IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN	)	**OPINION AND AWARD**
KING COUNTY	)	**Interest Arbitration: 2005-07 Agreement, Transit Design and Construction Staff Unit**
and	)	
TECHNICAL EMPLOYEES ASSOCIATION	)	**Date: December 23, 2008**

OPINION OF THE NEUTRAL CHAIRMAN

Neutral Chairman

Michael H. Beck

Arbitration Panel

King County: Gretchen Herbison
Technical Employees Association: Kenneth B. Madden

Counsel

King County: Otto G. Klein, III
Technical Employees Association: James M. Cline

KING COUNTY

and

TECHNICAL EMPLOYEES ASSOCIATION

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OPINION OF THE NEUTRAL CHAIRMAN

PROCEDURAL MATTERS

The Arbitration Panel was selected pursuant to RCW 41.56.450 to resolve various issues that the parties were unable to resolve through collective bargaining with respect to the 2005-07 Collective Bargaining Agreement, hereinafter referred to as the Agreement. The Arbitration Panel member selected by King County is Gretchen Herbison, Labor Negotiator, Labor Relations. The Arbitration Panel member selected by the Technical Employees Association was Rebecca Lederer. Ms. Lederer served as an Arbitration Panel member for the first five days of hearing but was replaced thereafter by Kenneth B. Madden, Project Manager and Secretary of the Technical Employees Association, for the final two days of hearing. The Neutral Chairman is Michael H. Beck. The Employer, King County, also referred to as the County, was represented by Otto G. Klein, III of the law firm Summit Law Group, PLLC. The Union, Technical Employees Association, also

referred to as TEA, was represented by James M. Cline of the law firm Cline & Associates.

A hearing in this matter was held at Seattle, Washington on April 14 – 18, May 21, and July 1, 2008. At the hearing the testimony of witnesses was taken under oath and the parties presented substantial documentary evidence. The parties did not provide for a court reporter and, therefore, there is no transcript of the proceedings. The parties filed simultaneous posthearing briefs which were timely postmarked and received in the office of the Arbitrator on September 10, 2008. The parties waived the provision of RCW 41.56.450 requiring the Neutral Chairman to issue a decision within 30 days following the conclusion of the hearing.

The Arbitration Panel met on November 12, 2008 and discussed the case. Furthermore, your Neutral Chairman provided the other two Panel members with a draft decision dated December 8, 2008. In response, I received comments by e-mail from both Ms. Herbison and Mr. Madden, which I carefully considered prior to issuing this Opinion and Award. Additionally, the panel members exchanged numerous e-mails regarding this case between late October, 2008 and the date of the draft decision.

RCW 41.56.492 provides for the application of the uniformed personnel collective bargaining provisions to employees of public passenger transportation systems. The parties agree that they are subject to the provisions of RCW 41.56.492, which provides that the Arbitration Panel "shall be mindful of the legislative purpose enumerated in RCW 41.56.430. . . ." RCW 41.56.430 provides that:

> [T]heir 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.

Furthermore, RCW 41.56.492 provides that the Arbitration Panel shall take into consideration:

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

BACKGROUND

As of year end 2007, the bargaining unit consisted of 65 employees employed in the Transit Design and Construction Section of the Transit Division of King County.

Employees in the Transit Design and Construction Section (Transit) are involved in designing and constructing various transit facilities including park-and-rides, transit centers, and parking structures, as well as expansion and renovation of transit bases. Bargaining unit employees are also involved in security and lighting improvements, as well as transit oriented development projects. The work requires skilled employees including Designers, Engineers, Project Managers, Project Control Engineers, Permit and Right-of-Way Specialists, Environmental Planners, Construction Inspectors and Resident Engineers, as well as Administrative Specialists.

The parties agree that the term of the Collective Bargaining Agreement which is subject to the interest arbitration here shall run from January 1, 2005 through December 31, 2007. This Agreement will be the second Collective Bargaining Agreement between the parties regarding the Transit Design and Construction bargaining unit. The first Collective Bargaining Agreement, hereinafter referred to as the 2002-04 Agreement, provided a 2004 top step wage for 37 classifications. These classifications are divided among various classification series, including Administrative, Business and Finance, Project/Program Managers, Real Property Agents, Construction Managers, Designers, Engineers, as well as several others. The 2002-04 Agreement was resolved through Interest Arbitration before Arbitrator Howell L. Lankford.

THE PARTIES' PROPOSALS REGARDING ARTICLE 17 – WAGE RATES

A. The Union's Proposal

The Union proposes the following:

1. Effective January 1, 2005 the pay for all classifications in the bargaining unit shall be increased at the top step of the range by six and one-half percent (6.5%) except that the following eleven classifications shall receive a raise as follows:

   Project and Program Managers: 39.19% (4 classifications, I – IV)

   Business Finance Officer I and II 10.98% (2 classifications)

   Real Property Agent II 8.08%

   Real Property Agent III 8.08%

   Real Property Agent IV 8.08% (parity with SPM I)

Senior [Special] Project Manager I – 2005 rate at $41.48 per hour

Senior [Special] Project Manager II – 2005 rate at $43.50 per hour

2. Effective January 1, 2006 the pay for all classifications in the bargaining shall be increased across the board by a percentage equal to 90% of the increase in the Seattle CPI Index from June to June with a minimum increase of 2% and a maximum increase of 6% plus an additional 1%.
3. Effective January 1, 2007 the pay of all classifications in the bargaining unit shall be increased across the board by a percentage equal to 90% of the increase in the Seattle CPI Index from June to June with a minimum increase of 2% and a maximum increase of 6% plus an additional 1%.[1]

The Union also proposes several changes to Section 17.6. First, the Union proposes that existing County employees promoted into bargaining unit positions shall be placed at a step providing a rate of pay no less than 10% above their previous rate of pay as opposed to the present 5%. Secondly, the Union proposes that upon satisfactory completion of a six month probationary period, regular employees shall receive a 5% increase. Presently, employees completing a six month probationary period are advanced to Step 2 if the current rate of that employee is Step 1. This would amount to an increase of approximately 2.5%. Furthermore, presently a one step increase for completion of probation for regular employees at Step 2 or above is permissive and may be given at the discretion of the Employer.

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[1] With respect to the Union's Seattle CPI Index proposal, the Union does not indicate whether it seeks to rely on the Seattle Index for all Urban Consumers (Seattle CPI-U) or the Seattle Index for Urban Wage Earners and Clerical Workers (CPI-W). However, a review of the evidence in the record indicates that the Union intends that the index to be employed for 2006 and 2007 is the Seattle CPI-W. Additionally, the Union's proposal does not indicate which years it intends to be compared. However, my review of the record indicates that it is the Union's intent that the 2006 wage rate be based on a comparison between June 2004 and June 2005. With respect to the 2007 wage rate, the record indicates that it is the Union's intent that the comparison be between June 2005 and June 2006.

Finally, at Section 17.6 the Union proposes a change in language, which, along with its proposal to add new language to Section 17.3 of the 2002-04 Agreement, would result in a change in the way merit pay would be handled. The specifics of this proposal will be described and discussed later in this Opinion.

B. The Employer's Proposal

The Employer proposes a separate wage rate for each classification in the bargaining unit. In selecting the applicable wage rate, the Employer looked to what other employees performing similar work at King County received as a wage rate. In particular, the Employer relied on wages received by staff employees in the Wastewater Treatment Division of the County's Department of Natural Resources and Parks. The State of Washington does not provide interest arbitration for these employees. Staff employees in the Wastewater Treatment Division (Wastewater) work on projects regarding pollution control. In the Employer's view, all but three classifications of employees in Transit have counterpart employees working in Wastewater.[2]

King County has a wage rate table, referred to as the Squared Table, which lists 99 pay ranges on the vertical axis. The Squared Table also has 10 Steps on the horizontal axis. Presently, the Transit staff bargaining unit employees are not on the squared table. The Employer's proposal for 2005 is to place each individual classification on the Squared Table at a range and step as close as possible to each employee's current pay

[2] The three classifications at Transit which do not, in the Employer's view, have a similar classification at Wastewater are: Database Administrator – Senior, Database Administrator – Journey, and Transit Environmental Planner. There are only three incumbents in these three positions; two Transit Environmental Planners and one Database Administrator – Journey. (The LAN Administrator – Senior position was removed from the bargaining unit in May of 2007.)

without providing a decrease in salary. This will result in a minimum of 2.19% increase for each employee as the Squared Table rates were raised by this amount for 2005 over 2004. However, a number of bargaining unit employees earned a wage which was higher than the highest wage rate available on the Squared Table. The number of these employees is not set forth in the record. The Employer's proposal includes a system of what the Employer refers to as Y-rating. A Y-rated employee receives a lump sum payment equal to the cost of living increases proposed by the Employer for the Squared Table during each of the three years of the Agreement here.

The Employer's proposal setting forth the Squared Table range and wage rate for each classification in the bargaining unit is contained at Employer Exhibit A-1. Of the 44 classifications listed in the Employer's wage proposal for 2005, only 19 had an employee working in that position at the end of 2007. (See Employer Exhibit D-2.) At Employer Exhibit D-3, the Employer computed the average percent change to top of the pay range between 2004 and 2005 based on its proposal, weighted by the number of incumbents in each classification. That figure came to 5.04%.[3]

The Employer proposes that effective January 1, 2006 the pay for all classifications in the bargaining unit shall be increased by a percentage equal to 90% of the increase in the CPI-W All Cities Index from September to September with a minimum increase of 2% and a maximum increase of 6%.

The Employer proposes that effective January 1, 2007 the pay for all classifications in the bargaining unit shall be increased by a percentage equal to 90% of

[3] The record does not contain the number of incumbents per classification for any time period other than "year end 2007." (Employer Exhibit D-2.) However, Employer Exhibit D-3 indicates there were 20 classifications which had incumbents in 2005 without listing the number per classification. The additional classification listed as having incumbents in 2005 is the Special Project Manager II.

the increase in the CPI-W All Cites Index from September to September with a minimum increase of 2% and a maximum increase of 6%.[4]

Since the cost of living figure resulting from each parties' proposals are now available, I am able to provide a chart showing the average percentage differences between the Employer and Union proposals for each of the three years of the Agreement.

KING COUNTY AND TEA PROPOSED INCREASES

YEAR	KING COUNTY	TEA
2005	5.04%[A]	6.50%[B]
2006	4.66%[C]	3.08%[D]
2007	2.00%[E]	5.16%[F]
TOTAL	**11.70%[G]**	**14.74%**

[A] Weighted by number of incumbent in each classification.
[B] Average increase of each classification excluding Union proposed additional increases above 6.5% for 11 classification.
[C] 90% of U.S. All Cities CPI-W September 2005 compared to September 2004.
[D] 90% of Seattle CPI-W June 2005 compared to June 2004, plus 1%.
[E] 90% of U.S. All Cities CPI-W September 2006 compared to September 2005 is less than the 2% minimum.
[F] 90% of Seattle CPI-W January 2006 compared to June 2005, plus 1%.
[G] Totals do not take into account the effect of compounding.

THE COMPARABLES AND THE CLASSIFICATION MATCHES

The parties stipulated to four comparable jurisdictions. These comparators are the City of Bellevue, the City of Seattle, the Port of Seattle, and Sound Transit. The parties also stipulated that there were job matches for 18 of the 44 classifications listed in the Employer's proposal.

Although the Employer based its wage proposal on its view of internal equity, the Employer also compared King County with the four stipulated comparables in order to

[4] The Employer proposal does not indicate which years it is using in comparing the index for September to September. The evidence in the record indicates that for the year 2006 the Employer used the years September 2004 to September 2005 and for the year 2007 the Employer used the years 2005 to 2006.

"confirm that these wages were in line with the outside labor market." (Employer brief, pg. 11.) In this regard, the Employer did present exhibits regarding the 18 matched job classifications as well as five others.[5] These exhibits indicate that pursuant to the Employer's proposal, only three of the 23 job classifications at King County will receive a lower top step wage rate in 2005 than was received at the top step in the four comparators in 2005.[6] I note that with respect to Construction Manager I – VI and Designer II – V, the Employer used as a fifth comparator what it contends is a comparable position at Wastewater.

The Employer did not calculate the overall average difference taking into account all 23 classifications. I made this calculation using each of the 23 average differences presented in the Employer exhibits and found that King County was 7.14% higher than the comparators in 2005, assuming implementation of the Employer's proposal.

The Union also presented a substantial amount of evidence regarding comparisons between King County and the four comparable jurisdictions. The exhibit the Union requests that the Arbitrator "most rely upon" (Union brief, pg. 54) is Union Exhibit No. 231. This exhibit indicates that in 2005 the comparators top step wage was 11.04% ahead of the 2004 top step wage at King County. In making this comparison, the Union used the 18 matched classifications and one additional classification, the Administrative Specialist II. The Union also concluded that the comparators provided a higher top step

[5] The five others are: Administrative Specialist I, II and II and Construction Manager V and VI.

[6] See Exhibits D-12, D-16, D-20, D-23, D-24, D-25, D-26 and D-27.

rate in 2005 than did King County in 2004 with respect to 18 of the 19 classifications[7] surveyed in Union Exhibit No. 231.

To summarize, the Union compared the comparators in 2005 to King County in 2004 and came up with a difference of 11.04%. The Employer, on the other hand, compared comparators in 2005 to King County in 2005 and that comparison indicates that on average King County was 7.14% higher than the comparators. Clearly, this difference between the Employer and the Union cannot be explained by the 5.04% incumbent weighted increase proposed by the Employer for 2005.[8] Rather the difference is related to the manner in which the parties determined to make the comparison between King County and the comparators. In order to understand this difference, it is necessary to consider the Howell Lankford Interest Arbitration Award referenced previously in this Opinion.

THE HOWELL LANKFORD INTEREST ARBITRATION AWARD

The Howell Lankford Interest Arbitration Award, hereinafter referred to as the Lankford Decision, was issued January 31, 2005. The Lankford Decision resolved numerous issues with respect to the parties' first Collective Bargaining Agreement, namely the 2002-04 Agreement. The many issues the parties placed before Arbitrator Lankford can be broken down into three broad categories as they relate to the issues that must be confronted here. First, the extent to which it is appropriate for an interest arbitrator to rely on internal equity in resolving the issue of wages. The second issue,

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[7] The one exception was Business and Finance Officer III.

[8] Nor can this difference be explained by the small number of additional classifications beyond the 18 matched classifications used by the Employer and the Union in their comparisons.

relates to the methodology to be used in comparing King County to the comparators. Finally, there is the question of which cost of living (CPI) index is appropriate to consider regarding the second two years of the Agreement.

Six days of hearing were held before Arbitrator Lankford. Additionally, Arbitrator Lankford stated that the record in his case ran to 17 volumes, or about eight linear feet. Arbitrator Lankford wrote a 48 page, single spaced, decision in which he dealt comprehensively with the issues before him. Additionally, Arbitrator Lankford had two active Panel members as well as a labor/ management committee, which also assisted Arbitrator Lankford in resolving various issues.

The parties have determined to re-litigate may of the issues presented to Arbitrator Lankford. In fact, the hearing before me lasted seven days and 10 volumes of evidence were placed in the record, consisting of approximately four linear feet. Both the Employer and the Union in their briefs explained the importance of your Arbitrator following the determinations of Arbitrator Lankford with respect to certain issues, but not as to other issues.

When one arbitrator resolves various issues with respect to a collective bargaining agreement, and then another arbitrator is asked to resolve many of those same issues with respect to a successor contract, it is clearly appropriate for the second arbitrator to resolve those issues in the same manner as did the first arbitrator. Certainly, one of the benefits the parties receive from an interest arbitration decision is the guidance it provides with respect to resolving a successor collective bargaining agreement. Thus, it is appropriate to place the burden of establishing the appropriateness of ruling differently regarding an issue raised in a successor contract interest arbitration, which had previously been

decided in a predecessor contract interest arbitration, on the party seeking a different result.

The purpose of an interest arbitration is not only to resolve issues regarding the particular collective bargaining agreement before the interest arbitrator, but to provide the parties with guidance with respect to bargaining future collective bargaining agreements. Your Arbitrator would be abusing the arbitration process if he were to conduct a *de novo* hearing with respect to each and every issue either party wanted to re-litigate. Here, after a prior interest arbitration lasting six day and containing a voluminous record, the parties are back before another arbitrator raising many issues previously decided by Arbitrator Lankford.

In view of all of the foregoing, I have determined to follow Arbitrator Lankford's resolution of all of the issues raised by the parties here with two exceptions, namely, merit pay and use of King County as a comparator.

INTERNAL EQUITY AND THE SQUARED TABLE

As indicated previously in this Opinion, the Employer seeks to have your Arbitrator rule that it is appropriate for bargaining unit wages to be determined by considerations of Employer internal equity. If the Employer's position were adopted, your Arbitrator would look to similar classifications within the County and compare the wage of those employees to that of the bargaining unit here. In particular, the Employer contends that the classifications in the staff Wastewater unit are, for the most part, similar to the bargaining unit classifications and these classifications should be looked at by the Arbitrator in particular. Thus, it is the Employer's position that your Arbitrator should

attempt a classification by classification comparison between bargaining unit classifications and Wastewater classifications and other relevant classifications within the County.

The Union, instead, seeks an across-the-board percentage increase with additional increases for eleven classifications the Union contends are below the market rate.

Arbitrator Lankford dealt extensively in his decision with these very same contentions. In this regard, Arbitrator Lankford set forth the parties' contentions as follows:

> The County—in lieu of its fondest hope of completely integrating this bargaining unit into the general classification and pay schemes for the general County workforce—proposes at least a class-by-class analysis, giving extreme weight to the County itself as a comparable. The County particularly urges this approach for those employees who have duties and responsibilities which are quite similar to large numbers of other County employees. For example, the County points out that the clerical employees in this wall-to-wall unit are physically stationed among other County employees doing essentially the identical work but organized into other bargaining units. Doing the same work, the County argues, certainly should result in getting the same pay. The Association, on the other hand, proposes a common, across-the-board approach to compensation, pointing out that PERC has conclusively determined that this is a single bargaining unit. (Lankford Decision, pg. 39.)

Arbitrator Lankford concludes that the class-by-class analysis proposed by the County is not a practical possibility even on the voluminous record before him. Arbitrator Lankford does recognize that with respect to clerical employees, the Employer's argument might be compelling if the record provided a basis for the analysis it required. Arbitrator Lankford then goes on to point out that the record before him included volumes of job descriptions, and thus it was "theoretically possible" to make a determination of exactly which bargaining unit classes corresponded to a County classification. However, Arbitrator Lankford warned against the difficulty of trying to

match classifications "on paper," pointing out the potential for error between such paper matching and the work employees in each classification involved actually performed. In this regard, Lankford stated that both of the party appointed members of the Arbitration Panel urged him to avoid "an over-reliance on such paper matching." (Lankford Decision, pg. 39-40.)

Lankford then went on with the assistance of the Labor/Management Committee to compare three bargaining unit classification series with similar classifications in the comparators Lankford had selected. Those classification series were Engineers, Construction Managers, and Designers.

In the instant case, the parties have provided the Arbitrator with a stipulation regarding job matches which includes these three classification series along with four other classifications. Based on all of the foregoing, I find that it is appropriate to consider the stipulated matched classifications in making comparisons between the bargaining unit and the comparable jurisdictions.

The Union opposes the Employer's request that bargaining unit employees be placed on the Squared Table. This same request was made to Arbitrator Lankford. In discussing this matter, Arbitrator Lankford pointed to the COLA formula that the County uses in connection with the Squared Table, namely 90% of the increase in the All-City CPI Index. Lankford then cited a study of King County's wage rates versus the market, prepared by David Gaba of the Employer's Labor Relation's Department in 2002. Lankford asserts that Gaba concluded that King County will:

> . . . fall behind the market over time *as interest arbitral units, free of those constraints, [the County COLA formula] have not done.*
> (Lankford Decision, pgs. 23-24.)

In this regard, I note that Mr. Gaba in his study concluded as follows:

> King County's compensation structure presently ensures that both new hires and long-term employees will consistently receive less than the market rate salary. (Union Exhibit No. 346, pg. 26.)

Lankford pointed out that an interest arbitrable bargaining unit must be paid at the market wage rate and, therefore, it cannot be forced into a compensation system that cannot keep pace with the market. Lankford concluded as follows:

> No matter how sympathetic I may be with the County's desire for administrative consistency, it would be contrary to the spirit of the statute, and contrary to the goal of maintaining general comparability, to place these employees on the County's squared table. (Lankford Decision, pg. 24.)

Based on all of the foregoing, I must deny the Employer's request that the bargaining unit employees be placed on the Squared Table.

THE LANKFORD METHODOLOGY

A. Broadband v. Steps

The Union challenges Arbitrator Lankford's determination of this issue.

Of the four stipulated comparators, Seattle and Bellevue have compensation systems like that of King County in that all three use a traditional step system. However, Port of Seattle and Sound Transit have what is referred to as a broadband System. Under a broadband system a broad range is established with a minimum, mid-point and maximum wage rate. In commenting on a broadband system, Arbitrator Lankford stated:

> One of the claimed virtues of the broadband system is that the center of the band should move up so that employees seldom, if ever, actually reach the top of the band. In order to function that way, broadbands

> must *be* broad, just as the name suggests, i.e. the stretch between the bottom and the top of the band must be relatively great. (Lankford Decision, pg. 37.)

The percentage difference between the top of the range and the bottom of the range in a jurisdiction which uses a broadband system, such as Port of Seattle and Sound Transit, is significantly greater than in a jurisdiction which uses a traditional step system, such as is the case in King County, Seattle, and Bellevue. Because of this difference, Arbitrator Lankford concluded that while it was appropriate for purposes of comparison to compare the top step wage rate in Seattle, Bellevue, and King County, the appropriate wage rate to use at Port of Seattle and Sound Transit was the wage paid to the highest paid incumbent in each of the classifications being compared.

The Union takes the position that I should use the top range wage rate at both Port of Seattle and Sound Transit. I have carefully reviewed the evidence provided by the Union in this case, and conclude that circumstances have not changed significantly so as to justify any change in the methodology used by Arbitrator Lankford in connection with comparing broadband systems and traditional step systems.

B. Snapshot Date

The Union challenges Arbitrator Lankford's determination of this issue.

The record indicates that in a broadband system employees often receive an increase on their anniversary date. Thus, pay increases will occur throughout the year. The Union contends that in making comparisons between King County and the comparable jurisdictions, it is improper to pick a snapshot date, such as January 1, since to do so ignores the increases occurring after January 1 at comparators with broadband

systems. Arbitrator Lankford used the January 1 date in making his comparisons. The Union has not provided evidence sufficient to convince your Arbitrator that Arbitrator Lankford's determination should be abandoned.

C. The Workweek

The Union challenges Arbitrator Lankford's determination of this issue.

Port of Seattle employees have a 37.5 hour work week while bargaining unit employees at King County, as well as the employees at the other comparators, have a 40 hour work week. The Union points out that on an annual basis this means that employees at the Port of Seattle work 130 hours less than their counterparts at King County and at the comparators. Thus, the Union contends that comparisons must be made on an hourly basis reflecting the lesser number of hours worked by employees at Port of Seattle. This issue was also presented by the Union before Arbitrator Lankford who refused to grant the Union's request, stating that to do so would require him to:

> . . . convert the stated annual rate—i.e. the rate which the Port states as the compensation for those employees—into an hourly rate (by dividing it by the annualized hours for a 37.5 hour week) and then multiplying it by the annualized hours for a 40 hour week. In short, the adjustment would add not quite 7% to the Port of Seattle numbers. That proposed correction is not justified here, particularly considering that most of these employees are FLSA exempt as professional employees and professional employees are not, generally, held closely to the clock. (Lankford Decision, pg. 42.)

Based on the foregoing, the Union's proposal is rejected.

D. City of Seattle/City Light

In its brief, the Employer makes the following statement:

> While the County was not in agreement with all of the Lankford methodology, it concluded that the benefit of consistency in analysis from negotiation to negotiation is more important, and has relied upon Lankford's methodology in this proceeding. (Employer Brief, pg. 15.)

In spite of this statement, the Employer determined not to follow the Lankford methodology regarding the treatment of Seattle and an agency of Seattle, namely, Seattle City Light. With respect to the Engineer IV and Engineer V classifications, the parties agree there is a classification match at both Seattle and Seattle City Light. The Employer would have your Arbitrator consider both Seattle and Seattle City Light matches in comparing the wages of the comparators with the Engineer IV and Engineer V classifications. The Union, on the other hand, asks your Arbitrator to follow the Lankford methodology with respect to Seattle and Seattle City Light. Arbitrator Lankford recognized that Seattle, City Light was an agency or division of Seattle and, therefore, found that the proper top step match is the higher paid match between Seattle and Seattle City Light.

The Employer has not provided either evidence or a rationale sufficient to convince your Arbitrator that the Lankford methodology should be abandoned in this instance.

E. Weighted Average

The Employer also challenges Arbitrator Lankford's determination of this issue.

In making the comparisons between the bargaining unit and the comparators, Arbitrator Lankford compared wages in the comparators as of 1/1/03 with the wage rate of the selected bargaining unit classifications and came up with an average difference.

Arbitrator Lankford rejected the County's contention that the averaging should be weighted to reflect how many County employees are currently in each of the classifications involved. Arbitrator Lankford noted that neither party proposed to do a weighted average with respect to the comparators. Thus, Arbitrator Lankford concluded that a proper market analysis involved averaging employers and not employees with respect to the comparators. Therefore, Arbitrator Lankford found it "hard to justify averaging employees—i.e. a 'weighted' average approach—when it comes to the final step of the analysis." (Lankford Decision, pgs. 41-42.)

Based on the foregoing, a weighted average for comparison purposes is not appropriate.

F. Two Exceptions to the Lankford Methodology

1. Merit Pay

Bargaining unit employees are eligible to receive merit pay of 5% above the top step of their pay schedule provided the employee meets certain conditions. The employee must receive an outstanding rating for each of two years after an employee reaches his or her top step. Once the employee secures the two consecutive years of an outstanding rating merit pay is granted. Thereafter, an employee must continue to maintain two consecutive years of an outstanding rating in order to continue to receive merit pay. Once an employee loses the right to merit pay because the employee did not maintain the outstanding rating, the employee must then wait two more years and receive outstanding ratings before being eligible for merit pay.

Arbitrator Lankford treated merit pay essentially as a bonus for longevity and, in effect, created what he described as a "merit step." (Lankford Decision, pg. 44.)

In making his decision regarding merit pay, Arbitrator Lankford pointed to the fact that of 74 employees in the bargaining unit, 33 were receiving merit pay and only one employee who had been eligible for merit pay had failed to receive it.[9]

The Union objects to considering merit pay as an automatic step in the salary schedule for purposes of comparing King County top step pay to the comparators. The Union further contends that the practice pursuant to which merit pay is paid allows the Employer discretion as to whether or not to grant merit pay. It is not, the Union contends, an automatic step in the salary schedule progression. This fact is recognized by the parties as Section 17.6 presently provides that:

> An employee at the top of his or her schedule shall be eligible for merit increases according to the existing practice. (Union Exhibit No. 3.)

Existing practice, as I have described it above, is clearly discretionary.

The Union objects to the fact that merit pay was automatically credited to bargaining unit employees as the top step by Arbitrator Lankford while the Employer maintains discretion as to whether to provide merit pay. Thus, the Union contends, that if merit pay is to be considered as an automatic top step in the pay schedule, then it ought to be treated as such and added to the pay schedule. Therefore, the Union has proposed that:

> Effective January 1, 2005 the merit pay step shall be become automatic and shall be added to the top of the existing pay range. (Union Exhibit No. 3.)

[9] In 2005, 4 employees out of 39 eligible employees did not receive merit pay. The numbers for 2006 were 3 out of 38 and for 2007 the numbers were 6 out of 46 eligible employees did not receive merit pay.

The Union points out that the comparators provide specialty pays beyond the basic wage rate. Thus, Bellevue has a performance bonus, Sound Transit has performance awards, the Port of Seattle provides for Employer matched deferred compensation, and Seattle provides substantial overtime. The Union points out that Lankford did not take into account these specialty pays when computing the wage rate for the comparators, although he did take into account the merit pay at King County. The only specialty pay Lankford recognized in his decision was the performance awards at Sound Transit and, as indicated above, he did not include these in computing the wage rate for comparable classifications at Sound Transit.

I also note that the Employer provides a specialty pay in the form of executive leave to employees who are exempt from the overtime provisions of the FLSA of at least three days on an annual basis. Also, Section 10.8 of the 2002-04 Agreement does provide that FLSA exempt employees are eligible for up 10 days of executive leave annually but this is at the discretion of the Employer. Furthermore, I note that one of the proposals of the Union is that Section 10.8 be changed so as to provide that FLSA exempt employees shall receive 10 days of executive annually instead of three.

I agree with the Union that these specialty pays should be considered in a separate category and not as part of the top step base wage.

2. King County as a Comparator

Both parties presented Arbitrator Lankford with numerous possible comparators. Lankford chose as comparators Bellevue, Port of Seattle, Seattle, and Sound Transit. He

also included as a fifth comparator King County with respect to two classification series, namely Construction Managers and Designers. Lankford did not explain in his decision why he chose to include King County itself as a comparator nor why he limited those comparisons to the Construction Manager and Designer classification series.

Here, unlike the situation before Arbitrator Lankford, the parties have stipulated to the four comparators to be considered by the Arbitrator. The parties' stipulation in this regard is set forth below:

> 1. The parties stipulate and agree that the only public sector comparables/comparators[10] that should be used by Arbitrator Beck in the forthcoming interest arbitration are: the City of Seattle, the Port of Seattle, the City of Bellevue, and Sound Transit.
>
> 2. The parties agree that they shall not submit evidence in the forthcoming interest arbitration hearing that would encourage the arbitrator to eliminate, modify, or add to the list of public sector comparables/comparators. (Union Exhibit No. 8.)

Based on all of the foregoing, I have not considered King County as a comparator.

KING COUNTY V. THE COMPARATORS

There are 18 matched classifications, but only 12 of them had at least one incumbent at the end of 2007. I have followed the approach used by Arbitrator Lankford and, therefore, have only compared bargaining unit classifications to the comparators for those bargaining unit classifications where there was a least one incumbent. Thus, although there are 18 agreed upon matches, only 12 of those King County classifications had at least one incumbent. Arbitrator Lankford pointed out that within the classifications he used in making his market analysis, there were 55 incumbents out of a

[10] Neither party has proposed any private sector comparators.

total bargaining unit of 74 employees, which was 74% of the bargaining unit. In the case before me, there are 65 employees in the bargaining unit and the 12 classifications include 50 employees, which is 77% of the bargaining unit.

In the parties' stipulation regarding job matches, the parties recognized that there were three disputed matches. In this regard, paragraph six of the stipulation provides as follows:

> **6.** For the positions listed as disputed the parties will propose the following job matches:
>
> **a. TEA Construction Manager IV/City of Seattle.** The County will propose matching Civil Engineer Specialist Supervisor at Seattle as a match for TEA Construction Manager IV position. TEA will propose that there is no match at the City of Seattle for TEA Construction Manager IV.
>
> **b. TEA Engineer IV/Sound Transit.** The County will propose matching Civil Engineer at Sound Transit as a match for TEA Engineer IV position. TEA will propose matching Sr. Civil Engineer at Sound Transit as a match for TEA Engineer IV.
>
> **c. TEA Engineer V/Sound Transit.** The County will propose matching Sr. Civil Engineer at Sound Transit as a match for TEA Engineer V position. TEA will propose there is no match at Sound Transit for Engineer V. (Employer Exhibit D-8.)

Paul Miller, an Engineer IV, testified on behalf of the Union. He testified that he was involved in working on job matches both with respect to the prior agreement and in connection with the current agreement. It was his undisputed testimony that the parties agreed to consider job matches by using minimum qualifications for each classification involved. This testimony is consistent with Arbitrator Lankford's decision regarding the manner in which Arbitrator Lankford distinguished between bargaining unit engineers and engineers working in other County bargaining units.

I have carefully reviewed the minimum qualifications for the three disputed positions and find as follows:

1. TEA Construction Manager IV/City of Seattle: No match.[11]
2. TEA Engineer IV/Sound Transit: Civil Engineer.
3. TEA Engineer V/Sound Transit: No match.

With respect to the Engineer IV and Engineer V classifications, the Seattle City Light match has a higher rate than the Seattle match and, therefore, I have used the Seattle City Light wage rate for Electrical Power Systems Engineer with respect to the Engineer IV and the wage rate for Electrical Power Systems Engineer – Principal with respect to the Engineer V.

A review of the chart indicates that with respect to the relevant wage comparisons the comparators were on average 5.58% above the bargaining unit members. Based on the foregoing I shall order the 5.58% increase for bargaining unit members effective January 1, 2005.

(See Chart on the Following Page – 24A)

[11] This determination results in there being no match with an incumbent at any of the comparators. Therefore, there are 11 instead of 12 matched classifications with at least one incumbent. The Construction Manager IV had five incumbents. With no match for Construction Manager IV, the number of incumbents at King County in a matched classification is reduced to 45 (50-5=45). Forty-five incumbents out of a bargaining unit of 65 results in 69% of the bargaining unit included in the 11 matched classifications with incumbents. Thus, the comparisons here include well over two-thirds of the bargaining unit.

WAGE COMPARISONS: THE COMPARATORS AND KING COUNTY

(Dollar figures shown are rounded to the nearest dollar.)

TEA Position Exhibit D-3	Exhibit	Bellevue		Seattle/ City Light		Port of Seattle		Sound Transit		Comparator Average 1/1/05	King County Top Step 2004	Comparable Average v King County
Business Finance Officer III	D-24	Sr. Finance Admin.	$ 69,264	Sr. Finance Admin.	$67,137	Sr. Finance Analyst	New Position 2006	No Match		$68,201	$67,434	$ 767
Construction Mgr. III	D-14	Sr. Const. Project Inspect.	$ 69,264	Civil Engn. Spec.Sr.	$73,029	Sr. Inspect.	$63,502	No Match		$68,598	$67,413	$ 1,185
Construction Mgr. IV	D-14	No Match		Disputed No Match		Asst. Resident Engn.	No Incumbent	No Match		N/A	N/A[A]	N/A
Database Admin. Journey	D-25	IT Data-base Admin.	$ 80,376	IT Profess. C	$75,982	No Match		IT Project Mgr.	No Incumbent 2005	$78,179	$64,106	$14,073
Designer IV	D-18	No Match		Civil Engn. Sp. Sr.	$73,029	Engn. Design Tech.	New Position 2007	No Match		$73,029	$57,886	$15,143
Designer V	D-18	Sr. Engn. Tech.	$ 69,264	Civil Engn. Sp. Sup.	$76,440	Engn. Design Tech Sr.	$61,734	No Match		$69,146	$64,106	$ 5,040
Engineer III	D-10	Sr. Engn. Transit	$ 84,456	No Match		Design Engn.	$68,119	No Match		$76,288	$75,920	$ 368
Engineer IV	D-10	Sr. Engn. Utility	$ 84,456	Elec. Power Sys. Engn.	$83,566	Sr. Design Engn.	$84,843	Disputed Civil Engn. $81,909		$83,694	$84,011	($ 317)
Engineer V	D-10	Engn. Super.	$ 93,264	Elec. Power Sys.Engn	$88,059	Engn. Design Coord.	$92,780	Disputed No Match		$91,368	$88,358	$ 3,010
Engineer VI	D-10	Engn. Mngr.	$102,996	Mngr. II	$93,387	2005 No Match		No Match		$98,192	$92,955	$ 5,237
Environmental Planner	D-26	Sr. Land Use Profes.	$ 80,371	Sr. Environ. Analyst	$72,405	Environ. Mgrmt Sp. 2	$63,125	Environ. Planner	$62,145	$69,512	$75,920	($ 6,408)
Real Prop. Agent III	D-27	Sr. Real Prop. Mngr.	$80,376	Sr. Real Prop. Agent	$67,808	Sr. Prop. Mngr.	$77,957	Sr. Real Prop. Agent	$85,643	$77,946	$70, 886	$ 7,060
										$854,153	$808,995	$45,158
												5.58%

[A] King County Top Step 2004 is $79,830. However, it has not been included above as there is no comparator average

THE UNION'S SEPARATE PROPOSAL FOR HIGHER THAN THE AVERAGE RATE INCREASES FOR ELEVEN CLASSIFICATIONS

I have determined that none of these 11 Union proposed increases should be granted. First of all, I note that seven of the 11 classifications had no incumbents in 2004 and by the end of 2007, eight of the 11 classifications had no incumbents. Secondly, the only one of the 11 classifications that has a job match at any of the comparators is the Real Property Agent III, making this classification the only classification for which a wage comparison can be properly completed by your Arbitrator. While it is true that, as the chart entitled, "Wage Comparisons: The Comparators and King County," at page 24A above, indicates the Real Property Agent III is approximately 10% behind the comparator average as of 1/1/05 ($77,946 compared to $70,886). There are two other job matched classifications that are considerably further behind the comparator average and yet the Union does not seek a raise for these classifications. These two classifications are the Designer IV which is 26.2% behind the average of the comparators ($73,029 compared to $57,886) and the Database Administrator – Journey which is 22.0% behind the comparator average ($78,179 compared to $64, 106).

The Union recognizes that Arbitrator Lankford reviewed the comparator average wage rate, compared it to the wage rate of King County, and provided an increase across-the-board to all bargaining unit members. This is the same approach I have used here. In its brief, the Union comments that this approach is very equitable and that it did the least damage to existing pay structures. The Union goes on to point out that the County proposal here is similar to its proposal before Arbitrator Lankford, namely that it based

its wage offer on considerations of internal equity. The Union then goes on to state the following in its brief:

> TEA sets forth a vastly different internal equity argument. For TEA the predominant internal equity issue is that *within* the bargaining unit. This is especially true because the team nature of the workgroup makes across the board increases more acceptable. It is also true because in the complex collective bargaining environment, TEA's intrabargaining unit discussion and debates require far more scrutiny to disparate wage adjustments than that which occurs in (sic.) within a King County labor bureaucracy. . . .
>
> TEA believes the existing internal parity relationships are fair and reasonable and ought to not be tampered with but for a few exceptions. Principally those exceptions include some cases where the County is proposing an increase greater than the standard across the board increase put forward by TEA. In those unique circumstances, TEA acquiesces to the proposal on a notion that it should not respond to the County proposal in a way that would harm the interests of individual members. (Union brief, pg. 61.)

I certainly understand the Union's concern that none of its members receive less in wages than they would have received had the Employer proposal been accepted by the Union. However, the Union simply cannot have it both ways. Either the Union wants to preserve, in its own words, "the existing internal parity relationships" or it is willing to sacrifice those relationships in order to make sure that a final settlement will not result in any bargaining unit member receiving less in wages than proposed by the Employer.

In view of the foregoing, the Union's proposal is rejected.

UNION PROPOSED CHANGES TO SECTIONS 17.6 AND 17.3

With respect to the Union proposals regarding the promotion of County employees into the unit, and the Union's proposal regarding employees who complete a six month probationary period, I find that the Union has not presented evidence sufficient to require a change in these provisions.

With respect to the Union's proposal regarding merit pay, the Union would eliminate the last section of 17.6 which provides:

> An employee at the top of his or her schedule shall be eligible for merit increases according to the existing practice.

That practice was described previously in the Opinion. Additionally, the Union would add the following language at Section 17.3:

> Effective January 1, 2005 the merit pay step shall become automatic and shall be added to the top of the existing pay range.

In view of my determination not to include merit pay as an automatic step in the salary progression, it would be inconsistent to grant this proposal. The Union recognizes this as it indicates in its brief that it is making this proposal because if the merit increases are to be considered an automatic step in the wage schedule, then there should be language reflecting this fact. However, since I have determined not to consider the merit increase as the top step in the wage schedule, it would be inappropriate to award the Union proposal.

2006 AND 2007 WAGE INCREASES

The question of whether the Seattle CPI Index or U.S. All Cities Index should be used in considering the percentage increase for the second and third years of the 2002-2004 Agreement was litigated before Arbitrator Lankford. Lankford decided that the appropriate index was the Seattle CPI. The Union contended before Arbitrator Lankford that wage increases should be based on 100% of the CPI, but Lankford adopted the Employer's position and ordered that any increase be based on 90% of the CPI. As I

understand it, both parties proposed a 2% minimum but only the Employer proposed what Arbitrator Lankford found to be the "traditional 6% cap." (Lankford Decision, pg. 31.) Lankford ordered the 6% cap.

Here the Union proposes 90% of the Seattle CPI Index with a minimum of 2% and a cap of 6% plus an additional 1%. The Union does not explicitly indicate in its brief the rational for this additional 1%. However, it appears to be based on a conclusion reached by Arbitrator Lankford, based on the Gaba study, that the U.S. All Cities CPI Index has trailed the Seattle CPI Index by an average of almost 1% from 1990 through 2000, thereby causing King County employees to lag behind local comparators whose CPI increases were pegged to the Seattle CPI Index.

I note that Arbitrator Lankford provided bargaining unit employees with market adjustment in the first year of the 2002-04 Agreement and then provided cost of living increases in the second and third year of the 2002-2004 Agreement based on 90% of the Seattle CPI Index. I will also award the bargaining unit members a market based adjustment for the first year of the Agreement here, and then an increase based on 90% of the Seattle CPI Index for the second and third years of that Agreement with a minimum of 2% and a cap of 6%.

Based on all of the foregoing, I shall not award the additional 1% above the CPI sought by the Union.

ABILITY TO PAY

RCW 41.56.492 does require that the Arbitration Panel take into consideration fiscal constraints upon the public employer.

The Employer placed in evidence an exhibit (Employer Exhibit No. 56) which sets forth the cost of the King County proposal and the cost of the TEA proposal. It is not entirely clear whether this exhibit includes costs beyond the Union's base wage proposal, such as the cost of the Union's proposals regarding standby pay and technological call-out pay. The total difference in cost set forth on Employer Exhibit No. 56 is $646,863.69. The Employer, in its brief, says that the TEA proposal will "cost the County an additional $650,000 over the course of the three years of the contract," citing Employer Exhibit 56. (Employer brief, pg. 30.)

The Union has not provided cost figures for its proposal. In view of the foregoing, I have determined that the cost difference between the Union's proposal and the Employer's proposal is approximately $650,000. The actual amount I shall award will be significantly less. The general wage increase I shall award effective January 1, 2005 of 5.58% is almost 1% less than the 6.5% the Union sought. Furthermore, I shall not award any of the increases above 6.5% that the Union sought for 11 classifications. Additionally, the cost of living increases I shall award for 2006 and 2007 will also be significantly less than the Union proposes, since I shall not award the additional 1% above the amount indicated by 90% of the Seattle CPI, sought by the Union.

While it does appear that there may well be some financial pressure on the Employer's general fund, and even the Enterprise Fund which supports the Transit Division, during the current recession, the evidence does not indicate that during the period of this Agreement, 2005-2007, the fiscal restraints upon the Employer were such that it could not have funded the increase I shall award. In fact, sales tax collection, which is the major source of revenue for the Transit Division, increased significantly year

over year in 2005, 2006 and 2007. Furthermore, fare box revenues, which account for most of the rest of Enterprise Fund revenue, also increased year over year in 2005, 2006, and 2007.

It is unfortunate for the bargaining unit members that they went for three years without a raise. In the interim, the Employer has had the use of those monies. Now the Employer must make it a priority to provide the funding necessary to pay for the wage increases resulting from the state mandated interest arbitration procedure. The amount in question here is a very small percentage of the revenues generated through the portion of the sales tax revenues dedicated to transit and the fare box collections. Based on all the foregoing, I find that the statutory factor of fiscal constraint does not require a reduction in the increase I shall award the bargaining unit members.

ADDITIONAL PROPOSALS

A. Section 7.2 – Personal Holidays

Presently Section 7.2 provides that employees shall receive two personal holidays which are to be administered through the vacation plan. Section 7.2 further provides that one of those two days shall accrue on the first of October and the other shall accrue on the first of November of each year. The Union proposes that both holidays shall accrue on January 1. The Employer opposes any change to contract language.

Interest arbitrators generally place the burden on the party seeking to change contract language to establish the appropriateness of such a change. The only rational presented by the Union for its proposed change is that an employee who leaves prior to October 1 will lose both floating holidays and that an employee who leaves after

October 1 but before November 1 will lose one personal holiday. However, as Kerry Delaney, Human Resources Senior Manager testified these personal floating holidays came about at King County as a result of changing the Columbus Day holiday to a personal floating holiday and changing the Election Day holiday to a personal floating holiday both of which can now be used in the same manner as vacation. Additionally, the vast majority of King County employees receive personal holidays in the same manner as is presently the case with respect to the bargaining unit here.

Internal equity is a factor which is "normally or traditionally taken into consideration" by interest arbitrators (RCW 41.56.492). Considerations of internal equity are most relevant with respect to benefits which affect most or all of a public employer's workforce, such as is the case here. Additionally, I note that the Union does not allege that a majority of comparators provide personal floating holidays in the manner proposed by the Union here.

Based on all of the foregoing, the Union's proposal is rejected.

B. Section 8.12 – Vacation Leave Sell Back

The Union proposes new language which would provide that on December 31 of each year an employee may elect to cash in up to two weeks of unused vacation and that accrued vacation in excess of 480 hours shall be cashed out. The Employer opposes any change to current contract language.

The vacation leave sell back provision is not available to the majority of County employees. Furthermore, such a benefit is not provided by a majority of the comparators.

Based on all of the foregoing, the Union's proposal is rejected.

C. Section 9.6 – Sick Leave Cash Out

Presently an employee with at least five years of service who retires as a result of length of service is entitled to be paid an amount equal to 35% of his or her unused accumulated sick leave. The Union's proposal would change this so that an employee who separates from County employment after five years of service but does not retire would be entitled to the same sick leave cash out benefit. The Employer opposes any change in current contract language.

The vast majority of County employees are not entitled to the benefit proposed by the Union. In fact, none of the 14 bargaining units within the Department of Transportation receive the benefit proposed by the Union. Furthermore, the Union's proposal is not supported by a majority of the comparators.

Based upon all of the foregoing, the Union's proposal is rejected.

D. Section 10.8 – Executive Leave

Presently employees who are exempt from overtime provisions of the FLSA are eligible to receive up to 10 days of executive leave annually and are entitled to receive three days of executive leave annually. The Union proposes that FLSA exempt employees shall be entitled to receive 10 days of executive leave annually. The Employer opposes any change to current contract language.

The Union did not point to any group of County employees who receive 10 days of executive leave, and a review of the comparables indicates that a majority of the comparables do not have a provision similar to that requested by the Union here.

Based on all of the foregoing, the Union's proposal is rejected.

E. Section 11.8 – Standby Time and Section 11.9 – Technological Callout

The Union proposes the following new language:

11.8 Standby Time.
11.8.1 Non-FLSA Standby

An employee is on standby time during the period that the employee is required to be available to respond to emergency calls, and when necessary, return immediately to work. Employees who are required to be on stand by shall be entitled to "standby time" pay. Employees are considered to be on standby time until officially released. Stand by time shall not be considered hours worked for the purpose of overtime computation. An employee shall not be considered to be on standby time while being paid for call time. Employees on stand by time shall receive, at the employee's option, either ten percent (10%) of their regular base pay for such standby time, or compensatory time off equivalent to ten per cent (10%) of such standby time.

When an employee is required to return to work while on standby duty, the standby pay shall be discontinued for the actual hours on work duty and overtime compensation shall be provided in accordance with section _____ of this Agreement.

11.8.2 FLSA Standby

Employees subject to standby conditions requiring them to be ready to report immediately under conditions which would constitute work under the FLSA shall be compensated at a rate of pay equal to thirty-three percent (33%) of their regular rate of pay. Such time shall be considered hours worked for the purpose of overtime computation.

11.9 Technological Callout

A Technological Callout (TCO) occurs when an employee is called to return to duty and perform duties via telephone, facsimile, computer or similar electronic device that does not require returning to a designated work site. If the time required responding to the TCO exceeds nine (9) minutes, than a minimum of thirty (30) minutes pay at the overtime rate shall be given. If the time exceeds thirty (30) minutes (or aggregate time of multiple TCO's exceeds thirty (30) minutes), then a minimum of one (1) hour of pay at the overtime rate shall be given. Any TCO or aggregate TCO's exceeding one (1) hour shall be compensated for at the overtime rate for all actual time worked. (Union Exhibit No. 3, pgs. 32-3.)

As the Employer points out in its brief these proposals are confusing. It is not clear how these proposals would be applied to exempt employees and then separately to non-exempt employees. Under County policy a non-exempt employee that has their time restricted so as to have that time be considered "hours worked" pursuant to the FLSA would be paid for that time at the applicable rate. With respect to exempt employees, they are expected as part of their duties to be available at times beyond a 40 hour workweek. That is, the monthly salary of FLSA exempt employees necessarily includes a component for answering telephone calls at home. Furthermore, to the extent that there are a large number of calls to be answered by an employee, that employee is eligible for additional executive leave beyond the guaranteed three days of executive leave.

The Union has not identified any Employer bargaining unit or workgroup that receives standby or technological callout pay. I also note that the Union indicates in its brief that employees are rarely required to engage in work pursuant to which they would be eligible for either standby or technological callout pay pursuant to the Union's proposal. Finally, the manner in which standby and/or technological callout pay is handled at the comparators was not described by any witness at the hearing.

Based on all of the foregoing, the Union's proposals are rejected.

F. Article 15 – Medical, Dental and Life Plan

Presently Article 15 provides:

> During wide-open enrollment at the end of 2004, benefit eligible employees will move, effective January 1, 2005, to the County-wide benefit program described in Addendum A to this Agreement. Employees shall remain in the County-wide benefit program through the end of 2005.

Addendum A to this Agreement is not attached to the Union proposal, Union Exhibit No. 3.

The Employer and the Union are party to a Memorandum of Agreement regarding health benefits covering all four TEA represented bargaining units. The Memorandum of Agreement provides in relevant part as follows:

> Whereas, the parties have bargained in good faith regarding health insurance benefits for 2006, the parties hereby agree as follows:
>
> **1.** The health care plans in effect for 2005 will be offered for 2006. Specifically, there will be three medical plans – the KingCare Basic, the KingCare Preferred and the Group Health plans that will be offered to all benefit-eligible employees under the terms set forth in this agreement.
>
> During the bargaining for successor agreements covering all four TEA-represented bargaining units, the County will offer these same or substantially similar plans as well as the opportunity to participate in the wellness assessment and individual action plan portion of the Healthy Incentives[SM] Program. As soon as practicable after a ratified contract or an interest arbitration award, employees will be placed on the new benefit plans at the level earned in 2006 as set forth in Paragraph 17. Pending placement into the appropriate level, employees will remain on a substantially similar plan to the health plans currently in effect.
>
> **2.** Effective February 18, 2006, benefit-eligible employees will begin participating in the Healthy Incentives[SM] Program to determine their out-of-pocket expense levels for 2007 as provided in Paragraph 17 of this Agreement. Effective January 1, 2007, benefit eligible employees will participate in the program to determine their out-of-pocket expense levels for 2008. In 2008, benefit-eligible employees will participate in the program to determine their out-of-pocket expense levels for 2009.
>
> * * *
>
> **14. Total Agreement**
>
> This Memorandum of Agreement comprises the entire Agreement of the parties with respect to the matters covered herein, and no agreement, statement or promise made by any party that is not included within this memorandum shall be binding or valid. This Agreement may be modified or amended only by a written amendment executed by all parties hereto. The parties agree that this is part of overall bargaining on successor agreements. TEA does not agree by this Agreement to be placed on the benefit plans until and unless there is an agreement or an award to that effect. However, TEA does agree to the contours of the plans and the

> eligibility requirements set forth herein. This Agreement may not be used as evidence at any interest arbitration that TEA has accepted placement on the plan.
> (Employer Exhibit F-9.)

The Union on behalf of the bargaining unit here does not want to be part of the Healthy Incentives Program and instead proposes that the bargaining unit be covered by the benefit program described in Addendum A for the duration of the 2005-07 Agreement.

The three other TEA represented units have accepted the Healthy Incentives Program. Additionally, all non-represented employees are on the Healthy Incentives Program as well as all other bargaining units with the exception of the King County Sheriffs who are represented by the Police Officers Guild. Employer labor negotiator David Levin testified that the Healthy Incentives Program is currently being discussed with the Police Officers Guild.

From the foregoing, it is clear that considerations of internal equity require a finding in favor of the Employer's proposal. Therefore, the Employer's Healthy Incentives Program shall be awarded.

G. Section 18.3.2 – Release Time

Presently, this Section provides as follows:

> When it is necessary during a TEA representative's work hours for that representative to participate in County meetings (i.e. investigatory interviews, Labor-management meetings, negotiations, or grievance hearings) the TEA representative shall be on paid time. In no instance shall the release of the TEA representative for this purpose interfere with County operations. Release time shall be permitted for contract negotiations for a total of up to four (4) people to bargain contracts for the two (2) transit TEA bargaining units. (Union Exhibit No. 3.)

The Employer proposes to add the following sentence to Section 18.3.2:

> Other representation activities (i.e. preparation for collective bargaining, preparation for grievance hearings or arbitrations, advice on completing forms or reports requested by the County, etc.) by TEA representatives must be conducted outside of regular work hours. (Employer Exhibit A-1.)

The Union opposes the addition of this new language.

The current language of Section 18.3.2 makes clear that when it is necessary during a TEA representative's work hours for that representative to participate in County meetings such as investigatory interviews, labor-management meetings, negotiations, or grievance hearings the TEA representative shall be on paid time, that is, on release time.

From the foregoing, it is clear, as the Employer points out in its brief, that other time spent on Union business is not subject to release time pursuant to Section 18.3.2. Additionally, HR Senior Manager Kerry Delaney testified that the practice of the parties is consistent with the language of Section 18.3.2. Thus, the Employer proposal makes clear that activities not subject to release time, such as preparation for collective bargaining, grievance hearings, or arbitration as well as advice on completing forms and reports requested by the County are to be conducted outside of regular work hours.

It is true that FLSA exempt employees may perform work outside their regular work hours, also referred to as core hours, but this fact does not entitle such an employee to perform any and all tasks that may relate to union representation within his or her work or core hours. Here the new language proposed by the Employer makes clear what was already the case based on the old language, namely that paid release time during work hours is available to employees who as TEA representatives participate in County

meetings, but that such release time is not available for other union activities. The parties have not negotiated release time for other union activities and, therefore, they are to be performed as they have in the past outside of work hours.

Based on all of the foregoing, I find that it is appropriate to grant the Employer's proposal.

H. Section 18.3.4 – Email, Photocopies, and Faxes

Currently, the Agreement between the parties does not contain a provision regarding email, photocopies and faxes. The Employer proposes a new subsection to Section 18.3 which would provide as follows:

> The Association, its members, and its representatives may not use the County email system for union business, except in a manner consistent with the concept of incidental personal use of the email system, as defined by County policy. The Association understands that the County may monitor employees' email at any time, that it stores email communications, and that such email communications may be subject to public disclosure. The Association will not use the County's photocopy or fax machines. (Employer Exhibit A-1.)

The Union opposes the Employer's proposal. The Union points to a Letter of Agreement between TEA and the County dated April 21, 2005. That Letter of Agreement was signed by Richard S. Hayes, Labor Negotiator II and TEA Second Vice President Dave Crippen. The Letter of Agreement indicates that it was copied to Union counsel Jim Cline, to Transit Division management officials Judy Riley and Chris Egan, and to David Levin, Labor Negotiator II, who has been the lead negotiator with respect to the Agreement before me as well as having served as the Union panel member with respect to the interest arbitration held before Arbitrator Lankford.

The subject matter of the Letter of Agreement is listed as follows:

Equipment Usage for Technical Employees Association – Department of Transportation – Staff and Supervisors

The Letter of Agreement goes on to provide as follows:

> In negotiations for our last collective bargaining agreement, we agreed to execute a side letter relating to minimal usage of County equipment by designated TEA representatives. Set forth below is the language we agreed to:
>
> > The County recognizes that certain minimal use by the union of County equipment and facilities is consistent with County business needs. Employees who are designated by TEA as representatives may make limited use of County telephones, fax machines, copies and similar equipment for the purpose of contract administration. Use of phones or fax machines shall not be for long distance calls. In addition, such employee representatives may use the County electronic email system for communications related to contract administration. Any use of county equipment or facilities must be use which is brief in duration and accumulation, and which does not interfere with or impair the conduct of official county business. The contours of this right are meant to parallel the County policy as regards the use of county telephones for personal calls. The Association understands that any communication sent on County equipment may be monitored by the County to the extent permitted by law. Any communication must adhere to any and all County policies relating to proper communication in the workplace. (Union Exhibit No. 366.)

The Union proposes that the above referenced agreement, beginning with the words "The County recognizes" and ending with the words "in the workplace" be included as a new subsection to Section 18.3 of the Agreement.

The Employer states in its brief that the Letter of Agreement has led to confusion between the parties regarding what is permitted with respect to the use of County equipment for Union business, pointing to a reprimand given to Union President Roger Browne regarding his use of County email. However, I note that Browne works in Wastewater which is not covered by the Letter of Agreement.

The Union points out that if its proposal is accepted, then any disputes regarding the meaning or applicability of this language would be subject to the parties' grievance and arbitration procedures, thereby providing a tested method for resolving any such disputes.

Based on all of the foregoing, I find that it is appropriate to grant the Union's proposal.

AWARD OF THE NEUTRAL CHAIRMAN

The Award of your Neutral Chairman with respect to each of the issues discussed in the attached Opinion is as follows:

I. Article 17 – Wage Rates

A. Effective January 1, 2005 the pay for all classifications in the bargaining unit shall be increased by 5.58%.

B. Effective January 1, 2006 the pay for all classifications in the bargaining unit shall be increased by a percentage equal to 90% of the increase in the Seattle CPI-W June 2004 to June 2005, which amounts to 2.08%.

C. Effective January 1, 2007 the pay for all classifications in the bargaining unit shall be increased by a percentage equal to 90% of the increase in the Seattle CPI-W June 2005 to June 2006, which amounts to 4.16%.

D. The additional wage increases proposed by the Union for 11 classifications are rejected.

E. The Union's proposals regarding: (1) promotion of County employees into the bargaining unit, (2) unit employees who complete a six month

probationary period, and (3) making merit pay an automatic step in the salary schedule are rejected.

II. Additional proposals:

A. Section 7.2 – Personal Holidays

The Union's proposal is rejected.

B. Section 8.12 – Vacation Leave Sell Back

The Union's proposal is rejected.

C. Section 9.6 – Sick Leave Cash Out

The Union's proposal is rejected.

D. Section 10.8 – Executive Leave

The Union's proposal is rejected.

E. Section 11.8 – Standby Time and Section 11.9 – Technological Callout

The Union's proposals are rejected.

F. Article 15 – Medical, Dental, and Life Plan

The Employer proposal is awarded.

G. Section 18.3.2 – Release Time

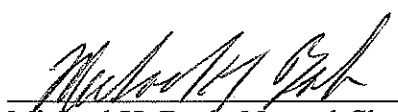
The Employer's proposal is awarded.

H. Section 18.3.4 – Email, photocopies, and faxes

The Union's proposal is awarded.

Dated: December 23, 2008

Seattle, Washington



Michael H. Beck, Neutral Chairman