

**IN THE MATTER OF  
CLARK COUNTY  
AND  
CLARK COUNTY CUSTODY OFFICERS GUILD**



**PERC Case No.: 26409-I-14-0641**

**Date Issued: April 30, 2015**

**INTEREST ARBITRATION OPINION  
OF  
ALAN R. KREBS**

**Appearances:**

**CLARK COUNTY**

**CLARK COUNTY CUSTODY OFFICERS GUILD**

**Bruce L. Schroeder**

**Daryl Garrettson**

**IN THE MATTER OF  
CLARK COUNTY  
AND  
CLARK COUNTY CUSTODY OFFICERS GUILD**

**OPINION OF THE ARBITRATOR**

**PROCEDURAL MATTERS**

In accordance with RCW 41.56.450, an interest arbitration hearing involving certain uniformed personnel of Clark County, Washington was held on February 11, 2015 in Vancouver, Washington. The parties waived the provision in RCW 41.56.450 that provides for a three - member arbitration panel to resolve an interest arbitration dispute and agreed instead to present the matter to a single arbitrator, Alan R. Krebs. Clark County was represented by Bruce L. Schroeder of the Summit Law Group PLLC. Daryl Garrettson, Attorney at Law, represented Clark County Custody Officers Guild. At the hearing, witnesses testified under oath and the parties presented documentary evidence. A court reporter was present, and, subsequent to the hearing, a copy of the transcript was provided to the Arbitrator. Post hearing briefs were submitted.

**APPLICABLE STATUTORY PROVISIONS**

When certain public employers and their uniformed personnel are unable to reach agreement on new contract terms by means of negotiations and mediation, RCW 41.56.450 calls

for interest arbitration to resolve their dispute. The parties agree that RCW 41.56.450 is applicable to the custody officers bargaining unit involved here.

RCW 41.56.465 sets forth certain criteria that must be considered in deciding the controversy:

(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.

(3) 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.

\* \* \*

The statute does not provide guidance as to how much weight should be given to any of these standards or guidelines, but rather leaves that determination to the reasonable discretion of the interest arbitrator. RCW 41.56.465 requires the interest arbitrator to be mindful of the legislative purpose set forth in 41.56.430, which provides:

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.

Arbitrators are generally mindful that interest arbitration is an extension of the bargaining process. They recognize those contract provisions upon which the parties could agree and decide the remaining issues in a manner that would approximate the result the parties would likely have reached in good faith negotiations considering the statutory criteria. A party proposing new contract language has the burden of proving that there should be a change in the status quo.

## **ISSUES**

On April 17, 2014, the Executive Director of the State of Washington Public Employment Relations Commission certified that following mediation, the parties were at impasse on a number of specified provisions in negotiations for their successor collective bargaining agreement, and therefore, they should proceed to interest arbitration on those issues. The previous agreement had duration from January 1, 2011 through December 31, 2012. The parties agreed that, with one exception, which will be discussed, the new agreement will retroactively apply from January 1, 2013 through December 31, 2015. Prior to the hearing, the parties resolved some of of the certified issues, leaving the following at issue:

|                       |                             |
|-----------------------|-----------------------------|
| Article 7.6           | Paid Days Off Sell-back     |
| Article 7.7 and 7.7.2 | Paid Days Off, Holiday Pay  |
| Article 8.7           | Sick Leave Payoff           |
| Article 11            | Compensation                |
| Article 11.7          | Compensation - Longevity    |
| Article 13            | Health and Welfare          |
| Appendix A            | Guild Custody Salary Tables |

## **NATURE OF THE EMPLOYER**

Clark County is located in southwest Washington State across the Columbia River from Portland, Oregon and is part of that metropolitan area. The Guild is recognized as the exclusive bargaining agent for all regular full time and part time Custody Officers and Custody Sergeants of the Clark County Sheriff's Office. As of December 31, 2014, the County employed 125 Custody Officers and 19 Custody Sergeants. They are responsible for providing supervision and care of inmates at the Employer's Main Jail and the Jail Work Center.

## **COMPARABLE EMPLOYERS**

RCW 41.56.465(3) requires the interest arbitrator to "consider a comparison of the wages, hours, and conditions of employment . . . [with those] of like personnel of like employers of similar size on the west coast of the United States."

The parties were unable to agree on a complete list of appropriate comparable jurisdictions. They did agree that the counties of Kitsap, Spokane and Thurston in Washington State and Clackamas and Washington in Oregon should be utilized as comparators. As an additional comparator, the Guild proposes that Lane County in Oregon be used. The County opposes the use of Lane County as a comparator.

In an interest arbitration opinion involving these parties, which this Arbitrator authored in 2008, it was held that the comparable jurisdictions included Lane County, based on population and the parties' historical practice. In 2011, the Employer undertook a "reconfiguration" project for the purpose of determining appropriate compensation for its employees. In that project the Employer utilized as comparators, the six counties now proposed for use by the Guild. In a 2012 interest arbitration, the Employer and the Guild each proposed the same comparable counties as

they have proposed in the matter at hand, differing as here, on the inclusion of Lane County. In her opinion in that matter, Arbitrator Kathy Whalen decided to utilize as comparators the five counties upon which the Employer and the Guild agreed. Arbitrator Whalen added

... I also have reviewed and considered the data regarding Lane County. Based upon Lane County's population and assessed valuation as well as its recent use in the reconfiguration project, I find it appropriate to consider this data – but it had no significant effect on outcome.

The counties that will be utilized here as comparable jurisdictions are Kitsap, Spokane, Thurston, Clackamas, Washington, and Lane Counties. These counties were utilized as comparators in the parties' 2008 interest arbitration and by the Employer in its 2009 reconfiguration project. The only basis for excluding Lane County offered by the Employer is that it was not included as a comparator in the 2012 interest arbitration opinion. In fact, Arbitrator Whalen stated in that opinion that she found it appropriate to consider the Lane County data based on population, assessed valuation, and its use in the reconfiguration project. I find insufficient rational basis for excluding Lane County as a comparator.

## **COST OF LIVING**

The governing statute requires consideration of "the cost of living." According to statistics provided by both parties, which are published by the U.S. Department of Labor, Bureau of Labor Statistics, the Consumer Price Index (CPI-W) for the Portland-Salem area rose by an annual average of 2 percent in 2012, 2.3 percent in 2013, and 2.4 percent in the first half of 2014. The County presented evidence that Custody Officer monthly base wages in the past ten years increased from \$4,043 to \$5,317, while if wages had increased by the increase in the CPI-W for Portland – Salem, their monthly wages in 2014 would have been \$5,072.

## **OTHER CONSIDERATIONS**

In addition to the specific criteria set forth in RCW 41.56.465(a)-(d), Subsection (e) of that statute requires consideration of “[s]uch other factors, not confined to the factors under (a) through (d) . . . , that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. . . .” Accordingly, the factors discussed below have been considered.

### **Ability to Pay**

A factor frequently advanced in contract negotiations and also considered by interest arbitrators is the ability to pay wage and benefit increases. *Clark County* (Axon, 1996); *King County* (Lankford, 2009).

The County contends that its ongoing financial challenges should temper any economic award. The County asserts that it was hard hit by the recession, and the continuing slow recovery has harmed its revenue sources. According to Adriana Prata, the County Budget Manager, property taxes, which are its largest revenue source, has been increasing by only between 1 and 2 percent in the last four or five years, and that much lower growth in sales tax revenues is expected. Ms. Prata testified that in recent years the County’s sales tax revenues have been increasing by 9 percent, but that was coming off a low base. Ms. Prata points out that in contrast to comparable counties, it receives much lower sales taxes per capita because Clark County residents can shop for big-ticket items in Portland where there is no sales tax. Ms. Prata testified that the County projects that in 2015 it will have reserves that will cover 56 days of its expenses. The County’s reserve policy, which is consistent with the recommendation of the Government Finance Officers’ Association (GFOA), calls for 60 days worth of reserves. The County maintains that with the current budget it still faces future budget challenges by

continuing to defer unmet needs. Ms. Prada testified that the County will pay out 1.5 million dollars per year until 2020 as a result of a lawsuit, and the rate it pays for its State retirement program has recently gone up from 9.21 percent to 9.6 percent, and it foresees an increase to 10.1 percent.

The Guild contends that the County has not met its burden of proving an inability to fairly compensate its custody employees. In this regard, the Guild agrees that the economic downturn of 2008-09 had financial consequences for the County, but argues that its current financial outlook is one of recovery, and it has more than adequate resources to fund the Guild's proposal. The Guild points out that the County's audited unassigned reserves have been increasing, with an unrestricted fund balance in 2011 of \$28,888,813 increasing to \$35,288,231 in 2013, even after the previous interest arbitrator had awarded the Guild's pay proposal. The Guild argues that the County's proposed 57-day unreserved balance is not fiscally required inasmuch as Standard and Poors, Moodys and Fitch IBCA all recommended a reserve of 5 percent. The Guild argues that the County never had such a 57-day reserve in recent years, and there was no evidence that this impacted its operations in any way.

According to a published "County Profile" submitted into evidence by the County, in 2014, it was the fastest growing county in the State. Its unemployment rate, while still relatively high, has been rapidly dropping over the past several years. I find that the County has adequate reserves and revenue to pay fair and reasonable compensation to its Custody Officers.

### **Recruitment and Retention**

Arbitrators often consider employee turnover, or lack thereof, when determining appropriate compensation rates. A high level of turnover or difficulties in recruitment may signify that the compensation levels are inadequate. During each of the last four years, the



number of applicants for Custody Officer positions has never been less than 107, nor more than 177. The number of Custody Officers hired during each of these years has ranged from a low of four to a high of eleven. Since 2011, two Custody Officers have resigned from their employment. There is no indication that in recent years, the County has had any difficulty recruiting or retaining employees with the existing terms and conditions of employment.

### **Internal Equity**

The County contracts with numerous unions that represent County bargaining units. As your Arbitrator has held in other interest arbitration proceedings, the settlements reached by an employer with its other bargaining units are significant. While those settlements are affected by the particular situation of each bargaining unit, still there is an understandable desire by the employer to achieve consistency. From a union's standpoint, it wants to do at least as well for its membership as the employer's other 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.

### **BASE WAGES**

The County proposes a 1.75 percent wage increase in 2013, a 2 percent wage increase in 2014, and a 2 percent wage increase in 2015, with retroactivity for these increases limited to employees on the payroll at the time of the award. The Guild proposes an increase of 5.2 percent for 2013, a 5 percent increase in 2014, and a 3 percent increase in 2015, with full retroactivity.

The County argues that its proposal in this regard is fair based on multiple factors. It asserts that its wage proposal is in accordance with internal comparisons with other County employee groups. It contends that its wage proposal is also fair in light of the external

comparables, the negligible inflationary pressures of the past several years, the limited voluntary turnover, the economic stagnation that continues to adversely impact the County, and by the economic realities of the local labor market.

The Guild argues that its wage proposal is justified because its members are far behind the average compensation provided by the comparable Counties, and even if granted, it would still not eliminate the disparity. The Guild asserts that their situation is even worse considering the local labor market, with Clark County Custody Officers currently the lowest paid Custody Officers within the Portland metropolitan area. The Guild urges that internal comparability should not be considered because of differences related to the job performed and because the other bargaining units have little bargaining power since they are not subject to interest arbitration. The Guild argues that recruitment and retention should not be considered because in down economic times employees hang onto their current jobs, and potential retention issues arise only when the economy begins to recover, as now is the case. Regarding the cost of living, the Guild suggests that the statute is looking to the future, not the past.

As previously discussed, the governing statute requires consideration of a “comparison of the wages, hours, and conditions of employment of like personnel of similarly-sized public employers.” The Guild presented evidence of total compensation for a Custody Officer in the County and the comparable jurisdictions, including employer contributions for longevity pay, deferred compensation and VEBA, education premium, Intermediate and Advanced Certification premium, pickup of employee’s retirement contribution, the value of the total leave benefit, and also including a deduction for the employee’s contribution towards their health insurance premium. The Guild adjusted the total compensation to reflect the additional hours the Custody Officers routinely work over and above a standard 2080-hour work year as a result of their

twelve-hour shifts. The Guild submitted such data for Custody Officers with five, ten, fifteen, and twenty years of service. The Guild also provided such data for Counties in the Portland Metropolitan area, while arguing that these are relevant because they are in the local labor market. The County's criteria for comparison are different. It proposes a comparison with the comparables limited to top step base wages for ten-year Custody Officers, without consideration of benefits provided.

I find that a total compensation comparison, as proposed by the Guild, is preferable to the base wage comparison proposed by the County. In past interest arbitration awards, this Arbitrator has generally relied on a total compensation comparison and it is the method preferred by most respected arbitrators when applying the statute. *City of Pullman* (Wilkinson, 2004); *City of Longview* (Lankford 2008). Base wages are only one element of an employee's total compensation. A total compensation comparison that takes into account pay premiums, benefits, and hours worked, is inherently more meaningful than a focus on base wages alone. I am not persuaded by the County's position that for purposes of compensation comparisons, it is insignificant that its Custody Officers' regular twelve-hour work schedule amounts to 2,190 hours per year, which is more than the usual 2080 hours per year. Such disparities in hours worked has a direct correlation to the employee's hourly wage. Similarly, differences in paid leave are also a relevant consideration in a total compensation comparison. I also do not agree with the County's argument that an employer's contribution to the employee pension fund is necessarily irrelevant to a compensation comparison. Some of the comparators pick up their employees' share of contributions into their retirement system. Other comparators do not, in which case deductions are made from the employees' pay. Such differences are appropriately considered in compensation comparisons since it directly affects take-home pay. Thus, I have

utilized the compensation figures provided by the Guild. In doing so, I have utilized benchmarks of a 10-year Custody Officers with an Associate's Degree and/or Oregon Intermediate Certification, and 15- and 20 year Custody Officers with an Bachelor's Degree and/or Oregon Advanced Certification:

10-Year Custody Officer Compensation Comparison

| <u>Jurisdiction:</u>      | <u>Spokane</u> | <u>Thurston</u> | <u>Kitsap</u> | <u>Washington</u> | <u>Clackamas</u> | <u>Lane</u>  | <u>Average</u>      | <u>Clark</u> |
|---------------------------|----------------|-----------------|---------------|-------------------|------------------|--------------|---------------------|--------------|
| <u>Wage Date</u>          | 12/1/14        | 1/1/15          | 1/1/13        | 7/1/14            | 12/1/14          | 7/5/14       |                     | 1/11/12      |
| <u>Base Wage</u>          | 4,674.04       | 5,466.          | 4,845.47      | 5,938.99          | 5,879.62         | 4,751.89     | <u>5,259.33</u>     | 5,010.10     |
| <u>Longevity</u>          | 239.31         | 0               | 0             | 0                 | 112.96           | 83.16        | <u>72.57</u>        | 292.88       |
| <u>EE Ins. Contrib.</u>   | -102.50        | 0               | -244.44       | -87.79            | -78.87           | -79.41       | <u>-98.84</u>       | -85.42       |
| <u>Total Leave</u>        | 539.42         | 672.76          | 577.65        | 708.02            | 781.35           | 530.03       | <u>634.87</u>       | 674.47       |
| <u>Defer'd &amp; VEBA</u> | 0              | 0               | 0             | 84.50             | 235.18           | 0            | <u>53.28</u>        | 0            |
| <u>AA/Int. Certif.</u>    | 0              | 109.32          | 0             | 356.34            | 0                | 142.56       | <u>101.37</u>       | 0            |
| <u>PERS Pick-up</u>       | 0              | 0               | 0             | 377.72            | 359.55           | 298.66       | <u>172.66</u>       | 0            |
| <br><u>Adj. Base</u>      | <br>5,350.27   | <br>6,248.08    | <br>5,178.68  | <br>7,377.78      | <br>7,289.79     | <br>5,726.88 | <br><u>6,195.25</u> | <br>5,892.03 |
| <br><u>Difference</u>     |                |                 |               |                   |                  |              |                     | <br>-5.1%    |

15-Year Custody Officer Compensation Comparison

| <u>Jurisdiction:</u>      | <u>Spokane</u> | <u>Thurston</u> | <u>Kitsap</u> | <u>Washington</u> | <u>Clackamas</u> | <u>Lane</u>  | <u>Average</u>      | <u>Clark</u> |
|---------------------------|----------------|-----------------|---------------|-------------------|------------------|--------------|---------------------|--------------|
| <u>Wage Date</u>          | 12/1/14        | 1/1/15          | 1/1/13        | 7/1/14            | 12/1/14          | 7/5/14       |                     | 1/11/12      |
| <u>Base Wage</u>          | 4,674.04       | 5,466.          | 4,845.47      | 5,938.99          | 5,879.62         | 4,751.89     | <u>5,259.33</u>     | 5,010.10     |
| <u>Longevity</u>          | 239.31         | 0               | 0             | 0                 | 169.44           | 142.56       | <u>91.88</u>        | 292.88       |
| <u>EE Ins. Contrib.</u>   | -102.50        | 0               | -244.44       | -87.79            | -78.87           | -79.41       | <u>-98.84</u>       | -85.42       |
| <u>Total Leave</u>        | 593.36         | 735.84          | 670.76        | 776.56            | 825.45           | 584.87       | <u>697.81</u>       | 712.92       |
| <u>Defer'd &amp; VEBA</u> | 0              | 0               | 0             | 84.50             | 235.18           | 0            | <u>53.28</u>        | 0            |
| <u>BA/Adv. Cert.</u>      | 0              | 245.97          | 0             | 712.68            | 0                | 285.11       | <u>207.29</u>       | 0            |
| <u>PERS Pick-up</u>       | 0              | 0               | 0             | 399.10            | 362.94           | 310.77       | <u>178.80</u>       | 0            |
| <br><u>Adj. Base</u>      | <br>5,404.21   | <br>6,447.81    | <br>5,271.79  | <br>7,824.03      | <br>7,393.77     | <br>5,995.79 | <br><u>6,389.57</u> | <br>5,930.48 |
| <br><u>Difference</u>     |                |                 |               |                   |                  |              |                     | <br>-7.7%    |

20-Year Custody Officer Compensation Comparison

| <u>Jurisdiction:</u>      | <u>Spokane</u> | <u>Thurston</u> | <u>Kitsap</u> | <u>Washington</u> | <u>Clackamas</u> | <u>Lane</u> | <u>Average</u>  | <u>Clark</u> |
|---------------------------|----------------|-----------------|---------------|-------------------|------------------|-------------|-----------------|--------------|
| <u>Wage Date</u>          | 12/1/14        | 1/1/15          | 1/1/13        | 7/1/14            | 12/1/14          | 7/5/14      |                 | 1/11/12      |
| <u>Base Wage</u>          | 4,674.04       | 5,466.          | 4,845.47      | 5,938.99          | 5,879.62         | 4,751.89    | <u>5,259.33</u> | 5,010.10     |
| <u>Longevity</u>          | 239.31         | 0               | 0             | 0                 | 225.92           | 237.59      | <u>117.14</u>   | 292.88       |
| <u>EE Ins. Contrib.</u>   | -102.50        | 0               | -244.44       | -87.79            | -78.87           | -79.41      | <u>-98.84</u>   | -85.42       |
| <u>Total Leave</u>        | 647.30         | 801.76          | 670.76        | 845.10            | 869.56           | 639.71      | <u>745.70</u>   | 751.66       |
| <u>Defer'd &amp; VEBA</u> | 0              | 0               | 0             | 84.50             | 235.18           | 0           | <u>53.28</u>    | 0            |
| <u>BA/Adv. Cert.</u>      | 0              | 273.30          | 0             | 742.37            | 0                | 285.11      | <u>216.80</u>   | 0            |
| <u>PERS Pick-up</u>       | 0              | 0               | 0             | 400.88            | 366.33           | 316.48      | <u>180.61</u>   | 0            |
| <u>Adj. Base</u>          | 5,458.15       | 6,541.06        | 5,271.79      | 7,924.05          | 7,497.74         | 6,151.37    | <u>6,474.03</u> | 5,969.22     |
| <u>Difference</u>         |                |                 |               |                   |                  |             |                 | - 8.5%       |

While a total compensation comparison reflects that a 10-year Custody Officer in this bargaining unit is currently 5.1 percent behind the average of their comparators, it must be remembered that they last received a pay increase in 2012. The data provided by the Guild for the comparables are for later time periods when, presumably, those employers had already provided wage increases to their employees during the intervening years. If the compensation comparison had been conducted in 2012, the wage differential would have been less. With the exception of Thurston County, there was no 2015 data provided for the comparable jurisdictions.

I have not given any weight to the compensation provided by much larger local jurisdictions. The governing statute requires that the external comparison be made with similar sized like employers. There was no evidence that the County's Custody Officers have left the County for better paying corrections jobs in the local labor market.

The County has reached agreement with twelve of its other bargaining units for the years 2013, 2014, and with eleven of them for 2015. Eleven of them received the same wage increases that the County has offered to the Guild. The County provided the same wage increases to its non-represented employees. The Deputy Sheriff's Guild, which also is also entitled to interest arbitration by statute, has not yet settled its contract for 2013, 2014, and 2015.

Considering the statutory criteria, I award base wage increases of 2 percent effective January 1, 2013, 2 percent effective January 1, 2014, and 2 percent effective January 1, 2015. These wages increases are fully retroactive, with no exclusion for individuals no longer employed by the County. It would not be fair to deny these individuals the wage rate they deserved because of lengthy bargaining process. The awarded wage increases should bring the total compensation of this bargaining unit close to the average of the comparable jurisdictions and they are close the increases in the cost of living. The wage increases awarded here are, in the Arbitrator's opinion, affordable for the County, and provides fair and just compensation, considering the statutory criteria, such as compensation comparisons with the comparable jurisdictions, increases in the cost of living, and other traditionally relied upon factors, including the ability to retain employees and internal equity. Moreover it takes into account additional employee costs for the County, including increased pension and insurance contributions, and also the longevity benefit awarded below.

## **STEPS**

The current Agreement provides for seven wage steps, with each step representing a 5 percent wage increase. Custody Officers reach the top step after six years of service. The County proposes to double the number of steps, with each step representing a 2.5 percent wage

increase. Custody Officers would then reach the top step after twelve years of service. Human Resources Director Francine Reis testified that as a result of the financial challenges of the Great Recession, it negotiated this new step plan into the contracts covering its other bargaining units, except for the Deputy Sheriff's Guild. Ms. Reis testified that 85 percent of the bargaining unit would not be affected by the change since they are already at the top step. The County argues that the new step plan should be awarded so that the County could control the rate of payroll expense growth.

The Guild opposes any change to the current step plan. It provided evidence that all the comparators have step plans, all have between five and seven steps, with a 5 percent wage difference between each step, and the top step reached at no more than six years. The Guild argues that the County has not proven a compelling need to alter the *status quo* based on inability to pay.

No change to the wage step plan is awarded. The current step plan is consistent with those of the comparable jurisdictions, and implementation of the County's proposal would result in the bargaining unit being extremely out of line with those comparators. The County has not demonstrated financial distress that could arguably justify a change to the status quo.

#### **ARTICLE 7.6 – PAID DAYS OFF SELL-BACK**

Article 7.6 provides that employees may elect to sell back to the County up to 60 hours of paid days off [PDO] per year, but further provides that this option “is subject to availability of adequate funds [and such] sell-back requests may be restricted or suspended by the County.” According to the County, it has not authorized PDO sellbacks since about 2009 and it has no intention of authorizing it in the future. Ms. Reis testified that the County wants to eliminate this

provision to clean up the language since this benefit is no longer offered and each year, her Department has to field questions about it. The County asserts that this right is not supported by reference to the external comparables.

The Guild recognizes that PDO sell-back is solely at the County's discretion. It points out that eight of the County's bargaining units currently have the same provision in their agreements. It argues that the County has failed to meet its burden of proving that a change to the status quo regarding PDO sell-back is justified.

No change to this provision shall be awarded. This provision is in many of the County's collective bargaining agreements. It is recognized that the County retains the discretion whether or not to fund a PDO sell-back. Since this provision remains in many of the County's contracts, and as mutually interpreted, it need not cost the County anything, I find insufficient reason to delete this provision from the Agreement.

#### **ARTICLE 7.7 - HOLIDAY PAY**

Article 7.7 provides for time-and-a-half pay for all regularly scheduled hours worked on five specified holidays, and Article 7.7.2 provides for two-and-a-quarter times the regular rate of pay for all excess hours worked on those days. The Guild proposes that it receive such premium pay for all hours worked on a holiday designated as such by law or by declaration by the County. That proposal would increase the number of holidays for which there would be premium pay from five to ten. The Guild points out that three of the comparable jurisdictions and the Sheriff's Office Support Guild provide premium pay for working on all holidays.

The County urges that there should be no change to Article 7.7 and 7.7.2. It points out that neither of the other two County bargaining units which are subject to interest arbitration, the



Sheriff's Administrative Association and the Deputy Sheriff's Guild, receive premium pay for more than five holidays. It also asserts that the cost for this proposal is over \$52,000, and this is not the time to increase costs.

I find that there is insufficient basis to increase the holiday premium benefit. The comparable jurisdictions are evenly split in their support, and the County's other uniformed bargaining unit does not have the benefit sought by the Guild.

#### **ARTICLE 8.7 – SICK LEAVE PAYOFF**

Article 8.7 of the current Agreement provides that employees with ten years of service and at least 300 hours of accrued sick leave who retire, are laid off, or resign in good standing may cash out a portion of their accrued sick leave at their base rate of pay. They would be paid for 25 percent of their accrued hours from 300 to 599, 50 percent from 600 to 899, and 75 percent of hours above 900. The Guild proposes to replace this with language calling for full payment for a maximum of 450 accrued hours of sick leave beginning with their 201<sup>st</sup> hour. The Guild reasons that both internal and external comparators support its proposal. The County contends that there should be no change in the current language. It too maintains that internal and external comparators support its position.

The two other County bargaining units that are entitled to interest arbitration have the same sick leave payout language that the Guild is proposing here. Ten other County bargaining units have contract language similar to the current language in the Custody Officers contract. Among the comparators, Clackamas, Lane, and Washington Counties provide no sick leave payout at separation. Kitsap County provides for sick leave cash out at retirement, allowing 50 percent of sick leave accrued prior to 1985, and 25 percent of sick leave accrued after 1985, to be

cash out. Spokane County provides for 50 percent of accrued sick leave to be cashed out at retirement or death, not to exceed 520 hours. Thurston County has a similar provision, though it limits the payout to 460 hours.

Weighing the evidence of the practice of internal and external comparators, I find insufficient basis to support the Guild's request for an enhanced sick leave payout benefit.

### **LONGEVITY PAY**

The Guild proposes a new longevity pay premium with a two percent premium after 15 years and an additional two percent after twenty years. It argues that its proposal is justified based on external comparability. The County urges that this proposal be rejected on the basis of internal and external comparability.

Lane County Custody Officers receive longevity pay of 2.5 percent at ten years and an additional 2.5 percent thereafter every five years plus an additional 3 percent for an Intermediate Certificate or 6 percent for an advanced certificate. Clackamas County Custody Officers receive an additional \$49.17 per month for every five years of service, plus they receive \$32.35 per month for an Intermediate Certificate and \$70.95 for an Advanced Certificate. Washington County Custody Officers with an Intermediate Certificate receive 3 percent at 15 years and those with an Advanced Certificate receive 4 percent at 15 years. Thurston County Custody Officers receive one percent at 15 years and an additional 1 percent at 20 years. Kitsap and Spokane Counties do not provide longevity pay at 15 and 20 years. Two of the County's smaller bargaining units have contract provisions providing for longevity pay at 15 years. One of those also receives longevity pay at 20 years. The County's other bargaining units do not receive longevity pay after ten years.

As the compensation charts set forth in the Wage section of this Opinion indicate, the compensation of Clark County Custody Officers are behind the average of the comparable jurisdictions at 15 and 20 years of service. A majority of the comparators recognize the value of such long years of experience with additional compensation. Accordingly, a 1 percent longevity premium is awarded at an employee's 15<sup>th</sup> year anniversary and an additional 1 percent is awarded at an employee's 20<sup>th</sup> anniversary.

## **LIFE INSURANCE**

The Guild proposes a \$200,000 line of duty death benefit. It reasons that Custody Officers have a reduced life expectancy and a higher suicide rate because of the stress of their work, including the constant threat of inmate assaults. The County opposes this proposal, arguing that no other County employee has such a benefit and Washington State Worker's Compensation law already provides a death benefit.

No new life insurance benefit is awarded. There is neither support for such a proposal among the comparable jurisdictions, nor among the County's other bargaining units. No evidence was presented that any employee in this bargaining unit has ever lost their life in the line of duty.

## **HEALTH INSURANCE**

Currently, the County contributes 95 percent of its Custody Officers' health insurance premiums, and its Custody Officers' pick up 5 percent (a 95/5 split). The County proposes for the new contract an employee contribution of 7 percent for employee health insurance premiums (a 93/7 split) up to the County's annual benefit budget, with a 50/50 sharing of increases that

exceed that budget. It further proposes that its Custody Officers move from their current health plans to revised “standard” plans. Currently, the Custody Officers have a choice of two plans, a Kaiser Permanente plan and a Regence/Vision Service plan. The County’s proposed standard plan would increase the annual out-of-pocket limit on expenses under the Kaiser plan from \$600 individual/\$1,200 family to \$1,200 individual/\$2,400 family. The newly offered Regence/Vision Service standard plan, provides the enhanced benefit of 100 percent coverage for certain medications treating specific chronic conditions and improved allowances for eye glasses. The County argues that its proposal is supported by its efforts to address its skyrocketing health care costs and decreased County revenue. It points out that since 2010, health insurance premiums have increased by more than 27 percent, escalating from \$1,248 in 2010 to \$1,603 in 2015. It argues further that its proposal is supported by internal parity, inasmuch as all bargaining units, with the exceptions of those represented by the Custody and Patrol Guilds, have already accepted the same contribution structure and plan redesign as the County is proposing here. The County maintains that its proposal would bring it more in line with other employers across the nation inasmuch as a published survey indicates that employees in the United States, on average, contributed 18 percent of the premium for individual coverage and 29 percent for family coverage. The County asserts that recent Washington interest arbitration decisions have sided with employer proposals on health insurance issues.

The Guild opposes the City’s proposal to modify its health insurance benefit by changing the terms of the plans and increasing the percentage of the employee contributions. It argues that its health plans should not be modified just because the County achieved a change to its plans with other bargaining units. It further argues that the County has not met its burden of proving that a change in the status quo is justified. The Guild maintains that the County’s proposal

would, when compared with the comparable jurisdictions, result in employees paying a premium share above the average, both in terms of premium share and out-of-pocket expense.

Custody Officers employed by the comparators pay the following monthly amounts for their share of the cost of health benefits:

| <u>Department</u> | <u>Employee Contribution for Health Benefits</u> |
|-------------------|--|
| Clackamas         | \$78.87  |
| Lane              | \$79.41  |
| Kitsap            | \$244.44   |
| Spokane           | \$102.50   |
| Thurston          | \$0.00   |
| Washington        | \$87.79  |
| Average           | \$98.83  |
| Median            | \$79.14  |
| Clark             | \$93.12  |

No change to the plan benefits or the employees' percentage share of their health insurance premiums shall be awarded. As previously observed, an employer's payment for its employees' health benefits is an element of total compensation. The evidence does not indicate that the total compensation for Custody Officers employed by the County, with the awarded wage increase, is significantly higher than the average total compensation paid by the comparable counties to their Custody Officers. Moreover, the average contribution by Custody Officers for their health insurance is not inconsistent with the comparators' practice. The County has not sufficiently established that the cost of its health insurance for its Custody Officers is unaffordable or out of line when compared with the comparable jurisdictions. Comparability with like employees of like employers of similar size, a factor specified in the governing statute, is more significant than the health insurance benefits that the County provides to its employees

who are not subject to interest arbitration and do not have duties which are as inherently stressful and dangerous as those of Custody Officers.

The County proposes that as an addition to the two health plans now offered to Custody Officers, they should have the option of choosing a newly offered High Deductible Health Plan (HDHP) coupled with a Health Savings Account (HSA). Those opting for this plan would receive from the County a monthly contribution to their HSA of \$20.83 per pay period (twice a month) for a single employee and \$41.67 per pay period for those covering dependents. All other bargaining units receive this option except for the Deputy Sheriff's unit. The County argues that Custody Officers should have the choice of deciding whether the HDHP plan is right for them. The Guild opposes this proposal. It argues that Custody Officers are exposed to health risks, such that they require high quality insurance. The Guild asserts that the HDHP was negotiated with a committee of other bargaining units, and not with the Guild.

The County's proposal for a High Deductible Plan coupled with a Health Savings Account is a reasonable alternative for Custody Officers and shall be added to the Agreement. It is available to most other County employees. Each Custody Officer will have a choice whether or not to select this benefit.

The County proposes a new benefit for Custody Officers of paying those who opt out of medical coverage \$130 per month and paying those who opt out of dental coverage \$20 per month. Employees opting for this must provide proof that they already have coverage through another's plan. All other bargaining units except for the Deputy Sheriff's unit receive this benefit. The Guild proposes that those employees who opt out of medical coverage receive \$250 per month. The Guild points out that if its proposal were adopted, its members would receive 1/6 of the financial savings to the County, while under the County proposal, the employee would

receive only 1/10 of the savings. Neither party contends that its proposal is supported by reference to the comparable jurisdictions.

The County's proposal of paying Custody Officers \$130 per month for those opting out of medical coverage and \$20 for those opting out of dental coverage shall be adopted. This is a new benefit for employees and matches the benefit provided to all of the other County bargaining units who have an opt-out benefit.

In sum, the only changes to the health insurance provisions that shall be ordered is the adoption of the County proposals for new benefits regarding a High Deductible Health Plan coupled with a Health Savings Account and payments to employees who opt out of medical and dental coverage.

### **AWARD OF THE ARBITRATOR**

It is the award of the Arbitrator that:

- I. Article 11 shall be changed to reflect increases in base wages of 2 percent effective January 1, 2013, an additional 2 percent effective January 1, 2014, and an additional 2 percent effective January 1, 2015. Appendix A shall be amended accordingly. These increases shall be retroactive and shall encompass former employees.
- II. There shall be no change to the wage step plan.
- III. There shall be no change to Article 7.6, Paid Days Off Sell-Back.
- IV. There shall be no change to Article 7.7, Holiday Pay.
- V. There shall be no change to Article 8.7, Sick Leave Payoff.
- VI. Article 11.7, Longevity Program, shall be amended to reflect a 1 percent increase

effective on the first day of the month during which the employee's 15<sup>th</sup> anniversary with the Sheriff's Office occurs, and an additional 1 percent increase effective on the first day of the month during which their 20<sup>th</sup> anniversary occurs.

- VII. No new life insurance benefit is awarded.
- VIII. Article 13, Health and Welfare, shall be amended to include the High Deductible Health Plan coupled with a Health Savings Account, and cash payments for opting out of the medical and dental plans, as proposed by the County. There shall be no changes to other matters in dispute regarding this provision.

Sammamish, Washington

Dated: April 30, 2015

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



**ALAN R. KREBS**

ATTORNEY AT LAW AND ARBITRATOR  
3308 - 217TH PLACE N.E.  
SAMMAMISH, WASHINGTON 98074-6320

TEL: (425) 868-2100 • FAX: (425) 868-6855

April 30, 2015

Case Administrator  
Public Employment Relations Commission  
P.O. Box 40919  
Olympia, WA 98504



Re: Clark County  
And  
Clark County Custody Officers Guild  
Interest Arbitration

Dear Sir or Madam:

Enclosed is my interest arbitration decision issued today in the above referenced matter.

Very truly yours,

A handwritten signature in blue ink that reads "Alan R. Krebs".

Alan R. Krebs