In the Matter of the Interest Arbitration

between King County Corrections Officers Guild ("Guild")

and

King County, Washington ("County")

Findings, Discussion and Award.

Case Numbers:	PERC case No. 21957-I-08-519. Arbitrator's case No. JC3.
Representing the Guild:	David E. Snyder, and Snyder and Hoag, LLC, PO Box 12737, Portland, OR 97212.
Representing the County:	Lawrence B. Hannah, and Perkins Coie, 10885 NE Fourth Street, Suite 700, Bellevue, WA 98004-5579.
Arbitrator:	Howell L. Lankford, P.O. Box 22331, Milwaukie, OR 97269-0331.
Hearing held:	In Seattle, Washington, on March 16-19, 2009.
Witnesses for the Guild:	Doug Justus, Chris Vance, Jared Karstetter, Adrienne Young, Sonya Weaver, Darin Mease, Maria Bentley, Matthew James Lewis, Tricia Kenyon, Katerina Spinaris, and Henry Cannon.
Witnesses for the County:	Hikari Tamura, Bob Cowan, Rob Sprague, Mary Beth Short, John McCoy, Donald Dijulio, Gordon Karlsson, and Herb Myers.
Post-hearing argument received:	On or before May 15, 2009.
Date of this award:	Monday, June 15. 2009.

This is an interest arbitration under the authority of RCW 41.56.450 *et seq.* The parties agree that the preliminary requirements of the statutory scheme have all been satisfied and that all the issues addressed here were properly certified to arbitration. The hearing was orderly.[1] Each party had the opportunity to present evidence, to call and to cross examine witnesses, and to argue the case. The parties filed timely post-hearing briefs.

Statutory authority. The primary controlling statute in this case is RCW 41.56.465(1) and (2):

> (1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, the panel shall consider:
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> (a) The constitutional and statutory authority of the employer;
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> (b) Stipulations of the parties;
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> (c) The average consumer prices for goods and services, commonly known as the cost of living;
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> (d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and
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> (e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. ***
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> (2) For employees listed in RCW 41.56.030(7) (a) through (d), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.

Background. Before 1974, the County staffed its corrections facilities with Deputies on rotation. The County created a separate classification of Corrections Officers in about 1974 when it took over housing prisoners of the City of Seattle. Corrections Officers were initially represented by SEIU, which entered into a series of "me-too" contracts following the Deputy Sheriff's agreements (except for retirement benefits) until about 1979 or 1980 when Corrections Officers first got a smaller increase than Deputies. Ever since then the Corrections Officers have sought some form of "parity" with the Deputies. The Guild took over representation in 1996. The bargaining unit consists of about 539 Corrections Officers and 40 Sergeants who work in three shifts assigned to one of the County's two corrections facilities. The older of the two, the King County Correctional Facility ("KCCF"), opened in 1986 and is spread out over several storeys of

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1. The parties agree that the official record of the hearing in this case, including the transcript of testimony, is in the possession of the County'. The County agreed to become the guardian of that record and to hold the arbitrator harmless in that regard.

a high-rise in downtown Seattle; and the newer Regional Justice Center ("RJC") opened in 1997 in suburban Kent.[2] Supervisory personnel include about 15 Facility Commanders and Captains. The prisoner population divides into minimum, medium, close, maximum, and ultra security; and the County manages the largest psychiatric correctional facility in the State. Although most bargaining unit members work inside the two facilities, a substantial number of Corrections Officers are required to accompany prisoners to court or medical appointments, almost entirely on day shift.

The parties' most recent, 2004-2006 collective bargaining agreement ("CBA") covered calendar years 2004 through 2006. Except for bargained COLAs, it was a rollover from the prior contract. The parties have been in negotiations since December 2006 in search of a successor agreement. Their chance of success in that search probably dropped to near zero in June, 2008, when the County agreed to a new five-year contract with its Deputy Sheriffs providing for a 5% increase every year.

COMPENSATION

Positions of the parties: *The County's general wage proposal.* The County would apply to this unit the same cost of living formula it has extended to most of its other employees, whether represented or not: it would increase wages on January 1 of 2007, 2008, 2009 and 2010 by 90% of the All-Cities CPI-W (September to September), with a minimum of 2% per year and a maximum of 6%. That formula would produce a 2% increase on January 1, 2007, 2.49% on January 1, 2008, and 4.88 on January 1, 2009. In addition to those general wage increases, the County would also prospectively increase entry step pay for Corrections officers by 8% and increase the 12-month step by 4%. (In part as a consequence of the proposed increases at the base of the schedule, the County would convert the current longevity schedule—which is discussed below—from percentages of base pay to flat dollar amounts. That conversion would not reflect the proposed 8% increase in entry level pay.)

The parties agree on increases at the top of the Sergeants' schedule. The Guild accepted the County's proposal to add two new top steps for Sergeants over the course of the new CBA: Effective January 1, 2007, a step at 48 months, 3% above the current top step, and effective January 1, 2008, a step at 50 months, at an additional 3% above the 48 month step.

The Guild's general wage proposal. The Guild proposes a 5% increase on January 1, 2007, followed by a 4.87% increase on January 1, 2008, 5.13% on January 1.

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2. The size of the bargaining unit has varied substantially in the past. For example, it declined by 40-45 FTE in 2002 when the County shifted some classes of prisoners from secured detention to other programs, and it has increased as the County has increased the number of beds it rents to the State.

2009, and (the parties agree here except for a dispute over 90% vs. 95%) 95% of the All-Cities CPI-W on January 1, 2010, with a 2% minimum and 6% maximum. The Guild justifies the initial 5% increase by the flat 5% per year increases the County bargained with the Deputies from 2008 to 2012 and as a return for the County's proposed changes in discipline and video recording. It justifies the 4.87% proposal for the second year as 100% of the appropriate CPI increase and the third year proposal by reference to comps (with a nod to the County's discipline and video recording proposals).

Longevity Incentive proposals. The previous contract between these parties included a unique "Longevity Incentive" which both parties propose to amend. Here is that prior language with the Guild's proposed amendments to it underlined and italicized:

> Additional compensation added to base monthly salaries of Corrections Officers and Corrections Supervisor. Calculation of same to be on a percentage basis using the twelve-month step as the base figure for Corrections Officers hired prior to January 1, 1981, and using the start figure for Corrections Officers hired January 1, 1981. Amounts as follows:

After 6 years of service:	1%	
After 7 years of service	*2%*	
After 8 years of service	2%	*3%*
After 9 years of service	*4%*	
After 10 years of service	3%	*5%*
After 11 years of service		*6%*
After 12 years of service	4%	*7%*
After 13 years of service		*8%*
After 14 years of service		*9%*
After 15 years of service	5%	*10%*

The County, on the other hand, proposes to leave the prior language alone except for substituting slightly increased fixed dollar amounts for the currently stated percentages, thus ending the continuing escalation of the longevity incentive program—and its cost—as the base of the contract increases. The County argues that such a change is particularly important in light of the County's current proposal to increase the base step by 8%.

The increases proposed by the Guild would still leave this "Longevity Incentive" behind that provided for the Deputies; but none of the comparable jurisdictions exhibits anything vaguely like this "additional compensation" for Corrections Officers. (Spokane has a single longevity step at 10 years and Multnomah has one at 14 and one at 20.) The Guild argues that this proposal would "create a greater incentive for members to remain with" the County. But this is a cure in search of a problem as far as this record shows: as indicated below, there is currently no problem of employee *retention* —as distinguished from recruitment—in this bargaining unit.

Comparability. This is not an easy unit to determine comparables for.[3] The statutory language—"like personnel of like employers of similar size on the west coast"—is some help, but not much. It directs our attention, first, to similarity of size, and both parties take that to mean primarily population. In the easiest interest case the arbitrator must chose among employers of similar population, all inside Washington and within a reasonable distance of the employer at issue. Washington (and Oregon) interest arbitrators overwhelmingly agree that geographic proximity is important if you can get it.[4] But similarity of population and geographic proximity do not come together in this case. King County is one of the most populous counties on the west coast; and, as the Guild points out, using the traditional selection criterion of 50% -150% yields a set of counties which are *all* in California.[5] Washington interest arbitrators have traditionally rejected such proposals, and I agree that resolving an interest arbitration dispute on such a basis would render the process abstract and antithetical to traditional collective bargaining. On the other hand, size counts under this statutory language, and the only way to make size count in this case is to pay some substantial attention to at least some California counties.

The County points out, and I agree, that comparisons across state lines are always somewhat perilous. Comparisons with California jurisdictions are particularly problematic because, in part, California's property tax initiatives have rendered California assessed value (and assessed value per capita) data pretty much useless for the purpose of determining whether California counties are "like employers" in the sense of comparative wealth and ability to pay. More fundamentally, California counties are *remote* from King County. Of course the Legislature knew that basic geography when it extended the limit of possible comparables to "the west coast," and this case demonstrates the usefulness of that extension, because there are no counties of similar population closer than California. But that does not mean that interest arbitrators should completely ignore the geographical remoteness of the California portion of comparability data.

Proposed comparables. The Guild proposes three large Washington Counties—Pierce, Snohomish, and Spokane—together with Multnomah County, the largest county in Oregon, and four California counties, Riverside, Santa Clara, Sacramento, and San

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3. As Jane Wilkinson (NAA) observed in *City of Camas* (2003), "perhaps the easy ones do not end up in interest arbitration."

4. That preference reflects the underlying realities of two-party collective bargaining: no comparison is quite as compelling as "what we could get just down the block" or "what they get the work done for just down the block."

5. The magnitude of the comparability problem with respect to population is dramatically demonstrated by the Guild's observation (Post-hearing Brief at 15) that the population of the *entire State of Oregon* is only about 23,000 over the traditional 150% comparability cutoff with respect to King County's nearly 1.9 million population.

Bernardino Counties. The County does not vigorously dispute that the proper comparison here should reflect the first six listed comparators at least in part —not including Sacramento and San Bernardino Counties. The County notes that these comparators were successfully used in the mediation process leading to the parties' prior contract.

The first substantial issue of comparability, therefore, is whether or not it is appropriate to include Sacramento and San Bernardino Counties even though the work done here by Corrections Officers is done there by Deputy Sheriffs. The County argues that such a comparison would violate RCW 41.56.465, which directs interest arbitrators to conduct "a comparison ... of *like* personnel..." In response, the Guild set out to establish a record of similarity of duties between those Deputies and these Corrections Officers. As a matter of statutory interpretation the Guild has an uphill battle here. As the Guild itself points out, "It is well established that this statute requires that Counties be compared to Counties..." (Post-hearing Brief at 14-15.) But if it is well established that the statutory term "like employers" requires the comparison of Counties to Counties, it would be odd, at best, if the term "like personnel," in the expression "like *personnel* of like *employers*" permits comparison of Corrections Officers and Deputy Sheriffs.

I agree with the Guild at least to the extent that the door to such a comparison is not forever closed. The claim becomes at least colorable when the record shows that some potentially comparable employers assign to their Deputies the work which is done here by dedicated Corrections Officers. And, of course, there is a long tradition in labor arbitration of paying careful attention to what employees *actually do* and not overmuch attention to what they are called. The determinative issue for application of the term "like personnel," it seems to me, is whether or not the two groups do substantially the same work. And the record before me simply does not show that Deputies in Sacramento and Santa Clara Counties do the same work as the County's Corrections Officers. The only evidence of what those Deputies do consists of their classification descriptions, which—to no great surprise—encompass both the traditional duties of a road deputy and the traditional duties of a corrections officer. Guild witnesses testified that they perform *in and around the corrections facilities* virtually all of the duties listed in those documents.[6] But there is no suggestion in the record that Corrections Officers perform those duties in the far reaches of a large County, as Deputies ordinarily do, or that those duties (for Corrections Officers) account for the great majority of their work time, as they do for Deputies. The Guild's own witnesses agreed that Corrections Officers could not legally work as Deputies.

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6. Both California and Washington have separate certifications for police and corrections officers. The very statutory scheme on which my jurisdiction rests distinguishes, in RCW 41.56.030(7), between "(a). Law enforcement officers ..." and "(b) correctional employees ..." Moreover, about 330 of these employees *do not* get the contractual premium for firearms qualification, which is enough to make the comparison problematic.

Equally important, the record does not show that either Sacramento or San Bernardino Counties have Deputies who perform corrections work on a career or very long term basis. The record does not show whether Sacramento and Santa Clara Counties rotate Deputies through assignment to corrections on an annual basis, on any other periodic basis, or whether those Deputies commonly make long-term, career choices between assignment to corrections and assignment to the road. If the record established that a county had a group of employees assigned to corrections work and nothing but corrections work on a long-term or career basis, then it would be hard to avoid the conclusion that those were "like personnel" within the sense of the statute, regardless of what they were called. This is not such a record.[7] As far as this record shows, Sacramento and San Bernardino Counties do not have "like personnel" and are not proper comparators here.

Even apart from the issue of Sacramento and San Bernardino Counties, it would misrepresent the County's position here simply to say that the County *accepts* these six comparables. Rather, the County argues that there is no single entirely adequate set of comparables for King County, and that the best we can do is to keep in mind several perspectives, one of which is these six Washington, Oregon and California counties.

Net hourly wages. The Guild's version of "net hourly wage" is the sum or wage, employer paid retirement contribution, employer paid deferred compensation, and longevity, certification and education premiums, all divided by the scheduled monthly hours less one-twelfth of annual holiday and annual vacation hours.[8]

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7. The Guild objects that failure to make such comparisons would frustrate the statutory purpose of assuring comparison with the entire West Coast because no comparison would be possible for California Counties. But, first, not all California Counties assign corrections work to their deputies, as this record demonstrates; and, second, it is not at all clear on the face of RCW 41.56.465 whether that statute mandates comparison with a group of employers chosen to be representative of the West Coast in general (which the statute certainly does not make explicit on its face) or whether it simply sets out a *limitation* for interest arbitrators, i.e. limit your group of comparators to "like employers of similar size on the west coast." Without counting noses, I suspect that most interest arbitrators take the latter view and prefer to resolve interest disputes by reference to in-state comparables if possible. See, e.g., *Snohomish County* (Jane Wilkinson, NAA, 2007) at 10-12.

8. County Corrections personnel work eight hours and ten minutes per shift.

	Corrections Officer				Sergeant			
	5 years	**10 years**	**15 years**	**20 years**	**5 years**	**10 years**	**15 years**	**20 years**
Pierce	$32.11	$32.67	$33.11	$33.40	$39.95	$40.65	$41.19	$41.56
Snohomish	$30.24	$31.86	$32.29	$32.44	$36.77	$37.26	$37.76	$37.93
Spokane	$25.14	$28.14	$28.51	$28.89	$33.42	$37.78	$38.28	$38.80
Multnomah	$36.40	$37.19	$38.86	$40.27	$45.08	$46.07	$48.14	$49.88
Riverside	$34.42	$40.03	$40.03	$40.03	$48.16	$54.73	$54.73	$54.73
Santa Clara	$47.34	$50.82	$51.28	$51.75	$64.11	$68.82	$69.44	$70.09
Average	$34.28	$36.79	$37.35	$37.80	$44.58	$47.55	$48.26	$48.83
King	**$30.52**	**$32.78**	**$33.22**	**$34.36**	**$36.15**	**$37.59**	**$38.03**	**$39.27**
Difference	-12.30%	-12.22%	-12.42%	-10.00%	-23.32%	-26.50%	-26.89%	-24.35%

But the County argues that these numbers reflect—and reflect quite substantially —differences in how Washington, Oregon and California deal with public employee retirement and "certification." Stripping out those factors along with education premiums, the County argues, the comparators look more like this, depending on whether the Guild's proposal or the County's is reflected:

	Corrections Officer						Sergeant				
	Start	5	10	15	20	25	Start	10	15	20	25
Average of comparables	25.72	33.23	34.67	35.25	35.69	36.04	36.16	44.29	45.01	45.56	46.02
County's Proposal	25.57	33.54	35.98	36.43	37.24	38.10	36.93	44.19	44.19	45.18	46.21
difference	**-0.6%**	**0.9%**	**3.6%**	**3.2%**	**4.2%**	**5.4%**	**2.1%**	**-0.2%**	**-1.9%**	**-0.8%**	**0.4%**
Guild's Proposal	24.99	35.42	39.14	41.01	41.93	42.89	40.22	47.75	50.02	51.14	52.31
difference	**-2.9%**	**6.2%**	**11.4%**	**14.0%**	**14.9%**	**16.0%**	**10.1%**	**7.2%**	**10.0%**	**10.9%**	**12.0%**

The spread between the two tables is obviously substantial. The difference is a product, in part, of the parties' differing proposals to change the "longevity incentive" (discussed immediately below); the rest of the difference rests on the Guild's inclusion —and the County's *ex*clusion—of retirement benefits and certification and educational premiums.[9]

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9. In the best possible case, both parties in an interest arbitration "show all their (continued...)

The County argues that the public retirement systems in Washington, Oregon and California are so different as to defy comparison. Oregon and California allow retirement contribution "pick-up" by a public employer, which Washington does not, and there are structural differences in retirement funding between Washington and Oregon or California. But as the Guild points, out none of those distinctions makes much difference from the employee's point of view (the statute compares benefits, not costs); and I agree that the inclusion of employer retirement contributions was proper.

The Guild also included certification and education premiums in its numbers; and there the argument falters. This brings us to a systematic quandary in making wage comparisons: employers commonly offer premiums to employees which only some of the employees avail themselves of, so how are we to address those factors in making cross-employer compensation comparisons? Education and advance certification premiums are obvious examples. One solution is to establish what amounts to a "close enough" trigger for treating that premium as if it applied universally. For example, in *Washington State Patrol and WSPTA* (Lankford, 2008) at 14, N20., I found, "The Association uses an 80% cutoff, i.e. a benefit received by 80% of the unit is treated as if it were received by all, and a benefit received by less than 80% is treated as if it were received by none. * * *" That was a reasonable trigger point. But the record here does not show what percentage of employees qualify for the respective education and certification premiums; and it appears that those premiums make a substantial difference in the compensation totals.[10]

Alternative comparables. Although the County does not challenge the relevance of the six comparables that were used in the successful mediation of the parties' prior agreement, it insists that that set of comparables is so marginally satisfactory that other comparisons should be considered too. Washington interest arbitrators have been notably reluctant to consider California comparables unless driven to that extremity. That

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9. (...continued)
work" in such an analysis so that an interest arbitrator can adjust for factors that he or she finds to be improper, and the parties critique one another's data and calculations on the record and respond to those criticisms. This is not such a case. Although the parties raised some particular objections to one another's data during the four day hearing, the Guild's Post-hearing Brief does not take issue with the accuracy or (modest) transparency of the County's numbers; while the County notes in general that it "has been unable to validate many of the Guild's posted rates." (Post-hearing Brief at 81.) (The County argues that the Guild appears to have used 8 hours a day—rather than 8.17—for daily leave deduction.)

10. As the County points out, it would be odd to base King County *base* compensation rates on increased training that has not been acquired for P.O.S.T. certification. On the other hand, the County wonders about inclusion of the firearms qualification premium which, according to the Brief, is received by almost half of the bargaining unit. The answer to that one is that it falls far short of any reasonable "close enough" trigger.

reluctance is based not only on distance, but also on the dissimilarities between Washington and California economic climate and public sector finance and retirement funding and on the fact that the important comparison criterion of assessed valuation is not meaningfully available with respect to California public employers. Perhaps an interest arbitrator who has a clear and compelling analysis of one set of comparables should leave well enough alone, even if that set necessarily includes California employers. But this is not such a case. Here I have one set of numbers that includes unsupported reference to education and certification premiums and another set of numbers that does not include retirement benefits. Under those circumstances it is not unreasonable to consider an alternative perspective.

The alternative perspective provided by the County focuses on proximity and leaves out the distant California employers. That would not be reasonable as a primary comparison because, as indicated above, King County has no population peer in Washington or Oregon; but it is useful as a second and rather distorted perspective. Here are the County's numbers—not reflecting retirement income—comparing the County's proposal with the average of Pierce, Snohomish, Spokane and Multnomah Counties:

	Corrections Officer						Sergeant				
Years	Start	5	10	15	20	25	Start	10	15	20	25
Average	24.09	31.65	32.85	33.58	34.13	34.56	34.63	41.31	42.22	42.91	43.44
King	25.57	33.54	35.98	36.43	37.24	38.10	36.93	44.19	44.19	45.18	46.21
Difference	5.8%	5.7%	8.7%	7.8%	8.3%	9.3%	6.3%	6.5%	4.5%	5.0%	6.0%

Not only is the County substantially ahead of the Northwest average at every period of service, the County leads this pack in every particular except that Pierce County is slightly higher for the first and second Corrections Officer steps and Multnomah County is slightly higher for a 20 year Sergeant.

Ability to Pay. Two features of the County's financial condition stand out. First, the County is fiscally sound. As the Guild is quick to point out, its current adopted budget includes over $17M in Salary and Wage Reserves and another million of Salary and Wage Contingency Fund. Since 2005, King County has been rated AAA by bonding services, based in part on the County's determination to maintain a 6% UFB reserve and a $15M "rainy day" fund.[11] (Reducing the UFB below 6% for any substantial period would probably reduce the County's credit rating, and a one notch decrease (to AA+) would increase its borrowing costs by about .2%.)

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11. The "rainy day" fund is aptly named, since it is restricted, for the most part, to potential costs of natural disasters. The Guild notes that the County has not maximized its property tax income and taxed at only about 60% of its legal limit from 1998 through 2001.

Second, it comes as no surprise that the County has suffered a substantial budgetary shortfall and resulting program reductions in 2009. The County announced stringent hiring controls in March of 2009. Overall, the 2009 deficit is about $93.4M. The magnitude of the impact of the "current economic downturn," as this period is now frequently called, on the County's General Fund is perhaps best illustrated by this eloquent fact: The decrease in the General Fund over the *four years* from 2002 through 2005, following 9-11 and the bursting of the dot-com bubble, was about $137M, and the *single year* deficit for 2009 is over $93M. The projected budgets for 2010 and 2011 show deficits of $40M and $60M respectively.[12]

For an interest arbitrator, no indicator of economic distress is more compelling than layoffs. The term "layoff" in this context has at least three distinct senses, which are all illustrated in the case at hand: the County's 2009 Executive Budget included the elimination of 390 "positions"—sometimes loosely referred to as "layoffs"—but the majority of those reductions were accomplished through attrition and leaving positions vacant.[13] 126 existing employees received October, 2008, notices of possible layoff at the turn of the year—a somewhat more concrete sense of "layoff"—and 63 employees actually lost their jobs on January 1, the most brutal sense of "layoff," sometimes referred to as "bodies out the door."

In addition to those 63, another 134 County employees are on notice that their positions are temporarily funded by "one time" money which will run out at the end of June unless the County receives some assistance from the Washington Legislature. These employees are tied to services that the County could legally eliminate or reduce. The County has spotlighted the financial precariousness of those services by funding them with $8.2M which was set aside in the 2008 budget as "out-year deficit reserve." The Guild points out that relief from the State Legislature is possible, and, of course, that was the whole point of painting these programs as occupants of a fiscal "lifeboat."

The County has also substantially shut down many of its facilities for ten days during 2009 and bargained its way to a ten-day "furlough" agreement for most

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12. The County argues eloquently and convincingly that, in addition to the impact of the current economic downturn, its overall budgetary problems are "structural," i.e. the Legislatively mandated income limits are inadequate for the required expenditure levels.

13. I do not mean to trivialize the consequences of leaving positions vacant. When the positions at issue would otherwise be occupied by public servants providing safety net social or health services, for example, leaving them vacant can have a substantial and immediate impact on the community. Unfortunately, the County's *discretionary* expenses are largely in public health, human services, and parks.

employees.[14] That amounts to the equivalent of about a 3.85% reduction in 2009 wage costs. But, or course, that wage reduction comes at the cost of a proportional reduction in services; and, from a services point of view, the furlough deal amounts to a form of borrowing, because the furloughed employees are compensated by ten days of "furlough replacement time" during 2010 and 2011.

None of these layoffs, in any sense, has come from the Corrections bargaining unit, of course, since corrections is one of the least elastic legally mandated functions of a county. In fact, systematic declines in jail census, rather than occasioning layoffs in the corrections workforce, actually allow the County to rent unused beds. For example, in 2009 the State's contract with the County increased from 220 beds to 445, adding about $7M to the Department's gross income. That outside income came with some operational costs—mostly in the form of about $2.5M in labor costs for Corrections Officers. That left a net gain for the County of about $4.5M. (The current prisoner average population is down by about 300, which may make additional beds available to contract out, but the County has not yet identified the reason for the decrease and therefore cannot yet count on its continuation.)

Cost of Living. Employees in this bargaining unit have received a series of cost of living increases—and no other increases—since 2003; and all of those have been at less than 100% of the CPI. It would be arithmetically odd if that cumulative history did not leave these employees behind the increasing cost of living over that period.

The Guild points out that the CPI-W (all Cities) numbers agreed to in the parties' prior contract would produce these increases if extended into this one:

> 2006 CPI increase of 1.7% —> 2007 increase of 1.62% (at 95% of the CPI)
> 2007 CPI increase of 2.8%---->2008 increase of 2.66% (at 95% of the CPI)
> 2008 CPI increase of 5.4%---->2009 increase of 5.13% (at 95% of the CPI)

The Guild notes that this cumulative 9.9% increase in the cost of living over that three year period would outstrip the County's proposed 9.37% increase for that period.

Recruitment and Retention. Hiring competition for Corrections and Police positions has never been sharper or the market more open, since the compensation factors for many employers are now set out side by side on web sites such as LawEnforcement.com and PublicSafetyTesting.com (which the County uses as part of its recruitment and screening program). The County devotes substantial resources and personnel to recruitment and has hired more that 150 Corrections Officers since 2006

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14. Twenty-seven unions represented the affected employees, and all twenty-seven agreed.

—but only about 17 in 2008—out of more than 1800 applications.[15] On the other hand, at the time of the interest arbitration hearing, the County was trying to fill 39 Corrections Officer positions, some of which had been open for over a year; and the County has had active open positions since at least 2006. The County's proposal to increase the bottom end of the pay schedule is eloquent testimony to a serious recruitment problems: The County argues that its recruitment problems largely result from particularly low base steps. While the Guild does not entirely disagree with that claim, it argues that the proper remedy is to raise the entire schedule rather than focusing on the base alone.

The record shows an admirable history of employee retention; and the County's 2008 *gross* turnover rate of 5% in this bargaining unit compares favorably with the Corrections Yearbook's national average of about 17%.[16] Even the recent high of 7% "all causes" attrition in 2005 was modest.

Internal comparability. Both parties argue that internal comparability should be a significant factor in this case, although that claim takes them in very different directions. The County argues that I should give great weight to the fact that the vast majority of its many bargaining units—and its unrepresented employees—have all accepted the traditional COLA formula which the County offers in this case: 90% of the prior CPI with a minimum of 2% and a maximum of 6%. The Guild, on the other hand, points to the Deputies' recent contract and its 5% increases every year from 2008 to 2012. (The Guild also points to the higher compensation rates for the County's 32 Corrections Program Specialists (and supervisors), who work just off the floor evaluating the placement of inmates, work that was once done by Corrections Officers.[17]) That new Deputy Sheriffs' settlement, more than any other economic consideration, may be what drove these parties to interest arbitration.

Interest arbitration serves the public interest best to the extent that it focuses on the same things that drive or frustrate settlements in two-party collective bargaining. Unless there are acute problems of recruitment, public employers almost always hope to sell the same compensation package to all their various bargaining units. And

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15. It costs the County over $12,000 to train a new Corrections Officer; and when backfill costs are added that number doubles.

16. The Guild claims that some Corrections Officers have gone to Pierce County because of higher pay and lower costs of living; but the Guild does not identify any Corrections Officers who have left County employment and moved to Pierce County. In fact, no witness for either party identified a Corrections Officer who has left the County to be a Corrections Officer elsewhere.

17. The Guild argues that these employees are substantially overpaid, so they are not compelling internal comparables. The Guild also points to the new Seattle Police Guild contract which the Guild characterizes as providing a 36% increase over four years.

Corrections Officers have sought "parity" with Police Officers (and Deputies) as long as there have been two separate professional certifications for those two related functions. In the case at hand, within the memory of many of the Corrections Officers the jail was operated by Deputies rotating through that assignment; and the County continued strict pay parity until about 1982 or 1983. That history is typical of the specialization of corrections work and its separation from police work in general.

Nonetheless, there is a limit to the usefulness of comparing *increases* in compensation, as distinguished from *rates* of compensation.[18] Those two sorts of comparisons cannot be mixed without running into serious arithmetic problems. Even though *increases* in compensation is an appropriate "other factor" to be considered under the Washington Statute, that Statute directs an arbitrator's attention to rates of compensation. In a nutshell, the problem is this: if we try to keep rates of compensation comparable, then it may occasionally be necessary to make unusually large (or small) increases when the system has gotten out of whack. If, on the other hand, we try to keep *increases* more or less the same, then whatever imbalance there may be in compensation rates, that imbalance is set in stone and cannot be redressed because the goal is for everyone's compensation to increase at the same rate. That second alternative is inconsistent with the language and spirit of the Washington Statutory scheme. So a comparison of *increases*, rather than of comparable pay rates, should not be a primary factor, regardless of whether it is urged by an employer or by a union.

The Guild also argues that the County came up with the funding for an increase of 25% over five years for the Deputies and can hardly be heard to cry poor when it comes time to deal with the Corrections staff. I certainly agree with the Guild that the deal with the Deputies suggests an ability to pay substantial increases. But there are three important limits to that conclusion: First, the Deputies' agreement was reached in June, 2008, well before the November economic collapse, when the national and local economies were humming merrily along. Second, the pay increase for the Deputies bought the County civilian oversight—a famously expensive contract concession in police contracts—and a change in insurance language. And third and most significantly, this record does not show the comparability situation the County found itself in when bargaining with the Deputies. Deputy Sheriffs, too, have access to interest arbitration, and nothing in this record suggests that the County's deal with the Deputies was not reasonable in light of what both of those parties could guesstimate as the range of possible results in that forum based on the Deputies' comparability.

Discussion. Four features of the record are compellingly clear: First, there is no dispute about the County's ability to fund a substantial compensation increase, even extending to the increase proposed by the Guild. Second, despite that ability to pay, it is

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18. Appeals to internal comparability usually turn the discussion from a comparison of rates of compensation to a comparison of *increases* in rates.

clear that the County faces extraordinary limitations on its ability to continue important programs in health and social services—the non-mandates portion of its service package—in the current economic climate. Sixty-three actual "out the door" layoffs, 134 more on notice of precarious funding, and ten days of partial service shutdown (borrowed from down-stream years operations) all speak more eloquently than any budget analyst. And in terms of budget analysis, the County now faces a single year General Fund decrease that amounts to over two-thirds of the total decrease over the *four years* from 2002 through 2005. Third, there is no substantial sign of a retention problem for Corrections staff; but there is no dispute that the County has continuing recruitment problems. (The Guild does not really argue that the base is not too low; instead, it claims that the *entire schedule* is too low.) Fourth, before the beginning of the current economic downturn, the County entered into a very expensive contract with the Deputies (partially in return for civilian oversight and insurance language); and even the Guild does not claim that comparability data can now be put together to justify extending a similar contract to Corrections staff.

Against that fairly clear background, I have comparability data that shows that a substantial part of the Guild's claim of a compensation gap rested on comparison with two California Counties which have no dedicated corrections staff, and the rest comes from the inclusion of very distant California Counties. There is no way to minimize the significance of compensation rates in those Counties, because without them that data comparability picture would be entirely composed of employers very much smaller than King County. But even with Riverside and Santa Clara Counties in the mix, the Guild's picture of comparability depends substantially on education premiums and certification premiums which, as far as the record shows, a substantial portion of this unit may not be entitled to.

On the other hand, the comparability data show clearly enough that the Guild is too far behind to accept the same COLA deal that the County worked out with its non-interest-abritrable employees. Rather, I will adjust that formula in two respects, both of which have precedents in the County's recent contract history.[19] Every January first, in 2007, 2008, and 2009, the County will increase the salary schedule by 95% (not 90%) of the prior September to September change in the All-Cities CPI - W Index, with a minimum of 3% and a maximum of 6%. This is in addition to the two additional steps for Sergeants (which the parties agree to) and the 8% increase in the entry step and 4% increase in the 12-month step for Corrections Officer proposed by the County. The Longevity Incentive language of the contract shall remain unchanged, which means that the entry and 12-month step increases will significantly affect longevity pay.

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19. The Guild's most recent CBA was 95% rather than 90%; Transit employees have a 3% floor.

The County vigorously argues against blanket retroactivity for individuals who passed through the bargaining unit during the very long bargaining and interest arbitration period leading up to the new contract. In reply, the Guild cites (Post-hearing Brief at 44) my prior award in *City of Kelso and Kelso Police Officers Assn* (2001):

> But if interest arbitration awards are not commonly retroactive to the expiration of the prior agreement, that creates an obvious pressure to initiate the interest arbitration process far enough in advance to avoid the retroactivity problem, regardless of whether two-party bargaining has really been exhausted or not. Second, leaving long periods between collective bargaining agreements, and without orderly wage and benefit provisions, does not seem to serve the stated legislative intent and purpose of the statute: "to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes."

But the County offers a substantially new argument on this issue: Not only can former employees be hard to find, but RCW 63.29.150 to 63.29.190 provides that wages unclaimed for more than a year are presumed abandoned and eventually escheat to the State. I agree—and the Guild may agree as well—that there is no point in transferring County funds to the State as part of this award. The award shall apply retroactively, therefore, to current employees and to former employees for whom the County has a freshly confirmed current address. The County shall attempt to establish freshly confirmed current addresses by sending out notices of the award within 30 days to whatever addresses it has for past employees and giving those individuals 90 days to inform the County of their current address. (The Guild may also take steps to encourage former employees to file a current address with the County.) Any former employee for whom the County has not freshly confirmed a current address by the end of that 90 day period is not within the scope of this Award.

MANDATORY OVERTIME

The County's current staffing levels require many posts to be filled on overtime. The Department maintains a voluntary overtime list; but that list frequently falls short. The County has some discretion about staffing levels at the RJC; but KCCF operates under a consent decree[20] following a federal suit over inmate safety, so there is less elasticity in its staffing requirements.[21] By policy—which became a LOA during the interest arbitration hearing—the County does not assign a Corrections Officer to

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20. Technically, the County must abide the detailed staffing minimums of the 1998 "Hammer Agreement" with the ACLU which superseded the terms of the consent decree.

21. For example, the Regional Justice Center—which is designed along quite a different corrections philosophy than KCCF, and which is not operating under the consent decree—has the option of limiting mandatory overtime to four hours by locking down cells.

mandatory overtime a second time within a "ten-day wheel" unless there is no other way to fill the slot. The Guild proposes to provide a structural disincentive for staffing at a level which leaves the County with no alternative to frequent mandatory overtime:

> Effective January 1, 2010 any employee required to work mandatory overtime within ten (10) days of previously working mandatory overtime shall be paid double time for such mandatory overtime hours worked within ten (10) days of previous mandatory overtime.

What the Guild branded as "the plague of mandatory overtime" is an old issue between the parties. The Guild has vigorously pursued every avenue—including possible County or State legislative action—in search of a remedy for the problem of excessive mandatory overtime, all without success. Although the County suggests that the worst days are now in the past, the Director of the Department issued a memo to all staff in October, 2007, noting "we see the level of mandatory overtime reaching levels never seen before," and the County Executive's 2008 budget message noted that Corrections Officers "need our help" and recommended an additional 32 positions, which the Council eventually approved. (The Executive planned to add 26 more positions in 2009.) On December 5, 2007 the Facility Commander for KCCF issued a general memo thanking the entire staff for their work after *the entire third shift* was required to stay over for mandatory overtime:

> Especially 3d Shift. You are assigned to the smallest shift, and you unfortunately have to backfill the largest shift along with Court Detail in the morning. You have been tasked with working mandatory overtime for months-on-end, and yesterday morning was the pinnacle. I know that on many occasions, the 10-day wheel is moot, based on operational need. I know that sleep, family matters and other personal issues are constantly put aside for the "operational need." I know that yesterday, ten officers were mandatoried the day before, and nine other officers were mandatoried just the day before that.

The problem has not gone away: There were a bit over 32,500 hours of mandatory overtime in 2008.[22]

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22. The County notes that data seem to show the situation is improving; but an "improving" situation reflects, in part, just how bad it was at the worst. In early January of 2007, for example, 14 Corrections Officers worked mandatory overtime two days in a row and three of those worked mandatory overtime three days in a row. On Christmas Day, 2007, 29 Corrections Officers were held at work for mandatory overtime; and that followed Christmas Eve, when 14 Officers were required to work 16 hours. In January of 2008 the entire third shift at KCCF was again held over for mandatory overtime.

I will not detail the volumes of testimony and exhibits bearing on this issue, because there is no significant dispute in the record before me that the County's dependence on mandatory overtime is not in the public interest. There are two, equally compelling bases for that conclusion beyond the traditional reference to "morale."[23]

First, the use of such frequent and repeated mandatory overtime is neither safe nor efficient. *No County witness contested that fact.* The most dramatic example of *acute* safety concern involves armed Corrections Officers accompanying prisoners on medical or court appointments. About 250 members of this bargaining unit get the contract's premium for firearms qualification. What public observer in a King County courtroom would fail to be outraged to find that the armed Corrections Officer responsible for the security of a potentially violent prisoner was functioning on four or five hours' sleep in the last 28 hours? (I.e., two, eight hour shifts, an eight hour break less transportation time, and mid-way through the next regular eight hour shift.) There is no dispute at all that it should be "a health and safety priority to reduce the need for mandatory overtime to a minimum..." (quoting the County Executive in 1998). Moreover, within the walls of the corrections facility, it makes no sense to ignore the obviously reduced efficiency and effectiveness of staff in such situations.[24] As the Guild points out, the problem shines forth from the Department's own disciplinary records: the second most common alleged offense is sleeping or inattention on duty, and the third is answering back or bickering with superior officers.[25] The Commander of the KCCF testified that excessive mandatory overtime causes concerns about the reduced attention to duty of fatigued Corrections Officers. To repeat, there is no substantial dispute in the record before me—or in common experience—that frequent mandatory overtime cuts a Corrections Officer's patience and tolerance down to a bare minimum. Apart from the inefficiency of such an operation from the County's point of view, neither the prisoners nor the prisoners' security are well served by having Corrections Officers work under such conditions.

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23. Much of the discussion of mandatory overtime, in the many studies in the record, is couched in terms of "employee morale." (For example, a 2006 study by the National Institute of Corrections begins with the observation that "The impact of mandatory overtime on the workforce at KCCF cannot be underestimated." and ends with the conclusion that "This is one of the most significant factors affecting employee morale.") Employee morale is certainly important, but the record here provides bases for resolving this issue which are more concrete than that.

24. Employees sometimes offer the lame "up-too-late-short-of-sleep" explanation for unacceptably poor performance. And employers inevitably reply that it is the employee's obligation not to do things off duty that interfere with his or her ability to perform while on duty. Here, the County's assignment of overtime is its own enemy of employee performance.

25. The very most common disciplinary allegation involves absence or tardiness after an employee's leave balances have all been used up.

Second, not only is such dependence on mandatory overtime unsafe and inefficient, it is cruel. In addition to the increased employee stress level caused by the uncertainty of work schedules, and the continuing frustrations of attempts to schedule one's non-working life, frequent mandatory overtime deprives the employee's entire family of his or her dependable presence. It represents missed soccer games and birthdays and band concerts. It represents, as the current KCCF Commander put it, a potential for worrying about who will put the dog out just when an Officer should be paying attention to a task at hand. In a professional field already characterized by one of the highest divorce rates, such frequent mandatory overtime is, as the Guild says, inhumane.[26] The County can do better than this by its employees.

The County's argument against the Guild's proposal is not compelling. It appears that regardless of the authorized size of the corrections workforce, the County attempts to optimize staff size: i.e. it tries to hire just enough Corrections staff to avoid having overtime costs exceed regular staffing costs.[27] In that calculus there is no input for concerns over the safety, efficiency or cruelty of frequent mandatory overtime. In the light of that uncontested record, the County's argument that "MOT is unavoidable" is not persuasive. On the contrary, it is appropriate to supply an economic motive, as the Guild proposes, an economic disincentive to staff at a level that requires too-frequent mandatory overtime.[28]

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26. Overall, the record shows that the County has taken several steps to reduce the impact of excessive mandatory overtime. But it has occasionally failed in that regard. For example, in September of 2008 a Corrections Officer was required to stay on the clock after the end of her second, mandatory full shift, in order to complete a regular report, thus cutting into the eight hours remaining before she had to report for her next regular shift.

27. The County's staffing model has not changed substantially in this regard since 1999 when the County Auditor reviewed the period from 1994 through 1998 and found that "To cover staffing needs at the jail, DAD commonly uses overtime instead of increasing the number of corrections officers." County witnesses testified that the County Auditor agreed with their staffing model, which is a bit odd in light of the Auditor's conclusion in 2006—in answer to the question, "Is overtime more expensive than hiring full-time staff?"—that increasing full-time staff is very narrowly *less* expensive than the total cost of covering a reasonably predictable vacancy on overtime.

28. The County also argues that double time for over-frequent mandatory overtime may be a disincentive to *volunteer* for overtime; and that is a serious potential down side of the Guild's proposal. But in that case the data will show a proportional drop in voluntary overtime and increase in mandatory overtime and the County will be well positioned to end the double time disincentive, through interest arbitration if necessary, or to consider other alternatives such as double time for *all* overtime within the ten day wheel, whether voluntary or mandatory.

The County points out that mandatory overtime within the ten day wheel for the first quarter (almost) of 2009 has declined to just about 4% of the total mandatory overtime for that period, and most mandatory overtime assignments during that period have been for four hours or less. But this provision will not take effect until January 1 of 2010, and if the problem really has been solved on a long term basis by that time then the double time provision will have no significant financial impact on the County.

At the other extreme, if the problem is not solved even after the new double-time language goes into effect, the Guild always has the option of asking a subsequent interest arbitrator to make excessive mandatory overtime cost however much it takes to end the County's dependence on excessive mandatory overtime.

The interest arbitration award includes the Guild's proposed language on mandatory overtime set out above.

ARTICLE 3, C – DISCIPLINE

In 1988 the parties adopted a practice of delaying the imposition of suspensions until after the resulting grievances have been resolved. (The parties disagree about whether that agreement also extends to a Letter of Reprimand, which has the effect of foreclosing special assignments or training for a year.) The County proposes to end that practice by adding a final sentence to this section:

> Discipline, including but not limited to suspending, demoting, or dismissing employees for just cause; provided that where a transfer is intended as a disciplinary sanction, it is subject to the Just Cause requirement. Discipline shall be imposed upon final decision, regardless of whether or not the employee or Guild grieves said discipline.

The County points out that the current agreed practice has led to shocking results such as a three-day suspension from 2005 which is still pending in the grievance process. And the Guild quite frankly admits that it automatically grieves every suspension. But nothing in the record explains why the County cannot move such a grievance through the process in an orderly and reasonably expeditious manner.[29] The County claims that it has been hard to schedule grievance hearings; but it does not explain why it does not simply do it, nor does the County claim that the language of the grievance provisions deprives it of the authority to move through the steps of the process. Not counting time for responses from the County, the existing grievance language gives the Guild ten working days to move a grievance from Step 1 to Step 2, ten working days to move it on to Step 3,

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29. The Guild argues that the County is so short-staffed that it is not genuinely eager to actually enforce a suspension.

and 30 days to request arbitration.[30] If we add five working days per step as a reasonable time for responses from the County the resulting picture is fairly typical of public sector grievance timelines and certainly does not allow a 2005 grievance to be unresolved four years later.

One of the first rules of thumb for interest arbitrators in dealing with language —i.e., non financial—proposals is the time-honored "If it ain't broke, don't fix it." A corollary to that rule is that interest arbitrators should generally be unwilling to change existing language in order to help a party that has not taken reasonable steps to help itself under that language. In this instance, I cannot tell whether or not the existing language "is broke" because the record does not show that the County has made a reasonable effort to make it work. The County's discipline proposal is not part of the Award.

VIDEO RECORDING

Both corrections facilities are equipped with cameras which are monitored in the control rooms. The parties dispute the County's right to hasten the addition of video recording for those camera systems. The County proposes this addition:

> Video Cameras: to enhance the utility of video cameras, the Department may add a recording capability to video cameras in all facilities. Video recordings shall only be reviewed in connection with a specific concern or a specific incident. An employee who is the subject of an investigation shall be allowed to privately view the video with a Guild representative prior to his/her interview concerning the alleged misconduct.

The Guild proposes to postpone resolution of the recording issue:

> Video Cameras: Recognizing the immediate need to address the County's understaffing issues, ongoing mandatory overtime crisis, need for careful planning of any video recording program, the substantial cost of implementing and operating video recording, and other immediate issues facing the County and the Guild, the parties agree that no video recording will be implemented in any facility where Guild members work during the term of this Agreement. The parties agree to meet upon reasonable request during the term of this Agreement to discuss video recording. The County may propose implementation of video recording in the negotiations for a successor agreement. The parties agree that if [any] video recording is implemented at some time in the future (1)

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30. Like most grievance language, there is a limit here on *the union's* opportunity to contest each level of decision, but there is no stated limit on *the employer's* opportunity to respond except that failure to respond within stated time limits allows the Guild to advance the matter to the next step. The Guild's General Counsel frankly testified, "I let it sit." Of course he does. But that obvious gambit has an equally obvious and adequate response: Move it along.

Video recordings shall only be reviewed in connection with a specific concern or a specific incident, (2) An employee who is the subject of an investigation shall be allowed to privately view the video with a Guild representative prior to his/her interview concerning the alleged misconduct and (3) No employee will be disciplined based solely on a video recording.

Those proposals present two principal issues: First, video recording now or later? And, second, shall discipline be allowed "based solely on a video recording?"

In April, 2007 the County retained a consultant to evaluate its existing video equipment and the process toward optimizing the use of video equipment. The consultant found 371 existing cameras at KCCF and 76 existing cameras at RJC; and it recommended an additional 263 and 189 additional cameras at those respective facilities along with the gradual introduction of recording capability at both facilities. As the initial step in that direction, the County has tentatively funded the addition of 69 new cameras at KCCF and 45 new cameras at the RJC. All these new cameras will come complete with a recording feature, in addition to which recording would be added to eight previously existing cameras at KCCF and to two previously existing cameras at the RJC (all covering areas where female inmates interact with staff). These additions do not come cheap. The budgeted funding for that first step amounts to about $3.1M ($210,000 for design, $2.5M for construction and equipment, and almost $400,000 for administration). The Guild argues that such funding should be devoted to pay increases; and the County points out that it "can be a bargain compared to the cost and risks of expensive inmate lawsuits."

The County points out that at least five of the comparable counties make extensive use of video cameras (Riverside did not respond to inquiry), and four of those five make use of recording—Pierce County does not have recording capability—*without* any specific procedural limitations on the potential disciplinary use of those recordings.

It is pretty obvious that Officers reviewing the input of 447 existing cameras (371 + 76) in real time have no chance of seeing everything the cameras see.[31] Moreover, those Officers currently cannot go back and look again, cannot slow down what they are watching, and cannot call for a second opinion or ask the subject Officer (or prisoner) for his or her explanation of what *seems* to be happening on camera. The Guild's suggestion that the current, unrecorded system is equal to a recorded system is simply not credible.

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31. There is also some potential protection for staff in the prisoners' inevitable realization that they are being recorded. Some Guild witnesses wondered whether prisoners know that there is currently no recording, but prisoner populations are notoriously knowledgeable about administrative details far smaller than that.

Recordings can potentially help defend corrections staff from unfounded prisoner complaints as well as uncover employee misbehavior.

The Guild resists the recording proposal on the grounds that the current system is adequate. But the County quite compellingly points to the conviction of five male staff for sexual misconduct with female prisoners between 2000 and 2005. The ultimate goal of video surveillance and recording is not so much to catch those who engage in such misconduct as it is to prevent the misconduct in the first place. The Guild does not defend such employee misconduct, of course; but it argues that cameras can sometimes miss important parts of the story, including particularly the accompanying audio (which the cameras do not report or record). The County does not argue that the contemplated incremental move to recording is a perfect solution, but only that it is an improvement ("80 or 90% of a loaf is better than none"). I agree. On the basis of this record the County's argument is compelling: there is no good reason to wait until another contract to put the parties' agreement about video recording into effect.[32]

That leaves the Guild's proposal for a third protection: "No employee will be disciplined based solely on a video recording." My hesitation in adding this protection is that it seems to be encompassed in #1: "Video recordings shall only be reviewed in connection with a specific concern or a specific incident." It seems to me that there could be situations in which the basis for the County's initial concern (which led to the review), together with what shows up on the tape, would be an adequate basis for discipline. The addition of the proposed #3 seems to mean that discipline would require (1) the basis of the initial concern, (2) what shows up on the tape, and (3) something more. But a basis of inquiry plus the content of the tape at least *could be* an adequate basis for disciplinary action in some instances. The award will include the language proposed by the County.

PERSONNEL GUIDELINES

The County proposes to add a new Section H in the Management Rights Article:

> Unless specifically negotiated otherwise or contradicted by a specific provision of this Agreement, the 2005 King County Personnel Guidelines shall cover all employees and classifications in the bargaining unit.

In this regard, the County has won the agreement of all of its employee unions except the Guild, the Juvenile Detention Guild, and the Uniformed Command Association

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32. The Guild's resistance to video recording in corrections facilities may be similar to postal employees' resistance of automation or longshoremen's resistance of containerized freight.

(representing the 13 corrections Captains).[33] The County argues compellingly that it is not practicable to administer such a large workforce without a reasonable backbone of procedural uniformity. The Guild argues that it has not had the time to address the proposed change to the 2005 Guidelines; but the proposal has been at large since 2004.

The Guild offers four specific objections to the Guidelines: First, the Guidelines proclaim on their first page, in very large type, that the "County retains the right to modify the policies and procedures in these guidelines from time to time with or without notice." I agree with the Guild that the County's proposed language for this CBA could lend itself to a construction waiving the Guild's right to bargain over any sort of changes in working conditions that might result from changes in the Guidelines. That concern is easily remedied by the addition of the expression, "...as they were in effect on March 16, 2009" (the first day of the interest arbitration hearing). Second, the Guild objects to the Guidelines' treatment of promotions; but the County's Post-hearing Brief (at 103) offers to except the promotions portion of the Guidelines. Third, the Guild objects to the Guidelines' failure to specify that the EAP is confidential. The County replies that EAPs are necessarily confidential, but it does not explain why the new Guidelines strike out "confidential" in Section 13.5: "The Employee Assistance Program (EAP) is a free, ~~confidential~~ service to all employees and their families." Perhaps it is intended as elimination of surplusage, but since the County does not explain it and I do not understand it clearly, I will again specifically except that change from the prior version of the Guidelines. Finally, the Guild takes issue in general terms with the performance appraisals section of the Guidelines; but the County points out that the Management Rights section of the CBA, at Article 3, B, reserves to management the evaluative function. I therefore award the following language:

> Unless specifically negotiated otherwise or contradicted in a specific provision of this Agreement, the 2005 King County Personnel Guidelines in effect on March 16, 2009 shall cover all employees and classifications in this bargaining unit except with respect to promotional procedures and with respect to the Guidelines deletion of the word "confidential" in section 13.5 describing the Employee Assistance Program

HOLIDAY LEAVE BANK

The parties' current contract and practice allow an employee to keep a holiday hours bank separate from his or her vacation bank. The holiday bank has no accrual maximum; and the developed practice allows employees to actually *take* a day off on a holiday by charging that day to vacation time and still bank the holiday hours in the unlimited holiday leave bank. The County's unfunded liability in the holiday bank is substantial, amounting to over 49,000 hours with a current value of over $1.3M. 130 members of the bargaining unit have over 100 hours in their holiday bank, 41 have over 300 hours, 19 have over 500

33. Deputies have separate regulations under an independently elected Sheriff.

hours, and two employees have over 900 hours (about 22 weeks) of banked holiday time. In the three pay periods just before the interest arbitration hearing, the County paid out over $71,000 in holiday bank cashouts. The County proposes to eliminate the holiday banks by adding this language to Article 5, Holidays:

> **Section 2. Holiday Pay.** All employees shall take holidays on the day of observance unless their work schedule requires otherwise, in which event they shall either be paid for the holiday or, if mutually agreed to by the employee and management, may be scheduled the same as a vacation day. All leave accrued under this section will be administered through the vacation plan (including maximum accruals provided in Article 6, Section 1[NB]).
>
> **Section 2b. Existing Holiday Banks.** Effective December 31, 200[9] employees will have their holiday bank hours converted to vacation hours. Any holiday bank hours in excess of the vacation accrual maximum identified in Article 6, Section 1 shall be grandfathered for future use for that employee (although the employee shall not accrue any additional hours). Each subsequent December 31st any remaining holiday bank hours shall again be converted to vacation hours and any remaining hours (in excess of the vacation accrual maximum) shall remain grandfathered for future use. This provision shall continue until all holiday bank hours have been converted to vacation. PERS I employees must use all their accrued holiday time prior to retirement.
>
> ~~Section 4. Holiday Time Accrual. An employee's paycheck will reflect the monthly accrual of holiday time.~~
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> NB: The referenced cap on vacation hours accrual is 480 hours.

The Guild opposes the elimination of the holiday banks. The Guild argues that the accumulated holiday bank is important for overseas family visits, to augment pay while on workers comp leave, and to cover FMLA leave (thus extending the time before an employee could be separated from service). Moreover, holiday leave may be cashed out, while vacation leave may not. Finally, the Guild argues that there are too few vacation slots already and that that shortage will be seriously exacerbated if employees are discouraged from banking holiday leave.

None of the comparable Counties offer any similar benefit to Corrections staff. Pierce County essentially requires holiday time to be taken within the calendar year except for 48 hours that may be taken in cash. Snohomish County allows an 80 hour carryover but also allows the County to buy back 80 hours at the end of November. Spokane County, essentially, allows no carryover but lets Sergeants cash out up to five days per year. Multnomah County, essentially, requires holidays to be used or cashed out within the fiscal year. Santa Clara County converts holiday credit to vacation leave if the holiday falls on a day off. And Riverside County apparently caps accrued holiday leave at 80 hours. The County's own Deputy Sheriffs no longer have holiday banks.

There is no sound basis for the continuation of the holiday leave bank in its current uncontrolled form. The holiday leave bank is being used to subvert the bargained cap on vacation leave; and it would be irresponsible of the County to allow this unfunded liability to continue to expand year after year. The question is what to do with the program and its accumulated leave balances. The Guild—in hopes of preserving the program as it is—offered no suggestions for preservation of the program in a modified form; and the County's proposed liquidation of the program is a bit draconian. Therefore, I will establish a separate holiday hours bank with a cap of 40 hours. For employees with 40 or fewer holiday hours now in their bank, time over 40 hours at the end of the calendar year shall be paid in cash. For employees with more than 40 hours now in their bank, no additional time may be banked until the bank is below 40 hours, and at least ten percent of the excess over 40 hours on January 1 must be used that year or that amount will be paid in cash at the end of the calendar year. That approach leaves some cushion for the employees with the same characteristics as the current holiday bank hours, but it eliminates the uncontrolled growth of the County's unfunded liability. This is the language:

> Section 2b. A maximum of 40 hours may be carried over from one calendar year to the next in an employee's holiday leave bank. For employees who have less than 40 hours in their bank at the beginning of a calendar year (or on the date of the 2009 interest arbitration award), any hours in excess of 40 at the end of that calendar year shall be paid in cash. For employees who have 40 hours or more in their bank at the beginning of a calendar year (or on the date of the 2009 interest arbitration award), those hours in excess of 40 on that date must be reduced by 10% during that calendar year or the remainder of that 10% shall be paid in cash at the end of that calendar year.

SICK LEAVE

Corrections work is hazardous. Corrections Officers and Sergeants are required to deal with combative prisoners as a regular part of the job, usually with no weapons beyond a stun gun and pepper spray. The existing CBA includes a "Special Sick Leave" provision which adds sick leave specifically for the purpose of augmenting workers comp payments for on-the-job injuries. The County proposes the following adjustments to that language:

> Special Sick Leave. All newly hired Corrections Officers shall be provided with thirty (30) days special sick leave, which shall be used only to supplement the employee's industrial insurance benefit should the employee be injured on the job during his or her first calendar year on the job. The special sick leave shall not be used until three (3) days of regular sick leave have been used for each instance of on the job injury. After the first three (3) days of leave, the employee must use special sick leave prior to using regular sick leave while on an FMLA qualified industrial injury leave. ~~During the second~~ After completion of the first year of employment, all Corrections Officers shall be ~~provided with~~ eligible for twenty (20) days special sick leave which shall only

be utilized in the circumstances as herein described. Special sick leave is non-cumulative, but is renewable ~~annually~~ for any subsequent injury. Except for an employee in the first calendar year of employment, as described above, no employee shall be eligible for more than twenty (20) days of special sick leave per injury or per year.

No comparable county provides such a benefit except Spokane County which grants up to 360 hours over a five year period. But the County's own Deputies have a similar benefit, providing 23 days of special leave renewable annually. (In fact, this benefit dates back to before the Deputy Sheriffs and Corrections Officers split into two bargaining units.)

The County argues that the current language *may* encourage employees to stay off work longer than necessary. But the County stipulates that it does not justify this proposal as a response to sick leave abuse, and there is no analysis of sick leave usage in the record to support the suggestion that the current language leads to longer down time.[34] I cannot award the language proposed by the County.

SPECIAL ASSIGNMENTS

Most assignments are subject to seniority bid but some—"Special Assignments"—are not. The County would make Court Detail a special assignment beginning with the 2010 annual shift rotation. At that same time, it would add to the list of special assignments for Sergeants "Administration, Court Detail, Maintenance and Supply, or [RJC Intake, Transfer & Release]." (While the Corrections Officer special assignment language makes these assignments "at the discretion of management with seniority being but one factor," the special assignment of Sergeants is "at management's complete discretion.")

The nub of the County's argument in favor of this proposal comes down to this: Court Detail is sweet work in this unit (e.g., 9:00 to 5:00 with weekends off), and senior Corrections Officers generally stay in that detail for decades until retirement. The Guild replies that Court Detail was unilaterally assigned by management up until about 15 years ago until complaints about "good old boy" choices led the parties to make it a seniority bid. Beyond a reference to cross-training in the abstract, the County does not offer any concrete examples of improvements if the various Sergeants were cross trained; and the Guild notes that there is little cross-training value in spreading these assignments, because experience in Court Detail has little to teach a Corrections Officer about running a housing unit or the reverse. In short, the record does not show an adequate reason for

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34. Moreover, it is not at all clear to me that the proposed language on its face says quite what the County wants to say. As written, the proposed language seems to be a sure invitation to grievance arbitration.

departing from seniority choice for Court Detail or for the listed Sergeant assignments, and I cannot award the County's proposed language.

The Guild offers its own proposal here, aimed at clarifying the existing contract language. The County does not raise any objections to the proposed clarification; and I award it.

AWARD

The new contract shall include the following contract language:

COMPENSATION

ARTICLE 8: WAGE RATES.

Section 1.

a. **2007 Wage Rates. Corrections Officers and Sergeants.** Effective January 1, 2007, the base wage rates of bargaining unit members in effect December 31, 2006 shall be increased by ninety-five percent (95%) of the C.P.I. - W for All Cities Index (September 2006 through September 2007). In no event shall such increase be less than three percent (3%) nor greater than six percent (6%). In addition, effective January 1, 2007, an additional step (48 months) for Sergeants shall be added to the pay scale at 3% above the 36 month rate.

b. **2008 Wage Rates. Corrections Officers and Sergeants.** Effective January 1, 2008, the base wage rates of bargaining unit members in effect December 31, 2007, shall be increased by ninety-five percent (95%) of the C.P.I. - W for All Cities Index (September 2006 through September 2007). In no event shall such increase be less than three percent (3%) nor greater than six percent (6%). In addition, effective January 1, 2008, an additional step (60 months) for Sergeants shall be added to the pay scale at 3% above the 48 month rate.

c. **2009 Wage Rates. Corrections Officers and Sergeants.** Effective January 1, 2008, the base wage rates of bargaining unit members in effect December 31, 2008, shall be increased by ninety-five percent (95%) of the C.P.I. - W for All Cities Index (September 2007 through September 2008). In no event shall such increase be less than three percent (3%) nor greater than six percent (6%).

d. **2010 Wage Rates. Corrections Officers and Sergeants.** Effective January 1, 2008, the base wage rates of bargaining unit members in effect December 31, 2009, shall be increased by ninety-five percent (95%) of the C.P.I. - W for All Cities Index (September 2008 through September 2009). In no event shall such increase be less than three percent (3%) nor greater than six percent (6%).

e. **Corrections Officer Entry and 12 Month Step.** Effective June 15, 2009, the entry step and 12 month step for Corrections Officer shall be increased by eight percent (8%) and four percent (4%) respectively.

Section 2: Retroactivity of the 2009 Interest Arbitration Award. The award shall apply to all Corrections Officers and Sergeants currently employed by the County. With respect to individuals who are not now so employed but who were so employed between January 1, 2007 and June 15, 2009, the award shall apply to those individuals only if they have provided the County with a freshly confirmed current address as follows:

The County shall attempt to establish freshly confirmed current addresses by sending out notices of the award by July 15, 2009 to whatever addresses it has for past employees and giving those individuals 90 days to inform the County of their current address. (The Guild may also take steps to encourage former employees to file a current address with the County.) Any former employee for whom the County has no freshly confirmed current address by the end of that 90 day period is not within the scope of the 2009 interest arbitration award.

The Longevity Incentive provisions of the prior collective bargaining agreement shall continue into the new agreement unchanged.

MANDATORY OVERTIME

Effective January 1, 2010 any employee required to work mandatory overtime within ten (10) days of previously working mandatory overtime shall be paid double time for such mandatory overtime hours worked within ten (10) days of previous mandatory overtime.

DISCIPLINE

Article 3,C, Discipline of the prior collective bargaining agreement shall continue into the new agreement unchanged.

VIDEO RECORDING

Video Cameras: to enhance the utility of video cameras, the Department may add a recording capability to video cameras in all facilities. Video recordings shall only be reviewed in connection with a specific concern or a specific incident. An employee who is the subject of an investigation shall be allowed to privately view the video with a Guild representative prior to his/her interview concerning the alleged misconduct.

PERSONNEL GUIDELINES

Unless specifically negotiated otherwise or contradicted in a specific provision of this Agreement, the 2005 King County Personnel Guidelines in effect on March 16, 2009 shall cover all employees and classifications in this bargaining unit except with respect to promotional procedures and with respect to the Guidelines deletion of the word "confidential" in section 13.5 describing the Employee Assistance Program

HOLIDAY LEAVE BANK

Section 2b. A maximum of 40 hours may be carried over from one calendar year to the next in an employee's holiday leave bank. For employees who have less than 40 hours in their bank at the beginning of a calendar year (or on the date of the 2009 interest arbitration award), any hours in excess of 40 at the end of that calendar year shall be paid in cash. For employees who have 40 hours or more in their bank at the beginning of a calendar year (or on the date of the 2009 interest arbitration award), those hours in excess of 40 on that date must be reduced by 10% during that calendar year or the remainder of that 10% shall be paid in cash at the end of that calendar year.

SICK LEAVE and SPECIAL ASSIGNMENTS

The language of these provisions of the prior collective bargaining agreement shall continue into the new agreement unchanged.

Respectfully submitted,

Howell L. Lankford
Arbitrator