute require the arbitration panel to give consideratioon to comparability data but also there has developed a strong tradition among arbitrators of doing so. It is a tradition which has its roots in practicality. The eminent economist, Thorsten Veblen has stated that "the propensity of individuals to compare themselves with others has

deep roots in human psychology, and the accepted legitimate end of effort becomes the achievement of a favorable comparison with others." (See, Veblen, The Theory of the Leisure Class, p. 24,(1934)).

In recognition of the powerful influence of equitable comparisons, the parties are well served when they are able to agree about appropriate points of comparison with similarly situated jurisdictions. Absent such an agreement, it becomes the task of the arbitration panel to reach conclusions with regard to appropriate points of comparison.

Comparisons are of special interest to interest arbitrators because comparisons do not focus on individual differences. There is an even-handedness about them. Long ago one observer argued that comparisons "offer a presumptive test of the fairness of a wage." (See, Feis, Principles of Wage Settlement, 1924, p. 339). Comparisons are also pragmatically attractive because they are readily understood by most people, but that is not to suggest that comparisons are not without problems.

There are a number of opposing opposites to be weighed in using comparisons. While comparisons have an aura of even-handedness, one must always wonder whether the jobs being compared really require approximately the same skill and responsibility. It is also useful to consider whether conditions at work are more hazardous in one jurisdiction than in another so as to justify differences in the price of labor. Questions should also be raised regarding whether

or not wages are typically lower or higher in particular geographical sections of the country. Arguably, geographical wage differentials might not necessarily reflect an inequitable wage in one jurisdiction but merely a geographical difference in the cost of living. Nor can one lose track of the common sensical fact that employes working in a large city may well have a longer workday than those in a more rural setting simply because working in a metropolitan area may require more time to be consumed going to and from work, and this fact of a longer "workday" may be reflected in the wage paid to employes.

Arbitrators also have a long history of giving greater weight to wages paid in the general locality of the employer and being less influenced by wages in a distant area. As one arbitrator observed:

> Prime consideration should be given to agreements voluntarily reached in comparable properties in the general area. For example, wages and conditions in Milwaukee, a city of comparable size nearest geographically to Minneapolis and St.Paul, whose transit company is neither bankrupt, municipally owned, nor municipally supported, might reasonably have greater weight than Cleveland or Detroit, both municipally owned and farther distant, for Omaha and Council Bluffs, more distant in miles and smaller in population. Smaller and larger cities, however, and cities in other geographical areas should have secondary consideration, for they disclose trends. (See, Twin City Rapid Transit Co., 7 LA 848 (1947)).

Nor can one lose sight of the great difficulty of establishing comparability with respect to job content and fringe benefit packages.

A. Why the Oregon and California "Comparables" Have Not Been Used:

The Union has submitted comparability data for ten California counties and four Oregon counties. The population in those jurisdictions ranged from 91,400 to 249,000 people. These comparability data have not been used for a variety of reasons.

It is recognized that RCW 41.56.460 directs addressed interest arbitrators to compare wages, hours, and conditions of employment of "like personnel of like employers of similar size on the west coast of the United States." The Union, however, failed to be persuasive that the jurisdictions with which it desired to compare the employer constitute similar employers. The arbitration panel received no data that showed a governmental structure in Oregon or California similar to the county structure in the State of Washington. There were no data submitted to the arbitration panel regarding revenue sources, assessed valuation or the socio-economic composition of the jurisdictions in Oregon and Washington. Oregon is more rural than much of Washington, and it is common knowledge, for example, that Marin County and Santa Cruz County in California use a different tax structure and have a number of unique protective services needs, factors, it is to be assumed, that would be reflected in budgetary expenditures. Mr. Basarab, Business Representative for Teamsters Local 763, conceded that he had not sought such information as a part of the data he collected from other jurisdictions. (See, Transcript, p. 144).

There also is a different collective bargaining structure in Oregon and California as compared with the State of Washington. Nor was there any showing that the external jurisdictions compete for labor with Whatcom County. Likewise, the arbitration panel received no evidence showing a similarity in cost-of-living increases for workers in Oregon and California.

Finally, data from jurisdictions outside of Washington "on the west coast of the United States" have not received evidentiary weight in this proceeding because ambiguity arose with regard to whether or not RCW 41.56.460(c) even applies to second class counties, at least with regard to comparability outside of the state. Mr. John Rabine, Chief Executive Officer for Teamsters Local 763, suggested that the statutory requirement had been intended to apply only to "larger" public employers. He observed that:

> With some of the larger employers that there would be no other employers to compare them with if they weren't, in fact, to include other western states. (See, Transcript, p. 96).

The combination of all these factors has made it reasonable in this particular proceeding not to give weight to the comparability data from Oregon and California jurisdictions.

B. Why Comparability Data from Washington Cities Have Not Been Used:

The Union submitted data from twenty-nine cities in Washington and argued that those jurisdictions are comparable with Whatcom County. The population in those cities ranged from 16,020 to 490,300. It is reasonable, based on evidence submitted by the parties, not to use these Washington cities as a point of comparison in this particular proceeding.

There was unrebutted evidence that cities in Washington have revenue generating capabilities not accessible to counties in the state. Ms. Shirley Van Zanten, County Executive for Whatcom County, testified that there are two major sources of revenue available to cities and unavailable to counties in the state. She stated:

> One is the business and occupation tax, which is a varying percentage on the gross of businesses within the city.
>
> The second is a utilities tax which is levied just [sic] a flat surcharge on natural gas, electricity and telephone service within the city. Those two taxes bring in rather large amounts of money to the city. (See, Transcript, p. 182).

Mr. Sutberry, Budget Director for the Employer, also asserted a difference in general fund resources of cities and counties in the state. He testified as follows:

> The primary difference that I can discern is about thirty-nine percent of the revenues to the general fund of the city . . . come from the B. and O. Taxes and from the tax on utility [sic] that the county does not have access to. (See, Transcript, p. 243).

In view of the fundamental difference in revenue generating

capability and in the absence of other compelling points of contact, comparability data from Washington cities generally have not been used by the arbitration panel.

C. Why Use Washington Counties for Comparison?

The arbitration panel has used the counties of Benton, Clark, Cowlitz, Kitsap, Thurston, and Yakima in an effort to obain an even-handed impression of an equitable wage level for Whatcom County. Recognizing that the legislature has not instructed interest arbitrators on whether or not to compare cities and counties, it is reasonable in this particular case to focus on six counties in view of a different size or functions or revenue sources in other counties or cities. The counties selected have been used because of their relative geographical proximity; similarity of training for law enforcement personnel; the similarity of taxing constraints faced by those entities; the general uniformity in their organizational structure; and a reasonably similar population base in the six counties. Two counties, namely, Clallam and Skagit Counties, have not been included as comparable jurisdictions because, according to the statutory definition, they do not qualify as "second class counties." The Employer's own exhibit shows that those two counties fall outside the statutory definition. (See, Employer's Exhibit No. 3).

V. THE UNION'S METHOD OF COMPARING HOURLY WAGES:

The Employer has collected data from other jurisdictions that show a monthly wage. The Union has translated wages and benefits in other jurisdictions to an hourly wage. As the Union has stated:

> The great variety of elements of compensation in a modern labor agreement or modern personnel system are each ultimately translated into a dollars and cents cost per hour to the employer. All such itemized costs are then totalled to determine the total hourly cost to the employer for compensation to the law enforcement officers as if the employer was compensating the officers on a dollar per hour basis rather than the market basket mix of fringe benefits reflected in the labor agreement or personnel system. (See, Union's Post-hearing Brief, p. 8).

First, the Union deserves considerable credit for the good faith effort it has made to effect a more usable system of comparative data. It is clear that considerable time has been spent on the system, and it contains potential utility. But use of hourly wage data for protective services negotiations constitutes a new and different approach to collective bargaining in this jurisdiction. It might well be valid, but it is new. The parties never joined issue with regard to this approach to bargaining. Interest arbitration customarily has not been viewed as a place to develop such a significant departure from customary procedures. There was no evidence that there had been any attempt at all to bargain with regard to these hourly figures.

It is also evident that, although potentially quite useful, the hourly computations need refinement. Many of the

data have been solicited in telephone conversations. (See, Transcript, p. 138). Likewise, there is considerable variety in the state with regard to how law enforcement agencies comply with Social Security requirements, and those differences have not always been reflected in the computation of hourly wages. (See, Transcript, pp. 67-68 and Union's Exhibit No. 1). Even Mr. Rabine, Chief Executive Officer for Teamsters Local 763, recognized some minimal arbitrary and subjective features to the Union's system of computing hourly wages in this matter. (See, Transcript, pp. 76-77).

Despite difficulties with the hourly wage computations, if used, they would show that Whatcom County lags behind comparable jurisdictions. According to the Union, there is an overall wage disparity in Whatcom County of $1.87 an hour, excluding the City of Seattle from the computation. (See, Union's Post-hearing Brief, p. 20). Using the hourly data merely to determine what information they might provide reveals the following pattern:

Counties	10 yrs BA	5 yrs, AA	5 yrs	10 yrs sgt.
Benton	$17.31	$15.91	$15.41	$20.26
Clark	19.05	18.29	17.92	21.77
Cowlitz	N/A	N/A	N/A	N/A
Kitsap	18.06	17.58	17.58	20.52
Thurston	18.35	17.18	17.03	19.70
Yakima	17.08	16.78	16.78	19.00

On average, the Union's method of computation shows that Whatcom County's wage level is below average at every range

except for the 10 year sergeant.

A. Using Monthly Wages as the Method of Comparison:

Using the Employer's method of computation for comparing wages shows that a wage increase is justified. Those data reveal the following pattern:

Counties	Deputy	Sergeant
Benton	$2100	$2500
Clark	2147	2485
Cowlitz	2323	2479
Kitsap	2303	2636
Thurston	2268	2449
Yakima	2096	2356

Those data show, in particular, that wages of deputies in Whatcom County are approximately 2% below those of comparable counties.

B. What to do About Bellingham?

Despite the fact that Bellingham is a "city," there are so many significant points of contact with the County that consideration must be given to the wage structure for law enforcement personnel in the City of Bellingham. It is recognized that, with sixty-three officers, the bargaining unit in Bellingham is considerably larger than in the County. There is a mutual aid agreement between the County and the

City, and the two entities do assist each other in the performance of their respective duties. As Mr. Raymond, Personnel Director for Whatcom County, made clear, the two jurisdictions compete in the same labor market. (See, Transcript, p. 192).

Despite competing in the same labor market, assisting each other in the performance of their respective duties, and having the same training, law enforcement personnel in the county perform more duties for less pay. Law enforcement personnel in both jurisdictions perform essentially the same duties, except that Whatcom County deputy sheriffs perform more work. Sheriff Mount made this fact clear, and it must be recalled that he spoke from the perspective of an individual who had worked as a police officer in Bellingham for six and a half years and has spent seven years as sheriff in Whatcom County. He testified as follows:

> QUESTION: Would you say that a Whatcom County Deputy Sheriff must have more legal knowledge than the city policemen?
>
> ANSWER: If you are looking at criminal, it would be the same. If you are talking about the civil aspects, yes, they have to. They have to do more, yes. (See, Transcript, p. 232).

The Sheriff made clear that deputies cover a larger geographic area than do city police officers. (See, Transcript, p. 233). Likewise, deputy sheriffs may be

exposed to greater danger on the job than are city police officers. Sheriff Mount testified as follows:

QUESTION: Is it more likely that a Whatcom County Deputy or a Bellingham policeman could be required to handle a situation by himself without being able to acquire back-up readily?

ANSWER: A deputy. (See, Transcript, p. 233).

The anomaly cannot be ignored that law enforcement personnel with the same training who work side by side and even work as members of the same team to resolve a crime in the vicinity receive substantially different compensation. Data submitted by the parties show the following pattern:

Counties	Deputy	Sergeant
Bellingham	$2540	$3032
Whatcom	2166	2523

These data show that, on average, Bellingham is 18.6% ahead of the County in wages paid to law enforcement personnel. Using the Union's method of computing the difference, Bellingham pays a ten year officer an hourly wage that is 8% ahead of the County and a ten year sergeant 10.7% more compensation. Without losing sight of the fact that the Employer's method of computation does not compare total compensation packages, it remains clear that the comparability data justify a wage increase.

The Union seeks a wage increase for July 1-December 31, 1985 of $1.53 an hour for a total compensation of $19.81 per

hour. This amount is 2.75% more than the Bellingham hourly rate and is 10.98% more than the 1985 Whatcom County hourly rate. If sergeants were to receive an increase of $1.37 an hour for a total compensation of $21.86 an hour, it would constitute a 6.69% increase over 1985. Even so, a Whatcom County ten year sergeant would lag 3.84% behind the hourly wage of a comparable sergeant in Bellingham.

The Employer has offered no increase for July-December, 1985. It is the contention of the Employer that the Union's proposal would cost $122,478 over the period of the proposed contract.

Recall also that wage settlements in comparable jurisdictions averaged 8.2% in 1985. Those data show the following pattern:

Counties	Wage Settlement
Benton	18.8
Clark	1.5
Cowlitz	N/A
Kitsap	3.6
Thurston	9.2
Yakima	8.3

Ms. Van Zanten, County Executive, made clear that other Washington counties had faced similar fiscal constraints to those confronted in Whatcom County. (See, Transcript, p. 180). Balancing the financial circumstances of the Employer with the equitable comparisons, it is reasonable to conclude that the data justify a wage increase of 3%.

C. Inability to Pay:

Serious attention must be given to an employer's contention that it is unable to fund a wage proposal. In this case, the Employer has argued that "elements traditionally deemed necessary by arbitrators to substantiate an inability to pay argument exist in this case." (See, Employer's Post-hearing Brief, p. 12). "Ability to pay" has not been set forth specifically in RCW 41.56.460 as a factor to be taken into consideration by interest arbitrators. Once raised, however, this factor normally and traditionally is taken into consideration in public sector interest arbitration disputes.

How does one test the financial ability of the employer to fund a wage increase? There is a distinction to be drawn between being unable to pay and unwilling to pay. "Unwillingness to pay" arguments generally have not been found to be persuasive by interest arbitrators. In "inability to pay" cases, the burden of proof has been on the employer to substantiate its claim. (See, for example, NLRB v. Truitt Manufacturing Company, 351 U.S. 149 (1956)). The courts and administrative agencies have been consistent in their expectation that the party relying on the "inability to pay" argument must prove its case. (See, for example, NLRB v. Jacobs Manufacturing Company, 169 F.2d 680 (2nd Cir. 1952)). In testing the contention of "inability to pay," some public sector jurisdictions have used a "fiscal strain index." (See, Sioux County and AFSCME Local 1774,

68 LA 1258 (1978).

There are four principal components of a fiscal strain index. All are customarily analyzed in comparison with comparable jurisdictions. First, what is the employer's long term per capita debt? Second, what is the employer's short term per capita debt? Third, what is the employer's per capita expenditure for fundamental functions of the employer as compared with expenditures for the same functions in comparable jurisdictions? Finally, what is the ratio of revenues to sales value of taxable property? Additionally, it is useful in proving inability to pay to know the unemployment rate of the Employer as compared with comparable jurisdictions. Likewise, what percentage of residents in Whatcom County receive some form of welfare payments as compared with the statewide average in Washington counties or, at least, in comparable counties.

There are other sources of data on which the parties might draw to establish an inability to pay. For example, has Moody's Investors Service or Standard & Poor's rated any general obligation bonds for the community? Such ratings might be indicative of the level of investor confidence in the community. One might also evaluate the current status of the Employer's pension liability. Is the Employer currently exposed to any unfunded pension liability? Is there information with regard to the per capita income for the community and its ranking with regard to comparable jurisdictions? What percentage of that per capita income is

expended on property taxes? In other words, how well off is a Whatcom County deputy sheriff in comparison with an average resident of the county? One also must consider any layoffs, sources of new revenue, and budgetary surpluses. There exists no precise formula for determining the level of financial destitution which must exist before an employer will be found unable to fund a wage proposal, but an effort must be made to balance the wage increase justified by the data and the taxpayers' willingness to meet costs. The question ultimately is whether or not the Employer is able to absorb an increase in operating costs and, if so, an increase in the amount of 3% of the wage package for six months.

Evidence submitted by the parties makes it reasonable to conclude that the Employer has the fiscal ability to fund a 3% wage increase for six months. In 1985, the Employer increased its surplus from the previous year by approximately $100,000, leaving a fund balance at the conclusion of 1985 of $1,449,699. It is recognized that the Employer registered warrants in 1985, but doing so may well be built into the fiscal structure of the county. As Mr. Sutberry, County Budget Director, testified registering warrants "seems to be an annual event these days." (See, Transcript, p. 259).

It is recognized that unemployment rates have been higher in Whatcom County than in the state generally. What is unclear is how Whatcom County compares with comparable jurisdictions with regard to unemployment levels. Arguably, other counties similar to this one have experienced similar fiscal

strains and unemployment rates while also continuing to provide reasonable wage increases. According to evidence submitted at the hearing, the Employer retains 68% of court revenues, and the Employer retained some discretionary authority over the level of those fees and fines. (See, Transcript, pp. 167-168). Likewise, the Employer retains considerable control over fees to be charged other jurisdictions for use of the jail facility. (See, Transcript, p. 169). Nor can it be ignored that 15 to 20% of the county's current expense fund comes from the sales tax, and events in Canada have brought thousands of tourists through Whatcom County.

During the period when circumstances allegedly strained county resources, the size of the Sheriff's Department increased from forty-four to forty-seven to forty-nine to fifty-two workers. When staffing cuts finally came in 1985, they came not on the recommendation of the county's chief executive officer but were made by the County Council. The County Executive had proposed no staff cuts. (See, Transcript, p. 153). Recall also that, despite the nine staff reductions in 1985, the Employer just had added nine new corrections officers and two cooks to its staff in 1984. (See, Transcript, p. 158). Additionally, the fiscal strain was not great in 1984. As Ms. Van Zanten, County Executive, stated, "the 1984 budget was fairly comfortable." (See, Transcript, p. 156).

The Employer provides numerous services to residents of the county as well as Bellingham, and there was no showing that fees for those services could not be increased. For

example, the Auditor's Office files and registers documents. The Treasurer's Office collects taxes and distributes them to the City as well as to the port. The Assessor's Office handles all valuation of property and the assessment process. The Prosecuting Attorney's Office handles all criminal prosecutions. The County Public Defense Office handles all criminal defense. The entire court system is run by the County. The County runs mental health services, disability services, and alcohol treatment services. The City, on the other hand, reimburses the County "only in that part of the property tax and the sales tax that we derive from within the city limits." (See, Transcript, p. 173). The Employer failed to establish that revenues currently are being generated at their maximum level by providing these services.

Testimony from Ms. Van Zanten as well as Messrs. Raymond and Sutberry established that there is an unwillingness, not an inability, to fund a wage increase in this case. Ms. Van Zanten testified as follows with regard to this issue:

> QUESTION: Are you saying today that the county has no revenue with which to pay any increase in wages for the Sheriff's Department for the period of July 1, 1985 through the end of 1985?
>
> ANSWER: My response is the total provision of service to Whatcom County, including the Sheriff's Department, the revenues that we have are limited. If additional amounts go to one

department, it means that they have to come from some other area of service in Whatcom County. (See, Transcript, pp. 179-180).

Mr. Raymond, County Personnel Director, reflected the same position. He testified as follows:

QUESTION: Did you specifically say the County could not afford more than the zero percent?

ANSWER: The County could probably find the money. It's there. There are funds,which this is not a large amount in terms of actual dollars; but, on the other hand, any money which is taken from here has to be taken from some source, and that means either cutting positions somewhere else, or -- . (See, Transcript, p. 212).

Mr. Sutberry, in his testimony, agreed with the two previous statements. He said:

QUESTION: It's a question of how the county chooses to spend its money, isn't that correct?

ANSWER: To a large degree, yes. The policy makers of the Council determine how to allocate those available funds, yes. (See, Transcript, pp. 255-256).

In other words, the Employer is arguing that, even if there was an ability to pay a wage increase, its budgetary allocations should be considered conclusive on all parties. First, it is important to stress that the Employer failed

to be persuasive that County budgetary priorities must be revised in order to meet a 3% wage increase for six months. Additionally, however, it is reasonable to assume that, if the legislature intended county budgetary allocations to be conclusive, it would have set forth regulations to that effect. Giving conclusive weight to budgetary allocations would render virtually meaningless the collective bargaining obligation of the parties. To do so would return the parties to the employer/employe relationship that existed prior to RCW 41.56.010-41.56.490. RCW 41.56.905 has made clear that provisions of the collective bargaining statute "shall be liberally construed to accomplish their purpose." That reflects the will of the legislature, and the arbitrator is bound by it.

VI. THE ISSUE OF PARITY

The Employer has argued for wage increase parity in this case. (See, Employer's Post-hearing Brief, pp. 10-11). In other words, the Employer has maintained that, since it negotiated percentage increases with all other county employers of 0, 4, 3-6 COLA for 1984, 1985, and 1986, this bargaining unit should accept percentage increases of 0, 4, 3-6 COLA for 1985, 1986 and 1987. It is management's contention that, in this way it can achieve internal equity of wages.

The parties have supplied the interest arbitration panel

with insufficient data to establish that management's approach to wage increase parity would accomplish internal equity. For example, there have been no data submitted with regard to what other benefits have been obtained by other bargaining units in lieu of a substantial increase in wages. More troubling is an assumption implicit in the Employer's position that the Union's wage demand is not being considered on the merits but primarily within the context of the Employer's quest for wage increase parity. In effect, other bargaining units are being made silent negotiators in this bargaining unit's impasse with the Employer. It is conceded that the impact of one wage settlement on other bargaining units cannot be ignored. At the same time, to make the "internal equity" argument controlling would diminish the legislative grant of collective bargaining rights and would contravene the intent of the public employment collective bargaining statute.

The Employer's quest for internal wage equity is an important factor that deserves consideration in this wage determination. It, however, cannot be dispositive of the issue. A strong reliance on the "wage increase parity" argument in this case is undermined by the statutory requirement and the arbitral tradition of evaluating comparability data. Negotiation goals of the parties must be analyzed within the context of comparability data. Most significantly, the arbitration panel has not received evidence of a history of rate equalization by the Employer. Evidence submitted by the parties supports a conclusion that rate equalization has

not been the pattern in this particular jurisdiction. (See, Employer's Exhibit No. 2).

VII. LAW ENFORCEMENT OFFICERS AND FIREFIGHTERS ACT (LEOFF I AND LEOFF II):

The state legislature has mandated that law enforcement officers and firefighters employed in the County prior to October 1, 1977 shall be covered by a disability insurance that covers the entire medical bill for on the job or off the job injuries. These individuals have been characterized as "LEOFF I" employes. Whether an injury resulted from performing one's duties as a deputy sheriff or in a recreational accident at home, the LEOFF I system would cover medical expenses.

Employes hired after October 1, 1977 have been characterized as "LEOFF II" employes. The LEOFF II disability insurance system provides coverage of medical expenses incurred for on the job injuries. Payments of medical expenses incurred as a result of off duty injuries, however, have been eliminated by the LEOFF II program. The Union has proposed that the Employer fund an insurance program to eliminate the distinction between LEOFF I and LEOFF II employes. While the proposed insurance policy would cover on duty injuries, its primary focus is to "restore the benefits which were taken away by the legislature" when it established a distinction

between LEOFF I and LEOFF II employes.

In this particular bargaining unit, approximately fifty percent of the employes enjoy LEOFF I coverage, and fifty percent have LEOFF II protection. (See, Transcript, p. 73). The LEOFF II employe, if injured, receives Worker Compensation, and any reduction in the employe's monthly compensation is borne half by the County and half by an employe's paid leave benefits, including sick leave, compensatory time, holiday time, and vacation benefits. The disability leave supplement covers only the deputy sheriffs under the LEOFF II retirement system.

To give LEOFF II employes the injury compensation protection enjoyed by employes covered under the LEOFF I retirement system would cost Whatcom County approximately $2600 a year. In a departmental budget of $2.3 million dollars, the cost would not appear to be significant.

The "low cost" argument, however, fails to address a compelling aspect of the issue. What is the justification for the benefit? Comparability data have not provided a basis for awarding the benefit. It was unrebutted that very few jurisdictions in the state have provided the type of insurance sought by the Union. (See, Transcript, p. 202). Nor did the legislature believe it to be inequitable to establish a two-tier system of disability coverage. The Union contended that its proposal had been "grounded in the equity of assuring that similarly employed employees employed by the same employer received similar benefits." (See, Union's Post-hearing Brief, p. 25). Yet, it must be presumed that the

Employer is not implementing an inequitable system for LEOFF I and LEOFF II employes when it is applying regulations set forth by the state legislature in HB 435. Nor was there a showing that any employes in Whatcom County, protective services or otherwise, enjoy the benefit sought by the Union, except as it specifically has been enacted by the state legislature.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator, in compliance with RCW 41.56.450, has set forth findings of fact and a determination of the issues in dispute, based on the evidence presented. The determination is as follows:

(1) There shall be a three percent wage increase for the period July 1, 1985 to December 31, 1985;

(2) The Employer has the ability to fund this three percent wage increase; and

(3) The Union's long term disability insurance proposal covering LEOFF II employes shall not become a part of the agreement between the parties.

It is so ordered and awarded.

Respectfully submitted,

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Secretary-Treasurer of
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Carlton J. Snow
Professor of Law and
Chairman of the Panel

Terry A. Unger
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Date: 9-29-86