

RECEIVED

APR 08 1987

PUBLIC EMPLOYMENT
RELATIONS COMMISSION
OLYMPIA, WA

IN THE MATTER OF
COWLITZ COUNTY

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS, LOCAL UNION NO. 58

Date Issued: April 7, 1987

PERC No. 6151-I-85-135

INTEREST ARBITRATION
OPINION AND AWARD
OF
MICHAEL H. BECK
FOR

THE ARBITRATION PANEL

Michael H. Beck
Barbara Revo
John Komar

Neutral Chairman
Employer Representative
Union Representative

Appearances:

COWLITZ COUNTY

Lawrence B. Hannah

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS,
LOCAL UNION NO. 58

Herman L. Wacker

IN THE MATTER OF
COWLITZ COUNTY

and

INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS, LOCAL UNION NO. 58

INTEREST ARBITRATION OPINION

PROCEDURAL MATTERS

RCW 41.56.450 provides for the arbitration of disputes when collective bargaining negotiations involving uniformed personnel have resulted in impasse. The parties agree that the deputy sheriffs and sergeants employed by Cowlitz County are subject to the aforementioned arbitration procedures. The undersigned was selected by the parties to serve as the Neutral Chairman of the tripartite arbitration panel. The Arbitrator selected by the Employer, Cowlitz County, is Barbara Revo, of the management consulting firm of Cabot Dow & Associates. The Arbitrator selected by the Union, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Local Union No. 58, is John Komar, Administrative Assistant for the Public, Professional & Office-Clerical Employees and Drivers Local Union No. 763, affi-

liated with the International Brotherhood of Teamsters
Chauffeurs, Warehousemen and Helpers.

A hearing was held before the Arbitration Panel on
January 6, 1987 in Kelso, Washington. The Employer was
represented by Lawrence B. Hannah of the law firm, Perkins
Coie. The Union was represented by Herman L. Wacker of the
law firm, Davies, Roberts, Reid & Wacker. At the hearing
the testimony of witnesses was taken under oath and the
parties presented extensive documentary evidence which
measured almost a foot in height. A court reporter was
present and a verbatim transcript was prepared and provided
to the Neutral Chairman (hereinafter Chairman) for his use
in reaching a decision in this matter.

The parties agreed to file simultaneous posthearing
briefs. The Employer's brief was timely postmarked and
received on February 16, 1987. The Union's brief was timely
postmarked but was mailed to the wrong address and thus was
not received until February 20, 1987. At the request of the
Chairman, the parties agreed to an extension of the statut-
ory requirement that a decision issue within thirty days.
Instead, the Chairman was given until April 8, 1987 to issue
his decision. On March 24, 1987, the Chairman met with the
other members of the Arbitration Panel. A discussion of the
issues occurred which was very helpful to the Chairman. In

accordance with the statutory mandate, I set forth herein my findings of fact and determination of the issues.

ISSUES IN DISPUTE

By letter of December 30, 1985, the Executive Director of the Public Employment Relations Commission certified a number of issues to be submitted to interest arbitration. Subsequent to such certification, the parties were able to settle a large number of the outstanding issues. Pursuant to the parties' December 5, 1986 Pre-Arbitration Agreement, the following issues remain:

- Holidays
- Uniforms and Uniform Equipment List
- Salary Schedule
- Salaries - Step Advancement

DISCUSSION

Comparables

RCW 41.56.460 directs that the following criteria shall be taken into consideration as relevant factors in reaching a decision:

[T]he panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:

- (a) The constitutional and statutory authority of the employer;
- (b) Stipulations of the parties;
- (c) Comparison of the wages, hours and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.
- (d) The average consumer prices for goods and services, commonly known as the cost of living;
- (e) Changes in any of the foregoing circumstances during the pendency of the proceedings; and
- (f) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

The legislative purpose for enactment of the interest arbitration statute is set forth in RCW 41.56.430 as follows:

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

The parties involved here are deputy sheriffs and sergeants employed by a county. They provide service to a population base of approximately 79,600. I have used the

Employer's population figure for Cowlitz County of 79,600 rather than the Union's figure of 79,000 because the source of the Employer's population figure appears to be slightly more recent and because I have generally determined to use the Employer comparators, as will be explained later in this Opinion.

The parties are not agreed upon which comparators are appropriate to use in reviewing the matters at issue here. The Union urges that the proper comparators are those cities and counties in the State of Washington which are subject to the statutory interest arbitration procedures. According to the Union there is no valid reason in this case to find that "like employers" refers only to other counties. The Union contends that cities and counties are appropriately considered like employers since there are few significant differences between the law enforcement activities of city police officers and those of county sheriffs. Further, the Union maintains that the reason commonly used for finding cities and counties not to be like employers, i.e., different revenue-raising devices, does not address the issue of comparability but only the relative ability of cities and counties to pay for personnel costs. Finally, the Union contends that compensation levels in cities subject to interest arbitration reflect the effects of in-

terest arbitration whereas compensation levels in counties not subject to interest arbitration reflect compensation amounts which tend to favor employers.

Whatever merit there may be in the Union's proposed interpretation of the statutory requirement that comparisons be made between "like personnel of like employers", it is clear that the statutory interpretation urged by the Union cannot be adopted since it conflicts with another specific statutory requirement. Here, use of the Union's comparators would require that the Chairman ignore the statutory requirement that comparators be of "similar size".

The Union's proposed comparators are set forth in Union Exhibit No. 44 (Counties) and Union Exhibit No. 53 (Cities). The Union's proposed comparator counties range in population from 107,700 to 1,326,600. The Union's proposed comparator cities range in population from 16,020 to 490,300. Thus, the Union's comparators range in population from almost 80% below to more than 1566% above the population of Cowlitz County. In my view such wide variances in population cannot be considered to meet the statutory requirement that the comparators be of similar size. As the Employer points out in its brief, there is ample arbitral support for the conclusion that population variances of such magnitude do not comport with the statutory requirement that comparators be

of similar size. Finally, in this regard, if your Chairman were to accept the Union's comparators, he would ignore the statutory requirement that the comparators selected are to be "west coast" jurisdictions and not simply jurisdictions from the State of Washington.

The Employer has proposed a set of twenty comparators. The Employer arrived at these by selecting all counties in Washington, Oregon, California and Alaska which had a population range of plus or minus 50% of the population of Cowlitz County. This analysis produced ten counties in Washington, one in Alaska, ten in Oregon, and twelve in California. The one jurisdiction in Alaska, Fairbanks North Star Borough, was eliminated because it does not provide any police services. The Employer reduced the number of counties in Oregon and California by selecting the five counties in each state closest to Cowlitz in population. The Employer made no further reduction in the counties selected for Washington.

For Oregon and California, the ten Employer selected comparators range in population from a low of 61,500 (Josephine County) to a high of 101,200 (El Dorado County), which is a range of from 23% below to 27% above Cowlitz County. For Washington, however, the Employer's comparables range from a low of 48,400 (Walla Walla County) to a high of

116,000 (Whatcom County), which is a range of from 39% below to 46% above Cowlitz. In view of the foregoing percentage disparities and the fact that the statute does not indicate that Washington State jurisdictions are to be more heavily weighted than other jurisdictions on the west coast, I have determined to select only five Washington counties. This decision is consistent with the method used by the Employer to select counties in Oregon and California in that I have chosen the five counties in Washington closest to Cowlitz in population to use as Washington comparators. The result is a sample of fifteen comparators, five each from Washington, Oregon and California. The population range of the fifteen selected comparators is almost exactly plus or minus 33%.

I also reviewed the comparators provided by the Union to determine whether any of the Union's proposed comparators fell within this population range. Only one of the Union's proposed counties, Benton, Washington (which I have selected for use as a comparator from the Employer's proposed list) and two cities, Bellevue and Everett were within the plus or minus 33% range. These three comparators taken alone would be an insufficient number of comparators to make any meaningful comparison with Cowlitz County. Further, I have chosen not to include Bellevue and Everett in the list of comparators because the wage and benefit information pro-

vided by the Union reflects 1985 compensation levels while the information provided by the Employer reflects 1986 compensation levels. Here the dispute between the parties does not involve 1985, it involves compensation levels for 1986 and 1987.

The following chart sets forth the selected comparator counties with their respective populations:

<u>Washington</u>		<u>Oregon</u>		<u>California</u>	
Benton	105,200	Douglas	92,150	El Dorado	101,200
Skagit	68,200	Linn	89,000	Kings	83,500
Grays Harbor	63,900	Benton	69,100	Madera	75,300
Lewis	56,500	Deschutes	65,400	Mendocino	72,700
Clallam	52,600	Josephine	61,500	Nevada	66,300

Salary Schedule

The parties have agreed upon a three year term for the Agreement. The Union proposes a 0% salary increase for 1985, 5% for 1986 and 5% for 1987. The Employer proposes no wage increase for the term of the Agreement. The parties are not agreed on the appropriate basis to use in comparing the wages of the comparators with those of the Employer. The Employer urges that only salaries be considered in comparing Cowlitz County with the other comparators. The Union maintains that all wages and benefits should be

reduced to a dollar value and that a total compensation figure be used for comparison. For the following reasons I have decided not to use the net hourly compensation analysis urged by the Union.

The Union includes in its analysis a wide range of benefits and sets forth as their value to the employee the cost of such benefits to the Employer. The cost to the Employer of benefits such as a pension plan, health insurance or life insurance does not represent direct compensation paid to employees. Furthermore, such benefits may have widely differing values to employees depending on the specific terms of such benefits and an employee's individual situation. For example, health insurance may be of substantially greater value to an employee whose spouse is not receiving health benefits at his or her place of employment than to an employee whose spouse is receiving broad health insurance coverage at his or her place of employment. Thus, to the extent that benefit figures reflect cost to the Employer, rather than compensation paid to the employee, it is very difficult to calculate the value of such benefits to employees. Additionally, the Union seeks to include in its net hourly compensation figures certain other benefits, such as holiday pay and uniform allowances, which are matters to be separately resolved in this case.

I agree, however, with the Union that looking solely to monthly salaries to evaluate the relative monthly compensation in wages among the comparators will not give an accurate comparison. The approach I have selected is a compromise between that urged by the Union and that urged by the Employer. I have included in my analysis those elements of compensation that are readily ascertainable and that reflect real wage compensation paid to employees each month. I have, therefore, included longevity and educational premium pay since these are amounts paid directly to employees and really are an integral part of the salary schedule. Additionally, I have included pension pick-up since, as I understand this benefit, the amounts paid by the Counties in Oregon and California to the pension system in those states are amounts the employee would be required to pay if the employer involved was not "picking up" the pension contribution.

The following chart indicates the position of Cowlitz County relative to that of the selected comparators. The total salary figure represents the maximum monthly total of wages, longevity pay (based on 20 years of service), educational premium pay, and pension pick-up payments made by each comparator to its deputies. Maximum amounts have been used since almost all members of the bargaining unit here

are at top step. I have not attempted to separately compare sergeants since the Union is not advancing a different wage proposal for those employees and because the deputies constitute a large majority of the unit. The figures provided by the Employer on Employer Exhibit Nos. 15, 16, 17 and 26 have been used except where obvious errors or apparent inconsistencies between 1986 and 1987 figures resulted in a recalculation of the figures. Any changes made in the Employer's figures are noted and explained in the relevant footnotes attached to this Opinion. In addition, because of the difficulty of comparing the 1986 total monthly wage of the comparator employees, who work 2080 hours per year, with the monthly wage of the Cowlitz County employees who worked 1950 hours in 1986, I have calculated the hourly rate for each comparator and Cowlitz County based on their respective scheduled hours of work.

1986 WAGE AND BENEFIT ANALYSIS

Jurisdiction	Wages	Longevity	Education	Pension	Total	Hourly
Benton-WA	2201	100	40	-	2341	13.51
Clallam	2003	60	-	-	2063	11.90
Grays Harbor	1990 ¹	40	-	-	2030	11.71
Lewis	1926	100 ²	12.50	-	2039	11.76
Skagit	2228 ³	45	-	-	2273	13.11
Benton-OR	2090	-	104.50	125.40	2320	13.38
Deschutes	2126	120	150	127.56	2524	14.56
Douglas	2045 ⁴	-	- ⁵	122.70 ⁶	2168	12.51
Josephine ⁷	-	-	-	-	-	-
Linn	2039	-	45	122.34	2206	12.73
El Dorado-CA	2415	-	120.75	60.38	2596	14.98
Kings	2212	-	-	121.66 ⁸	2334	13.46
Madera	1882 ⁹	188	-	94.10	2164	12.49
Mendocino	2144 ¹⁰	-	160.80	-	2305	13.30
Nevada	2035	-	-	91.58	2127	12.27
AVERAGE					2249	12.98
COWLITZ					2323	14.30
PERCENT COWLITZ ABOVE AVERAGE						+10.2%

The foregoing chart shows that for 1986, the average hourly wage and benefit rate for the comparators was \$12.98. The total hourly rate for Cowlitz County was \$14.30. Thus, Cowlitz County employees were paid 10.2% more than the average total hourly compensation of the comparators and ranked third behind El Dorado, California and Deschutes, Oregon. This extremely favorable ranking of Cowlitz for 1986 indicates that no wage increase is warranted for 1986. Even without an increase for 1986 the Employer is still in a position as a "wage leader" among the selected comparators, as the Union contends is appropriate.

For 1987, the Employer provided in its brief a revised copy of Employer Exhibit No. 19, showing the comparators' salaries for 1987. In reviewing this revised exhibit, I have determined based on the evidence in the record that, except for the changes noted, the revised exhibit more accurately reflects the salaries of the comparators for 1987. For six of the comparators, wage and benefit figures are not available for 1987. In certain instances corrections were indicated and any such corrections which I have made in the Employer's figures are noted and explained in the footnotes attached to this Opinion. The following chart indicates the position of Cowlitz County in 1987 relative to that of the comparators. I have used the same

methodology in assembling this chart as was used for the 1986 wage chart above. To do so, I have had to calculate the appropriate longevity, education, and pension amounts since such figures were not provided by the Employer for 1987 in its revised Employer Exhibit No. 19. The term "INA" means information not available.

1987 WAGE AND BENEFIT ANALYSIS

Jurisdiction	Wages	Longevity	Education	Pension	Total	Hourly
Benton-WA	2306	100	40	-	2446	14.11
Clallam	INA	-	-	-	-	-
Grays Harbor	1970 ¹	40	-	-	2010	11.60
Lewis	INA	-	-	-	-	-
Skagit	2301 ²	45	-	-	2346	13.53
Benton-OR	2195 ³	-	104.50	131.70	2431	14.03
Deschutes	2190 ⁴	120	175	131.40	2616	15.09
Douglas	2149 ⁵	-	-	128.94	2278	13.14
Josephine	INA	-	-	-	-	-
Linn	INA	-	-	-	-	-
El Dorado-CA	2415 ⁶	-	120.75	60.38	2596	14.98
Kings	2256	-	-	124.09	2380	13.73
Madera	INA	-	-	-	-	-
Mendocino	INA	-	-	-	-	-
Nevada	2035	-	-	91.58	2127	12.27
AVERAGE					2359	13.61
COWLITZ					2478	14.30
Percent Difference						+5.1%

The foregoing chart shows that the average hourly compensation for the available comparators for 1987 is \$13.61. The hourly rate of compensation for Cowlitz County is \$14.30. As can be seen from the chart, although Cowlitz County is 5.1% ahead of the average of the comparators, it has lost more than 5% in relation to its position in 1986 relative to the average of the comparators.

It is also clear that the cost of living has increased from the time of the last wage increase given to Cowlitz County bargaining unit employees in July, 1984. The Consumer Price Index for Urban and Clerical Workers (CPI-W) for All U.S. Cities increased 5.8%, for Portland 3.9%, and for Seattle-Everett 2.8% between July, 1984 and November, 1986. November, 1986 was selected because it is the latest date for which figures are available for the foregoing indices. Since there is not agreement by the parties as to which of these three indices should be used for comparison purposes, I find it appropriate to average the three indices in order to arrive at a figure which is reflective of the increase in the cost of living for Cowlitz County. The average increase in the cost of living represented by the three indices is 4.2% for the period from July, 1984 to November, 1986.

In addition to the statistical factors discussed above,

I note that the stated intent of the Legislature, in adopting the interest arbitration provision for uniformed personnel, was to insure the dedicated and uninterrupted vital public service provided by such personnel. Your Chairman is specifically directed by statute to be mindful of this legislative purpose in reaching a decision. To the extent that attention to this statutory purpose may result in a wage or benefit increase beyond that obtained by other public employees not subject to such procedure, such difference is inherent in the legislative establishment of differing collective bargaining rights for uniformed personnel and other public employees.

As noted above, the bargaining unit here has not had a wage increase since July, 1984. Although it is true that bargaining unit members received a 6.7% increase in monthly salary for 1987, such increase merely reflects a 6.7% increase in the monthly hours of work. As was clear at the hearing, such increase could also be viewed as a decrease in compensation since employees will work 2 1/2 more hours per week at the same hourly rate and will lose the overtime pay which would previously have accompanied such extra hours.

Based on the foregoing discussion, I find that some wage increase for 1987 is warranted. To adopt the Employer's salary proposal for 1987 would not be appropriate

since it would result in a decrease in real wages in the face of a rising cost of living. In such circumstances, a lack of any wage increase over 3.5 year period cannot be expected to meet the statutory purpose discussed above. An appropriate increase for 1987 is 4.2%. This increase reflects the average increase in the cost of living since the last prior wage increase. While such increase will compensate employees for the increased cost of living, such increase will not wholly maintain the Cowlitz County employees' 1986 position relative to the other comparators. Nonetheless, they will remain well-compensated in relation to the other comparators.

Salary - Step Advancement

The parties' prior Agreement established a salary step advancement schedule based on length of employment. The Employer proposes to make advancement on the salary step schedule contingent upon a satisfactory job evaluation. The Union proposes no changes in the prior contract language. In support of its position, the Employer relies upon the fact that a majority of the selected comparators provide for step advancement based on satisfactory job performance.

After reviewing the Employer's proposal to establish satisfactory performance as a criteria for salary step

advancement I find, in agreement with the Union, that it is vague in content. Neither Personnel Director, Richard Anderson, nor Undersheriff, Gary Lee, could explain how the evaluation form which the Employer had developed would be used to determine whether employees would be denied a step increase. Neither witness could explain whether a point system or some other grading system would be used, and, if points were used, how points would be allocated to particular levels of performance by category or what total number of points would be required for a satisfactory evaluation.

In addition to the lack of specific content in the Employer's proposed evaluation system, the Employer did not offer a particular reason why such an evaluation system should be implemented in this bargaining unit. It was clear from the testimony of Anderson that the present disciplinary system permits the Employer to discipline employees for poor job performance. There was no claim by the Employer that the present system is somehow inadequate or unworkable.

I note that the term of the Agreement at issue here is scheduled to expire December 31, 1987. Negotiations for a new Agreement will soon begin. Both the issue of implementation of a salary step system based on satisfactory performance and the content of any such evaluation system are clearly amenable to the bargaining process. Should such

bargaining process not result in agreement on this issue and were the Employer to offer a definite evaluation system and a rationale for implementing the system in this bargaining unit, then it would certainly be appropriate at that time to consider such a change. Here, however, where the Employer has offered neither, it is not appropriate to order any change in the prior Agreement.

Holidays

The parties are agreed that if a holiday falls on an employee's regularly scheduled work day, the employee will receive his regular straight-time pay plus pay at time and one-half. They are also agreed that if a holiday occurs on an employee's regularly scheduled day off, such employee will be paid for the holiday at his regular straight time rate or, at the employee's option, receive an extra day off with pay.

At issue here is what should be the appropriate compensation when a holiday occurs on an employee's regularly scheduled work day, but the Employer decides to reduce the level of staff and the employee is not required to work. The Employer contends that the employee should receive the day off with regular straight-time pay. The Union contends that the employee should be treated similarly to the

employee whose regular day off occurs on the holiday and receive an additional day's pay or an additional day off. An additional issue involves the Union's assertion that seniority should be the primary criteria used to determine which employees will work on a holiday when there is not full staffing.

The Employer contends that because no other comparator pays a holiday premium when an employee is taking a holiday off, the Employer should not be required to do so either. Further, during discussions with the other members on the Arbitration Panel, the Employer's representative on the Panel contended that awarding an additional day's pay or an additional day off in the circumstances at issue here would not result in similar treatment of employees whose day off falls on a holiday and those whose day off does not fall on a holiday but are given the day off. The Union relies on the language of the prior Agreement in support of its position. However, as the Employer points out this matter is not in the posture of a grievance but is before an interest arbitration panel.

After careful consideration of this matter, I find that it is not appropriate to award an extra day's pay or an extra day off to an employee scheduled to work but given the holiday off with pay. To do so would result in such

employee receiving an even greater holiday benefit than that received by an employee who actually works on the holiday.

For example, assume a standard working month contains 22 work days. Assume further, for ease of calculation, that employees are paid a salary equivalent to \$100 per day. Under the agreed upon terms of the Agreement, an employee who must work on a designated holiday will receive his regular monthly salary for 22 days of work (\$2,200) and in addition will receive time and one-half in holiday pay (\$150) for a total of \$2,350. This is the equivalent of working 22 days and receiving pay for 23.5 days. On a daily basis, the employee's effective daily rate would be $\$2,350/22$ or \$106.82.

An employee whose day off falls on a holiday has the option of receiving an additional day off or an additional day's pay. If the employee elects an additional day off, he will be paid for 22 days but work only 21 for an effective daily rate of $\$2,200/21$ or \$104.76. If the employee elects to receive an additional day's pay, he will be paid for 23 days and work 22, for an effective daily rate of $\$2,300/22$ or \$104.55.

Under the Union's proposal, an employee who was scheduled to work on a holiday but was given the day off with pay could elect to receive an additional day off or an

additional day's pay. If the employee chose to receive an additional day's pay, he would be paid for 23 days (\$2,300) but only work 21 days. This is an effective daily rate of $\$2,300/21$ or \$109.53. This is a higher rate of compensation than is received by the employee who must work on the holiday (\$109.53 compared to \$106.82). Similarly, if the employee elects to receive an additional day off, he will be paid for 22 days but only work 20. This is an effective daily rate of $\$2,200/20$ or \$110, which is even higher than the \$109.53 rate provided the employee who chose to receive an additional day's pay.

Under the Employer's proposal, an employee given a holiday off with pay would work 21 days and receive pay for 22 for an effective daily rate of $\$2,200/21$ or \$104.76. Thus, in terms of effective rate of compensation, the Employer's proposal compensates an employee who is given a holiday off with pay identically to an employee whose regular day off falls on a holiday and elects an additional day off, and almost identically to the same employee who chooses instead, an additional day's pay (\$104.76 compared to \$104.55). In these circumstances, it is not appropriate to order the Employer to provide an extra day off or an additional day's pay to an employee scheduled to work a holiday but who is given the day off.

On the issue of holiday staffing by seniority, the Employer introduced substantial evidence at the hearing that it would be dysfunctional to the Sheriff's department to staff holidays based on employee seniority. The Employer's proposed language on scheduling (Employer brief, page 32) is reasonable and consistent with the provisions for staffing already set forth and agreed to by the parties in Article 7, Section 7.1.

Thus, in view of the foregoing discussion, I find it is appropriate to order that the following language to be added to the parties Agreement:

5.3 When a holiday occurs on an employee's scheduled work day, staffing needs will be determined by the Sheriff based upon the manpower needs, experience and ability. After the Sheriff determines manpower needs, then preference for staffing those needs on the holiday may be exercised by qualified senior deputies, using the staffing guidelines set forth in Article 7.1 of this Agreement. In this event, those deputies not working the holiday shall receive the holiday off with pay and the employees working the holiday will receive premium pay for the holiday worked as set forth in Section 5.1

Uniforms And Uniform Equipment List

The parties are in agreement that the prior uniform

allowance system is in need of change. Both parties have proposed numerous changes to the former system. The Union proposes that new employees be given two complete uniforms and equipment. Each year thereafter, employees will be paid \$200.00 to cover the cost of cleaning such uniforms. Further, the Union proposes that each employee will be entitled to receive an additional \$200.00 each year for purchase of uniform and equipment items. The Union also wants to retain a procedure whereby the Employer would replace uniform and equipment items on a fair wear and tear basis. The Union proposes an additional \$300.00 purchase allowance for detectives and other officers required to wear special apparel. Finally, the Union seeks to retain the joint uniforms and equipment committee and to limit the uniform and equipment items that must be returned to the Employer upon termination to those purchased within the preceding twelve months.

The Employer has proposed that new hires be furnished with the uniforms and equipment set forth in the equipment list. Each year thereafter, employees will be entitled to reimbursement for up to \$350.00 for purchase of uniform and equipment items, cleaning and maintenance. The Employer seeks to abolish the joint uniforms and equipment committee and to require that all uniforms and equipment purchased by

the Employer be returned to the Employer upon termination. The Employer agrees to bear the burden of proof on this issue. In its brief, the Employer has also suggested an alternative proposal to that already set forth in Employer Exhibit No. 73 (Position of Cowlitz County Re: Uniforms) should it be found that the provision would benefit from an entire rewrite.

After a careful review of the evidence and the briefs of the parties, it is my understanding that the parties are generally in agreement as to the following items:

Returns. In the event a probationary employee is not retained beyond the probationary period, all uniforms and equipment shall be returned to the County.

Non-Cumulative Allowances. Accounts shall not be cumulative from year to year.

Bulletproof vests. Bulletproof vests shall be issued and replaced on an "as needed" basis when approved by the Sheriff and such issue and/or replacement shall not be charged to the allowance provided by this Article.

Uniforms and Equipment Damaged In The Line of Duty. Items damaged in the line of duty outside of reasonable wear and tear will be replaced by the County. Such items shall not be charged to the allowance provided by this Article.

Non-Abuse. Employees agree to maintain all clothing, uniforms and equipment in good condition and not subject such items to abuse.

On the remaining items in dispute, I have determined for the following reasons, to adopt the Employer's approach with certain modifications. First, it is apparent that the present uniform allowance procedure has been difficult to administer. The evidence indicates that the Union has been unhappy with the Employer's administration of the fair wear and tear policy. The Employer has proposed a simpler system which will give each employee a set uniform allowance each year which can be spent as the employee chooses to purchase, clean and maintain uniform and equipment items. Such system would eliminate the fair wear provision, but a review of the comparators shows that those comparators that provide a straight dollar allowance do not also provide for replacement of uniform and equipment items on the basis of fair wear.

The evidence presented indicates that the \$350 proposed by the Employer is a sufficient amount to adequately provide for the uniform and equipment needs of employees. In this regard, I note that the actual cost to the Employer to provide all uniforms, equipment and cleaning to bargaining unit members was an annual average of \$220.35 in 1985 and

\$168.33 in 1986 per employee.

The Employer also seeks to eliminate certain items from the Uniform and Equipment List. However, as was noted above, the Employer has been able to provide on average all of the items on the list to new employees and needed replacement items for all employees for significantly less than the allowance it is proposing. Thus, I find no justification for reducing the Uniform and Equipment List as suggested by the Employer.

On the issue of allowances for detectives and other employees required to wear special apparel, the Union wants a \$300 purchase allowance. The Employer proposes that the \$350 uniform allowance may also be used by detectives for cleaning plainclothes. The Employer's proposal provides for the replacement of items damaged in the line of duty apparently for detectives as well as other employees. Although a review of the evidence presented does not support providing detectives with an allowance beyond that provided uniformed officers, it does support making such allowance available to detectives and others required to wear special apparel. Therefore, I shall order that these employees receive the same annual allowance as uniformed officers which may be used for purchase, repair and cleaning of clothing and equipment.

Both parties are agreed that upon termination, employees should be required to return uniform and equipment items to the Employer. The Union, however, proposes limiting such return to those items purchased within the twelve months prior to termination. The evidence indicates that every comparator requires its employees to return uniforms and equipment at the time of termination. The twelve month limitation proposed by the Union would permit the Employer to recover only a small portion of the uniform and equipment items provided and is not supported by any substantial justification. Therefore, I find it appropriate to order that employees be required upon termination to return to the Employer uniform and equipment items provided by the Employer. I will not however, make the application of this section retroactive. Thus, the requirement to return uniform and equipment items applies only to those items acquired pursuant to this Article of the Agreement effective January 1, 1987.

During discussions with the other members of the Arbitration Panel, it became apparent that neither the Union nor the Employer proposal made adequate provision for the cleaning of uniform and equipment items provided to first year employees. Further, neither proposal specifically addressed how to implement a new uniform allowance system so

as to insure that all employees will receive the benefits of such new system in 1987.

The Employer's alternate proposal set forth in its brief does recognize that by eliminating the Employer provided cleaning service, first year employees would not be compensated for uniform cleaning costs. To remedy this problem, the Employer proposes awarding first year employees a reduced uniform and equipment allowance to be used for cleaning only. The Employer suggests that \$156 per year up to a maximum of \$13 per month is an appropriate amount. The evidence indicates that the average cost to the Employer to provide cleaning for each employee has been \$107 per year. The Employer's increased cleaning allowance may constitute a recognition that first year employees may have higher cleaning costs as a result of having fewer uniform changes. In view of the foregoing, I will order that first year employees be allocated up to \$156 for cleaning. I will not order such reimbursement limited to \$13 per month since to do so would place an unwarranted restriction on an employee's ability to be reimbursed for actual cleaning costs incurred.

Based on my discussion with the other members of the Arbitration Panel, I also find that it is reasonable to implement the uniform and equipment allowance provisions in

such a manner so as to insure that employees will receive the benefit of such provisions during 1987. In drafting such a system, I have attempted to incorporate the very helpful suggestions of both Panel members on this issue.

Finally, I think it is clear that when new contract provisions are implemented, issues may arise which were not anticipated. Here it would seem particularly appropriate to continue the joint uniform and equipment committee as a means to joint resolution of any problems which may develop regarding the new system embodied in my Award. Therefore, I will order that the joint committee provisions be retained.

Based on the foregoing discussion, I find it appropriate to order the following provisions be incorporated into the parties' Agreement:

Article 9 Uniforms and Equipment

- 9.1 Effective January 1, 1987, for any newly hired commissioned officer, the County shall furnish two (2) complete uniforms and equipment listed in Appendix A of this Agreement. During such employee's first year of employment, he shall be entitled to receive reimbursement for up to \$156 for the cleaning of such uniforms and equipment.
- 9.2 In the event a probationary employee is not retained beyond the probationary period, all uniforms and equipment shall be returned to the County.
- 9.3 Effective January 1, 1987, all

commissioned officers who have completed their first year of employment shall be entitled to receive, during each calendar year, reimbursement for up to \$350 for the purchase, replacement, repair or cleaning of uniforms (or plainclothes in the case of detectives or others required to wear special apparel) and equipment listed in Appendix A to this Agreement. Those commissioned officers who complete their first year of employment after January 1 of a calendar year shall be allocated a pro rata portion of this uniform and equipment allowance based on the number of scheduled work days remaining in the calendar year.

- 9.4 The uniform and equipment allowance shall not be cumulative from year to year.
- 9.5 Reimbursement for the purchase, repair or cleaning of uniforms (or plainclothes in the case of detectives or others required to wear special apparel) and equipment shall be processed using forms approved by the Sheriff. Employees may purchase items or obtain cleaning services from the vendor of their choice and have the vendor submit invoices to purchasing for direct payment to the vendor (if the vendor allows it) or pay the vendor for purchase or service and submit a receipt to Purchasing for reimbursement until the uniform and equipment allowance is exhausted.
- 9.6 Items damaged in the line of duty outside of reasonable wear and tear will be replaced by the County. Such items shall not be charged

against the employee's uniform and equipment allowance.

- 9.7 Employees agree to maintain all clothing, uniforms and equipment in good condition and not subject such items to abuse.
- 9.8 Bulletproof vests shall be issued and replaced on an "as needed" basis when approved by the Sheriff. Such issue and/or replacement shall not be charged against the employee's uniform and equipment allowance.
- 9.9 In the event of a dispute concerned with methods, problems, place of purchase, or items of purchase, a committee composed of two members appointed by the Union, and two members appointed by the Employer shall meet and confer and make appropriate recommendations to the Sheriff.
- 9.10 At time of termination, all uniforms and equipment purchased after January 1, 1987 pursuant to the terms of this Article, shall be returned to the County. The burden of proof shall be on the County.

APPENDIX A

Uniform and Equipment List

- 3 pair pants (wash and wear)
- 3 long sleeve shirts (wash and wear)
- 3 short sleeve shirts (wash and wear)
- 1 dress hat and hat cover
- 1 wash and wear jumpsuit (K-9 handlers wear a better quality jumpsuit and normally have three)
- 1 coat (short tuffy jacket or long sportscaster)
- 1 tie
- 1 winter cap
- 1 baseball cap (for S.A.R.)
- 22 shoulder patches
- 2 badge patches (4 for K-9 handlers)
- 1 bullet proof vest
- 1 hat badge
- 1 shirt badge
- 1 set brass buttons
- 1 set C.C.S. collar insignia
- 2 name plates
- 1 I.D. case
- 1 pair shoes or boots
- 1 dress belt (basketweave)
- 1 gun belt (basketweave)
- 4 belt keepers (basketweave)
- 1 cuff case (basketweave)
- 1 set speedloaders and case (basketweave)
- 1 key holder (basketweave)
- 1 uniform holster (basketweave)
- 1 concealable holster (pancake style)
- 1 baton ring (basketweave)
- 1 flashlight ring (basketweave)
- 1 buck knife and case (basketweave)
- 1 baton
- 1 Kell light (5 or 6 cell)
- 1 pair handcuffs
- 1 clipboard
- 1 pair uniform gloves

Retroactivity

The interest arbitration statute requires that the constitutional authority of the employer be considered in arriving at a decision. The Employer contends that certain provisions of the Washington State Constitution make any retroactive award of wages and benefits an unconstitutional gift of the Employer's resources. The Employer maintains that a retroactive award is only permissible if there was a prior agreement between the parties in which such retroactive application of a future award was agreed upon. According to the Employer it has entered into no such agreement here, accordingly, any award can be effective only from the date of issuance of this Opinion and Award.

I have carefully considered the Employer's contention and for the following reasons conclude that a retroactive award of wages and benefits is not precluded in this case. I note that the case predominately relied upon by the Employer, Christie v. The Port of Olympia, 27 Wn.2d 534 (1947) was decided many years prior to the passage of the public employee collective bargaining laws. Thus, Christie does not address the integrated statutory scheme established by the Legislature. This statutory scheme specifically provides in RCW 41.56.950 for the retroactive application of collectively bargained wages and other benefits for the

period of time between the expiration of a collective bargaining agreement and the execution of a successor agreement. It is also clear that to the extent Chapter 41.56 RCW permits the Employer to agree to retroactive compensation, it also permits an interest arbitration panel to award such retroactive benefits as part of the balancing of interests accomplished by the statute.

Additionally, since the time of the court's decision in Christie and the Opinion of Attorney General's Office interpreting that decision cited by the Employer, AGO 1974 No. 19, the court has seriously questioned its prior decisions interpreting the constitutional provisions relied upon here. See, City of Marysville v. State, 101 Wn.2d 50 (1984) where the court upheld a public entity's payments to the state retirement system pursuant to RCW 41.40.160(2) for service credit earned by employees before their private employer was purchased by the public entity as not constituting gifts of public funds to a private party prohibited by Article VIII, Section 7 of the State Constitution. In view of the foregoing, and recognizing the principle that enactments of the legislature are entitled to a strong presumption of constitutionality, I do not find my Award to be in violation of either Article II, Section 25 or Article VIII, Section 7 of the State Constitution.

FOOTNOTES TO 1986 WAGES AND BENEFITS CHART

1. The Employer's 1986 salary figure for Grays Harbor is \$1961. However, the applicable agreement provides that beginning January 1, 1986, each employee will receive a lump sum payment equal to his or her annual base salary times 80% of the increase in the Seattle-Everett CPI-U for the previous year ending November. This equals \$348.20 on an annual basis and \$29 on a monthly basis. Thus, I have used a figure of \$1990 to reflect the value of the lump sum payment for 1986, however, the actual base salary for 1986 does not increase.

2. The Employer's longevity figure for Lewis is \$385. The Lewis County agreement clearly provides for payment of \$5.00 per month for each year of service. Based on 20 years of service, \$100.00 is used to reflect a more accurate maximum longevity figure.

3. The Employer's 1986 salary for Skagit is \$2304, however, the amount reported by the Employer for Skagit in 1987 is only \$2226. The Skagit County agreement indicates that employees are to receive a raise of 3.25% for 1986 based on the salary shown in the salary schedule. It is unclear whether deputies are to be paid according to Salary Range 11 or Salary Range 12. Because the information

about the comparables was provided by the Employer, doubts as to the accuracy of such information should be resolved in favor of the Union. Thus, I have chosen to use Salary Range 12 which is 2010.39. $2010.39 \times 1.0325 = 2075.73$. In addition, I have included the \$152.50 per month merit pay reported by the Employer to arrive at a total monthly wage of \$2228.

4. The Employer's 1986 salary figure for Douglas on Exhibit No. 26 is \$1854. The Employer's questionnaire completed by Douglas indicates the 1986 salary to be \$2045.

5. The Employer lists a separate educational premium of \$191 for a deputy with advanced certification. However, the salary schedule in the collective bargaining agreement appears to include such premium as a part of the base salary.

6. Calculation of the pension pick up is based on the salary revision above, i.e. 6% of \$2045.

7. The collective bargaining agreement for Josephine expired June 30, 1985. The Employer's questionnaire indicates that the parties are still negotiating a successor agreement. To the extent there could be a retroactive application of agreed wage and benefit amounts, it would be inappropriate to use the 1985 figures to reflect 1986 wages and benefits.

8. The Employer lists no pension pick up for Kings

County, however, Article 17 - Retirement clearly indicates that Kings County shall contribute 5.5% of the employee's contribution.

9-10. Although the agreements for both Madera and Mendocino expired in 1985, the salary figures reported by the Employer for 1986 do reflect an increase over the 1985 salary figures. Thus, although the figures cannot be independently verified, there is no indication they are in error.

FOOTNOTES FOR 1987 WAGES AND BENEFITS CHART

1. The Employer's 1987 salary figure for Grays Harbor is \$1990. As indicated in footnote No. 1 to the 1986 Wage and Benefit Chart, the base salary in 1985 was \$1961. It did not increase in 1986. However, employees in 1986 did receive a lump sum payment equal to their base annual salary times 80% of the previous year's increase in the appropriate CPI index. For 1987 that amount was \$111.05. On a monthly basis this reflects an additional \$9.25 per month. Thus, the salary figure of \$1970 (\$1961 + \$9) is used to reflect the value of the lump sum payment.

2. The salary used reflects the corrections indicated in Footnote 3 to the 1986 Wage and Benefit Chart and the 3.5% increase in base salary provided in the Skagit County agreement in 1987.

3. Salary used reflects the average of the Employer figures to more accurately represent the average monthly salary for 1987. Pension pick up amounts reflect these adjusted salary figures.

4. Same as above.

5. Same as above.

6. Although the Resolution setting forth the terms of employment for El Dorado County expired December 31, 1986, the questionnaire provided by the Employer and answered by

El Dorado County indicates that no salary increase is scheduled for 1987, nor does the questionnaire indicate that there are any ongoing negotiations regarding salary. Thus, it is appropriate to consider El Dorado in calculating 1987 wages for the comparators.

AWARD OF YOUR CHAIRMAN

It is the Award of your Chairman that:

- A. There shall be no wage increase for bargaining unit employees in 1986.
- B. There shall be a 4.2% wage increase effective January 1, 1987 for all bargaining unit employees. This increase shall be applied to the base salary earned by employees after computing the 6.7% increase received effective January 1, 1987.
- C. There shall be no change in the Step Advancement language from that contained in the prior collective bargaining agreement.
- D. There shall be added to the Agreement a new provision on holidays which shall read as set forth at page 25 of the attached opinion.

E. There shall be substituted for the provision in the prior Agreement, a new provision on Uniforms and Equipment as set forth beginning at page 32 of the attached Opinion.

Seattle, Washington

April 7, 1987

s/ Michael H. Beck
Michael H. Beck, Arbitrator

MICHAEL H. BECK

ATTORNEY AT LAW

Suite 658 Skinner Building

1326 Fifth Avenue

Seattle, Washington 98101

(206) 621-8500

RECEIVED

APR 08 1987

PUBLIC EMPLOYMENT
RELATIONS COMMISSION
OLYMPIA, WA

April 7, 1987

Herman Wacker
Davies, Roberts, Reid & Wacker
Attorneys at Law
201 Elliot Avenue West, #500
Seattle, WA 98104

Lawrence B. Hannah
Perkins Coie
Attorneys at Law
One Bellevue Center, Suite 1800
411 108th N.E.
Bellevue, WA 98004

Re: Cowlitz County and Teamsters Local #58--
Interest Arbitration
PERC No. 6151-I-85-135

Gentlemen:

Enclosed please find my Opinion and Award in the above-referenced matter.

Also enclosed please find my statement.

Thank you for the opportunity to serve as your Arbitrator.

Yours very truly,

Michael H. Beck

MHB/dm

Enclosures

cc: John Komar

Barbara Revo

✓Marvin L. Schurke