

BEFORE THE NEUTRAL ARBITRATOR

In the Matter of the Interest Arbitration Between)
)
Snohomish County Sheriff's Office (Corrections))
)
the County)
)
and)
)
Teamsters Local 763, representing Snohomish)
County Corrections Sergeants and Lieutenants)
)
the Union)
)
_____)

**ARBITRATOR'S OPINION
AND AWARD**

PERC No 25993--I-13-0632

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Date of Award: October 15, 2014

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For the Union:

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I. PROCEEDINGS

This arbitration concerns the open terms of a Collective Bargaining Agreement between Snohomish County (the County) and the Teamsters Local 763 (the Union) representing a bargaining unit of Corrections' Sergeants and Lieutenants. The parties reached an impasse on various issues and pursuant to RCW 41.56.450, the Public Employment Relations Commission (PERC) certified those issues for interest arbitration. The parties submitted the disputed terms to neutral Arbitrator Jane R. Wilkinson for resolution. The parties waived the RCW 41.56.450 provisions for a tri-partite panel. The Arbitrator conducted evidentiary hearings, in Everett, Washington, on July 22, 2014. Each party had the opportunity to present evidence, examine and cross-examine witnesses and argue its case. The Arbitrator received the parties' post-hearing briefs on September 24, 2014, and thereupon closed the hearing.

RCW 41.56.030(13)(b), read in conjunction with RCW 41.56.430 and .450, states that unresolved disputes concerning the terms and conditions of a collective bargaining agreement must be settled by interest arbitration when the affected bargaining unit is composed of:

correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(9), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates;

RCW 41.56.450 specifies the powers and duties of the interest arbitrator or panel, who may consider only the issues certified by PERC's executive director. RCW 41.56.450 states that the arbitration determination "shall be final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious."¹

¹ RCW 41.56.450 requires an arbitrator to issue an award within 30 days following the conclusion of the hearing. In this case, the hearing concluded upon the receipt of the parties' briefs on September 24, 2014. This award's due date, therefore, was therefore October 24, 2014.

In RCW 41.56.465, the Washington Legislature specified that the interest arbitrator must apply the following criteria when determining the disputed terms of a new collective bargaining agreement:

(1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, the panel shall consider:

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

(b) Stipulations of the parties;

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

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

(e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. ...

(2) For employees listed in RCW 41.56.030(7)[sic] (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.

[Code] Revisor's note: RCW 41.56.030 was alphabetized pursuant to RCW 1.08.015(2)(k), changing subsection (7) to subsection (14). RCW 41.56.030 was subsequently amended by 2011 1st sp.s. c 21 § 11, changing subsection (14) to subsection (13).

"Such other factors" referenced in RCW 41.56.465(e) typically includes turnover, the fiscal health of the employer, general economic considerations, and considerations relating to internal parity or equity. The statute does not specify the relative weight to be assigned to each enumerated consideration nor how they are to be measured. These matters are left to the discretion of the arbitrator. I have kept in mind all of the statutory considerations set forth above, whether or not specifically articulated in this opinion.

II. BACKGROUND

Since 2009, the County's Sheriff's Office has managed the County's correctional facilities, which provide secure units for the prisoner housing as well as alternatives to incarceration. The

County rents jail space (beds) to other jurisdictions in an effort to be self sustaining. Due to issues arising from running a jail at capacity, or nearly so, the County has reduced the number of inmates it is willing to receive from other jurisdictions. This has hurt the bottom line. It projects a \$3.5 million budget shortfall for 2014. However, it is in the process of restructuring its outside "rental" rates in order to better recover its costs.

There are 18 Correction Sergeants (FTEs) and seven Lieutenants. In 2004, the Lieutenant title was changed to Captain. It was changed back to Lieutenant in 2009. The most recently expired Collective Bargaining Agreement (2008-2010) refers to the position as "Captain." The title changes have not affected that position's responsibilities or pay. The Sergeants are first-line supervisors for approximately 238 FTE corrections deputies working at the County's jail in Everett, Washington.

In 2007, this Arbitrator issued an award for wages and other terms and conditions of employment for this same bargaining unit. That award covered contract years 2005 through 2007. I will continue to apply the findings made in that award unless evidence in this proceeding places those findings into question. In particular, the Arbitrator selected Clark, Pierce, Kitsap and Spokane counties as comparable jurisdiction. The parties have accepted these four jurisdictions as comparators in this proceeding. The County presented evidence that the relative positions of these jurisdictions in terms of population and assessed valuation (as well as assessed valuation per capita) has not substantially changed. The Union argues that Snohomish County is closest to Pierce County as a comparable and furthermore, the compensation in Snohomish County should be above the average of the comparable jurisdictions. That argument will be discussed below.

The parties reached agreement for their 2008 through 2010 contract of their own accord. This dispute concerns that contract's successor. The County would have it expire at the end of 2014; the Union proposes an expiration at the end of 2015.

The parties' proposals on the outstanding issues and my review and award thereon are in the following sections of this document. This discussion keeps in mind the principle that for contract language changes, arbitrators place the burden of persuasion on the party advocating the change.

III. LEAVES

The Union's proposals on leaves, shown next in the subsequent subsections, are apparently drawn from Sheriff's Deputies' contracts although in the case of leave donation, Business Agent Mike Wilson vaguely referred to other County employees having similar leave donation abilities. He did not identify those County employees.

The County accuses the Union of "cherry picking" from the best of the Sheriff's commissioned law enforcement contract provisions. It opposes the Union's attempt to gain parity with Sheriff's Deputies or management (Lieutenants and Captains) because the Deputies and their managers are commissioned law enforcement officers with very different job duties.

I agree with the County's position. There is no evidentiary basis for this bargaining unit's claim to parity with commissioned officers or management. At hearing, the Union referred to a statement allegedly made by a former Sheriff to the effect that the corrections Captains' reversion in title to Lieutenant (with no change in status or pay) would mean the corrections Lieutenant position would be more closely aligned with the same titular position in the Sheriff's commissioned law enforcement office. As the Union conceded, no promises were made regarding wage or benefit parity.

A. Vacation Leave Annual Accrual, Section 9.1

The Union proposes adding a new step to vacation leave accrual, applicable to employees who have 25 years of service. Starting the 26th year, these employees would accrue 240 hours a year. The status quo, which the County supports, has a maximum leave accrual of 224.90 hours, which begins with the 25th year of service.

The Union presented no substantive justification for its proposal in terms of the statutory criteria. It argued that this would achieve parity with the Sheriff's deputies' supervisory positions. It also argued that this would additionally reward long service with the County, which should be encouraged.

Without further evidence, I will not award this proposal.

B. Vacation Leave Maximum Accrual, Section 9.1.1

The Union proposes to increase maximum per employee unused leave accrual to 320 hours, up from 240 hours. The County opposes this proposal.

The Union presented little justification for its proposal. It is not awarded.

C. Employer Approval for Lengthy Sick Leave, Section 9.2.4

Existing contract language allows an employee with a lengthy illness who has used up sick leave to use other accrued leave and after that, to up to 120 days leave without pay. The Union proposes to delete the following sentence from existing contract language on longer sick leave: "Such leave shall be subject to the approval of the Employer." The County opposes this deletion.

The Union requested the change because it believes the employee's physician should exclusively make the determination of the need for such leave. However, it did not propose language to that effect. In addition, at hearing, it could not explain to the Arbitrator how this section (modified or not) fits with the federal Family and Medical Leave Act and its Washington equivalent.

The proposed change is rejected.

D. Limited Duty Assignments, Section 9.2.4.1

The Union proposes to add the following language to the parties' agreement.

Limited Duty Assignments - Bargaining unit members will be offered limited duty assignments for a reasonable period of time when they are temporarily disabled, provided that said employees can reasonably be expected to recover from their disability and return to work.

At hearing, Business Agent Mike Wilson explained that temporarily disabled employees have been given limited duty assignments, but not pursuant to a written policy and further, this opportunity has been unevenly made available. The Union did not provide any details on specific problems bargaining unit members have experienced. In addition, there was no evidence the parties explored the meaning of a "reasonable period."

The County opposes this language because the Union presented no justification for it. The Union did not point to any instance of a bargaining unit member being denied light duty when requested or even of being out of work because of the absence of the proposed language. Again, Union is cherry-picking from the patrol deputies' agreement, the County argues. Finally, there is little or no comparator support for the Union's proposal.

The Arbitrator prefers the Counties' position and the proposed language is not awarded.

E. Current Leave Account (CLA) Payment upon Termination, Section 9.2.6

The Union proposes to increase the maximum number of accrued sick leave days/hours that can be cashed out upon the termination of employment. The current maximum, applicable to employees with 20 years or more of service is 30 days and 192 hours. The Union proposes to increase those numbers to 30 days and 240 hours.

The Union proposes this as an additional longevity benefit. The County opposes the change because the Union presented no evidence supporting it and the status quo is a fair one. The Corrections Deputies contract contains the same provision.

Without further support, the Arbitrator must reject the proposed change.

F. Leave Account - Cash Payment on Termination, Section 9.2.7

Language in the expired Collective Bargaining Agreement states that upon termination, employees who are over 65 with 20 or more service years will be paid a lump sum from accrued sick leave reserves. The payment will be based on one day of pay for each ten days of accrued leave using the employee's then current daily pay rate. The Union proposes that the payment be based on three days' pay, rather than the current one day.

The Union presented no evidence supporting this proposal. As the County points out, it is not something that permits much of a comparable jurisdiction analysis, since the comparables offer a hodge-podge of sick leave cash out provisions. The Union's proposal is not awarded.

G. Leave Donation, Section 9.9

The expired contract language states that employees may donate sick leave or annual leave to a sick leave bank that other bargaining unit members may draw upon under such conditions that the "Employer shall establish." In addition, the Employer determines the amount of shared leave that the employee may receive.

The Union proposes changing the language so that the determination will be made by a "Sick Leave Bank Donation Board." The Sick Leave Board will be made up of two members appointed by the Sheriff and two members appointed by the bargaining unit (stewards). It also proposes language that limits employees on disability to 30 days of donated leave.

The Union presented little evidence supporting this proposal. The County notes that there is no evidence of any bargaining unit member being denied donated leave when such a request has been made. As the County stated, this is a "solution looking for a problem." The Union again seeks to align itself with commissioned law enforcement contracts. The Union's proposal is not awarded.

H. Sick Leave Incentive, Section 9.9.1

The Union proposes the following bonus to employees who maintain a sick leave balance of at least 550 hours:

- 1). Employees who use no sick leave in a calendar year shall receive a 2% pay bonus.
- 2) Employees who use two days or fewer in a calendar year will receive a 1% pay bonus
- 3). Employees who use five days or fewer will receive a .75% bonus.

The Union's proposal further states, "In addition, Employees who meet the hour bank threshold requirements for a sick leave incentive under this section shall be awarded an additional twenty (20) hours of pay per year." The Union also proposes language stating that the

payment will be made with the first paycheck in January of each year. Employees promoted to Sergeant during a calendar year will be eligible for the incentive "as long as their sick leave usage fits within the above parameters."

The County opposes these proposals on the grounds that there is no sick leave abuse in the bargaining unit, there is no comparable jurisdiction support for the proposal, and it would be costly.

The Union argues that the new language would create a strong incentive against the use of sick leave. It provided no other support for this language in terms of the statutory criteria.

The Arbitrator agrees these bonuses would create a strong incentive against the use of sick leave, something that is not always desirable. The incentive would be against proper use of sick leave as well as the misuse of sick leave. A truly sick employee would be reluctant to give up a potential sizeable bonus by staying home, which is hardly desirable. The language will not be awarded, mainly for the reasons cited by the County.

I. Compliance with ADA, Section 9.11

The Union would add language requiring all provisions of Article 9 to be applied in compliance with the American with Disabilities Act and the Washington Law Against Discrimination.

This language is rejected because it already is the law and because the Union could not identify an extant noncompliance problem. Specifically incorporating statutory provisions into a contract is something I believe should be negotiated by the parties and not imposed in arbitration.

IV. INSURANCE, ARTICLE 10

The parties reached an 11th-hour agreement regarding the employees' maximum contribution to health care premium. However, other clauses falling under the topic of insurance

(including the effective date of the agreed-upon language and future premium increase cost sharing) remain unresolved.

A. Effective Date of Employee Contribution to Premium Changes, and Annual Increase in Premiums, Cost-Sharing, Sections 10.1 and 10.1.1.

The parties agreed that the Employer would make an increased contribution to the premium amounts under the parties' current health plans. Employees would pay the remaining amount; that agreed-upon amount appears lower than their current contribution. The employee contribution amount effectively places a cap on the amount they will have to pay.

One dispute is whether this increased contribution should begin on January 1, 2014, as the Union proposes, or one month after the effective date of this award, as the County proposes.

This ties in with how long the employee cap should remain in place. No doubt there will be a premium increase in 2015.

The Union wants the employees' cap to expire at the end of 2015. Thus, the Union would eliminate expired contract language establishing cost sharing formula for premium increases. That formula required employees to pay 20% of such increases, with a \$20 maximum.

The County proposes leaving the 20%/\$20 premium increase cost sharing language in place, although it also would have the contract terminate at the end of 2014. Should the Arbitrator extend the contract through 2015, the County would require this premium increase cost sharing for that year.

1. Effective Date of Increased Employer's Contribution to Premium

In general, I believe improved compensation items (including medical benefits) of a contract should be retroactive where practicable. Had the parties agreed to a new contract in a timely fashion, presumably such changed terms would have taken effect.

However, the County points out that during bargaining for the contract in dispute, the Union proposed changing the existing medical plans so that the bargaining unit had the same plans as the Sheriff's commissioned law enforcement employees. In the Union's statutorily required 14-

day proposal (submitted 14 days prior to the hearing), the Union changed its position. It proposed maintaining the current plans but with a higher contribution from the County, and a lower one from employees. The County agreed to this new proposal. This took the issues of which plans would be offered and the County's contribution to premiums off the table. The County argues that given these facts, it is reasonable and appropriate to make this agreement prospective. The County also contends that it has negotiated premium sharing agreements with five other bargaining units in the Sheriff's Office, and in all these agreements, the parties agreed the changes should take place prospectively. (Some bargaining unit employees have had increases to their contributions, and some decreases, according to the County). Administratively, prospective implementation makes sense, the County contends. With the change in contribution, the County also provides for an open enrollment for changes in coverage. Prospective implementation allows the County to coordinate the timing of these changes among the six bargaining units.

I find that the County has the better argument. Therefore, parties' agreed-upon premium split will take place one month after the date of this award.

2. Premium Increase Cost Sharing, 20%/\$20

As stated above, the expired contract had language requiring employees to pay 20% (\$20 max) of the amount of premium increases. These increases take place on April 1 of each year. The Union proposes to delete this language, while the County would retain it. As I understand it, this language only becomes relevant on April 1, 2015.

The Union opposes any language requiring an escalating annual contribution which is consistent with its proposal locking in the agreed upon caps until December 31, 2015. The County points out that all comparable jurisdictions have some sort of language requiring employer-employee cost sharing of premium increases.

Maintaining the language will create the *status quo ante* for the next collective bargaining agreement that the parties' negotiate. The language is reasonable and was in the parties' prior

contract. The Union presented no reason for changing it in terms of the statutory criteria. The County showed comparable jurisdiction support. Therefore, the language will be retained with the date modifications proposed by the County.

B. Life Insurance, Section 10.5

The County had been providing employees with a \$40,000 life insurance policy. The Union proposes increasing this amount to \$100,000. The County opposes the increase.

The Union proposed the change because the \$40,000 amount is low and outdated. The County opposed the increase arguing that the existing benefit exceeds the life insurance benefit provided by every other comparable jurisdiction.

Because I am required to base my award on the statutory criteria, I must rule in favor of the County on this issue. The increased benefit is not awarded.

C. Attorneys' Fees and Hold Harmless, Section 10.6.2

Language in the expired agreement stated:

The Employer shall provide in appropriate cases, legal counsel for representation and defense of civil suits and to hold employees harmless from any expenses, connected with the defense, settlement or monetary judgments from such actions, claims, or proceedings arising out of or incident to acts and/or omissions occurring while the employee was acting in good faith in the performance or purported failure of performance of his/her official duties or employment.

The Union proposes to change this language as shown with the underscore and strikethrough:

The Employer shall provide ~~in appropriate cases~~, legal counsel or reasonable attorney's fees for representation and defense of ~~civil suits~~ lawsuits and to hold employees harmless from any expenses, connected with the defense, settlement or monetary judgments from such actions, claims or proceedings arising out of or incident to acts and/or omissions occurring while the employee was acting in good faith in the performance or purported failure of performance of his official duties or employment and provided further that the employee was not engaging in criminal or malicious misconduct. A criminal conviction shall be deemed conclusive but not exclusive proof of criminal misconduct for the purposes of this section. If the County elects to pay reasonable attorney's fees hereunder, no claim for such payment may be made by an employee prior to the conclusion of the criminal lawsuit.

The County opposed the changes the Union has proposed.

The Union explained that its intent is to provide attorneys' fees in criminal cases. Witnesses for both sides agreed this proposal was not really discussed during negotiations.

I will not award the language in part because it is not well drafted.² It refers to representation and indemnification in "lawsuits." "Lawsuits" could be read not to encompass criminal proceedings. Such language should specifically reference "criminal prosecutions." Even if the proposal were clear as to its application to criminal matters, the proviso language ("provided further that the employee was not engaging in criminal or malicious misconduct") limits to application when the employee is innocent. Innocence might not be shown until acquittal, meaning the employee must pay his/her attorney's fees until acquitted and then seek reimbursement. Moreover, the language does not address the possibility of a hung jury or a *nolo contendere* plea. The term "malicious misconduct" is unduly vague. In addition, the language goes too far in saying that a criminal conviction is not conclusive proof of criminal misconduct. If the parties cannot rely on the bright line of a criminal conviction, then the door remains open for further dispute.

The County presented comparator support for the language in the expired contract, that is, Article 10.6.2 with no changes. The Union presented no evidence in terms of the statutory criteria. The Union's proposal is not awarded.

V. DURATION, ARTICLE XX

The Union asked for a five-year contract to give the parties' a break from bargaining, given that the last year of the contract subject to this arbitration is more than half over. The County would have it be four years, expiring at the end of 2014.

² When evaluating proposed noneconomic changes to proposed contract language in terms of the statutory criteria, I take the following analytical approach: First, the proponent must show a problem exists that needs correcting. Hypothetical issues usually don't suffice. Second, the proponent's proposed language change must address and resolve that issue. Third, the proposed language must not go beyond the issue addressed as to create the potential for unforeseen future problems.

The Union argues that because 2014 is nearly over a year-end expiration date would mean bargaining for a successor contract would have to begin immediately. An expiration date of December 21, 2015, would give both parties a badly needed break from negotiations. Although going a year longer could require a wage adjustment for that final year, it notes that of it proposes a very reasonable 90% CPI-W increase. (I also note that this would be a modest increase because the CPI-W for Seattle-Tacoma-Bremerton, June 2014 - June 2015, is 2.23% Ninety percent of that figure is about 2%.)

Although I'm sympathetic to the Union's position, I ultimately am awarding the County's proposal for a four-year contract because the County persuaded me that it wishes to have uniform expiration dates of late 2014 and early 2015 due to the Affordable Care Act. Chief labor negotiator Rob Sprague testified:

... One of the things we've been trying to do with all of our bargaining units is consolidate so they all expired either December 31, 2014 or coupled with law enforcement to end in March which is the end of our plan year. All expire within the same plan year so we can address the concerns the County has with the Affordable Care Act and the potential effects of the excise tax and Cadillac tax that faces us in 2018.

Tr. 84-85. The Union did not rebut this testimony. This testimony persuaded me that the need to deal with the ACA uniformly has created an unusual situation. Therefore, a four-year contract is awarded.

My award modifies slightly the County's proposal to provide a starting date of January 1, 2011. I believe there should be a specified starting date as well as a specified ending date. The wording of the expired language is a little awkward, but I shall leave it to the parties to provide better clarity.

VI. WAGES AND WAGE RELATED ITEMS, APPENDIX A

Under the topic of wages, the parties do not agree on wage adjustments, retroactivity, and the Union's proposals to add shift differential pay, longevity pay and college incentive pay.

A. Wages, Appendix A.1.

1. Proposals

The parties wage proposals are set forth in the next table:

Year	Union ³	County
2011	0%	0%
2012	2.0%*	1.35% eff. 4/1/12
2013	2.5%	1.5% eff. 1/1/13
2014	2.5%	1.5% eff. 1/1/14
2015	90% CPI 1.5/5.5% min/max	No proposal

*All Union proposals would be effective at the beginning of the calendar year at issue

2. Analysis Pursuant to the Pertinent Statutory Considerations

The following addresses the pertinent statutory considerations in this proceeding. I have considered all the statutory criteria, but the ones not addressed below were not helpful to a decision here.

a. Comparables

As discussed previously, the parties agreed to use Pierce County, Clark County, Kitsap County and Spokane County as comparables. These were the four jurisdictions I elected to use in my 2005-2007 award for this bargaining unit. Surprisingly, both parties' data and calculations show that the wages (both base wages and total compensation) of this bargaining unit are significantly *above* the average of the comparators.

My analysis here focuses on total compensation because I believe those figures better paint a true picture for purposes of comparison.

Both parties presented calculations for 2012, but their methodologies differed. In particular, the Union did not include "turnover" pay, but the County did. They differed as to their benchmarks. The Union chose median seniority and highest seniority for both Sergeants and Lieutenants. They both used highest seniority for their second comparison, but may have

³ The Union modified this proposal just prior to hearing. In its 14-day proposal: it asked for 3.3% for 2012, 2.4% for 2013, 1.5% for 2014 and a 90% of CPI increase for 2015. Also just prior to hearing, it dropped its proposal proposing to establish a 7.5% wage differential between Corrections Deputies and Sergeants and between Sergeants and Lieutenants.

differed as to years in classification. The most important difference, however, is that the County, when presenting 2012 wages relative to the comparators, included (as separate columns) each parties' proposed 2012 increase. The Union did not figure in an increase. As a starting point in a wage analysis, I prefer not to assume any wage increase for the subject jurisdiction. It makes it easier for me, as an arbitrator, to independently determine the appropriate wage adjustment. Therefore, I attempted to back out the proposed increases from the County's calculations, although this is problematic when dealing with total compensation. As a result the wage differentials (Snohomish County relative to the comparables) using the County's methodology would be lower. The "County" column of the table below contains my adjusted estimate of the County's calculation of the amount bargaining unit wages exceed the comparables' average at two different benchmarks. The figures in the "Union" column are from the Union's own exhibits.

2012	Union	County-Adjusted Est.
<i>Sergeant</i>		
Ave/Med Seniority	3.01%	6.30%
Top Seniority	2.68%	3.35%
<i>Lieutenant</i>		
Ave/Med Seniority	4.36%	7.90%
Top Seniority	4.11%	3.70%

I decided that I do not need to more precisely determine what I believe to be this bargaining unit's pay vis-à-vis its comparables because both parties' calculations have found the bargaining unit pay to be rather well above average going into 2012 (even without a wage increase in 2011). Although the parties' figures differ, their difference is not startling.

I find that the bargaining unit's position above the average is appropriate. Snohomish County's assessed valuation (both total and per capita) is above that of the comparable jurisdictions. It is more populous than Kitsap and Clark Counties, but somewhat less populous than Pierce County.

The Union seeks to align its wages more closely with Pierce County, which pays the highest of the comparators and more than Snohomish County. It takes this position because of Snohomish County's higher assessed valuation. In other words, it is a wealthier county.

The County contends that the configuration of Snohomish County is different than Pierce County in an important way. The county seat (and location of the county jail) for Pierce County is the City of Tacoma, which has almost double the population of Everett, which is Snohomish's county seat, jail location, and largest city. It contends that wages in Pierce County are heavily influenced by Tacoma's urban market, which would likely have higher wages than the Everett urban market.

Interest arbitration and contract negotiations have long operated under the assumption that both population and assessed valuation bear a correlation to wages. However, this correlation is far from precise. I am reluctant to engage in anything that resembles a more precise alignment of wages based something like the jail's location in what is otherwise a fairly populous county, one quite close to the Seattle-King County metropolitan area. (Pierce County likewise is populous and located near the Seattle/King metro area). In fact, these similarities provide logic to the Union's position that Pierce is the most closely comparable county to Snohomish.

In rendering my final award, I will keep in mind the bargaining unit's standing relative to its comparables and relative to Pierce County.

b. Cost of Living Changes

The parties agree on the use of the CPI-W for Seattle-Tacoma Bremerton and their figures match. Compare Exh. E-11, Tab H, with Exh. U-7. The Employer calculated that the rates of wage increase for both Sergeants and Lieutenants has easily outpaced the rate of inflation for the 11-year period ending in the 2010, as shown on the following table:

Year Ending	CPI-W	Contract Yr	Capt/Lt.	Sergeant
June 99	3.2%	2000	4.15%	2.88%
June 00	3.9%	2001	5.50%	8.50%
June 01	3.9%	2002	3.50%	3.50%
June 02	1.5%	2003	1.10%	1.10%
	0	October	1.20%	1.20%
June 03	0.9%	2004	0.80%	0.80%
June 04	2.5%	2005	4.50%	4.50%
June 05	2.3%	2006	2.70%	2.70%
June 06	4.6%	2007	4.60%	4.60%
June 07	3.3%	2008	5.50%	6.50%
June 08	6.2%	2009	5.57%	5.57%
June 09	-0.7%	2010	1.50%	1.50%
Compounded	36.32%		48.84%	52.64%

I note, however, that the County's proposal relative to the CPI-W for the contractual period under consideration is low:

CPI Year/Contract Year	CPI change over previous year	Employer Offer	Union's Offer
2009-2010 for 2011	-0.0615%	0%	0%
2010-2011 for 2012	3.7027%	1.35%	2.50%
2011-2012 for 2013	2.6732%	1.50%	2.50%
2012-2013 for 2014	1.1602%	1.50%	2.50%
2013-2014 for 2015	2.2306%	n/a	2% (90% of the CPI-W)

The compounded increase in the CPI for 2011 - 2014 is about 7.7%. The Union's proposal more or less matches this compounded increase. It exceeds 90% of that CPI change by a small amount, less than a percentage point. The Employer's offer, on the other hand, falls short of the compounded CPI for 2011 - 2014 by a little over three percentage points. I find this disturbing even though over a longer period, there is no lag.

c. "Such Other Factors"

(1) County's Fiscal Situation and General Economic Considerations

The County does not maintain that it lacks the ability to pay more than what it offers. However, it advances several reasons for the need to exercise fiscal restraint. It is facing increasing retirement contribution costs for all of its employees, there are statutory limits on its ability to collect more on property taxes, and there are issues regarding its ability to borrow at

lowered rates (something that relates to its bond rating). The Sheriff's office also is facing declining jail revenues. Its most significant potential financial liability (and uncertainty) pertains to the Oso, Washington mudslide disaster that took place in March 2014. It has already incurred significant costs in rescue, clean-up operations and ongoing litigation expenditures. It also is facing future costs that deal with litigation and liability. Some of its costs will be covered by federal emergency programs, but at this point the County believes it does not know how much. It estimates its costs could or will reach \$20 million. It is not clear whether this amount represents its costs before or after federal reimbursement.

The Union notes that the County does not claim an inability to pay, nor has it asserted that it would be fiscally imprudent to pay wage increases in excess of its offer. It cites other arbitration awards issued during the recent recession that tended to emphasize the statutory factors (particularly comparability, but also CPI changes) over the employers' reduced ability to pay due to the recession.

I note that an employer's fiscal outlook is not a specifically enumerated statutory factor. Rather, it is one of the "such other factors ... that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment." RCW 41.56.465(1)(e). Thus, one could argue that things like comparability and cost of living should be principal considerations. On the other hand, it appears that in the recession-era awards cited by the Union, the subject jurisdiction's wages lagged that of the comparable jurisdictions. *King County*, PERC No. 21957-I-08-0519 (Lankford, 2009); *City of College Place*, PERC Case No. 21899-I-08-00515 (Tim Williams, 2009); *Pierce County*, PERC No. 22679-I-09-0539 (Krebs, 2010); *City of Longview*, PERC Case 2241-I-09-0530 (Michelstetter, 2010). The opposite is true here. Before me is the unusual situation where the bargaining unit's wages exceeds the average of the comparable jurisdictions, as discussed above.

In any event, I believe the fiscal impact of an arbitration award on the employing jurisdiction is something an interest arbitrator should consider. Even if the employer is relatively flush, wage and benefit increases awarded in arbitration should be fiscally prudent.

(2) Retention

The County presented evidence, which was not disputed by the Union, that retention is not an issue in this bargaining unit.

(3) Internal Equity

In its post-hearing brief, the Union contends that as a matter of internal equity, it should receive the same (or close to the same) percentage increased wages enjoyed by Corrections Deputies. That bargaining unit received 2% for 2012, 2.5% for 2013, and 2.5% for 2014. Without similarly matching increases, the wage gap between Corrections Lieutenants and Sergeants and the Corrections Deputies will lessen. The Union argues that the County presented no evidence or argument that would justify making that wage gap smaller.

In principle, I believe that maintaining identifiable gaps between supervised and supervisory positions is a good idea. However, the expired contract specifies no particular pay differential between Sergeants over Deputies and the Union rescinded its proposal to establish a 7.5% differential. Nor did it present any evidence of a historical differential. Furthermore, there was no evidence as to why Corrections Deputies received a higher wage increase than what the County is now offering to this bargaining unit. In particular, I would need to know whether the Corrections Deputies received this as a *quid pro quo* for a concession. I also would need to know their position vis-à-vis their counterparts in comparable jurisdictions as well as in relation to certain other statutory factors. The Union presented none of this evidence. Therefore I cannot base an award on this argument of the Union.

(4) Concession Made by Union

The Union notes that it has agreed not to seek the employer's increased contribution to medical premium (and the resulting employee cap) going back to the beginning of the contract,

January 1, 2011. In fact, this Arbitrator decided above that this increase contribution/cap should be prospective only. The Union argues that this should be a consideration in favor of a higher wage award.

I believe that my award making the employee cap prospective only is something that might be factored into a wage award. However, it is not a significant consideration.

3. Arbitrator's Wage Award

Based on the above considerations, I find the following to be an appropriate wage award for this bargaining unit:

Year	Wage Adjustment
2011	0%
2012	2.0%
2013	2.0%
2014	1.5%

Each wage adjustment will be retroactive to the first day of the calendar year to which it pertains.

I believe these increases will help maintain the bargaining unit's position relative to the comparators and are more in line with cost of living increases during the period at issue. Although the evidence shows that wages were nicely above average in 2012, the comparable jurisdictions have received wage increases since then. Using the Exh. E-11, Tab K's comparator information as a starting point, I calculated that comparable jurisdictions bargaining unit members received an average compounded wage increase in 2013-2014 of between 4.75% and nearly 5% (depending on position and length of service). These figures were particularly affected by large wage increases in Kitsap County and relatively larger increases in Spokane County. This information particularly convinced me that the County's wage offer, which amounts to an overall compounded increase of about 4.4%, is too low. The adjustment awarded here will help the bargaining unit maintain its position and ranking relative to the comparable counties. The increases awarded here, I believe, can be absorbed by the County without having a substantial adverse effect on its overall budgetary and fiscal health.

B. Promotion Pay (Housekeeping Issue), Appendix A.2.2

The expired contract had language delineating the pay for promoted employees, and the language stated that it was "effective January 1, 2009." The Union proposes deleting the year 2009 and inserting the year 2011. The County opposes, indicating the change is unnecessary.

Whether the change is needed is indeed debatable. The County contends that any change without reason could have unintended consequences. However, this change is merely a housekeeping matter that keeps the clause up-to-date. I will award this change.

C. Shift Differential, Appendix A.8, Longevity and College Incentive, Appendix A.9

The Union made three proposals for premium or incentive pay:

1. Union proposes a shift differential of \$0.25/hr for swing shift and \$0.50/hr for night shift. In addition, it seeks a \$1500 retroactivity payment for all bargaining unit members. The differential pay would commence with the issuance of this award. The County opposes a shift differential.
2. Language in the expired agreement gave longevity pay to employees who were receiving longevity pay prior to December 31, 1982. The Union proposes deleting the existing and outdated longevity pay language and adding a comprehensive pay structure. The County wants to maintain the status quo.

The Union's longevity pay proposal (effective January 1, 2014) is as follows:

Yrs served in barg. unit	Monthly premium
4	1.5%
8	3.0%
12	3.5%
16	4.0
20	4.5%
24	5.0%

3. The Union proposes the following college incentive, effective January 1, 2014:

Degree	Monthly premium
Associate Degree	1.5%
B.A. or B.S.	4.0%
Master's Degree	6.0%

Degrees must be from an accredited college or university.

In addition, the Union proposes introductory language expressing the County's support of longevity and college incentives, but requiring employees to elect one or the other.

The County opposes the Union's proposals.

The Union's strongest case is for the shift differential. It is something Corrections Deputies receive. These are the people the bargaining unit members supervise. Sheriff's Deputies and their managers also receive this pay. Citing Arbitrator Axon in *Mason County*, 15793-I-01-361 (2001), the Union maintains there should be internal constancy. One group should not be wholly out of sync with related employer groups.

The Union refers to the law enforcement side of the Sheriff's office for internal equity support for its longevity pay proposal. It also notes that longevity pay rewards loyalty and length of service.

Similarly, the Union contends, Sheriff's Deputies and their managers enjoy an educational incentive and such an incentive rewards those who further their education.

Regarding shift differential, the County argues there is no evidence showing a need, such as difficulty recruiting or retaining employees to work swing or graveyard shifts. The differential would simply drive up total compensation without justification. The Union also made a proposal requiring the County to pay a lump sum (\$1500) as back pay for working a swing or graveyard shift. According to the County, the Union admitted that the \$1500 is not based on any calculations. It is nothing more than an unjustified windfall payment, the County maintains.

On longevity pay, the County argues that this would push up the bargaining unit's compensation even more, which is not appropriate. There was no evidence of a retention issue, so further rewarding longevity is not necessary. It has little comparator support. Only Kitsap County offers longevity pay similar to what the Union proposes.

The County contends that the college incentive also lacks any basis since there is no evidence of any issues with retention or that college education is at all related to the job or performance.

I am disinclined to award premium or incentive pay unless proposals for the same receive extremely strong comparator support or there are other compelling reasons to add such provisions via arbitration, as opposed to negotiation. The reason is that this pay is part of the

total compensation package and must be figured in as such. However, many times, these forms of premium pay benefit a bargaining unit unequally. Therefore, if the parties decide that premium or incentive pay is needed and part of the wage "pie" should be distributed in this uneven fashion, then this result should be achieved by negotiations

For the above reason and for some of the additional reasons cited by the County, the Union's proposals for shift differential pay, longevity pay and college incentive pay are not awarded.

VII. RECAP: FINAL AWARD OF THE ARBITRATOR

In the preceding discussion, I examined the parties' evidence and argument in the context of the statutory considerations for interest arbitration. To summarize, my awards on the various issues in dispute are as follows:

1. Vacation Leave Annual Accrual, Section 9.1: The Union's proposal is not awarded. The language of the expired Collective Bargaining Agreement will remain in effect.
2. Vacation Leave Maximum Accrual, Section 9.1.1: The Union's proposal is not awarded. The language of the expired Collective Bargaining Agreement will remain in effect.
3. Employer Approval for Lengthy Sick Leave, Section 9.2.4: The Union's proposal is not awarded. The language of the expired Collective Bargaining Agreement will remain in effect.
4. Limited Duty Assignments, Section 9.2.4.1: The Union's proposed language will not be added to the Collective Bargaining Agreement.
5. Current Leave Account (CLA) Payment Upon Termination, Section 9.2.6: The Union's proposal is not awarded. The language of the expired Collective Bargaining Agreement will remain in effect.
6. Leave Account - Cash Payment on Termination, Section 9.2.7: The Union's proposal is not awarded. The language of the expired Collective Bargaining Agreement will remain in effect.
7. Leave Donation, Section 9.9: The Union's proposal is not awarded. The language of the expired Collective Bargaining Agreement will remain in effect.
8. Sick Leave Incentive, Section 9.9.1: The Union's proposed language will not be added to the Collective Bargaining Agreement.

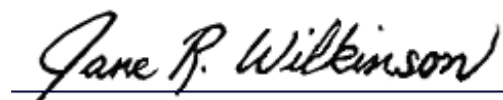
9. Compliance with ADA, Section 9.11: The Union's proposed language will not be added to the Collective Bargaining Agreement.
10. Effective Date of Employee Contribution to Premium Changes, and Annual Increase in Premiums, Cost-Sharing, Sections 10.1 and 10.1.1:
 - Effective Date of Increased Employer's Contribution to Premium: The parties' agreed-upon premium split will take place one month after the date of this award, per the County's proposal
 - Premium Increase Cost Sharing, 20%/\$20: The expired contract language will be retained with the date modifications proposed by the County.
11. Life Insurance, Section 10.5: The Union's proposal is not awarded. The language of the expired Collective Bargaining Agreement will be incorporated into the new one.
12. Attorneys' Fees and Hold Harmless, Section 10.6.2: The Union's proposed language changes will not be added to the Collective Bargaining Agreement. The language of the expired Collective Bargaining Agreement will be incorporated into the new one.
13. Duration, Article XX: The contract at issue will have a four-year term beginning January 1, 2011, and ending December 31, 2014.
14. Wages, Appendix A.1. The wage award is as follows:

Year	Wage Adjustment
2011	0%
2012	2.0%
2013	2.0%
2014	1.5%

Each wage adjustment will be retroactive to the first day of the calendar year to which it pertains.

15. Promotion Pay (Housekeeping Issue), Appendix A.2.2: The Union's proposed language change is awarded.
16. Shift Differential, Appendix A.8, Longevity and College Incentive, Appendix A.9: The Union's proposals on these items will not be added to the Collective Bargaining Agreement.

Date: October 15, 2014



Jane R. Wilkinson
Labor Arbitrator

