# In the Matter of the Interest Arbitration

between Kitsap County Deputy Sheriff's Guild ("Guild")

and

Kitsap County, Washington ("County")

Findings, Discussion and Award.

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| Case Numbers: | Washington Public Employment Relations Commission cases No. 24341-1-11-0580 and 23514-M-10-7175. Arbitrator's N21. |
| Representing the Guild: | James M. Cline and Christopher J. Casillas, and Cline & Associates, 2003 Western Avenue, Suite 550, Seattle, WA 98121. |
| Representing the County: | Russell D. Hauge, Prosecuting Attorney, by Jacquelyn M. Aufderheide, Chief Civil Deputy Prosecuting Attorney and Deborah A. Boe, Deputy Prosecuting Attorney, 614 Division Street, MS-35-A, Port Orchard, WA 98366. |
| Party-appointed Arbitrators: | Jay Kent, Guild President, PO Box 1545, Silverdale, WA 98303, appointed by the Guild; and Nancy Buonanno Grennan, King County Human Resource Division, 500 4th Avenue, Room 450, Seattle, WA 98104, appointed by the County. |
| Neutral Arbitrator: | Howell L. Lankford, P.O. Box 22331, Milwaukie, OR 97269-0331. |
| Hearing held: | In the offices of the County in Port Orchard, Washington, on October 23, 24, 25, 26, and 29, 2012. |
| Witnesses for the Guild: | Andrew Aman, Stan Finkelstein, James "Jay" Kent, Brian McCulock, Aaron Wuitsthick, Steven Harris, Jon Hytinen, Kate Kremer, Brandon Myers, Shane Hanson, Shon Montague Michael Redrigue, and James Kent. |
| Witness for the County: | Marcus Morrell, Jan Jutte, Susan Wohleb, Stephanie Hettema, Josh Brown, Eric Baker, Kate Cummings, David Schureman, Craig Adams, Fernando Conill, Dennis Bonneville, Gary Simpson, Charles C. Hilton, and Amber D'Amato. |
| Post-hearing argument received: | Original briefs received from both parties by email on January 7, 2013, and second round briefs received from both parties on January 22, 2013. |
| Date of this award: | February 27, 2013, by agreement of the parties. |

This is an interest arbitration authorized by and conducted under the provisions of RCW 41.546.465. The parties stipulate that the statutory requirements leading up to this proceeding and the preliminary steps of the interest arbitration statutes have been satisfied. There was a single dispute about the scope of the issues certified to interest arbitration by the Washington Public Employment Relations Commission (PERC), and that issue was resolved after the hearing by PERC's response to the parties' joint request for clarification. There were no objections to the parties' choices of party-appointed members of the arbitration panel. The hearing was orderly. Both parties had the opportunity to present evidence, to call and to cross examine witnesses, and to argue the case. Testimony was taken down by a court reporter, and the parties, and all three members of the arbitration panel, have had the benefit of a full transcript in preparing and considering the written post-hearing briefs. The same advocates had previously presented an interest arbitration dispute over the County's Corrections Officers. They chose me to hear the case at hand immediately after the February, 2012 hearing in that earlier case, and I had issued a final award on June 1, 2012. Both parties entered into the record here certain portions of the record in the Corrections Officers interest arbitration, particularly with respect to the financial condition of the County and the fiscal responsibility of funding the costs of the Guild's proposals here. Accordingly, some portions of the findings and discussion below come directly from my prior discussion and award in the Corrections Officer case. The parties agreed to a two-round briefing procedure; and both parties filed timely post-hearing briefs in each of those rounds. The parties agree that the County shall be the official custodian of the record of this proceeding after the issuance of this Award and shall hold the arbitrators harmless in that regard.

PERC certified these issues for interest arbitration: Recognition; Guild Activities; Guild Security, Payroll Deduction and Automatic Deposit; Grievance/Arbitration Procedures; Discipline/Discharge; Med/Psych. Fitness; Salaries 2010, 2011, and 2012; Education; Shift Differential; Assignment Pay; Uniform Allowance; Health and Welfare; Overtime; Leave Schedules; Accruals–Holidays; Annual Leave; and Bill of Rights. Some of those issues were resolved or withdrawn before or during the interest arbitration hearing.

***Background*: Kitsap County and the Guild**. Most of the County's 1,134 total personnel (154 of whom are part-time) are divided among 19 different bargaining units and covered by 13 different CBAs (Collective Bargaining Agreements). There are currently 93 Deputies and 12 Sergeants in the bargaining unit (out of an authorized total of 115). The Department's Lieutenants are in a separate bargaining unit. Most Deputies are in Patrol, with a minimum of nine on day shift, ten on swing, and nine on graves, with a Sergeant on each shift. The Guild's most recent CBA covered the beginning of calendar 2008 through the end of 2009. Kitsap is the third most densely populated county in the State. It engages in some regional planning and cooperation along with King, Pierce, and Snohomish Counties in the Puget Sound Regional Council. Kitsap County includes four incorporated cities: Port Orchard, Bremerton, Poulsbo, and Bainbridge Island. Silverdale, the largest retail shopping area in the County, is not part of an incorporated city, and the population of such unincorporated urban growth areas (with East Bremerton and South Kitsap) is about equal to that of the County's four incorporated areas. The US Navy is by far the County's largest employer. The Navy's over 14,000 civilian and

11,000 military personnel account for well over half of all economic activity in the County. After the US government, the largest employers are the County itself and its several school districts.

The Sheriffs Deputies and the and the Sheriff's Sergeants are technically in two distinct bargaining units, but they are covered by a single master agreement with separate addendums. The term "Deputy" in this discussion and award extends to both Deputies and Sergeants.

***Background:*** **A Recent Economic History.**[1] For some years before the national economic downturn around 2008, the County had maintained a general fund ("GF") reserve of around $15-$16 million. Around 2001 an initiative measure made a catastrophic change in the finances of the County, and of every city and county in Washington: I-747 limited property tax *income* growth to taxes on new construction plus 1% on existing improvements. That measure followed a rocky path to its final effective date, and it took some time for some cities and counties to appreciate the new fiscal reality. By 2005 the GF ending fund balance (EFB) had declined to just over $12 million. It shrank to about $9 million for 2006 and 2007 and by the end of 2008, the County had spent itself down to an EFB of about $6.6 million. Worse, by the middle of 2008, the County realized that its annual sales tax revenue was likely to be almost $2.2 million below estimate and its criminal justice sales tax revenue was likely to be $0.3 million below the projections in the budget; and all the while its fuel costs were rising sharply.[2] The County's response included a program for voluntary reductions in employee hours. 2009 began with a hiring freeze, but the economic picture darkened even further. Christmas period sales tax receipts failed to meet projections; and the County laid off 17 employees in November and December of 2009. Near the end of April, the County amended its budget to reflect a $3 million reduction in revenues. The amended budget reduced expenditures by almost $4.25 million (including over half a million from the Jail and almost $0.7 million from the Sheriff). As part of the reduction in expenditures the County closed the jail's work release facility and closed the County administrative building on Fridays (impacting primarily the licensing, permitting, assessment/taxation, and roads departments). The Administrative Building has not reopened to date. The EFB at the close of 2009 was down to about $5.1 million.

2010 saw the end of many of the County's three-year CBAs, including the contract with its Corrections Officers. The 2010 budget, unlike its predecessors, was built without any COLA

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1. As the parties anticipated from incorporating relevant portions of the Corrections Guild record in the record here, most of this section and the next ("Background: The County's General Fund") are adopted whole cloth from that prior discussion and award although there are additions and changes based on new material in this record.

2. By September, the General Fund could not meet payroll without borrowing $2.5 million from other funds. And that pattern repeated twice in 2009—a total of $6 million—and twice again in 2010—another $6 million. All of those were short-term loans, quickly repaid, but the interest costs for the GF totaled $56,000 over the three years.

funding; and the County required each department to budget for a 2%-3% overall reduction in expenditures and to absorb any area of cost increase within each departmental budget. In mid-December of 2009 the County had extended the previously voluntary furlough program (allowing employees to reduce their work time by up to ten hours per week or five days per month and still receive full-time benefits) and had added involuntary reductions in hours for some employees. It had also allowed elected officials— whose compensation was subject to state law—to pick up the cost of their 2010 health benefits through payroll deductions. County elected officials have had no pay increase since 2009. The 2010 budget was built on the assumption of no net economic improvements over 2009; and it reduced the GF budget by an additional $5.7 million. Nonetheless, the EFB at the close of 2010 had risen to almost $8 million, in part due to the total elimination of some services (partly detailed below) and in part due to the reduced level of services caused by layoffs and by reducing the hours of the remaining workforce.

In 2011 the County's revenue rates had ceased to drop. Pay rates for all non-represented employees remained frozen. At the time of hearing (in February, 2012) the estimated EFB for 2011 had risen to over $10.1 million. The 2012 Budget Call Letter assumed a modest increase in both property and sales tax revenues. But it also reflected an announced 28% increase in PERS costs and an anticipated 5% increase in health insurance costs. The County announced its intent to contract out custodian work.

Over the three years at issue, the County had closed its District Court offices in North Poulsbo and in Silverdale and had closed the Secure Crisis Residential Center (for runaways and seriously dysfunctional families) in addition to the Friday closure of the County's Administrative Building. This is the County's layoff history since 2008 (listing only 'bodies out the door' layoffs, and not including elimination of vacant positions): In 2008, 13 employees were bumped out; in 2009, 28 additional employees including four Corrections Officers,[3] were bumped out; in 2010, eleven more were RIFed, and three were bumped out; and in 2011, there were another 12, and one more was bumped out. After 2008—when all but one of the layoffs were in Community Development— these layoffs have been distributed throughout the County's operations: at least nine from the courts, plus a deputy prosecutor and nine staff, four from the Commissioners' Office, and about six from the juvenile department in addition to all nine staff of the Crisis Residential Center. To repeat, since 2008, Community Development has lost a total of 16 FTE;[4] Juvenile has lost 15; and the County Prosecutor has lost nine, including the entire Records division. That does not count the reductions in hours, voluntary or not, which added up to the equivalent of almost 40 FTE over only 2009 and 2010. For 2012, the County has decided to subcontract the custodian function, resulting in the layoff of ten custodians and one supervisor.

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3. Two of these four RIFed CO s were subsequently recalled, when the jail population and income temporarily increased throughout most of 2011, and were then RIFed again at the end of 2011.

4. Community Development operated substantially on an enterprise fund—not the General Fund—which was substantially reduced.

Like every county in Washington, Kitsap County's economic future is always subject to possible revenue losses due to annexations and incorporations. The County's sales tax income is reduced by about 85% in any area that becomes part of an incorporated city. There are genuine hazards of annexation of the communities of Gorst, Bethel/Sedgwick, Bethel North, and Mill Hill Drive. If all of those annexations happened, the County's expectable income would be reduced by about $357,000 in 2012, by almost $1.1 million in 2013, and by over $1.4 million in 2013. On the other hand, from the jail's point of view, any community that incorporates becomes a potential new customer for the contract services that the jail provides to several other jurisdictions. Actual annexations reduced the County's sales tax revenues by over $0.2 million in 2009 and 2010 and will reduce it by about $650,000 in 2012. Silverdale— the sales tax sparkplug of the County—has been the subject of three incorporation votes to date, and another is set for February, 2013. Two of those attempts failed at the polls and the third was invalidated due to a boundary error. On the other hand, the Sheriff's Department would probably be invited to bid to provide police services for the new city, so the overall impact of the potential revenue loss is not quite clear. (The immediate revenue loss of the earliest possible incorporation would begin at over $3.5 million in 2013 and would jump to about twice that in 2014.)

***Background:*** **The County's General Fund.** Over half of the County's GF revenue comes from a combination of property tax (36%) and sales tax (22%). The rest comes primarily from other taxes (12%), charges for services (11%) and inter-governmental fees (11%). Property tax income divides into taxes on existing properties and taxes on new construction, which is not limited to the 101% cap. New construction income peaked in 2007 at not quite $800,000, declined sharply through the next three years and bottomed out in 2011 at not quite $200,000. It will increase slightly in 2012. Criminal justice services account for over 61% of GF expenditures: 24% for courts, 22% for the Sheriff, and 15% for the jail. Salaries and benefits make up 67% of general fund expenditures.

***The factors to be considered under RCW 41.546.465***. Before beginning an analysis of the particular record here, it is useful to review in general the analytical tools which the statutory scheme makes available to an interest arbitration panel. The Washington interest arbitration statutory scheme—and particularly RCW 41.546.465—directs an arbitration panel to "be mindful of:"

> (1)...the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, the panel shall consider
> (a) The constitutional and statutory authority of the employer;
> (b) Stipulations of the parties;
> (c) The average consumer prices for goods and services, commonly known as the cost of living;
> (d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and
> (e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment...

(2) For employees listed in RCW 41.56.030(7) (a) through (d), the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.

"*The constitutional and statutory authority of the employer*." The elected Sheriff is the appointing authority for these Deputies; and the County has budgetary responsibility for them. The Sheriff is not alone, of course, in operating under the budgetary authority of the County. Eleven judges and the prosecutor are among the 19 elected officials who exercise the same dual responsibility as the Sheriff in this regard, being dependent on the County as the governmental entity responsible for their budgets and for managing the attendant taxation and expenditure functions. The statute does not say "...authority of the employer *with respect to the employees at issue*," and this part of the statute requires an interest arbitrator to take into account the fact that public employers almost always have constitutional and statutory authority—and therefore responsibility—which extends beyond the bargaining unit involved in the interest arbitration. It would be strange for an interest arbitration panel to turn a blind eye to such additional responsibilities. On the other hand, this is only one of the factors which the panel is required to consider: We are not directed to defer to the economic prioritizations chosen by the employer, and doing so would make the entire interest arbitration process quite pointless.

"*Stipulations of the parties*." These parties agree in five particulars. First, they agree that, subject to explicit contrary agreements made during the bargaining process, all provisions of the prior agreement which are not at issue in this case will continue unaltered into the successor agreement. Second, they agree that the agreement at issue here will cover the three contract years 2010, 2011, and 2012. Third, they agree to continue their established practice of measuring changes in the cost of living on the basis of the Seattle-Tacoma-Bremerton CPI-U index for the period six months prior to whatever period is at issue. Fourth, they agree on the specific changes in that index over the contract period at issue (which is addressed below). And finally, they agree that Thurston, Clark, and Whatcom Counties are appropriate comparables for Kitsap County, although each of the parties proposes other comparables which the other party contests.

"*The average consumer prices for goods and services, commonly known as the cost of living*." Because the parties agree on how the changing cost of living is to be measured, they agree on just what those changes have been during the period at issue here. The Seattle-Tacoma-Bremerton first half semi-annual index increased by 0.9% in 2009, by 0.3% in 2010; and by 2.0% in 2011.

"*[O]ther factors...that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment.*" The relevant "other factors" here include recruitment and retention, internal comparability, and the economic condition of the employer, which is often---and unfortunately---labeled "ability to pay."

*Recruitment and retention*—i.e., the employer's ability to hire and to hold employees in the bargaining unit—is sometimes a compelling factor in interest arbitration cases; but those are

usually the cases in which there have been substantial *problems* in hiring or holding onto employees. There was no recruitment in the County for Deputies during the period at issue; and the record does not show a substantial problem in retention.[5] When there has been no attempt at recruitment and no substantial problem with retention, that simply deprives the union of what might otherwise be a substantial driver of salary increases. Recruitment and retention deficiencies tend to be somewhat self-limiting since employers usually pay some attention if they find that they cannot hire and hold qualified employees. No reasonable interpretation of the statutory interest arbitration scheme can exalt that minimum pay rate to become the statutory standard.

The Guild argues that this workforce is becoming quite senior and retirements are likely in the near future. But this contract does not run into the near future—as the Guild argues quite vehemently when the topic is the County's proposal to become self-insuring after 2012—and so there is no good basis for arguing that a higher pay scale would have attracted better applicants during a period when, in fact, there were no openings to apply for. On the other hand, the most recent recruitment, in 2009, yielded only 13 candidates at the end of the initial, paper process and only two qualified laterals as compared to 13 in 2005. County witnesses agreed that these were not comfortable numbers; and the County anticipates recruiting for two open positions during 2013. Still, it is difficult to project problems in recruitment based on a very limited record which is four years old and which reaches back into a very different economic climate (particularly when some of the current Deputies came over laterally from King County jobs).

*Internal comparability* is not traditionally restricted to other units with access to interest arbitration. Unions representing interest arbitrable employees sometimes propose an analytical wall separating those employees with access to interest arbitration from those without. It is certainly appropriate to recognize the inherent difference in the bargaining dynamics of those two sorts of units; but internal comparability, even across that dividing line, is a significant and sometimes compelling factor in wage determinations.

*"Ability to pay"* may be the least helpful and most confusing analytical tool in public sector interest arbitration. In the public sector, 'the issue of ability to pay' almost always amounts to the employer's claims that it would not be financially responsible to devote its limited funds to the costs of the union's proposals.[6]

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5. At most, two Deputies resigned, during 2011, for better paid positions elsewhere.

6. The standard, wrote arbitrator Gary Axon (NAA) in *ATU 587 v. King County* (2006), "is not whether the Employer has the complete inability to fund the Union's proposal. The standard is one of fiscal constraints that limit the ability of an employer to pay the proposed wage increase." I submit that "financial responsibility" captures that consideration far better than "ability to pay" with its private sector analytical baggage. I addressed the general issue of financial responsibility in some detail in the Corrections Officer discussion and award, and there is no reason to reproduce that discussion here.

*Comparability* is best addressed in terms of the record in the case at hand. There is some overlap in the proposed comparables. The Guild proposes Whatcom, Snohomish, Thurston, and Clark Counties. The County agrees that Whatcom, Thurston and Clark Counties are appropriate, but it objects to Snohomish and proposes to add three counties in eastern Washington, i.e., Yakima, Benton, and Spokane. In a nutshell, the County argues that Snohomish county is too big (in terms of population and assessed valuation); and the Guild argues that Yakima, Benton, and Spokane Counties are too far and are on the other side of what arbitrator Jane Wilkinson (NAA) has characterized—tongue in cheek—as the "Cascade Curtain." As discussed below, in this case the Guild offers two different approaches to quantify that dividing line.

The statutory language provides only limited help in resolving a dispute over comparables: We are to "take into consideration...comparison of wages, hours, and conditions of employment of personnel involved in the proceedings with wages, hours and conditions of employment of like personnel of *like employers of similar size on the west coast of the United States*." Here, both parties offer only counties, and all the offered counties are within the State of Washington, which certainly satisfies the "like employers...on the west coast" part of the requirement. That leaves the restriction that comparison be with employers "of similar size." Once we have honored that restriction, the potential comparables may be winnowed down by comparisons on the basis of a variety of other characteristics, including, traditionally, proximity, revenue streams, average family income, etc. But that must be the *second* step of analysis: that step is limited, by the express terms of the statute, to counties "of similar size."[7]

The very same advocates argued the issue of comparability with respect to the very same County in the earlier Corrections Officer interest arbitration. In that earlier case, I found the appropriate "primary" comparables to be Whatcom, Thurston and Clark Counties, all of which both parties proposed; and I also considered a "secondary" set of comparables, which added the three Eastern Washington counties proposed by the employer, Spokane, Yakima, and Benton. The County now accepts this approach to comparability; but the Guild raises two objections, one

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7. One very important consideration in the choice of comparables is, What jurisdictions have these parties looked at in the past? Or, What jurisdictions have interest arbitration panels found to be appropriate comparables in the past? The Washington courts have made it clear that interest arbitration is a part of the collective bargaining process; and that process is best served by the removal of disputes over comparability. In the case at hand, that is not quite easy to do because two interest arbitrators have addressed the identification of proper comparables in the relatively recent past and have come up with substantially different answers. The Counties now proposed by the Guild were adopted by arbitrator Roger Buchanan in 1998; and all seven counties—the joint three, the Guild's Snohomish, and the County's three Eastern Washington Counties—were adopted by arbitrator Amedio Greco (NAA) in 2004. There were six years between those two analyses, and if it were possible to do so, I would extend great deference to arbitrator Greco's conclusion. But on the record before me I cannot fit some of those Counties into the statutory "of similar size" restriction.

about similarity in size and one about geographic proximity.[8] The discussion and award in the Corrections Officer case explained the dispute this way:

> If we consider the populations of only the three agreed comparables, the result is well balanced: In 2011, Kitsap's population of 253,900 was pretty much indistinguishable from Thurston's 254,100, while Whatcom—at 202,100—was 80% of Kitsap, and Clark—at 428,000—was 169%. In Assessed Valuation, too, according to County figures for 2011, Whatcom and Thurston Counties are "smaller" than Kitsap—83% and a nearly equal 95% respectively—and Clark County is larger at 134%.
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> Snohomish County, on the other hand, simply cannot be shoehorned into the statutory term "of similar size."[FN] Kitsap County's population is just over a third of Snohomish County, and Kitsap's assessed valuation is right at a third of Snohomish County's. No commonly recognized implementation of the statutory term "of similar size" will extend that term to Snohomish County.
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> > [FN: The Guild argues ... that "the statutory language suggests that selecting comparables is a nuanced process;" but it seems to me that the "similar in size" language is reasonably clear and admits of only limited nuance. Unions frequently argue that the better application of such language is as a product rather than a sum, i.e. 'twice of half' rather than '+/- 50%;' but I know of no implementation of the phrase "of similar size" that stretches it to cover jurisdictions almost three times as populous and fully three times as great in assessed valuation as the jurisdiction at issue. Arbitrator Roger Buchanan found Snohomish County an appropriate comparable in his 1998 interest arbitration between the County and the Deputy Sheriffs' Guild: "though its size, though substantially larger that Kitsap County in population, is not so much larger as to cause it to be eliminated as a reasonable 'comparable.'" (Award at 8.) I quite agree that the relative size of Snohomish County "is not so much larger as to cause it to be eliminated as a reasonable comparable;" but it seems to me that Washington interest arbitrators get to address the issue of "reasonable comparables" only after they get past the preliminary, statutory limitation of "employers of similar size;" and I cannot accept a county almost three times as populous, with more than three times the assessed valuation, as being "of similar size" to Kitsap County.]

The first dispute over the determination of comparable employers in the case at hand returns us again to the proposal to include Snohomish County. The Deputies Guild offers two new arguments in favor of adding Snohomish County. First, the Guild points out that Deputies are not Corrections Officers. While a corrections staff commonly has to deal with internees from that entire county, the deputies are responsible for patrol and enforcement mainly in the unin-

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8. The Guild continues to press for the comparables used by interest arbitrator Roger Buchanan in 1998.

corporated areas. The Guild therefore proposes to address similarity of size not of the county overall but "giving particular weight" to the unincorporated portion of it, comparing with the unincorporated portions of other counties (Post-Hearing Brief at 11). That approach, the Guild argues, reflects both the concentration of Sheriff's services and the concentration of a county's sources of income in the unincorporated portion of a county. And if we look primarily at the unincorporated portion of the various counties, then "[b]oth on unincorporated population and unincorporated tax base, Snohomish is within the preferred two-to-one band standard. Therefore, as to Sheriff's departments, the departments are of like 'size.'" (Post-hearing Brief at 19, ff.)

The first problem with this analysis is that it would have been pretty easy for the legislature to say "*departments* of similar size" (although that would probably have first directed attention to FTE rather than to unincorporated service areas) or "service areas of similar size," and the legislature chose instead to limit comparison to "employers of similar size." On the face of the statutory language, there is no reason to suppose that the legislature intended that expression to invite comparison in terms of service area population or service area tax base. The second problem with the service area based comparison approach is that it leads to amusing result that King County—with an unincorporated population of about 285,000, or 167% of Kitsap—is more similar to Kitsap than is Snohomish, with an unincorporated population of about 304,000, or about 178%. (County Reply Brief at 7.)

In short, I am again invited to adopt a creative means of avoiding the express directive of the statute that this panel consider comparison "of the wages, hours, and conditions of employment ... of like personnel of like employers *of similar size* ..."[9] I appreciate the fact that other interest arbitrators have felt themselves less narrowly restricted by this statutory language; but I find it quite clear that I have no choice on this issue: The statutory language does not permit me to include Snohomish County as a comparable of Kitsap, even in an interest dispute arising in the Sheriff's department.

The Guild's second objection to my conclusions about comparability in the Corrections Officers interest arbitration focuses in two respects on my inclusion of three Eastern Washington counties as secondary comparators.[10]

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9. The Guild's citation of David Ross's *The Arbitration of Public Sector Wage Disputes* (Post-hearing Brief at 8-9) avoids the issue of this statutory limitation. Whether or not it is ultimately true that "the subject of arbitration...*should be* the relative 'fiscal effort of the community..." (emphasis added here), this panel is limited by the terms of a statute; and that statute requires a comparison in terms of similarity of jurisdictional size.

10. The Guild points out (Post-hearing Brief at 20) that on the basis of service area, Yakima has less than half of Kitsap County's population, only about 44% of its sales tax revenues, just over a third of Kitsap County's assessed valuation. But, once again, I cannot conclude that the fairly simple language of the statute is consistent with that basis for comparison.

First, the Guild argues that these distant counties are not a part of the Kitsap County Deputies labor market. The Guild's own member survey fails to establish a clear demarcation of a "Central Puget Sound" (Post-hearing Brief at 15) labor market for deputy sheriffs; but the Guild is certainly correct in pointing out that Kitsap Deputies are far more likely to consider themselves adequately or inadequately paid by comparison with other deputies with whom they commonly interact. But once again, the statutory scheme requiring comparison with employers of similar size severely limits the usefulness of a labor market analysis. A small shop of half a dozen mechanists located in Everett, for example, might compare its wages with other employers of similar size—which *would not* include Boeing—or it might look at the local labor market—which would nearly be defined by Boeing. Similarly, if we were really looking at local labor market here, King County would almost certainly be significant; but the statutory language does not allow us to ignore the difference in "size." That does not mean that labor market analysis is entirely insignificant under this statute, but it means that we can look at the local labor market only within the statutory limitation of employers of similar size. Snohomish County cannot be slipped into that mix on "labor market" grounds.[11] On the other hand, however, the Guild is certainly correct in pointing out (Post-hearing Brief at 18) that it would be "especially inappropriate [to use] fully 50% of ...comparables from a region that provides no direct labor market competition for its employees." To the extent possible within the restrictions of the statute, proximity counts.[12]

Finally, the Guild argues that if a set of secondary comparables is to be recognized, the panel should adopt a systematic way of going about deflating the significance of such *secondary* comparables *vis a vis* the *primary* comparables.[13] The Guild points to a 11.26% difference in

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11. Labor market analysis is certainly a legitimate "other factor" within the language of this statute. But, as the Boeing example illustrates, the legislature's choice to explicitly list the factor of comparability within employers of similar size should not be defeated by giving primacy of place to a labor market analysis that ignores discrepancies of size. In light of respective sizes, the language of the governing statute does not allow the panel to give great weight to the fact that "Deputy Sheriff wages in the Central Puget Sound counties, consisting of King, Pierce, Snohomish and Kitsap Counties, are *substantially* higher than in other regions in the state [and] Deputy Sheriff wages decline the [farther] one moves from the Central Puget Sound labor market." (Guild Post-hearing Brief at 17. Emphasis in the original.) The County, on the other hand, argues that there is really a state-wide labor market for Deputies and quotes a 1999 Thurston County Deputies interest arbitration award by Ken McCaffree (NAA) to that effect.

12. That fairly common sense conclusion is demonstrated by the fact that the County itself considers a local labor market—including Snohomish County—in proposing compensation for its non-interest arbitrable employees.

13. The scramble for the avoidance of Eastern Washington comparators is illuminated by the Guild's exhibit showing the average 25 year BA monthly Deputy wage in King County to be $8,741, the average in the central Puget Sound area to be $6,166, the average in Western Washington to be $5,512, and the average in Eastern Washington to be $4,965.

median household income between the western Washington and eastern Washington employers and also points to a 33.74% difference in home prices. The Guild filters that 33.74% by the 22.44% of the CPI attributable to housing, and concludes that eastern Washington secondary comparables should be magnified by either 1.1126—for the average difference in median household income—or by 1.2233, for the housing component difference in home prices. The attempt to find a mathematical interpretation for the Cascade Curtain is well worked out, but this is not really an exact mathematical process, and it seems to me to make more sense to look for wage rate answers somewhere between the primary and secondary comparables' averages.

## ECONOMIC ISSUES

***Wage rates.*** The County proposes no increase throughout the three years at issue here (but points out that pay has increased through steps and longevity).[14] The Guild proposes increases of 2.0% from the first full pay period in 2010, another increase of the Seattle-Tacoma-Bremerton CPI plus 1% beginning the first full pay period of 2011—which comes to 1.3%—and a third, on that same formula from the first pay period of 2012, which comes to an additional 3%.

Wage changes—usually increases—are mostly driven by three factors: changes in the cost of living, problems with recruitment and retention, or comparability. In the case at hand, the County has experienced no substantial problems of recruitment or retention. And there is no dispute that the agreed measure of the CPI change shows increases of 0.9% in 2009, 0.3% in 2010, and 2.0% in 2011.[15] That leaves external comparability and the CPI as drivers and fiscal responsibility and internal comparability as inhibitors. This is the Guild's Total Monthly Wage analysis, using 2012 numbers for 5, 10, 15, and 20 years at three education levels:

| No Education or Longevity | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 5 years no ed. | | 10 years no ed. | | 15 years no ed. | | 20 years no ed. | |
| | Base | Total | Base | Total | Base | Total | Base | Total |
| Clark | 5,278 | 5,357 | 5,278 | 5,898 | 5,278 | 5,898 | 5,278 | 5,898 |
| Thurston | 6,117 | 6,117 | 6,117 | 6,240 | 6,117 | 6,300 | 6,117 | 6,361 |
| Whatcom | 5,838 | 5,838 | 5,838 | 5,955 | 5,838 | 6,013 | 5,838 | 6,042 |
| Average | 5,744 | 5,771 | 5,744 | 6,031 | 5,744 | 6,070 | 5,744 | 6,100 |
| % ± Kitsap | 4.9% | 5.4% | -0.1% | 2.8% | -0.1% | 2.5% | -0.1% | 2.0% |

14. Technically, the County's proposal includes a third year reopener on wages, but it would have had to be invoked by June 1, 2011. The County argues for no increase for 2012.

15. The Guild argues that the loss of purchasing power due to inflation—the CPI increases—should 'serve as a baseline' for an award on wages. Post-hearing Brief at 36.

| No Education or Longevity | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 5 years no ed. | | 10 years no ed. | | 15 years no ed. | | 20 years no ed. | |
| | Base | Total | Base | Total | Base | Total | Base | Total |
| Benton | 5,667 | 5,717 | 5,667 | 5,767 | 5,667 | 5,787 | 5,667 | 5,787 |
| Spokane | 5,438 | 5,547 | 5,438 | 5,628 | 5,438 | 5,737 | 5,438 | 5,927 |
| Yakima | 5,620 | 5,704 | 5,620 | 5,774 | 5,620 | 5,844 | 5,620 | 5,929 |
| Average | 5,660 | 5,713 | 5,660 | 5,877 | 5,660 | 5,930 | 5,660 | 5,991 |
| **Kitsap** | **5475** | **5475** | **5749** | **5864** | **5749** | **5922** | **5749** | **5979** |
| % ± Kitsap | 3.4% | 4.4% | -1.6% | 0.2% | -1.6% | 0.1% | -1.6% | 0.2% |

| AA Degree | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 5 years AA | | 10 years AA | | 15 years AA | | 20 years AA | |
| | Base | Total | Base | Total | Base | Total | Base | Total |
| Clark | 5,278 | 5,357 | 5,278 | 5,898 | 5,278 | 5,898 | 5,278 | 5,898 |
| Thurston | 6,117 | 6,178 | 6,117 | 6,270 | 6,117 | 6,331 | 6,117 | 6,392 |
| Whatcom | 5,838 | 5,838 | 5,838 | 5,955 | 5,838 | 6,013 | 5,838 | 6,042 |
| Average | 5,744 | 5,791 | 5,744 | 6,041 | 5,744 | 6,081 | 5,744 | 6,111 |
| % ± Kitsap | 4.9% | 5.8% | -0.1% | 3.0% | -0.1% | 2.7% | -0.1% | 2.2% |
| Benton | 5,667 | 5,774 | 5,667 | 5,824 | 5,667 | 5,844 | 5,667 | 5,844 |
| Spokane | 5,438 | 5,628 | 5,438 | 5,628 | 5,438 | 5,737 | 5,438 | 5,927 |
| Yakima | 5,620 | 5,759 | 5,620 | 5,829 | 5,620 | 5,899 | 5,620 | 5,984 |
| Average | 5,660 | 5,756 | 5,660 | 5,901 | 5,660 | 5,954 | 5,660 | 6,015 |
| **Kitsap** | **5475** | **5475** | **5749** | **5864** | **5749** | **5922** | **5749** | **5979** |
| % ± Kitsap | 3.4% | 5.1% | -1.6% | 0.6% | -1.6% | 0.5% | -1.6% | 0.6% |

| BA Degree | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 5 years BA | | 10 years BA | | 15 years BA | | 20 years BA | |
| | Base | Total | Base | Total | Base | Total | Base | Total |
| Clark | 5,278 | 5,357 | 5,278 | 5,898 | 5,278 | 5,898 | 5,278 | 5,900 |
| Thurston | 6,117 | 6,301 | 6,117 | 6,392 | 6,117 | 6,423 | 6,117 | 6,453 |

| BA Degree | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| | 5 years BA | | 10 years BA | | 15 years BA | | 20 years BA | |
| | Base | Total | Base | Total | Base | Total | Base | Total |
| Whatcom | 5,838 | 5,838 | 5,838 | 5,955 | 5,838 | 6,013 | 5,838 | 6,042 |
| Average | 5,744 | 5,832 | 5,744 | 6,082 | 5,744 | 6,111 | 5,744 | 6,132 |
| % ± Kitsap | 4.9% | 6.5% | -0.1% | 3.7% | -0.1% | 3.2% | -0.1% | 2.6% |
| Benton | 5,667 | 5,800 | 5,667 | 5,880 | 5,667 | 5,900 | 5,667 | 5,900 |
| Spokane | 5,438 | 5,819 | 5,438 | 5,819 | 5,438 | 5,819 | 5,438 | 5,927 |
| Yakima | 5,620 | 5,814 | 5,620 | 5,884 | 5,620 | 5,954 | 5,620 | 6,039 |
| Average | 5,660 | 5,822 | 5,660 | 5,971 | 5,660 | 6,001 | 5,660 | 6,044 |
| **Kitsap** | **5,475** | **5,475** | **5,749** | **5,864** | **5,749** | **5,922** | **5,749** | **5,979** |
| % ± Kitsap | 3.4% | 6.3% | -1.6% | 1.8% | -1.6% | 1.3% | -1.6% | 1.1% |

The Guild defends its "total compensation" analysis because that format better accommodates differences in health insurance coverage (some counties being on tiered premiums and some on composite). The Guild uses "after the Academy" "starting" wages throughout, and includes "specialty" pay for Clark County numbers because—there seems to be no dispute—72 of the 100 Deputies and 20 or 26 Sergeants receive that premium in Clark County;[16] and the Guild has translated the unusual Clark County 2,184 hour work year into a standard 2,080 hour equivalent.

The County comes to substantially different numbers, in large part because of its choices of different points of comparison and of a net hourly wage approach, rather than total monthly compensation. The County provides numbers for base, schedule top, and 12 and 18 years. Base numbers are a problematic basis for comparison because some employers list two bases, one pre-academy and one post-academy. And schedule top numbers are less informative than period of service measures. Here, then, is the summary of the County's numbers for 12 and 18 years, reflecting base pay, longevity, regularly scheduled hours, vacation hours and holiday hours, but not including any educational incentives:[17]

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16. The Guild did not adopt a cutoff point in this case to determine when a benefit should be considered part of general compensation. In some cases, unions argue for particular points, usually 70% to 80% of the total. The question is, how close to entire is close enough? This benefit apparently inures to about 73% of the entire unit.

17. The County lumps the comparators all together. The Guild correctly points out (Reply Brief at 2) that I divided them into primary and secondary, and the distinction is significant.

| 2010 Deputy Net Hourly Wages | | | | | | |
|---|---|---|---|---|---|---|
| | At 12 years | | | At 18 years | | |
| County | Net Hourly | Kitsap NH | + leads - trails | Net Hourly | Kitsap NH | + leads - trails |
| Clark | 37.30 | 39.03 | 4.4% | 37.63 | 40.08 | 6.1% |
| Thurston | 39.62 | 39.03 | -1.5% | 40.54 | 40.08 | -1.1% |
| Whatcom | 38.73 | 39.03 | 0.8% | 39.46 | 40.08 | 1.5% |
| Primary Average | 38.55 | 39.03 | 1.2% | 39.21 | 40.08 | 2.2% |
| Benton | 36.51 | 39.03 | 6.5% | 36.87 | 40.08 | 8.0% |
| Spokane | 40.06 | 39.03 | -2.6% | 41.50 | 40.08 | -3.5% |
| Yakima | 37.99 | 39.03 | 2.7% | 38.97 | 40.08 | 2.8% |
| Secondary Average | 38.37 | 39.03 | 1.7% | 39.16 | 40.08 | 2.3% |

| 2011 Deputy Net Hourly Wages | | | | | | |
|---|---|---|---|---|---|---|
| | At 12 years | | | At 18 years | | |
| County | Net Hourly | Kitsap NH | + leads - trails | Net Hourly | Kitsap NH | + leads - trails |
| Clark | 38.05 | 39.03 | 2.5% | 38.39 | 40.08 | 4.2% |
| Thurston | 39.88 | 39.03 | -2.2% | 40.81 | 40.08 | -1.8% |
| Whatcom | 39.89 | 39.03 | -2.2% | 40.64 | 40.08 | -1.4% |
| Primary Average | 39.3 | 39.03 | -0.6% | 39.95 | 40.08 | 0.3% |
| Benton | 37.58 | 39.03 | 3.7% | 37.96 | 40.08 | 5.3% |
| Spokane | 40.06 | 39.03 | -2.6% | 41.50 | 40.08 | -3.5% |
| Yakima | 37.99 | 39.03 | 2.7% | 38.97 | 40.08 | 2.8% |
| Secondary Average | 38.91 | 39.03 | 0.3% | 39.71 | 40.08 | 0.9% |

| 2012 Deputy Net Hourly Wages | | |
|---|---|---|
| | At 12 years | At 18 years |

| County | Net Hourly | Kitsap NH | + leads - trails | Net Hourly | Kitsap NH | + leads - trails |
|---|---|---|---|---|---|---|
| Clark | 38.82 | 39.03 | 0.5% | 39.17 | 40.08 | 2.3% |
| Thurston | 40.95 | 39.03 | -4.9% | 41.90 | 40.08 | -4.5% |
| Whatcom | 39.89 | 39.03 | -2.2% | 40.64 | 40.08 | -1.4% |
| Primary Average | 39.89 | 39.03 | -2.2% | 40.57 | 40.08 | -1.2% |
| Benton | 38.49 | 39.03 | 1.4% | 38.88 | 40.08 | 3.0% |
| Spokane | 40.06 | 39.03 | -2.6% | 41.50 | 40.08 | -3.5% |
| Yakima | 37.99 | 39.03 | 2.7% | 38.97 | 40.08 | 2.8% |
| Secondary Average | 39.37 | 39.03 | -0.9% | 40.18 | 40.08 | -0.2% |

No analytical format can capture every detail in a wage rate dispute. Insurance benefits are always difficult to factor in;[18] but both the cost to the employer and the benefit to the employees of insurance coverage are so significant that I prefer a format that takes that major benefit into account. Here, the County does not include insurance benefits in any detail.[19] (The Guild's analysis reflects both differences in employer costs and differences in employee contributions.) Moreover, it is not uncommon for public sector compensation packages to include creative labels for benefits that apply to the entire bargaining unit or to nearly the entire unit. Here, the County also omits elements of overall compensation that are tucked away with other titles but which benefit essentially all of the bargaining unit. Clark County's somewhat creatively named "specialty pay" is an example of such a benefit, which looks like a performance premium and in fact applies to virtually all senior members of the bargaining unit. And finally, the County proposes to isolate the analysis of education premiums; but such an isolation is somewhat artificial on this record, particularly because Kitsap County itself is an excellent example of the potential close connection because the County requires an AA for new hires but pays no education premiums at all.[20]

The Guild is at least partially correct in arguing that education incentives and longevity premiums have become an integral part of the overall compensation scheme for Deputies.

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18. They promise to become potentially even more difficult with the growth of health savings account medical benefits.

19. The County did include data for 2012 "total benefit" costs for the most expensive plans for a top step Deputy.

20. It is an oversimplification to say that the County requires an AA at hire: the County accepts experience as an equivalent, and the AA requirement therefore is not applied to lateral hires.

(Alternatively, one might suspect that compensation packaged as "education incentives" and "longevity premiums" is sometimes more politically palatable than direct pay rate increases.) The County pays a "longevity bonus" which begins at 1.5% after seven years and tops out at 5% after 25 years. Comparable employers demonstrate the general trend. Of the primary comparables, Clark and Whatcom Counties do not characterize any part of their compensation packages as education incentive or longevity premium, but Clark characterizes its later salary steps as a "longevity program" and Whatcom County has a "longevity/performance premium"—requiring a "satisfactory" rating—which begins at 1% after six years and tops out at 5% after 25 years; and Thurston County combines education incentives with what the contract calls "performance"—defined as not getting "an overall unsatisfactory performance evaluation"—for a compensation boost that begins after the third year at 3% for a BA, or after the eighth year with 1% for mere "performance," 2% for an AA, or 4% for a BA, and tops out after 20 years at 4% for mere "performance," 4.5% for an AA, and 5.5% for a BA. Among the secondary comparables, Benton County pays 1% for an AA and 2% for a BA and "service pay" of a monthly $10 for each year, beginning with the second year and topping out at $120 per month; Spokane County pays 3.5% for an AA, 7.0% for a BA, or 9.0% for a MA and has "longevity pay" which begins at 2% after four years and tops out at 9% after 20 years; and the Yakima County CBA sets out a flat dollar monthly premium of $55 for an AA or $110 for a BA and has a longevity premium which begins at 1.5% after five years and tops out at 6.75% after the 25th year.

Wage increases—driven by comparability, increasing cost of living, and, sometimes, problems with recruitment and retention—are usually resisted by considerations of financial responsibility (and, sometimes, internal comparability). The current dispute arises at a particularly complex time for such analysis because it is clear that the County's financial picture in 2012, the final year at issue, had improved from the two prior years.

With respect to internal comparability, the County points out that the Deputy Sheriffs bargaining unit amounts to less than 20% of the part of the County work force which is financed primarily from the General Fund. And the County argues that it would not be fair to finance an increase for this less-than-20% on the backs of the other 80+%, particularly when traffic and patrol already escaped the worst of the funding cuts that hammered the rest of the Sheriff's Department.

Turning to financial responsibility, and taking the two earlier years first, in 2010 the general fund had to borrow from other funds in order to meet payroll (as it had in 2008 and 2009). Every one of the unions representing the County's non-interest-arbitrable bargaining units agreed to wage freezes in 2010 and 2011 on top of their prior agreements to moderate the impact of bargained COLA clauses for 2008 and 2009 and their agreements first to voluntary, and then to involuntary reductions in hours of work throughout that period. Even though those unions did not have access to interest arbitration, that sort of unanimity is significant and persuasive. (See, e.g., arbitrator Alan Krebs' (NAA) discussion in *Pierce County Captains Assn*. (2010).) More importantly, those years were marked not only by hiring freezes and eliminations of vacant positions, but by successive layoffs of current employees and by reductions in working hours for

those who remained. And they were marked by the closure of County facilities, reductions in service hours, and the complete elimination of a significant program. Elected officials did not escape the fiscal impact: The County rescinded a scheduled 2010 2% increase for elected officials and allowed them to self-pay the County's part of their insurance costs, and those pay rates remained frozen through 2011. Indeed, the Guild does not question that severe economic recession strained the County's revenues and caused budgetary difficulties over the period at issue. The County points out that arbitrators Wilkinson (NAA) and Williams (NAA) both awarded wage freezes during that period (*City of Vancouver and OPEIU Local 11* (2011) and *State - Social and Health Services v. SEIU Local 775 NW* (2010), respectively).

But the reasonableness of a pay increase must be measured at least in part against the financial conditions of the County at that time and against the compensation shifts experienced by other County employees.[21] The comparability numbers for those years are not so great as to justify pay increases for Deputies for a period when their co-workers were suffering reduced hours and the County was reducing its level of services and eliminating programs. I must agree with the County's proposed pay rate freeze for 2010 and 2011.[22] The Guild argues—as the Corrections Guild argued—that "ability to pay" should be addressed only in terms of the employer's *current* ability to fund increases for prior years, regardless of its financial condition during those years. Without addressing that question in the abstract, I cannot grant the Deputies pay increases that would have been essentially paid for by give backs and reductions in hours suffered by other County employees during those difficult years. Similarly, the Guild argues that the County's reporting practices disguised the fact that many of the cuts and reductions were really unnecessary, but the cuts and reductions actually happened; and the record here is not sufficiently compelling to allow me to conclude that the County management so grossly misled the taxpayers over the period in question. During the two-year period marked by seventy layoffs and 160 employees working part-time, no rate increase is justifiable.

The County's fiscal condition improved in 2012, although there are catch-up consequences of the prior years, such as several years of unfunded depreciation on County vehicles. More importantly, the County's current financial improvement is built on multiple

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21. The testimony of the Guild's financial expert was impressive. But this is not the usual case in which the element of financial responsibility is fought out in terms of budget numbers. Here, the *actions* of the County in program elimination, layoffs, service level reductions, and facility closures—and the actions of its other unions in agreements to defer or eliminate bargained increases and to reduce hours of work—outweigh any purely numerical argument.

22. The Guild suggests that the County might have more income if only it asked the voters. That claim finds little traction in this record: A 2002 proposed levy lid lift failed by more than 60%; similar proposals in 2008 and 2010 by the Regional Library both failed; and a 2011 proposed levy for veterans and human services failed. With that history, and in light of the current economic climate, there is no good reason to suppose that voters would have changed their tune at any time during the period at issue here.

years of service reductions, layoffs, staffing reductions, foregone bargained wage increases, and reductions in paid time, and the County faces the prospect of a 28% increase in PERS costs.[23]

The best available economic forecast at the time of hearing was the report of the September 6, 2012, Washington State Economic and Revenue Forecast Council: "We continue to see slow growth, high unemployment and weak confidence."[24] On the other hand,

> Recent developments at the state level have generally been a bit stronger than expected in the June forecast. Employment growth in recent months has slightly outpaced the modest growth we expected in June. Personal income is tracking above our forecast in early 2012... Housing construction was stronger than expected in the second quarter ... The strengthening housing market is also reflected in the recent Seattle consumer price index data where rising rents are driving Seattle inflation above the national average.
>
> * * *
>
> *** As a result of the recent strength in housing, we have again raised our housing forecast for 2012 and 2013. While both single-family construction and multi-family construction have improved, single-family remains relatively depressed. Multi-family construction, however, is back in the normal range for Washington...

The 2012 GF budget projected total revenues and expenses of about $78.6 million—down about $3 million from the prior year. The September estimates improved revenues by about $0.6 million and expenditures reduced by about $0.8 million, for a $1.5 million total improvement.[25] The Budget Call Letter for 2013 anticipated a 2% growth in GF income, but most of that increase was immediately consumed by costs of steps and health care increases. The County has proposed a 2% increase in its negotiations with its non-interest arbitrable employees. 2013 is the first year since the beginning of the recession that has seen an increase in the County's forecast income. But that increase was not enough, in the opinion of the

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23. We take notice that Deputies' pension contributions in the Washington system increase substantially more than their employers' contributions increase.

24. As of September, 2012, the Pacific region continued to have the highest jobless rate in the country (9.7%), although that rate was down significantly from a year prior. On the other hand, according to the Department of Employment Security, the unemployment rate in Kitsap County fell to 7.3% in April (from 8% in March). Putting those numbers in context, however, the 85,200 total nonfarm jobs in the County in May, 2012 was still 1,100 down from May, 2007. Washington county tax levies grew by 1.2% in 2012 and retail sales tax grew by 4.7% in the second quarter.

25. The period at issue straddles an accounting change. The 2011 audit showed an Unrestricted—or "Unassigned"—Ending Fund Balance of about $11.5 million. The total General Fund Balance was about $13.9 million. The difference results from an accounting revision (to GASP 54) which requires several funds which were previously treated as Special Revenue Funds to be included in the General Fund numbers. For purposes of an "apples to apples" comparison with past years, the UEFB was $11.5 million.

Board, to finance a 2% across-the-board pay increase except through the imposition of still further restrictions on expenditures to the tune of almost half a million dollars.

The Unrestricted Ending Fund Balance for 2012 will achieve the 16% goal—actually at least16.5%—previously established by the County. The surplus will be about $1.5 million, compared to the $52,000 in the original budget.[26]

But the keystone of the County's argument for continuing the pay freeze into 2012 is its claim of its need to achieving a 16% unrestricted fund balance—about two months of operating expenses—in the general fund. The County has never carried such an extensive reserve. In 2006 and 2007, before the financial downturn of 2008, the reserve was less than 11%. (It dropped to just over 7% in 2008 and dropped again, to about 6% in 2009.) During the period at issue here, it recovered to under 10% in 2010, rose again to about 12.5% in 2011, and finally hit the County's 16% goal at the end of 2012.

The County's primary support for its claim that it would be irresponsible to seek less than a 16% UFB is this "Best Practice" recommendation, approved in 2009 by the Government Finance Officers Association (GFOA):

> The adequacy of unrestricted fund balance in the general fund should be assessed based upon a government's own specific circumstances. Nevertheless, GFOA recommends, at a minimum, that general-purpose governments, regardless of size, maintain unrestricted fund balance in their general fund of no less than two months of regular general fund operating revenues or regular general fund operating expenditures. *** Furthermore, a government's particular situation often may require a level of unrestricted fund balance in the general fund significantly in excess of this recommended minimum level. ***

The Guild's financial expert testified to the contrary—as he had at the Corrections Officer's interest arbitration hearing—that two months of operating costs is an excessive UFB for a Washington county.[27] And the fact that over 2007-2009, the worst years of the worst economic downturn since the Great Depression, (as the County's Post-hearing Brief points out at 8) the UEFB fell from about 10.6% to about 6%. That was, or course, a breathtaking drop. But the fact that the UEFB fell by less than 5% during the worst downturn in almost a century is not a very compelling argument for maintaining at all times a UEFB of at least 16%. The Washington

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26. Not all anticipated income shows up in a County budget: Federal grants are often for reimbursement and first appear in the budget after the expenditures. The County has a Federal COPS grant which funds about six FTE Deputy positions.

27. The County points out that much of the Guild's presentation here was couched in terms of Beginning Cash Balance, rather than EFB, and the BCB is established only two months after one of the twice annual infusion of funds into the GF, which makes BCB figures substantially less analytically appealing for budgeting purposes.

Auditor's office has no official recommendation or established "Best Practice" for the minimum UEFB of a local government.[28]

The County does not particularly press the second justification, offered at the Corrections Officers hearing, that 16% is justified by the requirements of the credit rating agencies. I will not again reproduce the quotations from the rating documents which seem to show that the rating agencies have no such minimal expectation. But the Corrections Officers discussion and award is in the record here, and I adopt its conclusion (Corrections Officers discussion and Award at 19) that the explanations in the credit rating agencies' reports seems to stand squarely in opposition to the Best Practice announced by the GFOA:

> If it were generally recognized that a county should have a minimum of 16%—two months—in unrestricted fund balance in order to be financially responsible, it is hard to imagine that these two credit rating agencies would have given the County such high ratings based on unreserved fund balances which were far, far less than 16%.[FN]
>
> [FN: The S&P notes the County's aspiration to a 16 % UFB without any mention of that percentage being a commonly agreed minimum standard or even a common goal.]

We are left with a record showing the Deputies trail the comparables at the same AA education level, but that deficiency is not shocking. Similarly, the Deputies have lost purchasing power to inflation over the period at issue, but that loss, too, is substantial but not shocking. On the other hand, even with a quite healthy 16+% UEFB, the County's inability to pay argument still has substantial support in the reduced staffing, reduced programs and levels of service, and overall compensation freezes.[29] Finally, considerations of relative work load—a commonly recognized factor in establishing compensation—again favor the Guild, but not overwhelmingly:[30] The size of the County's sworn officer force is slightly larger than average

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28. I agree with the County (Post-hearing Brief at 26) that "an interest arbitration panel shares the responsibility of the County Commissioners and Sheriff to act in the bests of the County, including the fiscal health of the County, in determining the issues in dispute." But an interest arbitration panel's first obligation is to carry out the legislative scheme established in the interest arbitration statute, a perspective that does not limit the elected leaders of the County. That difference in legal perspective, of course, is the whole point behind interest arbitration.

29. The Guild argues (Post-hearing Brief at 41) that the "October 2012 snapshot now available reveals that the County's claims of past low fund balances were *not accurate in virtually any respect*" and that I "should take a *renewed look* at any County budget claims..." (all emphasis in the original). But it is difficult to overcome the County's past actions with budget numbers, even if those actions had erroneous fiscal foundations.

30. The County notes (Post-hearing brief at 31) that the Guild's fiscal expert testified that the County's crime rate is "somewhat less than average." The contrary data in the record is convincing, and this is not the focus of that witness's expertise. The County points out that 3.8

among all comparators but exactly in the middle of the primary comparators. The Department reported the largest number of Part 1 crimes of all its comparators in 2011, the largest number of violent crimes, and the largest number of Part 1 crimes per sworn officer and the most violent crimes per capita and violent crimes per officer.[31]

Even on the County's version of the comparability numbers, it is extremely important to remember that this is a "rosy scenario" from the County's point of view because half of the comparables—Spokane, Whatcom, and Yakima Counties—are not yet settled for various parts of the period at issue. Those eventual settlements are almost certain to increase the County's lag behind the comparable averages.[32]

On that record, we have to consider insurance—the other major cost item at issue—before determining the award with respect to wage rates.

***Insurance.*** The first focus of the insurance dispute is the County's decision to self-insure beginning in January, 2013, and the possible consequences of that decision which might be mandatory matters for bargaining.[33] The County argues that its proposal to self-insure beginning in 2013 is one of the issues properly before this panel. But, as the Guild strenuously points out, the period before us ends with calendar 2012. It would have been possible, of course, for the parties to agree that their bargaining for 2010-2012 would also include the issues associated with the proposal to become self-insuring immediately after the end of the that contract period. Neither the certification of issues from PERC nor the record before me disclose any such agreement. Our authority is limited to the establishment of a contract for the three years ending with 2012; and neither the County's decision to self-insure nor any possible mandatory changes that might follow from that decision, are issues properly before us in this interest arbitration.

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violent crimes per officer per year is "not an overwhelming number."

31. The Department of Justice defines Part 1 offenses as criminal homicide, forcible rape, robbery, aggravated assault, burglary, larceny-theft, and arson. "Violent crimes" here consists of a subclass: rape, robbery and aggravated assault.

32. I agree with the County (Post-hearing Brief at 38) that the goal in interest arbitration is to compare pay rates and not rates of growth in pay rates. The point here, however, is that the pay rates yet to be set for the three unsettled comparables are very likely to be greater than their old rates.

33. The County's expense allocation for insurance will be established by the 2013 rates charged by its prior carriers, and the terms of coverage will be the same. Any "savings"—self-insuring local governments avoid a premium tax—left over after the cost of reinsurance and administration will be held in a "benefits bucket." The Guild filed a ULP complaint late in October, 2012, contesting not simply the County's decision to self insure (without bargaining over that decision), but, interalia, for the County's setting of rates and benefits for its self-insured coverage and for refusing to bargain over plan design and benefit levels.

That leaves two issues that are properly before us: All County employees except the Deputies are eligible for the same two alternate health insurance plans, and the County, first, proposes to move the Deputies from their existing insurance coverage to the plan which has previously covered most of the County employees, and second, proposes to change the rate allocation from the current system in which a Deputy pays nothing for employee-only coverage and 10% of the cost of full-family coverage to a system in which a Deputy would pay 3% of employee only and 15% of full family costs. The County calculates the savings *for the change in coverage alone*, over the three years at issue, to be a total of about $475,000. That savings would be divided $447,000 to the County and $27,000 to the employees. As far as this record shows, that premium savings comes largely from higher initial deductible costs and from higher individual and family stop-loss caps.[34] The change in premium split, all by itself and considering only 2012, would shift about $77,000 from the County to the Deputies under the existing plan or about $70,000 under the alternative coverage proposed by the County.

Looking at comparability, the County points out that the Deputies of all the comparable counties are all on the same insurance plans as the other employees of that county; and the Guild's data shows the *average* maximum employer contribution (not including Snohomish County) for full-family health care and life coverage to be almost $1,500 compared to the County's overall contribution of about $1,850. Of all the comparables proposed by the County, only Benton and Clark Counties require their Deputies to pay part of the employee-only premium, while Benton, Spokane, Yakima and Clark Counties require employee payment toward full-family coverage and Thurston and Whatcom do not. Of the County's six proposed comparables, the average *employee* contribution toward employee-only coverage (averaging the costs of all offered plans according to the County's data) is only $7 per month (averaging across mostly zeros); and the average employee contribution toward full-family coverage among the comparables is $145. The average Kitsap County Deputy contribution for those respective coverages would be $16 and $161. On the employer side, the average comparable *employer* contribution toward employee-only coverage is $646/month, while the average Kitsap County monthly cost would be $521; and the corresponding numbers for full-family coverage would be $1,319 per month and $1,343 per month respectively. On the County's proposal, the Deputies' 2011 costs of about $16-$18 per month for employee-only coverage (depending on choice of plan) or $105-$176 for full-family coverage, compared with the $35-$71and $211-308 per month respectively paid by other County employees.

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34. The County's insurance expert agreed that, as one would expect, the overall cost difference between the general County plans and the current plans available for the Deputies is primarily attributable to greater deductibles, higher stop-loss limits, and overall greater out-of-pocket costs to the insured. The Guild paints in great detail the past deterioration of the County's general plan over recent years. That pattern is wide-spread throughout the health insurance industry: When employees have been faced with massive premium increases, they have frequently chosen to split their part of those increases into increased employee costs and decreased benefits—which avoid some of the announced premium increases.

Finally, this is not a case in which the shift away from a peculiar insurance coverage is compelled by considerations of efficient administration. County witnesses described the additional administrative burden of the Deputies being on a separate plan as "not huge" and the procedures with a single plan as being "somewhat simplified."

The record therefore provides insufficient support for the proposal to shift the Deputies over to the County's usual insurance coverage. The change in family stop-loss, and the potential cost to particular Deputies of that change, is particularly troubling and not well-developed in the record here. What we are talking about, after all, is *insurance*, so it is not easy to skip over the prospect of substantially increased exposure to quite major out-of-pocket health care costs.

The County makes a more compelling argument for its proposal to increase the cost-sharing of its existing coverage. The County points out (Post-hearing Brief at 41) that I am among the interest arbitrators who have recognized before that 100 percent paid premiums for health benefit plans are no longer standard nor are they sustainable. But that increase would not be acceptable if it were to exacerbate the overall shortfall in total compensation of the Deputies as compared to their peers in comparable counties. On the basis of the entire record, and particularly in light of the County's still reduced workforce and programs, no schedule increase can be justified for 2010 or 2011, and therefore no change in insurance allocation is justified.

By 2012, however, the County's financial picture had improved, while the Deputies' had fallen substantially farther behind their comparables (and particularly their primary comparables). That lag is ominous because it is based on only a fraction of comparables' eventual 2012 contracts, so the actual lag will eventually be greater than the current numbers show. Moreover, a substantial increase in the cost of living during the previous year substantially decreased the Deputies' real income. That record requires a 2% increase effective the first pay period in January, 2012, to reduce the lag behind the comparables and at least keep up with the 2011 purchasing power loss. Moreover, the County's proposal to reallocate the cost structure for health insurance is not acceptable without a small additional increase to balance out that change, and the premium change and 0.5% pay increase should both be effective the first pay period in July, 2012.

I therefore award no rate increases for 2010 and 2011; a 2.0% schedule increase retroactive to the first pay period in January, 2012; and an additional 0.5% schedule increase retroactive to the first pay period in July 2012 along with a change in insurance cost participation: Retroactive to the premium payroll deductions in July 2012, the Deputies shall pay three percent (3%) of the premium of employee-only coverage and 15% of the premium for dependent coverage. The County shall continue to pay 100% of employee-only dental.[35] The

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35. The Guild argued strenuously against a retroactive premium participation change and pointed out that a Deputy who might have chosen to shift to a less expensive plan because of the participation rate change would have no opportunity to do so. The additional 0.5% pay increase that becomes effective at the same time as the insurance cost shift is the panel's answer to that concern,

exact calculation of each Deputy's insurance costs (for employee and spouse, employee and two dependents, etc.) shall be done just as it has been done in the past.

***Education premiums.*** The County does not now pay any premiums for education, although it requires an AA degree or the equivalent for initial hire at the bottom of the pay schedule. The Guild proposes to add a 1.5% differential for Deputies with an AA degree or 90 credits, 3% for Deputies with a BA, and 4.5% for Deputies with an MA.[36] The County estimates the cost of that proposal to be half a million dollars. There is, of course, a substantial body of scholarly work in support of the proposition that additional education makes for better police officers. And the Guild's witnesses testified compellingly that writing skills count, ability to deal with technological change counts, and ability to deal with other cultures are substantial parts of the necessary skill set of a modern Deputy. However, the Guild's education credit proposal is the most costly in this case, after the base wage increase itself; and the County notes (Reply Brief at 23) only Benton and Yakima Counties among the comparables pay *both* longevity and education premiums. Under the circumstances, it seems to me that the most appropriate way to reflect the education level of these Deputies is to use the AA line for wage rate comparisons, as I have done; and I decline to award any further education premium at this time.

***Shift differential.*** The Guild proposes to add a differential of 1% for swing shift and 2% for graveyard shift. The primary argument in favor of this proposal is that the junior Deputies are now stuck on the least popular shifts. There is no dispute in the record that the Guild once had a shift differential provision and the parties agreed to roll its cost into base pay. The Department also once had shift rotation, but the Guild proposed the current, three-times-per-year seniority shift bidding. That system results in the junior Deputies generally populating graves; and, since there has been no substantial turnover in the Department for several years, the most junior employees have been stuck on the graveyard shift for a long time.

Among the comparables, only Spokane County has a differential (of 1% for swing and 2% for graves).

The Guild argues that the addition of shift differential might ameliorate the unending assignment of the most junior Deputies to graveyard, but there is really no support in the record for that suggestion, and the Guild's witness on the topic seemed unenthusiastic about following the questions designed to lead them to that conclusion. The County costs the shift differential proposal at almost $85,000 per year. On that record, I must decline to award any shift differential.

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(even though the neutral arbitrator has no doubt of our authority to award retroactive premium shifts).

36. Arbitrator Amedio Greco (NAA) declined to award the Guild's proposal of 2% for an AA and 4% for a BA in his 2005 interest arbitration award.

***Premium holidays***. The Guild proposes to make every holiday—except one floating holiday—a premium holiday. According to the Guild's evidence, Benton County recognizes 11 premium holidays; Clark County, Spokane County and Yakima 5; Thurston County 10; and Whatcom County 6. That makes the average exactly seven, which is the current number recognized in the prior contract here. The County costs the premium holiday proposal at almost $53,000 (assuming top step wages and minimum staffing, and not counting retirement and other indirect personnel costs). On this record, I must agree with the County (Post-hearing Brief at 63) that "Premium holidays are a not so well disguised way to demand wages without actually having any purpose to them." The record does not provide an adequate justification for the Guild's premium holiday proposal.

***Call-back pay***. The County proposes the addition of this language addressing Call-Back pay:

> 7. Call-Back Pay: Employees called to work PRIOR to the start of the employee's scheduled shift shall be eligible to receive overtime pay for the actual hours worked prior to the shift (example: employee's regular shift starts at 8:00 a.m., and the employee is called to work at 7 a.m., by his/her supervisor. That employee is eligible for overtime compensation for actual hours worked for that one hour between 7-8.) If notified to report to duty ASAP, the employee shall be eligible to receive overtime compensation from the point in time of receiving the notification. Example: Employee called at 7 a.m. to report to work immediately (regular shift starts at 8 a.m.) That employee shall be compensated starting at 7 a.m.–even if he/she reports to work at 7:15 for that emergency call. In order to be eligible for call-back pay under this provision, the work performed during call-back duty must be connected to (no gap in time) the employee's scheduled shift.

There is currently a dispute between the parties over the County's alleged improper adjustment of shift times; and the callback issue in the case at hand in no way affects the merits of that grievance.

Benton County has a two-hour overtime minimum for meetings on off-duty time; Clark and Spokane Counties exempts hours "contiguous with" or "not adjoining" the employee's regular shift from the call-back minimum; Thurston and Whatcom Counties simply have a three-hour OT minimum; and Yakima County pays "four hours of premium pay at straight time" (along with "the time actually worked shall be compensated as any other time worked").

The County points out that it can hold Deputies over for a meeting after shift at the cost of simple overtime for the duration of that meeting. I agree that the County should have the flexibility to schedule meeting time before the established start time for a shift without necessarily paying the three-hour minimum. The Guild argues that such a schedule change has serious impact on the Deputy's personal time. But it seems to me that the impact may be greatly reduced by limiting the pre-shift meeting exception to those occasions on which the County has provided reasonably early notice of the coming meeting. I therefore award the following

language, which shall be added after the (unchanged) language of Article II, Section K (Overtime) 5 of the prior agreement:

> The County may schedule meetings immediately before the beginning of a regular shift without paying the three (3) hour overtime minimum only if (1) the meeting is for 90 minutes or less and (2) the employee is notified of the scheduled meeting at least seven calendar days in advance. If those conditions are met, the employee attending the meeting shall be paid the applicable overtime rate for that meeting time only and shall be paid as usual for his or her regularly scheduled shift (including overtime, if any, figured from the regular beginning of that shift).

***Sergeant step intervals.*** At the time of hearing the parties disagreed about whether or not this issue had been certified to hearing by PERC. On January 11, in response to a joint request for clarification, PERC's Executive Director clarified that "the parties intended and acknowledged the proposed changes to the pay step system for sergeants, contained in Appendix A, Salary Schedule to be included among the items certified to interest arbitration."

The Guild points out that the mean number of months to the top of the schedule among the six comparables (excluding Snohomish County) is 34, whereas Kitsap County takes 60 months. The Guild proposes to recalculate step increments in order to make the time to the top 48 months, which is the next longest period found among the comparables (both Thurston and Whatcom Counties). The Guild's exact proposal is to add this language to the salary schedule: "Set Sergeant opening step at 10% above Top Step Deputy, followed by three 2.5% annual steps. Current employees are Y rated at current rate as necessary to assure no reduction." The County offers no substantial argument against that proposal, and it is not apparent that it has substantial cost; and I award it prospectively.

## NON-ECONOMIC ISSUES

***Release time.*** The parties return again to a dispute they brought to interest arbitrator Amedio Greco (NAA). The contract provides for

> ...reasonable time off with pay for Guild members conducting official business that is vitally connected with the Employer's business... Examples of appropriate uses of release time include participation in labor-management meetings, representing employees in grievance meetings, and other contract administration matters." Guild officers and members will be charged annual leave or leave without pay, if no accrued annual leave is available, when they are absent from work to perform Guild business...

The Guild has filed a series of ULP complaints and contract grievances—all unsuccessful—seeking to expand release time to the attendance at ULP, grievance and interest arbitration hearings. The Guild now proposes these additions to the prior language: "Examples of appropriate uses of release time include, but are not be limited to, participation in labor-management meetings, representing employees in grievance meetings, hearings and other contract administration matters." Although the Guild now argues that there was a long-standing

past practice of such release, that claim has been repeatedly tested and rejected by PERC; and the Guild's claim that the existing contract language requires the County to include attendance time for all hearings on release time was specifically rejected by arbitrator Janet Gaunt (NAA).

Comparable counties take a variety of approaches to this issue. The Guild provided witnesses to some other county's practices of allowing union representatives to attend hearings on release time. But the Guild's proposal is unfortunately open-ended, and there is no good reason for allowing an unlimited number of Guild representatives that right. I will therefore continue the prior language with the addition of the sentence, "One Guild representative shall be allowed to attend any ULP hearing, grievance arbitration hearing or interest arbitration hearing on release time. (This does not prohibit the parties' agreement that more than one Guild representative may attend on release time.) This provision shall be effective retroactively to include the October, 2012 Interest Arbitration hearing."

The second part of this issue is the Guild's proposal to eliminate from the Arbitration article the provision that "Each party shall pay any compensation and expenses relating to its own witnesses or representatives." There is no dispute that the proposed elimination would probably make the County liable for the Guild's attorney fees in any grievance which successfully recovers any element of pay or salary under a Washington salary recovery statute as interpreted by the *International Association of Firefighters local 46 v. City of Everett*, 146 Wn.2d 29 (2002). Put another way, the Guild proposes a one-sided 'loser pays' provision which would require the County to pay the Guild's attorney fees if the Guild successfully recovered any pay for a Deputy but which would never require the Guild to pay the County's attorney fees under any circumstances.[37] I have never heard of an interest arbitrator awarding such language—or, for that matter, of a union proposing it—and I decline to award it here.

***Timely investigation.*** The prior contract had "goal" language addressing the period of a disciplinary investigation and requiring the Department to keep the Guild informed of an investigation's status after 90 days. The Guild proposes to substitute this:

> The County shall complete an investigation within sixty (60) calendar days. Where reasonable necessary the investigation may be extended by mutual agreement of the Guild who shall not unreasonably withhold their agreement. If the investigation is being performed by an outside agency, the investigation must be completed within ninety (90) days of being commenced. Where reasonably necessary, an outside agency investigation may be extended by mutual agreement of the Guild who shall not unreasonably withhold their agreement.

The record shows that most of the comparable Counties have some sort of time constraints on investigations, although several of those provisions are set out with a "should" or a "will

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37. Immediately after the *Everett Firefighters* case, employers throughout Washington made sure that the very next edition of all CBAs included "pay its own advocates" language in order to avoid that result.

generally" rather than with a "shall" or a "must." Under the current language, the Guild has argued in arbitration that delay infected the investigation process three times recently, in 2010, 2011, and 2012, and that claim has been rejected each time.

This is not an easy issue. As the Guild's past President testified, "We do investigations for a living," which seems to at least call for explanation of lengthy disciplinary investigation periods. But he also agreed that an IA investigation should be suspended if there is an associated criminal investigation. That, of course, *is* a common explanation for the delay in the processing of disciplinary charges, and so, too, is the not-infrequent involvement of an outside agency. On the other hand, in some police organizations, even when a disciplinary case is entirely 'in-house' it can take constant determination from upper management to keep the files from going to ground on somebody's desk. But the Guild does not offer that complaint here. The past President testified that the real focus of the delay it wants to address is *decisional* rather than *investigatory*.

Several comparable counties address this issue, and the Guild's proposed language generally echoes the Whatcom County contract. I particularly like Thurston County's approach and award the addition of this language prospectively:

> Interviews and Internal Affairs investigations shall be concluded without unreasonable delays. And any unexplained or unreasonable delay shall be rebuttably presumed to have prejudiced the accused's ability to defend himself or herself against the resulting charges.

That approach, it seems to me, recognizes that there sometimes *are* perfectly good reasons for delay in the process—which the County can explain to an arbitrator if necessary—and still to provide some protection for an employee who is disciplined at the end of an unnecessarily delayed IA process.

***Disciplinary transfers***. The Guild proposes to include "disciplinary transfers" in the definition of "discipline" in Article I, Section O: "Discipline is defined to include written reprimands, suspensions without pay, disciplinary demotions to a lower paying classification, disciplinary transfers, and discharge..." The Department has a variety of assignments, including Traffic, Field Training Officer, K-9, SWAT, Detective, Communications Resource, and Crisis Intervention; and the County objects to the possible interference with its right to assign Deputies for good administrative reasons.

Among the comparable counties, some jurisdictions do not list particular disciplinary acts. Benton County has an exclusive list of disciplinary actions, and that list does not include disciplinary transfers. Whatcom County's list includes disciplinary transfers. Some of the comparables' CBAs include arguably relevant language in Management Rights or Assignment and Transfer provisions.

The Guild is certainly correct in arguing that transfers are sometimes made for disciplinary reasons and that such disciplinary transfers are traditionally recognized to require just cause. (As a single example, the late Alabama State Civil Service Act saw about 75

disciplinary challenges every year, and about 2% of those addressed disciplinary transfers over the life of the Act. Those proportions may be fairly typical: transfer is not a common form of discipline, and not every challenged transfer proves to have been disciplinary.) Because some transfers *are* disciplinary, the Guild's proposal here amounts to it abandoning what might otherwise be a substantial argument if the Guild were challenging a disciplinary transfer. That argument— which is common in the wake of the current language in this contract—is that the parties have agreed to *limit* the employer's right to discipline, and that that limitation includes prohibiting transfers for disciplinary reasons. I take the Guild's proposal here to be its abandonment of the claim that the parties have agreed to prohibit disciplinary transfers; and the language which the Guild proposes, and which I award, does not restrict the County's right to transfer Deputies for operational or nondisciplinary reasons.

***Use of County email.*** The County issued its general Electronic Communications Policy in 2001. The Guild and the County then bargained over the topic and addressed it in the next, 2003-2005 CBA. In 2008, the County filed a grievance over what it considered to be the Guild's violation of the terms of that bargain; but the County withdrew the grievance after lunch in the arbitration hearing. The arbitrator (John Hayduke) suggested that the parties work out their differences or submit the issue to interest arbitration because "[i]t's not a problem that's very amenable to the grievance process because you are never going to get the specific set of rules that you need in a judicial case-by-case contract violation or no contract violation mechanism." This is the County's proposed change to the language previously worked out by the parties:

> Bargaining unit employees may make occasional but limited use of County-owned communications' resources (telephone, voice mail, electronic mail) for personal communications; specifically, incidental personal use is permitted. Incidental personal use is use that is both brief in duration and accumulation, and does not interfere with or impair the performance of their official duties. In no event will the Guild use the County's communications' resources for internal Guild business ~~beyond that permitted for in incidental use~~ <u>including: communications to any and all Guild members on any collective bargaining matter/issue, Guild meetings/events, announcements and other Guild business. However, the Guild executive board may use the County and KCSO communication resources for communication with KSCO Administration and the Kitsap County Labor Relations Manager (or authorized representative of Kitsap County) in matters specific to collective bargaining, grievances/arbitrations and contract administration. Guild communications using County communication resources for purpose of conducting county business are subject to public disclosure and may be audited by the County. Additionally, there should be no expectation of privacy on the part of employees using county or KCSO communication resources for county business, including all attorney-client privilege being waived in situations where the Guild's legal counsel is included in Guild communications using County resources.</u>

The County points particularly to the use of its email system to distribute the periodic newsletters published by the law firm representing the Guild (as PDF attachments) and to the discussion of arbitrations and grievance and other Guild business, including the discussion of bargaining issues. The Guild has also used the County's email system to announce the appearance at Guild

meetings of candidates for public office seeking the Guild's political support. All but two of the comparables have some restriction on their unions' use of email.

The Guild argues (Post-hearing brief at 94) that there "is absolutely nothing wrong with the parties' current language." That claim is probably too broad. But the record suggests that this problem has somewhat tapered off over time as the Guild has attempted to establish its own independent means of web communication which is not subject to County review and scrutiny. The use of County email to invite candidates to Guild meetings was particularly foolish, but the record does not show that the County ever took the obvious first step of pointing that out to the Guild leadership. In short, this record does not show that the parties have discussed these issues as they arose in the past; and the record suggests that the frequency of potential problems may well decline in the immediate future; and we decline to award additional language at this time. The Guild should realize, however, that future interest arbitrators might well decide that this "talk about it more" approach failed, and the County may win even greater restrictions.

***Arbitration of 'dishonest practices' discipline***. The County proposes to add this sentence to the Authority of the Arbitrator subsection:

> Additionally, a showing by clear, cogent, and convincing evidence that an employee has engaged in dishonest practices in the discharge of his or her official duties constitutes presumptive grounds for termination and substantial deference shall be given to any discipline imposed by the Employer.

This proposal appears to be motivated by the County's frustration over losing a discipline arbitration. That award is in the record, and the dispute involved a series of events and a 14-year Deputy. The arbitrator found that "anyone reviewing [grievant's] performance can see an individual suffering from some form of mental illness...;" and it involved a Lieutenant (who later resigned under a disciplinary charge) who "was a poor police officer and a sub-standard supervisor..." Not surprisingly, the County's task was not easy in the resulting grievance arbitration. The County pursued the Deputy's discharge all the way to the Washington Supreme Court, and one of the Justices suggested in oral argument that the County might try to fix this provision of the CBA. None of the comparables has contract language addressing this issue.

The problem with the County's proposal is not so much that the *language* is unclear as that the legal goal the County seeks is quite difficult to attain. In the Northwest, at least, labor arbitrators overall have traditionally reflected the simple "you lie, you die" rule in police officer discipline cases. Under *Giglio* and its family of cases, the legal complexities associated with such officers have always been acute.[38] Those problems would become one notch more complex

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38. *Giglio v. United States*, 405 U.S. 150 (1972), and its progeny establish the prosecution's obligation to disclose the prior history of its own witnesses if that history may have potential impeachment value for the defense.

by introducing the term "dishonest practices" into the mix. While I believe the County's proposed language reflects the general labor arbitral rule about police officer discipline cases, I see nothing in particular to be gained by adding that language to the contract.[39] I decline to award the County's proposed language.

## AWARD

All of the following changes shall be prospective except where otherwise indicated.

***Wages and Insurance.*** There shall be no rate increases for 2010 and 2011. We award a 2.0% schedule increase retroactive to the first pay period in January, 2012 and an additional 0.5% schedule increase retroactive to the first pay period in July 2012 along with a change in insurance cost participation: Retroactive to the premium payroll deductions in July 2012, the Deputies shall pay 3% of the premium of employee-only coverage and 15% of the premium for dependent coverage. The County shall continue to pay 100% of employee-only dental. The exact calculation of each Deputy's insurance costs (for employee and spouse, employee and two dependents, etc.) shall be done just as it has been done in the past.

***Call-back pay.*** The following language shall be added after the (unchanged) language of Article II, Section K (Overtime) 5 of the prior agreement:

> The County may schedule meetings immediately before the beginning of a regular shift without paying the three (3) hour overtime minimum only if (1) the meeting is for 90 minutes or less and (2) the employee is notified of the scheduled meeting at least seven calendar days in advance. If those conditions are met, the employee attending the meeting shall be paid the applicable overtime rate for that meeting time only and shall be paid as usual for his or her regularly scheduled shift (including overtime, if any, figured from the regular beginning of that shift).

***Sergeant step intervals***. The following language shall be added to the salary schedule. The change shall be prospective from the first full pay period following the date of this Award.

> Set Sergeant opening step at 10% above Top Step Deputy, followed by three 2.5% annual steps. Current employees are Y rated at current rate as necessary to assure no reduction.

***Education premiums, Shift differential, and Premium Holidays.*** No change.

***Release time.*** The following sentence shall be added following the existing provision:

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39. Of course, a grievance arbitrator may well find himself or herself quite frustrated by the fact that the employer has blown past a *Loudermill* point, has failed to correct glaring errors or omissions in its own internal investigation, or has long tolerated in other officers the sort of behavior it now points to as a 'dishonest practice' requiring immediate termination. Dishonesty discharges which exhibit none of those issues are, in my experience, extremely unlikely to go to arbitration.

One Guild representative shall be allowed to attend any ULP hearing, grievance arbitration hearing or interest arbitration hearing on release time. (This does not prohibit the parties' agreement that more than one Guild representative may attend on release time.) This provision shall be effective retroactively to include the October, 2012 Interest Arbitration hearing.

There shall be no change in the contract with respect to the payment of witnesses or advocates.

***Timely investigation.*** The following shall be added after the existing language:

Interviews and Internal Affairs investigations shall be concluded without unreasonable delays. And any unexplained or unreasonable delay shall be rebuttably presumed to have prejudiced the accused's ability to defend himself or herself against the resulting charges.

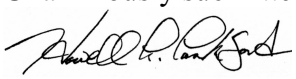
***Disciplinary transfers.*** Article I, Section O shall be changed as follows:

Discipline is defined to include written reprimands, suspensions without pay, disciplinary demotions to a lower paying classification, <u>disciplinary transfers,</u> and discharge...

***Use of County email***. No change.

***Arbitration of 'dishonest practices' discipline***. No change.

Unanimously submitted,



Howell L. Lankford
Neutral arbitrator

_____
Jay Kent,
Arbitrator appointed by the Guild.

_____
Nancy Buonanno Grennan
Arbitrator appointed by the County.