

JUL 29 2003

IN THE MATTER OF

**WALLA WALLA COUNTY,
WASHINGTON**

AND

**WALLA WALLA COUNTY
DEPUTY SHERIFF'S ASSOCIATION**

PERC No.: 16895-I-02-0389

Date Issued: July 28, 2003

INTEREST ARBITRATION OPINION AND AWARD

OF

ALAN R. KREBS

Appearances:

**WALLA WALLA COUNTY,
WASHINGTON**

Ronald J. Knox

**WALLA WALLA COUNTY
DEPUTY SHERIFF'S ASSOCIATION**

Steven Schuback

PROCEDURAL MATTERS	2
APPLICABLE STATUTORY PROVISIONS	3
ISSUES.....	5
NATURE OF THE EMPLOYER.....	6
COMPARABLE JURISDICTIONS.....	6
COMPENSATION COMPARISONS.....	12
COST OF LIVING	14
OTHER CONSIDERATIONS	14
Ability to Pay	14
Turnover	15
Settlements With Other Bargaining Units	16
ARTICLE V - WORK SCHEDULE.....	17
Shift Bidding	17
Call In Pay and Court Time	19
Compensatory Time	20
Training Time	22
ARTICLE VIII - SICK LEAVE	23
Buy Back	23
Sick Leave - Family Days	25
Doctor's Verification of Illness	25
ARTICLE XIII - HEALTH AND WELFARE	26
Group Insurance	26
Life Insurance	29
ARTICLE XIV - WAGES.....	30
Base Wage Adjustments	30
Deferred Compensation	32
Shift Differential Pay.....	33
ARTICLE XV - DISCIPLINE AND DISCHARGE	34
ARTICLE XVI - GRIEVANCE PROCEDURE	35
ARTICLE XVII - ASSOCIATION BUSINESS	38
ARTICLE XX - EDUCATION INCENTIVE	39
ARTICLE XXI - USE OF RESERVES.....	43
ARTICLE XXIV - DEPARTMENTAL INVESTIGATION PROCEDURES/ EMPLOYEE RIGHTS	46
Interview of Witnesses	46
Association Representation During Investigative Interview	49
AWARD OF THE ARBITRATOR.....	51

IN THE MATTER OF

**WALLA WALLA COUNTY,
WASHINGTON**

AND

**WALLA WALLA COUNTY
DEPUTY SHERIFF'S ASSOCIATION**

OPINION OF THE ARBITRATOR

PROCEDURAL MATTERS

In accordance with RCW 41.56.450, an interest arbitration hearing involving certain uniformed personnel of Walla Walla County was held in Walla Walla, Washington on March 25 and May 5 and 6, 2003. The parties agreed to waive the statutory provision which calls for an arbitration panel consisting of three members. Instead, as authorized by WAC 391-55-205, the parties agreed to have the matter presented before a single arbitrator, Alan R. Krebs. Walla Walla County was represented by Ronald J. Knox of the law firm Garvey Schubert Barer, PPC. Walla Walla County Deputy Sheriff's Association was represented by Steven Schuback of the law firm Garrettson, Goldberg, Fenrich & Makler.

At the hearing, the testimony of witnesses was taken under oath and the parties presented documentary evidence. There was no court reporter, and therefore, the Arbitrator tape recorded the proceedings as required by RCW 41.56.450.

The parties agreed upon the submission of post-hearing briefs. The Arbitrator received the briefs on June 13 and 16, 2003.

APPLICABLE STATUTORY PROVISIONS

Where certain public employers and their uniformed personnel are unable to reach agreement on new contract terms by means of negotiations and mediation, RCW 41.56.450 calls for interest arbitration to resolve their dispute. The parties agree that RCW 41.56.450 is applicable to the bargaining unit of deputy sheriffs involved here. Arbitrators are generally mindful that interest arbitration is an extension of the bargaining process. They recognize those contract provisions upon which the parties could agree and decide the remaining issues in a manner which would approximate the result which the parties would likely have reached in good faith negotiations considering the statutory criteria.

RCW 41.56.465 sets forth certain criteria which must be considered by an arbitrator in deciding the controversy:

**RCW 41.56.465 Uniformed personnel--
Interest arbitration panel--Determinations--
Factors to be considered.** (1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:

- (a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;
(c) (i) For employees listed in RCW 41.56.030(7)(a) through (d), 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;

(ii) ...

(d) The average consumer prices for goods and services, commonly known as the cost of living;

(e) Changes in any of the circumstances under (a) through (d) of this subsection during the pendency of the proceedings; and

(f) Such other factors, not confined to the factors under (a) through (e) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment....

* * *

RCW 41.56.430, which is referenced in RCW 41.56.465, sets forth a public policy against strikes by uniformed personnel, and recognizes that there should be an effective alternative means of settling labor disputes involving such groups so as to promote "dedicated and uninterrupted public service."

RCW 41.56.430 Uniformed personnel -- Legislative declaration. The intent and purpose of this 1973 amendatory 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.

ISSUES

The Association represents 19 commissioned deputies of the Walla Walla County Sheriff's Office, including two detectives and three sergeants. The Association and the County are parties to a collective bargaining agreement which had an expiration date of December 31, 2001. They were unable to reach an agreement on a new contract despite their efforts in negotiations and the assistance of a mediator. In accordance with RCW 41.56.450, the Executive Director of the Washington State Public Employment Relations Commission certified that the parties reached an impasse on a number of issues relating to 17 articles of their collective bargaining agreement. Afterwards, the parties reached agreement on a number of these matters. The issues remaining to be resolved in arbitration are:¹

Article 5.	Work Schedule
Article 8.	Sick Leave
Article 13.	Health Insurance
Article 14.	Wages
Article 15.	Discipline and Discharge
Article 16.	Grievance Procedures
Article 17.	Association Business
Article 20.	Education Incentive
Article 21.	Use of Reserves
Article 24.	Departmental Investigation Procedures & Employee Rights

The parties agreed that the new agreement should be for three years: 2002, 2003, and 2004.

¹ Certified issues which were resolved prior to arbitration were Article 1 - Recognition, Article 6 - Vacation, Article 7 - Holidays, Article 12 - Sabbatical Leave, Article 19 - Special Duty Compensation, Article 22 - Integration, and Article 25 - Length of Contract.

NATURE OF THE EMPLOYER

Walla Walla County is situated in Southeastern Washington and has a population of 55,180. The Walla Walla County Sheriff's Office directly serves a population of over 18,000 persons who reside in unincorporated areas of the County and in two small cities. It also provides backup to other law enforcement agencies, including the City of Walla Walla Police Department. The Sheriff's Office has an experienced workforce averaging about nine years of service, with none having less than about three years. Since 1998, the County has experienced a 26 percent increase in calls for service, and it has added five deputies. According to a report prepared by the Sheriff, the staffing level maintained by the Sheriff's Office is almost 25 percent below the state average for similarly sized counties.

COMPARABLE JURISDICTIONS

One of the primary standards or guidelines enumerated in RCW 41.56.465 upon which an interest arbitrator must rely in reaching a decision is a "comparison of the wages, hours and conditions of employment of personnel involved in the proceedings with the wages, hours and conditions of employment of like personnel of like employers of similar size on the west coast of the United States." The parties agree that Douglas, Franklin, Grant, Kittitas, and Whitman Counties are "like employers" which are appropriately comparable to Walla Walla County. The Association

proposes as additional comparable jurisdictions, Chelan, Clallam, Grays Harbor, Mason, and Lewis Counties, as well as the City of Walla Walla.

The County urges the Arbitrator to utilize only Douglas, Franklin, Grant, Kittitas, and Whitman Counties as comparators because they were the Counties relied on by Arbitrator Greer in reaching his interest arbitration decision with regard to the predecessor contract to the one at issue here. PERC Case No. 14798-I-99-327 (May 15, 2000). The County argues that it is inappropriate to continually change the comparators because the prior decision should have given the parties some predictability and a basis on which to proceed in future negotiations. It asserts that the counties which it proposes are geographically proximate and compare favorably on the basis of population, property valuation, geography, revenue base, miles of country road, and nature of the economy. With regard to the Association's suggested comparators, the County notes that with two exceptions, all fall within a band of 50% to 150% in both assessed valuation and total population when compared with Walla Walla County. The County observes that Chelan and Clallam Counties do not fall within this band, and that two Eastern Washington Counties, Okanogan and Stevens, do fall within this band, but are not included in the Association's suggested comparators. The County maintains that since there are a sufficient number of comparables in Eastern Washington, there is

no need to rely on comparables situated in Western Washington, which are not geographically proximate.

The Association, in its brief, "recognizes the value of Arbitrator Greer's comparables and decided to present an average or blended set" "which take into account a wider range of jurisdictions." It asserts that its proposed comparators "allows for a better weighted group which includes a 150%-50% population range." The Association contends that Western Washington comparators should not be excluded because "the ability to travel, tele-commute, and change job locations has eroded the illusion of an East/West barrier." The Association maintains that the County shares characteristics with more urban areas inasmuch as it has the second highest population density among its suggested comparable jurisdictions. The Association suggests that the Walla Walla Police Department should be used as a comparator because both it and the Sheriff's Office are located in the same town and have daily contact with one another. The Association argues that the terms and conditions of employment at the Walla Walla Police Department are a definite factor in employment decisions for employees of the County. The Association further argues that inasmuch as the comparators which were utilized by the arbitrator in the previous arbitration decision have not all yet reached agreement on a new contract, "[i]t would be difficult to gain [a] balance[d] perspective of the current market."

I have selected five county sheriff's offices which are "like employers of similar size" as comparable jurisdictions:

Douglas County
Franklin County
Grant County
Kittitas County
Whitman County

These are the geographically closest five counties to Walla Walla County which fall within population and assessed valuation bands of between 50% and 150% of Walla Walla County:

<u>Counties</u>	<u>Population</u>	<u>Assessed Valuation</u>
Douglas	33,100	\$1,783,283,541
Franklin	51,300	\$2,157,303,384
Grant	76,400	\$3,996,100,114
Kittitas	34,800	\$2,220,702,327
Whitman	40,600	\$1,639,271,884
Walla Walla	55,400	\$2,683,452,105

Both parties recognize that a band of between 50% and 150% is an appropriate measurement to determine "like employers of similar size" as required by RCW 41.56.465(c)(i). As the County points out in its brief, some arbitrators have utilized the 50%-150% measurement to compare both population and assessed valuation and thereby determine a group of comparable jurisdictions. The five sheriff's offices which have been designated here as comparable jurisdictions are the same five sheriff's offices which Arbitrator Greer designated as comparable jurisdictions in the parties' interest arbitration for their predecessor agreement. That arbitration was conducted during the year preceding negotiations for the contract at issue here. Ordinarily, the comparable jurisdictions designated by the parties' interest

arbitrator should provide guidance for their next round of negotiations, particularly where, as here, they commence so soon afterwards. If those negotiations lead to another round of interest arbitration, it should be expected that the new interest arbitrator would give significant weight to a recent determination of comparable jurisdictions by the previous interest arbitrator. Such consideration tends to add stability to the parties' collective bargaining relationship by encouraging a common basis for their negotiations. While the determination of the comparable jurisdictions in the previous interest arbitration is not binding in this proceeding, a party seeking a deviation from that prior finding should provide a convincing argument either that there are changed circumstances or that the determination of the prior interest arbitrator was wrong. Neither has been established here. While it is unlikely that I would have chosen the same list of comparators as Arbitrator Greer if there had been no precedent established, there has been no cogent argument why it should not be followed in these proceedings. The Association proposes as additional comparators, Chelan and Clallum Counties, which each have assessed valuations greater than 150% that of Walla Walla County. It proposes as comparators other counties in Western Washington which fall within the 50%-150% bands for population and assessed valuation, namely Mason, Lewis, and Grays Harbor Counties. At the same time, it ignores Okanogan and Stevens Counties, which also fall

within the designated parameters for population and assessed valuation, but are arguably more significant since they are Eastern Washington Counties, which presumably have more in common with Walla Walla County. I am not persuaded by the Association's argument that Walla Walla County shares characteristics with more urban areas because of its population density. In fact, it appears that Walla Walla County is rather thinly populated aside from the City of Walla Walla, which has its own police department. It is inappropriate to consider the Walla Walla Police Department as one of the primary comparators because the statute requires a comparison with "like employers of similar size." A city is not like a county. They are different in structure, taxing authority, and responsibility. Moreover, there was no evidence that the City of Walla Walla and Walla Walla County are "of similar size." It just cannot be reasonably said, based on the record presented, that the City of Walla Walla is a "like employer of similar size" which is a statutory requirement to be considered as a primary comparator. The fact that several of the selected comparators have not yet achieved settlement on a new agreement for 2002 and/or 2003, does not invalidate the selected list. These comparators will still sufficiently demonstrate the prevailing contract terms.

COMPENSATION COMPARISONS

For the most part, the parties are in agreement about how compensation comparisons should be made between the County and the selected comparable jurisdictions. They each would determine total compensation by totaling monthly base wages, longevity pay, insurance, vacation pay, and holiday pay. The Association would add education incentive pay for a bachelor's degree, while the County would omit this benefit for purposes of compensation comparison. Education incentive pay is a part of total compensation. For comparison purposes, the education incentive for an associate's degree will be included. Generally, where education incentive is provided for uniformed services, a higher monetary incentive is given for a bachelor's degree than for an associate's degree. Utilizing the incentive for an associate's degree would be more reasonable than selecting either of the extremes, i.e., an employee with a bachelor's degree or an employee with no higher education. The County would add sabbatical leave to the vacation benefit, while the Association would omit this. Article XII of the parties' agreement provides a schedule for days off for "sabbatical leave" which "shall be in addition to the vacation" leave in recognition of the "unusual occupational stress." It appears that the sabbatical leave serves, in effect, as additional vacation leave and it shall be considered as such in the compensation comparison. Kittitas and Whitman Counties have not yet settled their contracts for 2002.

Douglas County has not yet settled its contract for 2003. In making their comparisons, both the County and the Association assumed that each provided a 2.3% base wage increase for each unsettled year based upon the 2001 cost of living increase, and that assumption will be adopted here. Thus, the table below reflects the 2003 wages as adjusted for the counties which have not yet settled, and the unadjusted wages provided by Walla Walla County, reflecting the wages they currently receive based on the 1999-2001 Agreement. The monthly compensation comparison reflected in the table below utilizes a benchmark of a deputy with ten years experience, since that is close to the average in the bargaining unit.

<u>County</u>	<u>Adjusted Base Wage</u> (2003)	<u>Longevity</u>	<u>Education Incentive - Assoc. Deg.</u>	<u>Insurance Total Paid</u>		<u>Vacation Pay</u>	<u>Holiday Pay</u>	<u>Total Compensation</u>
				<u>By Employee</u>	<u>By Employer</u>			
Franklin	\$3,811	76	0	0	698	249	161	\$4,995
Grant	3,845	117	20	0	1,002	421	162	5,567
Douglas	3,637	25	73	-335	680	223 ²	153	4,456
Kittitas	3,316	39	0	-767	474	248 ²	140	3,450
Whitman	3,489	0	0	-642	615	268 ²	147	3,877
Average								4,469 (2003)
Walla Walla	3,605 (2001)	40	0	-351	731	277	152	4,454 (2001)

The total compensation provided to the Walla Walla deputies at the end of their last contract compares favorably with the average of the selected comparables, particularly when a compensation increase for the new agreement is factored in.

² The figures provided by the parties differed slightly with regard to the vacation pay provided by Douglas, Kittitas, and Whitman counties. I have utilized the Association's figures since these correspond with the hourly wage rate agreed upon by the parties in their identical holiday pay figures.

COST OF LIVING

RCW 41.56.465(d) requires consideration of "[t]he average consumer prices for goods and services, commonly known as the cost of living." The County provided evidence of the Consumer Price Index for Urban Wage and Clerical Workers (CPI-W) for the Seattle area during 2002. This measurement of consumer price increases published by the U.S. Department of Labor reflects an increase in December 2001 of 2.3% over the previous year, and an increase of 1.9% in December 2002 over the previous year. Inasmuch as the governing statute requires the Arbitrator to consider the cost of living, significant weight shall be given to the relatively modest changes in the cost of living during 2001 and 2002.

OTHER CONSIDERATIONS

In addition to the specific criteria set forth in RCW 41.56.465(a)-(e), RCW 41.56.465(f) directs the Arbitrator to consider "[s]uch other factors ... that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment." Accordingly the factors discussed below, have been considered.

Ability to Pay

A factor frequently raised in contract negotiations and also considered by arbitrators is the ability to pay wage and benefit increases.

The County has not argued that it is financially unable to provide fair wages and benefits to its employees. To the contrary, it asserts providing such fair compensation is in its interest. The Association presented evidence that the County is in good economic status. In recent years, the County has maintained a healthy year-end balance while making a number of capital improvements without incurring debt. These included a new public safety building at a cost of \$2.4 million and a new Road Department building at a cost of \$800,000. The County has the ability to provide fair compensation to its employees.

Turnover

Interest arbitrators are likely to consider whether the compensation package provided to employees is sufficient to retain them and to attract qualified applicants. The Association presented evidence that because of better working conditions provided by the City of Walla Walla, it has an advantage over the County in attracting new hires. In this regard, it established that a County jailer who was offered a job with the Sheriff's Office, turned it down to accept a job with the Walla Walla Police Department. Also, during July 1996, a deputy left the Sheriff's Office to take a job as an officer with the Walla Walla Police Department. Since that time, no employees have resigned for any reason. The last time employees were hired by the Sheriff's Office was during 2000. There is no indication that the County was unable to attract qualified applicants. It

appears that the current compensation package is sufficient to attract and retain qualified personnel.

Settlements with Other Bargaining Units

The County urges consideration of the wage increases and insurance packages received by County employees who are not in the deputy sheriff bargaining unit. As I have recognized in other interest arbitration proceedings, consideration of compensation settlements achieved by other groups of employees within the subject jurisdiction is appropriate. From the standpoint of both the employer and the union, the settlements reached with other bargaining units are significant. While those settlements are affected by the particular situation of each individual bargaining unit, still there is an understandable desire by the employer to achieve consistency. From the union's standpoint, it wants to do at least as well for its membership as the other unions have already done. At the bargaining table, the settlements reached by the employer with other unions are likely to be brought up by one side or the other. Other interest arbitrators have given some weight to internal parity. Thus, it is a factor which should be considered by the Arbitrator.

The County has reached agreement with its three other bargaining units for the years 2002, 2003, and 2004. Jail employees agreed to wage increases of 3% in 2002, 1.5% in 2003, and 1.5% in 2004. The bargaining units for Courthouse and Public Works employees each agreed to 3% increases in 2002 and 2003, and

no additional increase in 2004. Department heads were given raises of 2% in 2002 and 3% in 2003. No County employees other than the deputies receive an employer contribution for dependent medical coverage.

ARTICLE V – WORK SCHEDULE

1. Shift Bidding

The Association proposes to add the following language to Section 5.1 of the Agreement:

Work Schedule. The work schedule shall for the ensuing calendar year be posted no later than December 15th of the year preceding the bid year. The schedule shall provide for three equal rotation periods. Employees shall prior to the start of the bid year on the basis of seniority select a shift and days off for each of the three rotation periods.

Currently, there is no employee shift bidding. Some employees who have specialized assignments work a set schedule for all or most of the year. Most deputies rotate schedules. They rotate between working nights for six months and then days for six months. Their days off change every three months. Deputy Tom Cooper, the Association President, testified that employees usually get less than 30 days notice of their next rotation of days off. Deputy Cooper testified that this lack of notice causes difficulties in scheduling personal activities, such as doctor appointments, college classes, and child care. The Association argues that its proposal is vital to the improved morale of the group.

The County argues that this proposal would be devastating to the effective operation of the Department. It relies on the testimony of Sheriff Mike Humphreys that the Association's proposal could result in an imbalance in experience on a shift if all senior employees select a particular shift. He testified it could also result in new employees leaving the County if they consistently work nights with unfavorable days off. Sheriff Humphreys testified that he tries to accommodate employees who have a scheduling need because of family circumstances. He testified that he is unaware of any complaints or a morale problem related to the current scheduling method. Deputy Cooper responded to Sheriff Humphreys by testifying to his belief that with shift bidding there would still be a good mix of experience during shifts. Dana Bennett, a research analyst for the Association's law firm, testified that two or three comparable counties have shift bidding, but she could not recall which ones.

I am not persuaded that there should be any new language regarding shift bidding. There is insufficient evidence that any of the selected comparable employers have such a contract provision. Moreover, the testimony of Deputy Cooper was general in nature and was not persuasive that the current practice was unfair to employees. There was no evidence of specific scheduling problems suffered by an identified employee which was not or could not be accommodated.

2. Call In Pay and Court Time

The Association requests that Sections 5.2.2 and 5.2.4 be modified so as to increase guaranteed call in pay and court time from two hours at the overtime rate to three hours. Currently, employees receive a guaranteed minimum of two hours of overtime whenever they are called back to work after the completion of their regular shift or when they are called to appear in court outside of their regular work hours. The Association argues that deputies should receive increased compensation for their sacrifice of more time at work at the cost of being with family, resting, or attending to other personal responsibilities. The Association contends that its proposed increase in call in pay and court time is justified by a review of the practice of comparable jurisdictions. The Association presented evidence that Franklin, Grant, Douglas, and Whitman Counties each provide a minimum of three hours of call in overtime, and that Kittitas County has a four hour minimum. The County contends that an increase in call in pay and court time is unjustified. The County points out that if a deputy does not spend two hours on the call in or in court, he or she still receives two hours of pay at the overtime rate.

It shall be ordered that Sections 5.2.2 and 5.2.4 be modified to reflect an increase in the guaranteed minimums for call in pay or court time to three hours. The current practice of a two hour overtime minimum in such circumstances is

inconsistent with the practice of all of the comparable jurisdictions. In fact, all of them provide a guaranteed minimum of at least three hours of overtime for call in pay or court time. There is no demonstrated reason for the County's benefit in this regard to be below the standard.

3. Compensatory Time

Section 5.3 of the 1999-2001 contract provides:

Employees may elect to accrue compensatory leave in lieu of overtime pay. Compensatory time shall be earned at the rate of one and one-half (1-1/2) times the hours worked. Compensatory time may be accumulated up to sixty (60) hours. Any compensatory time that the employee earns in excess of (60) hours shall be paid to the employee at the rate of one and one-half hours overtime pay. At the time this contract is ratified, any member of the association with over sixty hours of compensatory time shall be cashed out for those hours in excess of sixty, at the employees straight time rate. Scheduling of compensatory time shall be by mutual agreement of the Employer and the employee.

The Association proposes to amend this language to read:

Employees may elect to accrue compensatory leave in lieu of overtime pay. Compensatory time shall be earned at the rate of one and one-half (1-1/2) times the hours worked. Compensatory time may be accumulated up to one hundred twenty (120) hours. Any compensatory time that the employee earns in excess of (120) hours shall be paid to the employee at the rate of one and one-half hours overtime pay. Scheduling of compensatory time shall be in accordance with the FLSA.

The County proposes that Section 5.3 read:

Employees may request compensatory time in lieu of overtime pay. The Employer shall determine whether compensatory time is granted to the employee when such time is requested in lieu of overtime. Compensatory time shall be earned at the rate of one and one-half (1-1/2) times the hours worked.

Compensatory time may be accumulated up to sixty (60) hours. Any compensatory time that the employee earns in excess of (60) hours shall be paid to the employee at the rate of one and one-half hours overtime pay. The Employer may designate specific times in which employees must use their compensatory time. Absent specific direction, scheduling of requested compensatory time off shall be by mutual agreement of the Employer and the employee. If no agreement can be reached, the Employer will schedule the requested compensatory time off within a reasonable period after the request has been made, considering the normal work schedule, existing workloads, availability of replacement staff, and so long as granting the request does not unduly disrupt the operation of the department.

The Association contends that an increase in the compensatory time bank cap to 120 hours is justified by the practice of the comparable jurisdictions. It argues that "a higher cap is preferred by the [d]eputies, and would be beneficial to their working conditions." The County urges rejection of the Association's proposal. It contends that such changes are unjustified by reference to the practice of the comparable jurisdictions and would put considerably more pressure on the limited resources of the Sheriff's Office. The County asserts that testimony established that there have been few arguments, if any, concerning the use of compensatory time. Finally, the County maintains that if any change is warranted, its suggested changes are simply more appropriate.

The comparable jurisdictions provide as follows with regard to caps for compensation time:

Douglas County	no cap, must use in 60 days
Franklin County	40 hours
Grant County	100 hours
Kittitas County	40 hours
Whitman County	no cap

Deputy Cooper testified that the County pays for all overtime worked above the 60 hours cap. He further testified that the County does pretty well in accommodating employees' requests to use compensatory time, if staffing levels permit.

None of the changes to the compensatory time language shall be adopted, with the exception that the next to last sentence of the current language shall be deleted. Both parties agree upon that deletion. There has been no showing that the current language is out of line with the comparable jurisdictions or otherwise unfair. The County has not provided justification for its proposed changes.

4. Training Time

Section 5.5 of the 1999-2001 contract reads:

Any employee who is required to attend job training during off-duty hours whether in the County or outside of the County will be given compensatory time on a one and one-half hour basis.

The Association proposes adding the following words to the end of this sentence:

including time spent traveling to and from the training center.

The County opposes this addition, arguing that "[i]t is not in the public interest to provide this gratuitous payment in light of the many other economic demands on the County."

No change to Section 5.5 shall be awarded. The proposed change was neither justified by reference to any prevailing practice of the comparable jurisdictions, nor by any other supportive argument.

ARTICLE VIII – SICK LEAVE

1. Buy Back

Section 8.2 of the 1999-2001 contract reads:

Employees shall accrue sick leave at the rate of one (1) day each month worked, to be used in the event illness. Twenty five percent (25%) of accrued sick leave, up to a maximum of thirty (30) working days shall be paid off upon retirement of the employee after twenty (20) years of service.

The Association proposes to increase the buy back percentage to 50% and to make it applicable to termination as well as retirement. The Association argues that its proposed changes would put Walla Walla deputies in a more similar position to their counterparts in comparable departments. The County rejects this proposal because of the increased costs and because it has, over the years, attempted to reduce this unfunded liability in each of its collective bargaining agreements. The County proposes to eliminate consideration of sick leave buy back when determining retirement benefits, by adding the following provision to Article VIII:

8.7 The parties mutually agree that a cash out of unused accrued sick leave, compensatory time, or any other claimed accumulation of unused time off shall not be included in calculation of the employee's retirement pension. All excess compensation as

defined by applicable State law, is deemed never to have existed for the purposes of employee pension. The County and the Association and the employees recognize that the Department of Retirement Systems will be notified of these payments but they shall not be included in the calculation of the employee's final average compensation.

The Association urges rejection of the County's proposed Section 8.7, arguing that it is an attempt to take away benefits in order to reduce its costs.

Douglas and Whitman Counties provide no buy back of accumulated sick leave at retirement. Kittitas County provides no sick leave buy back for employees hired since 1985, but grandfathers a 25% buy back upon a break in seniority for employees hired before that. Franklin County provides a 25% buy back upon termination. Grant County provides a 50% buy back upon retirement, a 25% buy back upon termination by an employee in good standing after 10 years of service, and, in case of death, a 100% buy back of accumulated sick leave up to 120 days. Walla Walla County's three other bargaining units receive a 25% buy back of accumulated sick leave at retirement, except that road crew employees hired before 1999 receive a 50% buy back.

No change shall be ordered with regard to either Section 8.2 or the proposed new Section 8.7. The changes requested are not supported by reference to prevailing practices among the comparable jurisdictions. The current practice is not inherently unfair.

2. Sick Leave – Family Days

The first sentence of Section 8.4 of the parties' 1999-2001 contract reads:

Sick leave, not to exceed three (3) days per year, may be used in the event of illness to a member of the employee's immediate household.

Both parties agree to remove the three day limitation regarding the use of sick leave in the event of illness of a family member.

Based on the agreement of the parties, it shall be ordered that the limiting phrase, "not to exceed three (3) days per year," shall be removed from Section 8.4.

3. Doctor's Verification of Illness

The County proposes the addition of the following sections to Article VIII:

A doctor's certificate of illness shall, at the Employer's timely request, be submitted by the employee at the time the employee returns to work, when he/she is absent because of illness or injury.

If the Sheriff or his/her designee suspect sick leave abuse, immediate verification of the illness or accident may be requested and must be provided by the employee.

The County argues that all of the comparable jurisdictions require an employee to provide verification of illness upon request. The Association did not propose any new language in this regard. However, it states, in its brief, that it "is not opposed to providing a doctor's certification if necessary," but not for every illness. The Association submits that "[t]he correct language to have would be comparable to other

jurisdictions which only require a doctor's note after three (3) days of illness." The Association asserts that requiring a doctor's note for any use of sick leave would increase the cost of health insurance. The Association argues that Section 8.6, as proposed by the County, is unnecessary as the County failed to present any testimony of abuse of sick leave.

The comparable counties have the following contract requirements:

<u>County</u>	<u>Doctor's Verification</u>
Douglas	"at the Employer's timely request"
Franklin	"may be required"
Grant	"may be required"
Kittitas	"may be required for absence of three days or more"
Whitman	"must be provided after three days"

Inasmuch as all of the comparable jurisdictions allow for an employer's request for verification of illness, it shall be awarded that the following new provision be added to the Agreement:

8.5 A doctor's certificate of illness shall, at the Employer's timely request, be submitted by the employee for an absence of three days or more, or whenever abuse of sick leave is reasonably suspected.

ARTICLE XIII – HEALTH AND WELFARE

1. Group Insurance

Section 13.1 of the 1999-2001 contract provides for the County to pay 100% of the health insurance premium for employees and 50% of the premium for dependent coverage.

The Association proposes, and the County opposes, that the County pay 100% of the premium for dependent coverage.

The Association argues that 100% dependent coverage is justified in order to meet the needs of the deputies' families and to bring their health insurance benefits to the level of other jurisdictions. The Association asserts that most deputies cannot afford to pay 50% of the cost of dependent coverage. In this regard, it relies on the testimony of Deputy Kenton Boyd to the effect that his family does not have insurance coverage because he could not afford the \$370 monthly cost for 50% of the dependent premium. The Association questions why the County's insurance is so expensive, arguing that the County artificially limits dependent coverage by making it more expensive than employees could afford. The Association points out that some other counties do not require an employee contribution for health insurance. The Association argues that the fact that deputies receive better health insurance coverage than other employees of Walla Walla County should be disregarded, since law enforcement agencies generally have better benefits because of the training and risk required of the work. The Association maintains that the County can afford the additional cost of providing full dependent health coverage.

The County argues that no increase in dependent insurance coverage is justified by reference to the comparability data. It suggests that providing dependent care coverage would completely alter the internal equity for compensation by County employees, inasmuch as, no other County employees receive dependent medical coverage.

The County offers a choice of two health plans, a standard preferred provider plan (PPO) and a group health plan. The County provided the following comparison of costs incurred for health insurance with dependent coverage, utilizing in each case the less expensive option:

	<u>County Pays</u>	<u>Employee Pays</u>
Douglas County	536	230
Franklin County	485	255 or 0 ³
Grant County	845	0
Kittitas County	421	564
Whitman County	457	343
Walla Walla County	724	370

No change shall be ordered with regard to the County payment for dependent health coverage. The County's contribution towards the cost of health insurance is not out of line with the situation in the comparable jurisdictions. Moreover, it is

³ The Association presented evidence that in Franklin County deputies effectively pay nothing for dependent coverage, since those costs have been covered in full by a contribution pool established from the amounts left over under the contribution cap from employees who have health plans costing less than the cap.

significant that the deputies are already receiving a higher level of health insurance benefits than all other County employees. The fact that one, or even several, deputies have decided that they cannot afford to pay 50% of the dependent premium does not establish that the dependent coverage benefit is a hollow one. There was no evidence that dependent coverage benefit is generally rejected by eligible deputies because of the substantial employee contribution which is required. There is no basis in the record presented to support the Association's suggestion that the County is overpaying for health insurance, or even that the Association has suggested or proposed consideration of a less expensive plan.

2. Life Insurance

Section 13.3 of the 1999-2001 contract requires the County to maintain a \$24,000 life insurance policy for its deputies. The Association proposes that the policy amount should be increased to \$48,000. It reasons that the existing coverage is only worth about six month's salary and fails to reflect a deputy's worth or risk of death on the job. The County opposes any increase in life insurance. It argues that the current life insurance coverage recognizes the risk which is part of the job.

The comparable jurisdictions provide the following levels of life insurance for their deputies:

Douglas County	\$	0
Franklin County	\$	24,000
Grant County		15,000
Kittitas County		12,000
Whitman County		40,008

Walla Walla County 24,000

Deputies receive additional life insurance from the federal government which provides coverage if they are killed in the line of duty.

No change in the current level of life insurance shall be awarded. The current level of this benefit compares favorably with that provided by the comparable jurisdictions.

ARTICLE XIV – WAGES

1. Base Wage Adjustments

The Association proposes a 6% wage increase for 2002, a 6% increase for 2003, and a 6% increase for 2004. The County proposes a 2% wage increase for 2002, a 2% increase for 2003, and a 2% increase for 2004. The Association argues that its proposed 6% yearly wage increase is needed in order to prevent further erosion of the deputies' compensation in relation to the market. The Association asserts that its wage proposal is merited based on the higher population density of Walla Walla County, the higher call loads and lower staffing, the poor working condition of having no back up coverage, and the deputies' underpaid salaries. The County argues that its proposed increases are supportable in light of the consumer price index information, a

comparison to the wage increases received by the other three bargaining units which have reached agreement with the County, and most importantly, by the comparability data.

Weighing the governing factors which are set forth in the statute, wage increases will be awarded for 2002 in the amount of 2.3%, for 2003 in the amount of 2%, and for 2004, in the amount of 2%. The statute requires consideration of the cost of living, and these wage increases approximate the increases in the cost of living. The overall compensation increase for the bargaining unit will exceed the cost of living, factoring in other financial benefits which will result from this Award, including a new education incentive benefit which I have valued at a 2% increase in compensation,⁴ and a 50% increase in the minimum payment for call ins and court time. The statute also requires consideration of terms and conditions of employment of comparable jurisdictions. As a result of the awarded increases, the total compensation received by the deputies will remain above the average of the comparable jurisdictions. In relation to these comparators, the bargaining unit will very likely retain its position as third out of six. Also considered, as required by statute, are other factors traditionally considered by interest arbitrators. Thus, I have considered that the County's healthy

⁴ This valuation is based on the education incentive awarded for employees with an associate's degree. The Association utilized its proposed education incentive for a bachelor's degree for purposes of valuating and comparing total compensation. Employees with a bachelor's degree will receive a 4% increase in addition to the base wage increase.

financial situation allows for the ability to pay a fair and reasonable compensation increase. Also considered was the high productivity reflected in the relatively high number of calls per deputy. Such higher workload levels provide justification for the above average compensation which the deputies receive. The compensation levels appear adequate to retain employees as the level of turnover in the Sheriff's Office has been low. Another factor considered was the wage settlements which the County has already achieved with its three other bargaining units. The wage increases awarded here are not out of line with those settlements. In sum, the awarded wage levels are appropriate considering the compensation provided by the comparable jurisdictions, the cost of living, and other factors normally taken into consideration in the determination of wages, such as productivity, turnover, and the wage increases provided by the County to other employee groups.

2. Deferred Compensation

The Association proposes a new deferred compensation benefit to be inserted into the contract as Section 14.3:

In addition to the wages provided for in Appendix A, the Employer shall match Employee contributions to their deferred compensation accounts as follows:

- 1) Contributions made during 2002, up to 1% of salary.
- 2) Contributions made during 2003, up to 2% of salary.

- 3) Contributions made during 2004 and thereafter, up to 3% of salary.

The Association argues that such retirement savings plans are very important in today's economy and would encourage employees to stay with the County. The Association asserts that implementation of this plan would be a minimal cost because the term of the new contract is already half expired. The County opposes this proposal since deferred compensation is not offered to any County employee and is not supported by reference to the comparable jurisdictions.

No deferred compensation shall be awarded. None of the comparable jurisdictions provide a deferred compensation benefit, and no other County employee has such a benefit. I am not persuaded by the Association's argument that a deferred compensation benefit is needed in order to retain employees. The County has not experienced a significant turnover problem in this bargaining unit.

3. Shift Differential Pay

The Association proposes a new shift differential benefit to be inserted into the contract as Section 14.4:

Employees who [sic] shift starts on or between 6:00 pm and 2:00 am shall receive an additional amount equal to two percent (2%) of base salary for all hours worked on said shift as well as all overtime hours adjacent thereto.

The Association contends that the sacrifices for working graveyard shifts are hardly disputed and deserve some additional compensation. In this regard, Deputy Cooper testified that

adjusting to the graveyard shift is physically very difficult. He testified that he must sleep while his family is awake, and he has to attend family functions with little sleep. Deputy Cooper testified that graveyard shifts are generally more dangerous, particularly since there is more likely to be little or no backup when it is needed. The County opposes a new shift differential benefit.

No shift differential benefit shall be awarded. None of the comparable jurisdictions offer such a benefit. There is no need to provide an incentive to work graveyard shifts, since they are part of the job and are generally shared equally among the deputies assigned to road patrol. Inasmuch as there is absolutely no support for such an incentive among the comparators, it appears that the hardships of working nights is considered an aspect of the job which is built into the existing valuation of the job for Eastern Washington deputy sheriffs.

ARTICLE XV – DISCIPLINE AND DISCHARGE

The Association has proposed two changes to Article XV. First, it proposes to add the following sentence to the end of Article XV:

Employees may only be disciplined for just cause.

The 1999-2001 contract contains no "just cause" provision. Second, it proposes to modify that contract by including the following sentence:

Information in the employee's personnel file will be made available to an authorized Association representative with the permission of the employee.

This change will remove the restriction in the 1999-2001 contract which limits the Association's access to personnel files only to situations involving a termination.

Before and during the hearing in this matter, the County opposed these changes and offered its own proposal to amend Article XV. However, in its post hearing brief, the County stated that it was withdrawing its proposal and agreeing to the Association's proposal.

Recognizing the agreement of the parties regarding Article XV, it shall be awarded that Article XV be modified to include language establishing the requirements of just cause for discipline, and access by Association representatives to personnel files with the permission of the employee.

ARTICLE XVI – GRIEVANCE PROCEDURE

The 1999-2002 contract requires that a grievance be raised with the supervisor within five working days of its occurrence, and then submitted in writing within five working days of the informal discussion with the supervisor. The department head then has five working days from receipt of the written grievance to provide a written response. In each case where there is a five working day limit, the Association proposes to raise the

limit to 15 working days. The County proposes to raise the limit, in each case, to 10 working days. The Association further proposes to amend Step 4. Step 4 currently provides that the decision of the Board of County Commissioners would be the final step in the grievance procedure. The Association proposes that Article XVI, Step 4 read as follows:

If the grievance is not resolved at Step 3, the Association may within fifteen (15) working days of receipt of the Mediator's non-binding opinion, submit the grievance to binding arbitration. The Association shall notify the County of its decision to arbitrate the grievance in writing and shall request a list of nine (9) arbitrators from the Public Employment Relations Commission. The parties shall select an arbitrator by alternative striking with the order of striking determined by lot. The arbitrator shall set a date for hearing the grievance and shall render a written decision within thirty days of the conclusion of the hearing. The decision of the arbitrator shall be final and binding upon the parties, and the parties shall split the arbitrator's fee and costs fifty-fifty.

The County opposes any change to Step 4.

The Association argues that all other comparable jurisdictions allow grievance arbitration. In fact, Douglas, Grant, Franklin, Kittitas, and Whitman Counties do provide for grievance arbitration. Franklin and Whitman Counties have a 10 calendar day deadline for submitting grievances, Douglas County has a 20 calendar day deadline, and Grant and Kittitas each have 30 calendar day deadlines. The Association relies on the testimony of Deputy Cooper to support its argument that there needs to be a neutral third party adjudication of unresolved grievances, rather than giving the Board of Commissioners final

say. Deputy Cooper testified that the Association encourages its members not to pursue grievances because it does not believe that the County Commissioners are neutral. Deputy Cooper testified that he would not expect the Commissioners to overrule the Sheriff or otherwise take a position which would adversely affect the County's finances.

The County argues that it does not see the necessity of adopting an arbitration provision because few, if any, grievances have been filed in the past and employees may take appropriate actions to the Civil Service Commission. Sheriff Humphreys testified that while employees have come to him directly to resolve problems, no formal grievances have been filed in the past five years. No evidence was presented during the hearing with regard to the availability of a Civil Service Commission to resolve disputes.

It shall be ordered that the time limits for filing and processing a grievance contained in Steps 1 and 2 of Article XVI shall be raised from five working days to ten working days. These changes bring the parties' time limits closer to the practice of the comparable jurisdictions. It shall also be ordered that Article XVI, Step 4 be modified in the manner proposed by the Association. The ordered change will remove the Board of Commissioners as the final step in the grievance procedure. A mutually selected arbitrator would provide a professional neutral adjudicator in order to provide a fair and

unbiased decision regarding any contract dispute. The availability of such a neutral arbitrator furthers the public policy described in RCW 41.56.430 to avoid strikes by uniformed personnel by providing "an effective and adequate alternative means of settling disputes." The Board cannot be viewed as a neutral body. Rather, as the Association points out, the Board may be perceived to have a bias when reviewing decisions made by County management and which affect the County's finances. Moreover, arbitration of unresolved grievances is the prevailing practice among all of the comparable departments.

ARTICLE XVII – ASSOCIATION BUSINESS

The Association proposes that the following new sections be added to Article XVII:

- 17.3 Association officers may investigate and adjust grievances during working hours without loss of pay so long as such activity does not interfere with departmental operations.
- 17.4 Association officers may attend negotiations without loss of pay if negotiations occur during their normal working hours. Negotiations includes both actual and reasonable preparation time.
- 17.5 The County will not incur overtime liability as the result of section 17.4 and 17.5.

The Association argues that these proposals are supported by reference to the practice of the comparable agencies and are needed to secure essential Association functions aimed at resolving disputes. Before and at hearing, the County opposed

any changes to Article XVII. In its brief, the County changed its position to accept all of the Association's proposed additions to Article XVII with the caveat that no more than two Association officers may attend negotiations without loss of pay.

The Association's proposed Sections 17.4, 17.5, and 17.6 shall be awarded, with the adjustment that Section 17.5 begin with the word "Two." The parties are generally in agreement regarding these additions. The County's proposal to limit to two the number of Association negotiators who remain on paid status appears to be a reasonable and fair clarification of the Association's proposal.

ARTICLE XX – EDUCATION INCENTIVE

Section 20.6 of the 1999-2001 contract reads:

Education Incentive Program Committee. The County and the Association agree to designate a committee to discuss establishment of an education incentive program. The committee will consist of three representatives appointed by the Sheriff and three appointed by the Association. The committee will meet no later than July 15, 2000 and no less than once every 90 days thereafter. By March 1, 2001, the committee will issue its recommendations regarding the possible creation of an education incentive program, including: (a) degrees and course work eligible for incentive pay; (b) incentive pay as a percentage of salary, a fixed dollar amount, or advancement on an existing salary schedule; (c) timing of a transition into a new program; (d) ongoing education or training requirements; (3) effect of education incentive programs on recruitment of personnel; and (f) the cost of a program. The committee will not have the authority to negotiate or make changes to this collective bargaining agreement.

The Association proposes to amend Section 20.6 to read:

Education Incentive. Employees possessing an Associates Degree or its equivalent shall receive and addition [sic] amount equal to three percent (3%) of their regular rate of pay. Employees possessing a BA/BS or its equivalent shall receive an amount equal to five percent (5%) their regular rate of pay.

The Association argues that its proposal is justified because the comparables have education pay, the prior interest arbitrator recognized the importance of education pay and awarded a process to start implementation, and an education committee which included Management determined that an education incentive is appropriate. The Association submits that a better educated police force is an advantage to the entire community. The County proposes to delete Section 20.6 entirely. The County urges rejection of the Association's proposal because there is no compelling evidence that Walla Walla is behind the comparators, and the Association's proposal did not incorporate all of the proposals of the education committee.

Section 20.6 was added to the 1999-2001 contract as a result of Arbitrator Greer's interest arbitration award. Arbitrator Greer found that adoption of an education incentive pay program would have "likely benefits," inasmuch as police personnel with higher education "are required to exercise judgment and discretion on the job, sometimes with life and death consequences," and "those with higher education may exercise that judgment and discretion more soundly than those without that background." Arbitrator Greer awarded "contract language that creates a committee to consider the possibility of adopting an

education incentive program." Accordingly, an Education Incentive Program Committee was formed, consisting of two Management representatives, two Association representatives, and a lieutenant from a nearby police department. That Committee unanimously approved the following report:

REPORT OF EDUCATION INCENTIVE PROGRAM COMMITTEE

Members: Gary Bolster, Deputy, Walla Walla Co. Sheriff's Office
Tom Cooper, Deputy, Walla Walla Co. Sheriff's Office
Bob Dutton, Lieutenant, College Place Police Department
Gordon Heimbigner, Financial Analyst, Walla Walla County
Carole Lepiane, Undersheriff, Walla Walla Co. Sheriff's Office

The committee was charged with the responsibility of researching and issuing NON-BINDING recommendations regarding the possible creation of an education incentive program. The findings of the committee, after several meetings and significant research, are listed below.

A) *Degrees and course work eligible for incentive pay*

It was the consensus of the group that the purpose for an educational incentive was to attract and retain employees with a higher degree of education and knowledge that would be beneficial to the field of law enforcement. The committee recognized that any higher education would be of some benefit as long as it consisted of general studies or . . . [sic]

We recommend the following to make an employee eligible:

Associate of Arts degree in general studies
Associate of Science degree in Criminal Justice
AA/AS
equivalent number of hours in four-year college
Bachelor of Arts or Bachelor of Science degree from four-year college in approved subject

The committee recommends that rather than listing specific degrees to be eligible that each employee's degree be reviewed by a committee of four persons (2 appointed by the sheriff and 2 by the association) to determine if it is of sufficient benefit to the Sheriff's Office to deserve the incentive.

B) *Incentive pay as a percentage of salary, a fixed dollar amount, or advancement on an existing salary schedule*

After reviewing the incentive pay offered by a number of similar counties, we recommend that the incentive be based on a percentage: 2% for two-year degree or equivalent hours in four-year college, and 4% for a BA/BS degree.

C) *Timing of a transition into a new program*

We recommend implementation beginning 01-01-03, provided that an agreement is reached by bargaining units prior to budget submission so that costs can be included in 2003 budget.

Kittitas and Whitman County provide no education incentive. Douglas County provides a 2% base wage incentive for a two year degree, a 4% incentive for a four year degree, and a 5% incentive for a master's degree, where the degrees are in "job-related studies as approved by the Sheriff." Beginning January 1, 2003, Grant County has offered an education incentive of \$20 per month for an AA degree, \$40 per month for a BA or BS degree, and \$60 per month for a master's degree. The degree must have "relevance to law enforcement responsibilities as determined by the Sheriff," to include such examples as a "criminal justice degree, [a] business administration degree, [and an] education degree." Franklin County provides for varying advancement on the wage progression for certain educational attainment, including a two year degree and a four year degree. It listed as qualifying courses: police science, criminal justice, sociology, political science, and psychology, plus other courses at the discretion of the Sheriff.

The following new education incentive language shall be awarded:

Effective January 1, 2004, employees completing the following higher education levels from accredited institutions in degree programs beneficial to the field of law enforcement shall receive additional compensation as follows:

AA/AS or equivalent number of hours from a four-year college	2% of base rate
BA/BS	4% of base rate

A committee of four persons, two appointed by the Sheriff and two by the Association, will determine if the education is of sufficient benefit to the Sheriff's Office to deserve the incentive. Deadlocks shall be reasonably resolved by the Sheriff.

While the comparable jurisdictions are divided with regard to providing an education incentive benefit, it is significant that one additional comparator, Grant County, has newly adopted an education incentive benefit since Arbitrator Greer determined that such a benefit had "likely benefits" and ordered the establishment of a committee to examine the subject. It is reasonable to give particular significance to the resulting jointly negotiated report recommending the adoption of an education incentive benefit. The language awarded here is intended, for the most part, to reflect the considered judgment of the unanimous recommendation of the parties' labor-management committee which recently considered the subject.

ARTICLE XXI – USE OF RESERVES

Article XXI of the 1999-2001 contract allows the Sheriff's Office to use reserve officers in certain circumstances,

including "where they have been utilized previously." The last sentence of Article XXI reads:

...If the Association believes that reserve offices are being utilized inappropriately, it may meet with the Sheriff or his designee to discuss such disputes or disagreements and to attempt to resolve any disputes or disagreements.

The Association proposes to replace this sentence with the following:

If the Association believes that reserve officers are being utilized inappropriately, it may open this article to discuss such disputes or disagreements, and to attempt to negotiate a resolution of any disputes or disagreements. In addition, reserves shall not be assigned to boat patrol unless the County also assigns a full time represented deputy to boat patrol.

The County proposes no change to this Article.

The Sheriff's Office operates a boat patrol in three river parks within the County. These boat patrols regularly operate only on weekends and holidays from late May through the Labor Day weekend. The boat patrol consists of a boat manned by two officers and two Sea-Doo personal watercraft. The See-Doos are a relatively recent addition. The boat has been utilized for many years. Years ago, deputies were assigned to operate the boat. In recent years, the boat patrol has been manned by reserve officers. These reserve officers have other regular employment, and receive \$14 per hour for their boat patrol work. One reserve officer, Skip Wade, is a college professor who has worked summers for the boat patrol for the past 11 years. The boat patrol is funded by the Federal Corps of Engineers at a fixed rate per

officer of \$38.12 per hour. Deputy Cooper testified that the reserve officers are not as proficient as regular officers and he is concerned that the boat patrol has not been issuing citations for operating a boat under the influence, careless driving of boats, and other safety related violations. The Association presented a letter from a Corps of Engineers manager stating that the County had issued only one boating citation during the year and that seemed out of proportion. Sheriff Humphreys testified that the boat patrol usually gives warnings before issuing citations. He testified that he has never received any negative comments from the public or the Corps of Engineers about the boat patrol. Sheriff Humphreys testified that using reserve officers on boat patrol during the summer is helpful in providing coverage while regular deputies are taking summer vacations.

The Association argues that it should be given the opportunity to bargain the use of reserves because it directly affects staffing, shifts, training and vacation times, and, most importantly, the Office's reputation. The Association contends that the permanent assignment of reserves to the boat patrol is an abuse. It asserts that the law enforcement activities of this patrol are pathetic and inexcusable. The Association contends that if scheduling vacation time is an issue, the County could utilize the reserves for road patrol. Sheriff Humphreys testified that he would be agreeable to this, but it is not that simple since reserve officers are paid for boat patrol work, but

are unpaid when performing road patrol. The County contends that there is no compelling reason to implement the Association's proposal, that it would strain the limited resources available to the County, and that the reserve officers are quite capable of performing their boat patrol duties.

No change to Article XXI shall be ordered. No justification was offered for inserting a provision allowing the Association to "open this article" during the term of the contract. If the Association has a problem with the wording of Article XXI, it should propose changes during collective bargaining for a new contract. It did just that regarding the County's use of reserves for the boat patrol. It was not established that this boat patrol proposal was justified by considerations of safety or efficiency. There was just no convincing evidence that the current practice of using reserve officers for boat patrol has led to a demonstrable problem for the public, that it was unfair to the deputies, or that it was otherwise called for by the listed statutory criteria.

ARTICLE XXIV – DEPARTMENTAL INVESTIGATION PROCEDURES AND EMPLOYEE RIGHTS

1. Interview of Witnesses

Section 24(a) concerns citizen complaints against an officer which could lead to discipline or criminal charges. It provides:

(a) Allegations, if true, would make the law enforcement officer guilty of a felony, misdemeanor or subject the employee to Department discipline, then the employee shall be advised of the facts of such allegation as soon as reasonably practical to do so after receipt of the complaint. Such report shall include the name of the complainant if the complaint is lodged by a non-employee of the Sheriff's office and the nature of the allegation. The officer shall not thereafter contact the citizen or witnesses without prior permission of the Sheriff.

The Association proposes, and the County opposes, deletion of the last sentence of Section 24(a).

The Association contends that this language violates accused officers' right to due process and their right to defend themselves. In this regard, the Association relies on a Washington Court of Appeals decision, Vancouver School District v. SEIU, Local 92, PERC Decision 3779-XX (1992). In that case, the Court held that the right to pursue grievances includes the right to investigate and contact witnesses, but that a reasonableness test must be applied. The Court concluded that it was unreasonable to contact witnesses under the age of 12 without first obtaining permission of the parents. The Association maintains that while it may not be wise to have the accused contact a witness or accuser alone, the Association can certainly conduct an investigation which permits the officer or the officer and a union representative together to contact witnesses or the accuser, if the contact is reasonable.

The County relies on the testimony of Sheriff Humphreys that he is greatly concerned about the Association's proposal.

Sheriff Humphreys testified that it would be naturally intimidating for the alleged victim of an incident to be interviewed by the perpetrator. The County asserts that the intent of the contract language is not to prevent the employee's representative from interviewing the witness, but rather to prevent the accused officer from doing so without the permission of the Sheriff. The County maintains that this has all to do with the credibility of the Department and the appearance of intimidation.

It shall be ordered that the last sentence of Section 24(a) be amended to read:

The officer shall not thereafter contact the complainant without prior permission of the Sheriff.

This change will strike a reasonable balance between the right of the Grievant and the Association to conduct a reasonable investigation of charges and the interests of the Sheriff's Office and the public in avoiding intimidation of members of the public who complain about police misbehavior. I agree with Sheriff Humphreys that it may be unacceptably intimidating for a member of the public complaining about the conduct of a law enforcement officer to then be contacted by that officer. It is reasonable that the Sheriff be alerted to the officer's desire to make such contact and to decide whether it would be appropriate. In any case, Association representatives would still be free to contact the complainant. The amended language allows the

Grievant to aid his own defense by contacting witnesses other than the complainant in a reasonable manner.

2. Association Representation During Investigative Interview

Section 24(c) relates to formal interviews of officers who are the subject of a Department investigation resulting from a citizen complaint. The last sentence of Section 24(c) restricts the participation of the employee's representative during such formal interviews:

...The employee shall have the right to retain an attorney of his/her own choosing and at his/her own expense and such attorney and/or a representative of the Association shall have the right to be present during any formal questioning, but he/she shall not participate except to advise the employee of his Constitutional Rights.

The Association proposes to delete from this sentence the limiting language: "but he/she shall not participate except to advise the employee of his Constitutional Rights." The Association argues that the language at issue prevents the Association representative from fulfilling its role in investigative interviews. The Association relies on a decision of the Washington Public Employment Relations Commission which held that it is an unfair labor practice for a police department to prevent a union representative from participating in an investigative interview of an officer alleged to have made an improper entry into a residence. King County v. King County Police Officer's Guild, Dec. 4299 (PECB, 1993). Citing NLRB v. Weingarten, Inc., 420 U.S. 251 (1975) and NRRB v. Texaco, Inc.,

659 F.2d 124 (9th Cir. 1981), the PERC examiner explained that while the employer may, at such investigative meetings, insist that it is only interested in hearing the employee's own account of the matter under investigation, still "the representative should be able to take an active role in assisting the employee to present the facts."

Sheriff Humphreys testified that he has no problem with an Association representative counseling an employee during an investigative interview, but he does not want that representative to answer for the employee. The County contends that it has no objection to a modification of Section 24(c), if the modification incorporates the Sheriff's concerns. The County asserts that it must maintain the ability to ask questions of the employee and receive answers without interference, and without turning the interview into a trial.

It shall be awarded that the disputed language shall be deleted from Section 24(c), and shall be replaced with the following:

and shall be permitted to participate to the extent required by law.

The effect of this language will meet the concerns of both the County and the Association, inasmuch as it will permit the active participation of the Association representative, but also will allow the County to insist that it is only interested in hearing the employee's own account of the incident.

AWARD OF THE ARBITRATOR

It is the determination of your Arbitrator that the Collective Bargaining Agreement between Walla Walla County and the Walla Walla County Deputy Sheriff's Association shall include the following:

I. Article V - Work Schedule

1. Shift Bidding - No change to Section 5.1
2. Call In Pay - Section 5.2.2 shall be modified to increase the guaranteed minimum to three hours.
3. Court Time - Section 5.2.4 shall be modified to increase the guaranteed minimum to three hours.
4. Compensatory Time - Section 5.3 shall be modified by deleting the next to last sentence.
5. Training Time - No change to Section 5.5

II. Article VIII - Sick Leave

1. Buy Back -
 - a) No change to Section 8.2
 - b) No new Section 8.7
2. Family Days - Section 8.4 shall be modified by deleting the phrase, ",not to exceed three (3) days per year,".
3. Doctor's Verification of Illness - Add:

8.5 A doctor's certificate of illness shall, at the Employer's timely request, be submitted by the employee for an absence of three days or more, or whenever abuse of sick leave is reasonably suspected.

III. Article XIII - Health and Welfare

1. Group Insurance - No change to Section 13.1.
2. Life Insurance - No change to Section 13.3

IV. Article XIV - Wages

1. Base Wage Adjustments:

Effective January 1, 2002 - 2.3%

Effective January 1, 2003 - 2.0%

Effective January 1, 2004 - 2.0%

2. Deferred Compensation - No new Section 14.3
3. Shift Differential Pay - No new Section 14.4

V. Article XV = Discipline and Discharge

1. Delete the limiting phrase, "In case of a termination following such warning," from the sentence regarding making information in the employee's personnel available to an authorized Association representative.

2. Add the following sentence:

Employees may only be disciplined for just cause.

VI. Article XVI - Grievance Procedure

1. Time Limits - Modify Steps 1 and 2 to increase the time limits for filing and processing a grievance from five working days to ten working days.

2. Arbitration - Modify Step 4 to read:

If the grievance is not resolved at Step 3, the Association may within fifteen (15) working days of receipt of the Mediator's non-binding opinion,

submit the grievance to binding arbitration. The Association shall notify the County of its decision to arbitrate the grievance in writing and shall request a list of nine (9) arbitrators from the Public Employment Relations Commission. The parties shall select an arbitrator by alternative striking with the order of striking determined by lot. The arbitrator shall set a date for hearing the grievance and shall render a written decision within thirty days of the conclusion of the hearing. The decision of the arbitrator shall be final and binding upon the parties, and the parties shall split the arbitrator's fee and costs fifty-fifty.

VII. Article XVII - Association Business

Add the following new sections:

- 17.3 Association officers may investigate and adjust grievances during working hours without loss of pay so long as such activity does not interfere with departmental operations.
- 17.4 Two Association officers may attend negotiations without loss of pay if negotiations occur during their normal working hours. Negotiations includes both actual and reasonable preparation time.
- 17.5 The County will not incur overtime liability as the result of Sections 17.4 and 17.5.

VIII. Article XX - Education Incentive

Section 20.6 shall be modified to read:

Effective January 1, 2004, employees completing the following higher education levels from accredited institutions in degree programs beneficial to the field of law enforcement shall receive additional compensation as follows:

AA/AS or equivalent number of hours from a four-year college	2% of base rate
BA/BS	4% of base rate

A committee of four persons, two appointed by the Sheriff and two by the Association, will determine if the education is of sufficient benefit to the Sheriff's Office to deserve the incentive. Deadlocks shall be reasonably resolved by the Sheriff.

IX. Article XXI - Use of Reserves

No change to Article XXI

X. Article XXIV - Departmental Investigation Procedures and Employee Rights

1. Interview of Witnesses - Amend the last sentence of Section 24(a) to read:

The officer shall not thereafter contact the complainant without prior permission of the Sheriff.

2. Association Representation During Investigative Interview

Delete from the last sentence of Section 24(c):

...but he/she shall not participate except to advise the employee of his Constitutional Rights.

Replace the deleted language with:

...and shall be permitted to participate to the extent required by law.

XI. Retroactivity - This Award shall be fully retroactive to January 1, 2002 unless otherwise indicated herein.

Sammamish, Washington
July 28, 2003

/s/ Alan R. Krebs
Alan R. Krebs, Arbitrator