IN THE MATTER OF THE INTEREST ARBITRATION BETWEEN:

SNOHOMISH COUNTY CORRECTIONS GUILD

and

SNOHOMISH COUNTY, WASHINGTON

PERC CASE NO. 20697-I-06-484

ANALYSIS

AND

AWARD

HEARING SITE: Everett Vehicle Maintenance Facility
3402 McDougall Avenue
Everett, Washington

HEARING DATES: September 24–28, 2007

POST HEARING BRIEFS: November 19, 2007

DATE OF AWARD: December 26, 2007

NEUTRAL ARBITRATOR: William F. Reeves
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PROCEDURAL SUMMARY

An interest arbitration hearing, as provided by RCW 41.56.450, was held in Everett, Washington from September 24 through 28, 2007, between the Snohomish County Corrections Guild ("Guild") and Snohomish County ("County"). The Parties agreed to waive the statutory provision which specifies an arbitration panel consisting of three members. Instead, as authorized by WAC 391-55-200, the Parties agreed to submit the matter to a sole neutral arbitrator. The County was represented by Lawrence B. Hannah of Perkins Coie, LLP, Douglas J. Morrill of the Snohomish County Prosecutor's office, and Steven J. Bladek of the Snohomish County Prosecutor's office. The Guild was represented by Stephen O. Schuback of Garrettson Goldberg Fenrich & Makler, P.C.

At the hearing, witnesses were examined and cross-examined, exhibits introduced, and the Parties presented oral opening statements. Written briefs were submitted, and the record closed on November 19, 2007, upon my receipt of the Parties' electronically filed briefs. A court reporter was present, and I was provided a transcript of the hearing.

The Parties' exhibits and post-hearing briefs provide detailed support for their positions. It is impractical for me to restate and refer to each and every piece of evidence, testimony, and argument presented. However, I have carefully reviewed and evaluated all of the evidence and arguments in accordance with the criteria established by RCW 41.56.465.

BACKGROUND: THE PARTIES AND THEIR RELATIONSHIP

The County Corrections Department ("Department") generally manages the County's detention/correction facilities. The Department's principal function is to detain individuals who have either been sentenced to jail for less than one year or who are awaiting trial and have not been released on bail. By state law, the Country is obligated to provide jail space for all felony arrests

within the County. The jail has minimum, medium and maximum-security facilities. The Department also manages such programs as work release, electronic home detention, and work crews. The jail, located in downtown Everett, consists of two high-rise buildings. The Wall Street building was built in 1986 and has a 505-bed capacity. The Oakes Street building opened in the Spring of 2005, and has a 770-bed capacity. The Department's 2007 operating budget was $37.7 million.

The Department has 367 full-time equivalent positions. Approximately 85 FTEs are part of the Correction Support Services bargaining unit represented by Teamsters 763; another 25 FTEs are part of the Sergeants and Captains bargaining unit which is represented by Teamsters Local 763; another 4 FTEs are part of the Corrections Supervisors bargaining unit which is represented by Teamsters Local 763; and 225 FTEs are part of the Custody and Corrections Officers bargaining unit which is currently represented by the Guild.

As indicated above, Custody and Corrections Officers comprise the bulk of the Department's employees. There are 13 Correction Officers budgeted to work in the Community Corrections Division which provides services to persons in Department facilities or in alternate facilities. There are 212 Custody Officers budgeted to operate the secure detention facilities. Over the course of the last year, an average of somewhere between 197 and 202 Custody Officer positions have been filled.[1] Of these Custody Officers, 22 are assigned to special functions including 19 who serve as Court Transport Officers. Custody Officers are also assigned to work as Control Room Operators and Booking Assistants (positions within the Correction Support Services bargaining unit) when there is an insufficient number of Control Room Operators or Booking Assistants available.

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[1]Director Thompson testified the monthly average was 202. Guild Exhibit 30 indicates about 197.

The Custody and Corrections Officers are directly supervised by members of the Sergeants and Captains bargaining unit. Sergeants are typically promoted from the ranks of Custody and Corrections Officers. Custody and Corrections Officers are the only non-supervisory Department employees who are permitted to carry weapons.

The Oakes Street facility is divided into 12 modules with 64 prisoners per module. Each module has 32 cells (two prisoners per cell), and a secured common area or "pod." During lock down, the prisoners are secured in their cells. When not in lock-down, the prisoners are released into the pod which is in the control of a Custody Officer. The Custody Officer is unarmed and stationed at a desk. In order to leave the pod, the Custody Officer must be relieved by another Custody Officer. Thus, for nature breaks, work breaks, lunch breaks, and at shift-end, the Custody Officer must remain on duty until a relief officer shows up.

Currently Custody Officers working in a pod are relieved once in the morning and once in the afternoon for a 15-minute break. Guild members receive a ½-hour paid lunch for which they are to "remain on the premises and be on call during the meal period." See CBA §5.2.1. Currently, a Custody Officer working in a pod takes lunch at the work station, although the Officer can request a "lunch-warmup." If relief is available, the Officer requesting the lunch-warmup can take enough time away from the pod to heat up his or her lunch. The Officer is still required to eat the meal in the pod.

Custody Officers work a three-shift rotation consisting of 8 hours per shift. Like all jails, the Snohomish jail is a 24/7 operation. The parties have been working under an unsigned MOU which establishes voluntary and mandatory overtime protocols.

The Custody and Corrections Officers' bargaining unit was represented for the preceding 25 years by Teamsters Local 763. The Teamsters/County collective bargaining agreement expired on December 31, 2004, and the Guild and County have been in negotiations, or litigation before

PERC, since March 2005. Inasmuch as this was a "first agreement" between the parties, there was an inclination to embark upon "new" contract language. This inclination gave rise to a substantial number of non-economic issues being addressed in bargaining.

Furthermore, the Parties' were unable to use the grievance/arbitration provisions of the Teamster/County contract because of various PERC rulings and a MOU signed by the parties in 2005. As a result, negotiations were often delayed while disputes were resolved by litigating unfair labor practice complaints ("ULPs") before PERC. In one of the ULPs, PERC ruled that under Washington law, employers are not obligated to provide retroactive wages during the window period of a newly certified bargaining unit, except by means of signing a waiver or *"Christie* Agreement." *See ULP 20177-U-06-5145.* Thus, the Guild's proposal does not contain a request for retroactive wages or a County-paid medical contribution. Furthermore, the Parties' expired labor agreement "capped" the Employer's portion of the medical insurance copay. As a result of the foregoing, the County has paid Guild members the same wage since 2004; and the County's insurance contribution has remained capped since 2003, while some Guild member's monthly medical insurance premium copay has increased $273 per month ($223 to $496 for full family Regence PPO) since December 2004.

Without question, the Parties' relationship was not helped by this three-year wage freeze and a rise in employee insurance copay. Additionally, the Department and the Guild experienced a significant amount of "change" during this period which probably added to the strain on labor relations. For example: a new Department Director in 2003, the replacement of the Teamsters by the Guild as the bargaining unit's representative in 2004–2005; the construction and start-up of the new Oakes Street prison facility in 2004 – 2005; and a larger prison population due to the Department "renting out" 350 to 400 excess cell/bed-space to cities and DOC upon completion of the Oakes Street facility.

In addition to the above, there has clearly been staffing and attendance issues which culminated in May 2007 when Director Thompson issued a moratorium restricting the approval of additional vacation days. Although there is no longer an emergency, problems still remain. Each Party blames the other for the status of the poor labor relations. The County blames the Guild for sick leave abuse, the Guild blames the County for understaffing, and they blame each other for the protracted negotiations. A few of the issues underlying many of the Parties' problems include

- Turnover and Recruitment. Recruitment is an issue for all law enforcement and correction agencies at present. Recruitment was not made any easier by a three-year wage freeze and an rising employee medical-premium copay. The yearly attrition average is approximately 37 Custody Officers, of which about 40% of which are either promotions, retirements, or terminations. *See* Exhibit C-19. As one might expect, about 38% of attrition occurred during the probationary period, and another 11% within the first two years of employment.

- Attendance/Sick Leave use. There appears to be an excessive amount of sick leave use by the officers. Over 50% of the Officers have used more than 90% of their career-accumulated sick leave, and nearly 13% have used more than 99% of their career-accumulated sick leave. Furthermore, in the first six months of 2007, 91 different Custody officers called in sick a total of 341 times when they did not have enough sick leave to cover the day. See Exhibit C-11. Unquestionably, the amount of unscheduled leave use has impacted the need for overtime.

- Staffing levels. There is evidence the Department funds some of its manpower needs through overtime rather than funding additional full-time positions. Additionally, the Department has not run at full staffing levels for a number of years. The shortfall appears to average between 10 and 15 Corrections Officers depending upon which Parties' statistics are correct. In addition, "real" staffing levels are affected by military leave and L&I leave.

- Overtime Policy. Whatever the cause, staffing levels or sick leave usage or both, Correction Officers end up working a lot of overtime. Current voluntary and mandatory overtime is typically taken, or assigned, as back-to back 8-hour shifts. At best, this leaves a maximum of 5 hours of possible sleep before the next shift. Tired workers are not happy workers. Furthermore, direct and anecdotal evidence indicates excessive overtime has caused an increase in the use of sick leave and LWOP.

- Meal Periods. Presently, most Custody Officers take their meals at their workstations where they are subject to interruption. The Officers are paid for their lunch, but contend they should be allowed to eat their lunch in the lunch room subject to call, and not restricted to their workstation.

Many of the above-referenced problems/issues may interact to make each of them greater issues. For example, an increase in sick leave use increases the amount of overtime to cover the "last minute" vacancies. Most of this overtime ends up being mandatory overtime because it is last minute. The increased overtime can put pressures on Correction Officers and their families by interrupting sleep schedules, and interfering with planned after-work activities. Officers may call in "sick" because they are too tired to come to work after a "double." This merely perpetuates the cycle. Furthermore, it may be difficult to determine where the cycle started.

The extent of the Parties' labor relation issues can be seen in the number of grievances filed (297 since 2005), ULPs filed (at least 7 multi-issue ULP's filed since 2005), and issues certified for interest arbitration (83). This is an extremely high number of issues to address in interest arbitration. Fortunately, in the months leading up to the arbitration hearing, the Parties settled many issues. Still, a number of non-economic issues were presented at this interest arbitration.

Interest arbitration is an awkward forum for addressing work-rules let alone general language in an agreement. In this arbitration, in addition to the economic issues of wages and medical benefits, the Parties' proposals address wide-sweeping changes in the definition of overtime, management and employee rights, code of conduct, breaks, meal periods, leave formulae, and overtime protocols. Quite frankly, there is little an arbitrator can do to solve all of the Parties' problems presented in this interest arbitration.

STATEMENT OF ISSUES

On October 12, 2006, PERC certified eighty-three (83) issues for interest arbitration. In early 2007 the Guild switched its legal representative, and in April 2007, Garrettson, Goldberg, Fenrich & Maker began representing the Guild. On May 29, 2007, I was selected as arbitrator. To the Parties' credit, negotiations continued between April 2007 and the arbitration hearing and many of the original 83 disputed issues have been resolved by the parties. The Parties' final proposals revealed the following issues, and sub issues, still in contention:

Issue 1	Article XX	Duration
Issue 2	Article X	Health Insurance
Issue 3	Schedule A	Wages & Longevity
Issue 4	Article V	Meals and Rest Periods *Meal Breaks* *Rest Breaks* *Missed Breaks*
Issue 5	Article V	Overtime *Sick Leave as overtime* *Tiered Overtime* *Voluntary Overtime Protocols* *Mandatary Overtime ("Ratcheting")*
Issue 6	Article IX	Leaves
Issue 7	Article XIII	Discipline *Warning Notices* *Timeline for Notices* *Use of Force Board*
Issue 8	Article XV	Employee Rights and Code of Conduct *Employee Bill of Rights* *Code of Conduct*
Issue 9	Article XVI	Management Rights *Payroll Changes* *Driver's Licence Verification* *Integration Clause* *Subcontracting*

STATUTORY CRITERIA

When certain public employers and their uniformed personnel are unable to agree on new contract terms after negotiation and mediation, RCW 41.56.450 provides for interest arbitration to settle the Parties' dispute. Arbitrators are generally mindful that interest arbitration is an extension of the bargaining process. They recognize those contract provisions to which the Parties agreed and, considering the statutory criteria, decide the remaining issues in a manner which would approximate the result which the Parties would likely have reached in good faith negotiations. *See generally, Kitsap County* (Arbitrator Krebs, 2000); *City of Centralia* (Arbitrator Lumbley, 1997).

Interest arbitrators are required to consider the enumerated legislative purpose of RCW 41.56.430, which provides:

> 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.

Furthermore, interest arbitration panels must consider certain factors or criteria set forth in RCW 41.56.465, which are:

1) a) The constitutional and statutory authority of the employer;
   b) Stipulations of the parties;
   c) The average consumer prices for goods and services, commonly known as the cost of living;
   d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and
   e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment . . . .

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

The Act does not provide guidance as to the relative weight an arbitrator should give to the above-referenced factors. However, there is considerable arbitral authority which analyzes and applies the statutory criteria.[2] The arbitral consensus is that these factors are standards or guidelines which the arbitrator must use to fashion an acceptable and workable bargain. Interest arbitration is not an exact science. However, the arbitrator uses principled reasoning to arrive at a bargain approximating what the parties themselves would have reached if they had continued to bargain with determination and good faith. Thus, the award should reflect the relative bargaining strength of the parties and should not be a mere "compromise" between the parties' positions because such a compromise would favor the party with the more extreme or intransigent position. Parties must not be allowed to view arbitration as a panacea for unrealistic proposals which would never be acceptable in the underlying negotiation process.

County's Constitutional and Statutory Authority

With respect to this statutory factor, I considered the constitutional prohibition of retroactive wages under *Christie v. Port of Olympia*, 27 Wn. 2d 534 (1947), which PERC found relevant to the instant arbitration.

Stipulations

I considered the "tentative agreements" ("TAs") reached by the Parties which will become part of the new contract. These TAs are contained in Exhibit G-5 with the exception of the TA on

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[2]*See generally, City of Kent (*Arbitrator LaCunga, 1980*); City of Seattle (*Arbitrator Snow, 1988*); City of Ellensburg (*Arbitrator Snow, 1992*); City of Pullman (*Arbitrator Axon, 1992*); Kitsap County* (Arbitrator Krebs, 2000); *Whatcom County* (Arbitrator Smith-Gangle, 2001); and *City of Centralia* (Arbitrator Lumbley, 1997).

Training. Regarding the issue of Training, the Parties tentatively agreed to continue the language found in the 2002 – 2004 Teamsters/County agreement.

The CPI and Other Factors

With respect to the cost of living and other traditional factors, I will address these factors where specifically relevant in my discussion of the Parties' proposal or my analysis. In particular, I will discuss the CPI in conjunction with the Parties' proposal on wages. With regard to other factors, I will discuss those factors in conjunction with the Parties' proposals.

Comparables

The employees subject to this interest arbitration are covered by RCW 41.56.030(7)(a) through (d). Accordingly, RCW 41.56.465(2)requires an interest arbitrator to use as a standard or guideline a "comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States." The term "Comparables" is used as a shortcut to identify "like employers of similar size on the west coast of the United States." Once determined, the Comparables provide a principled basis for the arbitrator's reasoning in resolving the impasse. A reasoning, which hopefully, the arbitrator can communicate to the parties.

The Guild proposed using the following four counties as Comparables: Pierce County, Clark County, Multnomah County (Oregon), and Washington County (Oregon). The County proposed the following six Washington state counties: Pierce, Spokane, Clark, Kitsap, Thurston, and Yakima. Of the Parties' proposed Comparables they agree upon only two: Pierce County and Clark County. Accordingly, I find it necessary to determine an appropriate list of Comparables in order to satisfy the statutory requirements.

SELECTION OF COMPARABLES

Introduction

Comparability of wages, hours, and working conditions is generally regarded as the predominant criterion for determining wages in public sector interest arbitration. RCW 41.56.465(2) requires an arbitrator to compare "the wages, hours and conditions of employment of like personnel of like employers of similar size on the west cost of the United States." Thus, the arbitrator is required to make qualitative decisions about work equivalency – an inherently subjective process based upon the evidence and arguments presented by the parties. *See* Bornstein *et. al.*, *Labor and Employment Arbitration*, §48:12 (2nd ed., continuously updated).

Ideally, an arbitrator attempts to select Comparables which have a population and assessed valuation within a reasonable range of the subject jurisdiction. Generally that "range" is considered reasonable if it is at least one-half (50%) of the subject jurisdiction, and not more than half again as large (150%) as the subject jurisdiction. Furthermore, the hope is the Comparables will lie within the subject jurisdiction's local labor market so as to obviate the need to consider geographical differences in wages and cost of living. *See City of Camas* (Wilkinson, 2003) at 12. After the initial screening, it may also be important to consider any distinctive characteristics of a community. For example: A community's proximity to a large urban area can affect wage rates and cost of living; per capita assessed valuation may be indicative of community wealth and cost of living; the size of the operation may be relevant when considering economies of scale; and geographical location (rural vs metro) may be important.

Background – Snohomish County

Snohomish County, Washington stretches from Puget Sound on the West to the crest of the Cascade Mountains on the East. It borders King County on the South and Skagit County to the

North. The County's population is not concentrated around Everett, the county seat, nor is the population evenly distributed. The County's more densely populated areas include Lynnwood, Edmonds, and Mountlake Terrace which are situated just north of the Snohomish/King County line; and Everett, where the jails are located, which is 16 miles north of the County line on the Interstate 5 corridor. Population densities to the North and East of Everett tend to thin out.

Snohomish's 2007 population count is 686,300 which is the third most populous county in Washington – behind King County(1,861,300) and Pierce County (790,500). Snohomish County, along with King and Pierce Counties, comprise the Seattle-Tacoma-Bellevue, WA Metropolitan Statistical Area which has a 2006 estimated population of 3,263,497. Together King and Snohomish Counties comprise the Seattle-Bellevue-Everett, WA Metropolitan Division which has a 2006 estimated population of 2,496,619.[3]

The 2006 Snohomish County Assessed Valuation for 2007 taxes was $84,124,564,644, which is the second highest in Washington – behind King County ($297,126,131,614) and ahead of Pierce County ($78,973,985,728). Parts of these three largest Washington counties (King, Pierce, and Snohomish) make up the "Puget Sound Metropolitan Area" which essentially stretches from Everett in Snohomish County to Olympia in Pierce County.

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[3]Metropolitan Statistical Areas have at least one urbanized area of 50,000 or more population, plus adjacent territory which has a high degree of social and economic integration with the core as measured by commuting ties. If the specified criteria are met, a Metropolitan Statistical Area containing a single core with a population of 2.5 million or more may be subdivided to form smaller groupings of counties referred to as Metropolitan Divisions. While a Metropolitan Division is a subdivision of a larger Metropolitan Statistical Area, it often functions as a distinct social, economic, and cultural area within the larger region. The Seattle-Bellevue-Everett, WA Metropolitan Division is one of only nineteen Metropolitan Divisions in the country. Source: OMB Bulletin No. 07-01 (December 18, 2006).

Snohomish County operates under a County Charter adopted May 1, 1980. It is a Council/Executive form of government with elected officials consisting of a five-member County Council, a County Executive, Assessor, Auditor, Clerk, Prosecutor, Sheriff, and Treasurer.

Snohomish County has approximately 3,000 full-time-equivalent employees ("FTEs"), of which approximately 2,400 are represented by unions or employee associations. In addition to the 212 Corrections and Custody Officers represented by the Guild, AFSCME represents 1,702 employees; Deputy Sheriff's Association (DSA) represents 271 law enforcement through the rank of sergeant; Sheriffs Office Management Team Associations represents 12 lieutenants and Captains in the Sheriffs Office; the IAFF Local 2597 represents the 12 firefighters at Paine Field Airport; Teamsters Local 763 represents 85 Corrections Support Personnel, 4 Corrections Supervisors, 51 Sheriff's Office Support personnel, 25 Sergeants and Captains in the Corrections Department; and the Snohomish County Clerks Association represents 77 employees in the County Clerks Office.

Snohomish County has enjoyed a strong economy with a resulting growth in sales tax revenues; however, the County's portion of sales tax has decreased as local cities annex County lands. This trend is expected to continue. Furthermore, the County's revenues are constrained by property tax increase limitations. Nevertheless the County Council elected to forego a one percent increase in property taxes in 2005, 2006 and 2007. A growing share of the County's budget is being devoted to law enforcement and corrections.

The Parties' Proposals and Positions

The Parties proposed comparables are shown in Table 1. The County's proposed six (6) comparable jurisdictions were derived by the County primarily by referring to Arbitrator Axon's 1996 award which covering the County and the bargaining unit now represented by the Guild. The

County also acknowledged and referenced Arbitrator Wilkinson's very recent award covering the County and the Correction Sergeants and Captains bargaining unit of (hereinafter "*Sergeants* Arbitration"). In the *Sergeants* Arbitration, Arbitrator Wilkinson selected as her comparables four of the six comparables selected by Arbitrator Axon.

Table 1. Proposed Comparables

County	2007 Pop.	Rank*	2007 Pop. as a % of SNO	2006 Assessed Valuation (in 000)	Rank*	AV as a % of SNO	Per Capita Assessed Valuation (in 000)	Rank*
Snohomish	**686,300**	**3**	**100%**	**$84,124,565**	**2**	**100%**	**$123**	**3**
Comparables Proposed by Both City and Guild								
Clark	415,000	6	60%	$42,831,709	5	51%	$103	5
Pierce	790,500	1	115%	$78,973,986	3	94%	$100	6
Comparables Proposed Only By City								
Kitsap°ˇ	244,800	7	36%	$28,579,488	7	34%	$117	4
Spokaneˇ	451,200	5	66%	$31,028,466	6	37%	$69	8
Thurston°ˇ	238,000	8	35%	$23,474,475	8	28%	$99	7
Yakima°ˇ	234,200	9	34%	$12,599,608	9	15%	$54	9
Comparables Proposed Only By Guild								
Multnomah (OR)	701,545	2	102%	$87,156,706	1	104%	$124	2
Washington (OR)	500,585	4	73%	$63,862,044	4	76%	$128	1

*Ranking is relative to all proposed comparables and includes Snohomish County.
°Population is less than 50% of Snohomish County's.
ˇAssessed Valuation is less than 50% of Snohomish County's.

The County argues the "size" of Snohomish County does not lend itself to selection of an ideal set of Comparables because only three other Washington counties fall within the traditional

50%-150% band for both population and assessed valuation.[4] Furthermore, the County argues Snohomish County is unique because its relatively large population is not partly a result of a major city. The largest city in the County is Everett (2007 population 101,800), while the largest city in King County is Seattle (population 586,200), and the largest city in Pierce is Tacoma (population 201,700). The County also contends comparisons with other jurisdictions is difficult because the Department is not part of the Sheriff's Office, and thus is not staffed by Deputies.

According to the County, any resultant set of comparables is of limited efficacy because of the lack of true comparables. Thus, the County contends the most appropriate set of comparables are the six comparables used by Arbitrator Axon in his 1996 arbitration, namely: Clark, Kitsap, Pierce, Spokane, Thurston, and Yakima. These include the four comparables in the *Sergeants* Arbitration (Clark, Kitsap, Pierce, and Spokane).

As to the Guild's proposed comparables, the County contends they should be rejected because the Guild has selected only four comparables, three of which (Washington, Multnomah, and Clark) are tightly centered around Portland, Oregon – a city of over 500,000 people. Furthermore, the County contends the Guild's comparables are inappropriate because Multnomah, Washington, and Clark are small urban counties, whereas Snohomish County is much larger and is dominated by large stretches of rural territory. Snohomish County has a population density of 328 (Population 686,300; Area 2,090 sq. mi.). Clark County, Washington has a population density of 661 (Population 415,000; Area 628 sq. mi.). Washington County, Oregon has a population density of 689 (Population 500,585; Area 727 sq. mi.). Multnomah County, Oregon has a population density of 1,509 (Population 701,545; Area 465 sq. mi.).

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[4]Actually, only two other counties are within 50%-150% band for both population and assessed valuation. Spokane county is within the population bandwidth, but falls below 50% of Snohomish County's assessed valuation.

Furthermore, the County contends the Oregon counties should be rejected as comparables because: 1) Multnomah County (Oregon) and Clackamas County (Oregon) were rejected by Arbitrator Wilkinson in the *Sergeants* Arbitration; 2) it is impossible to make a fair comparison of public employees working under different statutory requirements, different collective bargaining statutes, different public employee retirement systems, and different state methods of taxation; 3) it is even more difficult to determine whether employees in different states are really performing the same job duties or are subject to the same employment standards; and 4) arbitrators have overwhelmingly not embraced Oregon jurisdictions as comparables.[5]

The Guild used three criteria to select its proposed comparables: population (based on a 50%-150% band), assessed valuation (based on a 50%-150% band), and geographic location. With respect to population, the Guild noted only two Washington counties fall within the 50%-150% band: Pierce (population 790,500 which is 115% of Snohomish County) and Clark (population 415,000 which is 60% of Snohomish County).[6] For this reason, the Guild included two Oregon counties: Washington County (population 500,585 which is 73% of Snohomish County), and Multnomah County (population 701,545 which is 102% of Snohomish County).

The Guild argues its proposed comparables are balanced and equitable because in addition to population, both Multnomah County (Oregon) and Washington County (Oregon) are: 1) also within the 50%-150% range for assessed valuation; 2) within a reasonable geographic proximity

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[5]The County cites the following cases as support: *City of Pasco* (Gaunt, 2006); *City of Anacortes* (Parent, 2005); *Yakima County* (Gangle, 2004); *City of Redmond* (Wilkinson, 2004); *City of Wenatchee* (Savage, 2003); *Whatcom County* (Gangle, 2001); *City of Longview* (Nelson, 2001); *City of Aberdeen* (Axon, 2000); *Thurston County* (McCaffree, 1999); *City of Port Angeles* (Wilkinson, 1999); *City of Milton* (Abernathy, 1998); *City of Bremerton* (Axon, 1998); *Kitsap County* (Buchanan, 1998); *City of Pasco* (Wilkinson, 1994); *City of Mount Vernon* (Axon, 1993).

[6]Actually, there is a third jurisdiction. Spokane County has a population of 451,200 which is 66% the size of Snohomish County.

to Snohomish County (approximately 200 miles in distance), 3) representative of a similar labor market because of their proximity to the large metropolitan area of Portland; and 4) on the I-5 corridor as is Snohomish County.

The Guild argues that RCW 41.56.030 specifically permits the use of out-of-state comparables because the statute refers to "employers of similar size on the west coast of the United States." Furthermore, the Guild argues the County is familiar with the use of out-of-state comparables because the County proposed the use of Washington County (Oregon), Clakamas County (Oregon), and Stanislaus County (California) in *Snohomish County* (Sheriffs Deputies et. al) (Arbitrator Krebs, 1987). Arbitrator Krebs ultimately selected as comparables: Clark County (Washington), Pierce County (Washington), Spokane County (Washington), Washington County (Oregon), Marion County (Oregon), San Joaquin County (California), and Stanislaus County (California).

The Guild contends the County's proposed comparables are an attempt to "pull down the market." The Guild notes that half of the County's proposed comparables fall below the 50%-150% population band: Kitsap (population 244,800 which is 36% of Snohomish County), Thurston (population 238,000 which is 35% of Snohomish County), and Yakima (population 234,200 which is 34% of Snohomish County).

Regarding the appropriateness of the comparables selected by Arbitrator Axon and Wilkinson, the Guild notes the following:

- The Sergeants Arbitration is relevant because Guild members are potentially promoted to positions withing the Sergeant's bargaining unit.
- Arbitrator Wilkinson ruled Thurston and Yakima were not appropriate comparables because their population and total assessed value are well below the traditional 50% cutoff.
- Arbitrator Wilkinson used Spokane as a comparable in the *Sergeants* Arbitration because the parties agreed to use Spokane. Despite using Spokane as a comparable, Arbitrator Wilkinson noted Spokane "does not have a total assessed valuation within range, is not

geographically proximate, and is not part of a large metropolitan region." *Sergeants Arbitration* at 10.

The Guild also contends the County fails to understand Arbitrator Wilkinson's reasoning in declining to use Oregon comparables in the *Sergeants* Arbitration. The Guild argues that Arbitrator Wilkinson declined to use the proposed Oregon comparables because the union failed to present evidence regarding the job classifications of the sergeants in Oregon as compared with sergeants in Snohomish County. The Guild argues that in this arbitration supervisory or job classification is not an issue, thus there is no reason to exclude the proposed Oregon comparables.

Further, the Guild argues the County's list of arbitrations not using Oregon comparables are distinguishable from the instant arbitration. The Guild contends many of the cases cited involved smaller cities which had a sufficient selection of Washington cities to use as comparables.

Analysis and Conclusions

I find any discussion of comparables must begin with the list of comparables established by Arbitrator Axon in his 1996 interest arbitration between the County and the bargaining unit presently represented by the Guild. *See Snohomish County* (Arbitrator Axon, 1996). The 1996 arbitration was the first interest arbitration between the Parties. Arbitrator Axon selected the following Washington counties as comparables: Pierce, Thurston, Spokane, Clark, Yakima, and Kitsap. (Hereinafter referred to as the "Axon Six").

In the recently decided *Sergeants* Arbitration , Arbitrator Jane Wilkinson selected a different set of comparables. Given the recentness of Arbitrator Wilkinson's award and the relationship

between the bargaining units[7], I find it is appropriate to carefully look at Arbitrator Wilkinson's selection of comparables in the *Sergeants* Arbitration.

As in this arbitration, the County in the *Sergeants* Arbitration proposed the Axon Six as comparables. The Sergeants and Captains Bargaining Unit "Sergeants BU" proposed Clark, Spokane, Pierce counties in Washington state, and Multnomah and Clackamas counties in Oregon. Additionally, although it did not propose Kitsap County, the Sergeants BU included Kitsap County in its comparative analysis.

Arbitrator Wilkinson rejected Thurston and Yakima counties because their population and assessed valuation were well below the 50% cutoff. Arbitrator Wilkinson based this decision on the fact that Yakima County and Thurston County have not made similar gains in population and assessed valuation since Arbitrator Axon's Award as has Snohomish county.[8] In her comparables, Arbitrator Wilkinson included the three jointly proposed comparables (Clark, Pierce, and Spokane). Arbitrator Wilkinson also included Kitsap County even though Kitsap did not meet the 50% threshold for either population or assessed valuation. Arbitrator Wilkinson justified her selection of Kitsap County by noting the following:

- Kitsap County is relatively close geographically to Snohomish County.
- The Bureau of Labor Statistics (BLS) groups Bremerton (the largest city in Kitsap County) with Seattle and Tacoma in its CPI indices.
- Kitsap County's assessed valuation per capita is the closest of any proposed Washington comparable.

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[7]The Corrections Sergeants and Captains bargaining unit is comprised of those Department employees who supervise Guild members. Sergeants are typically promoted from the ranks of Custody and Corrections Officers.

[8] Between 1996 and 2007, Snohomish County's population increased by 182,030 (504,270 to 686,300); Yakima County's population increased by 29,900 (204,100 to 234,000); and Thurston County's population increased by 48,800 (189,200 to 238,000).

However, it appears the most significant reason for selecting Kitsap County was because the union was willing to consider it. Arbitrator Wilkinson noted that in the absence of a stipulation from the parties, she avoids including jurisdictions that do not meet the 50% population threshold. As stated by Arbitrator Wilkinson at page 9:

> Kitsap County does not meet the population and assessed valuation -50% bandwidth, However, given that the Union is willing to consider Kitsap County, a comparable proposed by the County, I will consider it also.

Arbitrator Wilkinson noted that reasonable minds could differ over whether or not to include Oregon jurisdictions, particularly Multnomah County. Nevertheless, Arbitrator Wilkinson excluded from her list of Comparables the union-proposed Oregon counties of Multnomah and Clackamas.[9] Arbitrator Wilkinson based her decision on several factors including:

- A preference for Washington jurisdictions to those from other states because of the difficulty of comparing collective bargaining laws, statutory benefits, labor markets, and cost of living.
- A question over the sergeant's responsibility in Oregon and Washington to the extent that Oregon sergeant's might not be supervisors, and therefore, not "like personnel" within the meaning of RCW 41.56.465(2).
- Oregon presented a particular problem with making comparisons at the Captain/Lieutenant level because these classifications were not represented and the union admitted to having difficulty obtaining reliable data for that classification.
- Clackamas County did not meet the 50% threshold for population.

In determining the appropriate Comparables for the instant arbitration, I first must agree with Arbitrator Wilkinson to the extent that Thurston County and Yakima County are no longer appropriate comparables for Snohomish County. They both fall well below the 50% threshold for

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[9]Arbitrator Wilkinson noted the union did not include Washington County because neither its Sergeants nor Lieutenants/Captains were represented, and the union had difficulty obtaining good data.

both population and assessed valuation, and neither jurisdiction has any distinctive characteristic which would warrant its inclusion on any other criteria.

Second, I feel compelled to give considerable weight to the comparables selected by Arbitrator Wilkinson. My reasons are grounded in common sense and include:

- The Sergeants Arbitration award is less than 4 months old;
- The arbitration involves the same department and same profession; and
- As acknowledged by the Guild, the *Sergeants* Arbitration is relevant because Guild members are potentially promoted to positions within the Sergeants bargaining unit.

In short, I find it beneficial to retain some relationship between the comparables used for the Sergeants and Captains, and the comparables used by the Guild who are supervised by the Sergeants and Captains. For that reason, I will include Kitsap and Spokane Counties as comparables.

Having decided to include these jurisdictions in my list of Comparables, I am mindful Kitsap County falls below the 50% threshold for both population and assessed valuation, and Spokane falls below the 50% threshold for assessed valuation. Furthermore, I am aware Spokane County and Kitsap County are not part of metropolitan areas nearly as large as the more populated portion of Snohomish County. As mentioned earlier, the U.S. Census Bureau lists the Seattle-Bellevue-Everett Metropolitan Division with a population of 2,496,619, and the larger Seattle-Tacoma-Bellevue Metropolitan Statistical Area with a population of 3,263,497. The Bremerton-Silverdale, WA Metropolitan Statistical Area consists of Kitsap County and has a population of 244,800. Although located within the Puget Sound area, Kitsap County requires a ferry ride or the Tacoma Narrows bridge to access the Seattle-Tacoma-Bellevue Metropolitan Statistical Area. The Spokane Metropolitan Statistical Area consists of Spokane County with a population of 451,200. Spokane is not proximate to any larger metropolitan area.

With respect to the Guild's proposed comparables, I note the following. First, RCW 41.56.465(2) does not provide a preference of comparability to Washington jurisdictions. Second, I note the legislature specifically provided a preference of comparability to Washington jurisdictions in interest arbitration involving employees listed in RCW 41.56.030(7)(e) through (h). That preference is set forth in RCW 41.56.465(3) which adds the following limiting sentence: "However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered." In other words, the legislature provides an overt preference for Washington comparables for employees listed in RCW 41.56.030(7)(e) through (h), and the legislators omitted such a preference for employees listed in RCW 41.56.030(7)(a) through (d).

I can only conclude that, if a preference was meant to be given to Washington comparables in all instances, the legislature would not have distinguished between interest arbitrations involving different employees. Accordingly, I find it would be improper to give a preference to a Washington jurisdiction solely because it is a Washington jurisdiction. It may be that more emphasis should be placed on some of the Washington comparables because they are in the same labor market as Snohomish County, but this is more a question of relative ranking than one of what comparables are appropriate. *See generally*, *Cowlitz County Corrections* (Arbitrator Lehleitner, 1995).

With the above discussion in mind, I find both Multnomah County and Washington County are appropriate comparables for Snohomish County. As seen in Table 1, both are within the 50%-150% bandwidth for population and assessed valuation. Like Snohomish County, both Multnomah and Washington Counties are part of large Metropolitan Statistical Areas. While not adjacent to Snohomish County, the Portland Metropolitan area is approximately 200 miles away and it is closer to Snohomish County than is Spokane County. Finally, Multnomah and Washington Counties are both are part of the Portland-Vancouver-Beaverton Metropolitan Statistical Area with an 2006

estimated population of 2,137,565.[10] This compares favorably to Snohomish County being part of the Seattle-Bellevue-Everett Metropolitan Division which has a 2006 estimated population of 2,496,619.

Having made the above finding, I recognize there may be differences in the way data is collected or reported in the Oregon jurisdictions. I will keep in mind my list of Comparables is heavily weighted toward jurisdictions in the Portland-Vancouver-Beaverton Metropolitan Statistical Area.

Accordingly, I find the appropriate Comparables consist of Clark County (WA), Kitsap County (WA), Multnomah County (OR), Pierce County (WA), Spokane County (WA), and Washington County (OR). *See* Table 2. An examination of Table 2 shows the ranking of the six Comparables and Snohomish County. When compared to the Comparables, Snohomish County is third in population, and second in assessed valuation. Additionally, Snohomish County is third in *per capita* assessed valuation.

Of the Comparables, I find the most irrelevant Comparable is Spokane County, and the most relevant is Pierce County. Even though Kitsap County is smaller and has a lower assessed valuation than Spokane County, I find Kitsap County is a more relevant Comparable than Spokane because of its assessed valuation per capita, and its geographically proximity to Snohomish County. Furthermore, to a limited extent, Kitsap County and Snohomish County share a similar economy with their common neighbor, King County. The disparity between Spokane and the other Comparables is most dramatically seen in the assessed valuation per capita where Spokane County is far below any of the other Comparables.

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[10]The Portland-Vancouver-Beaverton Metropolitan Statistical Area consists of the Oregon counties of Clackamas, Columbia, Multnomah, Washingtion, Yamhill; and the Washington counties of Clark and Skamania.

Table 2. Arbitrator Selected Comparables and Statistical Comparisons

County	2007 Pop.	Rank	2007 Pop as a % of SNO	2006 Assessed Valuation (in 000)	Rank	AV as a % of SNO	Per Capita Assessed Valuation (in 000)	Rank
Snohomish	**686,300**	**3**	**100%**	**$84,124,565**	**2**	**100%**	**$123**	**3**
Clark	415,000	6	60%	$42,831,709	5	51%	$103	5
Kitsap	244,800	7	36%	$28,579,488	7	34%	$117	4
Multnomah	701,545	2	102%	$87,156,706	1	104%	$124	2
Pierce	790,500	1	115%	$78,973,986	3	94%	$100	6
Spokane	451,200	5	66%	$31,028,466	6	37%	$69	7
Washington	500,585	4	73%	$63,862,044	4	76%	$128	1
STATISTICAL COMPARISONS								
Comps > SNO	2			1			2	
Comps < SNO	4			4			3	
Range Max	'+2%			'+4%			'+2%	
Range Min	-33%			-76%			-44%	
Average (w/o Snohomish)	517,272			$55,405,400			$107	
Median (w/o Snohomish)	500,585			$63,862,044			$103	

I find Pierce County the most relevant because it is close in size and assessed valuation to Snohomish County, and most importantly because the two counties have a high degree of social and economic integration with King County which is sandwiched between the Snohomish and Pierce Counties. As mentioned previously, Pierce, King, and Snohomish Counties together comprise the Seattle-Tacoma-Bellevue Metropolitan Statistical Area. Furthermore, both Parties' selected Pierce County as a comparable. Finally, the data relating to Pierce County will be of a similar nature as opposed to the Oregon Comparables which may have anomalies in the collection or reporting of statistics *vis a vis* the Washington Comparables.

ISSUE 1 – DURATION

The County proposes the agreement run through 2009. The Guild proposes the agreement run through 2008. There will be no retroactive wage increase in this award. Thus, the first wage increase will be upon my award, and the second wage increase on January 1, 2008. Given the propinquity of my award to January 1, 2008, in reality the County proposes a two-year agreement and the Guild proposes a one-year agreement.

The County argues for the longer agreement because the term it is more consistent with the Parties' practice of negotiating three-year agreements, and three-year agreements are standard among the Comparables. Furthermore, the County contends the Guild- proposed expiration date of December 31, 2008, would require the Parties to begin negotiations anew in the very near future.

The Guild asks for a contract term ending December 31, 2008 primarily because it believes many smaller matters will need to be resolved by the Parties, and an additional year is too long to wait to address these other matters. The Guild also argues it will be necessary re-evaluate the 2008 wage rate based on settlements in the comparable jurisdictions.

After due consideration, I conclude an appropriate ending term is December 31, 2009. I am not convinced the best solution for improved labor relations is to begin negotiations six-months from now – which would occur under the Guild's proposal. I believe the Parties would derive greater benefit with a hiatus from the bargaining table, and experience working under a collective bargaining agreement. Currently, the Parties' judgements may well be influenced by the practices during the preceding three years when there was no collective bargaining agreement in place. Unquestionably, this time was hard on Guild members, and labor relations suffered. Finally, I note the Parties have a history of negotiating three-year agreements. Every agreement since 1986 has been for three years. Accordingly, I award a contract duration through December 31, 2009.

ISSUE 2 – HEALTH INSURANCE

Introduction and the Parties' Proposals

The County is self-insured for health insurance. Currently, Guild members can enroll in one of three plans offered by the County. The three plans are Regence Selections, Regence PPO, and Group Health Options. Regence Selections is an "in-network" plan. Regence PPO is a preferred provider plan; it offers the most flexibility in terms of physician selection. And Group Health is a group-health plan; it offers the least flexibility in terms of physician selection.

Under the terms of the expired collective bargaining agreement the County's contribution to a Guild member's insurance benefit is capped at $508.88, and an employee pays the difference between the "premium" and the employer contribution. This carryover language, which caps the County's portion of an employee's health care premium has resulted in an increase in an employee's monthly contribution for health care coverage. For example, for Regence PPO family coverage the monthly employee contribution has risen $273 from the expiration of the 2002–2004 agreement to today.[11]

The County proposes new language which places a cap on an employee's monthly contribution to health care coverage during the life of the agreement. Under the County's proposal, the employee contribution would be the same as those employees represented by AFSCME or Teamsters (Sheriff's Support; Corrections Sergeants and Captains), and the County's non-represented employees.

The Guild proposes employees pay up to 5% (not to exceed $100) of the monthly insurance premium for employees and dependents. Furthermore the Guild seeks a provision requiring the County to maintain the existing level of benefits under the present plans.

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[11]The employee contribution for Regence PPO family coverage in December 2004 was $223. Currently the employee contribution for the same coverage is $496.

The current employee contribution as well as each Party's proposed contribution is shown in Table 3. The employee contribution for the Guild's proposal is based on the current tiered rates (4/1/2007 – 3/31/08) as shown in Exhibit C-7. Under the Guild's proposal, Employee contributions could increase up to a maximum of $100 if premiums increase.

Table 3. Insurance Premium Contribution – Current and Proposed

Coverage	Guild Members' Premium Contribution – Current and Proposed								
	Regence PPO			Regence Selections			Group Health Options		
	Current	County	Guild	Current	County	Guild	Current	County	Guild
Employee Only	$184	$58	$24	$165	$43	$23	$66	$0	$18
Employee + Spouse	$367	$195	$47	$331	$166	$45	$125	$79	$35
Employee+Children	$312	$98	$40	$281	$74	$39	$107	$0	$30
Employee + Family	$496	$235	$64	$447	$196	$61	$167	$79	$47

Note: The employee contribution for the Guild's proposed rates is based on the County-provided "tiered rates" contained in Exhibit C-7.

Guild's Proposal

The Guild proposes to amend CBA Article X, as follows

ARTICLE 10 INSURANCE BENEFITS

10 Insurance Benefits – ~~The Employer shall pay up to the following amounts during the term of this Agreement for the medical insurance plans provided by the Employer:~~

~~January 1, 2002 $450.82~~
~~April 1, 2002 $451.27~~
~~April 1, 2003 $478.35~~
~~April 1, 2004 $502.26~~

~~Note: The indemnity and HMO plan designs, e.g. co-payments for hospital stays, office visits and prescription drugs shall be the same as for the majority of other County employees who are bargaining unit members under the terms of labor agreements between the Employer and other Unions representing County employees.~~

The employer shall pay a minimum of 95% (ninety-five percent) and the employee will up to pay 5% (five percent), not to exceed one hundred dollars ($100.00), of the health (medical/RX) insurance premiums for employees and dependents. The County shall maintain the existing level of benefits under the present plans, as found in Appendix "Y" (attached).

10.1 ~~Employees shall pay any difference between the Employer's contribution and the actual rate through payroll deduction.~~

[Note: The remainder of Article X is unchanged.]

County's Proposal

The County proposes to amend CBA Article X, as follows:

ARTICLE X INSURANCE BENEFITS

10 ~~Insurance Benefits – The Employer shall pay up to the following amounts during the term of this Agreement for the medical insurance plans provided by the Employer:~~

~~January 1, 2002~~	~~$468.17~~
~~April 1, 2002~~	~~$488.52~~
~~April 1, 2003~~	~~$508.88~~
~~April 1, 2004~~	~~$508.88~~

Following the 1st of the month of contract ratification by the Guild and the County Council the Employer for the term of the agreement shall place a cap on employee medical insurance premium contribution, whereby such monthly contribution will not exceed the following amounts:

Regence Selections	**Employee Premium Contribution**
Employee Only	$ 43
Employee and Spouse	$166
Employee and Children	$ 74
Employee and Family	$196
Regence PPO	
EE	$ 58
ES	$195
EC	$ 98
EF	$235
Group Health Options	
Employee Only	$ 0
Employee and Spouse	$79
Employee and Children	$ 0
Employee and Family	$79

Note: The indemnity and HMO plan designs, e.g. plan year, co-payments for hospital stays, office visits and prescription drugs shall be the same as for the majority of other County employees who are bargaining unit members under the terms of labor agreements between the Employer and other Unions representing County employees.

10.1 Employees shall pay ~~any difference between the Employer's contribution and the actual rate~~ the monthly premium contribution through payroll deduction and the Employer will pay any difference between the Employee's contribution and the actual plan rate.

. . . .

~~10.6.1 The Union and the Employer shall review and make recommendations of specifications for such policy or policies with the specific intent of attempting to acquire adequate insurance~~

~~coverage in the areas of police brutality, wrongful death and criminal defense prior to the award of any contract. A copy of such policy contract entered into shall be made available to the Union. Such policies as purchased shall be kept in force for such periods within the time period of this Agreement as is prudent in the exercises of good business judgment.~~

[Note: The remainder of Article X is unchanged.]

County's Argument

The County contends the most important consideration for medical premium sharing is internal equity. Furthermore, the County contends internal equity is consistent with the Parties' history of bargaining on this issue. As support for its argument on internal parity, the County cites Arbitrators Howard Block and Gary Axon (Note: Arbitrator Wilkinson agreed with Axon in her *Sergeants* Award at page 29).

> When a general benefit, like group insurance, applies uniformly to a diverse group of City employees, an arbitrator should hesitate to order something different in the absence of clear and convincing evidence to prove an inequity. Deviations from a uniform benefit pattern can be highly disruptive to employee morale. In short, comparisons among employees groups of the same employer are not less important than comparisons with other employers. *City of Bellevue* (Arbitrator Howard Block, 1982) at 31.
>
> There is no statutory obligation to award what the other bargaining units in the County have negotiated in the way of insurance benefits. In the judgment of this Arbitrator, an award for one group of employees should not be so different as to be out of touch with the other bargaining units. The goal is to provide consistency, not complete uniformity. *Mason County* (Arbitrator Gary Axon 2001) at 14.

The County's argues the Guild's proposal should be rejected by the Arbitrator because:

- The County's proposal is supported by arrangements covering other County employee groups.
- No other County employee group has 95% of employee and dependent medical premiums paid by the County, as demanded by the Guild.
- The Corrections Support and the Corrections Supervisory bargaining units have adopted the AFSCME premium-sharing schedule, as proposed by the County to the Guild.

- Arbitrator Wilkinson embraced the AFSCME premium-sharing schedule as fair and reasonable in the Sergeants Arbitration award.
- The Guild's proposal for 95% County-paid medical premiums for employees and dependents is at odds with the bargaining history covering the County's Custody and Corrections officers.
- The Guild's proposal would reduce employee premiums to the year 2000-level by requiring the County to pay at least 95% of the premium.

As to the Guild's argument to "freeze" plan design, the County contends it is unrealistic because other County employees are in the same risk pool. It would be unwieldy for the County to have to negotiate minor adjustments in plan design that, in effect, may be mandates from insurers.

Finally, the County contends the medical insurance issue should be decided apart from the wages because the Comparables have many different traditions and bargaining histories when it comes to premium sharing. Thus, according to the County, it is difficult to make "apples-to-apples" comparisons.

Guild's Argument

The Guild argues the appropriate means to find an equitable insurance contribution is by a comparative analysis with Comparables. According to the Guild, a comparative analysis of employee copay provisions does not support the County's proposed insurance copay provision. The Guild describes its proposed $100 cap as a "cost containment" feature which would not take effect until the tiered rate exceeded $2,000. According to the Guild, employees should no longer bear the burden of fronting the insurance cost increases.

In addition to the proposed formula for premium sharing, the Guild proposes new language requiring bargaining over benefit levels, deductibles, and copays. According to the Guild, the

existing language is vague. Furthermore, the Guild argues that maintenance of benefit provisions are not unusual – citing the Spokane County agreement.

The Guild complains the County has profited from the carryover provision whereby Guild members have been paying the full burden of all insurance increases since 2003. The Guild also contends internal equity is not a factor of the statutory criteria of comparing "similar and like" agencies, and is given little weight in the statute. Furthermore, the Guild points out the County's internal equity argument largely ignores a comparison with other employee units subject to interest arbitration, such as the deputy sheriffs and fire units. Also, the Guild contends the County's claim that it is simply too hard to compare medical plans lacks merit. Finally, the Guild argues the award of the County's proposal in the *Sergeants* Arbitration is irrelevant here, because in the *Sergeants* Arbitration the union stated it was willing to accept the County's premium sharing proposal. However, in this arbitration, the Guild is not willing to accept the County's proposal.

The Guild also proposes additional language which would require the County to maintain the level of benefits, and incorporates those benefits into an appendix to the Agreement. According to the Guild this would require the Employer to bargain with the Guild over any change in benefit levels. Finally, the Guild complains about the County's premium computation, and contends the County's "rates" are extortion and deceptive; and have created an artificial funding mechanism which requires Guild members to pay higher contributions than other County employees.

Analysis and Findings

Table 4 shows the premium copay provisions of the Comparables. While the premium sharing arrangements of the Comparables vary, the Comparables are considerably more generous than the existing premium sharing or the premium sharing proposed by the County.

With respect to the County's internal equity argument, it is easy to understand the County's desire to have uniform medical plans and uniform employee premium copay provisions for all of its

employees. In this particular arbitration, the County's desire for internal parity is even more acute. The recent *Sergeants* Arbitration award included a medical premium copay provision identical to the County's proposal. Thus, an award of a more generous County copay will likely lead to more erosion of the County's goal of uniform copay provisions.

Table 4. Comparables: Employee Copay of Insurance Premiums

Comparable Jurisdictions	Current Employee Copay of Insurance Premiums for Full Family PPO
Clark	$0.00
Kitsap	$104.04
Multnomah	$49.22
Pierce	$76.22
Spokane	$45.00
Washington	$0.00
Average	**$45.75**
Median	**$46.11**
County Proposed	**$235.00**
Guild Proposed*	**$63.66**

*The Guild Proposal is based on 5% of the current Regence PPO full family "tiered rate" of $1,273.21. (Source: Exhibits G-36 and G-37.)

Inasmuch as interest arbitration is an extension of the collective bargaining process, and an attempt to duplicate an agreement the Parties could have reached through good faith negotiation, I note the following factors which would influence the Parties' negotiations on this issue.

- The County clearly has an objective of reaching uniform medical-premium copay provisions in all its contracts.
- Presently the County has identical, or nearly identical, medical-premium copay provisions in its contracts with AFSCME, Law Enforcement Support, and Corrections Support.
- The recent *Sergeants* Arbitration award contained a copay provision identical to the County's proposal. The Corrections Sergeants and Captains bargaining unit contains the supervisors for the Custody and Correction Officers.
- An examination of the copay provisions of the Comparables shows the employee portion is significantly lower than the employee copay proposed by the County.

- The expired agreement contained a copay provision much less favorable to the employees than the County's proposal. The former language provided a cap on the employer contribution which saddled the employee with 100% of the premium increases once the employer cap was reached. At the expiration of the 2004 agreement, an employee's monthly contribution was $233 for Regence PPO full family coverage. Presently it is $496.

- An employee copay provision is an economic provision within the context of bargaining. In other words, it has a cost which can be identified. The bargaining parties can thus consider this identified cost in the context of the entire economic package.

- In real-life bargaining, a party can often obtain its objective by giving the other party something it wants.

- Given the County's objective in reaching uniform employee copay provisions in all its contracts, and the County's progress toward that objective, I find it probable the Parties would reach an accommodation wherein the County's proposal would be included in a new agreement. However, this accommodation would likely be reflected in the Parties' consideration of wages.

In particular considering the County's desire to standardize health-care premiums, the fact the Sergeants Bargaining Unit contains an identical provision, and the Parties' relative bargaining position *vis-a-vis* the existing provision, I find it is reasonable to conclude the Parties would have tentatively agreed to the County's proposal pending an agreement on the wages. Accordingly, I am awarding the County's proposal on insurance benefits (§10 and §10.1), but I will keep my award in mind when I consider the Parties' wage proposals.

I also find the County provided neither evidence nor argument to support deleting §10.6.1. Accordingly, I am not deleting §10.6.1. Furthermore, given my award of the County's proposal on insurance benefits, which has as a basis a single risk pool, I find the Guild's proposal to maintain benefits is not warranted.

Award

The County's proposal to modify §10, and §10.1 is awarded.

The language contained in §10.6.1 of the 2002-2004 agreement will remain in the contract.

The Guild's proposals are rejected.

ISSUE 3 – WAGES & LONGEVITY (Appendix A)

The Parties' Proposals

As stated earlier, Guild members have not received a wage increase since January 1, 2004, and a retroactive wage increase in this arbitration is precluded by Washington law. See PERC ULP ruling 20177-U-06-5145 citing *Christie v. Port of Olympia*, 27 Wn. 2d 534 (1947). As a result, both Parties propose substantial wage increases, effective on award, to bring Guild-members' wages current with the Comparables. The Parties' proposals for increasing the wage rates are set forth in Table 5. Both Parties proposed "across the board" increases.

Table 5. The Parties' Proposed Wage Increases

	2007 Effective on Award	Effective 1/1/2008	Effective 1/1/2009
City Proposal	9.08%	2.97%[1]	90% of CPI-W
Guild Proposal	12.0%	3.3%[2]	NA

[1]Actual proposal is based on 90% of CPI-W (June – June) which for June 2006 – June 2007 was 3.3%.
[2]Actual proposal was for 100% of CPI-W (June – June)

Additionally, the Guild proposes a longevity pay incentive with increases of 1%, 2%, 3%, 4%, and 5%, at 7, 11, 15, 19, and 23 years of service, respectively. The County opposes a longevity incentive.

The County contends its wage proposal is fair and reasonable in light of the statutory criteria. Furthermore, the County contends both the record and common sense show the Guild's wage proposals (including longevity pay) are inflated and unrealistic. According to the County, the Guild's proposal of 12.0% would provide Guild members a higher wage increase than any of the comparables, and is not reasonable. Additionally, the County contends the reduction in medical insurance premium sharing proposed by the County will increase take-home pay for all officers.

Finally, the County points out the County is absorbing significant increases in PERS pension contributions, the latest being an increase from 6.57% to 8.55% effective September 1, 2007.

The Guild contends its wage proposal is supported by the Comparables and the CPI. The Guild contends the wage adjustment still leaves it somewhat below the market. According to the Guild, a higher wage was not sought because the Guild's top priority was a significant adjustment in insurance benefits which strongly affects the total compensation package.

Comparison of Wage Rate Data

Both Parties provided me with wage rate data for the Comparables, but the Parties' methodologies differ significantly. The County used a Net Hourly approach whereby a per hour wage is computed based on adjustments to wages and hours worked. First, an annual "Net Pay" is derived using the monthly wage and longevity premiums. Second, an annual "Net Hours" is computed by taking the annual hours of work and subtracting vacation hours, holiday hours, and holiday premiums. The resulting Net Pay is divided by the Net Hours to determine the Net Hourly Rate. The Net Hourly Rate is then used for comparison purposes.

The County did not include the employee insurance-premium copay in its calculation because the County contends insurance rates, premium-sharing arrangements, and benefit levels vary greatly among public agencies. According to the County, it considered only those wage-related items paid to all bargaining unit members and not those special wage-related items paid only to some bargaining unit members (e.g., shift differential pay and education incentive pay). The County provided benchmark comparisons for entry Custody Officers, Custody Officers at 73 months of service ("Top Step Custody Officers"), and Custody Officers at 181 months of service ("Senior Custody Officers"). According, to the County these three benchmarks show the County's market position for new hires, top step employees, and those more senior employees. Currently the

County has 25 Custody Officers in the Senior Custody Officer category, and 65 in the Top Step category.

The Guild's compensation analysis is based on a calculated "Adjusted Base Wage." This Adjusted Base Wage is then compared at 5, 10, 15, and 20 years of service. The Guild computed the Adjusted Base Wage by adjusting the base monthly salary as follows:

- Adding Longevity Pay.
- Subtracting the employee insurance-premium copay. The copay is computed based on the copay for full-family PPO coverage.
- Adding Total Leave Compensation. Total leave compensation is derived by adding annual vacation accrual and annual holiday hours and then determining a monthly amount based on 2080 hours in a year.
- Adding the employee-portion of the PERS contribution. This addition only applied to the Oregon jurisdictions because Washington prohibits public employers from paying the employee portion of the PERS contribution.

According to the Guild, the insurance premium copay should be included in a "total compensation analysis" because it can be a significant portion of the total compensation package. The Guild contends there is sufficient similarity in the PPO coverage among the Comparables to warrant including the copay for that coverage in its total compensation comparison.

Discrepancies.

There were some discrepancies between the Parties' data which I resolved as follows:

- The County shows the Multnomah salary for 6-year and 15-year Corrections Officers as $4,841. The Guild shows the same salary as $4,822. The Multnomah agreement shows an hourly rate of $27.82, which I calculated as equal to $4,822 per month based on a 2080 hour workyear. Accordingly, I used the Guild figure.
- Despite evidence at the hearing to the contrary, the County continued in its final brief to show Clark County's base wage as $4,216 per month and then computed the Net Hourly Rate based on a 2190 hour work-year. Those numbers are inconsistent with each other, and result in understating the Clark County Net Hourly Rate. The County is correct in stating Clark County Correction Officers work 2190 hours year. However, the Clark County

agreement shows an hourly rate (for Step 6 Correction Officers) of $24.32 per hour. Based on a 2080 hour year the monthly salary for a Step 6 Officer is $4,216 per month which is what the Guild and the County used as a salary base. *The problem with the County's net hourly calculation is the County divides the annualized Net Pay (which it derived from a 2080 hour work-year) by the Net Work Hours - which is based on a 2190 hour work-year.*

In order to correctly compute the Net Hourly Rate using a work-year of 2190, the Clark County Base Wage must be computed by multiplying the hourly rate as shown in the agreement times 2190 hours (the number of hours in the work-year), and dividing by 12 (the number of months in the year). I have computed the Clark County Base Wage on a 2190 hour work-year to be as follows: Step 1, $3,477 (based on $19.05 per hour); and Step 6, $4,438. I based my Net Hourly analysis on these computed monthly rates, and then used 2190 as the annual work hours for Clark County.

- The County shows Clark County Correction Officers receiving longevity pay in the County's 73-month compensation comparison. The Clark County Agreement states that step 8 (designated as the first of two longevity steps) is for employees with eight (8) years of service. Thus, longevity is not paid to an officer with 73 months of service.

Discussion

Naturally, each Party contends its method is superior to the other Party's. As a practical matter, there is little significant difference between the County's Net Hourly approach and the Guild's Adjusted Base approach if the employees' salary in all comparables is based on a 2080 hour work-year. Both methods begin with the wage-schedule salary, and then adjust that salary based upon monetary gains or losses (e.g., longevity, medical copay), or on compensated non-work hours (e.g., vacation and holiday pay). Under the Guild's methodology, the base monthly wage is adjusted upward to reflect a monthly allocation of the dollar value (hours times rate of pay) of an employee's annual leave accrual and paid holidays. Under the County's methodology, an employee's hourly rate is adjusted upwards because fewer hours can be worked as a result of annual leave accrual and paid holidays. In other words, both the Adjusted Base Wage and the Net Hourly Rate are increased when the value of leave and holiday pay is considered. The effect and intent of both approaches is to quantify the "total compensation" received by an employee.

I find the slight differences in the Parties' approach are insignificant when used in a comparative analysis. Both methods are total compensation analyses: they take into account benefits which are not part of the wage schedule; and they further adjust compensation for potentially compensated non-work hours (e.g., annual leave accrual and holiday pay). The net result of including compensated non-work hours under the Guild's approach is an increase in the total monthly compensation, while the net result under the County's approach is an increase in the total hourly compensation. The important aspect of both Parties' methodologies is the attempt to quantify benefits as part of a total compensation analysis, rather than merely comparing the unadjusted base wage.

The real question is not whether the Net Hourly approach is better or worse than the Adjusted Base Wage approach. It is what adjustments should be made to the base wage. Both Parties factor in longevity pay, annual leave accrual, and paid holidays. The County also includes "Holiday Comp Time," which is described as the extra-compensation potentially earned for working on holidays. The Guild includes adjustments for an employee's insurance-premium copay, and for PERS.

In this arbitration, I elected to use a Net Hourly approach because of the greater number of regularly scheduled hours contained in the Clark County agreement (2190, compared with the typical 2080). A Net Hourly approach is less cumbersome than an Adjusted Base Wage approach when all Comparable wages are not based on 2080 work-hours per year. Additionally, the Net Hourly approach annualizes wages, which effectively averages mid-year wage increases. Washington County's mid-year wage increase is annualized in such a fashion.

With respect to the County's inclusion of Holiday Comp Time, I find it is an inappropriate adjustment to the base wage. The County claims to include only wage-related items paid to all bargaining unit members; however, Holiday Comp Time is not paid to all bargaining unit members

– it is only paid to bargaining unit members who actually work on a holiday. In fact, the County simply assumes the "typical" Snohomish County Custody Officer will work 7 out of 10 holidays. *See* Exhibit C-4 (Attachment 4). Furthermore, the impact of including or excluding Holiday Comp Time is *de minimus* and not worth further discussion. I note Arbitrator Wilkinson rejected Holiday Comp Time in her wage analysis in the *Sergeants* Arbitration for much the same reasons.

The Guild's attempt to include the employee portion of the PERS contribution highlights the problem of using non-Washington comparables. I have excluded that adjustment from my analysis for several reason. First, public employers in Washington are prohibited from paying an employee's portion of PERS. Second, it is difficult to compare PERS even within a single jurisdiction because of the different plans and tiers which exist within practically all PERS systems. Finally, there was no evidence of the benefit levels of the Oregon and Washington PERS systems.

Regarding the employee-portion of the insurance-premium copay, I have included it in my analysis for the following reasons. First, the medical premium copay provisions vary significantly among the Comparables, and the difference in copay amounts is significant. *See* Table 4, *supra.* I awarded the County's proposal on insurance which means Guild members have a higher premium copay than employees in any of the Comparables. It would be unfair now to exclude those copay amounts in a total compensation analysis.[12]

Second, I conclude that using the PPO insurance-premium copay for a full family provides a reasonable basis of comparison. While it is clear insurance benefits vary between comparable

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[12]*See Cowlitz County Deputies (Arbitrator Williams, 2007) at 19.* [The medical insurance premium is a major part of an employee's compensation. While a precise comparison is difficult since medical insurance takes many forms and at numerous cost structures, as the Employer argues, it is the Arbitrator's conclusion the disadvantages of not including it are greater than the problems around the preciseness of the comparison]

jurisdictions, the total premiums for PPO family coverage is remarkably close[13] – certainly close enough to assume an equal benefit level for purposes of comparing only the employee portion of the premium costs. I have used the Guild-provided numbers for the premium copay because the County did not provide any numbers.

Table 6. 2007 Wages: Entry-Level Corrections Officer

	Current Salary and Adjustments For Entry Corrections/Custody Officer								
Comparable	BASE WAGE (Monthly)	LONGEV (Monthly)	EMPLOYEE PREMIUM COPAY (Monthly)	NET PAY (Annual)	ANNUAL HOURS	ANNUAL ACCRUED VACATION (Hours)	ANNUAL PAID HOLIDAYS (Hours)	NET WORK HOURS (Annual)	NET HOURLY RATE
Clark*	$3,477	$0	$0	$41,724	2190	128	96	1966	$21.22
Kitsap	$3,241	$0	($104)	$37,644	2080	80	88	1912	$19.69
Multnomah	$3,765	$0	($49)	$44,589	2080	80	96	1904	$23.42
Pierce	$3,524	$0	($76)	$41,373	2080	96	96	1888	$21.91
Spokane	$3,135	$0	($45)	$37,080	2080	96	96	1888	$19.64
Washington**	$3,344	$0	$0	$39,486	2080	96	104	1880	$21.00
Average									$21.15
Median									$21.57
Average of County Proposed Comparables									$20.62
Average of Guild Proposed Comparables									$21.89
Snohomish County									
County Proposed	$3,425	$0	($235)	$38,280	2080	80	96	1904	$20.11
Guild Proposed	$3,516	$0	($235)	$39,372	2080	80	96	1904	$20.68

***Base Wage for Clark is computed using an hourly rate of $19.05 and a work-year of 2190 hours.**
****Washington Annual Net Pay reflects the 7/06 base wage of $3,237 for ½ the year and the 7/07 base wage of $3,344 for ½ the year.**

[13]Total premium rates for full-family PPO coverage are as follows: Clark, $1,456.70; Kitsap $1,191.72; Multnomah, $1,453.94; Pierce, $1,045.33; Spokane, $1,100.00; Washington, $983.00. The average of the Comparables is $1,205.12. Snohomish County's tiered rate is $1,273.21. *See* Exhibits G-36 and 37.

Table 7. 2007 Wages: 6-Year Correction Officer (73 Months)

	Current Salary and Adjustments After 6 Years (73 Months) of Service								
Comparable	BASE WAGE (Monthly)	LONGEV (Monthly)	EMPLOYEE PREMIUM COPAY (Monthly)	NET PAY (Annual)	ANNUAL HOURS	ANNUAL ACCRUED VACATION (Hours)	ANNUAL PAID HOLIDAYS (Hours)	NET WORK HOURS (Annual)	NET HOURLY RATE
Clark*	$4,438	$0	$0	$53,256	2190	168	96	1926	$27.65
Kitsap	$4,344	$0	($104)	$50,880	2080	120	88	1872	$27.18
Multnomah	$4,822	$0	($49)	$57,273	2080	120	96	1864	$30.73
Pierce	$4,680	$0	($76)	$55,245	2080	128	96	1856	$29.77
Spokane	$4,024	$0	($45)	$47,746	2080	120	96	1864	$25.61
Washington**	$4,935	$0	$0	$58,272	2080	120	104	1856	$31.40
Average									$28.72
Median									$28.71
Average of County Proposed Comparables									$27.55
Average of Guild Proposed Comparables									$29.88
Snohomish									
County Proposed	$4,544	$0	($235)	$51,708	2080	145	96	1839	$28.12
Guild Proposed	$4,666	$0	($235)	$53,172	2080	145	96	1839	$28.91

***Base Wage for Clark is computed using an hourly rate of $24.32 and a work-year of 2190 hours.**
****Washington Annual Net Pay reflects the 7/06 base wage of $4,777 for ½ the year and the 7/07 base wage of $4,935 for ½ the year.**

Table 8. 2007 Wages: 15-Year Correction Officer (181 Months)

Comparable	Current Salary and Adjustments After 15 Years of Service								
	BASE WAGE (Monthly)	LONGEV (Monthly)	EMPLOYEE PREMIUM COPAY (Monthly)	NET PAY (Annual)	ANNUAL HOURS	ANNUAL ACCRUED VACATION (Hours)	ANNUAL PAID HOLIDAYS (Hours)	NET WORK HOURS (Annual)	NET HOURLY RATE
Clark*	$4,438	$422	$0	$58,315	2190	200	96	1894	$30.79
Kitsap	$4,344	$0	($104)	$50,880	2080	200	88	1792	$28.39
Multnomah	$4,822	$121	($49)	$58,725	2080	200	96	1784	$32.92
Pierce	$4,680	$0	($76)	$55,245	2080	184	96	1800	$30.69
Spokane	$4,024	$206	($45)	$50,218	2080	168	96	1816	$27.65
Washington**	$4,935	$0	$0	$58,272	2080	168	104	1808	$32.23
Average									$30.45
Median									$30.74
Average of County Proposed Comparables									$29.38
Average of Guild Proposed Comparables									$31.66
Snohomish									
County Proposed	$4,544	$0	($235)	$51,708	2080	193	96	1791	$28.87
Guild Proposed	$4,666	$0	($235)	$53,172	2080	193	96	1791	$29.69

***Base Wage for Clark is computed using an hourly rate of $24.32 and a work-year of 2190 hours.**
****Washington Annual Net Pay reflects the 7/06 base wage of $4,777 for ½ the year and the 7/07 base wage of $4,935 for ½ the year.**

My Net Hourly comparison tables for 2007 wages are shown in Tables 6, 7, and 8. I elected to use the County's benchmarks because they reflect a market analysis for entry-level Custody Officers, top step Custody Officers, and more senior Custody Officers. The Guild's benchmarks did not include a comparison of entry-level Custody Officers. In addition to the Net Hourly Rates for the Comparables, I show the Net Hourly Rate for Snohomish County as proposed by both the County and the Guild. I also show the average and median Net Hourly Rate for all the Comparables, and the average Net Hourly Rate for only the Guild proposed Comparables and for only the County proposed Comparables.

Table 9. 2007 Wages: Comparison of Parties Proposals at Benchmarks

	Net Hourly Rates		
	Entry-Level CO	6-Year CO	15-Year CO
Average of Comparables	$21.15	$28.72	$30.45
Pierce County	$21.91	$29.77	$30.69
Guild's Proposal	$20.68	$28.91	$29.69
Guild's Proposal from Average	-2.22%	0.66%	-2.50%
Guild's Proposal from Pierce County	-5.61%	-2.89%	-3.26%
County's Proposal	$20.11	$28.12	$28.87
County's Proposal from Average	-4.92%	-2.09%	-5.19%
County's Proposal from Pierce County	-8.22%	-5.54%	-5.93%

Table 9 compares the average Net Hourly Rate of the Comparables to the Parties' proposals for 2007. I have also included Pierce County as my "reality check." Because of the difficulty in selecting Comparables in this arbitration, and the range and diversity of the selected Comparables, I used Pierce County as an indicator of whether the averages obtained from the Comparables had local significance to Snohomish County. To reiterate, I earlier found Pierce

County to be the most relevant of all of the Comparables because: 1) it is close in size and assessed valuation to Snohomish County; 2) the two counties have a high degree of social and economic integration with King County which is sandwiched between the Snohomish and Pierce Counties; 3) together Pierce, King, and Snohomish Counties comprise the Seattle-Tacoma-Bellevue Metropolitan Statistical Area: and 4) both Parties' selected Pierce County as a comparable.

After examining the data in Tables 6 through 9, I make the following findings:

- The Average Net Hourly Rate for the Comparables does not appear out of line with Pierce County's Net Hour Rate. For 15-year Custody Officers there is practically no difference. For entry level and 6-year Custody Officers the average is less than 4% below Piece County.

- The Guild's proposed wage rate more closely approximates the total compensation received by the Custody Officers in the Comparables and Pierce County at all of the benchmarks than does the County's proposal. At the 6-year benchmark, the Guild proposal is 0.66% higher than the average of the Comparables, but 2.89% lower than Pierce County. At the 15 year benchmark, the Guild's proposal is between 2½% to 3¼% lower than the average of the Comparables or Pierce County.

- The benchmark with the greatest disparity from the Average or Pierce County is the entry-level benchmark. Even the Guild's proposal is more than 5% lower than Pierce County. The County's proposal is more than 8% lower than Pierce County.

- Based on the spread between the Parties' proposals at the three benchmarks, there is no basis for a longevity increase for Guild members at this time. A longevity increase would lift Guild members above the average for the 6-year and 15-year benchmarks, and do nothing for the greater discrepancy which exists between the County's entry-level Custody Officers and the Comparables or Pierce County.

Comparability is generally regarded as the predominant criterion for determining wages in public sector interest arbitration.[14] However, RCW 41.56 requires arbitrators to also consider the cost of living and other factors normally or traditionally taken into account in determining wages, hours, and conditions of employment.

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[14]Bornstein *et. al.*, *Labor and Employment Arbitration*, §48.05[2] (2nd ed., continuously updated).

Cost of Living

RCW 41.56.465(c) requires considering "the average consumer prices for goods and services, commonly known as the cost of living." The frequently used standard to measure increases in the cost of living is the consumer price index (CPI), which is reported in two indices – the CPI-U (all urban consumers) and the CPI-W (Urban Wage Earners and Clerical Workers). The Parties agreed to use the June 2006 – June 2007 CPI-W (Seattle-Tacoma-Bremerton) index as the basis for the January 1, 2008 wage increase. The CPI-W for that period was 3.3%. The County proposes a wage increase based on 90% of the CPI-W, while the Guild proposes a wage increase based on 100% of the CPI-W.

The Guild contends the presumption for CPI-based wage increases should be at 100%, and the County has failed to justify a lesser amount. The Guild notes Arbitrator Wilkinson awarded a 100% of CPI wage increase in the *Sergeants* Arbitration "in order to improve the bargaining unit wages against the average." Additionally, the Guild points out many of the Comparables use 100%–of–CPI as a basis for wage increases, notably: Multnomah, Kitsap, and Pierce Counties.

The County contends wage increases for Custody Officers between 1997 to 2007 have significantly exceeded concurrent increases in the CPI-W index. Additionally, the County contends a wage increase of 90% CPI is consistent with the Parties' history of wage increases.

I find the County's arguments for a 90% CPI are unpersuasive. A 90% CPI wage increase is inadequate when the subject jurisdiction's wages are less than the average of the Comparables, and less than the benchmark Comparable of Pierce County.

Other Factors: Internal Parity

Internal parity is not an enumerated consideration in RCW 41.56.465. Mostly, an internal parity determination is appropriate when employers are making "ability to pay" arguments.

Additionally, internal comparisons with units not subject to interest arbitration are often of little persuasive value. In this arbitration, the County did not make an inability to pay argument, but it still argues that I should consider "internal parity" in making my award.

The County argues that granting the Guild's wage proposal would set off a round of "me too" demands from other bargaining units within the County. The County also contends its wage proposals are fair when compared to the wage increases granted other County bargaining units between 2005 and 2007. The County points out the 9.08% proposed increase for 2007 is the same as the increase received by the AFSCME coalition of 3,000 employees, and Teamsters Support (Sheriff's Department). It is higher than increases in two Correction Department units: Teamster support (8.96%), and Teamsters Supervisory (8.46%).

I am not persuaded by the County's argument. The internal comparison with the greatest significance is with the Correction Sergeants. I note Arbitrator Wilkinson awarded an 11.8% increase to the Sergeants for the period between 2005 and 2007. Furthermore, since Arbitrator Wilkinson's award was retroactive, the compounded wage increase for the Sergeants was 12.3% over the three-year period.

Other Factors: Recruiting, Turnover, and Retention.

As mentioned earlier, the yearly attrition average is approximately 37 Custody Officers, of which about 40% are either promotions, retirements, or terminations. *See* Exhibit C-19. The County believes its wage rate is neither a factor in the attrition rate nor a hindrance to recruiting. Neither Party presented particularly relevant information on these issue. However, as part of the County's evidence is a July 27, 2007 email from Pierce County's Labor Relations Manager Joe Carrillo to Snohomish County Labor Relations Analyst Dave Ellgen relating to the 2008 Pierce County wage increases. *See* County Book 1 end of Pierce County Agreements. In his email, Mr.

Carrillo explains that in addition to a 100% COLA in 2008 and 2009, the parties "agreed to drop the 1st step for CO's and add a new top step at 2.5% higher effective in 2008 (We did this for recruitment and retention purposes)." The net effect of this change is to increase the entry-level wage by 5% and increase the wage for top step wage by 2.5% in addition to the 100% COLA, i.e., in 2008 an effective 8.8% increase for entry-level Officers and a 5.8% increase for top-step Officers.

I find this is significant for two reasons: 1) Pierce County, Snohomish County's most relevant Comparable, apparently recognizes it has a recruitment and retention problem; and 2) even with the Guild-proposed wage increase, Pierce County's 2007 wages are higher than Snohomish County's. This is particularly for entry-level Officers where, beginning in 2008, more than a 10% discrepancy will exist.

Analysis and Findings

In deciding the wage increase issue, I have predominately relied on my wage rate comparisons with the Comparables. Not only is this factor given statutory prominence, but Comparable wage-rate comparisons are usually the fairest way to determine a wage which the Parties might have arrived at themselves. However, I have also considered the cost of living, particularly for the 2008 and 2009 wage increases. Additionally, I have kept in mind my awards on other issues in this interest arbitration.

I find the Guild's proposed wage rate is fair and reasonable. As discussed earlier, and as seen in Table 9, the Guild's proposal closely tracks the average of the Comparables at the 6-year and 15-year benchmarks, while the County's proposal is more than 5% below the average. Furthermore, although not necessarily a factor, I note the Sergeants and Lieutenants received an 11.8% raise for 2005 to 2007 in the *Sergeants* Award. If compounded annually, the Sergeants raise equals 12.3%. Thus, a 12% wage increase is internally consistent with the most important

internal comparator – the Custody Officers' supervisors. Accordingly, effective the date of this award, I award a 12% wage increase.

Regarding wage increases for 2008 and 2009, I award 100% of the CPI-W for the following reasons. First, an award of 100% of the CPI will assure Custody Officers' wages remain competitive and comparable to the Comparable jurisdictions. In particular, Pierce County has already negotiated wage increases of 100% CPI (2.5% floor; 5.5% ceiling) for 2008 and 2009. Second, Arbitrator Wilkinson awarded a 100% CPI wage increase for 2008 in the *Sergeants* Arbitration. Once again, my award of 100% of the CPI keeps the Custody Officers internally consistent with their supervisors. Third, a 90% CPI is not appropriate when the Custody Officer salary levels are below the average of the Comparables and Pierce County.

Regarding the Guild's proposal for a longevity bonus, I find the Guild failed to demonstrate such a proposal is fair or reasonable. A longevity bonus would only affect the 6-year and 15-year benchmarks. After my award, Custody Officer wages at the 6-year and 15-year benchmarks will be within an acceptable range of the average of the Comparables. The Guild has not provided any justification for increasing wages at these benchmarks.

Award

Effective on Award:	12.0% wage increase
Effective January 1, 2008:	3.3% wage increase
Effective January 1, 2009:	100% of the CPI-W[15] wage increase

The Guild's proposal on longevity is denied. The longevity language in §A.5 will remain unchanged from the language in the expired 2002-2004 Agreement.

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[15]Based on the Seattle-Tacoma-Bremerton CPI-W, June 2007-2008. Additionally, in keeping with the Parties' practice, I will include the CPI language from the expired 2002-2004 Agreement, but with a floor of 2.5% and a ceiling of 5.5% which is consistent with the Pierce County Agreement.

ISSUE 4 – MEAL PERIODS AND REST BREAKS (§5.2 – §5.3.1)

Introduction and the Parties' Proposals

Meal Periods

The current language relating to meal period has remained unchanged since at least 1986. It provides:

> 5.2 Meal Breaks - All employees assigned to an eight (8) hour shift exclusive of the meal period shall be entitled to a thirty (30) minute meal break during their shift. Said employees shall not be on call except for emergencies during their meal period
>
> 5.2.1 Employees assigned to an eight (8) hour shift inclusive of the meal period shall remain on the premises and be on call during their meal period.

The Guild proposal on the issue of Meal Periods (with changes shown to existing language) is:

> 5.2 Meal Breaks - ~~All employees assigned to an eight (8) hour shift exclusive of the meal period shall be entitled to a thirty (30) minute meal break during their shift,~~ Employees shall be allowed a paid meal period of at least 30 minutes which commences no less than two hours and nor more than five hours from the beginning of the shift. The employer will make every effort to provide employees with an uninterrupted meal period and provide relief coverage such that employees are not required to stay at their workplace post. Said employees shall not be on call except for emergencies during their meal period. Employees working three or more hours longer than a normal work day shall be allowed at least one 30 minute meal period prior to or during the overtime period. Employer shall adhere to all applicable State and Federal laws, including WAC 296-126-092 and related administrative policy, as found in Appendix "X."
>
> 5.2.1 Employees assigned to an eight (8) hour shift inclusive of the meal period shall remain on the premises and be on call during their meal period.

Testimony regarding the Parties' practice in implementing the existing contract is consistent. For at least the past eleven years, Officers assigned to a pod are required to eat lunch at their duty-stations, and their lunches are frequently interrupted by unscheduled tasks. Oftentimes their duty-station is surrounded by inmates.

Over the years, many Officers have expressed dissatisfaction with the practice. Officers complain: They really never get a lunch break, conditions in the Pod are not sanitary, they have no

real "break from work," and are unable even to read a newspaper. The Parties have discussed the topic of meal periods at numerous Labor-Management Committee meetings, and a grievance was filed in 2000. However, that grievance was not pursued. The Parties addressed this provision during the 2000/2001 negotiations, but no change was made to the agreement. According to the affidavit of David Ellgen (Exhibit C-16; attachment B), in the 2000 negotiations the County proposed a one-half (½) hour designated meal period in which the Officer would be allowed to leave the module, but the meal period would be unpaid. Custody officers have filed two separate lawsuits relating to meal periods: *Iverson v. Snohomish County*, 117 Wn. App. 618 (2003); and *Frese, et al. v. Snohomish County*, King County Superior Court Cause No. 03-2-24214-SEA. *Frese* is currently pending and scheduled for trial in 2008.

The Guild contends the Parties cannot reach agreement on the meal period issue because the County refuses to follow the minimum standards of the law. The Guild contends the current practice violates WAC 296-126-092. According to the Guild, its proposal is intended to make it clear "work site" does not mean "remaining at your post." Furthermore, the Guild seeks language to assure that, in the case of extended shifts, employees are provided adequate breaks and meal periods. As additional support for its proposal, the Guild contends the majority of the Comparables have paid lunch periods subject to interruptions or subject to call.

The County opposes the change, and contends the current practice is lawful based on *Iverson*, *supra*, and a recent ruling in *Frese*, *supra*. In *Iverson*, the Court of Appeals upheld the lower court's summary judgement ruling for the County. In *Iverson*, a Custody Officer sued contending he was entitled to additional compensation for his 30-minute lunch break because being "on call" did not reflect the extensive duties he actually performed during his lunch break. The appellate court found the meal period complied with WAC 296-126-092, and found plaintiff was unable to cite any authority which would require additional compensation for the duties he was

required to perform during his lunch period. In *Frese*, the trial court recently dismissed all claims brought by Officers working graveyard, because the court found the evidence showed they had ample time to eat while at their duty station.

According to the County, the language is the result of prior negotiations when Custody Officers bargained for a shorter workday with paid meal breaks. The County asserts the evidence shows that neither the contract language nor the Parties' practice has changed for decades. The County argues the Guild would be unable to obtain such a concession in bargaining without an offsetting concession on the Guild's part. Finally, the County contends that granting the Guild's meal-break proposal would require the County to create and fill 10 to 12 additional FTEs.

Rest Breaks

The current language relating to rest breaks remains unchanged since at least 1992. It provides:

> 5.3 Rest Breaks - All employees shall receive two (2) fifteen (15) minute rest breaks during their assigned work shift. Employees shall remain on the Corrections premises unless otherwise authorized.
>
> 5.3.1 Missed Breaks – In the event an employee is denied a fifteen (15) minute break, he/she shall be compensated for fifteen (15) minutes at the rate of one and one-half (1-1/2) times the employee's regular straight time rate of pay for the fifteen minutes he/she was denied.

The Guild proposed revision for Rest Breaks issue (with changes shown to existing language) is:

> 5.3 Rest Breaks - ~~All employees shall receive two (2) fifteen (15) minute rest breaks during their assigned work shift.~~ Employees shall be allowed a paid rest period of 15 minutes for each 4 hours of working time. No employee shall be required to work more than three hours without a rest period. Employees shall remain on the Corrections premises unless otherwise authorized. Employer shall adhere to all applicable State and Federal law, including WAC 296-126-092 and related administrative policy, as found in Appendix "X." The employer will make every effort to provide employees with an uninterrupted rest period. The Employer will provide relief coverage such that employees are not required to stay at their workplace post.

5.3.1 Missed Breaks – In the event an employee is not provided ~~denied~~ a fifteen (15) minute break, he/she shall be compensated for fifteen (15) minutes at the rate of one and one-half (1-1/2) times the employee's regular straight time rate of pay.

The Guild's states its change to §5.3.1 is aimed at shifting the burden of scheduling breaks from the Officers to the Employer. According to the Guild, currently Officers must continuously push for breaks, and this imposes an undue burden on an employee who must "bother" his supervisor by asking for a break. Additionally, the Guild seeks a change in §5.3 to require a rest break every four hours instead of two breaks "during the assigned shift;" other language relating to relief coverage for breaks; and the incorporation of federal and state law. According to the Guild, this language change is necessary to ensure workers get relieved at breaks, and a break between shifts when working back-to-back overtime shifts ("doubles").

The County also opposes the Guild's proposal on rest breaks. According to the County, the Guild's proposal in §5.3.1 would require the County to pay for a rest break even when Officers failed to timely advise their supervisor they had not yet had a break. According to the County, the CBA should not contain such disincentives to responsible behavior. The County provided no argument in opposition to the Guild's proposed language in §5.3, although the County in general opposed including any provision in the agreement which incorporated federal or state law by reference.

Analysis and Findings

Meal Periods

The current practice requiring Custody Officers to eat at their work stations is unquestionably undesirable. The practice has generated labor-management meetings, past negotiations, and lawsuits. However, the practice arose out of previous negotiated changes to the agreement where presumably Officers received a paid meal break in exchange for the Officers "remaining on the premises and being on call during their meal period."

Interest arbitration is not the forum to contest whether the existing practice violates state or federal law. However, I note the question of whether the current practice violates WAC 296-126-092 is not as clear as the Guild contends. The Washington Appellate Court in *Iverson*, *supra*, addressed a claim by a Snohomish County Corrections Officer that the County's meal-period practice violated WAC 296-126-092. The Appellate Court found:

> [CBA §5.2.1] clearly states that Iverson is required to remain on the premises and be "on call" during his lunch period. . . .
>
> Here the bargaining agreement tracks WAC 296-126-092, and Iverson is paid his normal wage for his on call status during meal periods. The point of being on call is to be available to perform regular duties while on call. Iverson has failed to show [that any] authority stands for the proposition that he should be required to perform fewer duties during his meal period. *Iverson, supra*, 622, 623.

By statute, my consideration of this issue must be based on evidence from a comparative analysis. The CBA provisions of the Comparables can be seen in Table 10. With the exception of Kitsap County, all of the Comparables provide paid meal periods. Spokane County specifically provides an uninterrupted paid lunch period (subject to interruption for emergencies). The other four jurisdictions require or imply the employee must remain on duty or be available for duty. However, the evidence is unclear as to the actual practice of the parties to those agreements.

The Guild contends the intent of these Comparable provisions, for which lunch breaks are subject to operational interruptions, is to "give the employee the chance to eat, rest, or just get away from the work." However, there was no evidence describing the meal-period practice in the Comparable jurisdictions. I find the language of most of the Comparable agreements is unclear regarding an employee's responsibilities during a paid lunch period. In Multnomah County, the lunch period is "subject to interruption based on operational needs." In Washington County, a lunch period is provided "when practicable." In Pierce County, the employee has to remain on duty during lunch. Thus, I find the Guild's position is not supported by a comparative analysis.

I also find the Guild failed to show a pressing need for its proposal. This practice arose out of bargaining, and has existed for more than ten years. According to the evidence, the issue was discussed only once before during negotiations when the County proposed a ½ unpaid lunch which allowed the Custody Officers to leave their workstations. The Guild seems much more intent on litigating than negotiating with respect to this issue.

Based on the above, I find the Guild has failed to justify its proposal.

Table 10. CBA Provisions Relating to Meal Periods

Comparable	CBA Provision
Clark	Employees shall receive a one half (½) hour paid meal period . . . .
Kitsap	In the event the Employer is unable to provide corrections officers with a break for lunch, the Employer agrees to provide a lunch for the affected employee(s).
Pierce	The Employer shall provide each employee with a paid thirty (30) minute meal period as part of the employee's regular eight hour shift. The employee shall remain on duty during this period. If interrupted due to operational need, such meal period shall be continued when operationally feasible, not to exceed thirty (30) minutes total.
Spokane	[Employees receive a 30-minute uninterrupted paid lunch] The employer shall provide adequate lunchroom facilities which may be used for lunch and rest periods. During lunch and rest breaks, employees shall be available in cases of emergency. This shall apply to all shifts.
Multnomah	Subject to interruption based on operational needs, all employees shall be granted a thirty (30) minute meal period during each work shift, which shall be with pay. The County shall permit any employee who is requested to and does work two (2) hours beyond his regular quitting time, time off for his meal. . . .
Washington	All employees' work schedules shall provide fo a one-half (½) hour lunch period in middle of each shift when practicable. However, if an employee attends training where the County does not have control of the schedule, the lunch period(s) at such training will be unpaid. . . .

Rest Breaks.

Under the existing language, a rest break must be denied by the Employer before a sanction is triggered. The Guild proposes the sanction be triggered if the break is "not provided." The Guild simply argues it should be the Employer's responsibility to make sure all employees have a break.

The Guild did not provide any comparative analysis to support its proposal. The Guild has also not convinced me it is unreasonable for an employee to ask for, or remind a supervisor he or

she has not had, a break. While the Employer must establish a system and have the manpower to provide work breaks to its employees, the Parties are certainly free to allocate the responsibility of monitoring breaks. I find the Guild failed to justify its proposal to change the previously negotiated language of §5.3.1.

However, I will award the Guild's proposal to modify §5.3, but not the incorporation of federal and state law, nor the addition of Appendix "X." I find the County did not present any reason for opposing this language change. Furthermore, the language includes the current practice of the Employer providing relief coverage for breaks. The proposal would also provide a rest break to Officers working doubles at or near the end of their regularly scheduled shift. I did not include the language incorporating state and federal law nor the addition of Appendix "X" because the County has consistently opposed importing external law into the Agreement, and the Guild did not submit a comparative analysis showing such provisions are common among the Comparables. I find the Guild failed to justify that part of its proposal.

Award

The Guild's proposed changes to §5.2, and §5.3.1 are denied. The language for those sections will remain unchanged from the expired 2002-2004 agreement.

The Guild's proposed change to §5.3 is awarded as herein modified.

> 5.3 Rest Breaks - Employees shall be allowed a paid rest period of 15 minutes for each 4 hours of working time. No employee shall be required to work more than three hours without a rest period. Employees shall remain on the Corrections premises unless otherwise authorized. The employer will make every effort to provide employees with an uninterrupted rest period. The Employer will provide relief coverage such that employees are not required to stay at their workplace post.

ISSUE 5 – OVERTIME (§5.4 and its subsections).

Introduction

Both Parties proposed numerous changes to the overtime section of the agreement. As discussed in the background portion of this Award, the overtime issue is central to many of the Parties' labor relations problems. Both Parties' agree there is a tremendous amount of overtime within the Department. The Parties dispute the reasons why this overtime is necessary. The Guild contends excessive overtime is the result of understaffing. The County contends the problem stems from attendance problems – in particular the excessive use of sick leave.

Many of the Parties' proposals relate to the voluntary and mandatory overtime protocols. The existing protocols are a combination of contract language, unilaterally imposed language, and practice. Sometime in 2002 or early 2003, the Parties explored options for resolving administrative and employee-relations issues regarding their mandatory overtime ("Ratcheting") provision. A draft Memorandum of Understanding ("MOU") was proposed by the County, but neither Party signed it. Under the draft MOU, a trial period was to be held in May 2003. The trial period was not held. Instead, following the expiration of the Teamster/County agreement in December 2004, the County unilaterally implemented the language of the MOU. Subsequently, the Parties engaged in various practices in the administration of the voluntary and mandatory overtime system. The use of Ratcheting reached a peak in May 2007. Although overtime use has subsided since the Spring of 2007, it continues to be an issue.

Under the present system, practically all overtime (voluntary and mandatory) is performed by working back-to-back 8-hour shifts ("doubles"). The present Voluntary Overtime system works as follows. Officers who wish to work voluntary overtime may sign up on what amounts to a Microsoft Outlook calendar (the voluntary sign up list) for any day and any shift within the next two weeks (in other words, the sign-up list is not based on expected shift vacancies). When an Officer

is needed, a Sergeant or Captain starts going down the list in order of seniority to find someone willing to work voluntary overtime. The Officer, when contacted, is not obligated to accept the overtime assignment. Neither an Officer's eligibility, nor seniority, for other voluntary overtime is affected by the Officer accepting or rejecting the proffered overtime.

Under the Ratcheting arrangement, Officers are mandatorily assigned to the shift following their scheduled shift based on a monthly list organized by reverse order of seniority. Officers can use "credits," gained by working voluntary overtime, to miss a Ratchet assignment. Officers are also exempted from Ratcheting for certain reasons, such as entering their weekend, or a medical appointment. Although it is not mentioned in the MOU, the *status quo* includes exempting those Officers with other excuses, e.g., child care.

Typically Officers are notified of a Ratchet in the middle of a shift – which means the Officer will work the following shift without a break between shifts. By the time the Officer gets home, he or she may have only 5 or 6 hours of possible sleep before it is time to prepare for the next workday. The possibility of a Ratchet makes it difficult for Officers to plan, or commit to, after-work activities.

Parties' Proposals

The County contends the existing voluntary and mandatory overtime protocols create operational difficulties. According to the County, the existing system is not an efficient or reliable means to fill vacant posts; and it is not fairly distributing mandatory overtime among the Officers. Specifically, the County contends the existing system does not work because Officers are taking excessive sick leave, cancelling or declining to accept voluntary overtime, and increasing the frequency of excuses to avoid being Ratcheted.

To remedy these perceived faults, the County proposes changes to the voluntary overtime provisions of §5.4.3 by making an employee ineligible for the voluntary overtime sign-up list for ten

(10) days if the employee signs up for overtime and declines the overtime opportunity, or cancels the overtime assignment before the shift starts. The County also proposes requiring Officers who are excused from a Ratchet to be the first called for the next Ratchet. Finally, the County proposes changing §5.4 to address the attendance problem. Under the County's proposal, sick leave (and compensated time taken in lieu of sick leave) would no longer be considered as time-worked for the purpose of calculating overtime.

The Guild proposes its own change to §5.4, arguing the Department should be discouraged from mandating overtime in the form of back-to-back shifts. The Guild proposes to discourage mandatory eight-hour overtime assignments by amending §5.4 to provide a tiered overtime structure with double time after 12 hours, and a maximum work-day limit of 16 hours unless an emergency is declared. If an emergency is declared, triple-time would be paid for work in excess of 16 hours. The Guild also proposes adding language to §5.4 which incorporates state and federal law into the Agreement.

Regarding the overtime protocols, the Guild seeks a return to the pre-existing contract, and contends the County's proposals to restrict voluntary overtime sign-up are too severe. The Guild also opposes some of the County's proposals which were part of the unilaterally implemented MOU. However, the Guild would like to continue some provisions or practices, such as: protection from mandatory overtime for employees on special leaves (FMLA, L&I, employees on vacation, and during employees' weekends); the "credit" system whereby voluntary overtime hours can be used to avoid a Ratchet; the practice of first come, first served when working overtime; and the current tradition of changing an assignment for Officers working double shifts.

The Guild contends child-care needs to remain a legitimate and accepted reason for avoiding mandated overtime. The Guild suggests the *status quo* definition, and past practice

regarding child care as an excuse should stand. Finally, the Guild contends Officers should not be penalized following a legitimate excuse from a mandatory overtime assignment.

The County's proposal (with changes shown to the existing language) is:

5.4 Overtime - Employee shall be paid overtime pay at the rate of one and one-half (1-1/2) times the employee's regular rate of pay for all hours worked in a week in excess of forty (40) hours. For the purpose of calculating overtime pay, all compensated hours (except sick leave and compensated time taken in lieu of sick leave) shall be considered time worked.

5.4.1 All overtime shall be compensated for in increments of fifteen (15) minutes with the major portion of fifteen (15) minutes being paid as fifteen (15) minutes.

5.4.2 Overtime shall be reported in the payroll time period in which it was earned.

5.4.3 Overtime Sign-up List - Employees desiring to work overtime shall sign on the overtime sign up sheet indicating the dates and shifts they would be willing and available to work. When overtime occurs, the most senior employee who has signed up for overtime and is assigned to the shift where overtime is needed shall be contacted. The shift where overtime is needed shall be the shift where the majority of anticipated overtime hours are to be worked. If he/she declines or is not available for the overtime work, the next senior employee on the list assigned to the shift shall be called. This process shall continue until all employees on the list assigned to the shift have been contacted or the overtime work has been filled. In the event none of the employees signed up for overtime and assigned to the shift where overtime is needed is available, the overtime work shall then revert to the most senior employee not normally assigned to the shift where overtime is needed. The employee may sign up for overtime a maximum of fourteen (14) days in advance; the Employer shall assign overtime a maximum of seven (7) days in advance.

In the event said overtime and/or extra work is not filled by using the overtime sign-up list, mandatory overtime shall be assigned. This overtime shall be assigned in reverse order of seniority on a rotating basis from the least to the most senior employee, by shift, who is qualified to perform the work.

If an employee voluntarily signs up for overtime and then cancels out four (4) hours or less time before the shift starts, the employee shall not be eligible for voluntary sign-up for ten (10) calendar days. Employees will not voluntarily sign up for overtime when they do not intend to work the overtime. If an employee voluntarily signs up for overtime and declines the opportunity and/or cancels before the shift starts, the employee shall not be eligible for voluntary sign-up for ten (10) calendar days. Exceptions will not be allowed unless approved by the Director or designee. However, the employee may still be mandated to work overtime.

5.4.4 Overtime and Extra Work – Overtime and extra work shall be assigned as denoted in 5.4.3 ~~on a first right of refusal basis~~ to the most senior, qualified employee ~~by shift~~. ~~In the event said overtime and/or extra work is not filled on a voluntary basis on the shift where the overtime is needed, the next senior employee not on that shift who is qualified to perform the work shall be offered the overtime~~. In the event overtime or extra work is not filled on a voluntary basis, mandatory overtime shall be assigned on a rotating basis as denoted in ~~5.4.4.1.in reverse order of seniority to the next senior employee not on that shift who is qualified to perform the work.~~

Definition – Rotating basis shall mean from the least senior employee through the most senior employee. Employees not available for their rotation on the mandatory list will be assigned the next mandatory shift.

5.4.4.1 Mandatory Overtime Rotation – For mandatory overtime (ratcheting), the rotation shall commence on the first day of each month starting with the least senior employee qualified to perform the assigned work, ~~regardless of classification. Employees not available for their rotation on mandatory assignment shall be assigned the next mandatory shift regardless of when such mandatory shift occurs~~.

1. Sign-Up:

a. The employee may sign up for overtime a maximum of twenty-one (21) days in advance; and

b. The Employer shall assign overtime a maximum of fourteen (14) days in advance. However, the Employer will make a good faith effort to assign overtime a maximum number of days in advance.

c. Sgt's, Captain's and/ or designee will be responsible for scheduling overtime needs as much as fourteen (14) days in advance.

2. Mandatory overtime for the next shift will be filled by the shift on duty:

a. Dayshift will provide coverage for Swing shift mandatory overtime vacancies.

b. Swing shift will provide coverage for Graveyard shift mandatory overtime vacancies.

c. Graveyard shift will provide coverage for Dayshift mandatory overtime vacancies.

d. For mandatory overtime needed for transport, the transport Sergeant will ensure that the officer(s) being mandated will be scheduled so that the total number of hours worked will not exceed eighteen (18) hours.

e. Mandatory overtime rotation shall reset on the first calendar day of each month and be assigned in order of seniority starting with the least senior officers to the most senior officer. Officers may substitute earned overtime credits, (earned within the monthly rotation), for a mandatory shift. Credits shall be accrued and used in hourly increments. (Examples: a four (4) hour credit may only be substituted for a four (4) hour mandatory shift). Officers who have already worked a mandatory shift during the current month's cycle shall not be mandated prior to all other eligible officers being mandated or having utilized an earned credit

3. Exceptions:

a. Employees in primary vacation, secondary vacation, scheduled day off and other scheduled leaves (FMLA, military, L&I) are not eligible to ~~will not~~ be "ratcheted" unless an emergent condition exists as declared by the Employer. ~~Employees with a scheduled and confirmed medical appointment will be~~ excused ~~from the ratchet under article 5.4.4.1.~~ Also, all officers on, or starting a weekend, or approved training that may not be rescheduled are not eligible for ~~shall be immune from~~ mandatory overtime unless an emergent condition exists as declared by the Employer. Vacation, leaves and days off for the purposes of this section are to begin as soon as the employees' regular shift ends.

b. Employees with a scheduled and confirmed medical appointment or verified child care will be "excused" from the ratchet under article 5.4.4.1., subject to paragraph 7.d. ~~Vacation, leaves and days off for the purposes of this section are to begin as soon as the employees' regular shift ends.~~

c. In the event there are not enough persons remaining to fill the short notice overtime needs, the 2nd call will be to those persons starting their regular scheduled days off not attached to primary vacation in reverse order of seniority. If still unable to fill the overtime needs, the 3rd call goes to persons taking secondary leave days in reverse seniority order. Otherwise the list shall reset and the next person eligible to ratchet shall be called.

The Employer shall not create overtime assignments to permanently replace regular full-time Council (budget and appropriated) positions.

4. Tracking: The County shall provide an accurate, contemporaneous and readily ascertainable computer tracking of all mandatory overtime grouped by shift. The computer tracking shall be available for all officers to review and shall contain the following information which shall be listed in order of seniority: (with alternative language shown)
   a. Names of officers
   b. Seniority numbers
   c. Date Notified
   d. Shift and date ordered to work
   e. Name of supervisor ordering
   f. Credits/Ratchets
   g. Excused (and reasons) or unexcused (and reason).
   h. Other pertinent notes

5. Crediting:

   If an employee works voluntary overtime, the employee will get a "credit" for the actual number of voluntary overtime hours worked. This credit will be used by the employee on an hour for hour basis to waive their obligation to work mandatory overtime within that month. The credit hours earned will be reset to zero on the 1st of each month.

   An employee ratcheted for overtime who works two (2) hours or more and is then sent home by the employer will be considered to have fulfilled a mandatory overtime shift and the employee shall be paid for actual hours worked. In the event a mandatory overtime shift is less than eight (8) hours the last Officer placed on mandatory overtime shall have the first option to leave consistent with reasonably anticipated operational requirements.

6. Employee Contacts: No employee shall be considered to have been ordered in, to have refused such order, or to be unavailable for ratchet unless positive verbal confirmation is given either in person, over the phone or the employee responds through in-house email.

7. Operational Procedures:

a. The person working overtime either mandatory or volunteer may not select a position to work that would displace a regular scheduled employee. They may select which vacant post they want to work if more than one is available – subject to operational needs as determined by the Shift Commander (Captain or designee).

b. In the event an employee is mandated to work more than sixteen (16) hours consecutively, the employee may, at their request, have their next regularly scheduled work day adjusted by the number of hours beyond sixteen (16). Employees may choose to extend their shift to eight (8) hours or elect to use

vacation leave, holiday leave or leave without pay. All hours over sixteen (16) shall be paid at the double time rate.

c. The employer may order mandatory overtime assignments for support bargaining unit assignments only after the following:

(1) Custody Officers on the voluntary overtime sign-up list assigned to the same shift and within shift by seniority;
(2) Custody Officers on the voluntary overtime sign-up list assigned to a different shift in order of seniority;
(3) Custody Officer volunteers in order of response received to the request for volunteers.

d. An employee who refuses a mandatory overtime shift for an unexcused reason shall be placed on the unexcused list. Those employees on the unexcused list shall be called first and required to work any mandatory overtime shifts within the next 72 hours without excuse.

e. Finally, the mutual understanding of the parties follows:
(1) The Employer shall not create overtime assignments to permanently replace regular full-time Council (budget and appropriated) positions.
(2) If an employee signs up for overtime and is called, the employee must accept the overtime assignment, and (2) if the employee accepts the overtime assignment, the employee will may not cancel it without forfeiting eligibility for voluntary overtime for 10 days;
(3) Employees who have accepted overtime will work in any custody officer assignment designated by management for the overtime shift.; and
(4) Anyone that is eligible for a ratchet and does not work that excused from a ratchet shall be available for a ratchet during the next 72 hours.

The Guild Proposal (with changes shown from existing language) is:

5.4 Overtime - Employees shall be paid overtime pay at the rate of one and one-half (1-1/2) times the employee's regular rate of pay, as according to all state and federal laws, for all hours worked in a week in excess of forty (40) hours. For the purpose of calculating overtime pay, all compensated hours shall be considered time worked. Double time rate is defined as twice the applicable straight time rate.

Employees mandated to work overtime will be paid time and one-half (1 ½) for the first four (4) hours of mandatory overtime in a workday and shall be compensated at double time rates for all worked over four (4) hours. Any and all hours of mandatory overtime in excess of a twelve hour workday will be paid at double time.

Employees shall not be mandated to work more than sixteen (16) consecutive hours, unless an emergency is declared. This is a safety and security issue. If an emergency is declared and officers are mandated to work more than sixteen (16) consecutive hours, these hours will be paid at triple time (3x). Employees working mandatory or voluntary overtime may not displace a regular scheduled employee.

5.4.1 All overtime shall be compensated for in increments of fifteen (15) minutes with the major portion of fifteen (15) minutes being paid as fifteen (15) minutes.

5.4.2 Overtime shall be reported in the payroll time period in which it was earned.

5.4.3. Overtime Sign-up List - Employees in the Detention Division desiring to work overtime shall sign on the overtime sign up sheet indicating the dates and shifts they would be willing and available to work. When overtime occurs, the most senior employee who has signed up for overtime and is assigned to the shift where overtime is needed shall be contacted. The shift where overtime is needed shall be the shift where the majority of anticipated overtime hours are to be worked. If he/she declines or is not available for the overtime work, the next senior employee on the list assigned to the shift shall be called. This process shall continue until all employees on the list assigned to the shift have been contacted or the overtime work has been filled. In the event none of the employees signed up for overtime and assigned to the shift where overtime is needed is available, the overtime work shall then revert to the most senior employee not normally assigned to the shift where overtime is needed. The employee may sign up for overtime a maximum of fourteen (14) days in advance; the Employer shall assign overtime a maximum of seven (7) days in advance.

In the event said overtime and/or extra work is not filled by using the overtime sign-up list, mandatory overtime shall be assigned. This overtime shall be assigned in reverse order of seniority on a rotating basis from the least to the most senior employee, by shift, who is qualified to perform the work.

If an employee voluntarily signs up for overtime and then cancels out four (4) hours or less time before the shift starts, the employee shall not be eligible for voluntary sign-up for ten (10) calendar days.

The County shall provide accurate, contemporaneous and readily ascertainable computer tracking of all mandatory overtime grouped by shift. The computer tracking shall be available for all employees to review and shall contain the following information which shall be listed in order of seniority:

- Name of employees
- Seniority Numbers
- Date notified
- Shift and date ordered to work
- Name of supervisor ordering
- Credits/ratchets
- Excused (and reasons) or unexcused (and reason)
- Other pertinent notes

The employer shall not create overtime assignments to permanently displace regular full-time positions.

5.4.4 Overtime and Extra Work – Overtime and extra work shall be assigned on a first right of refusal basis to the most senior, qualified employee by shift. In the event said overtime and/or extra work is not filled on a voluntary basis on the shift where the overtime is needed, the next senior employee not on that shift who is qualified to perform the work shall be offered the overtime. In the event overtime or extra work is not filled on a voluntary basis, mandatory overtime shall be assigned on a rotating basis in reverse order of seniority to the next senior employee not on that shift who is qualified to perform the work.

Definition – Rotating basis shall mean from the least senior employee through the most senior employee. Employees not available for their rotation on the mandatory list will be assigned the next mandatory shift.

5.4.4.1 Mandatory Overtime Rotation – For mandatory overtime, the rotation shall commence on the first day of each month starting with the least senior employee qualified to perform the assigned work, regardless of classification. Employees not available for their rotation on mandatory assignment shall be assigned the next mandatory shift regardless of when such mandatory shift occurs.

No employee shall be considered to have been "ordered to work" to have refused such order, or to be unavailable for ratchet unless positive verbal confirmation is given either in person, over the phone or the employee responds through in-house email.

Employees on primary vacation, secondary vacation, scheduled day off and other scheduled leaves (FMLA, military, L&I) will not be "ratcheted" or mandated overtime, except emergency situations. Employees on, or starting a weekend, or approved training that may not be rescheduled, shall be immune from mandatory overtime, except emergency situations. Vacation, leaves and day off begin as soon as the employees' regular shift ends.

An employee mandated for overtime who works two (2) hours or more and is then sent home by the employer will be considered to have fulfilled a mandatory overtime shift and the employee shall be paid for actual hours worked, at the applicable rate. In the event a mandatory overtime shift is less than eight (8) hours, the most senior officer placed on mandatory overtime shall have the first option to leave when applicable.

Employees who volunteer for overtime prior to being mandated may accrue a "credit" to avoid future equivalent overtime during the month cycle. Employees who have already worked a mandatory shift during the current month's cycle shall not be mandated prior to all other eligible officers being mandated or having utilized an earned credit. Credits shall be accrued and used in hourly increments, but do not carry past the current month's cycle.

Analysis and Findings

Unquestionably, the amount of overtime is excessive. According to the County, the average officer worked 231.54 hours of overtime in the 36-week period between January 1, 2007 and September 15, 2007. *See* Exhibit C-17. That means the average Custody Officer was working a double practically every week during that period. The increase in overtime correlates with the start-up of the new jail in the Spring of 2005. As illustrated in Table 11, the Department's monthly overtime expenditure averaged $115,000 for the first three months of 2005. Starting in April 2005 the overtime expenditure doubled, and for the remaining nine months of 2005 the monthly overtime expenditure averaged $244,000.

Table 11: Department of Corrections Overtime Expenditures

Year	ACTUAL OVERTIME EXPENDITURES PER MONTH (in thousands – $000)											
	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
2005	$111	$107	$128	$239	$257	$186	$256	$295	$262	$253	$215	$235
2006	$193	$205	$252	$254	$262	$221	$241	$236	$222	$270	$217	$216
	TARGET OVERTIME EXPENDITURES PER MO (in thousands – $000)											
2005	$183	$113	$113	$113	$113	$113	$113	$113	$113	$113	$113	$183
2006	$193	$179	$166	$166	$179	$166	$179	$179	$166	$166	$243	$217

Source: "Snostat" Data Sheets from Snohomish County Website and Exhibit C-28.
Note: No Snostat data sheet for overtime in 2007 was provided

The Department's Snostat reports confirms the County is relying to some extent on overtime to staff its jail. In 2006, the Department's monthly average "targeted" overtime expenditure was $183,000, i.e., the Department planned on spending over $2 million in overtime. In the Snostat report, the Department explained its anticipated use of overtime as follows: "The expenditure of overtime funds to support jail operations is, in some circumstances, the most efficient means of funding manpower needs as opposed to funding additional full-time staff."

In fact, the Department spent almost $3 million in overtime in 2006, exceeding its targeted overtime use by an average of $61,000 a month. The Department's Snostat report attributed this "excess" overtime to: "Higher than anticipated unscheduled leave use for sick leave, military leave, L&I and leave without pay plus additional posts needed to staff the new jail facility above initial transition staffing plan."

Sick leave and LWOP (leave without pay) use among employees is alarmingly high. The Department presented evidence showing over 50% of the Officers have used more than 90% of their career-accumulated sick leave, and nearly 13% have used more than 99% of their career accumulated sick leave. Sick leave usage for 2006 was 18,689 hours, and for 2007 it will probably be about the same. That averages approximately twelve sick days per year per Officer. In addition

to sick leave, many Officers take LWOP instead of sick leave. Unfortunately, the LWOP category includes military leave beyond 120 hours, FMLA leave and L&I leave, in addition to sick calls when an Officer has no sick leave available. Thus, the Department's LWOP data does not correlate to anything. See Exhibit C-11.

Not coincidentally, the use of overtime and the use of sick leave or LWOP reached a peak in the Spring of 2007. According to Exhibit G-35, 209 overtime shifts were needed the first week of April 2006. Also in the first six months of 2007, 91 different Custody officers called in sick a total of 341 times when they did not have enough sick leave to cover the day. See Exhibit C-11. In May 2007, the Director issued a temporary moratorium which restricted the approval of additional vacation or holiday leave. In September 2007, the Director lifted the moratorium. At the time of the hearing, the earlier crises seemed to have passed.

The evidence suggests the Department is walking a fine-line with respect to "funding manpower" through the use of overtime instead of increasing the number of full-time employees. At some point the use of overtime has its limits. Workers get tired, and not all employees can schedule their lives to work 16 straight hours. Additionally, the manpower system does not have the capacity to absorb unexpected events like a sudden increase in attrition.

The Guild contends its proposal would "discourage" the use of mandatory overtime in excess of four hours, i.e., eight-hour Ratchets would be more expensive because the last four hours would be at double time. The Guild also contends there is support from the Comparables for limiting mandatory overtime to four hours. For example: Spokane assigns mandatory overtime in ½ shift increments, and Multnomah limits mandatory overtime at the end of, or prior to, a shift to four hours.

Table 12 shows the Comparables' CBA provisions relating to mandatory overtime. As can be seen from Table 12, most agreements provide little insight into the Comparables' practices on

assigning mandatory overtime. Only two of the Comparables, Multnomah and Spokane, seem to limit the number of mandatory overtime hours per assignment.

Table 12: CBA Provisions of Comparables Relating to Mandatory Overtime

Comparable	Provision
Clark	Nothing in Agreement, but Operational Order states: "Mandatory overtime will be assigned to the off-going shift starting with the eligible employee with the least amount of accumulated mandatory overtime hours. When tied, the overtime is assigned to the junior person with the least hours." In the event that a gap in coverage remains (due to 12 hour shifts), and a lack of volunteers, then employees of the oncoming shift can be mandated to report early.
Kitsap	The Employer shall make a reasonable attempt to seek volunteers for overtime assignments prior to mandatory assignments of overtime. Absent volunteers, the Employer shall assign by reverse order of seniority, starting with the least senior employee and rotating through the list of employees by shift . . . .
Pierce	Employer retains and reserves authority . . . . to assign overtime.
Spokane	Due to unpredictable absences or circumstances, or in the event that overtime is not filled on a voluntary basis, predictable overtime becomes unpredictable and mandatory twenty-four (24) hours prior to the shift being filled. A shift sergeant will have the authority to order positions assigned no more than twenty-four (24) hours in advance of the hours needed to fill the position; except that employees may be given notice on the final day of their regularly scheduled work week for overtime work adjacent to their next regularly scheduled shift. Mandatory overtime shall not exceed half the employee's regularly scheduled shift. Each employee may be ordered to work two (2) one-half (½) shifts each month. . . . If all employees have worked two (2) one-half (½) shifts within the month, they may be required to work an additional one-half (½) shift.
Multnomah	Mandatory overtime at the end of (or prior to) the regular shift will be no longer thatn four (4) additional hours except in a bona fide emergency.
Washington	Nothing in Agreement.

I believe the Parties' would both be happier if mandatory overtime assignments were limited to four hours, and if voluntary assignments were available in four hour increments. Officers working overtime would not be as tired, and Officers would have more flexibility in volunteering for overtime by working the four hours before their regularly scheduled shift. However, my belief is not important in determining this issue. The question is whether the Guild presented sufficient evidence to justify its proposed change, primarily through a comparative analysis as specified in RCW 41.56.465. Furthermore, it is not the Guild's intended purpose for their proposed change that is at issue, it is the actual change proposed.

I find the Guild's proposal is simply not supported by a comparative analysis. Not one of the Comparables pays double time after twelve hours, and no Comparable pays triple time. I find the Guild failed to justify its proposal.

Regarding the County's proposed change to §5.4, the County argues for this "modest tool to discourage unnecessary use of sick leave." The Guild contends the County's proposal would penalize all employees on the basis that a few employees have abused sick leave. The Guild contends abuse of sick leave should be addressed on a case-by-case basis, and if present and proven, handled with disciplinary action.

I find the County's proposal is not supported by a comparative analysis. Pierce, Washington, Spokane, Kitsap, and Clark Counties all include sick leave as hours worked for the purposes of calculating overtime. Washington County is silent on the subject. Furthermore, I note Arbitrator Wilkinson denied a similar change proposed by the County in the *Sergeant* Arbitration. Based on the above, I find the County failed to justify its proposal to modify §5.4.

The remainder of the Parties' overtime proposals relate to the voluntary and mandatory overtime protocols. The Parties' have asked me to devise voluntary and mandatory protocols based on their proposals. Many of the Parties' proposals are identical, but the proposals are inserted in different parts of Article V. The County's proposal is much more detailed than the Guild's, but in some instances the County's proposed subsections merely perpetuate and provide structure to the current practice.

There are some significant differences between the Parties' proposals. The most notable differences are in the County's proposals for: 1) penalty provisions for an Officer on the voluntary overtime list who refuses an offer of overtime, or who accepts the overtime assignment and later cancels the assignment; and 2) requiring an Officer excused from a Ratchet for a legitimate medical appointment or legitimate child care to work the next Ratchet (within 72 hours) without excuse.

I will first discuss and make findings regarding these two major differences. I will then briefly discuss other areas of each Party's proposal which I am not including in my award. Finally, I will present my award as a compilation of both Parties' proposals with my editing to reduce some of the redundancies, and any clarifications which I found necessary.

Voluntary Overtime Protocol

The present voluntary overtime system is unusual in several respects. First, the voluntary sign up sheet is simply a calendar where Officers can sign up stating they have an interest in working overtime on a particular day and shift. There is no assurance that overtime will, in fact, be available on the date and shift for which the Officer expresses an interest.

Second, the present method of assigning voluntary overtime is very time consuming. A Sergeant must offer the overtime shift to everyone on the overtime list starting with the most senior volunteer. However, there is no obligation on, or consequence to, the Officer for either accepting or declining the overtime shift, i.e., the Officer does not go to a bottom of a list. Since there is no obligation to accept offered overtime, there is no disincentive to sign the overtime list. As a result, the Sergeants may go through several names and still find no one willing to accept an overtime assignment. Furthermore, there is no penalty for accepting an overtime assignment, and then cancelling (unless an employee cancels within 4 hours prior to the start of the overtime shift). In the event of a cancellation, the Sergeant must again go through the overtime list to find an Officer willing to accept the assignment. There may be several iterations of this same process before a single overtime slot is filled.

The County's proposes new language in §5.4.3 which sanctions an Officer on the sign up list in two instances: 1) if the Officer is offered the overtime and refuses the overtime; and 2) if an Officer accepts an overtime assignment and then cancels that assignment. In both instances the

sanctioned Officer is ineligible for the voluntary sign up for ten calendar days. Under the County's proposal, an Officer may still sign up for several days for which he or she is interested in working overtime. However, the Officer must keep those sign-ups current with his or her present intention to accept overtime if offered. If an Officer's plans change and the overtime is no longer wanted on a particular day, then the Officer needs to remove his or her name from the list. There is no penalty or restriction for removing a name from the overtime list as long as the removal occurs before being offered the overtime for that day and shift.[16]

I find the County's proposal reasonable with little impact on those Officers who are truly interested in working overtime for a particular shift. I will modify the language in the County's proposal to more clearly spell out the circumstances when an Officer can remove his or her name from the overtime list. As modified, I will include the proposal in §5.4.3.2 and §5.4.3.3 of my award.

Excuses from Mandatory Overtime.

Although I find the language unclear, the County proposes that an Officer who is excused from a Ratchet for verified child care or for a scheduled and confirmed medical appointment be the first called and required to work any mandatory overtime shift within the next 72 hours. *See* County's proposed §5.4.4.1(3)(b) and §5.4.4.1(7)(d). The County contends this provision is necessary because of the proliferation of "child care" and "medical appointment" excuses from Officers. The Guild specifically argues against this proposal and contends that child care issues are legitimate reasons for being unavailable for mandatory overtime.

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[16]A hypothetical was discussed during the December 20, 2007 conference call. In the hypothetical, an Officer volunteers for overtime on four consecutive days because the Officer is interested in working overtime during that week. The Officer is called and advised of an overtime opportunity on the first of those consecutive days. The Officer can accept the overtime offer and ask the Sergeant to remove his name from the lists for the following three days without penalty.

I considered the Party's arguments, and find the County needs to explore other options for imposing mandatory overtime on Officers with legitimate child-care issues. The problem arises in part due to the amount of overtime which the Department uses to "fund its manpower," and in part, due to the use of 8-hour mandatory overtime assignments. Common sense indicates Officers with legitimate child-care issues will have difficulty working a double shift with less than eight hour's notice. The County's proposal requiring that Officer to then make arrangements to possibly not care for his or her child for the next three days, is simply unreasonable. This is particularly true because, given the amount of overtime used by the Department, the mandatory of overtime could be a monthly event. Accordingly, I will not include the County's proposed §5.4.4.1(3)(b) and §5.4.4.1(7)(d) in my award.

Other Provisions

Regarding other portions of the Parties' proposals relating to overtime, I included all of the Guild's proposals and most of the County's. The County's proposals not included in my award are set forth in Table 13.

Table 13: County's Voluntary and Mandatory Overtime Provisions Not Included in Award

Section	Reason for Excluding
5.4.4.1(1)	This proposed section is confusing and contradictory
5.4.4.1(3)(b)	See discussion and findings above.
5.4.4.1(7)(c)	Even though this proposal is in the unsigned and unilaterally implemented MOU, I find the County presented no independent reason presented for its inclusion.
5.4.4.1(7)(d)	See discussion and findings above.
5.4.4.1(7)(e)	This section is redundant.

The remainder of the Parties' proposal's are included in my award. I edited some proposals, and renumbered much of §5.4 and its subsections with the intent of providing more logic and clarity

when necessary. In my award, §5.4.3 and its subsections relate to "voluntary overtime" and §5.4.4 and its subsections relate to "mandatory overtime." Following each section in my award is a bracketed notation showing the source of the provision. The bracketed language is not part of the award, merely a road map to my editing changes. Of course, the Parties are always free to agree on alternate language if they are dissatisfied with my efforts.

Award

As discussed above, the language below (without explanatory brackets) is awarded as §5.4 through §5.4.7 inclusive. All of the Parties' overtime proposals not contained herein are denied.

5.4 Overtime - Employee shall be paid overtime pay at the rate of one and one-half (1-1/2) times the employee's regular rate of pay for all hours worked in a week in excess of forty (40) hours. For the purpose of calculating overtime pay, all compensated hours shall be considered time worked.

[*Same as exiting 5.4.*]

5.4.1 All overtime shall be compensated for in increments of fifteen (15) minutes with the major portion of fifteen (15) minutes being paid as fifteen (15) minutes. Overtime shall be reported in the payroll time period in which it was earned

[*Same as exiting 5.4.1 and 5.4.2.*]

5.4.2 Overtime and Extra Work – Overtime and extra work shall first be assigned on a voluntary basis as denoted in 5.4.3 and its subsections. In the event said overtime and/or extra work is not filled on a voluntary basis, mandatory overtime shall be assigned as denoted in 5.4.4 and its subsections.

[*Generally the same as County Proposed 5.4.4 with redundancies removed.*]

5.4.3 Voluntary Overtime – Voluntary Overtime shall be assigned to the most senior, qualified employee on the overtime sign up sheet. Employees in the Detention Division desiring to work overtime shall sign on the overtime sign up sheet indicating the dates and shifts they would be willing and available to work. The employee may sign up for overtime a maximum of fourteen (14) days in advance; the Employer shall assign overtime a maximum of seven (7) days in advance.

When overtime occurs, the most senior employee who has signed up for overtime and is assigned to the shift where overtime is needed shall be contacted. The shift where overtime is needed shall be the shift where the majority of anticipated overtime hours are to be worked. If he/she declines

or is not available for the overtime work, the next senior employee on the sign up sheet assigned to the shift shall be called. This process shall continue until all employees on the sign up sheet assigned to the shift have been contacted or the overtime work has been filled. In the event none of the employees signed up for overtime and assigned to the shift where overtime is needed is available, the overtime work shall then revert to the most senior employee not normally assigned to the shift where overtime is needed. [*Generally the same as existing 5.4.3 with redundancies removed.]*

5.4.3.1 Crediting – If an employee works voluntary overtime, the employee will get a "credit" for the actual number of voluntary overtime hours worked. This credit will be used by the employee on an hour-for-hour basis to waive their obligation to work mandatory overtime within that month. The credit hours earned will be reset to zero on the 1st of each month.

[*Same as County's proposed 5.5.4.1(5) and similar to part of Guild's proposed 5.4.4.1.*]

5.4.3.2 Employees should not voluntarily sign up for overtime when they do not intend to work the overtime. However, there is no penalty if an employee removes his or her name from the overtime sign up sheet before being called upon to accept an overtime assignment.

[*Similar to part of County's proposal 5.4.3. Additional language added to clarify Employer's stated intent that an Employee is not penalized for removing his or her name from the overtime list prior to being called to fill overtime for that day.*]

5.4.3.3 If an employee on the overtime sign up sheet is called upon to accept an overtime assignment, and declines the opportunity or cancels before the shift starts, then the employee shall not be eligible for voluntary overtime sign-up for ten (10) calendar days. Exceptions will not be allowed unless approved by the Director or designee. However, the employee may still be mandated to work overtime.

[*Similar to part of County's proposal 5.4.3. Edited to clarify Employer's stated intent that an Employee is subject to this penalty only if his or her name is still on the overtime list when called to fill overtime for that day.*]

5.4.3.4 If an employee accepts an overtime assignment and then cancels out four (4) hours or less time before the shift starts, the employee shall not be eligible for voluntary sign-up for ten (10) calendar days.

[*Same as part of existing 5.4.3, and in both Parties' proposals. Although this "violation" is within the parameters of 5.4.3.3 (and the penalty is the same), I have continued this provision in the agreement because the Parties may want to readdress the sanction for this action. I note the consequences to the Employer and other Employees is greater because such a late cancellation will surely result in a ratchet.*]

5.4.4 Mandatory Overtime (ratcheting) – In the event said overtime and/or extra work is not filled by using the overtime sign-up list, mandatory overtime shall be assigned on a rotating basis. The rotation shall commence on the first day of each month starting with the least senior employee qualified to perform the assigned work. Officers may substitute earned overtime credits, (earned within the monthly

rotation), for a mandatory shift. Credits shall accrue and be used in hourly increments. (Examples: a four (4) hour credit may only be substituted for a four (4) hour mandatory shift). Officers who have already worked a mandatory shift during the current month's cycle shall not be mandated prior to all other eligible officers being mandated or having utilized an earned credit. Employees not available for their rotation on the mandatory list will be assigned the next mandatory shift.

[*Similar to both parties' proposal's 5.4.4.1 and 5.4.4. Edited to eliminate redundancies.*]

5.4.4.1 In the event there are not enough employees remaining to fill a short notice overtime need, the second call will be to those employees starting their regular scheduled days off not attached to primary vacation in reverse order of seniority. If still unable to fill the overtime needs, the third call goes to employees taking secondary leave days in reverse seniority order. Otherwise the list shall reset and the next employee eligible to ratchet shall be called.

[*Similar to County's proposed 5.4.4.1(3)(c), but with slight editing modifications. Also part of the unsigned and unilaterally implemented MOU.*]

5.4.4.2 Mandatory overtime for the next shift will be filled by the shift on duty:

a. Dayshift will provide coverage for Swing shift mandatory overtime vacancies.
b. Swing shift will provide coverage for Graveyard shift mandatory overtime vacancies.
c. Graveyard shift will provide coverage for Dayshift mandatory overtime vacancies.
d. For mandatory overtime needed for transport, the transport Sergeant will ensure the officer(s) being mandated will be scheduled so the total number of hours worked will not exceed eighteen (18) hours.

[*Same as part of County's proposed 5.4.4.1(2).*]

5.4.4.3 An employee ratcheted for overtime who works two (2) hours or more and is then sent home by the employer will be considered to have fulfilled a mandatory overtime shift, and the employee shall be paid for actual hours worked. In the event a mandatory overtime shift is less than eight (8) hours, the last Officer placed on mandatory overtime shall have the first option to leave consistent with reasonably anticipated operational requirements.

[*Same as part of County's proposed 5.5.4.1(5) and part of Guild's proposed 5.4.4.1.*]

5.4.4.4 The following employees will not be ratcheted except in emergent situations:

a. Employees in primary vacation, secondary vacation, or scheduled day off;
b. Employees on other scheduled leaves (FMLA, military, L&I); and
c. Employees on, or starting, a weekend or approved training that may not be rescheduled

Vacation, leaves and days off for the purposes of this section are to begin as soon as the employee's regular shift ends.

[*Similar to part of County's proposed 5.5.4.1(3)(a) and part of Guild's proposed 5.4.4.1. Edited for clarity.*].

5.4.4.5 Tracking: The County shall provide an accurate, contemporaneous and readily ascertainable computer tracking of all mandatory overtime grouped by shift. The computer tracking shall be available for all officers to review and shall contain the following information which shall be listed in order of seniority:

a. Names of officers
b. Seniority numbers
c. Date Notified
d. Shift and date ordered to work
e. Name of supervisor ordering
f. Credits/Ratchets
g. Excused (and reasons) or unexcused (and reasons).
h. Other pertinent notes.

[*Same as County's proposed 5.5.4.1(4) and same as part of Guild's proposed 5.4.4.1.*]

5.4.4.6 Employee Contacts – No employee shall be considered to have been ordered in, to have refused such order, or to be unavailable for ratchet unless positive verbal confirmation is given either in person, over the phone or the employee responds through in-house email.

[*Same as County's proposed 5.5.4.1(6) and same as part of Guild's proposed 5.4.3.*]

5.4.4.7 In the event an employee is mandated to work more than sixteen (16) hours consecutively, the employee may, at their request, have their next regularly scheduled work day adjusted by the number of hours beyond sixteen (16). Employees may choose to extend their shift to eight (8) hours or elect to use vacation leave, holiday leave or leave without pay. All hours over sixteen (16) shall be paid at the double time rate.

[*Same as County's proposed 5.5.4.1(7)(b) and same as part of Guild's proposed 5.4.3.*]

5.4.5 Employees working either mandatory or voluntary overtime may not select a position to work that would displace a regular scheduled employee. They may select which vacant post they want to work if more than one is available – subject to operational needs as determined by the Shift Commander (Captain or designee).

[*Same as County's proposed 5.4.* with slight editorial changes]

5.4.6 The Employer shall not create overtime assignments to permanently replace regular full-time Council (budget and appropriated) positions.

[*Same as part of Guild's proposed 5.4.3 and unnumbered County proposal between 5.4.4.1(3) and 5.4.4.1(4).*]

ISSUE 6 – LEAVES (§9.1.6)

Introduction and the Parties' Proposals

Currently, Officers leave accural rates are graduated and based on the number of continuous years of service. Annual leave is selected by Officers using a three-step process. First, primary vacation days are selected annually based on seniority. Primary vacation days may not exceed three work-weeks. Second, upon completion of the primary vacation calendar, Employees may select secondary vacation days based on seniority. For this selection, the number of days requested by an employee is limited only by the amount of leave the employee will have accumulated by the requested time off. Third, following completion of the primary/secondary vacation-calendar, the Employer considers further requests for additional days off in the order received, and approves or rejects the request not later than 10 (ten) days from submission.

Under the current system, the Employer determines the number of Officers that can select a vacation day for a particular day and shift. The Employer permits the following maximum number of employees to sign up for leave:

Monday through Friday	Day Shift	9
Saturday & Sunday	Day Shift	6
Monday through Sunday	Swing Shift	6
Monday through Sunday	Graveyard Shift	5

According to County, the aforementioned limitations and allocation of leave slots is based upon an annual review of staffing patten needs based on the jail's 24-7 schedule. This analysis takes into account the actual staffing needs and staff leave-use experience (e.g., vacation, holiday, sick leave, jury duty, FMLA, and military leave).

The limitations are followed during the primary and secondary bidding process regardless of the number of employees on military, FMLA, and L&I leave; however, the Department takes into account leave requests from positions in other Detention Department bargaining units for which

Custody Officers may be required to work. Specifically, Control Room Operators (CRUs) and Booking Agents (BAs) participate in the seniority-based bidding for primary and secondary vacation time. This seeming anomaly is based on the fact that Guild members can volunteer for, or be mandated to, a position as CRU or BA in the event a CRU or BA is unavailable for work.

In the selection of additional days off (not primary or secondary vacation days), the Employer grants or denies these requests based on actual operational needs which includes considering the actual number of employees on all forms of leave (i.e., including FMLA, L&I, and military leave). In other words, the projected staffing needs are used in constituting the primary/secondary vacation calendar, and actual staffing needs are used in approving additional days off. Under this system, the Employer can deny an employee's request for an additional day off based on the operational needs of the Department even though the day requested by the employee appears to be available (i.e., the maximum number of employees have not yet selected that shift and day). This discretion was upheld in a ULP decision, Snohomish County, Decision 9291-A (PECB, 2007)

The Parties are not proposing to change the basic workings of the system. However, the Guild proposes limiting the Employer's discretion to deny leave, and seeks to insert a formula within the CBA for allocating the leave available to Guild members. Additionally, the Guild's proposal would prohibit the Employer from denying a vacation request based on the employee's intended purpose for taking leave. The Guild contends such a change is necessary because Officers have become frustrated and bitter about their ability to take leave.

According to the Guild, the Department's failure to adequately staff the facility has brought about draconian measures to restrict leave. Furthermore, the Guild contends the numeric ratio of employees on leave should no longer be tied to any other non-bargaining unit employees. According to the Guild, excessive overtime and continual turnover has created an environment of

fatigued Officers with low moral. The Guild contends its proposed formula is necessary to allow Officers an opportunity to take time off, in lieu of placing employees in the awkward position of using sick leave to get a break from work. The Guild argues its proposal is partially supported by the Comparables – Pierce and Multnomah Counties have 10% formulas.

The County proposes no change to the current language. The County contends the Guild's proposal stems from, and is undermined by, general attendance problems. Furthermore, the County contends management must maintain the ability to staff the facility at a safe level. The specific language proposed by the Guild and the existing language supported by the County is shown in Table 14.

Table 14: The Parties' Proposals: Leaves

		Section 9.1.6
PROPOSALS	GUILD	Amends the existing language to read as follows: Annual leave shall be taken at the time requested by the employee in accordance with seniority. The time of taking vacations shall be approved by the Director or designee, except as provided by the State and Federal law (i.e.: FMLA, etc). An employee's intended purpose for vacation shall not be cause for denial of the request. The department will allow a minimum of 12%* of the total number of officers normally assigned to a shift to utilize available annual leave. Employees on military leave, FMLA, L&I or similar protected leave are excluded from this ratio. (*Note: The total number of officers assigned refers to bargaining unit employees only*)
	COUNTY	No change to existing language which states : Annual leave shall be taken at the time requested by the employee in accordance with seniority, except that: Leave shall be at a time when it shall not impair the efficiency of a department or section; and If the department head determines that the nature of the work is such that no employees or a limited number of employees may be on vacation at a given time, he may establish non-leave periods and priority lists for assigning the order in which leaves may be taken.

*Following the hearing, the Guild modified it's proposal lowering its percentage from 20% to 12%.

Analysis and Findings

Once again the interrelationship between the amount of overtime (both voluntary and mandatory), the *de facto* three-year wage freeze, and the high sick-leave usage make it difficult to attribute cause and effect. Moreover, most of the Guild's complaints are with additional days off or what the Parties' call "tertiary leave requests" – not primary or secondary leave requests. While management should strive to fill these requests when possible, the mandates of providing adequate personnel to staff the prison must come first.

Furthermore, I note that while the Pierce County Agreement does provide a formula for establishing the number of employees allowed vacation, compensatory time and furlough leave at any one time, the provision sets a limit on the **maximum** number of employees, not the minimum number of employees as proposed by the Guild.[17] In other words, the Pierce County Agreement does not support the Guild's contention.

Thus, a comparative analysis shows only Multnomah County has a provision which establishes the total number of vacation slots available to its line staff. I find this is not sufficient to justify the Guild's proposal.

Award

The Guild's proposal is denied. The language of §9.1.6 will remain as in the 2002-2004 agreement.

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[17] *See* Pierce County/AFSCME Local 3572 CBA, Article 9, Section 7.2

ISSUE 7 – DISCIPLINE (Article XIII)

Introduction and the Parties' Proposals

As throughout this arbitration, the Parties seek revisions to different sections of a particular provision. The County seeks to delete "Warning Notices" as a form of discipline (§13.1.2), and to add a new section providing for "Letters of Corrective Counseling" which would not be discipline (§13.2). The County contends this change merely reflects the current practice. According to the County, warning notices have not been used since 2003. The Guild does not necessarily oppose the concept of letters of corrective counseling, but does oppose the latest "final" offer on that issue from the County.

The second change proposed by the County is to the time-limit for notices of discharge and suspension(§13.1.3). The County proposes extending the existing 20-day limit to 40 days. The County contends the proposal is an effort to balance the Parties' mutual interest in providing employees ample notice, and the opportunity to address proposed discipline before a final decision is made. The County argues the additional administrative tasks required for a suspension or discharge (e.g., preparing pre-disciplinary notice; holding a *"Loudermill* hearing, and preparing a "Results of Pre-Disciplinary Hearing,") are unfair to the County which could be forced to rush through the administrative process.

The Guild opposes extending the time-line because employees have an interest in ensuring discipline is properly handled. The Guild also proposes its own modification to §13.1.3 which requires the Employer to provide written reasons why an extension to the 20-day period is necessary. The Guild also proposes adding language to §13.1 which makes the grievance procedure subject to Article XV - Employee Rights. The County opposes these Guild's proposals.

Finally the Guild also proposes a new subsection (§13.1.4) which adds a "Use of Force Board." This Board would provide findings and recommendations to management whenever there

is an accusation of excessive force. The Guild contends this proposal is simply an effort to ensure the County follows its own long-standing policy on using the Use of Force Review Board (Exhibit G-2 or G-40). The County opposes the change, and contends there is no evidence that management lacks a perspective on those incidents. The County points out there have only been seven "excessive force" actions initiated in the last three years. Only four involved Officers (as opposed to Sergeants or Captains). Of those four, only two resulted in any sustained findings of wrongdoing. Furthermore, the County argues that none of the Comparables have a contract provision calling for a "Use of Force Board" or any other peer review.

The Guild's proposed Changes to Article XIII are:

13.1 Disciplinary Action - The Employer retains the right to discipline, suspend or discharge an employee for just cause, subject to the grievance procedure in Article 14 and employee rights in Article 15.

13.1.3 Notices of discharge and suspension shall be given within twenty (20) days of the date when the Employer obtained knowledge of the violation. The twenty (20) day period may be extended by the Employer if additional time is necessary to obtain evidence, cooperation from third parties or if the employee is unavailable. Suspension days shall be consecutive. The Employer shall notify the Guild and any affected members in writing when an extension is necessary, including the specific reason(s) for the notice.

13.1.4 Use of Force Board: Whenever there is an accusation of excessive use of force the Employer shall within twenty (20) calendar days convene a use of force board. The board shall consist of one SCC Sergeant; one SCCT DT Instructor, and two persons who are peers of the subject in question. Each member of the board shall not have any direct involvement with the situation in question. Upon completion of the use of force board, the board shall detail their findings and recommendations to management. Two of the four Use of Force Board members shall be selected by the Guild and Employer.

The County's Proposed Changes to Article XIII are:

13.1.2 ~~Warning notices and~~ written reprimands shall be given within twenty (20) days of the date when the Employer obtained knowledge of the violation. The twenty (20) day time period may be extended by the Employer if additional time is necessary to obtain evidence, cooperation from third parties or if the employee is unavailable. ~~Warning notices shall be removed from the employee's file after one (1) year if no further violations have occurred.~~ Written reprimands shall be removed form the Employer's file after three (3) years if no further violations have occurred. Employees may request a review of ~~a warning notice (after six(6) months and/or~~ a written reprimand (after eighteen (18) months) for removal from their file subject to the approval of the Division Manager.

13.1.3 Notices of discharge and suspension shall be given within ~~twenty (20)~~ forty (40) days of the date when the Employer obtained knowledge of the violation. The ~~twenty (20)~~ forty (40) day period may be extended by the Employer if additional time is necessary to obtain evidence, cooperation from third parties or if the employee is unavailable. Suspension days shall be consecutive.

The County's Proposal as contained in its September 6, 2007 letter regarding Letters of Corrective Counseling:

13.2 Letters of Corrective Counseling – Unlike a written reprimand, a letter of corrective counseling is not considered discipline. Such a letter is defined as documentation of a communication from an employee's superior drawing the employee's attention to a matter that needs correction.

The County's Proposal as contained in its 14-day offer (August 14, 2007)regarding Letters of Corrective Counseling:

13.2 Letters of Corrective Counseling – Unlike a written reprimand, a letter of corrective counseling is not considered discipline. Such a letter is defined as documentation of a communication from an employee's superior drawing the employee's attention to a matter that needs correction. By way of illustration, such communications address issues that pertain to expectations as to compliance with Department rules, procedures, and policies.

Any employee who receives a letter of corrective counseling may, within five (5) business days of receipt of the letter, request a meeting with his or her captain to discuss the Letter of Corrective Counseling. Within ten (10) business days of such meeting, the employer will notify the employee of whether or not the Letter of Corrective Counseling will stand as is, be modified or be rescinded. The letter shall be removed from all files and shall not be considered for any reason one (1) year after the incident giving rise to the Letter of Corrective Counseling, provided no further incidents of similar conduct have occurred.

Analysis and Findings

Regarding the County's proposal to increase the notice period in §13.1.3 from 20-days to 40-days, I find the following. *Loudermill* requires that, prior to being disciplined, a tenured public employee is entitled to oral or written notice of the charges against him or her, an explanation of the employer's evidence, and an opportunity to present his or her side of the story. The Parties agree the provision applies to the issuance of the discipline itself. In other words, it refers to the post-*Loudermill* notice of what disciplinary action has been imposed by the Employer, and not the pre-disciplinary "notice of proposed discipline."

The County did not support its proposal with a comparative analysis. Furthermore, the County did not provide evidence of any pressing need, particularly in light of the existing language which allows the Employer to extend the 20-day period "if additional time is necessary to obtain evidence, cooperation from third parties or if the employee is unavailable." Furthermore, the Sergeants Agreement contains the identical 20-day language as in the Parties' expired agreement. After considering these facts, I conclude the County did not justify its proposal to change §13.1.3.

With respect to the County's proposal to eliminate "warning notices" and add "corrective counseling," I find such a proposal reasonable primarily because the Parties acknowledge this has been the practice since 2003. However, I find the County's August 14, 2007 proposal more consistent with the 2002–2004 CBA because it clearly states that letters of corrective counseling, like the warning notices in the existing CBA, will be removed from the file after one year. Furthermore, the August 14 proposal provides an employee the opportunity to discuss a letter of corrective counseling with his or her captain. This provision is consistent with the existing language regarding warning notices. Finally, I note the County's August 14, 2007 language is identical to the language the County agreed to in the Sergeants Agreement. Accordingly, I award the County's suggested language for §13.2 as stated in its August 14, 2007 proposal.

Regarding the Guild's proposal to subject §13.1 (Disciplinary Action) to Article 15 (Employee Rights), I find such a modification is redundant and unnecessary. Regarding the Guild's proposal to add a provision requiring the Employer to convene a Use of Force Board, I find the Guild's proposal is not supported by a comparative analysis. Similarly, the Guild did not provide a comparative analysis for its proposal to modify §13.1.3. Furthermore, the Guild did not produce evidence of a pressing need for the Employer to notify the Guild in writing of the specific reasons of why it is extending the 20-day period. Accordingly, I find the Guild has not justified its proposals.

Award

Based on the above findings §13.1.2 is modified to read as follows:

13.1.2 Written reprimands shall be given within twenty (20) days of the date when the Employer obtained knowledge of the violation. The twenty (20) day time period may be extended by the Employer if additional time is necessary to obtain evidence, cooperation from third parties or if the employee is unavailable. Written reprimands shall be removed from the Employer's file after three (3) years if no further violations have occurred. Employees may request a review of a written reprimand (after eighteen (18) months) for removal from their file subject to the approval of the Division Manager.

Furthermore a new §13.2 is added to read:

13.2 Letters of Corrective Counseling – Unlike a written reprimand, a letter of corrective counseling is not considered discipline. Such a letter is defined as documentation of a communication from an employee's superior drawing the employee's attention to a matter that needs correction. By way of illustration, such communications address issues that pertain to expectations as to compliance with Department rules, procedures, and policies.

An employee who receives a letter of corrective counseling may, within five (5) business days of receipt of the letter, request a meeting with his or her captain to discuss the Letter of Corrective Counseling. Within ten (10) business days of such meeting, the employer will notify the employee of whether or not the Letter of Corrective Counseling will stand as is, be modified or be rescinded. The letter shall be removed from all files and shall not be considered for any reason one (1) year after the incident giving rise to the Letter of Corrective Counseling, provided no further incidents of similar conduct have occurred.

The remainder of Article XIII is unchanged from the expired 2002-2004 agreement.

ISSUE 8 – EMPLOYEE RIGHTS AND CODE OF CONDUCT (Article XV)

Introduction and the Parties' Proposals

As in the case of the Parties' proposal on discipline, once again the Parties present wide-ranging and divergent proposals with respect to employee rights. The Guild proposes a detailed and specific process for internal investigations which include a 48-hour notice requirement. The Guild contends these steps are necessary to ensure due process. The Guild also asserts its proposal is supported by a comparative analysis. The County opposes the Guild's proposed changes, and proposes a few changes of its own.

The County proposes a new Code of Conduct for employees which is to be an appendix to the CBA. The County places a high priority on having all of its personnel "embrace" a centralized Code of Conduct. The Guild opposes the new code of conduct because these policies are already well defined in the County policy manual.

The Guild's proposed changes to Article XV Employee Rights are:

15.1 All employees within the bargaining unit shall be entitled to the protection of what shall hereinafter be termed the "Employees Bill of Rights" as set forth below. ~~The wide ranging powers and duties given to the Department and its employees involve them in all manner of contacts and relationships with prisoners and the public. From time to time, questions arise concerning actions of employees. These questions often require immediate investigation by the Employer.~~

15.2 In criminal matters, an employee shall be afforded those constitutional rights available to any citizen as under State and Federal law. In matters relating to job performance, the following guidelines shall be followed:

(A) Employees subject to an internal investigation interview shall be provided 48 hours written notice of the interview. The notice shall included the following:

1. Sufficient facts of the allegations including date, time and place of each allegation.
2. If the employee is a suspect or witness.
3. Notice of right to Guild representation.
4. Nature of the potential sanction (i.e.: suspension, termination, etc), and potential criminal allegations considered.
5. The name of the employee conducting the interview and person in charge of the investigation.
6. In cases contemplating any discipline exceeding a written reprimand, the 48 hour notice will be provided to the Guild President or designee.

(B) Employees will not be denied reasonable access to Guild representation or contact during or while pending internal investigations as a witness or suspect.

~~15.2.1 Before being interviewed, the employee shall be informed of the nature of the matter in sufficient detail to reasonably apprise him/her of the matter.~~

15.2.2 Any interview of an employee shall be at a reasonable hour, preferably when the employee is on duty unless the circumstances of the investigation dictate otherwise.

15.2.2.1 Tape Recording of Interview: Interviews may be tape recorded by either party upon notice at time of the interview. Upon request, either party may ask for an electronic copy of the recording, which shall be provided within seven days of the request. By nature of the collective bargaining agreement, RCW 9.73 does not apply to these interviews.

Compelled Statement: In the event an employee is ordered to answer questions, the following written notice will be provided:

"You are present and required to answer the following questions as part of an internal investigation and as an employee of this department.. You are hereby ordered to answer the questions related to your conduct and/or job duties and performance and are expected to cooperate and testify truthfully. Your failure to cooperate can result in disciplinary action, including dismissal. The statement you make or evidence gained as a result of this required inquiry may only be used for administrative purposes and cannot be used or introduced into evidence in any criminal proceeding."

In the event the Employer knowingly interviews the employee for the commission and prosecution of a crime, the Employer will provide Miranda rights. Under those circumstances, the employee cannot be compelled to answer questions.

15.2.3 When practical, an interview (which shall not violate the employee's constitutional rights), shall take place at the place of employment. The Employer shall offer the employee an opportunity and facilities to contact and consult privately with an attorney of the employee's choosing and/or with a representative of the Guild ~~Union~~. An attorney of the employee's choosing and/or a representative of the Union may be present during the interview, but may not participate in the interview except to counsel the employee.

15.2.4 The questioning shall not be overly long and the employee is entitled to reasonable breaks for personal necessities, meals, telephone calls and rest periods.

15.2.5 The interviewer(s) shall not subject the employee to offensive language. The interviewer(s) shall not threaten the employee with dismissal, transfer or other disciplinary action in an attempt to obtain the employee's resignation. The interviewer(s) shall not intimidate the employee in any other manner. The interviewer(s) shall not make promises or offer rewards in an effort to obtain information from the employee. Interviews will be limited in scope to the allegations provided in the 48 hour notice.

15.2.6 The Employer shall not require any employee covered by this Agreement to take a lie detector test as a condition of hiring, continued employment, promotion or internal investigation.

15.3 Rules and Procedures - The Employer shall furnish each employee with a copy, of the

Department's Administrative and Personnel policies. The Employer shall make available at each duty assignment all rules and procedures related to the performance of the duties of that position and shall make available rules and procedures related to all other job assignments.

15.4 Disability - When an employee has a physician-certified disability which prevents the employee from performing his/her regular duties, the Employer shall pursue accommodations in accordance with State and Federal disability law(s).

15.5 The Employer shall make reasonable efforts to provide work stations for clerical positions that are ergonomically correct, with adjustable key boards and chairs.

15.6 The Employer and the Union agree to comply with the State and Federal Family and Medical Leave Act(s).

15.7 USE OF DEADLY FORCE OR TRAUMATIC INCIDENTS.

(A) In situations involving the use of deadly force, the involved employee shall have the right to consult with an Guild representative or attorney prior to giving any statement regarding the administrative investigation and shall be given written "Garrity" warnings prior to any compelled statement taken by the department. No statement shall be required for at least 48 hours after the incident. Employees involved in the use of deadly force shall be provided some at least 72 hours administrative leave and the opportunity to meet with a psychologist, at the County's expense, for the purpose of debriefing. The County and Guild will mutually agree to a psychologist for this purpose. In any event, these meetings shall be covered by the psychotherapist/patient privilege and information disclosed in these meeting shall not be attainable or usable by the County for any purpose, except for the evaluator's conclusion of fit or not fit for duty.

(B) In the event of use of deadly force or a traumatic incident, included the use of elevated force or reasonable perception of the intended use of deadly force, the protocol outlined in Appendix "Z" will apply. (see attached)

15.8 FITNESS FOR DUTY: Medical and Psychological Examinations.

(A) The employer will adhere to all applicable State and Federal privacy laws (I.E.: HIPPA).

(B) The examining professional shall issue a written report to the Employer limited to the conclusion of fit or not fit for duty. If not fit, the report may include an estimated recovery period as well as any reasonable accommodations. The employee will be permitted to fully discuss the determination with the examining professional.

(C) If the employee believes the examining professional in error, he/she may obtain an additional examination at his/her own expense and the Employer will provide the examining professional with the documents utilized by the first examiner.

(D) In the event there are conflicting assessments, the County will provide a mutually acceptable list of additional examiners and the parties will seek a third opinion. A third opinion is at the expense of the employer, and does not waive any rights under just cause discipline. In the event of discipline or discharge, the Employer shall

allow the release to the employee all examinations and supporting documents relied upon for the action.

15.9 PERSONNEL RECORDS:

(A) A "personnel file" shall be defined as any file pertaining to the bargaining unit member's employment status, work history, training, disciplinary records, or other personnel related matters. The personnel file will not include medical records, pre-employment records or interviews, psychological evaluations or background investigations, and any internal investigations not resulting in discipline, as defined in Article 13.

(B) In the event of a public records request, the Employer will notify the employee and provide at least 72 hours prior to release of any document. The employer will allow the employee and Guild the fullest possible opportunity to legally object to unwarranted disclosure.

(C) Employees may view their individual personnel file upon request. The employer shall not maintain any "secret" files.

(D) Written reprimands shall be purged from an employee's personnel file no later than two (2) years from the date of issuance.

The County's proposed changes for Article XV are:

15.1.1 Rules and Procedures - The Employer shall provide employees access to the Department's Administrative and Personnel policies. The Employer shall provide employees access to all rules and procedures related to the performance of the duties of that position and access to rules and procedures related to all other job assignments. It shall be each employee's responsibility to comply with such policies and employees' code of conduct (incorporated as Appendix B to this agreement) as a condition of continued employment.

. . . .

~~15.3 Rules and Procedures - The Employer shall furnish each employee with a copy of the Department's Administrative and Personnel policies. The Employer shall make available at each duty assignment all rules and procedures related to the performance of the duties of that position and shall make available rules and procedures related to all other job assignments.~~

[The remainder of Article XV is unchanged.]

[The County's proposed Code of Conduct is attached to this Award as Appendix A. As it is 14 pages, it is too lengthy to include within the body of this Award.]

Analysis and Findings

The Guild "strongly" seeks widespread changes in "employee rights," and the County "places a high priority" on implementing a new code of conduct. Despite the Parties' strong desires and high priorities, they were unable to negotiate any changes during protracted bargaining. It is also unrealistic for the Parties to expect much in the way of changes in this area during interest arbitration. These are complex areas which are not easily subject to a comparative analysis with other jurisdictions. As a result, it is generally very difficult for a party to justify significant changes to areas involving "employee rights" or "codes of conduct" during an interest arbitration. Such is the case with the Parties' proposals in this interest arbitration.

The Guild attempts to justify its proposal by a comparative analysis. I find four Comparables contain language addressing employee rights. *See* Multnomah County Agreement, Article 19; Clark County Agreement, Article 4; Washington County Agreement, Article 8; and Pierce County Agreement, Article 19. However, these agreements are no more comprehensive than the language of the existing agreement. For example, Multnomah County's agreement provides the following in its "Employee Rights" section (Article 19):

> Section 1. Any employee in the Bargaining Unit, when being questioned in a pre-disciplinary meeting by the employer about mattes which may result in discipline, suspension, demotion, and/or termination, has the right to be represented by a union shop steward, Executive Board member, or union staff representative present within a reasonable length of time. When the Employer initiates disciplinary action in response to a charge or complaint by a third party, the employee shall be apprised of the allegation and the accusing party shall be identified. Investigations by the Employer as the result of an allegation are not considered the initiation of a disciplinary action.
>
> Section 2. The questioning by the Employer in such pre-disciplinary meeting shall be during normal County business hours or the employee's normal work hours, unless agreed to be held at other times by the employee. The questioning of the employee shall take place in a reasonable private location. The questioning shall not be unreasonably long, and the employee shall be entitled to brief intermissions for the purpose of attending to personal necessities, meals, telephone calls and rest periods.
>
> Section 3. No employee shall be required to take a polygraph test or similar test as a condition of continued employment.

> Section 4. The Employer shall make reasonable efforts to furnish the Union a copy of all final disciplinary actions.

I find Multnomah's provision is similar to the language in Article XV of the Parties' expired 2002–2004 agreement. My finding is the same with respect to the employee rights provisions in the Clark, Washington, and Pierce agreements.

Contrary to the Guild's assertion, I find a comparative analysis does not support the wide-sweeping language contained in the Guild's proposal. Accordingly, I find the Guild failed to justify its proposal.

Regarding the County's proposal to modify Article XV by deleting §15.3 and including a new code of conduct ("Code"), I note that Arbitrator Wilkinson granted the County's proposal in the *Sergeants* Arbitration and included the Code in her award. I also note that a code of conduct was agreed to by the corrections support personnel and support supervisors (both represented the Teamsters Union which represented the Sergeants). However, I also note that the County's proposal does not contain the following qualifying language which was added by Arbitrator Wilkinson:

> Nothing in this Code of Conduct shall be construed to abridge the just cause language found in Article XIII of this Agreement or other provisions of this Agreement. Its incorporation into this agreement shall not be deemed a waiver of the Union's right to challenge the reasonableness, appropriate application or the County's interpretation of any of the provisions of the Code of Conduct.

In reviewing the Sergeants Award, I find Arbitrator Wilkinson noted that comparator support for a written ethical code was mixed. Ultimately, Wilkinson concluded the County's proposal was not only fair and reasonable, but "important and of great merit" – so long as it was accompanied by qualifying language. Arbitrator Wilkinson found the County's proposal "requires qualifying language in order to protect the right of bargaining unit members." In the instant arbitration, the County seeks a code of conduct without the qualifying language which Arbitrator Wilkinson found essential to including the Code in her Award in the *Sergeants* Arbitration.

I also find a Code is not supported by a comparative analysis. Some of the Comparables may have a code of conduct, but none of the Comparables have a 14-page code of conduct as part of their collective bargaining agreement. If a Comparable has a code of conduct, it is typically an order or rule. Finally, while I agree with Arbitrator Wilkinson that such a code is important, and it would make sense for all corrections personnel to be under a similar code of conduct, I also note the County has codified "Standards of Ethical Conduct" (Executive Order 05-11A); and the Department has "Rules of Conduct for Staff Members" (Policy 280) and numerous other codes which address matters contained in its Code of Conduct.[18]

Considering the above, in particular the County's failure to include qualifying language, the lack of support from a comparative analysis, and the lack of demonstrated need given the exiting policies, I find the County failed to justify its proposal to include a code of conduct as an appendix to the agreement.

With respect to the County's proposed elimination of §15.3, I find a provision identical to §15.3 remains in the Sergeants Agreement. I also find the County failed to provide a comparative analysis to justify its position. Accordingly I find the County failed to justify its proposal to eliminate §15.3.

Award

Article XV remains unchanged from the expired 2002-2004 agreement.

The County's proposed Code of Conduct is denied.

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[18]For example: Policies 140,152, 220, 222, 235, 285, 286, 287, 415, 416, 635, 636, 740, and1710 *See* Exhibit C-27, Tab 3. *See also* Exhibit G-41 which compares proposed code of conduct provisions and existing County and Department policies.

ISSUE 9 – MANAGEMENT RIGHTS (Article XVI).

Introduction and the Parties' Proposals

Each Party proposes different changes to various provisions in Article XVI Management Rights. Both Parties propose changes to §16.1.4, "payroll changes." The County proposes to add two new provisions: 1) a new §16.1.5 which allows the Department to require an employee to provide evidence of a valid Washington State driver's licence; and 2) additional language in §16.2 which the County characterizes as an integration clause. The Guild proposes to delete the existing provisions relating to Subcontracting. The Parties' proposals are in Table 15.

Payroll Changes. The County contends its proposal "carries forward" its previously negotiated ability to implement payroll system changes at the same time it does so for the majority of other Snohomish County employees. The County contends the new language is "entirely consistent with the negotiated language from the previous contract." The Guild opposes the change, and contends the new language amounts to a waiver of its bargaining rights.

Driver's Licence Verification. The County contends this new provision is necessary to make it clear the County may verify the driver's licences of Custody Officers assigned to the Transport Unity and other Officers who may intermittently be required to drive County vehicles. The County notes that the job descriptions for Custody and Corrections Offices include a driver's licence requirement. Furthermore, the County contends that driver's licence verification is within the existing management rights. The Guild does not necessarily oppose the provision, but is unwilling to place it in the Agreement.

Integration Clause. The County argues the additional language in §16.2 is necessary to clarify that the new contract is the 'law of the land' in order to eliminate disputes deriving from alleged past practices that are inconsistent with the terms of the new contract. As justification for its proposal, the County points to the large number of grievances and ULP complaints filed by the

Guild[19]. The Guild opposes the change and contends the language in the County's proposal is unclear, and will not eliminate litigation involving issues of "past practice."

Table 15: The Parties' Proposals: Management Rights

		Article XVI
PROPOSALS	GUILD	The Guild proposal **amends** the existing language to read as follows: ~~16.3 Subcontracting - The Employer retains the right to subcontract work through contracts with non-governmental entities and government agencies. The Union retains the right to negotiate regarding the effect of such decision with respect to wages, hours and terms and conditions of employment.~~ ~~16.3.1 The Employer's exercise of the right to subcontract shall not be subject to Article 14 Grievance Procedure.~~
	COUNTY	The County Proposal **amends** the existing language to read as follows: 16.1.4 The Employer reserves the right to make changes to the County's payroll system; provided, such changes shall be made uniformly and at the same time as for the majority of other Snohomish County employees. ~~During the life of this Agreement, the Employer may implement a change in the payroll schedule based on actual hours worked which would result in a lag period between the end of the payroll period and the pay day. In order to implement such a change for the bargaining unit, the Employer must also implement such change at the same time for the majority of other Snohomish County employees and provide the Union sufficient notice (not less than 90 days) of the Employer's intent to implement such a change so as to allow the Union time to bargain the effects of such decision.~~ 16.1.5 The Employer reserves the right to require an employee to provide evidence of a valid Washington State driver's license if the employee has or will at any time drive a County vehicle. 16.2 Entire Agreement - This Agreement and all of its Articles and/or Appendices constitutes the entire Agreement between the parties and no oral statement shall add to or supersede any of this provision. Each party to this Agreement agrees that it has had the unlimited right to make proposals that are proper subjects for collective bargaining and waives the right to oblige the other party to negotiate any matters to become effective until the expiration of this Agreement. The parties recognize that administrative changes over the years and varying practices necessarily create uncertainty of rights and responsibilities, such as in leave practices. Accordingly, "past practice" will not hereafter be deemed to detract from the rights or responsibilities of employees, the Guild, and management as stated by the language of the Agreement.

[19]According the County, the Guild filed 297 Grievances since 2005 of which "an overwhelming majority have related to application of past practice." The County also contends the seven ULPs filed by the Guild contain 50 separate allegations of unilateral change in past practice.

Subcontracting. The Guild proposes to delete §16.3 and §16.3.1 because the agreement also contains §16.3.2 which the Guild contends limits the Employer's subcontracting rights under §16.3 and §16.3.1. The County opposes the change and contends the Guild's proposal "to negate the County's contractual right to contract or subcontract work is not supported by experience, logic, or the comparables."

The present subcontracting section reads as follows:

> 16.3 Subcontracting - The Employer retains the right to subcontract work through contracts with non-governmental entities and government agencies. The Union retains the right to negotiate regarding the effect of such decision with respect to wages, hours and terms and conditions of employment.
>
> 16.3.1 The Employer's exercise of the right to subcontract shall not be subject to Article 14 Grievance Procedure.
>
> 16.3.2 The Employer shall not contract out work covered by the terms of this Agreement if such contracting out would result in the layoff or reduction of salary or benefits of any bargaining unit employee employed on the signature date of this Agreement.

Analysis and Findings

Payroll Changes. I am at a loss to understand the County's explanation for its proposed change to §16.1.4. I find it disingenuous to suggest eliminating the 90-day notice and the Guild's right to bargain is "entirely consistent with the negotiated language from the previous contract." Of course they are different. Moreover, the County has not been successful in negotiating such a change with its other bargaining units. The 2007–2009 agreement between the County and the Department of Corrections Supervisors contains language identical to the pre-existing language. Similarly, identical language to the proposed deleted language exists in the Sergeants Agreement. Additionally, the agreement between the County and the Department of Corrections Support Services, contains the following language:

> The Employer implemented a bi-monthly Lag Payroll effective April 1, 2005. The Union retains the right to negotiate effects of changes made by the County as may be required by RCW 41.56.

Under the preexisting language the Parties negotiated an MOU in April 2005 to implement the County's payroll tracking system known as "Highline." Under the County's proposal, no such MOU would be necessary in the future.

I find the County's proposal is significantly different than the pre-existing provision. I also find the County's proposal is not supported by either a comparative analysis with the Comparables, or internally. I conclude the County failed to justify its proposal.

Driver's Licence. I find the County's justification for this provision is unclear. By its own acknowledgment, Driver's licence verification is within existing management rights. The County does not provide any justification for its proposal other than it is reasonable, and should be spelled out in the Agreement. Despite the County's contention, I find the County has failed to justify why is it necessary to include such a provision in the Agreement.

Integration Clause. While I understand the County's objective in proposing an integration clause, I find the proposed language confusing. As such, I find the clause, as proposed, would be unlikely to accomplish the County's stated purpose. Accordingly, I find the County has failed to justify its proposal.

Subcontracting. I find the Guild provides no justifiable reason to delete §16.3 and §16.3.1 from the agreement. While I find it may be difficult to reconcile the three subcontracting clauses (§16.3, §16.3.1, and §16.3.2), I find the Guild has not provided justification for eliminate any particular subcontracting provision to the benefit of another of the subcontracting provisions. Accordingly, I will leave the subcontracting language as it is.

Award

Article XVI remains unchanged from the expired 2002-2004 agreement.

SUMMARY OF AWARD

The following summarizes my award on the issues presented.

Issue 1: Duration

The County's proposal is awarded. Article XX shall read:

20.1 Excepting for those provisions which state the contrary, all provisions of this agreement shall be effective on date of award and shall remain in full force and effect through December 31, 2009.

Issue 2: Health Insurance

The Guild's proposals are rejected. The language contained in §10.6.1 of the 2002-2004 agreement will remain in the contract. The County's proposal to modify §10 and §10.1 is awarded. The new language shall read:

10 Following the 1st of the month following the effective date of this agreement, the Employer for the term of the agreement shall place a cap on employee medical insurance premium contribution, whereby such monthly contribution will not exceed the following amounts:

Regence Selections	Employee Premium Contribution
Employee Only	$ 43
Employee and Spouse	$166
Employee and Children	$ 74
Employee and Family	$196
Regence PPO	
Employee Only	$ 58
Employee and Spouse	$195
Employee and Children	$ 98
Employee and Family	$235
Group Health Options	
Employee Only	$ 0
Employee and Spouse	$79
Employee and Children	$ 0
Employee and Family	$79

Note: The indemnity and HMO plan designs, e.g. plan year, co-payments for hospital stays, office visits and prescription drugs shall be the same as for the majority of other County employees who are bargaining unit members under the terms of labor agreements between the Employer and other Unions representing County employees.

10.1 Employees shall pay the monthly premium contribution through payroll deduction, and the Employer will pay any difference between the Employee's contribution and the actual plan rate.

Issue 3: Wages

The Guild proposal on longevity is denied. The longevity language in §A.5 will remain unchanged from the language in the expired 2002-2004 Agreement. Appendix A, Sections A.1, A.2, and A.3 are awarded to read:

A.1 Effective on the date of this award, the monthly rates of pay in effect for employees covered by this Agreement on December 31, 2004 shall be increased by 12%.

A.2 Effective January 01, 2008, the monthly rates of pay computed under Section A.1 shall be increased by 3.3%.

A.3 Effective January 01, 2009, monthly rates of pay computed under Section A.2 shall be increased by 100% of the percentage increase in the Seattle-Tacoma-Bremerton Area Consumer Price Index for June 2008 over the same period in 2007. The index used shall be the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), All Items, Revises Series (1982-84=100) as published by the Bureau of Labor Statistics. The minimum increase in the monthly rates of pay for 2009 shall be 2.5% and maximum increase shall be 5.5%.

Issue 4: Meal and Rest Periods.

The Guild's proposed changes to 5.2, and §5.3.1 are denied. The language for those sections will remain unchanged from the expired 2002-2004 agreement. The Guild's proposed change to §5.3 is awarded as herein modified.

5.3 Rest Breaks - Employees shall be allowed a paid rest period of 15 minutes for each 4 hours of working time. No employee shall be required to work more than three hours without a rest period. Employees shall remain on the Corrections premises unless otherwise authorized. The employer will make every effort to provide employees with an uninterrupted rest period. The Employer will provide relief coverage such that employees are not required to stay at their workplace post.

Issue 5: Overtime

The following language is awarded as §5.4 through §5.4.7 inclusive. All of the Parties' overtime proposals not contained herein are denied.

5.4 Overtime - Employee shall be paid overtime pay at the rate of one and one-half (1-1/2) times the employee's regular rate of pay for all hours worked in a week in excess of forty (40) hours. For the purpose of calculating overtime pay, all compensated hours shall be considered time worked.

5.4.1 All overtime shall be compensated for in increments of fifteen (15) minutes with the major portion of fifteen (15) minutes being paid as fifteen (15) minutes. Overtime shall be reported in the payroll time period in which it was earned.

5.4.2 Overtime and Extra Work – Overtime and extra work shall first be assigned on a voluntary basis as denoted in 5.4.3 and its subsections. In the event said overtime and/or extra work is not filled on a voluntary basis, mandatory overtime shall be assigned as denoted in 5.4.4 and its subsections .

5.4.3 Voluntary Overtime – Voluntary Overtime shall be assigned to the most senior, qualified employee on the overtime sign up sheet. Employees in the Detention Division desiring to work overtime shall sign on the overtime sign up sheet indicating the dates and shifts they would be willing and available to work. The employee may sign up for overtime a maximum of fourteen (14) days in advance; the Employer shall assign overtime a maximum of seven (7) days in advance.

When overtime occurs, the most senior employee who has signed up for overtime and is assigned to the shift where overtime is needed shall be contacted. The shift where overtime is needed shall be the shift where the majority of anticipated overtime hours are to be worked. If he/she declines or is not available for the overtime work, the next senior employee on the sign up sheet assigned to the shift shall be called. This process shall continue until all employees on the sign up sheet assigned to the shift have been contacted or the overtime work has been filled. In the event none of the employees signed up for overtime and assigned to the shift where overtime is needed is available, the overtime work shall then revert to the most senior employee not normally assigned to the shift where overtime is needed.

5.4.3.1 Crediting – If an employee works voluntary overtime, the employee will get a "credit" for the actual number of voluntary overtime hours worked. This credit will be used by the employee on an hour-for-hour basis to waive their obligation to work mandatory overtime within that month. The credit hours earned will be reset to zero on the 1st of each month.

5.4.3.2 Employees should not voluntarily sign up for overtime when they do not intend to work the overtime. However, there is no penalty if an employee removes his or her name from the overtime sign up sheet before being called upon to accept an overtime assignment.

5.4.3.3 If an employee on the overtime sign up sheet is called upon to accept an overtime assignment, and declines the opportunity or cancels before the shift starts, then the employee shall not be eligible for voluntary overtime sign-up for ten (10) calendar days. Exceptions will not be allowed unless approved by the Director or designee. However, the employee may still be mandated to work overtime.

5.4.3.4 If an employee accepts an overtime assignment and then cancels out four (4) hours or less time before the shift starts, the employee shall not be eligible for voluntary sign-up for ten (10) calendar days.

5.4.4 Mandatory Overtime (ratcheting) – In the event said overtime and/or extra work is not filled by using the overtime sign-up list, mandatory overtime shall be assigned on a rotating basis. The rotation shall commence on the first day of each month starting with the least senior employee qualified to perform the assigned work. Officers may

substitute earned overtime credits, (earned within the monthly rotation), for a mandatory shift. Credits shall accrue and be used in hourly increments. (Examples: a four (4) hour credit may only be substituted for a four (4) hour mandatory shift). Officers who have already worked a mandatory shift during the current month's cycle shall not be mandated prior to all other eligible officers being mandated or having utilized an earned credit. Employees not available for their rotation on the mandatory list will be assigned the next mandatory shift.

5.4.4.1 In the event there are not enough employees remaining to fill a short notice overtime need, the second call will be to those employees starting their regular scheduled days off not attached to primary vacation in reverse order of seniority. If still unable to fill the overtime needs, the third call goes to employees taking secondary leave days in reverse seniority order. Otherwise the list shall reset and the next employees eligible to ratchet shall be called.

5.4.4.2 Mandatory overtime for the next shift will be filled by the shift on duty:

a. Dayshift will provide coverage for Swing shift mandatory overtime vacancies.
b. Swing shift will provide coverage for Graveyard shift mandatory overtime vacancies.
c. Graveyard shift will provide coverage for Dayshift mandatory overtime vacancies.
d. For mandatory overtime needed for transport, the transport Sergeant will ensure that the officer(s) being mandated will be scheduled so that the total number of hours worked will not exceed eighteen (18) hours.

5.4.4.3 An employee ratcheted for overtime who works two (2) hours or more and is then sent home by the employer will be considered to have fulfilled a mandatory overtime shift and the employee shall be paid for actual hours worked. In the event a mandatory overtime shift is less than eight (8) hours the last Officer placed on mandatory overtime shall have the first option to leave consistent with reasonably anticipated operational requirements.

5.4.4.4 The following employees will not be ratcheted except in emergency situations:

a. Employees in primary vacation, secondary vacation, or scheduled day off;
b. Employees on other scheduled leaves (FMLA, military, L&I); and
c. Employees on, or starting, a weekend or approved training that may not be rescheduled
d. Vacation, leaves and days off for the purposes of this section are to begin as soon as the employee's regular shift ends.

5.4.4.5 Tracking: The County shall provide an accurate, contemporaneous and readily ascertainable computer tracking of all mandatory overtime grouped by shift. The computer tracking shall be available for all officers to review and shall contain the following information which shall be listed in order of seniority:

a. Names of officers
b. Seniority numbers
c. Date Notified
d. Shift and date ordered to work
e. Name of supervisor ordering
f. Credits/Ratchets

g. Excused (and reasons) or unexcused (and reasons).
h. Other pertinent notes.

5.4.4.6 Employee Contacts – No employee shall be considered to have been ordered in, to have refused such order, or to be unavailable for ratchet unless positive verbal confirmation is given either in person, over the phone or the employee responds through in-house email.

5.4.4.7 In the event an employee is mandated to work more than sixteen (16) hours consecutively, the employee may, at their request, have their next regularly scheduled work day adjusted by the number of hours beyond sixteen (16). Employees may choose to extend their shift to eight (8) hours or elect to use vacation leave, holiday leave or leave without pay. All hours over sixteen (16) shall be paid at the double time rate.

5.4.5 Employees working either mandatory or voluntary overtime may not select a position to work that would displace a regular scheduled employee. They may select which vacant post they want to work if more than one is available – subject to operational needs as determined by the Shift Commander (Captain or designee).

5.4.6 The Employer shall not create overtime assignments to permanently replace regular full-time Council (budget and appropriated) positions.

Issue 6: Leaves

The Guild's proposal is denied. The language of §9.1.6 will remain as in the 2002-2004 agreement.

Issue 7: Discipline

Portions of each of the Parties' proposals are awards as specifically stated below. All other proposals are denied. All other language of Article XIII remains unchanged from the 2002–2004 agreement. Section 13.1.2 is awarded to read as follows:

13.1.2 Written reprimands shall be given within twenty (20) days of the date when the Employer obtained knowledge of the violation. The twenty (20) day time period may be extended by the Employer if additional time is necessary to obtain evidence, cooperation from third parties or if the employee is unavailable. Warning notices shall be removed from the employee's file after one (1) year if no further violations have occurred. Written reprimands shall be removed from the Employer's file after three (3) years if no further violations have occurred. Employees may request a review of a written reprimand (after eighteen (18) months) for removal from their file subject to the approval of the Division Manager.

Furthermore a new §13.2 is awarded to read:

13.2 Letters of Corrective Counseling – Unlike a written reprimand, a letter of corrective counseling is not considered discipline. Such a letter is defined as documentation

of a communication from an employee's superior drawing the employee's attention to a matter that needs correction. By way of illustration, such communications address issues that pertain to expectations as to compliance with Department rules, procedures, and policies.

An employee who receives a letter of corrective counseling may, within five (5) business days of receipt of the letter, request a meeting with his or her captain to discuss the Letter of Corrective Counseling. Within ten (10) business days of such meeting, the employer will notify the employee of whether or not the Letter of Corrective Counseling will stand as is, be modified or be rescinded. The letter shall be removed from all files and shall not be considered for any reason one (1) year after the incident giving rise to the Letter of Corrective Counseling, provided no further incidents of similar conduct have occurred.

Issue 8: Employee Rights and Code of Conduct

The Parties' proposals are denied. Article XV remains unchanged from the 2002-2004 agreement.

Issue 9: Management Rights

The Parties' proposals are denied. Article XV remains unchanged from the 2002-2004 agreement

Dated this 26th day of December 2007.

WF Reeves

William F. Reeves,
Neutral Interest Arbitrator

William F. Reeves

Digitally signed by William F. Reeves
DN: cn=William F. Reeves, c=US, ou=Arbitrator, email=wreeves@ccountry.net
Reason: I am the author of this document
Location: Ashland, Oregon
Date: 2007.12.26 11:29:09 -08'00'

APPENDIX A

SNOHOMISH COUNTY & SNOHOMISH COUNTY CORRECTIONS GUILD
INTEREST ARBITRATION
COUNTY'S PROPOSED CODE OF CONDUCT

EMPLOYEE CODE OF CONDUCT

MISSION STATEMENT: The mission of every employee is to promote, preserve, and deliver security, safety and quality services to the community. Each employee must do their part to guarantee that our detention facilities, and programs and services are secure, safe, humane and efficient. Employees have an obligation to ensure a safe environment for their colleagues, co-workers, and the inmates they supervise.

B .005
PURPOSE/POLICY STATEMENT:

To establish and provide guidelines and instructions concerning employee conduct and responsibility of all personnel who work in any capacity in SCC detention facilities.

Employees shall:

a) conduct themselves in a manner that creates and maintains respect for the County and the Department. They should always be mindful of the high standards of professionalism and integrity expected of them by the public, the Department and the County in their official activities.
b) avoid actions which might result in adversely affecting the confidence of the public in the integrity of the County government or the Department;
c) promptly discuss with their supervisors any problems arising in connection with matters within the scope of this policy;
d) perform all duties in a professional and competent manner;
e) strive to achieve excellence in learning and implementing the necessary knowledge and skills associated with their duties.

Action may be taken against an employee due to a failure of the employee to meet the requirements of the position. Such action may be either disciplinary or non-disciplinary in nature.

B.010
KEY WORDS AND DEFINITIONS:

For the purpose of this document, the term "employee" shall include individuals 1) employed by Snohomish County Corrections; 2) assigned by other County or outside agencies to work in Corrections facilities or programs, 3) performing work under contract, and 4) individuals who perform volunteer services for the department or who spend a portion of their work day in an SCC Detention Facility.

B.015
CONFORMANCE TO LAWS AND REGULATIONS:

Employees shall abide by federal and state laws and applicable local ordinances, County and department policies and procedures, and Snohomish County's Code of Ethics. Penalties for violating the County Code of Ethics may include but are not limited to:

- Employment termination
- Criminal sanctions
- Civil remedies
- Discipline as approved by the Director

B.020
OFF DUTY INVOLVEMENT:

There is no provision in this section that requires any employee during off-duty hours to be involved in any law enforcement action. Employees should contact the appropriate law enforcement agency having jurisdiction.

B.025
PUNCTUALITY:

Employees shall be punctual when reporting for duty at the time and place designated by their supervisors. Employees shall remain on their post at all times until properly relieved from duty.

B.030
ABSENCE WITHOUT LEAVE (AWOL)

Regular attendance is essential to meeting the department's mission and is expected of every employee.

1. Employees shall not be absent from duty except for:

    a. Sickness
    b. Family care or family sick leave
    c. Injury/disability
    d. Suspension from duty
    e. Approved jury duty
    f. Approved military leave
    g. Scheduled furlough days
    h. Approved holiday or vacation days
    i. Approved compensatory days
    j. Other approved absences

2. All absences for any reason must be authorized by the Department. The Department may or may not authorize leave without pay for employees who do not have the appropriate leave time on their books. Unless the Department has authorized unpaid leave for such individuals, they are required to report to work.

3. Employees shall provide verification of absence, at the request of the department, in accord with collective bargaining agreements and County policy.

B.035
IDENTIFICATION AS AN EMPLOYEE

1. Acceptable identification is the Department authorized badge or ID card as issued without any alteration.

2. Employees shall provide their name and badge number, if applicable, upon citizen request, unless circumstances surrounding the request might tend to hinder, obstruct or endanger the employee during the performance of their duties.

3. When on duty, all employees shall prominently display their authorized identification so it can be seen and/or read by others.

B.040
USE OF AUTHORITY:

Employees shall not use their position, or authority, department credentials, identification cards or badges for any reason or purpose not directly associated with the performance of official duties, nor shall aforementioned be used to coerce, intimidate or deceive others or to obtain any privilege or article not otherwise authorized in the performance of official duties.

B.045
SPECIAL PRIVILEGE CREDENTIALS:

Unless approved by the Director or designee, employees shall not issue any device, credentials or identification to persons other than employees that presume to grant a special privilege or consideration relating to Department business. All provisions of the Snohomish County Code of Ethics shall apply.

B.050
GRATUITY:

Employees shall not:

1. Use their position to solicit or accept anything of value that would not be accorded to a private citizen. Included are free rates for anything whatsoever.

2. Employees shall not inappropriately give or accept any gift or favor from an inmate, ex-inmate, their family or friends.

B.055
NAMES OR PHOTOGRAPHS, USE OF:

Employees shall not allow the use of their name or photograph for any commercial advertising purpose connected with work without the permission of the Director.

B.060
RECOMMENDING EMPLOYMENT, PERSONS OR FIRMS:

Employees shall not:

1. Make recommendations to any detainee, their family or friends, regarding an attorney, bail bondsman, individual or firm for services that may be required as the result of an action, incident or condition with which the Department is concerned as an investigative or public service agency. This does not include the family members of employees.

2. State, either orally or in writing, that the Department or any representative endorses any product or service. Vendors or business representatives who request that the Department evaluate a product or service shall be advised to forward an appropriate written communication to the Director for consideration.

B.065
OBEDIENCE TO ORDERS:

Employees shall obey lawful and reasonable orders.

B.070
CONFLICTING ORDERS:

1. Should any conflict arise with any previous order, or with an order from another supervisor, the employee shall promptly and respectfully call attention to such conflict. If the supervisor does not change the order, it shall be immediately followed.

2. The supervisor giving the conflicting order shall:

   a. Take the necessary action to correct the conflicting orders.

   b. Assume full responsibility for the subordinate's action in obedience to the order.

B.075
GROOMING

Uniformed staff are to dress in accordance with applicable regulations. Staff are to maintain proper personal hygiene and grooming.

B.080
FITNESS FOR DUTY:

1. Employees are expected to maintain physical and psychological fitness sufficient to perform the essential functions of their jobs.

2. If the Department has reason to believe an employee may be psychologically and/or physically unfit to perform their duties, the Director may require the employee to undergo a physical and/or psychological examination(s) to resolve any questions regarding fitness for duty.

3. Examinations ordered by the Department shall be performed by Department approved practitioners at the Department's expense. Employees are required to promptly appear for the scheduled examinations so as to not cause the County unnecessary expense. Employees are expected to cooperate fully with such evaluations, except as otherwise provided by State and Federal Privacy Laws.

4. In the event there are conflicting health care assessments, the County health care practitioner will confer with the employee's health care practitioner and they will provide a mutually acceptable list of health care practitioners qualified to provide a third opinion. A third opinion is at the expense of the employer, and does not waive any rights under the just cause for discipline of the bargaining agreement.

A Focus on Prevention and Treatment

SCC employees participate in excellent health care plans. SCC encourages all staff to seek proactive and preventive care in matters of personal health (medical and psychological) through their individual health care providers.

Employees shall take the initiative to secure assistance before it impacts your work, family or others.

B.085
FAILURE OF MANDATORY TRAINING OR QUALIFICATION:

1. When officially assigned, employees shall attend all mandatory Department training or qualification sessions and achieve passing scores.

    - Employees scheduled shall attend at least 90% of a training session to be eligible for a passing score unless absence is authorized by the Director.

2. Failure to achieve a passing score may render an employee ineligible to hold certain positions and/or to perform certain assignments.

3. Upon failure of any mandatory training or qualification session, the Training Unit shall notify the employee and the Deputy Director and Facility Commander or designee.

4. The Deputy Director and Facility Commander or designee may schedule an appointment with the employee to discuss the reason for failure; and, if warranted, provide an opportunity to the employee to retake the final examination or qualification.

    - Each instance of failure shall be evaluated on a case by case basis and appropriate action taken.

5. Probationary employees are "at will" employees and may be terminated at the discretion of the Department. Failure to successfully complete and "pass" any portion of training during the probationary period may be one of the reasons the Department decides to immediately terminate a probationary employee.

B.090
ADDRESSING EMPLOYEES:

1. Employees shall always show mutual respect and courtesy to fellow employees.

2. Employees shall observe a respectful attitude, using the individual's proper title, as appropriate, particularly in public.

B.095
RIDICULE:

Employees shall not ridicule or make remarks that would tend to jeopardize working relationships with other public agencies or other employees.

B.100
COWARDICE:

Employees shall not display cowardice or fail to support their fellow employees in the performance of duty or fail to respond to emergency situations.

B.105
SLEEPING ON DUTY:

Employees shall not sleep while on duty.

B.110
INCURRING LIABILITY AGAINST THE COUNTY:

Employees shall not purchase anything chargeable (i.e. credit card, etc.) against the Department or Snohomish County except with the knowledge and consent of proper authority.

B.115
ON DUTY SALE OF PERSONALLY OWNED ITEMS, RESTRICTED:

The sale or trading of items or products by employees to other employees will only occur in common employee areas during authorized breaks or rest periods.

B.120
PERSONAL LONG DISTANCE CALL PROHIBITED:

Employees shall not use Department telephones by direct dial, directory assistance or remote SCAN authorization to charge Snohomish County for any long distance call that is not Department business.

B.125
CELLULAR PHONES, PERSONAL CALLS PROHIBITED:

Employees shall not use a Department cellular phone to make or receive calls that are not Department business except as authorized in Snohomish County Code 2.350, unless previous arrangements have been approved by the Director or designee. Employees may not carry personal cell phones within the secure perimeter of the jail unless authorized by the Director and shall use them only during authorized breaks or rest periods.

B.130
SEARCH OR INSPECTION OF COUNTY PROPERTY

County property, such as desks, computers or vehicles, and all building areas under the control of the Department, are subject to lawful search or inspection by authorized SCC employees. The search of a locker is limited to consent or reasonable suspicion of stolen or unlawful items.

B.135
PERSONAL USE OF DEPARTMENT ADDRESS PROHIBITED:

Employees shall not use the Department address for personal correspondence that includes, but is not limited to items such as bills, magazines, licenses or registrations.

B.140
CONFIDENTIALITY:

To ensure proper use of official information, the following will apply:

1. Employees will verify the identification and authority of individuals requesting access to information prior to giving or discussing records, personnel files or other official information.

2. No employee will deny authorized persons access to official information.

3. Employees will not use, or release for use, official information for private purposes.

4. Employees will not remove from files or make copies of records or documents except in accordance with established procedures or upon proper authorization.

5. Employees will not make any statement or release official information which could breach the security of the facility or unduly endanger any person.

6. Former employees will be granted access only to information available to the general public and will have no greater standing than employees of the public, regardless of their past employment and any associations developed in the course of such employment.

7. All of the above apply to evolving technology, information systems, methodologies of communicating, transmitting, and storing data; images, pictures and other formats of information.

8. If any employee has a question regarding the above, direction should be sought from a supervisor.

B.145
SMOKING PROHIBITED:

Snohomish County Ordinance prohibits smoking in all County buildings and vehicles.

1. The Director or designee shall designate smoking areas outside building enclosures.

   a. Smoking may be done only during regularly scheduled breaks and meal periods.

   b. Those who smoke shall dispose of cigarette butts in the appropriate containers. Disciplinary action may be taken when cigarettes are disposed of on facility floors, in the parking or plaza area or in any other work area or passageway.

2. The County provides assistance to employees who want to stop smoking through the Snohomish County Employee Assistance Program.

B.150
INTOXICANTS:

Employees shall not consume intoxicants when on duty. This includes during any break or meal period whether in or out of uniform.

1. Employees shall not report to work for duty with the odor of intoxicants on their breath or under the influence of intoxicants or under the influence of any controlled substance that may interfere with the employee's ability to perform their job.

   a. All breaks are considered on duty time for this section.

   b. Any supervisor who reasonably believes that a employee is under the influence of intoxicants shall comply with Snohomish County drug free workplace policies and procedures.

   c. Any employee who believes medication may affect their ability to perform any element of their job must report such immediately to their supervisor.

2. The Snohomish County Employee Assistance Program is available to employees who want/need help in controlling their use of drugs and alcohol.

B.155
DRUGS:

Employees shall only use drugs that are legally prescribed to them by a licensed health care practitioner or purchased over the counter.

B.160
EMPLOYEE CONTACTS:

Individual employee's actions which give the appearance of conflict of interest, dishonesty, criminal activity or permitting criminal activity may impair public confidence in the employee or the Department and such actions are strongly discouraged. Employees may be subject to investigation, discipline, and possible criminal action if involved in such improper conduct or activity.

Therefore, employees must avoid associations with persons which might reasonably be expected to compromise the integrity or credibility of themselves or of the Department because of the nexus of such associations with the Department's mission.

B.165
INMATE CONTACT

The following shall be the general standards for inmate contact. Any employee whose family relationship or friendship with an individual reaches the threshold of any of these provisions shall seek the guidance and direction of their supervisor.

1. Employees shall not allow themselves to show partiality toward or against, become emotionally, physically or financially involved with inmates or the families and friends of inmates; nor shall they correspond with inmates through use of the internal or public mail systems.

2. Employees shall not offer or give to an inmate, or any member of an inmate's family or friends or to any person known to be associated with an inmate, any article, favor or service, which is not authorized in the performance of the employee's duties.

3. Neither should the employee accept any gift, personal service or favor from an inmate or from anyone known to be associated with or related to an inmate.

4. Employees shall not show favoritism or give unauthorized preferential treatment to one inmate, or group of inmates, over another.

5. Brutality, physical violence, intimidation or corporal punishment of inmates by employees will not be permitted nor will force be used beyond that necessary to subdue an inmate.

6. Employees who are inappropriately contacted outside of work by an inmate, or on behalf of an inmate, are required to report this contact to their supervisor.

7. Staff are not prohibited from corresponding through the U.S. mail, or visiting in accord with visiting procedures, with a member of their immediate family who is in custody.

B.170
RECOMMENDATIONS:

1. Unless assigned to the Internal or Criminal Investigations Units, employees below the rank of Facility Commander shall not recommend directly to any court or to any other agency the disposition of any:

    a. Pending investigation;
    b. Employment applicant background investigation;
    c. Criminal case involving an inmate or County employee.

2. Employees below the rank of Facility Commander, wishing to make a recommendation, may forward a recommendation in writing to the Facility Commander via the chain of command.

3. Other employees authorized by the Director to conduct employment applicant background investigations shall forward the results of such investigations to the Chief of Administration.

4. Nothing in this section applies to SCC employees involved in pre/post trial services to Municipal, District or Superior Courts during their performance of their duties.

B.175
BREACH OF FACILITY SECURITY

Any breach of security may lead to administrative action. Employees shall not cause or create any breach of facility security which would endanger the integrity of the building, its employees or inmate population. Neither shall employees introduce contraband or traffic in contraband.

B.180
DUTY TO REPORT CRIMINAL ACTIVITY OR BREECH OF FACILITY SECURITY:

Employees have the duty to report, in writing, any knowledge of suspected criminal activity, violation or attempted violation of the law, and/or suspected breach in facility security to their immediate supervisor.

B.185
CONDUCT UNBECOMING:

1. "Conduct Unbecoming" means behavior that generally tends to:

    a. Adversely impacts respect for the Department or its employees;
    b. Adversely impacts confidence in the operation of the Department;
    c. Adversely influence or impair the efficiency of a Department employee;
    d. Adversely influence the morale or discipline of the Department.

2. Conduct unbecoming includes behavior such as:

    a. Inappropriate association with convicted felons, ex-inmates, their family or friends.
    b. Communicating intolerance relating to gender, race, religion, age, ethnic origin or sexual orientation.
    c. Criminal conduct
    d. Dishonesty
    e. Criminal traffic violations
    f. Fighting
    g. Insubordination
    h. Significant misuse of County property
    i. Substance abuse
    j. Verbal abuse
    k. Use of profanity toward staff or inmates
    l. Excessive drinking or public drunkenness that leads to undue negative attention to the Department (using nexus test).
    m. Harassment and/or discrimination based on race, ethnic origin, gender, disability, religion, age or sexual orientation.
    n. Illegal gambling or unlawful betting.
    o. Making false statements or written reports, concealment or providing misleading information, or inducing others to do so.
    p. Failure to report arrest of oneself

Employees should keep in mind that their conduct reflects upon the Department. Conduct that may tend to diminish the respect for the Department, its employees or mission, may be grounds for discipline, subject to just cause.

B.190
INVESTIGATION OF PERSONNEL MISCONDUCT

It is the Department policy to promptly, thoroughly, fairly and objectively investigate alleged misconduct involving employees.

B.195
REQUIREMENT TO COOPERATE:

All employees shall fully cooperate in Department investigations as applicable under this collective bargaining agreement. If an employee has a reasonable belief that they may be the subject of possible disciplinary action they are entitled to be accompanied by a union/guild representative during any interviews. Non represented employees may have a personal representative present.

B.200
WITHHOLDING EVIDENCE:

Employees shall not fabricate, withhold or destroy evidence of any kind in any criminal or administrative investigation.

B.205
NATURE OF INVESTIGATIONS:

1. Internal investigations shall be administrative and not criminal in nature.

2. Criminal investigations shall be assigned to the appropriate law enforcement jurisdiction.

    - The Director may assign a criminal investigation to the Internal Investigations Unit (IIU).

B.210
TOPICS OF INVESTIGATION:

1. Any alleged violations of laws or ordinances.

2. Any alleged violation of Department rules and regulations.

    a. When an alleged or observed minor infraction does not involve persons outside the Department, a supervisor may resolve these cases and immediately take the necessary corrective action without completing an IIU complaint.

    b. Minor infractions may include behavior such as:

        - Tardiness
        - Uniform and equipment violations
        - Personal appearance infractions
        - Minor omissions in assigned duties
        - Minor regulations concerned with efficiency or safety

B.215
DISCIPLINE AUTHORITY:

Except for verbal counseling and letters of corrective counseling, Departmental disciplinary actions shall be approved by the Director, Deputy Director, Commander and/or Chief of Administration.

B.220
DISCIPLINARY ACTION:

Disciplinary actions should be corrective and not punitive in nature, with the concept of progressive discipline applied when appropriate.

1. Employees are subject to disciplinary actions consistent with the provisions of the following:

    a. Standard Operating Procedures
    b. Post orders
    c. Training bulletins
    d. Department directives
    e. State and federal laws
    f. Local ordinances
    g. Snohomish County *Personnel Guidelines*
    h. Collective bargaining agreements

2. Disciplinary actions include:

    a. Written reprimands
    b. Suspension from duty
    c. Demotion (not applicable to support services)
    d. Termination

The disciplinary action to be taken will be the action considered appropriate for that particular case. Verbal counseling and letters of corrective counseling are not considered discipline.

3. Training and professional counseling may be recommended either separately or in conjunction with the above disciplinary actions.

Rules describing misconduct are illustrative only. It is not possible to anticipate every possible act of misconduct.

Snohomish County Corrections

Employee Code of Conduct

I have received the Employee Code of Conduct

Name (Print Legibly or Type Only)	Signature	Date

Printed Name of Supervisor	Supervisor's Signature	Date