

BEFORE THE ARBITRATOR

In the Matter of the Interest Arbitration Between

AMALGAMATED TRANSIT UNION LOCAL 587,  
AFL-CIO,

Union,

and

KING COUNTY,

Employer.

ARBITRATORS' DECISION  
AND AWARD

2014-2016 INSURANCE  
MEMORANDUM OF  
AGREEMENT

HEARING DATES:

July 8, 9, 10 and 11, 2013

POST-HEARING BRIEF DUE:

July 26, 2013

RECORD CLOSED ON RECEIPT OF BRIEF:

July 27, 2013

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INTRODUCTION:

This interest arbitration is conducted pursuant to RCW 41.56.492 and the regulations promulgated thereunder. The parties to this dispute are the Amalgamated Transit Union, Local 587, AFL-CIO, hereinafter referred to as the Union or ATU 587, and King County, hereinafter referred to as the Employer or County. The Division involved in this case is Transit which is referred to as KCMetro or Metro. King County and ATU 587 have been parties to a number of collective bargaining agreements, the last of which expires on October 31, 2013. They are also signators to a Health Benefits Memorandum of Agreement which was extended to expire December 31, 2013. The parties engaged in a good faith effort to negotiate a successor Health Benefits Memorandum of Agreement, but were unsuccessful. Impasse was declared by PERC on November 30, 2012, and the matter, accordingly, was submitted to arbitration. Hearing was held on July 8, 9, 10 and 11, 2013. The proceeding was recorded and a transcript of 842 pages was submitted to the parties and arbitrators. The parties submitted briefs postmarked July 26, 2013. The hearing was officially closed on July 27, 2013, after receipt of the final briefs.

Collective bargaining is a process of reason and rationale. It is a give and take process. Any proposed changes, modifications, additions or deletions must be based on need or other reasonable basis. Therefore, the party proposing a change has the burden of establishing the reasons therefor and whether its proposal addresses the reason for the changes. Collective bargaining, of course, is not done in a vacuum. The parties in support of their positions rely on a number of factors or criteria. Interest arbitration must also be guided by the same factors. The statutory factors to be considered by the Arbitration Panel are the following as enumerated in RCW 41.56.430:

- (a) The constitutional and statutory authority of the employer;
- (b) Stipulations of the parties;
- (c) Compensation package comparisons, economic indices, fiscal constraints, and similar factors determined by the arbitration panel to be pertinent to the case; and
- (d) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment.

The Arbitration Panel will base their decision on the specific statutory factors listed, if applicable, and factors normally or traditionally taken into consideration in negotiations.

STIPULATED ISSUE:

Insured Benefits for 2014, 2015 and 2016 as Authorized by Articles 12 and R 12 of the Parties' Collective Bargaining Agreement.

BACKGROUND:

King County is the largest county in the State of Washington. The County employs about 13,000 employees. Many of the employees are represented. There are 35 unions, including ATU 587, and 108 different bargaining units at the County. ATU 587 represents over 3,800 of the County's represented employees (11,000), 4,500 of whom are in Transit. The vast majority of ATU 587's membership consists of Transit Operators and Mechanics. There are about 2,850 ATU 587 bus drivers, over 1,000 of who work part time. ATU 587 represents approximately twice as many of King County employees as the next largest union. The Metro ATU collective bargaining agreement (CBA) has more than five times as many employees as the next largest contract.

Prior to the early 1990's, Transit was part of the Municipality of Metropolitan Seattle ("Metro"), a separate and distinct governmental entity from King County. Metro and King County merged effective in about 1995.

Since the merger, ATU has been a part of the healthcare coalition known as the Joint Labor Management Insurance Committee (JLMIC). Prior to this round of bargaining, 107 of the 108 bargaining units at the County were encompassed within the JLMIC process. The only exception is the King County Sheriff's Guild. ATU 587 represents approximately 40% of the union membership that participates in JLMIC.

The purpose of JLMIC is to "research, propose, evaluate and negotiate specific benefit plan design elements and to actively educate representatives from all of the County's bargaining units about objectives, issues, proposals and agreements regarding employee benefits programs."

Since the merger, ATU-related healthcare issues have always been resolved as part of the JLMIC process, rather than in negotiations. Traditionally, the parties negotiated three-year MOA's regarding healthcare. The MOA allowed the parties to make changes to healthcare during the term of the MOA if mutually agreed to. Also, since the 1996-1998 MOA, ATU had the right to "negotiate alternative benefits" if the JLMIC were to modify the previously agreed-upon benefits with respect to upcoming years specified in the CBA. ATU had the right to opt out. Prior to this round of bargaining, ATU 587 never opted out.

In 2004, the County was experiencing an annual increase in healthcare costs of about 11% each year. The County created a Health Advisory Task Force ("HAT" Force) to study the situation.

In 2005, the JLMIC and the County negotiated a new benefit package for 2007-2009 which included the creation of a new program called "Healthy Incentives." An underlying core

component of the plan was to encourage employee participation in wellness activities. An employee's participation in the Healthy Incentives program leads to assignment of gold, silver or bronze benefits level. The determination of which level a participant achieved is related entirely to their willingness to participate in the County's wellness program, and is totally unrelated to the actual health condition of the participant (i.e., an employee with chronic or serious health problems can earn gold so long as he/she participates in the wellness tasks). In order to qualify for gold, an employee must take a wellness assessment and complete an individual action plan over a six-to-ten week period. Employees who only complete the wellness assessment but do not follow through with an action plan receive silver. Employees who do not complete either the wellness assessment or the action plan are bronze. In order to incent employee participation, employees pay a lower share of their incurred costs (co-pays and deductibles, etc.) if they are gold than if silver or bronze.

An annual report was issued about the plan for the first five years in order for King County council to assess if the plan goals were being achieved. The report showed that healthcare costs for the period 2007-2011 were less than projected. This was due to (1) health improvements of employees; (2) plan design, (3) enrollment switch by employees from the KingCare (a PPO plan) to Group Health (an HMO), and (4) the reduction of head count by about 1,000 employees due to the Great Recession. The total savings was \$59.7 million.

There are two healthcare plans. One is a preferred provider option (PPO) model. It is called the KingCare plan and is currently administered by Regence. The other plan is a health maintenance organization (HMO) model with Group Health Cooperative. Regence allows employees a lot more flexibility and doctor choice than Group Health, but employees pay greater

out-of-pocket costs under Regence than under Group Health. The majority of King County employees are enrolled in the PPO plan, but a much higher percentage of ATU members are enrolled in Group Health than is the case with other JLMIC unions.

Within each of the PPO and HMO plans there are three levels of out-of-pocket expenses: bronze, silver and gold. All three levels cover the same services and benefits. The bronze level has the highest deductibles, co-insurance rates, co-pays, and out-of-pocket maximums. Gold has the lowest deductibles, co-insurance rates, co-pays, and out-of-pocket maximums. All of these employee costs have remained constant since 2010. King County employees do not pay a portion of the monthly premiums associated with their healthcare coverage or their dependents' coverage.

The bronze, silver and gold designations are part of the Healthy Incentives Program adopted by the JLMIC. Healthy Incentives is an employee wellness program. The purpose of Healthy Incentives is to encourage "employees and their spouses/domestic partners to participate in demonstrated health improvement programs." All covered employees are automatically "bronze." An employee achieves silver status for a given year by taking a computer-based wellness assessment. The wellness assessment is a health-risk assessment and takes about 10-15 minutes to complete. An employee achieves gold status for a given year by taking the wellness assessment and by completing an individual health action plan.

The majority of King County employees achieve gold status annually but the percentage of ATU 587 employees who do is approximately 15% to 20% lower each year than the percentage of employees from the other JLMIC unions. The number of employees enrolled in

gold (both ATU 587 members and overall) dropped between 2010-2011 as a result of the change of the Healthy Incentives Program administrator to WebMD. The gold level achievement percentage has rebounded somewhat over the past two years.

#### Negotiations of 2014-2016 Agreement

ATU 587 signed off on the 2010-2012 MOA adopting the recommendations of the JLMIC. Healthcare benefit negotiations for 2013-2015 began in October 2011. The County proposed its Protected Fund Reserve (PFR) plan.<sup>1</sup> The Union opposed the proposal. When it became clear to ATU 587 that the other JLMIC unions were in favor of the County's proposal, ATU exercised its contractual right to "negotiate alternative benefits." The Union proposed the status quo. The parties were unable to reach a negotiated agreement on healthcare benefits for 2014-2016. They participated in the mediation process but remained at impasse. This resulted in the parties proceeding to interest arbitration under RCW 41.56.450 and RCW 41.56.492(2).<sup>2</sup>

#### THE RECORD:

The record which was developed over a period of four days is voluminous. It consists of 842 pages of transcript, exhibits totaling hundreds of pages, and 95 pages of briefs.

#### POSITIONS OF THE PARTIES:

The parties did an excellent job presenting their case and arguing their positions with numerous case citations in support thereof. The briefs were comprehensive, well reasoned, and

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<sup>1</sup> The County's proposal is attached and identified as "Attachment 1".

<sup>2</sup> Under the provisions of the interest arbitration statute, the Arbitration Panel is not limited to the parties' proposals in reaching its decision. However, in this case given the nature of the issue presented and its implications, the Arbitration Panel will limit its decision to selecting one of the two proposals presented.

supportive of the parties' respective positions. Because of the length of the parties' briefs, it would be impractical for the Arbitrators to restate the arguments of the parties in detail. Instead, what follows is a summary of the parties' positions. However, the parties should rest assured the Arbitrators have thoroughly read and reviewed the record herein in its entirety, including the transcript, exhibits and briefs in resolving the issue in dispute.

The parties address some of the same factors or criteria normally considered by arbitrators in arriving at an appropriate award in interest arbitration. More specifically, the economic condition of the Employer, internal comparables, external comparables, status quo, and compensation package comparisons.

#### Economic Condition of Employer or Fiscal Constraints

##### Employer's Position

The Employer has struggled to manage its affairs given the significant impact of the Great Recession. Since 2008, County employment has been reduced by 1,000 employees, or about 8%.

The County has had to take measures in order to cut services and programs in an effort to balance the budget. In Washington, a public employer is required to have a balanced budget. The County must find ways to insure the growth in expenses will be at a level that can be sustained by the growth in revenues.

Majority of General Fund revenue at the County comes from property and sales tax. Property tax increases are generally limited to about 1% per year. With property taxes making up 42% of General Fund revenue, this limitation acts as a significant constraint upon General Fund expenses.

Sales taxes make up about 13% of the General Fund revenue. It is estimated it will increase in the 4% - 4.5% range over the next couple of years. However, there has been a dramatic shift in the ratio of taxable retail sales to income in King County; residents have been spending a significantly smaller percentage of their overall personal income on items subject to sales tax.

Compensation cost, due to, in part, increased healthcare costs, have become a larger percentage of the overall budget. Wages and benefits now make up 69% of the County's General Fund and 61% of King County Metro operating expenses. At King County Metro, benefit costs alone constitute 17% of all operating expenses. A sustainable budget requires that annual healthcare costs be capped at 4%.

The County has a AAA bond rating as pointed out by the Union. However, the County cannot drain reserves in order to pay for escalating benefit costs without concern for the impact on its bond rating or long-term financial stability.

The current financial situation at King County Metro is much more problematic than the difficulties faced by the County and its General Fund. King County Metro is much more dependent on sales tax revenue than the County; 48% versus 13%.

The recession had a significant impact on sales tax revenue. From 2008 to 2010, the amount of sales tax revenue decreased by \$75 million (\$450 to \$375 million). Sales tax revenue has increased over the last few years, but is still far below the 2008 amount received. In order to avoid significant service cuts, the County was able to convince the Legislature to allow the County to adopt as a stop-gap measure a two-year special revenue source called the Congestion Reduction Charge (CRC). It expires in mid-2014.

The current anticipated gap between revenue and expenses is about \$60 million, with an additional \$15 million necessary to purchase replacement vehicles. The County needs authority from the Washington State Legislature in order to raise the revenues necessary to avoid significant cuts. If funding is not obtained, there will be a reduction in service of about 600,000 hours (17%) and reduction of 600-700 King County Metro employees.

The Union claims the economic health of the County is exceptionally strong. There has been an increase in the amount of unrestricted funds available to King County Metro. However, during this period King County Council directed that certain previously dedicated and restricted funds be utilized for current operations in order to temporarily fund the budget deficit. Expenditure of reserves rather than ongoing revenue in order to fund operations is not sustainable.

The Union recognizes that finding additional funding for transit is paramount. It is helping on the state level to address the funding problem. However, it cannot assume the funding crisis will be solved.

Given the financial situation of the County, the County believes it has come up with a methodology for controlling healthcare costs that is unique and innovative. Instead of charging employees more and more of a premium, the County seeks to have the Union work with the County and invest in an effort to control healthcare costs and simultaneously improve quality. The County proposal is amply supported by the fiscal constraints factor.

#### Union's Position

King County's current economic health is exceptionally strong. The Comprehensive Annual Financial Report ("CAFR") is the best measure of the County's financial health because the CAFR is audited by the State. The 2012 CAFR shows King County's strong financial health.

The bond market is another reliable predictor of a government entity's economic strength. Moody's gives King County an "AAA" bond rating, which establishes that the County is an exceptionally strong jurisdiction. A relatively small number of U.S. jurisdictions receive an "AAA" bond rating.

The County has recovered from the Great Recession much more quickly than most other places in the country. The County and Metro are in much better financial shape than when they signed the 2010-2012 MOA. The County has shed 1,000 workers since 2008. Metro weathered the storm without making significant service cuts. Metro reduced its deficit by nearly \$800 million between 2009-2013. Metro has achieved \$148 million in ongoing savings during this same four-year time period. A significant amount of that savings was the result of changes in the Metro – ATU 587 labor contract. This included reduction of the guaranteed COLA over several years.

Sales taxes, which is Metro's primary revenue source (60%), is expected to grow by 4.23% in 2013. Transit sales tax revenue is projected to grow 4% to 5% annually over the next few years. Transit sales tax revenue is currently 3.7% more than the budget forecast.

Fares account for 22% of Metro's revenues. Metro ridership peaked in 2008, dropped significantly in 2009 and 2010, but increased in 2011 and 2012. Metro began receiving a small percentage of property tax revenue in 2010, only about 2.7%. It is expected to decrease by 1.47% in 2013, but projected to increase by 3.80% in 2014.

Metro's cash and readily convertible-to-cash investments exceeded its liability by a ratio of 6 to 1 for 2010, 2011 and 2012. A ratio of 2:1 is an acceptable ratio for any business entity. The County currently has available to it many more readily convertible-to-cash investments than it did when it negotiated the 2010-2012 MOA.

Metro currently has sufficient unrestricted retained earnings so as to allow it to operate at full strength for 225 days without taking in a single dollar of additional revenue. This is compared to a low of 29 days in 2009. This is more than all but one of the comparators used by the parties in this arbitration.

The County's General Fund is mostly supported by property taxes and constitutes 18% of the County's total budget. There are multiple separate transit funds. The County can transfer money between the General Fund and Transit funds. The General Fund is unrestricted. For 2012, the County had a General Fund unrestricted fund balance of \$133 million. This is much higher than in the past.

County General Fund revenues for 2010-2012 exceeded budget projections by 1.7%, 3.7% and 1.9%, respectively. Union Exhibits 13 and 14 show the County has done well, and is continuing to do well, in terms of actual revenues and expenditures compared with predicted revenues and expenditures. This provides additional evidence of the County's exceptionally strong financial health.

Metro argues that it may have to reduce service by 17% in September 2014 if the Legislature does not ultimately enact the Transit package. The possibility that a Transit package will not be adopted is remote. Such a package failed by one vote last session. The Union is working with the County for passage of a bill. It's likely the Legislature will solve Metro's budget issue (\$75 million) before any cuts occur. If service cuts do occur in 2014, this would likely lead to major employee layoffs. While such layoffs would be devastating to the affected employees, the layoffs would reduce the County's total healthcare expenditures over the next three years. This further undermines any justification for a departure from the status quo as it relates to healthcare.

## Internal Comparability

### Employer's Position

Numerous arbitration decisions in Washington have recognized that internal parity is particularly important when it comes to healthcare benefits. With 35 unions and 108 different bargaining units, it is imperative that the County find ways to be consistent in its practices and benefits. One of the many ways that the County has done over the years is the JLMIC process which ATU 587 was a member of. The ATU 587 withdrew from the JLMIC so now the new JLMIC agreement covers 106 of the 108 bargaining units.

The ATU 587 rejected the status quo, and instead embarked on separate negotiations. The County proposed the same system for co-managing benefits of the ATU bargaining unit be the same as under the JLMIC to insure internal consistency.

The Union argues there is an exception to County consistency, the King County Sheriff's Guild. The relationship between the County and the Sheriff's Guild is contentious. The County is currently in negotiations with the Guild and has made it a high priority to get the Guild on a healthcare plan similar to all other County employees. Further, the fact that one group is not consistent with others is of little relevance when considered in the context of the fact that 106 other bargaining units are in the same place.

### Union's Position

Metro's "need for uniformity" argument is highly overstated. It claims it needs uniformity in order to insure uniformity and fairness to all County employees. But, both the Union's proposal and County's proposal provide the same healthcare plans with the same vendors (Regence and Group Health). Therefore, the County will have the same market power

with respect to its vendors. The quality of healthcare is the same under both proposals. Possible future changes to insurance benefits pursuant to the reopener provisions of the 2014-2016 JLMIC MOA are speculative. Moreover, ATU has agreed to accept any “insurance benefits” agreed to by the JLMIC during the 2014-2016 agreement.

Imposition of the contract’s proposal would not result in healthcare benefit uniformity for all County employees because the Deputy Sheriff’s have a different healthcare plan than JLMIC unions do. ATU 587 and the Deputy Sheriff’s represent, respectively, the biggest and third biggest labor contracts in the County. Neither Union has agreed to the County’s PFR proposal.

The County’s assertion of the need for consistency directly contravenes the terms of the Metro – ATU 587 MOA. Article 12.1.B. gives ATU 587 the right to “negotiate alternative benefits” different from those agreed to within the JLMIC.

### External Comparables

#### Employer’s Position

The parties stipulated to nine comparable employers. To begin with, evidence presented establishes that 92% of employers in the United States require premiums from employees for employee-only coverage, and 97% require premiums from employees for family coverage.

Among the nine comparables, the average premium is \$67 per month (about \$800 annually) for individual coverage, and \$276 per month (\$3,306 annually) for family coverage. This compares to no premium paid by King County employees to insure themselves and their families.

Another way of looking at comparables is to include the annual premium, maximum possible deductible, and maximum out-of-pocket expenses paid by employees. The result, the

average for comparables was \$1,734 for individual coverage and \$5,551 for family coverage. This compares with \$1,100 for individual coverage and \$2,500 for full family coverage under KingCare Gold coverage, and \$1,000/\$2,000 for Group Health. The Union's analysis also shows King County employees are better off than the comparables.

The final comparison takes into consideration wages in a compensation package comparison. For Transit Operators, the County's wages are currently more than 15% above the average of the comparables. The County pays its Operators more than any of the comparable employers.

The County has an extremely generous healthcare plan and the wages are much higher than the comparators. In light of the statute requirement that arbitrators consider compensation package comparisons, it is reasonable for the County to want to impose accountability on the Union to insure healthcare costs are kept in check.

#### Union's Position

Comparative data regarding healthcare benefits within the nine comparable jurisdictions are of extremely limited probative value with respect to the issue before the Arbitrators. With the exception of Snohomish County, employees in all other jurisdictions pay a portion of the cost of premiums. However, King County employees pay higher out-of-pocket deductibles than employees who pay a portion of their monthly healthcare premiums. KingCare plan gold-level employees pay higher co-insurance rates than employees in any premium-share jurisdiction other than Boston and Philadelphia. For bronze and silver enrollees, the employees' co-insurance rate is higher than all premium-share jurisdictions other than Philadelphia.

The only way to accurately compare healthcare costs with the comparables is to compare total cost, i.e., the premium amount the employer pays plus any amount the employee pays of the premium. When compared this way, healthcare costs in many of the comparator jurisdictions are significantly higher than they are in King County. This explains in part why these other jurisdictions need to have a premium share.

Metro has the highest percentage of part-time Transit Operators of any transit agency in the United States. Thus, part-time benefits are of real significance. King County part-time employees in the KingCare plans pay more for their own medical and prescription coverage than part-time employees pay in all of the comparables.

Even with detailed data regarding comparables, it is very difficult to make comparisons. For this reason, the comparator healthcare benefits and costs data are of limited value to the resolution of this issue.

The Union is simply proposing the continuation of the status quo that existed at the time the County agreed to the current wage scale. The parties are negotiating wages for 2014-2016 separately from healthcare benefits and on a different schedule. The good wage that Metro negotiated with ATU 587 assuming the status quo regarding healthcare benefits cannot be a reason for departing from the status quo regarding healthcare benefits.

### Status Quo

#### Employer's Position

The Union asserts that it seeks to maintain the status quo, but in fact that is not what it proposes. If status quo were maintained, the ATU 587 would participate with JLMIC in the new County healthcare plan worked out with the JLMIC. That's what has been the case the last 15 years. Now ATU 587 has pulled out of the JLMIC process.

ATU 587's concept of status quo is viewed solely from the members' out-of-pocket costs. ATU 587's proposal may be status quo from the employees' perspective, but not the employer's. This is so because ATU 587's proposal greatly escalates the County's costs and does so without any constraints or upper limits whatsoever.

Throughout the four days of hearing, the explanation of its proposal evolved from Article 12.1.C. not being part of its proposal to finally that it was a part of its proposal for the 2014 – 2016 MOA. The County has no idea how ATU 587 foresees their proposal working in practice. Efforts are already underway within the JLMIC to look at possible plan revisions that will reduce claims' experience under the JLMIC plan, thereby protecting the JLMIC PFR. It is unclear whether the Union is suggesting that those benefits would automatically apply to ATU 587. Also, there is some question as to ATU 587's role or participation as a member in the JLMIC process.

#### Union's Position

The Union's proposal is to continue the status quo.

The County's healthcare costs have decreased over the four years since the execution of the 2010-2012 MOA. The data for the first quarter of 2013 suggests a continuation of this trend. Further, the decline in the County's healthcare costs has been accelerating.

The County's medical trend factor (the rate of healthcare inflation) projections over the past several years have fared no better than its per employee per month (PEPM) in cost predictions. The County's predictions of large increases in both medical and prescription drug costs for 2010 for the KingCare plan were wrong as was the case in 2011, 2012 and 2013. The same was true with Group Health predicted medical trend factors.

It is undisputed that County healthcare expenditures decreased by \$59.7 million during 2007-2011. Even after discounting for cost-savings from layoffs, the County still spends \$45.7 million less on healthcare during 2007-2011 than it had projected.

The Union's exhibits provide a far more accurate picture of the County's healthcare costs since 2009 than the County's flex-rate exhibit. The flex-rate does not reflect the County's actual healthcare costs. The County's exhibits do not show the several month flex-rate holiday the County declared as a result of setting the rate too high.

ATU 587 members pay more for their healthcare and cost the County less than other County employees.

As a result of plan design change, the JLMIC implemented in 2010 the employee cost-share of the KingCare gold plan increased from 12.7% in 2009 to 18% for 2010 onwards. The implementation of the Healthy Incentives Program also reduced the County's healthcare costs. Since its inception, \$10.8 million in medical and prescription costs have shifted from the County to its employees.

For the entire existence of the Healthy incentives Program, the percentage of ATU 587 members who qualify for the gold level has been substantially less than of other employees in JLMIC unions. Due to their over-representation in silver and bronze, ATU members pay more for their healthcare and the County pays less than for employees represented by unions who signed the 2014-2016 JLMIC MOA.

The percentage of County employees enrolled in Group Health has increased since 2008. Group Health costs less for the County; it has decreased healthcare expenditures by \$8.7 million in 2010 and 2011. The County's effort to enroll employees in Group Health is working far better with ATU 587 than with the other JLMIC unions.

The County recognizes that the unions have worked with the County to reduce healthcare costs. Similar cost-reduction events may occur in the future. ATU 587 is willing to discuss additional increases to employee deductibles and co-insurance rates over the next three years should the County experience healthcare cost increases that warrant them.

The County's unreliable predictions of a rise in healthcare costs over the next three years and desire to cap increases at 4% does not justify departure from the status quo.

Healthcare costs are hard to predict. The County has a record of predicting increases that do not occur. The County's healthcare benefits consultant and actuary has repeatedly revised downward its trend factor projections for the County's healthcare costs. The County's latest projection that its healthcare costs will increase by more than 6% on an annual basis over the next three years is not a compelling justification for overturning a healthcare structure that has existed for decades.

The County claims that "budget sustainability" henceforth requires that its healthcare costs increase by no more than 4% on an annual basis. However, the County has not demonstrated that its budget would be less able to sustain healthcare cost increases of over 6% over the next three years than it has in the past. The County is in far better shape now than at the time the 2010-2012 MOA was negotiated.

### Skin in the Game

#### Employer's Position

One of the fundamental differences in the respective positions of the parties is the extent to which the ATU will have an active interest or stake in participating in the process of health benefit plans and costs.

The Union claims it can and has made changes in health insurance and plans during the term of the parties MOA. The Union cites cases where they cooperated. But that has not been the case. The emergency room co-pays were made during negotiations, not mid-term. How treatment for massage, acupuncture and chiropractors would be managed was proposed by the County and benefits the employees. Pharmacy benefits were changed during negotiations effective in 2010. There were two changes in plan administrators (CareMark to Express Scripts in 2005 and Aetna to Regence in 2012), but the County did not have a duty to bargain these and could do so unilaterally.

The Union cites the County/ATU 587 Wellness Subcommittee. The County recognized that ATU participation in the wellness program has not been as high as most other County employees. Working together the parties came up with “ATU Strive for Gold” program. The parties’ experience in the Wellness Subcommittee is a great example of what can happen when both parties have skin in the game. Under the County’s proposal, the Employer and the Union both have an interest. Both parties have something they are trying to protect in co-managing the fund. Under the Union’s proposal, however, there is no interest that the Union has in managing or containing healthcare costs.

#### Union’s Position

The Union has repeatedly partnered with Metro on revenue and cost initiatives and showed that it has “skin” in the healthcare cost reduction game. In 1999 voter initiative 695 eliminated the motor vehicle excise tax that Metro then relied upon for much of its funding. ATU brought a lawsuit challenging the initiative and prevailed in the Washington State Supreme

Court. The Healthy Incentives program is another example. The Employer concedes that without the County and Union's cooperation it is doubtful that such a large majority of employees would have participated in the program.

ATU 587 and Metro have worked particularly well together over the past year on the Wellness Subcommittee. The Committee enhanced the Healthy Incentives program and made it more useful for ATU 587 members. This is an example of how the parties responded to an unanticipated healthcare challenge. The joint efforts of the County and ATU 587 also led to the creation of the Health Champions program for ATU 587 members; a program to help ATU 587 members achieve gold or silver status. The County's collaboration with ATU on this program is similar to the type of collaboration that the Union's contract proposed in this arbitration is intended to foster.

The Union has previously agreed to several mid-term changes as part of the JLMIC; the emergency room fee and charge and a change in pharmacy manager for CareMark to Express Scripts.

The Union has also agreed to substantial plan changes at the beginning of a three-year MOA. This includes a pharmacy formulary change and a change in KingCare administration from Aetna to Regence.

### Taft-Hartley

#### Employer's Position

It is common in the private sector for a union and employer to establish a Taft-Hartley trust healthcare plan. The County's proposal does not have a trust, but the fund is separate and

distinct and the PFR can only be used for providing benefits to the ATU 587 member participants. While not a trust, it is an express contractual commitment that is enforceable by the Union in the event of a breach.

Another similarity with a Taft-Hartley plan is the mechanism for resolving disputes. Under Taft-Hartley it is arbitration. Under the County's proposal, if the Union and County cannot agree, they will mutually appoint experts who in turn appoint a neutral expert who will make a final determination.

The County's proposal is not unique in the labor-management area. It is common in the private sector and is a concept that is very familiar to organized labor. The County's proposal is also similar to that of City of Seattle.

#### Union's Position

The County's PFR proposal is not a Taft-Hartley joint employer-union trust. There are well-defined legal rules governing employee welfare trusts such as ERISA. In a trust plan, a third party holds the trust corpus. Under the County's PFR proposal, it will hold all of the money.

The Union is not philosophically opposed to a bona fide healthcare trust arrangement and even explored creating its own healthcare trust. The County's PFR proposal is simply not legally or actually a trust despite some superficial similarities.

#### County's Proposal

##### Employer's Position

The County's proposal to the ATU 587 is essentially the same as the JLMIC agreement. Historically, ATU 587 actively participated in negotiations with JLMIC, but opted out for these

negotiations. The County and JLMIC began negotiations in October 2011 to come up with a new and different model for managing healthcare at the County. The employees, unlike almost anywhere else, were not paying a share of healthcare premiums. The County had an interest in finding a different model to control costs and redesign plans. The model ultimately adopted is a collaborative effort to jointly manage healthcare benefits.

The plan proposed to ATU 587, as with JLMIC, establishes a protected fund reserve (PFR). Based on the same criteria as with JLMIC, the PFR fund for ATU is \$10.2 million. The initial reserve is tracked as a separate fund and earns interest that remains in the PFR. The reserve serves as a safety net and can be utilized to fund healthcare costs that exceed the monthly contributions by the County for all ATU 587 eligible employees as defined in the MOA.

The County calculates a “Flex Rate” to determine how much money must be transferred internally by a County department to the King County benefits fund, per employee, per month, (PEPM) for benefit costs. The Flex Rate is a projection of the employee-per-month contribution required to fund all of the health and related benefits for employees, as well as administrative costs.<sup>3</sup> The County’s Flex Rate contribution for 2014 through 2016 will increase by 4% each year from the 2013 rate of \$1,303 per employee. The rates are set forth in the MOA at \$1,355 per month for 2014, \$1,409 per month for 2015 and \$1,465 per month for 2016.

In the event the PFR is projected to fall below \$4 million at any time during the term of the agreement, the parties must consider plan changes and other funding options. Under the MOA, ATU 587 is empowered to negotiate and implement modifications to insured benefits during the term of the agreement. This includes changes to both plan provisions and/or supplemental premium funding methodology to be effective January 1 of the following year. If

the parties are unable to agree, they each appoint an expert who will mutually select a neutral expert. If the process occurs in 2014, the panel is empowered to make plan design changes but not implement premium share or employer contribution increases. In 2015, the panel can make plan design changes and/or adding employee premium share, and/or employer contribution increases.

Safeguards are built in to insure PFR would only be available for ATU 587 healthcare benefits. The County agrees “no funds for PFR shall at any time be used for other purposes” than providing and maintaining insured benefits for ATU 587 employees. The County and organizations handling PFR funds have a responsibility to insure PFR funds are being used solely for the benefit of ATU employees. The PFR will be supplemented by interest earnings, participant benefit access fees, and any other plan participant contributions (COBRA payments, etc.).

The County’s PFR of \$10 million provides a significant back stop. The \$6.2 million between the size of the PFR and the \$4 million trigger will cover a little over 13% in “excess” cost increases. This is a significant protection to ATU 587 and its members.

The agreement recognizes that the agreed-upon structure is intended as an ongoing commitment, and not limited to the 2014-2016 period. There is a process for negotiating their subsequent agreement on healthcare. If the parties are unable to reach a resolution, they will utilize the dispute resolution procedure to any outstanding issues, including employer contribution rates, plan design changes, and any employee premium share.

### Union’s Position

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<sup>3</sup> Flex Rate is similar to what is referred to as Premiums in the insurance industry. For the purposes of this case it is appropriate to use the terms interchangeably.

The County's proposal is unprecedented and would destabilize the healthcare costs of ATU 587 members. Until now, the ATU 587 healthcare costs have been predictable during the term of a three-year agreement. It could only change during mid-term if the Union agreed to changes through the JLMIC process. The cost stability will continue under the Union's proposal; not under the County's proposal. The acknowledged purpose of the County's proposal is to cap its own healthcare expenditures and make them predictable. Until now, the County has borne any healthcare cost increases during the term of the MOA.

One of the reasons the County sought the 2014-2016 JLMIC MOA is that the majority of the unions in the JLMIC are not eligible for interest arbitration. Those unions were in a weaker bargaining position. ATU 587 is interest eligible and opposed the County's proposal. In interest arbitration the burden is on the County to show a "compelling need" to increase employee healthcare cost or to reduce benefits. Under the County's proposal, the dispute resolution panel can raise employee's cost or reduce employee benefits for 2012-2020 without any showing of "compelling need." The proposal would forever supplement ATU 587's statutory right to interest arbitration and substitute a far weaker dispute resolution process.

Despite the County's claims, the County's Consultant, Mercer, is unaware of anywhere else in the County with a similar plan. The County cites Seattle and some other jurisdictions but none of their plans were provided. The County's plan is untried and untested.

At bottom, the difference between the County's proposal and Union's is whether employees can be forced over their objections to increase their healthcare costs or reduce their benefits during the term of the three-year agreement.

#### Cadillac Tax

#### Employer's Position

The 2018 imposition of an excise or “Cadillac” tax on employees under the Affordable Care Act is a significant factor that must be considered. The tax applies to health benefit costs over a threshold allowed for cost of insurance. The thresholds are \$10,200 per year for employee-only coverage and \$27,500 per year for family coverage. The tax is significant; 40% of the amount over the threshold. The amounts can be huge. The Union suggests that the County can wait until 2017 to deal with the issue since it would have the year prior to the implementation of the excise tax to make changes. However, the changes that may be needed to get below the threshold may be significant so waiting, rather than planning, is simply not a good idea.

The Union’s status quo proposal will not allow the County to require the Union to engage in resets during the term of the 2014-2016 agreement.

#### Union’s Position

Even assuming the Cadillac tax might affect one of the County’s six healthcare plans in 2018, selection of the County’s proposal will not reduce that potential impact.

Without plan changes, the KingCare gold level might be subject to the Cadillac tax. The County has not claimed that either the silver or bronze level plans will potentially be subject to the Cadillac tax. None of Group Health plans will be subject to the Cadillac tax.

Both the Union’s healthcare benefits consultant and the County’s agree that the Arbitration Panel’s selection of the County’s contract proposal or the Union’s will have no direct impact on whether the gold level KingCare plan becomes subject to the Cadillac tax. Whether employees pay a portion of medical premiums will not impact the Cadillac tax. But, if employees shift from KingCare to Group Health, that will reduce the likelihood of the Cadillac

tax. Percentagewise, more ATU 587 members use Group Health than other employees and increasing at a higher rate.

The Union recognizes that, despite these efforts, there is some chance the KingCare gold level plan could be subject to the Cadillac tax. In three years when the parties negotiate again, they will be in a far better position to negotiate whatever may be needed for the Cadillac tax, if any.

### Public Opinion

#### Employer's Position

King County Metro needs to maximize the likelihood of generating and maintaining public support. Members of the public simply do not understand why the County is not charging premiums for healthcare benefits, and are concerned by the cost of the benefits. Telling the public that King County Metro's approach to healthcare is status quo would not be a good development with the public.

#### Union's Position

The Union argues that the County's desire to placate political interest that oppose robust compensation for public sector unions provides no basis for the Arbitrators to award the County's healthcare proposal. Securing the endorsement of a major newspaper or increasing public and political support for transit funding by "getting tough with the unions" is not a valid justification to jettisoning the status quo regarding employees' healthcare benefits.

### DISCUSSION:<sup>4</sup>

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<sup>4</sup> This is the discussion and decision reached by the majority of Panel Arbitrators.

The many arguments and positions taken by the parties were set forth earlier and most need not be repeated again. Some of the positions taken by the parties are more critical to the disposition of the issue presented than others. Those that are will, of course, be discussed again in addressing the issue.

There is only one issue before the Arbitrators, insurance. It is the County that is seeking a change in this regard. The Union is proposing to maintain the status quo.

The County takes issue with the Union's assertion that it is proposing the status quo. It argues that if status quo were maintained, the Union would participate with JLMIC in the new County healthcare plan worked out with the JLMIC. For the last 15 years, the ATU has had exactly the same benefits as all other JLMIC unions.

The Union, however, correctly argues that Article 12.1.B. gives ATU 587 the right to "negotiate alternative benefits" different from those agreed to with the JLMIC. This coupled with the Union's proposal that includes Article 12.1.C. leads the Arbitrators to conclude that the Union's proposal is the status quo.

It is a fairly established principle in interest arbitration that the party seeking a change in the status quo, here the Employer, must show a "compelling need" to do so.

The County claims, contrary to the Union, that there is a compelling need for a change in insurance from what's provided in the CBA. It should be noted at this point that the insurance proposals of both the County and Union provide for the same vendors (Regence and Group Health) and the same health plans. The difference between the two is over the premium funding methodology of the plans. The Union maintains the status quo which requires the County to pay 100% of the premiums (flex-rate) including any increases during the term of the CBA. The County proposes to cap its contribution at 4% per year.

### Compelling Need and the Criterion of Fiscal Constraints

The County argues that the genesis of the 4% contribution cap is that the County needs a sustainable budget. The Great Recession has had a significant impact on the County; employment had to be reduced by 1,000 employees, or about 8%. Further, if the state legislature does not pass a transit bill, Metro will be forced to make drastic cuts in services and personnel.

The Union argues that the County's economic health is exceptionally strong. It notes that the County has recovered from the Great Recession more quickly than most other places in the country. Sales tax and fare revenues have improved. Also, unrestricted funds are larger than in past couple of years. Further, the County healthcare expenditures decreased by \$59.7 million during 2007-2011 (\$45.7 million less after discounting for cost-savings from layoffs).

Both parties make good arguments in support of their respective positions. The record establishes – and the County does not dispute – that there has been an increase in sales tax and fare revenues. Also, the unrestricted funds are larger than earlier years, but the County makes a good point that the expenditure of reserves rather than ongoing revenue in order to fund operations is not sustainable. Unquestionably, there has been a decrease in healthcare costs sustained by the County over the last several years as argued by the Union. However, the projection for the future is that there will be increases of 6.1% in 2014, 6.2% in 2015, and 6.3% in 2016. Further, while sales tax revenue has increased, the projection for 2012 is still far below the amount received in 2008. However, in the bigger picture, the fact remains that Metro has a history of requiring financial assistance to help maintain its service to the public. In or about 2009, Metro received federal stimulus money for a short-term funding fix. Shortly thereafter, Metro had to address a long-term revenue shortfall and did so by fare hikes, not filling vacant positions, and spending \$46 million out of the \$100 million bus replacement reserve fund. In

2012, in order to avoid significant service cuts, the State Legislature allowed the County to adopt as a “stop gap measure” a two-year special revenue source; the Congestion Reduction Charge (CRC). It began in the middle of 2012 and expires in the middle of 2014.

Now, again, the County is in need of action by the State Legislature to fund a Metro shortfall of approximately \$75 million (\$60 million without the purchase of replacement vehicles). Without help, the result will be a severe cut in services and the layoff of possibly hundreds of employees. It is possible, but not sure, some sort of transit aid will be forthcoming, but even so, it would not be reasonable to simply ignore the problem.

Under the circumstances, the Majority of Panel Arbitrators (hereinafter Majority) cannot deny the County its assessment of a compelling need to look at cutting its expenditures including healthcare costs. One may argue that cuts should come elsewhere. If only the cost of healthcare was considered in determining the issue at hand, the Arbitrators would agree that no compelling need exists because the last several years the cost of insurance has been stable. But the issue must be viewed in the broader picture of Metro’s budget as a whole. It is reasonable for the County to scrutinize and consider all categories of expenditures including healthcare costs in the overall budget. In this regard, wages and benefits make up 69% of the County’s General Fund and 61% of Metro’s operating expenses. Metro’s benefit costs constitute 17% of all operating expenses.

Bottom line, it may be the County can afford to maintain the status quo, but given the potential budgetary problems faced by Metro, it cannot be said it does not have a compelling need to propose to limit its healthcare costs.

#### Internal Comparables

Having established a need for change, the County must show that its proposal reasonably address the benefit sought to be changed in order to be accepted. The County says yes in large part because all of the other units but one has accepted it voluntarily. The County's proposal has been set forth and discussed above and need not be repeated for the purposes of this discussion.

The Majority agrees that currently and in the past healthcare costs for employees has been predictable; no premium share. However, and importantly, it should be noted that under the County's proposal there is no set premium share requirement of employees. Rather, it is very likely that under the County's proposal of it paying up to 4% of premium increases, there will be no premium share during the term of the collective bargaining agreement. This is so because if healthcare costs rise as predicted, 6.1%, 6.2% , and 6.3% for the three years, 2014, 2015, and 2016, respectively, the amount above 4% per year (6.6% total) would come out of the PFR fund of \$10 million. The proposal provides for a cushion of \$6.2 million (\$10.2 minus \$4 million) to absorb and pay for yearly increases before employees are potentially affected. The proposal provides for a process for ATU 587 and the County to co-manage the fund and protect and build the PFR if the PFR is projected to fall below \$4 million. If the parties cannot come to an agreement final and binding arbitration is provided for final resolution. The arbitration panel can make plan design changes and in 2015 (for 2016) can also add employee premium share and/or employer contribution increases. In total, the proposal may not be the same as a Taft-Hartly plan, but it does protect the funds strictly for insurance, provides Union input and final and binding arbitration

In the final analysis, the plan, as argued by the Union, is new and untried. Further, there is no magic to the 4% cap (but it can be negotiated and arbitrated higher). However, importantly, it has been accepted by the internal comparables.

With respect to internal comparables, it is widely recognized that uniform benefits, especially as it relates to health insurance among employees of the same employer, is vitally important because of fairness and the impact on morale of the employees. It follows that since insurance benefits are uniformly applied, there must be a very good reason to deviate from the internal pattern of settlements.

Here, there are 108 bargaining units in the County represented by 35 unions. 106 of the bargaining units are JLMIC members and covered by the JLMIC agreement with the County that has been offered to ATU 587. ATU 587 is still a member of JLMIC, but opted out of the JLMIC agreement in this round of negotiations to negotiate alternative benefits to those agreed to by JLMIC. The other bargaining unit is the King County Deputy Sheriff's Guild.

The Union argues that the parties' CBA gives ATU 587 the right to opt out of the changes agreed to by JLMIC and negotiate on their own. This, of course, is true but this does not negate the internal pattern of settlements as a criterion. In this regard, the Deputy Sheriff's Guild is the only other Union that is not on board with the JLMIC insurance agreement. The Guild, however, historically has not been a member of JLMIC and has been on its own since the inception of the JLMIC. ATU 587, on the other hand, has always agreed to the changes agreed to by JLMIC. We do not intend to render the option to opt out meaningless. The parties have agreed to continue the same option by agreeing to include the existing Articles 12. B and C in their entirety (with appropriate date changes) in the successor CBA to the 2010 – 2013 CBA. (Cty. Ehx. 65). Each case must be decided on its own facts and issues involved. In this case, there are compelling reasons for uniformity. That may not be the case in future cases depending on the benefits involved. Also, internal comparables may be less important and given less weight if they do not compare well with external comparables.

The Union raises a good point that regardless of the proposal selected, both the County's and Union's proposals provide the same healthcare plans and the same vendors. Notwithstanding, however, the healthcare cost funding issue that separates the parties is a huge issue. This issue is subject to the same considerations favoring internal uniformity as are the other components of a healthcare package, especially when it comes to sharing the cost of insurance. At stake is the element of fairness and the impact on morale of the other employees.

In the end, as stated earlier, 106 of the 108 bargaining units have agreed to essentially the same insurance packages as offered to ATU 587. Importantly, this includes nine of the other bargaining units in the Metro division of the County.

In reaching our decision, we are mindful, and considered the fact that ATU 587 is the largest of the 108 bargaining units in the County. It represents approximately 3,800 of the King County's nearly 11,000 represented employees. The Arbitrators are generally in agreement with the principle that the "tail should not wag the dog." If this were a case of an employer with several units of employees and trying to impose the smaller and weaker units' settlements on the largest unit, the Arbitrators would likely not limit the larger unit to such settlements. Here, however, the "tail wagging the dog" is very, very long, 106 of 108 units with approximately 7,200 employees. Further, although there are some very small units among the 106 bargaining units, here the 106 units representing 7200 employees were participants in the JLMIC which reached agreement with the County. Under the circumstances of this case, the Majority finds that the internal comparables and the pattern of settlements they set clearly favors the County.

#### External Comparables

As discussed above, internal comparables is the most important criterion when it comes to benefits. However, if the benefit in issue is substandard, then external comparables can be important and given great weight. However, that is not the case here.

The parties stipulated to the following nine external comparables: Atlanta, Baltimore, Boston, Miami, Minneapolis, Philadelphia, Portland (Tri-Met), Washington, D.C., and Snohomish County, Washington (Community Transit).

In all of the comparables, except one (Snohomish County), the employees, unlike King County, pay a portion of the premium cost. The Union, however, correctly argues that in making a meaningful comparison, the total cost to the employee must be compared, not just premium payments. In other words, out-of-pocket costs must be factored in to determine the total cost of insurance to the employee.

A comparison of out-of-pocket costs shows that ATU 587 unit employees pay more than the nine comparables in the four patient-type examples used by the Union (Union Exhibit 31). In the examples of “single healthy person,” “family of four,” “single person with diabetes,” and “single person with catastrophic condition – cancer,” unit employees pay more out-of-pocket costs than almost any of the comparables.<sup>5</sup>

However, and more importantly, the annual maximum possible financial outlay by an employee for both the individual or family plan is far less than the comparables. This is so

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<sup>5</sup> The only exceptions are: In the “single healthy person” KC Gold pays \$15.00 less than Philadelphia PPO (\$315 vs. \$330); in the “single person with catastrophic condition – cancer,” Atlanta, Minneapolis, Philadelphia, Portland and Snohomish County pay more in some categories.

because the annual individual and family premiums paid by employees in the most populous plan <sup>6</sup> in the comparators is the following:

	<u>Ind.</u>	<u>Family</u>
Atlanta	963	2947
Baltimore	1824	5116
Boston	1812	4561
D.C.	1121	2992
Miami	0	7633
Minneapolis	70	3805
Philadelphia	552	552
Portland (Tri-Met)	863	2152
Snohomish (Community Transit)	0 <sup>7</sup>	0
Average	804	3312

When premium contribution is added to deductibles and maximum out-of-pocket cost, the total cost to the employee is as follows:

	<u>Ind.</u>	<u>Family</u>
Atlanta	2464	7447
Baltimore	1824	5116
Boston	1812	4561
D.C.	1621	3992
Miami	1500	10633
Minneapolis	1070	5805
Philadelphia	552	552
Portland (Tri-Met)	2513	7102
Snohomish (Community Transit)	2250	4750
Average	\$1734	\$5551

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<sup>6</sup> The Union in its exhibit comparisons used all of the plans offered by the comparable nine jurisdictions. However, the exhibits do not show the distribution of employees in the plans. Therefore, in the opinion of the Arbitrators, the most appropriate and meaningful comparison is the most popular plan in each jurisdiction as used by the County.

<sup>7</sup> The County corrected its initial figure regarding Snohomish County, based on information provided by the Union, to reflect that employees in said jurisdiction do not premium share.

The County compared KingCare Gold and Group Health plans with the comparables. The maximum financial outlay for both was \$1,100 individual and \$2,500 family. Both are far below the averages. Comparisons with KingCare Silver and Bronze may not be as dramatic, but when all is considered, the record establishes that overall employees in the comparable jurisdictions pay more for health insurance than ATU 587 members.

The Union asserts that part-time employees pay more in premiums than employees in any of the comparators. This is true for those working less than one-half time, but those one-half time or more get fully paid insurance benefits the same as full-time employees. There was testimony that in most comparators, part-timers have a much higher eligibility threshold for full insurance benefits equal to that of full-time employees. The parties' charts do not clearly establish the eligibility of part-time employees to full benefits.

The Union provided information and comparisons regarding retirees which establish that they pay more for health insurance coverage than their counterparts in the comparator jurisdictions.

Given the totality of evidence produced regarding external comparables and the comparisons of regular full-time employees, part-time employees and retirees, the Majority finds that the external comparables favor the County.<sup>8</sup> Clearly this is the case with the regular full-time employees, which is the most significant category of employees. The evidence regarding part-time employees is not complete. The retiree comparison does not change the significant difference regarding full-time employees.

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<sup>8</sup> Further, nationally, 92% of employers require employees to share premium costs for individual coverage and 97% of employers require premium share from employees for family coverage. (Cty. Exh. 42, at 112)

Lastly, the Union correctly points out that the total premiums paid, Employer and employee, in almost all comparators is higher than King County which is likely why employees are required to contribute. This may be one reason, but the principle of shared responsibility in managing healthcare costs is usually another significant reason for employee contributions.

As stated earlier, internal comparables, in this case, are more important and given greater weight than external comparables. This is not to say, however, that the same will be true in future insurance arbitration cases. External comparables may be a very important and a deciding factor depending on the experience of the parties under the County's proposal.

#### Compensation Package Comparisons

Compensation package comparisons is one of the statutory factors specifically listed to be considered in interest arbitration.

There was no evidence presented regarding this criterion as it relates to internal comparables. With respect to external comparables, evidence was presented comparing the wages of top step Operator and top step Mechanic (County Exhibits 54 and 55). Both classifications rank number one among the comparables with a "difference from average" of 16.87% for the Operators and 15.79% for the Mechanics.

The Union argues that a wage comparison is irrelevant because the good wages negotiated was with insurance at status quo. The Union makes a reasonable argument, but the fact remains that comparable employees in the appropriate comparables make less and share, in varying degrees, the cost of premiums.

#### Conclusion

An extensive record was developed by the parties in support of their positions. Counsel for the County and Union presented their case thoroughly and effectively and, in the end, each established its position as reasonable in its own right.<sup>9</sup>

The Union's position to maintain the status quo is certainly understandable, especially when insurance costs for the County have been stable over the last few years. Its argument that this unit of blue collar workers needs to know their exposure to insurance costs is understandable. Further, contrary to the County's claim, they have had "skin" in the game. The Union has agreed to insurance benefit changes over the years either mid-term or in negotiations.

The panel, of course, in making its determination cannot simply base its decision on what it deems fair and equitable. Interest arbitrators are guided by established principles and standards developed over many years. These principles provide the parties with predictability and in so doing guide and help the parties develop and assess their issues in negotiations. Moreover, the parties are aware of what they can expect in arbitration. In this regard, RCW 41.56.430 mandates the panel of Arbitrators to consider certain factors or criteria including the specifically listed factors of fiscal constraints and comprehensive package comparisons. The statute also requires that factors that are "normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment", be considered by the arbitration panel in reaching its decision. In interest arbitration, it is recognized and widely accepted that internal and external comparables are such factors. The Arbitration Panel considered all of these factors and the parties addressed same in their presentation of testimony, exhibits, and arguments.

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<sup>9</sup> It is noted that the parties took positions regarding the Excise or Cadillac Tax under the Affordable Care Act and Public Opinion which were not discussed because, while important, they were not considered to be an influencing factor in the selection.

The criterion of fiscal constraints was disputed, but the evidence establishes that while the finances of Metro have definitely improved, it has a history of needing help to meet its budget. It now faces the same situation. While it is possible a bill by the State Legislature will avoid massive service and personnel cuts, it is not a foregone conclusion and cannot be ignored. It certainly is significant to the extent that it cannot be said that the County did not have a compelling need to address Metro's budget as a whole, including healthcare costs.

The Majority in evaluating the parties' insurance proposals vis-à-vis the criteria stated above concludes that the County's proposal is the most reasonable. This is so primarily because of the internal comparables which overwhelmingly favor the County. Uniformity of benefits is vitally important because of equity considerations and employee morale. That is why in cases involving benefit issues in interest arbitration, internal comparables are much more important and given greater weight than external comparables or any other factors and usually the determinative criterion. The Majority cannot ignore this widely accepted principle or standard in interest arbitration.

Of the 108 bargaining units, 106 have agreed to the proposal offered to ATU 587. This includes the nine other units in Metro (about 700 employees). The unit other than ATU 587 to not agree is the King County Deputy Sheriff's unit which historically has been independent and not a member of the JLMIC. While ATU 587 is the largest unit in the County, JLMIC which reached agreement with the County is comprised of all the other units which represent approximately 7,200 employees or about 65% of the represented employees.

External comparables are much less significant unless the external comparables are much superior to the benefit in issue. Here, that is not the case. ATU 587 members compare very well against the comparables. The County's proposal is to a premium method of payment that may

(not necessarily) require premium pick-up by the employees. This would be comparable to the externals. However, if in the future this comparison changes, then external comparables will become important.

Lastly, wage comparison with the externals also favors the County.

Based on the statutory criteria listed above and the record established in this proceeding, including testimony, exhibits and arguments of the parties, and for reasons discussed above, the Panel Majority selects the proposal of the County.

Dated at Madison, Wisconsin, this 22nd@ day of August, 2013.

  
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Herman Torosian, Neutral Arbitrator

I Concur:

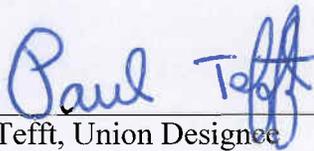
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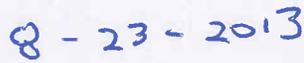
  
\_\_\_\_\_  
Ian B. Coleman, Employer Designee

  
\_\_\_\_\_

I Dissent:

Date:

  
\_\_\_\_\_  
Paul Tefft, Union Designee

  
\_\_\_\_\_

*Attachment 1*

**\*\*\*KING COUNTY'S ARBITRATION PROPOSAL\*\*\***

**PROPOSED MEMORANDUM OF AGREEMENT**

**Regarding Insured Benefits**

**January 1, 2014 through December 31, 2016**

**For Represented Benefits-Eligible Employees**

**By And Between King County**

**And**

**The Amalgamated Transit Union, Local 587**

1. **Scope of Agreement.** This Agreement shall apply to all employees represented by Amalgamated Transit Union, Local 587. All employees that this Agreement applies to shall be referred to as "Employees." Eligibility for benefits is determined by the parties' collective bargaining agreement and associated memoranda of agreement.
2. **Establishment of ATU Protected Fund Reserve.** There is hereby established an ATU Protected Fund Reserve ("PFR"). The PFR is established and maintained solely for the purpose of funding, providing and maintaining insured benefits, and providing a reserve fund to self-insure against unanticipated increases in the cost of those benefits, for Employees. It is expressly agreed that no funds from the PFR shall at any time be used for any other purpose, unless mutually agreed to by parties of this Agreement. It is further agreed that the County and organizations handling PFR funds have a responsibility to ensure that PFR funds are being used solely for the benefit of Employees.
3. **Employer Funding of the Protected Fund Reserve.** No later than January 1, 2014, the County will provide funding for the PFR. The funding shall be ten million and two hundred thousand dollars (\$10,200,000).
4. **Employer Contributions to Covered Employees.**
  - A. **2014.** Commencing on January 1, 2014, the County shall contribute four (4) percent more than was contributed the prior year (i.e., \$1,355.00) per month on behalf of each Employee.
  - C. **2015.** Commencing on January 1, 2015, the County shall contribute four (4) percent more than was contributed the prior year (i.e., \$1,409.00) per month on behalf of each Employee.
  - D. **2016.** Commencing on January 1, 2016, the County shall contribute four (4) percent more than was contributed the prior year (i.e., \$1,465.00) per month on behalf of each Employee, subject to the provisions in paragraph 8, below.
5. **Insufficient Employer Contributions.** To the extent that the County's contributions identified in paragraph 4 and other yearly non-flex rate revenue (interest earnings,

participant benefit access fees, and other plan participant contributions such as COBRA payments), attributed proportionally to Employees covered under the terms of this Agreement, is at any time inadequate to fully fund the cost of providing insured benefits for Employees, the parties agree that the PFR will be used to fund the difference until such time as the PFR is exhausted.

6. **Excess Employer Contributions.** To the extent that the County contributions identified in paragraph 4, and other yearly non-flex rate revenue, attributed proportionally to employees covered under the terms of this Agreement, provides greater funding than is necessary to fully fund the cost of insured benefits for Employees, the parties agree that the excess shall be added to the PFR.
7. **Calculations.** All calculations that must be made under this agreement will be based on ATU-specific claims experience.
8. **Initial Health and Welfare Plan Provisions.** Insured benefits provisions for Employees during the term of this Agreement shall be identical to those benefit levels provided in 2013, including but not limited to the current out of pocket costs for KingCare<sup>SM</sup> and Group Health as described in Attachments A and B, unless otherwise modified by the parties or modified pursuant to the terms of this Agreement.
9. **Modification to Plan Provisions and Administration of Protected Fund Reserve.** The parties are hereby empowered to negotiate and implement modifications to insured benefits for Employees during the term of this Agreement. The parties will negotiate any changes to plan provisions and/or supplemental premium funding methodology to be effective on January 1 of the following calendar year.
10. **Scope and Purpose of the Annual Reconciliation Meeting.** The parties will convene an "annual reconciliation meeting" no later than April 15th of each calendar year to review the insured benefits expenditures for the prior year, projected expenditures for the current and future year(s), plan provisions, and any other information or factors that the parties deem relevant.
11. **Dispute Resolution.** If at any time during the term of this Agreement, the PFR is projected to fall below four million dollars (\$4,000,000), the parties must consider plan changes and may consider other funding options to be implemented by the following January 1. If the parties are unable to reach agreement on such modifications by June 1 of any calendar year, the matter will be submitted to a Panel of three (3) subject matter experts for final and binding resolution, whose decision must be issued no later than August 15 of the same calendar year. The Panel shall be comprised of one expert selected by the County, one expert selected by the Union, and one expert selected jointly by the two selected partisan experts. The parties agree to cooperate to present relevant information to the Panel in sufficient time for the Panel to issue a decision by August 15. In 2014, for implementation January 1, 2015, the Panel shall be empowered to make plan design changes, but not employee premium share and/or employer contribution increases. In 2015, for implementation January 1, 2016, the Panel shall be empowered to make plan

design changes and/or adding employee premium share and/or employer contribution increases. The costs of the Panel shall be shared equally by the parties.

12. **Subsequent Agreement.** The parties agree to commence negotiations for a successor benefits agreement (to be effective starting January 1, 2017) in January of 2016. If the parties are unable to reach agreement by June 1, 2016, on the terms of the successor agreement, the parties agree to use the Dispute Resolution procedure in paragraph 11 of this Agreement to resolve any outstanding issues including employer contribution rates, plan design changes, and any employee premium share. The Panel shall issue its decision by August 15, 2016.
13. **Total Agreement.** This Agreement constitutes the entire Agreement of the parties with respect to the matters covered herein, and no other agreement, statement or promise made by any party which is not included herein shall be binding or valid. This Agreement may be modified or amended only by a written agreement.
14. **Term.** This Agreement shall be in effect, after approval of the King County Council, from January 1, 2014 through December 31, 2016.

For Amalgamated Transit Union,  
Local 587:

\_\_\_\_\_  
Paul J. Bachtel  
President and Business Agent

\_\_\_\_\_  
Date

For King County:

\_\_\_\_\_  
Patti Cole-Tindall  
Director  
Office of Labor Relations

\_\_\_\_\_  
Date

**Attachment A**  
**Amalgamated Transit Union, Local 587 Health Benefits**  
**2014 through 2016**

**KingCare<sup>SM</sup> expenses for ATU-Eligible Employees — Attachment A**

This table shows the 2014 annual deductibles, coinsurance and prescription drug coverage for KingCare<sup>SM</sup>, administered by Regence Blue Shield, which are the same as 2013.

<b>KingCare<sup>SM</sup></b>	<b>Gold</b>	<b>Silver</b>	<b>Bronze</b>
<b>Annual deductible</b>	\$300 per individual \$900 per family	\$600 per individual \$1,800 per family	\$800 per individual \$2,400 per family
<b>Coinsurance paid by Regence</b>	85% network 65% out-of-network	75% network 55% out-of-network	75% network 55% out-of-network
<b>Prescription drugs (30-day supply)</b>	\$7 generic \$30 preferred brand \$60 non-preferred brand	\$7 generic \$30 preferred brand \$60 non-preferred brand	\$7 generic \$30 preferred brand \$60 non-preferred brand
<b>Prescription drugs (90-day supply by mail)</b>	\$14 generic \$60 preferred brand \$120 non-preferred brand	\$14 generic \$60 preferred brand \$120 non-preferred brand	\$14 generic \$60 preferred brand \$120 non-preferred brand
<b>Annual out-of-pocket maximum after annual deductible</b>	<i>Network</i> \$800 per individual \$1,600 per family  <i>Out-of-network</i> \$1,600 per individual \$3,200 per family	<i>Network</i> \$1,000 per individual \$2,000 per family  <i>Out-of-network</i> \$1,800 per individual \$3,600 per family	<i>Network</i> \$1,200 per individual \$2,400 per family  <i>Out-of-network</i> \$2,000 per individual \$4,000 per family
<b>Lifetime maximum</b>	No limit	No limit	No limit

**Attachment B**  
**Amalgamated Transit Union, Local 587 Health Benefits**  
**2014 through 2016**

**Group Health expenses for ATU-Eligible Employees — Attachment B**

This table shows the 2014 annual deductibles, coinsurance and prescription drug coverage for SmartCare Connect, powered by Group Health, which are the same as 2013.

<b>SmartCare Connect</b>	<b>Gold</b>	<b>Silver</b>	<b>Bronze</b>
<b>Annual deductible</b>	None	None	None
<b>Coinsurance</b>	None	None	None
<b>Copay</b>	\$20	\$35	\$50
<b>Prescription drugs (30-day supply)</b>	\$10 generic \$20 preferred brand \$30 non-preferred brand	\$10 generic \$20 preferred brand \$30 non-preferred brand	\$10 generic \$20 preferred brand \$30 non-preferred brand
<b>Prescription drugs (90-day supply by mail)</b>	\$20 generic \$40 preferred brand \$60 non-preferred brand	\$20 generic \$40 preferred brand \$60 non-preferred brand	\$20 generic \$40 preferred brand \$60 non-preferred brand
<b>Annual out-of-pocket maximum</b>	<i>Network</i> \$1,000 per individual \$2,000 per family  <i>Out-of-network</i> Limited coverage	<i>Network</i> \$2,000 per individual \$4,000 per family  <i>Out-of-network</i> Limited coverage	<i>Network</i> \$3,000 per individual \$6,000 per family  <i>Out-of-network</i> Limited coverage
<b>Lifetime maximum</b>	No limit	No limit	No limit