WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN LEWIS COUNTY, WASHINGTON, Employer, and LEWIS COUNTY CORRECTIONS GUILD, Union.	**PERC Case No. 23135-I-10-0543**

I. INTRODUCTION

This interest arbitration arises pursuant to RCW 41-56-450 and WAC 391-55-200 to -265 under which Neutral Arbitrator David Gaba, Guild Partisan Arbitrator Jaime Goldberg and County Partisan Arbitrator Richard Miller were selected to serve as the Interest Arbitrators.

A hearing was held before Arbitrators Gaba, Goldberg, and Miller on March 21, 22 and 23, 2011. The parties had the opportunity to examine and cross-examine witnesses, introduce exhibits, and fully argue all of the issues in dispute. A transcript of the proceedings was provided. Post-hearing briefs were filed by both parties on May 27, 2011, and received by the Neutral Chair on May 31, 2011.

APPEARANCES:

On behalf of the Union:
Sean Lemoine
Makler, Lemoine & Goldberg, P.C.
515 NW Saltzman Road, #811
Portland, OR 97229

On behalf of the Employer:
J. David Fine
Senior Civil Deputy Prosecuting Attorney
Office, Civil Division
345 W Main Street, 2nd Floor
Chehalis, WA 98532

Hearing Held	Post Hearing Briefs Received
March 21, 22 and 23, 2011	May 31, 2011

II. RELEVANT PORTIONS OF THE REVISED CODE OF WASHINGTON AND WASHINGTON ADMINISTRATIVE CODE

RCW 41.56.430 Uniformed personnel – Legislative declaration.

The intent and purpose of chapter 131, Laws of 1973 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.

RCW 41.56.440 Uniformed personnel – Negotiations – Declaration of an impasse – Appointment of mediator.

Negotiations between a public employer and the bargaining representative in a unit of uniformed personnel shall be commenced at least five months prior to the submission of the budget to the legislative body of the public employer. If no agreement has been reached sixty days after the commencement of such negotiations then, at any time thereafter, either party may declare that an impasse exists and may submit the dispute to the commission for mediation, with or without the concurrence of the other party. The commission shall appoint a mediator, who shall forthwith meet with the representatives of the parties, either jointly or separately, and shall take such other steps as he or she may deem appropriate in order to persuade the parties to resolve their differences and effect an agreement; provided, that a mediator does not have a power of compulsion.

RCW 41.56.450 Uniformed personnel – Interest arbitration panel – Powers and duties – Hearings – Findings and determination.

If an agreement has not been reached following a reasonable period of negotiations and mediation, and the executive director, upon the recommendation of the assigned mediator, finds that the parties remain at impasse, then an interest arbitration panel shall be created to resolve the dispute. The issues for determination by the arbitration panel shall be limited to the issues certified by the executive director. Within seven days following the issuance of the determination of the executive director, each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chairman of the arbitration panel. Upon the failure of the arbitrators to select a neutral chairman within seven days, the two appointed members shall use one of the two following options in the appointment of the third member, who shall act as chairman of the panel: (1) By mutual consent, the two appointed members may jointly request the commission, and the commission shall appoint a third member within two days of such request. Costs of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or (2) either party may apply to the commission, the federal mediation and conciliation service, or the American Arbitration Association to provide a list of five qualified arbitrators from which the neutral chairman shall be chosen. Each party shall pay

the fees and expenses of its arbitrator, and the fees and expenses of the neutral chairman shall be shared equally between the parties.

The arbitration panel so constituted shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice thereof to the parties to the dispute. A hearing, which shall be informal, shall be held, and each party shall have the opportunity to present evidence and make argument. No member of the arbitration panel may present the case for a party to the proceedings. The rules of evidence prevailing in judicial proceedings may be considered, but are not binding, and any oral testimony or documentary evidence or other data deemed relevant by the chairman of the arbitration panel may be received in evidence. A recording of the proceedings shall be taken. The arbitration panel has the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the panel to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitration panel, or refuses to be sworn or to make an affirmation to testify, or any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held hereunder, the arbitration panel may invoke the jurisdiction of the superior court in the county where the labor dispute exists, and the court has jurisdiction to issue an appropriate order. Any failure to obey the order may be punished by the court as a contempt thereof. The hearing conducted by the arbitration panel shall be concluded within twenty-five days following the selection or designation of the neutral chairman of the arbitration panel, unless the parties agree to a longer period.

The neutral chairman shall consult with the other members of the arbitration panel, and, within thirty days following the conclusion of the hearing, the neutral chairman shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on the commission, on each of the other members of the arbitration panel, and on each of the parties to the dispute. That determination shall be final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious.

RCW 41.56.452 Interest arbitration panel a state agency.

An interest arbitration panel created pursuant to RCW 41.56.450, in the performance of its duties under chapter 41.56 RCW, exercises a state function and is, for the purposes of this chapter, a state agency. Chapter 34.05 RCW does not apply to proceedings before an interest arbitration panel under this chapter.

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, the panel shall consider:

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

(b) Stipulations of the parties;

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

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

(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. For those employees listed in *RCW 41.56.030(7)(a) who are employed by the governing body of a city or town with a population of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living.

(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.

WAC 391-55-200 Interest arbitration — Certification of issues.

(1) If a dispute involving a bargaining unit eligible for interest arbitration under RCW 41.56.028, 41.56.029, 41.56.030(7), 41.56.475, 41.56.492, 41.56.496, 41.56.510, or74.39A.270 (2)(c) has not been settled after a reasonable period of mediation, and the mediator is of the opinion that his or her further efforts will not result in an agreement, the following procedure shall be implemented:

(a) The mediator shall notify the parties of his or her intention to recommend that the remaining issues in dispute be submitted to interest arbitration.

(b) Within seven days after being notified by the mediator, each party shall submit to the mediator and serve on the other party a written list (including article and section references to parties' latest collective bargaining agreement, if any) of the issues that the party believes should be advanced to interest arbitration.

(2) The mediator shall review the lists of issues submitted by the parties.

(a) The mediator shall exclude from certification any issues that have not been mediated.

(b) The mediator shall exclude from certification any issues resolved by the parties in bilateral negotiations or mediation, and the parties may present those agreements as "stipulations" in interest arbitration under RCW 41.56.465 (1)(b), 41.56.475 (2)(b), or 41.56.492 (2)(b).

(c) The mediator may convene further mediation sessions and take other steps to resolve the dispute.

(3) If the dispute remains unresolved after the completion of the procedures in subsections (1) and (2) of this section, interest arbitration shall be initiated, as follows:

(a) Except as provided in (b) of this subsection, the mediator shall forward his or her recommendation and a list of unresolved issues to the executive director, who shall consider the recommendation of the mediator. The executive director may remand the matter for further mediation. If the executive director finds that the parties remain at impasse, the executive director shall certify the unresolved issues for interest arbitration.

(b) For a bargaining unit covered by RCW 41.56.492, the mediator shall certify the unresolved issues for interest arbitration.

WAC 391-55-210 Interest arbitration — Selection of neutral chairperson.

(1) If the parties agree on the selection of a neutral chairperson, they shall obtain a commitment from that person to serve, and shall notify the executive director of the identity of the chairperson.

(2) If the parties agree to have the commission appoint a staff member as the neutral chairperson, they shall submit a written joint request to the executive director. The parties are not entitled to influence the designation of a neutral chairperson under this subsection and shall not, either in writing or by other communication, attempt to indicate any preference for or against any person as the neutral chairperson to be appointed by the commission. Upon the submission of a request in compliance with this subsection, the executive director shall appoint a neutral chairperson from the commission staff.

(3) If the parties desire to select a neutral chairperson from a panel of arbitrators, they shall attempt to agree as to whether the commission, the Federal Mediation and Conciliation Service or the American Arbitration Association will supply the list of arbitrators. If the choice of agency is agreed, either party or the parties jointly shall proceed forthwith to request a panel of at least five arbitrators specifying: "For interest arbitration proceedings under RCW 41.56.450." Referrals and selection from the commission's dispute resolution panel shall be as provided in WAC 391-55-120. Referrals and selection from other panels shall be made under the rules of the agency supplying the list of arbitrators. The parties shall notify the executive director of the identity of the neutral chairperson.

(4) If the parties have not notified the executive director of their selection of a neutral chairperson within twenty-eight days after certification of issues under WAC 391-55-200, the parties shall be deemed to have waived the procedures in subsections (1) through (3) of this section. The executive director shall issue a list of dispute resolution panel members and the neutral chairperson shall be selected as provided in WAC 391-55-120.

WAC 391-55-215 Interest arbitration — Conduct of proceedings — Waiver of objections.

Proceedings shall be conducted as provided in WAC 391-55-200 through 391-55-255. The neutral chairperson shall interpret and apply all rules relating to the powers and duties of the neutral chairperson. Any party who proceeds with arbitration after knowledge that any provision or requirement of these rules has not been complied with and who fails to state its objection in writing, shall be deemed to have waived its right to object.

WAC 391-55-220 Interest arbitration — Submission of proposals for arbitration.

At least fourteen days before the date of the hearing, each party shall submit to the members of the panel and to the other party written proposals on all of the issues it intends to submit to arbitration. Parties shall not be entitled to submit issues which were not among the issues certified under WAC 391-55-200.

WAC 391-55-230 Interest arbitration — Order of proceedings and evidence.

The order of presentation at the hearing shall be as agreed by the parties or as determined by the neutral chairperson. The neutral chairperson shall be the judge of the relevancy of the evidence. All evidence shall be taken in the presence of all parties, unless a party is absent in default or has waived its right to be present. Each documentary exhibit shall be submitted to the neutral chairperson and copies shall be provided to the partisan arbitrators and to the other parties. The exhibits shall be retained by the neutral chairperson until an agreement has been signed or until any judicial review proceedings have been concluded, after which they may be disposed of as agreed by the parties or as ordered by the neutral chairperson. The neutral chairperson has authority to administer oaths, to require the attendance of witnesses, and to require the production of documents that he or she may deem to be material.

WAC 391-55-240 Interest arbitration — Closing of arbitration hearings.

The neutral chairperson shall declare the hearing closed after the parties have completed presenting their testimony and/or exhibits and submission of briefs within agreed time limits.

III. FACTS

A. BACKGROUND

1. The County

This matter involves an impasse arising from negotiations over a successor agreement between Lewis County (County or Employer) and the Lewis County Corrections Guild (Guild or Union). The Guild is a new bargaining unit that has not previously negotiated a contract with the County.

As of 2010, the population of Lewis County was 75,455. Lewis County is located in western Washington. The county seat of Lewis County is Chehalis, and its largest city is Centralia. Lewis County is predominantly rural and is located between the cities of Olympia and Vancouver, Washington, although it is far enough away from both of these cities so as not to be part of their labor markets. Adjacent counties are Grays Harbor County, Thurston County, Pierce County, Yakima County, Skamania County, Cowlitz County, Wahkiakum County, and Pacific County, Washington.

Set in the shadow of Mount St. Helens, Lewis County is physically beautiful, yet economically bleak. The traditional timber industries of the County and their accompanying jobs in pulp, paper, and lumber industries have been shrinking while the County's population has grown at a rate far slower than the State of Washington as a whole. Since 1970, the County's population as a percentage of the State of Washington has been steadily shrinking. Likewise, the personal income of Lewis County's residents has been declining as a percentage of Washington's average personal income. In short, Lewis County is a poor, semi-rural county with few prospects of increased employment or general growth in the near future.

Lewis County provides a number of municipal and regional services for its residents. Under the general policy direction of an elected three-member Board of County Commissioners, services are provided through a number of County departments. Each department is under the direction of a department head and provides specific programs within respective jurisdictions.

The County receives its operating funds from a variety of sources, including licensure and permitting, charges for services, taxes, and intergovernmental payments. Once funds are received, they are directed to specific portions of the budget in such areas as capital improvements, police services, roads or the jail. Operating funds dealing with the employees in question (such as salaries and benefits) are derived from the Employer's Current Expense General Fund.

Lewis County has experienced a decrease in revenue. The Employer presented evidence that the 2009 budget was constructed with estimated revenue of approximately $34 million. As the year progressed, it was determined that the actual revenue would be closer to $32 million. The revenue shortfall occurred from the decline of such revenue sources as the forest excise tax, sales and use tax, investment interest, and jail inmate revenue. The County projected that yearend revenue for 2010 would be approximately $32.5 million with an increase for 2011 of only $250,000.

At the same time that the County's revenue decreased, its expenditure obligations remained constant. In the 2009 budget cycle, the Employer took steps to reduce expenditures, but it was required to use reserves to meet its financial obligations. Among other steps taken to reduce expenditures, the Employer eliminated 17.88 positions from its payroll. Expenditure reductions continued in the 2010 budget, including the elimination of another 10.34 positions. In 2011, the County proposes to eliminate another 38.88 employees.

2. The Facility

Lewis County operates the Lewis County Correctional Facility. Built in 2004, the county jail can hold as many as 356 inmates. The jail was built with extra capacity to absorb inmates from nearby counties and the state corrections system. Those inmates would be housed in the Lewis County facility at a contract rate reached between the Employer and the entities needing to transfer inmates to Lewis County. The purpose of this arrangement was simply for Lewis County to make money housing inmates for other jurisdictions.

For a short time after the Lewis County facility opened, the jail operated near capacity, but census figures have steadily declined, and in October 2010, the facility's daily census stood at 196 inmates. In short, this economic development attempt by the County has appeared to have failed and the County is proposing to reduce the number of Corrections Officers at the jail by 2.58 full time equivalent employees (FTEs) for 2011.

At the time of hearing, the corrections facility budget was $6.1 million dollars, of which the majority was directed toward personnel costs. Under the command of Corrections Chief Kevin Hanson, forty-six (46) uniformed personnel serve in the County's correctional facility: forty (40) Corrections Officers and six (6) Corrections Sergeants. The Corrections Officers are represented for purposes of collective bargaining by the Lewis County Corrections Guild. Corrections Sergeants are represented by Teamsters Local 252.

3. The Guild

Prior to becoming an independent Guild, the Lewis County Corrections Officers were represented by Teamsters Local 252. In February of 2009, the newly formed Lewis County Corrections Guild decertified and replaced the Teamsters as the bargaining representative of the affected employees. Although the facts are somewhat unclear as to exactly when the Teamsters

were replaced, there is no question that in March of 2009, the Guild lost access to the Teamsters' health plan and was placed into the group of plans that other non-teamster County employees had access to.

The change in benefits that resulted from the Teamsters' decertification led to the filing of an Unfair Labor Practice Charge that is currently on appeal. Specifically, the Guild was given the option of three insurance plans: Premera 200, 500, and 750, with the County paying 95% of the Teamsters' insurance premium for Corrections Guild members or $969.21 (later increased to $1,138.10). The Premera 200 plan was the plan that was most closely comparable to the Teamsters plan; however, the premium for the Premera 200 plan is $1,610.83 (before add-ons for dental, vision, employee life, dependent life, and short-term disability).

4. Issues in Dispute

On March 29, 2010, the Executive Director of the Washington Public Employee Relations Commission certified the following issues for interest arbitration:

1) Wages and Health Care Benefit contributions by each party,

2) Application of pay steps to bargaining unit members,

3) Plus the following items tied to specific contract articles:

Article 8.1.2	28-Day Work Cycle
Article 8.2.1	Threshold for Overtime Pay
Article 8.3.1	Shift Differential Pay
Article 8.10.2	Incentive Pay for Specialty Assignments
Article 9.3.1	Vacation Accrual
Article 9.3.4	Vacation Scheduling
Article 9.4.1 – 9.4.5	Health Insurance Premium Payments by Parties and Selection of Plan Contents by Parties
Article 9.7.1	Sick Leave Accrual
Article 9.7.4	Sick Leave Cash Out/Buyout
Article 9.8.1	Longevity Pay
Article 9.13.1	Workers Compensation Supplemental Pay
Article 9.14.1	Light Duty Work Opportunities
Article 10.3.1 – 10.3.3	Arbitration Provisions and Process

Article 11.1	Wages
Article 11.3	Unpaid Days, i.e., Furloughs
Article 12.1	Application of Seniority Rights to those who are not in the Guild Bargaining Unit
Article 16.1	Duration of Contract
Article 17.1	Appendix A, Seniority Dates
Article 18.1	Appendix B, Salary Schedule

Prior to hearing, the parties tentatively agreed to the following certified issues: Article 12.1 and Article 17.1, Appendix A. The Guild also withdrew any proposed changes to the following certified issues and reverted to status quo language: Article 8.3.1, Article 8.10.2 and Article 9.8.1.

On April 7, 2010, the Executive Director of the Public Employment Relations Commission certified that the Guild and Lewis County were at impasse over certain issues that had arisen in negotiations for a collective bargaining agreement concerning a bargaining unit of Correctional Officers, and that those issues should be advanced to interest arbitration for resolution. On April 22, 2010, the parties waived their right to appoint partisan arbitrators and, pursuant to WAC 391-55-210(2), the parties requested David Gaba to serve as neutral arbitrator.

IV. DECISION

This Panel carefully reviewed and evaluated all of the evidence and argument submitted pursuant to the criteria established by RCW 41.56.465. Since the record in this case was both comprehensive and extensive, it would be impractical for the Panel in the discussion and Award to restate and refer to each and every item of evidence and testimony presented. However, when formulating the decision, the Panel gave careful attention to all of the evidence and arguments placed into the record by the parties.

When certain public employers and their uniformed personnel cannot reach an agreement on new contract terms through negotiations and mediation, RCW 41.56.450 calls for interest

arbitration to resolve their dispute. The parties stipulated that RCW 41.56.450 applies to the instant dispute. The parties were not able to reach agreement over the issues presented, and the remaining unresolved issues were presented to the undersigned arbitrators during a three-day hearing.

An arbitrator must remember that interest arbitration is an extension of the bargaining process. The Arbitrator recognizes those contract provisions upon which the parties agree and decides the remaining issues in a manner that approximates the result that the parties would likely have reached in good faith negotiations considering the statutory criteria.[1]

RCW 41.56.465 sets forth certain criteria which must be considered by the Arbitrator in deciding the issues in dispute:

> (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:
>
> (a) The constitutional and statutory authority of the employer;
>
> (b) Stipulations of the parties;
>
> (c) The average consumer prices for goods and services, commonly known as the cost of living;
>
> (d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and
>
> (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. ...
>
> (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.

[1] *Lewis County*, PERC Case 23148-I-10-544 (2011).

The statute does not provide guidance as to how much weight should be given to any of these standards or guidelines, but leaves that determination to the Arbitrator's reasonable discretion.

The Interest Arbitrator is constrained by statute to deliberate and issue his findings and recommendations no later than thirty days after the submission of the briefs, if any. In this case, counsel for the parties filed briefs with the undersigned on May 27, 2011, that were received the next business day of May 31, 2011. This award is being issued in a timely manner.

The goal of the Interest Arbitrator is to place the parties in as close a position as possible to where they would have been had the bargaining been successful. The Interest Arbitrator should not make a recommendation that encourages the parties to proceed to fact-finding annually, nor should the recommendations be based on standards that would interfere with, or preempt future bargaining.

The Interest Arbitrator in this matter has previously held:

> Being presented with the facts and arguments from both parties, the Arbitrator must determine what reasonable agreement the parties should implement. In evaluating the evidence and positions of both parties, the Arbitrator must keep in mind prevailing practice in similar cases, previous agreements or concessions made by either party prior to arbitration, and external comparison of the parties' requests with the standards of the industry.[2]

The standards listed above are applied to the open issues listed below. However, the Panel specifically adopts the concept of a total compensation approach to any open issue that has a financial impact on the County or the Correctional Officers. Total compensation of the Correctional Officers is discussed in detail below, and it has been considered and integrated into the individual decisions of each open issue.

It is generally accepted that a party seeking to change a provision of the contract is required to justify the change by "strong evidence establishing its reasonableness and

[2] *Basin Electric Power Cooperative*, 120 LA 210 (2004).

soundness."[3] The Panel explicitly finds that a "clear and convincing evidence" standard is to be applied in the instant case to all proposed changes.

A. Ability to Pay

At the outset of the hearing, it became clear that Lewis County would argue that they had an "inability to pay" the salary increase proposal offered by the Guild. "In the public sector, with the necessity of continuing to provide adequate public service as a given, 'going out of business' is not an option, and an employer's *inability* to pay can be the decisive factor in a wage award notwithstanding that comparable employers in the area have agreed to higher wage scales..."[4] Economic distress for municipalities is not a new issue and commentators have been writing learned papers on the subject since the 1950s.[5] In the instant case, there is no question that the County is experiencing a very difficult economic environment. Some would argue that the ability of the County to pay is irrelevant and that market wages should be paid regardless.[6] Others would argue that the County has adequate reserves to pay the Corrections Officers this year, so that it would be acceptable to deplete the County's reserve fund.[7] This Panel does not ascribe to either of the above theories.

While many states have specific statutes that address an employer's inability to pay, Washington has not seen fit to include inability to pay in RCW 41.56.465. However, the Panel finds that "inability to pay" is included in RCW 41.56.465 as: (e) Such other factors, not

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[3] Elkouri & Elkouri, *How Arbitration Works,* (5th Ed. 1985).
[4] Elkouri & Elkouri, *How Arbitration Works*, (6th ed., 2003).
[5] *See, The Arbitration of Wages*, University of California Press, Berkeley and Los Angeles (1954). "Nowhere in the public sector is the problem of interest arbitration more critical than in the major urban areas of the nation. Municipal governments are highly dependent, vulnerable public agencies. Their options for making concessions in collective bargaining are at best limited, and are often nullified by social and economic forces which command markets, resources, and political power extending far beyond the city limits."
[6] *See, City of Quincy*, 81 LA 352 (1982). "The price of labor must be viewed like any other commodity which needs to be purchased. If a new truck is needed, the City does not plead poverty and ask to buy the truck for 25% of its established price. It can shop various dealers and makes of truck to get the best possible buy. But in the end the City either pays the asked price or gets along without a new truck."
[7] *See, Northwest Kans. Educational Service Center*, 113 LA 47 (1999). "Consequently, if the Union's salary proposal is implemented, the district's reserves for next year might decrease, but no over spending will result."

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.[8]

As Arbitrator Krebs explained in Pierce County:

> The severe recession this country has experienced over the past several years has had a particularly adverse effect on the County's finances. Property taxes are obviously negatively affected by the decreases in assessed valuations and new construction which the County has experienced in recent years. The County's interest income has diminished considerably as interest rates plummeted.

The above quote from Arbitrator Krebs accurately portrays the current situation in Lewis County.

However, in the instant case, the County has been very well managed and continues to have healthy financial reserves even while severe cutbacks were being made in the services provided to county residents. It is also axiomatic in interest arbitrations and fact-findings that the County has the burden of proof of establishing its "inability to pay." Further, "the alleged inability to pay must be more than speculative."[9] While the County has lost revenue and cut programs, the County still has a projected General Fund balance of $9,623,960 for 2012. As the County's projected expenditures for 2012 are $33,737,983, it is clear that the County is projecting to maintain a fund balance of more than 28% of their projected 2012 budget.

As stated by Hearing Officer Latsch to Lewis County and the Teamsters only five months ago:

> Lewis County's poor economic condition, particularly its falling revenues and resulting layoffs, must be remembered when determining the appropriate compensation levels for the Corrections Sergeants. However, analysis cannot stop at that point. The employer would have the Arbitrator acknowledge its difficult economic circumstances and use that unfortunate

[8] Washington Arbitrators have been asked to consider an employer's "ability to pay" in a number of arbitration awards. *See, Clark County*, PERC Case 11845-1-92-252 (1996); *King County*, PERC Case 21957-1-08-519 (2009); *Pierce County*, PERC Case 22679-1-09-539 (2010).

[9] Elkouri & Elkouri, *How Arbitration Works*, (6th ed., 2003).

> turn of events as the primary, if not only, factor in fashioning an award. Such an analytical model is not appropriate, and would not meet the comparability requirements set forth in RCW 41.56.465. While the Arbitrator should consider the employer's economic condition as a factor to be applied, it is not the only factor to be considered and must be analyzed in light of the statutory factors.[10]

Clearly, the County does have many indicia of an "inability to pay" such as a reduction of services (closing parks), laying off employees and an inability to raise revenue.[11] However, while the financial situation in Lewis County may justify no increase in employee wages, or a reduction in wages, the County does not meet the technical criteria to show an "inability to pay," and the County has the "financial ability... to bear the costs involved." The Merriam-Webster Dictionary describes "inability" in part as:

> INABILITY
> : lack of sufficient POWER, resources, or capacity <his *inability* to do mathematics>
>
> **Synonyms:** IMPOTENCE, INADEQUACY, INCAPABILITY, INCAPACITY, INCOMPETENCE, INCOMPETENCY, INEPTITUDE, INSUFFICIENCY, POWERLESSNESS
> **Antonyms:** ABILITY, ADEQUACY, CAPABILITY, CAPACITY, COMPETENCE, COMPETENCY, POTENCY[12]

Ironically, the County's ability to pay is due to the hard work of its finance staff who have conservatively budgeted and provided for adequate fund reserves. Dawna Truman, the County's Budget/Fiscal Director, was an extremely knowledgeable and powerful witness and the Panel agrees with her that Lewis County must dramatically reform its expenditures in the future so as to enable it to balance its annual budgets. Obviously, Lewis County cannot continue to dissipate its reserves, nor can it continue to rob other funds and other departments to fund its public safety operations. In the future, Lewis County's budget must, at some point, balance

[10] *Lewis County*, PERC Case 23148-I-10-544 (2011).
[11] *See,* Elkouri & Elkouri, *How Arbitration Works*, (6th ed., 2003). In some cases, neutrals have expressly asserted an obligation of public employers to make added efforts to obtain additional funds to finance improved terms of employment found to be justified.
[12] In *Merriam-Webster.com*. Retrieved June 8, 2011, from http://www.merriam-webster.com/dictionary/inability.

through matching annual expenditures to annual revenues. However, at the present time the County would be able to fund the Guild's wage proposal for more than a decade before the County's General Fund balance approaches a danger level. In short, the County is "capable" and has the "capacity" to meet the Guild's demands even if meeting those demands is unwise. Clearly, good arguments can be made for maintaining a fund balance in excess of 28% of revenues; however, based on a simple dictionary definition of "inability," the County is capable of meeting the Guild's wage proposal (although this does not mean the Guild is entitled to any increase or even immune to a reduction in wages). Ultimately, this Panel must find that the County has an ability to pay and move on to the other statutory criteria. As recently stated by Arbitrator Williams:

> Ultimately, the Arbitrator set aside his trepidation, focused on the statutory criteria and notes that for most all of the comparators wages and benefits are already set through the year 2011. This award is, in the arbitrator's view, consistent with the terms and conditions set forth in labor agreements of the comparators. Hopefully actions taken at the national and state level will continue to have a positive impact on the economy and business can return to a more steady state. Clearly this award contains some of the optimism found in that statement.[13]

B. Comparability

One of the primary "standards or guidelines" found in RCW 41.56.465 upon which an 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."

Clearly, the interest arbitration process anticipates that awards will be issued on the basis of comparability. The interest arbitration process anticipates that comparability should be

[13] *City of Longview*, PERC Case 21899-I-08-515 (2009).

analyzed as one of the major factors in determining an award. The award must make sense in the context of wages, hours, and conditions of employment enjoyed by other jurisdictions found to be "comparable" to the Employer at issue in the immediate proceeding. As recently stated by Arbitrator Krebs:

> In order to make a reasonable comparison, there must be an adequate number of comparable jurisdictions. If too few are chosen, then the significance of the situation in individual jurisdictions is unreasonably magnified, particularly when information from one or more of the comparables on a particular issue in dispute is either unavailable or inapplicable. On the other hand, if the population band chosen provides more comparables than are needed for a reasonable comparison, it is appropriate to narrow the number utilized by considering other factors, such as assessed valuation, which would provide comparables which are more like the jurisdiction in dispute, and therefore would make more relevant comparisons.[14]

In this case, both parties presented sets of jurisdictions they deemed to be "comparable" to Lewis County. However, the Employer also presented a number of other factors that it wanted the Panel to consider in determining comparability and fashioning an award.

1. The County

In developing its arguments concerning its economic condition, the Employer engaged the services of Dr. Kenneth Duft, Professor Emeritus of Economics at Washington State University and Visiting Professor at the University of Idaho. Professor Duft provided a detailed analysis of Lewis County's general economic condition, using the indicators of population, total personal income, per capita income, employment, total industry earnings, average earnings per job, derivation of personal income by major component source and employment by industrial sector, and daily per diems authorized by the State of Washington. Applying these economic factors, Professor Duft concluded that Lewis County's economy has been in a downward spiral

[14] *Pierce County,* PERC Case 22679-1-09-539 (2010).

since 1980 as compared to the State of Washington as a whole. Professor Duft's conclusions are correct.

Professor Duft noted that a third of personal income in Lewis County is derived from some kind of government assistance, either in the form of food assistance or direct monetary payments. No other county in western Washington has such a high percentage. Professor Duft also noted that the County's overall population has been stagnant since 1980, while the rest of western Washington has continued to grow at a steady pace during the same period. Dr. Duft concluded that the County's lack of economic opportunities directly impacted population growth. Turning to the issues presented in this matter, Dr. Duft concluded that the lack of solid economic and population growth directly affected the Employer's ability to raise revenue through the collection of taxes.

This assessment of the County's economic health explains why the Employer believed that it could not grant wage increases in the latest round of collective bargaining. It also helps explain the Employer's argument that comparable jurisdictions could not be found in western Washington alone and that the Arbitrator must consider several jurisdictions in eastern Washington.

The County proposed:

1. Cowlitz County
2. Franklin County
3. Grant County
4. Mason County
5. Okanogan County
6. Walla Walla County

The Employer maintained that the six above-listed jurisdictions fall in a range of 50% to 150% of Lewis County in the application of the economic indicators chosen by Dr Duft. This analysis is fatally flawed.

First, four of the Employer's proposed comparable counties are located in eastern Washington (Franklin, Okanogan, Grant, and Walla Walla). The Employer argued that it is necessary to "pierce the Cascade Curtain" to find jurisdictions that are more comparable to the economic situation found in Lewis County.

The Employer maintained that it could not find truly comparable jurisdictions by limiting its analysis to western Washington. This may be true; however, interest arbitrators have long strived to focus on like political subdivisions in the same geographical area.[15] By focusing on jurisdictions in eastern Washington, the County would have this Panel disregard thirty years of interest arbitration awards that seek to focus on comparators in the same geographical area. The uniqueness of the eastern Washington labor market cannot be ignored. This uniqueness is recognized in numerous arbitration awards.[16]

More importantly, RCW 41.56.465(2) provides direction as to what types of jurisdictions this Panel should look at. The statute states:

> For employees listed in RCW 41.56.030(14) (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. (emphasis added)

The statute requires an arbitrator to only compare jurisdictions who are "like employers." In relevant part, RCW 41.56.030(14) defines employees eligible for interest arbitration in the following terms:

> "Uniformed personnel" means . . . (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(9), by a county

[15] *See, Pierce County,* PERC Case 22679-1-09-539 (2010); "For obvious reasons, it would be best to utilize counties in proximate or comparable labor markets."

[16] *See, City of Pasco,* (1994) *at* 11; *City of Richland,* (1984) *at* 15-16; *City of Pullman,* (1981) *at* 10; *City of Ellensburg,* (1992) *at* 9; *City of Moses Lake,* (1991) *at* 6; *City of Pasco,* (1990) *at* 12; *Spokane Fire District No. 9,* (1993) *at* 2-4; *City of Pullman,* (1997); *City of Kennewick,* (1997) *at* 14.

> with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates ....

In this case, the Employer asks that Okanogan County, Mason County, and Walla Walla County be considered to be comparable. The Panel concludes that those counties are not comparable because they do not meet the population threshold needed to invoke interest arbitration.

It is not enough to share similar economic factors. To be comparable, jurisdictions must also have common dispute resolution procedures available to them.[17] Trying to compare interest arbitration-eligible jurisdictions to non-interest arbitration-eligible jurisdictions does not allow meaningful analysis of wages, hours, and working conditions found in collective bargaining agreements in either type of jurisdiction.[18] Collective bargaining relationships are influenced by the presence of interest arbitration, and bargaining results can vary dramatically between interest arbitration-eligible and non-interest arbitration-eligible jurisdictions.[19] As stated by Hearing Officer Latsch:

> If jurisdictions are to be considered comparable, they must also be comparable in their access to interest arbitration. Given that Okanogan County, Mason County, Stevens County and Walla Walla County are not eligible for interest arbitration, they will not be considered as comparables in this case.[20]

For the above reasons, the Employer's comparables are fatally flawed.

2. The Union

The Union presented data on what it believed were comparable jurisdictions; however, none of the testimony presented was credible as to why the jurisdictions chosen were

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[17] *Lewis County*, PERC Case 23148-I-10-544 (2011).
[18] *Id.*
[19] *Id.*
[20] *Id.*

"comparable." The Guild's witness, Debra Feagler, did an excellent job in compiling a list of counties in Washington that have populations that are approximate to Lewis County. However, the Guild provided no analysis as to why the counties were comparable and Ms. Feagler seemed to have simply taken direction on which counties to include as comparables. When cross-examined during the hearing, Ms. Feagler had no rationale for her "comparables" stating:

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Q Aside from a wish not to include them in the comparables analysis, how do you distinguish east-side from west-side counties when doing comparables your way?

A In this case, it was more of a direction as opposed to me distinguishing the east side from west side.

Q Your boss told you what you're supposed to consider a an east-side county and what you're supposed to consider a west-side county?

A Yes.

Q Can you offer an economic justification for the so-called -- let me repeat the prior question.
In use in labor proceedings in this state, do you understand -- do you understand what the term "Cascade curtain" means?

A Not precisely, no.

Q Do you believe there is any economic justification for disregarding east-side counties, as you call them, whatever that means to you, for purposes of determining

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comparables?

A It wasn't within my purview to determine economic justification.

At the end of the day, the Guild selected the following counties as "comparable":

1. Chelan County
2. Clallam County

3. Cowlitz County
4. Grant County
5. Grays Harbor County
6. Skagit County
7. Island County

Unfortunately, the record is bereft of evidence that would allow the Panel to find the above counties as "comparable."

3. Comparable Jurisdictions

The parties have profoundly different views of what jurisdictions should be considered "comparable," and both of their analyses are flawed. As stated by Arbitrator Gaunt:

> The selection of comparable jurisdictions is a process fraught with imprecision. As one of my colleagues has accurately observed: "The interest arbitrator faces the problem of making 'apples to apples' comparisons on the basis of imperfect choices and sometimes incomplete data."[21]

In the instant case, the Panel has chosen to first focus on the population of the comparators. There are so many arbitration awards that have considered only population and assessed valuation as a measure of size that no citation is needed. These awards have spanned many decades without any correction from the Legislature or the courts. Thus, we emphasize that it is both usual and appropriate to confine one's inquiry to the population and assessed valuation indicators (with consideration also given to geographic proximity), as many interest arbitration adjudications have found.[22]

Further, previous arbitration awards show that heavy weight should be given to a list of comparators historically used by the parties.[23] Arbitrators have consistently held that it is inappropriate to continually change the comparators because the prior decision should have

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[21] *Whitman County*, PERC Case No. 17193-I-03-0396 (2004).
[22] *See, Whitman County*, PERC Case 17193-I-03-0396 (2004); *City of Camas* PERC Case16303-I-02-0380 (2003, Wilkinson); "Certainly, any proposed comparable which is strikingly dissimilar in respect to assessed valuation, . . .is not likely to be given much weight." *City of Mukilteo*, PERC Case 16378-I-02-00382 (2002).
[23] *City of Redmond*, PERC Case, 19305-M-05-6270 (2007).

given the parties some predictability and a basis on which to proceed in future negotiations.[24] "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."[25]

In the instant case, this is the first contract and hence the first interest arbitration for the parties. However, the prior bargaining agent for these parties has recently received an interest arbitration Award for the Corrections Sergeants in the jail who are governed by the exact same statutory authority, have the exact same employer, and work in the exact same facility as the Corrections Officers in this case. It should be expected that a new interest arbitrator would give significant weight to a recent determination of comparable jurisdictions by a previous interest arbitrator.[26] "Such consideration tends to add stability to the parties' collective bargaining relationship by encouraging a common basis for their negotiations."[27] While the determination of the comparable jurisdictions in the previous interest arbitration is not binding in this proceeding, a party seeking a deviation from a prior finding should provide a convincing argument either that there are changed circumstances or that the determination of the prior interest arbitrator was wrong.[28] In the instant case, neither party has provided substantial evidence to indicate that Hearing Officer Latsch was incorrect when he chose comparables for Lewis County in PERC Case 23148-I-10-544.[29] Further, in the instant case, no testimony was provided to show that circumstances have changed since Hearing Officer Latsch's decision.[30]

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[24] *Walla Walla County,* PERC Case, 16895-I-02-0389 (2003).
[25] *Walla Walla County,* PERC Case, 16895-I-02-0389 (2003).
[26] *Walla Walla County,* PERC Case, 16895-I-02-0389 (2003).
[27] *Walla Walla County,* PERC Case, 16895-I-02-0389 (2003).
[28] *Walla Walla County,* PERC Case, 16895-I-02-0389 (2003).
[29] *Lewis County*, PERC Case 23148-I-10-544 (2011).
[30] The Panel does strongly encourage the parties to formulate their own set of comparables through negotiations which, due to the nature of collective bargaining, will be far superior to any comparables chosen either by us or Mr. Latsch.

Based on the foregoing, the Panel finds the appropriate comparables to be the same as those chosen by Hearing Officer Latsch:

- Clallam County
- Cowlitz County
- Franklin County
- Grant County
- Grays Harbor County
- Island County
- Skagit County

As stated by Mr. Latsch:

> All of these counties fall within the range of 50 - 150% of Lewis County in population, assessed valuation, median household income, and cost of living. While the union opposed using any eastern Washington jurisdictions, the inclusion of Franklin County and Grant County is appropriate, given their similarity of the comparability factors listed above. The comparables reflect proximity to larger population centers while acknowledging their rural and suburban roots.

4. Internal Comparability and the Local Labor Market

In addition to the Corrections Officers unit, the Employer negotiates with at least eleven other bargaining units. The Deputy Sheriffs unit and the Correctional Sergeants unit are both eligible for interest arbitration. The remaining nine bargaining units are not. The Employer noted that the nine non-interest arbitration-eligible units have already settled on collective bargaining agreements that do not contain any cost of living or other pay increases in 2011. The Deputy Sheriffs unit voted to defer a negotiated 2% cost of living increase for 2010 because of the Employer's difficult economic position.

This Panel recognizes that consideration of compensation settlements achieved by other groups of employees within the subject jurisdiction is appropriate where the other units have the same statutory dispute resolution mechanism. Other interest arbitrators have given weight to

internal parity under RCW 41.56.465(f). The reasons for this have been well described by Arbitrator Krebs:

> From the standpoint of both the employer and the union, the settlements reached by the employer with other bargaining units are significant. While those settlements are affected by the peculiar 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 employer's unions have already done. At the bargaining table, the settlements reached by the employer with the other unions are likely to be brought up by one side or the other. Thus, it is a factor which should be considered by the arbitrator.[31]

Also, "during difficult economic times when it becomes necessary to ask all employees to make sacrifices, internal parity will often merit more weight."[32] Again, as stated by one arbitrator, "Obviously, it does nothing for the morale of one employee segment to accept, for instance, a wage freeze, and then see another group receive a whopping increase, not matter how deserving the latter group is of that increase."[33]

Further, the decision of Hearing Officer Latsch is probative of the County's local labor market as it sets local labor rates for corrections supervisors. All arbitrators are aware of the impact local labor markets can play in setting wage rates and benefits. The consideration of a subject jurisdiction's local labor market is thus fully sanctioned by RCW 41.56.465(f). The reasons for this have been well-described by UCLA Professor Irving Bernstein:

> [Local labor market] comparisons are preeminent in wage determination because all parties at interest derive benefit from them. To the worker they permit a decision on the adequacy of his income. He feels no discrimination if he stays abreast of other workers in his industry, his locality, his neighborhood. They are vital to the union because they provide guidance to its officials on what must be insisted upon and a yardstick for measuring their bargaining skill. In the presence of internal factionalism or rival unionism, the power of comparisons is enhanced. The employer is drawn to them because they assure him that competitors will not gain a wage cost

[31] *City of Kennewick*, AAA No. 75 300 00225 96 (1997).
[32] *City of Redmond*, PERC No. 16791-I-02-0387 (2004).
[33] *City of Redmond*, PERC No. 16791-I-02-0387 (2004).

> advantage and that he will be able to recruit in the local labor market. . . . . Arbitrators benefit no less from comparisons. They have "the appeal of precedent and ... awards based thereon are apt to satisfy the normal expectations of the parties and to appear just to the public.[34]

In short, the comparability of other Washington jurisdictions, internal comparability, and the local labor market all weigh for adopting Hearing Officer Latsch's rationale and methodology. Hearing Officer Latsch found the following wage adjustment[35] to be appropriate:

Wages: Effective January 1, 2010, the 2010 salary schedule shall be increased by an amount equal to the August 2008-2009 All U. S. Cities CPI-W. Such salary increase shall be a minimum of 1% up to a maximum of 3%.

Effective January 1, 2011, the 2011 salary schedule shall be increased by an amount equal to the August 2009-2010 All U. S. Cities CPI-W. Such salary increase shall be a minimum of 1% up to a maximum of 3%.

The Panel believes that the above wage adjustment is appropriate as it keeps the internal alignment between the Corrections Officers and Sergeants in place, is based on a historical set of comparables (the "Latsch" Award), and will not deplete the County's reserves to a dangerous level. However, while granting this adjustment, the Panel is mindful that this might be the last increase this bargaining unit receives until structural changes occur to Lewis County's methods of raising revenue.

C. Health Insurance, Article 9.4.1 – 9.4.5

Currently, Lewis County's obligation to the members of this bargaining unit is to pay the sum of $1,138.10 per employee per month toward insurance premiums. This places the County squarely within what comparable jurisdictions pay based on the "Latsch" comparables. Simply put, Lewis County pays more in healthcare premiums than Grays Harbor County, Clallam

[34] *Arbitration of Wages, Publications of the Institute of Industrial Relations,* 54 (Berkeley: University of California Press, 1954). As discussed later in this decision, I have kept the County's local labor market in mind.
[35] I use the term "adjustment" as Hearing Officer Latsch stated: "I must emphasize that this is not a salary increase over and above what has been negotiated in the past, and is in line with the range of increases found in the comparable jurisdictions."

County, Cowlitz County and Franklin County, while paying less than Skagit, Island and Grant Counties. The Union currently receives approximately $36 more in premium assistance than the market average.

Also, an analysis of the County's internal comparables favors the County's position on the issue of healthcare funding. Of the County's twelve current bargaining units, all except those representing the Sheriff's uniformed employees have agreed in collective bargaining to cap the County's benefits contribution at a fixed dollar amount, varying from a low of $835.00 per month to a high of $984.15 per month, with the employees paying the remainder of the cost of their health insurance and other premiums.

The Corrections Guild requests that the County pay 95% of the cost of the Premera 200 Plan, which is the highest cost health plan offered by Premera Blue Cross. Based on the current 2011 rate sheet, the cost to the County of the 200 Plan (plus dental, vision, and life insurance) would come to $1,663.06 per corrections officer per month. Placing the Guild members on this plan would increase the County's premium bill for the 38 corrections officers in the year 2012 by $314,000, from $519,000 to $833,000.[36]

The Employer argues that all non-interest arbitration-eligible bargaining units have agreed to convert from a "percentage of premium" approach to a "fixed dollar" model. Under the "percentage of premium" approach, the Employer generally was responsible for 95% of insurance costs, with employees picking up the remaining five percent (in several bargaining units, the percentages worked out to be 97% for the Employer and three percent for the employees). Following the "fixed dollar" approach, the Employer's insurance contribution was "capped" at a set amount, with employees paying the remaining premium costs.

[36] This $314,000 increase in the County's expenses assumes insurance premiums do not go up.

The Employer maintained that the Arbitrator must acknowledge these employee contributions and economic sacrifices in fashioning an award in this matter. The Employer argued that the other units' acceptance of a 0% increase should be considered the best evidence of what the parties would have bargained for, and must be considered dispositive in the fashioning of an award in this case. The County concluded that it would be unfair for so many employees to take affirmative steps to help correct the budget problem while other groups did not.

However, as noted by Hearing Officer Latsch; "those other employees have little recourse than to accept what the County dictates." For interest arbitration-eligible employees, RCW 41.56.465(c) requires the comparison of law enforcement personnel to other law enforcement personnel. If the state Legislature had wanted internal parity to supersede the comparison of like personnel required by RCW 41.56.465(c), it would have said so. Association members should not be denied a particular benefit because of internal parity sought between dissimilar units.[37]

While the County's arguments on internal comparability are unpersuasive, the external comparables clearly favor a status quo of a fixed amount of $1,138.10 per employee per month toward insurance premiums. In awarding this amount, the Panel is mindful that the majority of comparable jurisdictions have elected to have a 95% - 5% split and the Panel believes that future interest arbitrators would award this split if the comparables remain the same; however, the lack of data presented at the hearing on comparable plans prevents this Panel from awarding language of this type.

[37] *Whitman County*, PERC Case No. 17193-I-03-0396 (2004).

D. Other Proposals

The parties had a variety of proposals that were certified by the Executive Director of the Washington PERC and subsequently either withdrawn or the parties reached agreement on. The remaining issues addressed at hearing included: Article 8.1.2 (28-Day Work Cycle); Article 9.3.4 (Vacation Scheduling); Article 9.14.1 (Light Duty); and, Article 10.3.3 (Arbitration Provisions and Process).

The above articles paled in importance to the parties when compared to the issues of wages and health benefits if the amount of time spent addressing them during the hearing or in post-hearing briefs (which was minimal for both) are probative of their importance.

As stated by Arbitrator Gaunt;

> The approach of this Arbitrator is to evaluate a proposal in terms of how significant a departure it represents from the status quo and the extent to which it is supported by the practice of comparable jurisdictions. The more significant the change and the less support for it in the practice of comparables, the more compelling the reasons must be for adopting that proposal. As the party seeking to change current contract language, the burden of persuasion rests in this case on the City.[38]

For all of the proposals listed above, there was some amount of testimony as to why the proposals had merit. However, costing for the above proposals was almost non-existent (although one could argue that the light-duty and arbitration provisions had no cost). Data on the above proposals that would affect the "total compensation" of the employees was also missing as was data on how the proposals compared to the practices at comparable jurisdictions.[39] While the Neutral Arbitrator liked some of the Guild's proposals, especially the proposals on light duty and the payment of arbitrators, the Panel must be mindful that this is a statutory proceeding, so it

[38] *City of Pasco*, PERC Case No. 18872-1-04-0439 (2006).

[39] For instance, while the Guild provided language on Light Duty from Skagit and Island Counties, language or practices from the other comparator counties was absent.

is the obligation of an arbitrator to apply the facts in evidence to the statutory criteria, not to develop criteria of his or her own.[40]

Additionally, this is "an adversarial proceeding, so it is the responsibility of each party to provide definite proposals and to provide evidence and argument in support of those proposals."[41] Further, "(I)t is not the responsibility of an arbitrator to go outside the record and arguments made."[42] This case seems analogous to *Kitsap County* in which Arbitrator Buchanan stated:

> The wording proposed by the County seems designed to improve the bargaining position of management and the proposed wording of the Guild seems designed to improve the bargaining position of the Union.[43]

In short, both the County and Guild want what they want, but have not provided evidence that would satisfy the elements set forth in RCW 41.56.465. While excellent policy arguments were made, the Panel was not provided with a "comparison of wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of like personnel of like employers of similar size on the west cost of the United States..." on the disputed provisions.

E. Threshold for Overtime Pay, Article 8.2.1

Article 8.2.1 (Threshold for Overtime Pay) is more problematic. The County at one time proposed the following but later withdrew its own proposal.

> Any work performed in excess of 40 hours per week or eight or ten hours per day, depending on the employee's assigned shift, shall be paid at the rate of time- and- one-half the regular rate of pay, or paid in the form of compensatory time off in accordance with the compensatory time provisions of Article 8.5. All overtime shall be authorized by the employee's supervisor and approved by the Sheriff's designee. Time spent

[40] *Mason County*, PERC Case No. 1856-104-0430 (2004).
[41] *Id.*
[42] *Id.*
[43] *Kitsap County*, PERC Case No. 13831-I-98-00299 (1998).

> donning and doffing uniform shirt and belt shall be considered deminimus for the purpose of calculating hours worked. An employee working out of classification as an Officer in Charge is eligible for three minutes of overtime for completion of verbal "pass down" at the beginning of each shift.

In its brief, the Guild altered its own proposal which had been the County's withdrawn proposal stating: "The Guild's position at this point is that the Arbitrators consider reverting to status quo language since the County apparently can't agree with its own proposal." The Panel accepts the Guild's invitation to adopt the status quo and awards such.

F. Duration of Contract, Article 16.1

Both parties agree on the end date of the Collective Bargaining Agreement being December 31, 2011, but the parties disagree on the starting date of the new Collective Bargaining Agreement. The Guild's position is that the prior Collective Bargaining Agreement expired when the Teamsters were decertified as the exclusive bargaining representative and the Corrections Officers were certified as the Lewis County Corrections Guild. The County has taken the position that the status quo was maintained from the moment that Teamsters declined to continue providing insurance coverage once the Guild members chose different representation based on their insurance proposal that cites the PERC hearing examiner decision. The Panel is unsure if the parties' position is materially different given the Award of a fixed dollar amount towards employer health insurance.

RCW 41.56.950 provides:

> Whenever a collective bargaining agreement between a public employer and a bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the same parties, the effective date of such collective bargaining agreement may be the day after the termination date of the previous collective bargaining agreement and all benefits included in the new collective bargaining agreement including wage increases may accrue beginning with such effective date as established by this section.

Clearly an order of retroactivity is permitted as RCW 41.56.950 provides that the effective date of a collective bargaining agreement may be the day after the termination date of the previous collective bargaining agreement "and all benefits included in the new collective bargaining agreement *including wage increases* may accrue beginning with such effective date as established by this section."

The parties apparently negotiated over many months for a successor Collective Bargaining Agreement. PERC initiated interest arbitration by letter dated March 29, 2010. On or about March 7, 2011, the parties notified me of my appointment, and I conducted the interest arbitration hearing on March 21, 22 and 23, 2011. Almost half of the proposed retroactivity period, therefore, was devoted to the interest arbitration process. There is no question that the Guild was certified on February 9, 2009 and Teamster's Welfare Trust discontinued their health insurance coverage effective March 1, 2009; therefore, there is no impediment to the new Collective Bargaining Agreement being effective February 9, 2009.

AWARD

Based on the foregoing and the record as a whole, the Arbitrator makes the following Interest Arbitration Award:

Wages: Effective January 1, 2010, the 2010 salary schedule shall be increased by an amount equal to the August 2008-2009 All U. S. Cities CPI-W. Such salary increase shall be a minimum of 1% up to a maximum of 3%.

Effective January 1, 2011, the 2011 salary schedule shall be increased by an amount equal to the August 2009-2010 All U. S. Cities CPI-W. Such salary increase shall be a minimum of 1% up to a maximum of 3%.

Medical Insurance: The County will continue to pay a fixed amount of $1,138.10 per employee per month toward insurance premiums.

Threshold for Overtime Pay: The Panel accepted the Guild's invitation to adopt the status quo and awarded such.

The parties' respective proposals to change the status quo on the following items are denied:

28-Day Work Cycle;

Vacation Scheduling;

Light Duty; and,

Arbitration Process.

Duration: The Collective Bargaining Agreement will be in effect from February 9, 2009 through December 31, 2011.

07/13/11
Date

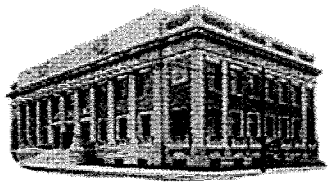
/s/ David Gaba
David Gaba, Neutral Arbitrator
Seattle, Washington

07/13/11
Date

/s/ Jaime Goldberg
Jaime Goldberg
Guild Partisan Arbitrator

07/13/11
Date

/s/ Richard Miller
Richard Miller
County Partisan Arbitrator



Lewis County
Prosecuting Attorney's Office

Equal Justice for All

July 18, 2011

By email and by First Class Mail

The Compliance Officer
Public Employment Relations Commission
P.O. Box 40919
Olympia, Washington 98504

Dear Sir:

I attach as a PDF file (and I enclose with the hard copy of this letter) a copy of the interest arbitration award in PERC case number 23135-I-10-0543, *Lewis County v. Lewis County Corrections Guild* ("the award"). I received it in today's mail.

I also received in today's mail the Commission's decision in PERC case number 22324-U-09-5692, Decision 10571-A-PECB, *Lewis County Corrections Guild v. Lewis County* ("the decision").

The decision and the award appear to require my client Lewis County to do two different things during an overlapping period of time with respect to its contribution toward the health insurance premiums for the same employees. I have scheduled a meeting with my internal clients to discuss the decision, the award, and related compliance issues for Monday of next week (July 25, 2011). I should appreciate your guidance in advance of that date.

Yours truly,

J. David Fine
Senior Civil Deputy Prosecuting Attorney

cc: Mr. Lemoine
Chief of Staff Walton
Mr. Smith
Chief Hanson

345 W. Main Street, 2nd Floor • Chehalis, WA 98532
(360) 740-1240 • Fax (360) 740-1497 • TDD (360) 740-1480