BEFORE ARBITRATOR MARVIN L. SCHURKE

In the matter of Interest Arbitration under Chapter 41.56 RCW, between:	)	
COWLITZ COUNTY	)	PERC CASE 26333-I-14-0638
and	)	ARBITRATION AWARD
COWLITZ DEPUTIES GUILD	)	

Ogletree, Deakins, Nash, Smoak & Stewart, P.C., by Howard Rubin, Attorney at Law, and Daniel L. Boyer, Attorney at Law, appeared on behalf of the employer.

Makler, Lemoine & Goldberg, P.C., by Jaime Goldberg, Attorney at Law, appeared on behalf of the union.

Cowlitz County (hereinafter, "the employer") is a political subdivision of the State of Washington governed by a three-member Board of County Commissioners, and is a public employer under the scope and coverage of the Public Employees Collective Bargaining Act, Chapter 41.56 RCW. The Cowlitz Deputies Guild (hereinafter "the union") has been certified by the Public Employment Relations Commission as the exclusive bargaining representative of deputy sheriffs and sergeants who are employed by Cowlitz County and work under the direction of an elected Sheriff. The employees represented by the union are "uniformed personnel" within the meaning of RCW 41.56.030(13)(a).[1] Following a failure of the parties to agree on a new collective bargaining agreement to replace their 2012-2013 contract and mediation conducted by a member of his staff, Executive Director Michael P. Sellars of the Public Employment Relations Commission issued a letter on March 6, 2014, certifying certain issues for interest arbitration by a Neutral Chairperson under to the impasse resolution procedures set forth in RCW 41.56.430 through .490.

[1] Under RCW 41.56.030(13)(a), "Uniformed personnel" includes: "(a) Law enforcement officers ... employed by ... the governing body of any county with a population of ten thousand or more ...." No controversy exists as to whether the population of Cowlitz County exceeds 10,000 persons.

By an email message and letter dated May 5, 2014, the parties announced their selection of Marvin L. Schurke as the Neutral Chairperson for the above-captioned proceeding. The Executive Director's letter initiating arbitration had invited the parties to appoint partisan arbitrators, and cautioned that their failure to notify the Public Employment Relations Commission of their selection of a partisan arbitrator within 14 days would constitute a waiver of the use of partisan arbitrators under WAC 391-55-205(1). There was neither mention of partisan arbitrators in the May 5, 2014 correspondence, nor mention of partisan arbitrators by either party at any subsequent stage of this proceeding. The use of partisan arbitrators is thus deemed to have been waived by the parties under the Commission's rule.

Following a further exchange of email messages, the Arbitrator set October 29 and 30, 2014, as the dates for a hearing in the interest arbitration proceeding. The parties submitted their proposals to the Arbitrator on October 14, 2014, as required by WAC 391-55-220. The Arbitrator reviewed those proposals prior to the arbitration hearing. The Arbitrator held the hearing at Longview, Washington, on October 29 and 30, 2014. The parties stipulated the admission of 10 joint exhibits in evidence, including: A previous interest arbitration decision involving these parties; a copy of the parties' 2012-2013 collective bargaining agreement; and copies of collective bargaining agreements covering bargaining units of similar personnel in Benton County, Grant County, Grays Harbor County, Lewis County and Skagit County. Additionally, 14 employer exhibits and 11 union exhibits were admitted in evidence. Witnesses testified under oath. A court reporter was present, and issued a transcript of the proceedings on November 12, 2014. At the hearing, the parties waived any time limits prescribed by the statute and/or rules for issuance of the Arbitrator's decision. The Arbitrator deemed the hearing to be closed upon receipt of the parties' written closing arguments on December 15, 2014.

THE TASK BEFORE THE ARBITRATOR (NEUTRAL CHAIRPERSON)

The object of this proceeding is to establish the terms of a new collective bargaining agreement between parties who remained at impasse after bilateral negotiations and mediation. The purpose of the proceeding and task before the Arbitrator are defined in Washington statutes:

> **RCW 41.56.430 Uniformed personnel — Legislative declaration.** The intent and purpose of chapter 131, Laws of 1973 is to recognize that there exists a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes. [1973 c 131 § 1.]
>
> ...
>
> **RCW 41.56.465 Uniformed personnel — Interest arbitration panel — Determinations — Factors to be considered.**
>
> (1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, the panel shall consider:
>
> (a) The constitutional and statutory authority of the employer;
>
> (b) Stipulations of the parties;
>
> (c) The average consumer prices for goods and services, commonly known as the cost of living;
>
> (d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and
>
> (e) *Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment.* ....
>
> (2) For employees listed in [RCW 41.56.030(13)] (a) ... , 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.*
>
> (3) [omitted as only applying to firefighters]
>
> (4) For employees listed in RCW 41.56.028 [applicable only to family child care providers]:
>
> (a) The panel shall also consider: ...
>
> (ii) *The financial ability of the state to pay* for the compensation and benefit provisions of a collective bargaining agreement; and ....
>
> (5) For employees listed in RCW 74.39A.270 [applicable only to long-term care providers]:
>
> (a) The panel shall consider: ...

> (ii) *The financial ability of the state to pay* for the compensation and fringe benefit provisions of a collective bargaining agreement; and ....
>
> (6) Subsections (2) and (3) of this section may not be construed to authorize the panel to require the employer to pay, directly or indirectly, the increased employee contributions resulting from chapter 502, Laws of 1993 or chapter 517, Laws of 1993 as required under chapter 41.26 RCW.

2007 c 278 § 1; 1995 c 273 § 2; 1993 c 398 § 3. [emphasis by *italics* supplied]. At the outset of the hearing in this case, the parties stipulated that five Washington counties (Benton, Grant, Grays Harbor, Lewis and Skagit) are comparable to Cowlitz County for purposes of implementing RCW 41.56.465(2).

At pages 27-28 of its brief, the employer asserts the propriety of an entirely different task for the Arbitrator here. Without making any reference to RCW 41.56.465, the employer quotes from a decision issued in 1995 by another arbitrator under RCW 41.56.450, as follows: "The Arbitrator's task is to 'fashion an award that will, as nearly as possible, approximate what the parties themselves would have reached had they continued to bargain with determination and good faith'." The employer's brief then goes on to cite a private sector arbitration award from 1947, the Elkouri and Elkouri "*How Arbitration Works*" treatise (4th edition, 1985), and two more Washington interest arbitration decisions issued by the same arbitrator as the quoted 1995 decision. None of those employer citations are persuasive (let alone binding) precedent here. Interest arbitration under Chapter 41.56 RCW is a statutory proceeding, not a forum for itinerant philosophers to dispense their own brand of industrial justice. None of the decisions cited by the employer were issued by the Public Employment Relations Commission or by the Washington courts, and none of them provide any basis to add to or subtract from the criteria set forth by the Washington State Legislature in RCW 41.56.465. Along the same line, the Arbitrator notes that the statutory standards applicable to law enforcement personnel in Washington do not include

the "ability to pay" components that exist in the same section for family child care workers (at RCW 41.56.465(4)(a)(ii)) and for long-term care workers (at RCW 41.56.465(5)(a)(ii)), so that the statute precludes direct consideration of the "ability to pay" arguments this employer has advanced under a "fiscal responsibility" euphemism. The employer's "ability to pay" and/or "fiscal responsibility" arguments can only be considered under the "other factors" language in RCW 41.56.465(1)(e).

THE SEQUENCE USED TO ADDRESS ISSUES, ANALYSIS AND CONCLUSIONS

Although these parties have had collective bargaining agreements for several years, they did not supply the Arbitrator with a copy of their 2012-2013 contract or of the Executive Director's certification of issues when they submitted their proposals two weeks prior to the hearing. The Arbitrator reviewed the parties' submitted proposals prior to the hearing, and had created a sheet attempting to list the contested demands and offers found in those proposals. The Arbitrator shared and reviewed his sheet with the parties during a pre-hearing conference held immediately prior to the start of the hearing. The Arbitrator also made reference to his sheet during the course of the hearing, but it did not control the sequence in which the issues were addressed at the hearing. Indeed, the parties had agreed to use an issue-by-issue approach to presenting evidence at the hearing, and to deal with all fiscal-related issues at the hearing before addressing the non-financial issues.

A question inevitably arises as to the order in which issues should be addressed in an interest arbitration decision. The sheet prepared by the Arbitrator in advance of the hearing certainly did not constitute a ruling as to the sequence in which the issues would be addressed. The Arbitrator respects the right of employers and unions to structure their collective bargaining agreements as

they see fit, and has reviewed the parties' 2012-2013 contract that was stipulated in evidence at the outset of the hearing. Given the nature of the proceeding and the RCW 41.56.465(1)(b) language admonishing arbitrators to consider the stipulations (i.e., prior agreements) of parties, the Arbitrator embraces the parties' past agreements by addressing the issues in this case under separate headings set forth in the order those subjects appeared in the parties' 2012-2013 collective bargaining agreement.

The interest arbitrator's conclusions and award on each article are set forth at the end of the analysis for each article. Whenever changes from the parties' 2012-2013 collective bargaining agreement are ordered, they are set forth in this decision in legislative format (i.e., with deletions indicated by ((~~strikeout within double parenthesis~~)) and new language indicated by **bold and underlined**), but the parties shall convert the awarded changes to normal format when the language is incorporated into their next collective bargaining agreement.

Preamble and Article I - Guild Recognition

The Executive Director did not certify an issue concerning Article I, but the Arbitrator has found discrepancies among documents in this case file with respect to the name of the union.[2] For entirely pragmatic reasons, the name used for the union in the caption and first paragraph of this decision was taken from the certification issued by the Public Employment Relations

[2] The front cover of the parties' 2012-2013 contract used "Sheriff Deputies/Sergeants Guild" without "Cowlitz County" words. The signature block on page 18 of the same contract used "Deputy Sheriffs Guild" without "Cowlitz County" or "Sergeants" words. The union's proposals were headed "Cowlitz County Sheriff Deputies/Sergeants Guild". The name used for a union in a collective bargaining agreement is normally the name under which it is incorporated and/or the name by which it was certified by the Public Employment Relations Commission. In Cowlitz County, Decision 5771 (PECB, 1996) the Commission certified the "Cowlitz Deputies Guild" without "County", "Sheriff" or "Sergeants" words.

Commission in 1996. That does not constitute a ruling as to how the name of the union should appear in the parties' next collective bargaining agreement, but the Arbitrator encourages the parties to ascertain and consistently use the union's correct name in the future.

Article 2 - Management Rights

The employer has proposed multiple changes to the management rights language contained in the parties' 2012-2013 collective bargaining agreement, as follows:

> ARTICLE 2 – MANAGEMENT RIGHTS
>
> **2.1** Except as abridged by this contract, the Sheriff shall retain the exclusive right to exercise the customary functions of management, including, but not limited to: directing the activities of the department; determining the methods of operation, including but not limited to the introduction of new equipment; the right to hire, layoff, transfer, promote; to discipline or discharge for just cause; to determine work schedules and assign work; to establish performance objectives; to set job standards; and to evaluate performance of employees. Provided, the Cowlitz County [sic, should add Board of County?] Commissioners shall retain the authority to determine all items with budgetary impact such as rates of pay, amount of vacation, sick leave and holidays, health insurance, life insurance, overtime rate, call back rate, and uniform allowance. Provided, nothing contained herein shall be deemed to be a waiver of the Guild [sic, should be Guild's?] right to bargain concerning changes in mandatory subjects of bargaining.
>
> **2.2 Transfer of Work.**
>
> **A. The term "transfer of work" as used in this Section 2.2 applies to any and all kinds of transfer of work or operations, both within and without the bargaining unit, whether permanent or for some period of time, including but not limited to assigning work done in whole or in part by bargaining unit members to other bargaining unit members; assigning work that had been done in whole or in part by bargaining unit members to workers who are not members of the bargaining unit; reassigning work to bargaining unit members that had been performed in whole or in part by workers who are not members of the bargaining unit; contracting or subcontracting work or operations that had been performed, in whole or in part, by bargaining unit members to any other agency, business, individual, or other entity, whether public or private; or using temporary, contract, or leased workers to perform work that had been done, in whole or in part, by one or more members of the bargaining unit.**

B. The parties understand and agree that the Employer will have the exclusive right, from time to time, in its sole discretion, to determine if and when to engage in a transfer of work.

C. The parties also agree that except in extraordinary or emergency situations, [sic, should add the?] **Employer will give the Guild at least thirty (30) calendar days' advance notice before the effective date of any transfer of work. If the Guild makes a written request to the Employer within seven (7) calendar days after the Guild receives the Employer's notice, the parties will meet to negotiate any effects of the transfer of work on the bargaining unit employees. In extraordinary or emergency situations, as determined by the Employer in its sole discretion, the Employer will give the Guild as much advance notice of a transfer of work (though less than thirty (30) days) as is practical under all the circumstances. If the parties do not reach an agreement within thirty (30) calendar days of the first such meeting to negotiate the effects of a transfer of work, a bargaining unit employee whose position is eliminated, or whose straight time hours are reduced, by the transfer of work will have the layoff and recall rights established in Section 7.2.**

Employer proposal dated October 14, 2014 [proposed deletions indicated by ((~~strikeout within double parenthesis~~)); proposed additions indicated by **bold and underlined**.]

At the hearing, the only testimony supporting this employer proposal was by Human Resources Director Jim Zdilar, to the effect that the proposal addresses a situation where the union demanded a quid pro quo for agreeing to give up court security work that was assigned to bargaining unit members a few years ago. At the hearing, union witnesses testified of concerns about ambiguity of the proposed term "emergency" in the context of a bargaining unit that responds to 9-1-1 calls that are answered "What is your emergency?"

The employer's brief recounts how the Sheriff responded to a budget cut in 2009, by laying off other employees and shifting the court security work they had performed to this bargaining unit. The employer claims its subsequent efforts to transfer the court security work back to employees outside of this bargaining unit have been unsuccessful because of union demands for concessions

to relinquish the work. The employer claims the bargaining unit employees do not like to perform the court security work, and that its proposals to give notice and to bargain the effects of a transfer are sufficient to ameliorate any impact on employees in this bargaining unit.

The union's brief characterizes the employer's proposal as using a shotgun to neutralize a mosquito, and it resists a waiver of the union's bargaining rights.

Analysis

The employer has not claimed its proposal aligns with language in any of the five Washington counties stipulated as comparables for purposes of RCW 41.56.465(2), so the Arbitrator is left with applying only the criteria set forth in RCW 41.56.465(1). Among those, the employer does not claim that the present assignment of court security work to this bargaining unit constitutes any conflict with its constitutional or statutory authority so as to invoke RCW 41.56.465(1)(a), that its proposal invokes a "cost of living" analysis under RCW 41.46.465(1)(b), or that there have been any "changes of circumstances during pendency of the proceedings" to invoke RCW 41.56.465(1)(d).

Applying the "stipulations of the parties" criteria set forth in RCW 41.56.465(1)(b) is not helpful to the employer. The management rights language of the parties' 2012-2013 contract clearly did not give the employer a right to transfer bargaining unit work.

The employer's proposal has been considered under the "such other factors" criteria set forth in RCW 41.56.465(1)(e), but a long line of legal precedent weighs heavily against adopting the employer's proposal under such an indirect analysis:

Any transfer of bargaining unit work to employees of another employer (contracting out) or to the employer's employees outside of the bargaining unit (skimming) is a mandatory subject of collective bargaining under Washington law. Innumerable Public Employment Relations Commission decisions dating back to South Kitsap School District, Decision 472 (PECB, 1978) have established and reiterated the principle that a union has the right to protect the work jurisdiction of a bargaining unit it represents.

The employer's proposal to give notice to the union and to bargain only the effects of contracting out or skimming offers nothing of substance. In the absence of a contractual waiver of a union's collective bargaining rights on work jurisdiction, the statute obligates an employer to give notice and provide opportunity for good faith bargaining on **both the decision and effects** of contracting out or skimming bargaining unit work.

The employer's proposed language would go far beyond the court security work, and the union clearly resists waiving its bargaining rights on decisions to transfer unit work. Assuming, arguendo, that this union could waive its bargaining rights by contract language explicitly giving this employer a right to contract out or skim any or all bargaining unit work, this employer has not pointed to any such language in any collective bargaining agreement in the Washington public sector.

Any argument under RCW 41.56.465(1)(e) is inherently weakened by the fact that the court security situation is of the employer's own creation. Public Employment Relations Commission precedent establishes that an employer that gives bargaining unit employees duties historically performed by persons outside of that bargaining unit simultaneously gives the union representing the receiving employees a right to protect that work from later erosion. See, City of Spokane, Decision 6232 (PECB, 1998), and cases cited therein. When this employer's elected

officials gave the court security work to this bargaining unit in 2009, legal precedents consistent for many years gave this union a right to demand a quid pro quo for giving up that work.

Analysis under RCW 41.56.465(1)(e) is fatally weakened by the evident failure of this employer to utilize the remedy available to it under the applicable statute. In bargaining concerning "uniformed personnel" under RCW 41.56.030(13), the interest arbitration process is available to an employer which: (1) Gives notice of a proposed change that is neither protected nor prohibited by an existing collective bargaining agreement; (2) bargains in good faith with the union representing the bargaining unit that includes that work; and (3) bargains to impasse in mediation. City of Pasco, Decision 3641 (PECB, 1990) stands for the proposition that a union which refuses to bargain about an employer-proposed change it does not like can be both: (1) Found guilty of an unfair labor practice; and (2) Deprived of putting forth "late hit" arguments or counterproposals in a separate interest arbitration proceeding certified after the impasse in the separate mediation. This employer apparently started negotiations - but did not pursue mediation or interest arbitration - on the court security matter since the budget cut was restored in 2010.

Having stuck to its broad language throughout the parties' negotiations and mediation for the successor contract being arbitrated here, other unfair labor practice decisions citing City of Pasco, Decision 3641, supra, indicate it would have been an improper late hit for this employer to narrow its proposal in this proceeding to address only the court security work. See: City of Clarkston, Decision 3246 (PECB, 1989); Whatcom County, Decision 7727 (PECB, 2002); Snohomish County, Decision 9196 (PECB, 2005).

Conclusion on Article 2: The employer's proposals are NOT ADOPTED. Article 2 of the 2012-2013 collective bargaining agreement shall be retained in the parties' contract without change.

Article 3 – Association Rights

No issue was certified for interest arbitration, so Article 3 of the 2012-2013 contract shall be retained in the parties' next contract without change.

Article 4 – Hours of Work and Overtime

The employer has proposed two changes to the Article 4 language contained in the parties' 2012-2013 collective bargaining agreement, as follows:

> ARTICLE 4 – HOURS OF WORK AND OVERTIME
>
> 4.1 **Except by mutual consent**, Patrol Dayshift will be 0600 to 1630 or 0800 to 1830. Nightshift will be either 1630 to 0300 or 1930 to 0600. Sergeants will work 0700 to 1730 or 1600 to 0230. The Sheriff or his designee may move employees from one shift to another of the described shifts.
>
> four (4) days on then three (3) days off;
> four (4) days on then three (3) days off;
> four (4) days on then four (4) days off;
> six (6) days on then four (4) days off;
> four (4) days on then three (3) days off;
> four (4) days on then three (3) days off;
> four (4) days on then six (6) days off
>
> After two (2) complete cycles, a day shift to night shift & night shift to day shift rotation will occur at the end of the six days off.
>
> The Sheriff or his designee will assign and schedule the days of work and the work hours for the deputy assigned to the PacifiCorp Contract. The administrative supervisor for this position will be assigned by the Sheriff.
>
> 4.2 *Except by mutual consent*, employees assigned to non patrol positions shall work 7:00 am to 5:00 pm Monday through Thursday or Tuesday through Friday. ....
>
> 4.3 All employees shall be allowed a one-half (1/2) hour lunch break ....
>
> 4.4 Overtime. All overtime must be approved by the shift supervisor. ....
>
> Compensatory time. At the time overtime is worked the employee has the option ....
>
> 4.5 All call time, which includes court time, shall be approved by the shift supervisor. ....

4.6 Except in emergencies (when an employee is ((~~expected~~)) **required** to accept overtime assignment), assignment of overtime shall be rotated among regular employees according to job assignment. A record shall be kept by the supervisor of overtime worked.

4.7 Training Days. Every effort will be made to schedule training at least (14) fourteen [sic, format change] or more days in advance of occurring. Training which is posted (14) fourteen [sic, format change] or more days before it occurs shall be considered the employee's assigned shift for that day. If such scheduled training is cancelled ... *the employee has the option, with approval of affected supervisors, of either working the scheduled training hours ... or move back to their regular shift hours*.

4.8 Short Notice of Shift Change - [sic, format change] Deputies who are not notified of a change in shift hours at least by the end of their last scheduled working week *shall not be required to adjust their shift without mutual agreement or compensation* at the time and one half rate ....

4.9 a. The parties understand and agree that ... law enforcement personnel are ... subject to the terms set forth in 29 U.S.C. Sec. 207(k) of the Fair Labor Standards Act ... for the purpose of calculating overtime.

b. Starting ... before January 1, 2010, the work period for purpose of calculating overtime ... will be 28 days. ....

c. *The Sheriff, in his sole discretion, will determine* when the twenty eight (28) day work period shall begin and end.

4.10 ... [T]raining and travel time shall be compensated at straight time, including meal periods. ....

4.11 Employees assigned to the basic law enforcement academy ... are exempt from ... 4.10.

Employer proposal dated October 14, 2014 [emphasis by *italics* supplied; deleted material indicated by ((~~strikeout within double parenthesis~~)); new material indicated by **bold and underlining**.]

The Proposed Change in Section 4.1

At the hearing, Undersheriff Marc Gilchrist testified briefly about the "by consent" language proposed in Section 4.1. Under direct examination that occupies only 43 lines of the transcript, his focus was divided between wanting to negotiate directly with patrol division employees (in place of the historical negotiating and signing MOUs with the union) and the existing language authorizing the employer to conduct direct negotiations with employees in all other Sheriff's

Office divisions. In its cross-examination of Gilchrist, the union sought to bring out a potential for individual employees to be abused in direct negotiations with employer officials. Union witness Deputy Craig Shelton testified that the patrol division has never been covered by the "by consent" concept added to the collective bargaining agreement in 1977 for the non-patrol divisions, that immediate responses to emergency calls distinguish the patrol division from other divisions, that having a patrol employee off of their regular schedule impacts other employees on duty, and that the union prefers greater – rather than less – schedule stability for patrol employees. Shelton also testified of union concern about potential problems with direct negotiations between the employer and patrol employees, and generally characterized such situations as more benefitting the employer than the employee involved.

In its brief, the employer asserts that its proposal concerning Section 4.1 is only a "slight modification" and that individual employees would benefit from the proposed change.

The union's brief reiterates that the "mutual consent" concept has been inapplicable to the patrol division in the parties' contracts for many years. The union's brief opposes increasing the instability of patrol division work schedules, and opposes opening the door for individual negotiations between the employer and patrol division employees.

In the absence of any employer argument based upon language in any of the five Washington counties stipulated as comparables for purposes of RCW 41.56.465(2), the Arbitrator is once again left with applying only the five criteria set forth in RCW 41.56.465(1). Among those, the cost of living component (RCW 41.56.465(1)(c)) and change of circumstances component (RCW 41.56.465(1)(d)) are clearly inapposite to the debate about Section 4.1.

RCW 41.56.465(1)(a), requiring the Arbitrator to consider "the constitutional and statutory authority of the employer" is of no help to the employer on this proposal. Once the employees in a bargaining unit chose union representation, their employer is **without any statutory right or authority** to deal directly with those employees on mandatory subjects of collective bargaining. Hours of work are explicitly a mandatory subject of bargaining under the "wages, hours and working conditions" definition in RCW 41.56.030(4). The employees in this bargaining unit have a long history of being organized for the purposes of collective bargaining under Chapter 41.56 RCW. The patrol division employees affected by this employer proposal constitute the largest sub-group in this bargaining unit and, as noted above, the Public Employment Relations Commission has certified this union as their exclusive bargaining representative. The union has not invoked the "circumvention" terminology used in unfair labor practice proceedings, but that is what the employer is proposing to do. The statutory process for arranging variances from the contractual work schedule is the historical practice in the patrol division: The employer must negotiate the matter with the union, and the statute requires signing of a written agreement (memorandum of understanding or MOU) if an agreement is reached.

RCW 41.56.465(1)(b), requiring the Arbitrator to consider the "stipulations of the parties" is of no help to the employer on this proposal. Language that has been agreed upon (i.e., stipulated to) in collective bargaining agreements is entitled to substantial weight. These parties have signed multiple collective bargaining agreements since an interest arbitration proceeding in 2007, where the arbitrator rejected an employer proposal to give it flexibility under Section 4.1.[3] The union also provided uncontroverted testimony here that the absence of "mutual consent" language covering the patrol division has a long history. The employer has not provided any

[3] The parties stipulated the decision issued by Arbitrator Timothy D. W. Williams in evidence in this proceeding. Arbitrator Williams characterized that employer proposal as "seriously flawed" and as rendering the negotiated agreement on hours meaningless.

detailed evidence in this proceeding that shows problems with implementation of the historical contract language and/or justifies its modification.

RCW 41.56.465(1)(e), requiring the Arbitrator to consider the "other factors normally or traditionally taken into consideration" is of no help to the employer on this proposal. The employer's claim that its proposed language would "benefit employees by adding schedule flexibility" is directly controverted by the union. A union is accountable to the employees it represents for the positions and actions it takes, and the Arbitrator respects the right of the union to speak for the employees as to what will or will not be to their benefit.

The Proposed Change in Section 4.6

At the hearing, the employer provided testimony of Undersheriff Gilchrist concerning the proposed substitution of "required" for "expected" in Section 4.6. When asked on direct examination why "expected" was not enough, Gilchrist responded, "Expected means you may expect me to come out, but I'm not going to come out." Gilchrist did not, however, cite any bargaining history, any union argument, or any grievance –let alone an arbitration award - which would elevate his response beyond his personal opinion. Gilchrist acknowledged under direct examination that his intention to call out the deputy who lives closest to the scene of a dispatch would contravene the use of an overtime book "whenever we have an overtime situation, whether it is scheduled or emergent" to implement the overtime rotation and recordkeeping requirements in Section 4.6. When asked under cross-examination whether the employer's proposed "required" could conflict with Sheriff's Office Policy 44.8.0,[4] Gilchrist backed away from the absolute obligation he had put on bargaining unit employees in his direct testimony.

[4] As read into the record by counsel for the union, the policy states: "In the case of a countywide disaster or one that affects the area of a member residence, that member's first obligation is to his family's safety prior to reporting for duty …."

Although he has been with the Sheriff's Office for 29 years, Gilchrist was unaware of any situation when a deputy failed or refused to report in response to a call-out. Union witness Deputy Shelton testified that a flood in 1996 was the one and only occasion of a declared emergency in Cowlitz County, and that bargaining unit employees even responded when called out per the overtime book for a private sector labor dispute that turned violent. Shelton testified that the "expected" language has been in collective bargaining agreements covering this bargaining unit since 1990, and he could not recall any situation in which the employer had complained to the union about a bargaining unit employee failing to respond when called out. Deputy Shelton also testified of union concerns about the definition of "emergency" in this employment setting, where employees are dispatched in response to citizen calls that are answered, "9-1-1, what is your emergency?"

In its brief, the employer asserts that its proposal concerning Section 4.6 is necessary to ensure deputies respond to an emergency (and that a deputy can now refuse to respond), but it does not cite any actual example of such a refusal. The employer's brief reiterates Gilchrist's "most practical and efficient" and "time of the essence" intentions without reference to the overtime rotation and recordkeeping requirements that at the employer proposes to retain in Section 4.6.

The union's brief cites the long history of the "expected" language, the absence of past refusals by called-out employees, and the ambiguity of the "emergency" word in the employer proposal.

Once again, the employer has not made any claim that its proposed "required" is comparable to language in any of the five Washington counties stipulated as comparables, and the Arbitrator is left with applying the only three potentially-applicable criteria in RCW 41.56.465(1):

RCW 41.56.465(1)(a), requiring the Arbitrator to consider "the constitutional and statutory authority of the employer" is of minimal help to the employer on Section 4.6. While the employer certainly has an interest in prompt responses by its law enforcement force, there is no evidentiary basis for its claim that "expected" is insufficient to elicit such responses. If there ever was any arguable or actual situation where a bargaining unit employee failed to respond to a call-out, the employer could have exercised the authority to discipline for just cause reserved to it by the parties' last contract negotiated through the statutory collective bargaining process.

RCW 41.56.465(1)(b), requiring the Arbitrator to consider the "stipulations of the parties" is of no help to the employer on this proposal. The union's witness gave uncontroverted testimony that the "expected" language dates back to 1990. Indeed, the word "expected" has the unmistakable sound of a compromise reached by the parties in collective bargaining. There might have been a basis to revisit the "expected" language here if the employer had produced evidence that it was more honored in the breach than with obedience, or if the employer had produced evidence of an arbitrator overturning a disciplinary action under an interpretation that emasculated the obligation on bargaining unit employees, but there is no such evidence. Once again, a contract provision that has been stipulated in multiple collective bargaining agreements is entitled to substantial weight.

RCW 41.56.465(1)(e), requiring the Arbitrator to consider the "other factors normally or traditionally taken into consideration" is of no help to the employer on Section 4.6. Gilchrist's testimony reveals an intent to use the proposed "required" language to upset or ignore the overtime rotation and recordkeeping requirements implemented via the overtime book. Gilchrist's testimony was unclear as to whether his intent was ever disclosed to the union prior to the interest arbitration hearing. Having seen a constant flow of unfair labor practice complaints

alleging "unilateral change" that crossed his desk during 30+ years as Executive Director of the Public Employment Relations Commission, the undersigned Arbitrator sees a strong potential for the change of Section 4.6 proposed by the employer to create more future disputes and litigation than clarification of a historical obligation.

Conclusion on Article 4: The employer's proposals are NOT ADOPTED. Article 4 of the 2012-2013 contract shall be retained in the parties' next contract without change.

Article 5 – Holidays

The Executive Director's letter initiating this proceeding certified the issues for interest arbitration by reference to the numbers and subject headings of articles in the parties' 2012-2013 collective bargaining agreement. Although "Article 5 – Holidays" was listed there, no proposal to amend Article 5 was found in the materials submitted by the parties prior to the interest arbitration hearing.

Conclusion on Article 5: Article 5 of the 2012-2013 contract shall be retained in the parties' next contract without change.

Article 6 – Vacations

Both parties have proposed changes to the vacation provisions that were contained in their 2012-2013 collective bargaining agreement, as follows:

ARTICLE 6 – VACATIONS

6.1 All regular employees in the Sheriff's Office shall be granted forty-eight (48) hours vacation credit upon the completion of six (6) months of continuous service. ...

6.2 Leave credits accumulated are cancelled automatically on separation after periods of service of less than six (6) continuous months.

6.3 Employees earn a day of vacation leave for their first month .... Terminating employees do not receive vacation leave credit for the month ....

6.4 *EMPLOYER PROPOSAL:* Vacation time may accumulate to a maximum total of two hundred forty-eight (248) hours. *An employee who has accumulated a total of* total of [sic, duplication] *of two hundred forty-eight (248) hours of vacation,* with or without prior notice by the Employer, *shall not accrue or be credited with any additional vacation until the employee has reduced his/her total accrual* to less than two hundred forty-eight (248) hours by using some or all of the accrued vacation time. *Vacation time that does not accrue or is not credited under the preceding sentence will not be restored or credited under any circumstances.*

An employee who has accumulated, or is about to accumulate, two hundred forty-eight (248) hours of vacation *may submit a written request to the Employer to extend the time during which the employer* [sic, should be employee?] *may use some or all of the accrued vacation while continuing to accrue vacation* above the limit of two hundred forty-eight (248) hours. The written request must be signed by the employee, [sic, and?] must request a definite time limit for using the excess accrued vacation. The Employer may approve or deny such a request for an extension at its sole discretion, with the understanding that extensions generally will be denied only if the employee's using the excess accrued leave at or around the time of the extension request could potentially be detrimental to the Employer. **A time off schedule must be included with the extension request in order to help the administration determine any potential detriment. If no plan is submitted, the administration, in its discretion, may establish a plan in order to help the employee reach compliance.** Employee is limited to one extension request every twelve (12) months.

6.5 All accumulated vacation leave shall be allowed when an employee leaves the employment of Cowlitz County ....

6.6 *EMPLOYER PROPOSAL:* ((~~Vacation schedules shall be posted no later than February 1, of each calendar year, and all~~)) **After January 1 of each calendar year,** employees ((~~shall indicate their choice of~~)) **may request** vacation time ((~~on the schedule in accordance with their~~)) **for that year. Prior to April 1 approval will be given according to** their seniority by classification and assignment. ((~~The vacation schedule shall be completed by April 1 and preference shall be given by seniority in the scheduling of vacations.~~)) Employees who ((~~fail to sign the~~)) **request** vacation ((~~schedule by~~)) **time after** April 1 shall be scheduled on a first-come first-served basis.

EMPLOYER PROPOSAL: The Sheriff's Office Administration [sic, inconsistent capitalization] will allow ((~~up to two~~)) **one** employee((s)) on a patrol team off on vacation ((~~when the vacation is scheduled prior to April 1 of each calendar~~ year)) **at the shift supervisor's discretion**. The Administration [sic, inconsistent

capitalization], in its sole discretion, may allow **two or** more ((~~than two~~)) employees off on vacation.

EMPLOYER PROPOSAL: ((~~After April 1, the~~)) **The** Sheriff's Office Administration [sic, capitalization] ((~~will~~)) **may** allow ((~~up to~~)) two **or more** employees off work on a patrol team at any given time, regardless of the number of employees assigned to the team. ((~~The administration, in its sole discretion may allow more than two employees off work.~~)) For the purposes of this article, employees shall be considered off work if they are absent from work for any reason, including, but not limited to, vacation, floating holidays, compensatory time off, training, extraditions, sick leave, disability leave, bereavement leave, Family Medical Leave Act (FMLA), administrative leaves of absence, suspensions, leaves of absence approved by the Sheriff and/or the Civil Service Commission, and military leave. An employee on leave for more than fourteen (14) calendar days, with the exception of vacation leave, shall not count as an employee off work after the 14th consecutive calendar day missed. An employee who is reassigned temporarily to another patrol team for any reason will be considered an employee off work from his [sic, "or her" elsewhere] original team.

EMPLOYER PROPOSAL: ((~~Once approved by the administration, scheduled vacation and floating holidays will not be cancelled absent an emergency.~~))

6.7 The provisions of this article are not applicable to [part-time] … temporary, intermittent or occasional [employees]

UNION PROPOSAL: ((~~BONUS LEAVE~~

~~Section 1. Bonus vacation days shall be granted to the employees and credited to their account on the anniversary date of employment and in accordance with the vacation schedule shown below.~~

~~Number of Years of Employment Completed~~	~~Vacation Hrs Earned~~	~~BonusHours~~	~~Total Hours of Vacation Earned Per Year~~
~~1~~	~~96~~	~~8~~	~~104~~
~~2~~	~~96~~	~~16~~	~~112~~
~~3~~	~~96~~	~~32~~	~~128~~
~~4~~	~~96~~	~~32~~	~~128~~
~~5~~	~~96~~	~~40~~	~~136~~
~~6~~	~~96~~	~~40~~	~~136~~
~~7~~	~~96~~	~~40~~	~~136~~
~~8~~	~~96~~	~~40~~	~~136~~
~~9~~	~~96~~	~~40~~	~~136~~
~~10~~	~~96~~	~~48~~	~~144~~
~~11~~	~~96~~	~~56~~	~~152~~
~~12~~	~~96~~	~~64~~	~~160~~
~~13~~	~~96~~	~~64~~	~~160~~
~~14~~	~~96~~	~~72~~	~~168~~
~~15~~	~~96~~	~~72~~	~~168~~
~~16~~	~~96~~	~~80~~	~~176~~
~~17~~	~~96~~	~~80~~	~~176~~
~~18 & over~~	~~96~~	~~88~~	~~184~~))

VACATION SCHEDULE

Years of Service	Hours Earned per Month
0-2	**8 hours per month**
3-4	**10.5 hours per month**
5-9	**11.5 hours per month**
10-13	**13.5 hours per month**
14-15	**14 hours per month**
16-17	**15 hours per month**
18-20	**16 hours per month**
21-25	**17 hours per month**
25-29	**18 hours per month**
30-Over	**20 hours per month**

It is understood that a vacation day is eight (8) hours pay or leave, whichever is applicable. In one year the minimum accrual is 104 hours per year; maximum accrual is ((~~184~~)) **240** hours.[5]

Employer and union proposals dated October 14, 2014 [emphasis by *italics* supplied; deleted material indicated by ((~~strikeout within double parenthesis~~)); new material indicated by **bold and underlining**.]

The Proposed Changes in Section 6.4

At the hearing, Undersheriff Gilchrist testified that current practice requires employees who have exceeded the 248-hours maximum vacation accumulation to submit a plan showing how they will use the excess vacation within a 90-day period, and that the employer wants to make sure that the days taken are not going to conflict with time off already scheduled by other employees. Gilchrist testified that the employer's proposal is consistent with current practice, and that the employer's ability to assign dates would be used to pick days which would not create overtime. Deputy Shelton testified about a recent change of practice for Superior Court subpoenas which could upset employees' plans to eliminate excess vacation accumulations. Shelton also voiced

[5] A union proposal to completely delete this paragraph was modified at the interest arbitration hearing to retain the historical language except for altering the maximum accumulation to match the higher accumulation being proposed by the union.

concern about the subjectivity of the current process,[6] and complained that the employer has been asking the employees for more than the three requirements (written request, burnoff period and signature) contained in the parties' 2012-2013 contract.[7]

The employer's brief asserts that the union "agrees" that its proposal concerning drawdown of excess vacation accumulation is consistent with current practice, and that having a plan in place ensures that the days taken off do not conflict with time-off scheduled by other employees.

The union's brief does not indicate agreement with the employer's proposal, and instead argues that the plan called for by the employer "may or may not" avoid overtime costs. It puts an "unfair and unnecessary" label on the proposed language allowing the employer to pick the vacation days to be taken in the absence of an employee-generated plan.

The first thing to be said about the 248-hour maximum accumulation allowed in Cowlitz County is that is higher than either the State of Washington's policy (which caps vacation accumulation at 240 hours) or the contracts in the counties stipulated as comparable (which all impose a 240-hour maximum except for one that allows a higher accumulation for some senior employees).

The second thing to be said about this subject is that the provisions of the parties' 2012-2013 contract show the earmarks of compromises negotiated at different times:

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[6] Union counsel elicited a response from Deputy Shelton that was not in the union's formal proposals:

Q. [By Mr. Goldberg] So, in other words, the [union] would not be opposed to having a process where if a person needs an extension, say 90 days, and if they don't use it in 90 days it's gone?

A. [By Mr. Shelton] I think 120 would be great, but that's something that the Champ system automatically puts into play. It would eliminate the administration having to address the issue. …

[7] Shelton made reference to a grievance filed in 2013, but the outcome of that dispute is not established in this record.

The first paragraph of Section 6.4 is very strict. An employee who accumulates 248 hours of vacation forfeits any further accrual, and can never get back the forfeited vacation time.

The second paragraph of Section 6.4 permits an employee to avoid the forfeiture specified in the first paragraph, if he or she: (1) Submits a written request; (2) *Specifies a definite time period* to burn off the excess accumulation (impliedly including any new vacation accrued during that burnoff period); and (3) Signs the request. An employee who fails to meet those requirements would remain under the first paragraph of Section 6.4, losing all vacation accumulation until the excess is eliminated. The extension is not automatic: The employer has "sole discretion" to grant or deny an extension; and extensions will be denied if the burnoff of the excess accrual could "potentially be detrimental" to the employer. An employee whose extension request is denied would remain under the first paragraph of Section 6.4, losing all vacation accumulation until the excess is eliminated.

The employer is not seeking to eliminate the possibility of an extension. Its proposal expands the existing "must request a definite time limit for using the excess accrued vacation" language to require a time off schedule that its officials can use to evaluate the existing potential for detriment. With addition of a guaranteed revision of extension plans disrupted by court subpoenas, the employer proposal is a reasonable adjustment of the historical language.

The employer proposes adding "If no plan is submitted, the administration, in its discretion, may establish a plan in order to help the employee reach compliance." It has not provided any justification for adding that language. While the union characterizes it as unfair and unnecessary, the Arbitrator sees it as virtually nullifying the "cease accumulation" and "never get it back" concepts of the first paragraph of Section 6.4, as well as nullifying the "definite time

period" requirement in the second paragraph of Section 6.4. A perhaps-unintended consequence of this proposal could be to guarantee an automatic extension to any employee who submits an insufficient request, and that is not justified by the parties' history.

The Proposed Changes in Section 6.6

Undersheriff Gilchrist testified that starting vacation selection on January 1 is consistent with current practices that have changed over time. Called by the union, Deputy Bradley Thurman confirmed April 1 as the cutoff for senior employees to bump vacation dates selected by junior employees, and acknowledged that the employer's proposal preserves the April 1 deadline for seniority preference. Deputy Shelton gave uncontroverted testimony about a change of practice concerning Superior Court subpoenas that could upset vacation selections.

Gilchrist mentioned five-person patrol teams and having four employees on duty being the practical – if undocumented – minimum staffing, so that somebody needs to be called in on overtime if two team members are on vacation at once. He testified that absences due to sick leave and other reasons exacerbate the need for call-outs on overtime, and that about 50 overtime incidents per year have been on days when two patrol deputies were on vacation. Shelton mentioned six-person patrol teams and questioned whether some of the overtime incidents claimed by Gilchrist also involved absences for other reasons. Shelton testified that it was a long fight to get two people off on vacation at once, and he questioned whether "up to two" language in the employer's proposal might be applied to prohibit all vacations on a particular date when there were multiple absences for non-vacation reasons.

The employer's brief asserts that its proposal on the first paragraph of Section 6.6 reflects current practice, and that the union has no objection to those changes. The employer's brief justifies the reduction of the number of vacation slots entirely on the basis of reducing overtime costs and helping the employer to align its expenses with its revenues.

The union's brief notes the importance of the April 1 date for ending seniority-based vacation selection, that having two vacation slots open at a time was a hard-fought battle, and that the current limit works for both sides. The union's brief further points out that reducing the number of vacation slots available may increase excess accumulations and that the change of practice concerning court subpoenas will make it more difficult for employees to use their vacation time.

The first paragraph of Section 6.6 has historically compressed the seniority-based phase of the vacation selection process into the months of February and March, and has contained an ominous "shall be completed by April 1" requirement. The employer's proposed changes to that paragraph expand the seniority-based phase to the first three months of the calendar year, preserve the April 1 deadline for assertion of seniority preference, delete the ominous language, and preserve the "first-come, first-served" concept for vacation requests made after April 1. These appear to be reasonable adjustments to implement the historical language.

The second paragraph of Section 6.6 is hotly contested, but neither party has advanced any comparability claim. Nor has the employer claimed that reducing the number of vacation slots is supported by RCW 41.56.465(1)(a), (c) or (d). Thus:

Applying the "stipulations of the parties" criteria in RCW 41.56.465(1)(b), the Arbitrator notes that the union could have helped its cause with more detailed evidence of the bargaining

history, but its limited testimony about the "two at once" language being a hard fought contract provision is sufficient in the absence of any contrary evidence from the employer.

Applying the "such other factors" criteria in RCW 41.56.465(1)(e), the Arbitrator finds the employer's proposal to be flawed. The proposed addition of "at the shift supervisor's discretion" at the end of the first sentence creates a potential for future disputes, if it were to be asserted as nullifying the "one employee on a patrol shift" in the first part of that sentence.

Applying the same "such other factors" criteria and practical realities, the employer's "avoidance of overtime" reasoning is unpersuasive. The real cost of paid leave is the cost of replacing the absent employees (i.e., zero, paying overtime to another employee, or hiring additional employees to cover the absences). The 500 hours per year at overtime rates for Gilchrist's 50 overtime shifts pales in comparison to the employer's total exposure for vacations. *If patrol team employees average 10 years of service* (i.e., 144 hours of vacation each), the parties' 2012-2013 contract generated: 2880 hours per year of vacation time for four five-person teams (per Gilchrist); or 3456 hours of vacation time per year for four six-person teams (per Shelton). Any employer needs to assess whether and when it is cost-effective to increase the size of its workforce to cover all of its paid leave authorizations at straight-time rates. This employer cannot blame the union or the bargaining unit employees for its incurring of some overtime costs, if it has chosen to keep its workforce smaller than is needed to cover all of its contractually-authorized vacation (and other paid leave) obligations on a straight-time basis.

The Proposed Change of Vacation Accumulation Rates

Called as a witness by the union, Deputy Todd McDaniel testified that he participated in drafting the union's proposal to eliminate the bonus hours awarded annually and make it easier for

employees to manage their vacation time. McDaniel testified of his belief that the employer has the capability to pro-rate the bonus time, and that it did so recently in the case of an employee who retired prior to his anniversary date. The employer did not call any witness on this subject.

The union's brief asserts that these employees get much less paid time off than the comparable counties, when paid holidays and vacations are considered together. The union's brief also asserts that a shift from annual to monthly accumulation of vacation time would help employees to better manage their vacation accumulation, and reduce need for extensions under Section 6.4.

The employer's brief asserts that it already provides vacation time comparable to the other counties stipulated for purposes of RCW 41.56.465(2), that the union provided no evidence supporting an increase of vacation accumulation rates, and that the employers financial picture supports maintaining the historical accumulation rates.

The Arbitrator inquired at the hearing about separate "vacation" and "bonus" columns in the 2012-2013 contract. Both parties indicated the two columns have existed for a long time, but nobody could explain how or why the distinction came into existence. Applying RCW 41.56.456(2), none of the comparable contracts have a similar distinction. The union aptly argues that combining the two columns and converting to monthly accumulation would tend to both ease vacation scheduling and reduce the potential for excess accumulations. The employer did not controvert these aspects of the union's proposal, either at the hearing or in its brief.

The union's argument based on a combination of holidays and vacations is not persuasive. The union appears to be making a back-door attempt to address claimed comparability problems with

Article 5 – Holidays, even though it did not directly pursue its opportunity to make a proposal to change Article 5.

Applying RCW 41.56.465(2) and the analysis in Attachment A, below, the employer's arguments on comparability persuasively support continuation of the historical vacation accrual schedule. This bargaining unit is in the middle of the relevant pack, which is what the union has historically accepted in contract negotiations and where the employer says it wants to be:

For employees with 1 to 6 years of service, the vacation accumulations provided under the 2012-2013 contract are slightly (4%) to dramatically (16%) greater than the average under the comparable contracts for employees at similar service levels.

For employees with 7 years of service, the vacation accumulation provided under the 2012-2013 contract is at the average of the comparable contracts.

For employees with 8 to 22 years of service, the vacation accumulations provided under the 2012-2013 contract are minimally (1%) to slightly (6%) less than the average of the comparable contracts.

Employees reach the maximum vacation accumulation at 18 years of service under the parties' 2012-2013 contract, compared to an average of 17.6 years (within a range of 14 to 23 years) under the comparable contracts.

Applying RCW 41.56.465(2), the union's proposal for a change of vacation accrual rates is not supported by evidence in this record. The Arbitrator notes that Arbitrator Williams rejected a union proposal that he described as "a significant increase in … the number of vacation hours" in the interest arbitration proceedings involving these parties in 2007. The union has not

adequately explained why it would cut the vacations of newer employees or why it would increase the vacations of senior employees:

For employees with 1 to 2 years of service, the union would substantially (8%) to dramatically (14%) reduce their vacations to a level slightly (2% to 6%) below the comparables.

For employees with 3 to 4 years of service, the union would slightly (2%) reduce their vacations, leaving them slightly (1%) to dramatically (14%) above the comparables.

For employees with 10 to 11 years of service, the union would substantially (7%) to dramatically (13%) increase their vacations, putting them slightly (1%) to substantially (9%) above the comparables.

For employees with 21 to 25 years of service, the union would dramatically (11%) increase their vacations, putting them slightly (1%) to substantially (9%) above the comparables.

For employees with 26 to 29 years of service, the union's proposal would dramatically (17%) increase their vacations, putting them substantially (9%) above the comparables.

For employees with 30 or more years of service, the union would hugely (30%) increase their vacation, putting them hugely (21%) above the comparables.

The union would have employees reach the maximum vacation accumulation at 30 years of service, compared to the average of 17.6 years (within a range of 14 to 23 years) under the comparable contracts.

Conclusions on Article 6: The employer and union proposals on this Article are each ACCEPTED IN PART and REJECTED IN PART, as follows:

A. Sections 6.1 through 6.3, 6.5 and 6.7 of the 2012-2013 contract shall be retained in the parties' next contract without change.

B. Section 6.4 of the 2012-2013 contract shall be amended to adopt some, but not all, of the employer's proposal to aid the administration of extensions, as follows:

6.4 Vacation time may accumulate to a maximum total of two hundred forty-eight (248) hours. An employee who has accumulated a total of ((~~total of~~)) two hundred forty-eight (248) hours of vacation, with or without prior notice by the Employer, shall not accrue or be credited with any additional vacation until the employee has reduced his/her total accrual to less than two hundred forty-eight (248) hours by using some or all of the accrued vacation time. Vacation time that does not accrue or is not credited under the preceding sentence will not be restored or credited under any circumstances.

An employee who has accumulated, or is about to accumulate, two hundred forty-eight (248) hours of vacation may submit a written request to the Employer ((~~to extend the time~~)) **for an extension of up to ninety (90) days** during which the ((~~employer~~)) **employee** may use some or all of the accrued vacation while continuing to accrue vacation above the limit of two hundred forty-eight (248) hours. The written request**:**

a. **M**ust be signed by the employee,
b. **M**ust request a definite time limit for using the excess accrued vacation, **and**
c. **Must include the employee's proposed time off schedule for the employer to use in determining any potential detriment.**

The Employer may approve or deny such a request for an extension at its sole discretion, with the understanding that extensions generally will be denied only if the employee's using the excess accrued leave at or around the time of the extension request could potentially be detrimental to the Employer. **An e**mployee is limited to one extension request every twelve (12) months. **If a subpoena to appear in court on duty for the employer prevents an employee from taking vacation scheduled in an approved extension plan, the extension plan shall be revised and/or further extended to reschedule the affected vacation days.**

C. Section 6.6 of the 2012-2013 contract shall be amended to adopt some, but not all, of the employer's proposal to conform vacation selection to recent practice, as follows:

6.6 ((~~Vacation schedules shall be posted no later than February 1, of each calendar year, and all~~)) **After January 1 of each calendar year,**

employees ((~~shall indicate their choice of~~)) **may request** vacation time ((~~on the schedule in accordance with their~~)) **for that year. Prior to April 1, preference in scheduling vacations shall be given by** seniority by classification and assignment. ((~~The vacation schedule shall be completed by April 1 and preference shall be given by seniority in the scheduling of vacations.~~)) Employees who ((~~fail to sign the~~)) **request** vacation ((~~schedule by~~)) **time after** April 1 shall be scheduled on a first-come first-served basis.

The Sheriff's Office **a**dministration will allow up to two employees on a patrol team off on vacation when the vacation is scheduled prior to April 1 of each calendar year. The **a**dministration, in its sole discretion, may allow more than two employees off on vacation.

After April 1, the Sheriff's Office **a**dministration will allow up to two employees off work on a patrol team at any given time, regardless of the number of employees assigned to the team. The administration, in its sole discretion may allow more than two employees off work. For the purposes of this article, employees shall be considered off work if they are absent from work for any reason, including, but not limited to, vacation, floating holidays, compensatory time off, training, extraditions, sick leave, disability leave, bereavement leave, Family Medical Leave Act (FMLA), administrative leaves of absence, suspensions, leaves of absence approved by the Sheriff and/or the Civil Service Commission, and military leave. An employee on leave for more than fourteen (14) calendar days, with the exception of vacation leave, shall not count as an employee off work after the 14th consecutive calendar day missed. An employee who is re-assigned temporarily to another patrol team for any reason will be considered an employee off work from his/**her** original team.

Once approved by the administration, scheduled vacation and floating holidays will not be cancelled absent an emergency.

D. The "Bonus Leave" versus "vacation" dichotomy that neither party could explain, along with the header, text and table set forth under what appears to be an erroneous "Section 1" marker shall be amended to adopt some, but not all, of the union's proposal to shift vacation accumulation to a monthly basis and to set forth the vacation accrual schedule at the historical rates in a format more consistent with comparable contracts, as follows:

((~~BONUS LEAVE~~))

~~Section 1. Bonus vacation days shall be granted to the employees and credited to their account on the anniversary date of employment and in accordance with the vacation schedule shown below.~~))

VACATION SCHEDULE

Number of Years of Employment Completed	((~~Vacation Hrs Earned~~	~~BonusHours~~	((~~Total Hours of Vacation Earned Per Year~~	**Hours of Vacation Earned Per Month**
1	~~96~~	~~8~~	~~104~~	**13**
2	~~96~~	~~16~~	~~112~~	**14**
3	~~96~~	~~32~~	~~128~~	**16**
4	~~96~~	~~32~~	~~128~~	**16**
5	~~96~~	~~40~~	~~136~~	**17**
6	~~96~~	~~40~~	~~136~~	**17**
7	~~96~~	~~40~~	~~136~~	**17**
8	~~96~~	~~40~~	~~136~~	**17**
9	~~96~~	~~40~~	~~136~~	**17**
10	~~96~~	~~48~~	~~144~~	**18**
11	~~96~~	~~56~~	~~152~~	**19**
12	~~96~~	~~64~~	~~160~~	**20**
13	~~96~~	~~64~~	~~160~~	**20**
14	~~96~~	~~72~~	~~168~~	**21**
15	~~96~~	~~72~~	~~168~~	**21**
16	~~96~~	~~80~~	~~176~~	**22**
17	~~96~~	~~80~~	~~176~~	**22**
18 & over	~~96~~	~~88~~	~~184~~))	**23**

It is understood that a vacation day is eight (8) hours pay or leave, whichever is applicable. In one year the minimum accrual is 104 hours per year; maximum accrual is 184 hours.

Article 7 – Seniority

No issue was certified for interest arbitration, so Article 7 of the 2012-2013 contract shall be retained in the parties' next contract without change.

Article 8 – Sick Leave

The employer has proposed to change the language contained in the parties' 2012-2013 collective bargaining agreement, as follows:

ARTICLE 8 – SICK LEAVE

8.1 Sick leave is granted at the rate of one (1) working day for each completed month of service. It shall accumulate to a total of one hundred fifty (150) working days. A working day for sick leave accrual is eight (8) hours.

8.2 Employees will be granted … sick leave for the first month ….

8.3 Sick leave may be taken for any of the following reasons:

A. Illness or injury which incapacitates the employee ….

B. Quarantine as the result of exposure to contagious disease ….

C. Doctor or dental appointments.

D. Illness in the immediate family ….

8.4 Payment for sick leave will be made only when approved by the appointing power. …

8.5 At the employee's option, vacation leave may be used as sick leave, but sick leave may not be used as vacation leave.

8.6 An employee receiving Washington State industrial insurance ….

8.7 Doctor's certificate of illness may be required by the Employer ….

8.8 An employee separated from County service due to death, retirement, or termination short of retirement age shall be compensated for accrued and unused sick leave at the following rate: ((~~twenty percent (20%) up through ten (10) years; forty percent (40%) eleven (11) years through nineteen (19) years; sixty percent (60%) twenty (20) years and over~~)) **fifty percent (50%) of his/her accumulated sick leave to a maximum of three hundred and sixty (360) hours that will be compensated when the employee separates from the County on their final paycheck**.

8.9 Leave Sharing ….

Employer proposals dated October 14, 2014 [deleted material indicated by ((~~strikeout within double parenthesis~~)); new material indicated by **bold and underlining**.]

At the hearing, Human Resources Director Zdilar testified that the employer's proposal was intended to cut the employer's exposure from 720 hours of cashout (i.e., 60% of the 1200 hour maximum accumulation by an employee with 20+ years of service) to 360 hours of cashout. He did not mention internal equity during either his direct examination or under cross-examination. Called as a witness by the union, Deputy Thurman testified that the sick leave cashout provision had been unchanged for 27 years in the collective bargaining agreements covering this

bargaining, and that he personally stood to lose about $14,000 if the employer's proposal were to be adopted. The employer neither controverted Thurman's testimony about the 27-year history of the benefit, nor cross-examined him about his estimated loss.

The employer's brief acknowledges that the aim of its sick leave proposal is to limit its financial exposure. It goes on to assert, however, that the proposed flat rate would promote internal equity, and that some bargaining unit employees would receive more sick leave cashout under the employer's proposal than they would receive under the historical language.

The union's brief labels this employer proposal as a "take-away" of a benefit in effect for many years, and points out the arbitrator's rejection of a similar proposal in the 2007 proceeding.

Once again, the employer has not claimed its proposed language is comparable to language in any of the five Washington counties stipulated as comparables, and the Arbitrator is left with applying the only three potentially-applicable criteria in RCW 41.56.465(1).

Nothing in the employer's testimony on its sick leave cashout proposal or in its brief provides basis to invoke a "constitutional and statutory authority of the employer" analysis under RCW 41.56.465(1)(a). The fact that the State of Washington limits sick leave cashout by its employees to a 25% rate does not preclude Cowlitz County from having agreed to – or continuing to use – a higher rate.

RCW 41.56.465(1)(b), requiring the Arbitrator to consider the "stipulations of the parties" weighs heavily against this employer proposal. The historical language dating back 27 years is entitled to substantial weight.

Applying RCW 41.56.465(1)(e), the union aptly relies on the "failure to provide detailed evidence" reason given for rejection of the employer's similar proposal in the 2007 interest arbitration proceeding. In the present proceeding, the sole employer witness on this subject claimed to not even know the number of employees already entitled to the 60% cashout rate, and only backed into giving a count of ten after counsel for the employer directed him to the list of employees in evidence as Exhibit 1001. Zdilar also denied having knowledge of the amounts paid out to employees under the historical sick leave cashout provision. This clearly constitutes insufficient preparation by the employer to support its proposal.

RCW 41.56.465(1)(e) is of no help to the employer on its equitable treatment argument. While a similar employer argument was of some interest to arbitrator Williams in 2007, it only appears here as an afterthought resurrected in the employer's brief without any supporting evidence. The testimony provided by the employer here clearly indicated its only justification for this aptly-characterized "take-away" is to save the employer an unknown amount of money.

Conclusion on Article 8: The employer's proposal is NOT ADOPTED. Article 8 of the 2012-2013 contract shall be retained in the parties' next contract without change.

Article 9 – Absence Without Pay

No issue was certified for interest arbitration, so Article 9 of the 2012-2013 contract shall be retained in the parties' next contract without change.

Article 10 – Uniforms and Equipment

The Executive Director's letter initiating this proceeding listed Article 10 – Uniforms and Equipment among the issues certified the issues for interest arbitration. No proposal to amend Article 10 was submitted by the parties prior or at to the interest arbitration hearing.

Conclusion on Article 10: Article 10 of the 2012-2013 contract shall be retained in the parties' next contract without change.

Article 11 – Equipment

No issue was certified for interest arbitration, so Article 11 of the 2012-2013 contract shall be retained in the parties' next contract without change.

Article 12 – Discharge or Suspension

The employer has proposed to change the language contained in the parties' 2012-2013 collective bargaining agreement, as follows:

> ARTICLE 12 – ((~~DISCHARGE OR SUSPENSION~~)) **DISCIPLINE**
>
> No employee shall be disciplined or discharged except for just cause. ((~~The Sheriff or his designee shall notify the employee and the Guild of his intent to discipline an employee. Provided that employees during their initial probationary period shall not be covered by this article.~~)) **Disciplinary actions may include but are not limited to the following: Oral warning, written warning, demotion, suspension, or termination. Employer may take whatever disciplinary action it deems appropriate. Counseling, giving of directions, and/or oral warning shall not be grievable. This language in Article 12 supersedes and eliminates any former contract language, policy language and/or**

past practice that in any way deals with discipline or types of discipline including but not limited to Chapter 47 of Sheriff Office policy manual.

Employer proposal dated October 14, 2014 [deleted material indicated by ((~~strikeout within double parenthesis~~)); new material indicated by **bold and underlining**.]

At the hearing, Human Resources Director Zdilar explained the employer's proposal to amend Article 12 of the collective bargaining agreement on the basis that Chapter 47 of the Sheriff's Office policy manual is difficult to follow and has many steps. When asked under direct examination if there have been issues or challenges regarding the application of Chapter 47, Zdilar responded with vague reference to claims about missed Chapter 47 steps at some "Step 3" hearings. Under cross-examination, Zdilar sought to emphasize the just cause test, rather than the arguments advanced at "Step 3" hearings.[8] The union called Sergeant Ryan Cruser, who testified that Article 47 provides due process rights and a progressive discipline system.

The employer's brief explains this proposal as an effort to eliminate "additional burdensome steps" and "unclear language" with specific reference to Chapter 47 of the policy manual. The employer would make Article 12 of the collective bargaining agreement the sole source of authority regarding discipline of bargaining unit employees, and also contends its proposal is consistent with current practice, but it does not rely on comparability under RCW 41.56.465(2).

The focus of the union's brief is on the early steps of the disciplinary process, asserting that Chapter 47 of the policy manual has been the status quo for many years, that it provides for a

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[8] From Zdilar's reference to the board of commissioners during his cross-examination, the Arbitrator infers that the "Step 3" process he referred to is part of Chapter 47, rather than a hearing before an arbitrator under Step 3 of the grievance procedure in Article 13 of the 2012-2013 collective bargaining agreement.

uniform discipline procedure, and that its various steps provide due process to the employee involved.

Analysis under RCW 41.56.465(1)(a) yields a conclusion that the employer has again failed to use the statutory remedy already available to it. Members of the general public and others unfamiliar with the collective bargaining process might question why this employer hasn't repealed the now-disliked provisions in Chapter 47 of the policy manual, or made them inapplicable to the employees represented by this union. Observers more familiar with the collective bargaining process would caution that Chapter 47 may constitute a part of the status quo for the employees in this bargaining unit, so that the employer would have a duty to give notice and provide opportunity for collective bargaining before making such a change. In turn, that presents two problems for this employer:

First, as with the employer's desire to transfer court security work which was cited as the basis for the employer's management rights proposal in Article 2, discussed above, this employer has failed to pursue the statutory process available to it to directly address its complaints about Chapter 47. Lacking agreement with the union after giving notice and bargaining in good faith, the employer could have put its complaints about Chapter 47 before a mediator and an arbitrator under RCW 41.56.440 and .450, for a final and binding decision applying the criteria set forth in RCW 41.56.465.

Second, as with the union's back-door attack on the holidays provisions in Article 5 of the 2012-2013 contract as justification for amending provisions in Article 6, the employer's proposal concerning Article 12 must be discredited as a back-door attack on a separate bargainable subject.

Analysis under the "stipulations of the parties" criteria in RCW 41.56.465(1)(b) weighs heavily against adoption of this employer proposal. The union's uncontroverted testimony indicates Chapter 47 dates back many years. The parties' past agreements leaving it in place are entitled to substantial weight.

Analysis under the "such other factors" language in RCW 41.56.465(1)(e) also weighs heavily against the employer on Article 12. At a minimum, the union aptly characterizes the employer proposal as a "take-away" from employee rights, because it does not expressly transfer the progressive discipline system described as a feature of Chapter 47 of the policy manual into the collective bargaining agreement. Although Zdilar supported the just cause test preserved by the employer's proposal, the "Employer may take whatever disciplinary action it deems appropriate" sentence that the employer may have intended to import employer authority specified in Chapter 47 into the collective bargaining agreement could arguably be asserted in the future as limiting the discretion customarily exercised by arbitrators in administering the "just cause" standard.[9] In such an event, this employer proposal would become a back-door amendment of Article 13, which has not been certified for interest arbitration in this proceeding. This Arbitrator is unwilling to adopt unclear language that sounds like another dispute waiting to happen.

Conclusion on Article 12: The employer's proposal is NOT ADOPTED. Article 12 of the 2012-2013 contract shall be retained without change in the parties' next contract.

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[9] See, Koven/Smith/Farwell, *Just Cause – The Seven Tests*, (BNA Books, 1992). The last of the seven tests propounded by Arbitrator Carroll R. Daugherty in Enterprise Wire Co., 46 LA 359 (1966) calls upon the arbitrator hearing a discipline or discharge grievance under the just cause standard to decide whether the degree of discipline imposed by the employer in the particular case was reasonably related to: (1) the seriousness of the offense (i.e, a "does the punishment fit the offense" analysis); and (2) the record of the particular employee (i.e., a "progressive discipline" analysis).

Article 13 – Grievance Procedure

No issue was certified for interest arbitration, so Article 13 of the 2012-2013 contract shall be retained in the parties' next contract without change.

Article 14 – Health and Welfare

Both parties have made proposals concerning this subject. Article 14 of their 2012-2013 contract simply provided:

> 14.1 Effective January 1, 2012, the County agrees to pay up to one thousand one hundred dollars ($1,100.00) toward the cost of the monthly premium for eligible employees for medical, dental and life insurance. Any amount in excess of $1,100.00 shall be paid by the employee by payroll deduction ....
>
> 14.2 Effective January 1, 2013, the County agrees to pay up to one thousand one hundred and fifty dollars ($1,150.00) toward the cost of the monthly premium for eligible employees for medical, dental and life insurance. Any amount in excess of $1,150.00 shall be paid by the employee by payroll deduction ....

2012-2013 collective bargaining agreement. The union proposed to have the employer pay **$1,250.00 per month for 2014**, and to then shift to a percentage split with the **employer paying 95% of any premium increase in 2015 and 2016**. The union then proposed addition of:

> **14.3 As a wellness incentive, the following hours of sick leave may converted to straight-time pay:**
>
> **Balance of 900 hours can convert 48 hours to straight-time pay.**
>
> **Balance of 750 hours can convert to** [sic] **32 hours of straight-time pay.**
>
> **Balance of 500 hours can convert to** [sic] **16 hours of straight-time pay.**

Union proposal submitted October 14, 2014 [new material indicated by **bold and underlining**.]

The employer rejected the union's "wellness incentive" proposal on the basis of its cost, proposed to pay **$1200 per month for 2014** (beginning after a contract ratification which didn't happen before that year ended), and proposed both a different schedule of contribution increases and several plan changes, as follows:

> **14.2** **Effective January 1, 2015,** the County agrees to pay up to **one thousand two hundred and fifty ($1,250)** toward the cost of the monthly premium for eligible employees for medical, dental, life insurance **and long term disability. For any option that the monthly premium is less than one thousand two hundred and fifty dollars ($1,250), the County will pay the total amount of that monthly premium option. For any option that the monthly premium is in excess of one thousand two hundred and fifty dollars ($1,250), the excess amount shall be paid by the employee through payroll deduction through December 31, 2015. The Kaiser $250 deductible plan will no longer be offered.**
>
> **The 2015 employer contribution towards VEBA will be a flat $750.00 per month for eligible employees who select the VEBA option. For the employees who select the Kaiser HAS $1,500/$3,000 option, the employer contribution will be $100.00 per month. For the employees who select the WCIF $1,500/$3,000 option, the employer contribution will be $150.00 per month.**
>
> **14.3** **Effective January 1, 2016,** the County agrees to pay up to **one thousand three hundred ($1,300)** toward the cost of the monthly premium for eligible employees for medical, dental, life insurance **and long term disability. For any option that the monthly premium is less than one thousand three hundred dollars ($1,300), the County will pay the total amount of that monthly premium option. For any option that the monthly premium is in excess of one thousand three hundred dollars ($1,300), the excess amount shall be paid by the employee through payroll deduction through December 31, 2016.**
>
> **The 2016 employer contribution towards VEBA will be a flat $750.00 per month for eligible employees who select the VEBA option. For the employees who select the Kaiser HAS $1,500/$3,000 option, the employer contribution will be $100.00 per month. For the employees who select the WCIF $1,500/$3,000 option, the employer contribution will be $150.00 per month.**
>
> **14.4** **New employees (hired on or after January 1, 2014) will be eligible for healthcare (medical, dental and life insurance) coverage beginning the first of the month following 30 calendar days of employment.**

Employer proposal of October 14, 2014 [new material indicated by **bold and underline**]. The employer neither offered any evidence at the hearing nor made any specific argument in its brief

about the "long term disability" insurance mentioned in its proposal. The union has not voiced any objection in this proceeding about the elimination of the "Kaiser $250 deductible plan" in the employer proposal.

At the hearing, the union primarily relied upon exhibits comparing the insurance benefits and costs of these bargaining unit employees with the insurance benefits and costs of like personnel in the five counties stipulated as comparable. It provided testimony by the analyst who prepared those exhibits. The union called Deputy Ryan Cruser, and he testified in support of the union's "wellness incentive" proposal. The employer called its Human Resources Director, and Zdilar testified that the employer prefers to maintain internal consistency of insurance benefits among most of its employees.[10]

In its brief, the union asserts that employees in this bargaining unit are paying far more for health insurance than deputies in the comparable counties, and it attributes that gap largely to the percentage formulae in effect in the comparable counties. The union's brief goes on to argue that this bargaining unit would fall even farther behind if the flat dollar amounts proposed by the employer are adopted. The union's brief also contends that the employer is acting at the behest of insurance companies in proposing to delay coverage for new employees, and that adjustments to premium payments are necessary five or fewer times per year. The union's brief asserts that its proposed wellness incentive would reward employees who don't call in sick, and would benefit the employer by reducing the vacancies to be filled on an overtime basis.

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[10] Zdilar acknowledged that employees represented by a local union affiliated with the International Brotherhood of Teamsters, et. al. have their insurance under a Teamsters trust plan, and so are treated differently from other Cowlitz County employees.

In its brief, the employer objects to the proposed wellness incentive on grounds of its cost. It contends its proposed contributions of $1,200 per month in 2014, $1,250 per month in 2015 and $1,300 per month in 2016 are consistent with the amounts paid on behalf of most Cowlitz County employees outside of this bargaining unit. The employer's brief asserts that its proposal for 2014 would have yielded a $38.88 per month reduction of the average amount paid by employees in this bargaining unit.

The Employer's Contribution Level

Applying the "change of circumstances" criteria in RCW 41.56.465(1)(d), the Arbitrator accepts the employer's contention that health insurance benefits should be analyzed separately from wage issues. The federal Affordable Care Act has now been on the books for a few years and - like it or not - the current national policy is to promote all people having health care insurance. Additional provisions of that law have taken effect in 2014 and 2015, including providing health care insurance to historically uninsured individuals beginning in 2014, discouraging so-called "Cadillac" insurance plans, and requiring individuals who choose to forego health care insurance to pay a tax penalty when they compute their federal income tax returns for 2014. The federal law has changed the game that went on as an adjunct to wage negotiations in collective bargaining between employers and unions for at least the last 50 years.

Attachment 2 to this interest arbitration award contains the Arbitrator's analysis of the historical, present and future comparisons of the six Washington counties stipulated as comparable for purposes of RCW 41.56.465(2). The Arbitrator readily acknowledges that the plans made available in the six counties vary widely, and that myriad permutations and combinations could exist for making comparisons. For multiple reasons, the Arbitrator has chosen to focus on the

"Plan E" bundle (Washington Counties Insurance Plan "Budget" health coverage, Washington Dental coverage and a standard life insurance) as the basis for comparison:

Plan E has been available throughout the relevant period, and appears to be the closest the employer has to a traditional "full family medical and dental" plan without HMO components.[11]

The components of Plan E appear to have close – or even precise – counterparts among plans offered by the comparable counties.

Using the percentage of insurance premiums paid by the employer as the basis for comparison keeps the focus on what was negotiated by the respective parties in collective bargaining, without getting into rural/urban or east/west premium differentials or plan feature variances that are difficult or impossible to compare.

Analysis is limited to the period since 2009, when the present administration moved into the White House and began the push for the game-changing Affordable Care Act.

The premium increases for Plan E documented in Employer Exhibit 1003 for 2010, 2011, 2012, 2013 and 2014 have been averaged, and that average has been used for *estimating* premium increases for 2015 and 2016.

Applying RCW 41.56.465(2), this employer has fallen far behind its comparables. Its contribution in 2009 covered 96% of the total cost for Plan E, and was very close to the average of its comparables for that year. The employer's share of the Plan E premium dropped steadily thereafter, to a low of only 76% in 2014, putting the employer behind the average of its comparables by double-digit percentages for five consecutive years. Additionally:

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[11] The Arbitrator notes that a "Plan D" formerly offered by this employer was discontinued in 2012. It bundled the same dental and life coverages with a Washington Counties "standard" health coverage.

Assuming annual cost increases at the 2009-2014 average, the employer proposals in interest arbitration would barely keep its contribution at 76% of the total Plan E cost for 2015 before sliding to only 73% for 2016.

The employer's claim of a $38.88 average reduction of employee outlay for 2014 was based on an increase of employer contribution that was never put into effect. Even if that $50.00 increase had been in effect, these employees would still have been paying $28.48 per month (18%) more than they paid in 2012.

The employer's calculation based on current enrollments is suspicious, because Attachment 2 supports an inference that this employer has driven its employees away from "full family medical and dental" coverage – and toward cheaper plans labeled "value" or "affordable" – by paying far less than its comparables since 2010.

The Arbitrator has considered the employer's "financial responsibility" and "internal equity" arguments under the "such other factors" criteria in RCW 41.56.465(1)(e), but does not accept them as justification for the employer's complete disregard of comparability under RCW 41.56.465(2):

Like state legislatures in several other states in the early 1970's, the Washington State Legislature clearly did not want to put public safety at risk of strikes or lockouts involving law enforcement officers or firefighters.[12] Most of the interest arbitration criteria set forth by the Legislature focus on conditions external to the particular employer and union (i.e., the state

[12] Prior to the enactment of Chapter 131, Laws of 1973 (RCW 41.56.430 et. seq.), law enforcement officers and/or firefighters had gone on strike in several major cities around the nation and the fire chief in Milwaukee, Wisconsin, had essentially created a lockout by suspending all of the firefighters on duty one night because of their concerted activity refusal to obey an order he had given. In each instance, private citizens not involved in the labor dispute were put at risk by being left without protection.

constitution and state statutes in RCW 41.56.465(1)(a), the cost of living computed by the federal government in RCW 41.56.465(1)(c), the changes of circumstances component pointing back to RCW 41.56.465(1)(a) and (c), and the comparability with like employers in RCW 41.56.465(2)). The internal equity argument relentlessly pursued by this employer has no direct basis in the statutory criteria, and cannot be made to overrule or obliterate the external factors set forth in the statute.

The Arbitrator accepts the testimony of the employer's budget director as establishing her genuine concern about the employer's financial health. At the same time, the Arbitrator notes that the budget director's view is far more conservative or pessimistic than the fairly positive picture of Cowlitz County portrayed in the report issued by the State Auditor's office during the pendency of this proceeding. Although "ability to pay" components appear in the statutory criteria covering some other types of Washington employees that have been made eligible for interest arbitration since 1973, an in pari materia analysis drives a conclusion that the Legislature intended to continue the absence of an "ability to pay" component applicable to this bargaining unit. Absent applicable statutory criteria requiring interest arbitrators to directly consider the employer's financial situation, the most that can be said is that some caution is warranted in bringing these parties back into line with their stipulated comparables.

The union attributes much of the slippage to the flat dollar amounts established for employer contributions in the parties' 2012-2013 contract (and perhaps in one or more previous contracts), as compared to "employer pays the premium" or "percentage split" provisions found in all of the comparable contracts. It proposes percentage split language in this interest arbitration proceeding. Human Resources Director Zdilar acknowledged that these parties had some sort of

percentage language at some unspecified time in the past, but his strong preference for flat dollar amounts to ease the employer's budgeting process is not persuasive:

The Arbitrator has heard employers prefer flat dollar amounts on countless occasions going back to his first mediation cases in 1970, and has always found such arguments to be short-sighted. Faced with "employer pays the premium" language in a collective bargaining agreement, employers frequently propose "flat dollar amount" language in negotiations for a successor contract; faced with "flat dollar amount" language, unions frequently propose "employer pays the premium" language in negotiations for a successor contract. Parties starting from either of those extremes almost inevitably engage in protracted debate before arriving at an agreement that frequently has the employers paying most or all of the premium increases. Moreover, those agreements are frequently reached after budget deadlines have passed.

The only lasting arrangement ever seen by the undersigned Arbitrator during a career that spans five decades is a percentage split of the premium obligation: The employer can feel good about making the employees participants and partners in avoiding abuse and excess costs, and can estimate its future costs without having to wait for conclusion of the next round of negotiations; the union can feel good about protecting its members from the entire risk of premium increases, and from having to battle back to a shared obligation in future negotiations. The Arbitrator notes that Lewis County became, in 2014, the third of the stipulated comparables to move into a percentage split imbedded in its current collective bargaining agreement.

The 95%/5% split of premium increases proposed by the union for 2015 and 2016 is a step in the right direction, and would pull this employer's insurance contribution proportion back toward alignment with its comparables. However, given the precipitous drop of this employer's contribution level (from 96% in 2009 to only 76% in 2014) and the lack of any increase of

employer contribution in 2014, adoption of the 95%/5% split of premium increases in 2015 and 2016 will not suffice to bring this employer fully in line with its comparables during the term of the contract which is to result from this interest arbitration proceeding.[13]

The Union's "Wellness Incentive" Proposal

The Arbitrator is not persuaded by – and does not adopt – the union's proposal for a cashout (presumably annually, although that is not expressly stated) of sick leave accumulations under a "wellness incentive" euphemism. In this instance, it is the union that has advanced a proposal without reliance on comparability, so the Arbitrator is limited to applying RCW 41.56.465(1).

Nothing in the union's evidence or brief on this proposal invokes analysis of the "constitutional and statutory authority of the employer" under RCW 41.56.465(1)(a).

Applying the RCW 41.56.465(1)(b) "stipulations of the parties" criteria heavily against adoption of this union proposal. The cashout proposed by the union in Article 14 would duplicate (and necessarily diminish the balances available for) the sick leave cashout being preserved in Article 8 of the same contract.

Nothing in the union's evidence or brief on this proposal invokes RCW 41.56.465(1)(c), requiring the Arbitrator to consider changes in the cost of living.

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[13] As the parties will see on Attachment 2, the Arbitrator has experimented with a 90%/10% split of the total insurance premiums. The Arbitrator has long found that a 90%/10% split has a strong potential for a lasting solution, and has recommended that formula in numerous past mediation and/or factfinding cases. At a minimum, it is the logical compromise between the 85%/15% formula and the 95%/5% formula mentioned in this record. Additionally, a simple advantage of the 90%/10% formula is that bargaining unit employees can see and appreciate the full cost of their insurance benefits by moving the decimal point on their pay stub deductions one place to the right, without needing a smartphone or calculator to compute the total premium from their pay stub deduction under an 85%/15% or 95%/5% formula. A 90%/10% split of the total insurance costs would easily be justified by the comparability data here, and these parties are urged to consider a 90%/10% split of the total premiums in the future. The Arbitrator is not adopting that formula here only because it could cost the employer more in 2015 and 2016 than full acceptance of the union's "95%/5% split of premium increases" proposal.

Nothing in the union's evidence or brief on this proposal invokes RCW 41.56.465(1)(d), requiring the Arbitrator to consider changes in circumstances during the pendency of the interest arbitration proceedings.

RCW 41.56.465(1)(e), requiring the Arbitrator to consider the "other factors normally or traditionally taken into consideration" is of no help to the union here. Inasmuch as the sick leave cashout in Article 8 is already substantially more generous than the 25% cashout allowed by the State of Washington for its employees upon their retirement, the employees in this bargaining unit already have a substantial incentive to refrain from abuse of sick leave.

The Employer's VEBA Proposals

The "VEBA" plan mentioned in the employer's proposal does not appear in the parties' 2012-2013 contract, and the Arbitrator only learned at the hearing that the employer has been offering a VEBA option for some time outside of the parties' collective bargaining agreements.[14] The employer's VEBA contributions in past years equaled the amounts it paid for conventional insurance coverages in those years, but the fixed contribution proposed by the employer here is substantially lower than the amounts the employer proposes to pay for conventional insurance coverages. The employer is offering to increase its VEBA contribution for employees who bundle VEBA with a high-deductible health care insurance plan, but the total would still be less than it proposes to contribute for conventional plans. The union's brief indicates some familiarity with the VEBA plan, and contends the fixed contribution rate proposed by the employer is an unjustified "take-away" from the employees. The union's brief also takes issue

[14] The Arbitrator received an affirmative response to an inquire about whether the VEBA alternative might be chosen by an employee who wants to forego health care insurance under this employer's plans because that employee has coverage through his or her spouse's job. Employer-provided exhibits suggest that, notwithstanding the silence in the 2012-2013 contract, it has been making the VEBA plan available to employees in this bargaining unit since as early as 2004.

with the employer's linking of the VEBA plan and high-deductible plans, contending those features do not need to be linked.

The Arbitrator finds this employer proposal is poorly-conceived and unpersuasive. While some bargaining unit employees who take pride in their self-sufficiency might be attracted to a VEBA plan that gives them greater control over the money paid by the employer, the lower and fixed contribution being proposed by the employer would likely drive the same employees away from the VEBA plan in 2015 and 2016.

Applying RCW 41.56.465(1)(b), the Arbitrator is reluctant to embark on a process of imbedding any altogether new language about VEBA in the parties' next collective bargaining agreement (and potentially future contracts). These parties have apparently done without VEBA language in the past, and there is no evidence that they are anywhere close to an agreement on the VEBA language (as distinguished from the contribution level) being proposed by the employer. The contracts stipulated as comparable are of no help, since the Arbitrator found few references to VEBA plans in the course of reading the insurance provisions of those contracts, and none of those describe a plan like the complete alternative to health care insurance in Cowlitz County.

The Employer's Start-of-coverage Proposal

The past practice has been for new employees in this bargaining unit to get health care insurance coverage effective on their first day of work. The employer's proposal to start insurance coverage for new employees on the first of the month following 30 calendar days of employment was explained on practical grounds having to do with the need for retroactive premium payments. The union protests that the employer would leave new employees without insurance.

One widely-held principle in the insurance industry is that customers are not allowed to purchase insurance covering a time period that has already passed. The practice regarding health care insurance – as reflected in all six of the collective bargaining agreements compared in this proceeding – is that coverage is paid for and effective by calendar months (rather than day-by-day blocks of time). Thus, Cowlitz County has been either: (1) Paying premium adjustments for a full month of retroactive coverage that includes the days before the new employee started work; and/or (2) Paying full monthly premiums to cover only the part of the month after the new employee started work. In either case, that Cowlitz County practice is contrary to the norms concerning insurance coverage.

In the process of reading the insurance provisions of the comparable contracts, the Arbitrator found nothing that would cause any of the other counties to make retroactive or partial-month premium payments. Two of the five comparables make insurance coverage effective if the new employee starts work on the first day of a month, but otherwise delay the effective date of coverage until the first day of the next calendar month. A third comparable simply makes the coverage for new employees effective on the first day of the calendar month following the starting date. A fourth comparable delays coverage for new employees even longer than is being proposed by the employer here. Nothing on the subject was found in the fifth contract.

The "thirty (30) calendar days" clause in the employer's proposal would be out of step with three of the five comparable contracts. The 30-day delay would almost always leave the new employee and his/her family without health care insurance for a full month beyond the month in which the new employee starts work. Consistent with the "get everybody on health care insurance" spirit of the Affordable Care Act, the Arbitrator does not adopt the 30-days clause.

Conclusions on Article 14: The employer and union proposals on this Article are each ACCEPTED IN PART and REJECTED IN PART, as follows:

A. Section 14.1 of the parties' 2012-2013 contract shall be amended to read as follows:

> 14.1 Effective January 1, ((~~2012~~)) **2015**, the County ((~~agrees to pay up to one thousand and one hundred dollars ($1,100.00)~~)) **shall pay up to the sum of one thousand one hundred and fifty dollars ($1,150) plus ninety-five percent (95%) of any premium increase that has been or will be made effective since January 1, 2014 for coverage in 2015 under the "Plan E" historically offered by the County** toward the cost of the monthly premium for eligible employees for medical, dental and life insurance. Any amount in excess of ((~~$1,100.00~~)) **the sum computed under this section** shall be paid by the employee through payroll deduction through December 31, ((~~2012~~)) **2015**.

B. Section 14.2 of the parties' 2012-2013 contract shall be amended to read as follows:

> 14.1 Effective January 1, ((~~2012~~)) **2016**, the County ((~~agrees to pay up to one thousand and one hundred and fifty dollars ($1,150.00)~~)) **shall pay up to the sum of the amount computed under Section 14.1 plus ninety-five percent (95%) of any premium increase that has been or will be made effective for coverage in 2016 under the "Plan E" historically offered by the County** toward the cost of the monthly premium for eligible employees for medical, dental and life insurance. Any amount in excess of ((~~$1,150.00~~)) **the sum computed under this section** shall be paid by the employee through payroll deduction through December 31, ((~~2013~~)) **2016**.

C. The union's proposal for a wellness incentive by means of cashout of accumulated sick leave is NOT ADOPTED.

D. The employer's proposal adding a "long term disability" plan to the list of insurance coverages made available to employees under Article 14 of the 2012-2013 contract is NOT ADOPTED due to: (1) The insufficiency of evidence or argument provided by the employer in support of that proposal; and (2) The absence of any acceptance or stipulation from the union concerning a long term disability plan.

E. The employer's proposal for a reduced and fixed rate of contribution to the VEBA plan historically offered by the employer is NOT ADOPTED and the parties' collective

bargaining agreement shall continue to contain no reference to the VEBA plan, but this does not preclude the continued operation of the historical VEBA plan.

F. The employer's proposal to specify the effective date of insurance coverage for new employees is ADOPTED IN PART and new language shall be included in the parties' collective bargaining agreement, as follows:

14.3 Insurance coverage for new employees hired on or after [*insert the date of this interest arbitration award*] shall be made effective on the first day of the calendar month following their first day of employment under this collective bargaining agreement.

Article 15 – Bereavement Leave

No issue was certified for interest arbitration, so Article 15 of the 2012-2013 contract shall be retained in the parties' next contract without change.

Article 16 – Retirement

No issue was certified for interest arbitration, so Article 16 of the 2012-2013 contract shall be retained in the parties' next contract without change.

Article 17 – Salaries and Appendix A

General Wage Increase Proposals

Section 17.1 of the parties' the 2012-2013 contract bumps all details about the current wages of bargaining unit employees to Appendix A. The union proposed to amend Appendix A to provide

general wage increases of **3% each year for 2014 and 2015** plus **3.5% for 2016.** Rejecting the union's proposals, **the employer proposes a wage freeze for 2014, 2015 and 2016**.

At the hearing, the union explained its proposals by means of an opening argument and relied entirely upon exhibits comparing the wages received by these bargaining unit employees with the wages received by like personnel in the five counties stipulated as comparable. The employer similarly provided an opening argument in which it reviewed exhibits comparing the wages and some other financial benefits paid at various service levels, and asserted there is no groundswell of data showing that Cowlitz County lags behind its comparables.

Human Resources Director Zdilar testified about the various bargaining units existing among Cowlitz County employees and the status of contract negotiations with the unions representing those bargaining units. Zdilar emphasized the employer's historical and ongoing preference: (1) To have its wages and benefits be neither out in front of nor far behind other employers; and (2) To use the "U.S. all cities" consumer price index and an "80% of CPI" formula for setting wage levels. Zdilar testified that wage and benefit changes have usually been the same for all of the Cowlitz County bargaining units and non-represented employees. Zdilar acknowledged he had been instructed to negotiate wage freezes in the current round of negotiations, as part of an employer effort to get its expenses in line with its revenues, and he testified that some of the bargaining units had agreed to accept a wage freeze. When presented during cross-examination with a copy of the report recently issued by the State Auditor's office, Zdilar did not controvert any of several positive statements pointed out to him in that report. The employer's budget director, Claire Hauge, testified at length about the process for developing and adopting the employer's budget. She testified about a decline of revenues in 2008 and 2009, about position

eliminations and about other expenditure reductions, and about some services being curtailed or eliminated since 2008. She described a "hold the line" effort in 2010 and 2011, and increased use of transfers from the road fund to balance the general fund budget. Asked at page 212 of the transcript about revenues, Hauge testified, "In a general way, they've stabilized. This particular year we've seen some growth in sales tax and we saw some growth in property tax …." She characterized the employer's financial condition as "stable but fragile" and stated "significant concerns" about potential loss of state and federal revenues. Hauge's opinion was that it would not be financially responsible to pay increased compensation to employees. She acknowledged the employer was projecting a 9.5% ending fund balance, but asserted that cash flow needs require keeping at least that much or more on the books as working capital.

In its brief, the union asserts that the employees it represents lag behind their comparables by a double-digit amount when longevity, insurance, and leaves are taken into account. It disputes the comparability analysis offered by the employer, and contends the gap will increase further if the employer's pay freeze proposal is accepted while comparable counties are giving pay raises in the range of 2% to 3% per year. The union's brief characterizes the employer's ability to pay and financial responsibility arguments as a cover for a local political decision to preserve internal equity, and points out that the employer has recently been hiring new employees. The union contends that transferring money from the road fund is allowed by state law, and that such transfers have been going on for many years.

In its brief, the employer points to acceptance of a wage freeze by other bargaining units, a loss of private sector jobs in the county since 2008, and a need to retrench after expenditure growth that preceded the 2008 downturn. The employer contends its fund balance should be increased

to 12% or even 15%. It seeks to discredit the use of averages for assessing comparability, or promotes use of an "inverse weighted average" formula taking population differences into account. It claims it is in alignment with the comparables in terms of total compensation, and that a wage freeze for 2014, 2015 and 2016 is fiscally responsible.

Attachment 3 to this interest arbitration award contains the Arbitrator's analysis of historical, present and future comparisons of the six Washington counties stipulated as comparable for purposes of RCW 41.56.465(2). The Arbitrator readily acknowledges that myriad permutations and combinations exist for making comparisons, but has multiple reasons for choosing to focus on comparability of base wages at 61 months of service:

Neither party to this proceeding has proposed any modification of the salary steps they have historically used, so the Arbitrator would be loathe to alter that matrix. Both these parties and the comparable counties have used across-the-board percentage changes of their wage rates in the past. Comparisons and application of percentage general increases at any one service level respects whatever matrix was agreed upon by each pair of respective parties in their past collective bargaining negotiations. By contrast, comparisons at multiple service levels (e.g., the starting rate, a middle-of-the-scale rate, and the top rate) could create a quandary as to which of potentially differing results to accept.

Analysis starts with 2011, the earliest year for which wage rates are found in the contracts stipulated in evidence or can be computed from historical references within those contracts. Even then, 2011 wage rates can only be discerned for two of the five comparable counties.

The 61st month of employment is used, because employees who have stayed in their jobs for over 5 years will likely have acquired a long-term perspective (i.e., certainly beyond the

vagaries of rookie status and many years from retirement). By that time, they will hopefully understand and have become a part of the fabric in the workplace.

The comparisons do not include longevity, educational incentive, holiday pay, shift-differentials or other financial add-ons negotiated separately by the respective parties. The bundles used by both of these parties in their presentations on comparability risk back-door encroachment on contract provisions that neither of them proposes to change here.

Applying RCW 41.56.465(1)(b), the parties' 2012-2013 contract is deemed significant as their last agreed position in relation to their stipulated comparables.

Comparison based on the year-to-year percentage changes respects any cost-of-living differences or de facto pecking order differences that have been expressly or silently accepted by the parties in their past negotiations. The top half of Attachment 3 shows that these parties agreed to a higher wage increase than their known comparables for 2012, and then a lower wage increase than their known comparables for 2013. From that starting point, the Arbitrator concludes that the employer is offering too little and the union is asking for too much:

Acceptance of the employer's proposed wage freeze for 2014 would put it 2.3% behind the comparables for that year, and would entirely erase the higher-than-comparables increase agreed upon by these parties for 2012.

Acceptance of the employer's proposed wage freeze for 2015 would put it another 2% behind the comparables that year, assuming that Grant County and Skagit County will have wage increases of at least 1.44% (applying the "80% of CPI" formula this employer prefers to the already-known 1.8% CPI increase listed on an employer exhibit for 2014).

Acceptance of the employer's proposed wage freeze for 2016 would put it another 2% behind the only comparable contract already settled for that year.

Acceptance of the union's "3% general increase" proposal for 2014 would put it 0.7% ahead of the comparables for that year, and would essentially erase the lower-than-comparables percentage increase agreed upon by these parties for 2013.

Acceptance of the union's "3% general increase" proposal for 2015 would put it 1% ahead of the known and estimated comparables for that year.

Acceptance of the union's "3.5% general increase" proposal for 2016 would put it 1.5% ahead of the only comparable contract already settled for that year.

Comparison based on cumulative dollar amounts is, as noted above, at risk of bringing into consideration cost-of-living differences and de facto pecking order differences that have been accepted by these parties in the past. From the limited data available, Cowlitz County appears to have been 1% behind the known comparables in 2011. With addition of computed date for Benton County, this bargaining unit fell farther behind in 2012 even with its higher-than-comparables percentage increase for that year. With data for the full set of comparables, Cowlitz County appears to have regained some ground in 2013, even though its percentage increase that year was lower than the average of the comparables. From that starting point, the Arbitrator confirmed his conclusion drawn from the comparison of percentage increases:

Acceptance of the employer's wage freeze proposal for 2014 would put the employer $224 per month (4%) behind the comparables, constituting the largest gap up to that time.

Acceptance of the employer's wage freeze proposal for 2015 would predictably create another new record-high gap estimated at $333 per month (6%) behind the comparables.

Acceptance of the employer's wage freeze proposal for 2016 would predictably create a third consecutive record-high gap estimated at $476 per month (8%) behind the available comparable.

Acceptance of the union's "3% general increase" proposal for 2014 would close the gap to $69 per month (1.3%) behind the comparables, and would appear to make these employees better off than they were under the agreed wage increases for 2012 and 2013.

Acceptance of the union's "3% general increase" proposal for 2015 would close the gap to only $17 per month (0.3%) behind the comparables, and would make these employees much better off than they were under the agreed wage increases for 2012 and 2013.

Acceptance of the union's "3.5% general increase" proposal for 2016 would reverse five years of history and put these employees $32 per month (0.6%) ahead of the known comparable.

The Arbitrator accepts the union's "employees should not fall farther behind" argument under RCW 41.56.465(2) as prevailing over the employer's "financial responsibility" argument considered under the "such other factors" criteria in RCW 41.56.465(1)(e). Attachment 3 also contains lines showing the effect of 2% percentage wage increases for 2014, 2015 and 2016 that are close to the average percentage wage increases computed from the comparability data:

A 2% general wage increase paid retroactively for 2014 will keep these employees within the range of comparability they had under the parties' 2012-2013 contract.

A 2% general wage increase effective January 1, 2015 will match the average of the contractual and estimated wage increases provided by the stipulated comparables for 2015.

A 2% general wage increase effective January 1, 2016 will match the percentage wage increase provided by the one comparable available for that year.

The Educational Incentive Proposal

The union proposed to amend Section 17.5 of the 2012-2013 contract to increase the amount of an existing educational incentive, as follows:

> 17.5 Educational Incentives – Effective January 1, ((~~2010~~)) **2014**
>
> AA or AS Degree – ((~~.5%~~)) **1%** of the applicable base monthly salary in Appendix A
>
> BA or BS Degree – ((~~1%~~)) **1.5%** of the applicable base monthly salary in Appendix A
>
> These premiums may not be added together or pyramided. ....

Union proposal submitted October 14, 2014 [new material indicated by **bold and underlining**.] The employer resists the union's educational incentives proposal.

At the hearing, Undersheriff Gilchrist testified that the employer formerly imposed a degree requirement as a minimum qualification for positions in this bargaining unit, but it was abandoned due to recruitment problems. He further testified that the presence or absence of a higher education degree is not used in the hiring process or in making assignments in the Sheriff's Office, and that nothing requires that the higher education qualifying for compensation under Section 17.5 be related to work as a law enforcement officer.

In its brief, the union contends that Cowlitz County is uniformly behind its comparables with respect to educational incentive, and dismisses testimony about education not making a good or bad deputy as beside the point. In its brief, the employer objects to the proposed increase of educational incentives on grounds of its cost, but also contends that any comparability analysis should take total cost of compensation comparisons into account.

Applying RCW 41.56.465(1)(e), the testimony on this issue is troubling. It discloses a complete absence of any correlation between work as a bargaining unit employee and the coursework for which an educational incentive has historically been paid. At a time when law enforcement officers in cities from New York, New York to Ferguson, Missouri are being characterized as bullies, these parties and persons involved in law enforcement elsewhere may need to seriously reconsider both: (1) Whether and/or what higher education should be required for law enforcement officers; and (2) Whether and/or what additional practical training should be provided for law enforcement officers. Against that background, the Arbitrator finds the union's proposal to be premature, and as no more than a band-aid covering a larger problem that needs to be addressed by the parties in contract negotiations.

Conclusion on Article 17: The employer's wage freeze proposal is NOT ADOPTED. The union's proposals are ACCEPTED IN PART and REJECTED IN PART, as follows:

A. The union's proposals for general wage increases in 2014, 2015 and 2016 are ADOPTED WITH MODIFICATION, and Appendix A referred to in Section 17.1 shall be amended as follows:

> Effective January 1, ((~~2012~~)) **2014**, all classifications listed in Appendix A will be increased ((~~3.28% which is 80% of the percentage increase in the CPI-W, U.S. City Average measured from June 2010 to June 2011~~)) **by two percent (2%). The employer shall promptly make retroactive payments to all present or former bargaining unit employees for their time worked during calendar year 2014.**
>
> Effective January 1, ((~~2013~~)) **2015**, all classifications listed in Appendix A will be increased ((~~by 80% of the percentage increase in the CPI-W, U.S. City Average measured from June 2011 to June 2012~~)) **by two percent (2%). The employer shall include this wage increase in the wage payments made to bargaining unit employees in the month of January 2015, or may make a retroactive payments to all present or former bargaining unit employees no later than the end of February 2015 for their time worked during January 2015.**

Effective January 1, 2016, all classifications listed in Appendix A will be increased by two percent (2%).

B. The union's proposal to increase the educational incentive is NOT ADOPTED, and Section 17.5 of the 2012-2013 contract shall be retained in the parties' next contract without change.

Article 18 – Shift Work

The Executive Director's letter initiating this proceeding listed Article 18 – Shift Work among the issues certified the issues for interest arbitration. No proposal to amend Article 18 was found in the materials submitted by the parties prior to the interest arbitration hearing.

Conclusion on Article 18: Article 18 of the 2012-2013 contract shall be retained in the parties' next contract without change.

Article 19 – Bill of Rights

No issue was certified for interest arbitration, so Article 19 of the 2012-2013 contract shall be retained in the parties' next contract without change.

Article 20 –Duration of Agreement

The Executive Director's letter initiating this proceeding listed Article 20 – Duration of Agreement among the issues certified for interest arbitration. The language in the 2012-2013 collective bargaining agreement included:

> ARTICLE 20 – DURATION OF AGREEMENT
> This agreement … *shall continue in effect from year to year hereafter* unless either party gives notice in writing at least sixty (60) days prior to any expiration or modification date ….

2012-2013 collective bargaining agreement [emphasis by *italics* supplied]. The proposals submitted by the employer and union in advance of the interest arbitration hearing simply changed the starting and ending dates to provide for a three-year collective bargaining agreement covering 2014, 2015 and 2016. At the outset of the interest arbitration hearing, the parties confirmed their agreement on a three-year contract covering 2014, 2015 and 2015.

While preparing this interest arbitration award, the Arbitrator noted that Article 20 of the 2012-2013 collective bargaining agreement contained – and both parties proposed to retain – a clause that could arguably nullify the entire contract under RCW 41.56.070, as follows:

> **RCW 41.56.070 Election to ascertain bargaining representative.**
> In the event the commission elects to conduct an election …. Where there is a valid collective bargaining agreement in effect, no question of representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement. *Any agreement which contains a provision for automatic renewal or extension of the agreement shall not be a valid agreement* ….

Revised Code of Washington [emphasis by *italics* supplied]. The notice period in Article 20 of the 2012-2013 contract conflicts with the statutory timetable set forth in RCW 41.56.440.

During his tenure as Executive Director of the Public Employment Relations Commission, the undersigned Arbitrator was well aware of the RCW 41.56.070 language prohibiting automatic renewal or extension provisions in collective bargaining agreements negotiated under Chapter

41.56 RCW. Some practitioners argued that the language quoted with emphasis above only applies to administration of the contract bar provision within RCW 41.56.070, but the statute did not expressly say that. Since noting the language in Article 20, the Arbitrator has confirmed the continued existence of the *"shall not be a valid agreement"* from the Office of the Code Revisor website. A search of Public Employment Relation Commission decisions failed to disclose any authoritative interpretation limiting application of the *"shall not be a valid agreement"* language in RCW 41.56.070. Out of an abundance of caution, and not wanting to participate in creating a nullity, the Arbitrator strikes the automatic renewal/ extension language from Article 20.

Conclusion on Article 20: Article 20 of the 2012-2013 contract shall be amended to read as follows:

> ARTICLE 20 – DURATION OF AGREEMENT
>
> This agreement shall be in full force and effect from January 1, ((~~2012~~)) **2014**, to and including December 31, ((~~2013~~)) **2016.** ((~~, and shall continue in effect from year to year hereafter unless either party gives notice in writing at least sixty (60) days prior to any expiration or modification date of its desire to terminate or modify such agreement.~~))

Appendix B – Uniform and Equipment List

No issue was certified for interest arbitration, so Appendix B of the 2012-2013 contract shall be retained in the parties' next contract without change.

Appendix C – Family Leave

No issue was certified for interest arbitration, so Appendix C of the 2012-2013 contract shall be retained in the parties' next contract without change.

Submission of Interest Arbitration Award

In conformity with WAC 391-55-245, a copy of this interest arbitration award is being submitted to the Executive Director of the Public Employment Relations Commission.

Expenses of Interest Arbitration Proceeding

In conformity with WAC 391-55-255, each party was obligated to pay the expenses of presenting its own case and the expenses and any fees of its witnesses at the interest arbitration hearing. Under the same rule, each party is obligated to pay one half of the fees and expenses of the neutral chairperson, and these parties are being billed in equal shares for the fees and traveling expense of the undersigned Arbitrator for his services in this proceeding.

ISSUED at Olympia, Washington, on the 9th day of January, 2015.

MARVIN L. SCHURKE, ARBITRATOR,
serving as Neutral Chairman under RCW
41.56.450 and WAC 391-55-210 (1) or (3)

ATTACHMENT 1 - ANALYSIS OF VACATIONS COMPARABILITY

Years of Service Completed	Cowlitz Vacation Hours per year	Cowlitz Bonus Hours per year	Cowlitz Total Hours per year	Benton County Vacation Hours per year	Grant County Vacation Hours per year	Grays Harbor County Vacation Hours per year	Lewis County Vacation Hours per year	Skagit County Vacation Hours per year	Comparables Average Vacation Hours per year	Cowlitz + / - from comps average	Cowlitz % from comps average	Union Proposal Hours per year	Union Proposed Change +/- Hours	Union Proposed Change %	Union Proposal +/- from comps	Union Proposal % from comps
1	96	8	104	120	96	96	96	80	97.6	6.4	7%	96	-8	-8%	-1.60	-2%
2	96	16	112	120	104	104	104	80	102.4	9.6	9%	96	-16	***-14%***	-6.4	-6%
3	96	32	128	120	120	112	112	88	110.4	17.6	***16%***	126	-2	-2%	15.6	***14%***
4	96	32	128	120	120	120	112	120	118.4	9.6	8%	126	-2	-2%	7.6	6%
5	96	40	136	120	136	128	120	120	124.8	11.2	9%	138	2	1%	13.2	***11%***
6	96	40	136	144	136	136	120	120	131.2	4.8	4%	138	2	1%	6.8	5%
7	96	40	136	144	136	144	136	120	136.0	0	0%	138	2	1%	2	1%
8	96	40	136	144	136	152	136	120	137.6	-1.6	-1%	138	2	1%	0.4	0%
9	96	40	136	144	136	160	144	120	140.8	-4.8	-3%	138	2	1%	-2.8	-2%
10	96	48	144	144	152	168	156	120	148.0	-4	-3%	162	18	***13%***	14	9%
11	96	56	152	180	152	176	164	128	160.0	-8	-5%	162	10	7%	2	1%
12	96	64	160	180	152	184	164	136	163.2	-3.2	-2%	162	2	1%	-1.2	-1%
13	96	64	160	180	152	192	172	144	168.0	-8	-5%	162	2	1%	-6	-4%
14	96	72	168	180	152	200	180	152	172.8	-4.8	-3%	168	0	0%	-4.8	-3%
15	96	72	168	180	176	208	180	160	180.8	-12.8	-7%	168	0	0%	-12.8	-7%
16	96	80	176	198	176	216	180	168	187.6	-11.6	-6%	180	4	2%	-7.6	-4%
17	96	80	176	198	176	216	180	168	187.6	-11.6	-6%	180	4	2%	-7.6	-4%
18	96	88	184	198	176	216	180	168	187.6	-3.6	-2%	192	8	4%	4.4	2%
19	96	88	184	198	176	216	180	168	187.6	-3.6	-2%	192	8	4%	4.4	2%
20	96	88	184	216	176	216	180	176	192.8	-8.8	-5%	192	8	4%	-0.8	0%
21	96	88	184	216	176	216	180	184	194.4	-10.4	-5%	204	20	***11%***	9.6	5%
22	96	88	184	216	176	216	180	192	196.0	-12	-6%	204	20	***11%***	8	4%
23	96	88	184	216	176	216	180	200	197.6	-13.6	-7%	204	20	***11%***	6.4	3%
24	96	88	184	216	176	216	180	200	197.6	-13.6	-7%	204	20	***11%***	6.4	3%
25	96	88	184	216	176	216	180	200	197.6	-13.6	-7%	204	20	***11%***	6.4	3%
26	96	88	184	216	176	216	180	200	197.6	-13.6	-7%	216	32	***17%***	18.4	9%
27	96	88	184	216	176	216	180	200	197.6	-13.6	-7%	216	32	***17%***	18.4	9%
28	96	88	184	216	176	216	180	200	197.6	-13.6	-7%	216	32	***17%***	18.4	9%
29	96	88	184	216	176	216	180	200	197.6	-13.6	-7%	216	32	***17%***	18.4	9%
30	96	88	184	216	176	216	180	200	197.6	-13.6	-7%	240	56	***30%***	42.4	***21%***
31	96	88	184	216	176	216	180	200	197.6	-13.6	-7%	240	56	***30%***	42.4	***21%***
32	96	88	184	216	176	216	180	200	197.6	-13.6	-7%	240	56	***30%***	42.4	***21%***
Years to Maximum Vacation Accrual:			18	20	15	16	14	23	17.6	0.4	2%	30	12	***67%***	12.4	***70%***
Maximum Vacation Accumulation:			248	240	240	240	240	240	240	8	3%	248	0	0%	8	3%

Color code: Cowlitz more than avg. comps | Cowlitz less than avg. comps

Cowlitz >10% more than comps | ***Cowlitz >10% behind comps***

ATTACHMENT 3 - ANALYSIS OF WAGE COMPARABILITY

Year / Criteria	US - All Cities CPI	Cowlitz Starting Rate	Cowlitz 61 mos. Rate	Cowlitz Maximum Rate	Benton County 61-mos. Rate	Grant County 61 mos. Rate	Grays Harbor Cty 61 mos. Rate	Lewis County 61 mos. Rate	Skagit County 61 mos. Rate	Average of Compar-ables	Cowlitz $ / -$ from average of comps	Cowlitz % from average of comps
Percent Change Analysis					CBA term:	2013-2017	2012-2014	2014-2016	2014-2015	2012-2014		
2011 -> 2012 %	**4.1%**	**3.28%**	**3.28%**	**3.28%**	*No data*	**2%**	*No data*	*No data*	**0%**	*1.0%*		*2.28%*
2012 -> 2013 %	**1.6%**	**1.28%**	**1.28%**	**1.28%**	**3%**	**1%**	*No data*	*No data*	**2%**	*2.0%*		*-0.72%*
2013 -> 2014 ER %	**1.8%**	**0%**	**0%**	**0%**	**3%**	**2.5%**	**2%**	**2%**	**2%**	*2.3%*		*-2.30%*
2013 -> 2014 UN %	**1.8%**	**3%**	**3%**	**3%**	**3%**	**2.5%**	**2%**	**2%**	**2%**	*2.3%*		*0.7%*
2014 Arbitration %	**1.8%**	**2%**	**2%**	**2%**	**3.0%**	**2.5%**	**2%**	**2%**	**2%**	*2.3%*		*-0.3%*
2014 -> 2015 ER %		**0%**	**0%**	**0%**	**3%**	*1.44%*	**2%**	**2%**	*1.44%*	*2.0%*		*-1.98%*
2014 -> 2015 UN %		**3%**	**3%**	**3%**	**3%**	*1.44%*	**2%**	**2%**	*1.44%*	*2.0%*		*1.0%*
2015 Arbitration %		**2%**	**2%**	**2%**	**3%**	*1.44%*	**2%**	**2%**	*1.44%*	*2.0%*		*0.0%*
2015 -> 2016 ER %		0%	0%	0%	*Open*	*Open*	**2%**	*Open*	*Open*	*2.0%*		*-2.00%*
2015 -> 2016 UN %		3.5%	3.5%	3.5%	*Open*	*Open*	**2%**	*Open*	*Open*	*2.0%*		*1.5%*
2016 Arbitration %		**2%**	**2%**	**2%**	*Open*	*Open*	**2%**	*Open*	*Open*	*2.0%*		*0.0%*
Pay Rates Analysis					CBA term:	2013-2017	2012-2014	2014-2016	2014-2015	2012-2014		
Source:		*Computed*	*Computed*	*Computed*	*No data*	*Computed*	*No data*	*No data*	**Ex10 18.1**			
2011 Wages		*$4,350*	*$4,952*	*$5,543*	No data	*$4,897*	*No data*	*No data*	**$5,135**	*$5,016*	*($65)*	*-1%*
Source:		**Exhibit 2**	**Exhibit 2**	**Exhibit 2**	*Computed*	**Ex 7 Adm A**	*No data*	*No data*	**Ex10 18.1**			
2012 Wages		**$4,493**	**$5,114**	**$5,725**	*$5,667*	**$4,995**	*No data*	*No data*	**$5,135**	*$5,266*	*($152)*	*-2.9%*
Source:		**Exhibit 2**	**Exhibit 2**	**Exhibit 2**	**Ex 6 Page 46**	**Ex 7 Adm A**	*Computed*	*Computed*	**Ex10 4518A**			
2013 Wages		**$4,551**	**$5,179**	**$5,798**	**$5,837**	$5,045	$5,328	$4,958	**$5,238**	*$5,281*	*($102)*	*-1.9%*
Source:		**Ex. 3 & 4**	**Ex. 3 & 4**	**Ex. 3 & 4**	**Ex 6 29.3**	**Ex 7 Adm A**	**Ex. 8 15.1**	**Ex 9 16.1**	**Ex10 4518A**			
2014 ER Proposal		**$4,551**	**$5,179**	**$5,798**	**$6,012**	**$5,171**	**$5,435**	**$5,057**	**$5,343**	*$5,404*	*($224)*	*-4%*
2014 UN Proposal		**$4,687**	**$5,335**	**$5,972**	**$6,012**	**$5,171**	**$5,435**	**$5,057**	**$5,343**	*$5,404*	*($69)*	*-1.3%*
2014 Arbitration		**$4,642**	**$5,283**	**$5,914**	**$6,012**	**$5,171**	**$5,435**	**$5,057**	**$5,343**	*$5,404*	*($121)*	*-2.2%*
Source:		**Ex. 3 & 4**	**Ex. 3 & 4**	**Ex. 3 & 4**	**Ex 6 29.4**	*Est 80% CPI*	**Ex. 8 15.2**	**Ex 9 16.2**	*Est 80% CPI*			
2015 ER Proposal		**$4,551**	**$5,179**	**$5,798**	$6,192	*$5,245*	**$5,544**	**$5,158**	*$5,420*	*$5,512*	*($333)*	*-6%*
2015 UN Proposal		**$4,828**	**$5,495**	**$6,151**	$6,192	*$5,245*	**$5,544**	**$5,158**	*$5,420*	*$5,512*	*($17)*	*-0.3%*
2015 Arbitration		**$4,734**	**$5,389**	**$6,033**	**$6,192**	*$5,245*	**$5,544**	**$5,158**	*$5,420*	*$5,512*	*($123)*	*-2.2%*
Source:		**Ex. 3 & 4**	**Ex. 3 & 4**	**Ex. 3 & 4**	*No data*	*No data*	**Ex. 8 15.3**	*No data*	*No data*			
2016 ER Proposal		**$4,551**	**$5,179**	**$5,798**	*Open*	*Open*	**$5,655**	*Open*	*Open*	*$5,655*	*($476)*	*-8%*
2016 UN Proposal		**$4,997**	**$5,687**	**$6,367**	*Open*	*Open*	**$5,655**	*Open*	*Open*	*$5,655*	*$32*	*0.6%*
2016 Arbitration		**$4,829**	**$5,496**	**$6,153**	*Open*	*Open*	**$5,655**	*Open*	*Open*	*$5,655*	*($159)*	*-2.8%*

SYMBOLS: *Computations & estimates in italics* ; **Contract data in bold**

Cowlitz more than avg. comps

Cowlitz less than avg. comps