THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION

BEFORE SANDRA SMITH GANGLE, ARBITRATOR

In the Matter of the Interest Arbitration between **WHATCOM COUNTY,** Employer, and **WHATCOM COUNTY DEPUTY SHERIFFS GUILD,** Bargaining Representative.	**PERC Case No. 15395-I-00-347** **OPINION AND AWARD**

Hearings Conducted:	June 11, 12, 13, 14 and July 30, 2001
Representing the Employer:	Larry E. Halvorson, Attorney at Law HALVORSON & SAUNDERS 800 Fifth Avenue, Suite 4100 Seattle, WA 98104
Representing the Guild:	James G. Cline, Attorney at Law CLINE & ASSOCIATES 6800 E. Greenlake Way N., Suite 250 Seattle, WA 98115
Arbitrator:	Sandra Smith Gangle SANDRA SMITH GANGLE, P.C. P.O. Box 904 Salem, OR 97308-0904
Date of Decision:	October 2, 2001

TABLE OF CONTENTS

I. BACKGROUND

This matter comes before the arbitrator pursuant to the Washington Public Employees' Collective Bargaining Act, RCW Chapter 41.56. The public policy of the State of Washington prohibits a bargaining unit of uniformed public safety personnel from engaging in a strike to settle a labor dispute with a public employer. RCW 41.56.430. When the process of collective bargaining between the parties reaches impasse, the law provides that the disputed issues, as certified by the Executive Director of the Public Employment Relations Commission ("PERC"), will be resolved through interest arbitration. RCW 41.56.450.

The Whatcom County Deputy Sheriffs Guild ("the Guild") is the exclusive bargaining representative of the Deputy Sheriffs employed by Whatcom County, Washington ("the County" or "the Employer"). The parties reached impasse during bargaining for a successor contract to their 1997-99 collective bargaining agreement and were unable to resolve the impasse through mediation. On September 27, 2000, thirty-five (35) unresolved issues were certified for interest arbitration by Order of Marvin L. Schurke, Executive Director of PERC.

The parties mutually selected Sandra Smith Gangle, J.D., of Salem, Oregon, through PERC appointment procedures and pursuant to RCW 41.56.450 and WAC 391-55-210, as the neutral Panel Chairperson of an arbitration panel that would conduct a hearing and render a decision in the matter. The parties subsequently waived the appointment of their partisan arbitrators, electing to proceed with Arbitrator Gangle as sole interest arbitrator.

A hearing was conducted on June 11, 12, 13, 14 and July 30, 2001, in a conference room of the Alternative Corrections Office of Whatcom County in Bellingham, Washington. The parties were thoroughly and competently represented by their respective attorneys throughout the

hearing. The County was represented by Larry Halvorson, Attorney at Law, of the Seattle law firm of Halvorson and Saunders, P.L.L.C. The Guild was represented by James M. Cline, Attorney at Law, of the Seattle law firm of Cline & Associates.

The parties were each afforded a full and fair opportunity to present testimony and documentary evidence in support of their respective positions. A voluminous record was produced, consisting of five thick volumes of Guild documentary exhibits (Guild Ex. 1 through 197, including a videotape) and four volumes of County documents (County Ex. 1 through 62).

All witnesses who appeared at the hearing, including the parties' attorneys (who offered some of the evidence on behalf of their respective clients) were sworn and were subject to cross-examination by the opposing party. The Association's witnesses were James Cline, James Smith, John Barriball, Stewart Smith, Steve Gatterman, Scott Rossmiller, Leland M. Childers, Michael Jolly, Jason Nyhus, Pat Brown and Kevin Mede. The County's witnesses were Larry Halvorson, Wendy Wefer-Clinton, Deane Sandell and Jeffrey Parks.

The arbitrator tape-recorded the testimony of all witnesses as an adjunct to her personal notes. It was agreed that the arbitrator's tapes were not an official record of the hearing. They are the arbitrator's private property and are not subject to subpoena by any party. The County assigned a temporary employee to keep a taped record of the hearing and the Guild agreed to share in the cost of the taping. The County's tapes will constitute the official record of the hearing and will be preserved in the same manner that the County preserves evidentiary materials in its Internal Investigations.

While the hearings were in progress, PERC Executive Director Marvin Schurke executed two Orders, pursuant to unfair labor practice (ULP) complaints that had been filed by the parties

with the Agency. According to the first Order, dated June 21, 2001, PERC denied the Guild's request for suspension of the interest arbitration proceeding as to the "Article 25 Management Rights" issue. The second Order, issued on July 18, 2001, declared that two issues were suspended, pursuant to WAC 391-55-265, pending the outcome of proceedings before the Agency. Those issues were identified as: (1) shifts of four ten-hour days; and (2) the beginning time of a compensable work day.

In spite of the PERC Order denying suspension of the Management Rights issue, the parties informed the arbitrator that they had agreed to suspend that issue from the interest arbitration. Also, the parties agreed, as a consequence of PERC's July 18 Order, that the interest arbitrator should not consider any of the evidence that had been admitted into the record on the Guild's proposals regarding converting to a "4-10" work schedule, and conversion to a "portal-to-portal" system of shift scheduling. If, however, at some future time, the parties should decide to reopen the hearing for either or both of those issues, the interest arbitrator may be re-appointed for that purpose.

During and after the arbitration hearing, the parties advised the arbitrator that a number of issues, which were previously certified by PERC Executive Director Schurke, had either been resolved through bargaining or were expected to be resolved and were no longer before the arbitrator.

Written briefs of final argument were submitted by both parties on the issues remaining unresolved. By agreement, the parties sent their opening briefs to the arbitrator by e-mail attachment and regular mail on August 24, 2001. Reply briefs were also sent by e-mail

attachment and regular mail, on August 31, 2001. Upon receipt of the parties' reply briefs, the arbitrator officially closed the hearing and took the matter under advisement.

The arbitrator has considered all of the testimony and evidence that the parties offered at the hearing. She has weighed all the evidence, in the context of the legislative purpose set forth in RCW 41.56.430 and the relevant factors established in RCW 41.56.465. She has carefully considered the argument of both parties in reaching her findings and conclusions.

II. RELEVANT STATUTORY PROVISIONS

RCW 41.56.030. Definitions. As used in this chapter:

(1) "Public Employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body * * * * *

(2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution * * * or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship * * * or (d) who is a court commissioner or a court magistrate * * * or (e) who is a personal assistant to a * * * judge * * * or (f) excluded from a bargaining unit under RCW 41.56.201(2)(a). * * * *

(3) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.
(4)"Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer, except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter.

* * * * *

(7) "Uniformed personnel" means: (a) Law enforcement officers as defined in RCW 41.26.030 employed by the governing body of * * * any county with a population of ten thousand or more * * * * *.

RCW 41.56.430. Uniformed personnel—Legislative declaration.

The intent and purpose of chapter 131, Laws of 1973 is to recognize that there exists a public policy of 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.

RCW 41.56.450. Uniformed personnel—Interest arbitration panel—Powers and duties—Hearings—Findings and determination.

* * * * * The issues for determination by the arbitration panel shall be limited to the issues certified by the executive director. * * * * * [T]he fees and expenses of the neutral [arbitrator] shall be shared equally between the parties. * * * * * [W]ithin thirty days following conclusion of the hearing, the neutral [arbitrator] shall make findings of fact and a written determination of the issues in dispute, based on the evidenced presented. A copy thereof shall be served on the Commission, * * * * * and on each of the parties to the dispute. That determination shall be final and binding on both parties, subject to review by the superior court upon the application of either party solely on the question of whether the decision of the [arbitrator] was arbitrary or capricious.

RCW 41.56.465. Uniformed personnel--Interest arbitration panel—Determinations—Factors to be considered.

(1) In making its determination, the [arbitrator] shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standard or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:

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

(b) Stipulations of the parties;

(c)(i) 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;

* * * * *

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

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

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

III. STATEMENT OF THE FACTS

The following facts are either stipulated or undisputed by the parties:

Whatcom County is located in the northwestern corner of the State of Washington. Covering 2,120 square miles, it is generally rectangular in shape and about twice as wide as it is long, stretching from the Strait of Georgia on the west end to the border of Okanagan County on the east, and from the Canadian border on the north to the boundary of Skagit County on the South.[1] It includes Lummi Island, which is only accessible by boat or ferry, and Point Roberts, which is actually an isolated appendage of land on the southern tip of British Columbia, and requires travel through Canada in order to reach it from the mainland. Much of the eastern two-thirds of the County is mountainous and includes 10,778-foot-high Mt. Baker and considerable National Park and National Forest Land. There are few inhabitants in the remote eastern areas.

The population of Whatcom County, according to the 2000 U.S. census was 166,814.[2] Between 1990 and 2000, the population increased 30.5 percent. Bellingham, the County seat, has a population of 64,720, or about 39 percent of the County's residents. There are six smaller cities within the County, none of which exceeds 10,000 in population. The City of Bellingham and several of the smaller cities have their own police forces.

One of five charter counties in Washington, Whatcom County is governed by an elected county council (legislative) and an elected county executive (administrative). The County Sheriff is also an elected official, who is responsible for law enforcement in the county and

---

[1] Guild Ex. 7, Co. Ex. 32.

[2] The official 2000 U.S. Census figure is considered the most reliable source for population data. See Co. Ex. 50. Other sources in the record stated the 2000 population of Whatcom County at 163,500. See Co. Ex. 32, Guild Ex. 7; but see County Ex. 36, p. 2. The arbitrator will use the U.S. Census figures for all counties referenced herein. The

operation of the county jail.[3] For purposes of RCW 41.56.465, it is clear that Whatcom County has constitutional and statutory authority to employ the deputy sheriffs and sergeants who provide law enforcement officer services to the County and make up the Guild bargaining unit in this matter.

The County employs approximately 750 persons in its various agencies. In addition to its unrepresented employees, whose terms and conditions are set forth in annual Resolutions passed by the Council, there are eight separate collective bargaining units of County employees. Those units, which include the Deputy Sheriffs' Guild unit, are covered by labor contracts as follows:

> Teamsters Local 231 and Sheriff's Department Corrections Officers and Cooks;
> Teamsters Local 231 and Sheriff's Department Support Staff;
> Teamsters Local 231 -- Master Labor Agreement;
> Teamsters Local 231 and Health Department Clerical Agreement;
> Washington State Nurses Association and Health Department;
> IFPTE Local 17 and Health Department;
> Inlandboatman's Union and Masters Mates and Pilots; and
> Whatcom County and Whatcom County Deputy Sheriffs' Guild.[4]

Until 1997, Teamsters Local 231 represented the bargaining unit of deputy sheriffs and sergeants. One interest arbitration was conducted between the Teamsters and the County on behalf of the unit, in 1986. There were two issues in dispute at that time, wages and long-term disability insurance. Professor Carlton Snow served as the arbitrator.[5]

The Teamsters were decertified in 1997 and the Whatcom County Deputy Sheriffs Guild ("the Guild") was formed and certified as the unit's bargaining representative. The parties' first

---

arbitrator notes, however, that these figures *include* the population totals for all cities within the boundaries of the various counties.

[3] County Ex. 33. The City of Bellingham does not have its own jail. Therefore, the County provides jail services to the City.

[4] The agreements were included in the record. County Ex. 3-9, 12.

[5] Guild Ex. 21.

collective bargaining agreement[6] expired on December 31, 1999, and the parties, having been unable to negotiate a successor agreement, have proceeded to interest arbitration in this matter.

On June 7, 2001, just prior to the start of the hearing herein, there were 55 deputies and eight sergeants in the Deputy Sheriffs bargaining unit.[7] Six of those deputies had been hired in 2001 and were still involved in the initial training process. Twenty-two other deputies had been hired between 1996 and 2001. The remainder of the unit, including all of the sergeants, were hired before June 1, 1995.

IV. RELEVANT CRITERIA FOR AWARD

The Washington Public Employees Collective Bargaining Act prescribes the criteria that an arbitrator should use in making an award in a public sector interest arbitration case. See RCW 41.56.465, cited herein at p.6. The Act does not give guidance to the arbitrator as to the relative weight that should be given to the factors.[8] Therefore, the arbitrator has discretion to decide how to weigh the various factors and the evidence supporting them. This is not an exact science. However, it is incumbent on the arbitrator to use principled reasoning in drawing conclusions.

There has been considerable case authority in Washington, by which various distinguished labor arbitrators have analyzed and applied the statutory criteria. Each of the parties referenced some of those earlier Awards in their briefs. To the extent that the reasoning of those arbitrators is relevant to the facts of this matter, the arbitrator will refer to those cases.

---

[6] County Ex. 12.
[7] County Ex. 16.
[8] In Oregon, the interest arbitration statute not only sets out a list of eight criteria that the arbitrator should apply, but also provides that the arbitrator must give first priority to "[t]he interest and welfare of the public," and secondary priority to all the rest. See ORS 243.746(4). There is no such priority stated in the Washington statute.

Arbitrators generally agree that interest arbitration is an extension of the collective bargaining process and that the statutory criteria should be applied in such a manner as to obtain, as nearly as possible, the package of provisions that the parties would have agreed upon if they had been free to continue bargaining in good faith, as parties do in the private sector.[9] Arbitrator Buchanan, in Kitsap County Deputy Sheriffs Guild and Kitsap County (unpub., 1999) at page 4-5, quotes Arbitrator LaCugna, in a City of Kent case, on that principle, pointing out that the Award should not be a "compromise", or a "splitting of the difference", but an "acceptable and workable bargain":

> "The Arbitrator must interpret and apply the legislative criteria in RCW 41.56.460. The Arbitrator must not only interpret each guideline, but he must determine what weight he will give to each guideline in order to arrive at a 'total package', because only the 'total package' concept measures the real effect of the Arbitrator's decisions. The task is not easy. He must attempt to fashion an acceptable and workable bargain, one that the parties would have struck by themselves as objective and disinterested neutrals. This point is crucial. Dispute settlement procedures that culminate in binding arbitration make it easy to bypass negotiations, mediation and fact finding in the hope that an Arbitrator might award to one party what it could not gain through the process of free and robust negotiations. The award must reflect the relative bargaining strength of the parties. The award cannot be a 'compromise', much less 'splitting of the difference', because such an award would favor the party that advances extreme demands and takes an intransigent position."

This arbitrator concurs with the reasoning of Arbitrators LeCugna and Buchanan.

V. DETERMINING COMPARABLES

The parties agree that the threshhold factor the arbitrator must determine is comparability. The statute requires, in subsection (c)(1), that the arbitrator draw "a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages,

[9] See, e.g., Arbitrator McCaffree in ***Thurston County Deputy Sheriffs' Association and Thurston County***, Case No. 14303-I-98-00318 (unpub. 1999).

hours, and conditions of employment of *like personnel of like employers of similar size* on the west coast of the United States". (Emphasis added). The significant inquiry, therefore, is:

> *What are the **"like personnel of like employers of similar size"** that should be compared to the Whatcom County Deputy Sheriffs?*

The parties agree that the arbitrator should seek to achieve an "apples to apples" type of comparability. They have stipulated that units of deputy sheriffs in four counties in Washington meet that definition. Those are: Skagit County, Thurston County, Kitsap County and Cowlitz County. The parties also generally agree that, since Cowlitz County has not yet completed bargaining for a successor to its labor agreement, which expired in 1999, the remaining three of the mutually-acceptable comparables would not provide a full and adequate picture of the range of comparable wages and working conditions from which the arbitrator could draw conclusions on the disputed issues. Also, the parties agree that the arbitrator's designation of an appropriate group of comparable jurisdictions will assist them with their future bargaining.

The parties seem to agree that two additional comparables would be a desirable number. They do not agree, however, on what those additional jurisdictions should be. The County proposes Yakima County and Benton County. The Guild vigorously opposes both of those, for the reason that they are situated in Eastern Washington, which has a different economy and labor market from Western Washington. The Guild, in turn, advocates for Clark County and the City of Bellingham as comparables, but the County believes there are significant reasons why neither of those jurisdictions should be included. The County contends that Clark County is significantly larger and better-funded than Whatcom County. Also, it has a more urban character, being a rapidly-growing bedroom community for Portland, Oregon. Bellingham, says

the County, is a city rather than a county; therefore it has an entirely different legal structure, tax structure and crime situation from Whatcom County. Basically, each of the parties contends that the other party's proposed comparables do not meet the "apples-to-apples" requirement that the interest arbitration statute anticipates.

The parties do not dispute that all four of their separately-proposed comparables would meet the statutory factor of *"like personnel"*. Except for minor differences in the job descriptions and minimum qualifications required, the members of all of the proposed bargaining units are sworn law enforcement officers who perform the same essential types of work. As stated by Arbitrator McCaffree in Thurston County Sheriffs and Thurston County (Unpubl., 1999) at p. 8:

> "the essential function or business of the units to be considered . . . is the establishment and maintenance of a system of law and order, the safety and protection of people and property."

Since all of the proposed comparables meet the definition of *"like personnel"*, the arbitrator's analysis will focus on the statutory criteria of *"like employers"* and *"similar size"*.

A. "Like Employers" :

(1) Benton and Yakima Counties: The first issue to explore is whether there is a substantial difference between the economies and labor markets of the counties of Eastern Washington and counties in Western Washington, especially along the busy I-5 corridor, such that Benton and Yakima Counties should be excluded as *"like employers"* to Whatcom County. The Guild argues that there is such a difference, but the County denies this. The Guild emphasizes that Whatcom County's population base is concentrated along the I-5 corridor, which has become a magnet for economic development throughout Western Washington, from

the Canadian border to the Oregon border. As a result of that economic activity, deputy sheriffs earn substantially more along the I-5 corridor than their counterparts do in Eastern Washington. Also, Western Washington employers, like Whatcom County, compete vigorously for law enforcement personnel among the residents of Western Washington. Therefore, similar wage structures need to be maintained in counties near I-5, in order to attract and retain deputies.

The Guild argues that the average deputy sheriff in Western Washington at the "ten-year AA"[10] wage level earns $650 per month more than the average deputy in Eastern Washington earns.[11] Regardless of differences in size or other demographic factors, argues the Guild, Western Washington salaries are always higher. The Guild offered in evidence a January 27, 2001 Seattle Post-Intelligence newspaper article, which showed that the Eastern Washington economy was substantially weaker than the Western Washington economy and that income levels along the I-5 corridor were significantly higher than those in the eastern part of the state.[12] Statistics in the article show that the *per capita* income in Eastern Washington in 1998 was $21,736, while in Western Washington, it was $30,702 in that year, a difference of 41 percent.

The arbitrator is not persuaded that the general economic difference that exists between Eastern and Western Washington provides a sufficient reason to eliminate Benton and Yakima Counties as *"like employers"*, however. The arbitrator agrees with arbitrator McCaffree's conclusion in his 1999 Thurston County interest arbitration, that police officers and sheriffs' deputies have a mobile and "occupational" labor market that is not controlled by geography in

---

[10] The Guild believes that it is more appropriate to compare the salaries of deputy sheriffs who have ten years of experience and an Associate in Arts degree than it is to compare minimum or maximum salaries of deputies. There is further discussion of this argument elsewhere in this report.
[11] See Guild Ex. 67.
[12] Guild Ex. 65.

the same way that unskilled blue-collar workers' wages may be affected. Also, in spite of evidence showing there are "two Washingtons", the County's evidence rebutted the Guild's contention that Benton and Yakima Counties are substantially dissimilar from Whatcom County.

A study by the Washington Employment Security Department (ESD), dated February 2001,[13] showed that the *"Bellingham Metropolitan Statistical Area"* (Whatcom County), the *"Yakima Metropolitan Statistical Area"* (Yakima County) and the *"Richland-Pasco-Kennewick Metropolitan Statistical Area"* (which includes both Benton and Franklin Counties), are *similar* by socio-economic standards. They are all rated as "rural" according to population density (i.e., they each have fewer than 100 persons per square mile), but "urban" by ESD's labor-market standards.[14] Further, the *per capita* incomes in the three designated counties in 1999 were far *closer* to each other than the incomes of the "two Washingtons" were. Specifically, Whatcom County's *per capita* income was $23,228 and ranked 15th of the 39 counties in the state that year, while Benton County's was 7.6% higher, at $25,004, and ranked 11th.[15] Yakima County's was 10.4% lower than Whatcom's, at $20,811 and ranked 25th.[16] Those differences were far less, however, than the 41% differential between the regional *per capita* income figures of Eastern and Western Washington that the Guild relied upon in its contention that Yakima and Benton Counties are wholly dissimilar from Whatcom.

Other evidence offered by the County showed that the Part I Crime Indices in Benton, Yakima and Whatcom Counties are not substantially different from each other. While Whatcom County's crime rate was 28.3 crimes per thousand population in 1999, Benton's rate was 18.4

[13] County Ex. 42.
[14] Id., at p. 2.
[15] County Ex. 35.

per thousand (35% lower) and Yakima County's rate was 32.5 per thousand (15% greater than Whatcom's)[17]. Those differentials are not substantial. For examples of substantial differences, one needs only to consider the crime rates of Columbia, Grant, Mason, Spokane and Pierce Counties, each of which exceeded 41 crimes per thousand in 1999, a 45% higher crime rate than Whatcom County had.[18]

Finally, the unemployment rates for the three counties, between 1997 and 2000, show that Whatcom County's (5.6 %) and Benton County's (6.3%) were low.[19] Yakima County's rate, at 10.1%, was higher and rendered that county a "distressed" economy.[20] It appears, therefore, that Yakima County's economy may be at risk. However, there is no evidence in the record that shows the unemployment rate is having an adverse effect on the wages and working conditions of Yakima County Sheriff's deputies at this time, or that the Sheriff's ability to recruit or retain deputies in that county is compromised.[21]

Overall, the arbitrator is persuaded that the socio-economic conditions are not substantially different in Benton, Yakima and Whatcom Counties, even though the first two are in Eastern Washington and Whatcom County is in Western Washington. Therefore, the arbitrator does not agree with the Guild that Benton and Yakima Counties should be excluded as *"like employers"*. However, in the future, the parties should monitor any changes that may occur in the economic

---

[16] Id.
[17] County Ex. 32, Crime in Washington, 1999 Annual Report, Washington Assoc. of Sheriffs and Police Chiefs.
[18] Id.
[19] County Ex. 34.
[20] Id.
[21] See Yakima County and Law Enforcement Officers Guild collective bargaining agreements for 1999-2000 and 2001. Guild Ex. 19, 20.

conditions in Yakima County, as such changes, if they continue a downward trend, could adversely affect the continued viability of that county as a *"like employer"* to Whatcom County.

(2) Bellingham: The second issue involving comparability is whether the City of Bellingham meets the "*like employer*" requirement. The City's Police Chief is appointed by the Mayor, while the County Sheriff is elected by the voters, but that difference in legal structure is inconsequential. What is significant is that the City is much better funded and has more sources of revenue available to it than the County has; therefore, it can afford to be more generous with its police officers. Specifically, the City receives Business and Occupation (B&O) taxes in the amount of over $7 million dollars a year and retail sales tax income of over $6 million a year. The County, which has neither of those funding sources available, has to stretch its budget accordingly. For example, Bellingham's overall revenues in 1999 were $102,077,900, while the County's were only $73,786,400, or 28% *less*, in that year,[22] even though the City's population was only about one-third the size of the County's overall population.

Whatcom County Human Resources Manager Wendy Wefer-Clinton testified that wages for City of Bellingham employees usually exceed wages paid by the County for similar services by about ten percent (10%). She acknowledged that the County "considers" the wages paid to City staff when it negotiates salaries of unrepresented and management employees in the County. She said her negotiating team routinely offers about 10% less than the City pays for similar services, however, to reflect the economic differences that exist between the two jurisdictions.

Arbitrator Krebs, in Spokane County and Spokane County Deputy Sheriffs Assn (Unpubl. Interest Arb., 1999), at p. 23, acknowledged that city police officers "always receive more pay"

than their county counterparts. He identified five Washington counties in which the deputy sheriffs were paid less than the city police officers were paid in the county's largest city. The smallest differential noted by Krebs was between Kitsap County and the City of Bremerton, at 3.6 percent; the largest was between Snohomish County and Everett, at 11.4 percent.

The evidence also shows that substantial differences exist between the crime rates and working conditions of law enforcement officers in Bellingham and its neighbor, Whatcom County. Bellingham's Part I Crime Index, at 69.3 crimes per thousand of population, was 45% greater than the County's rate in 1999.[23] In order to combat the crime, the City employed 103 police officers in 2000, or 69% more law-enforcement officers than the 61 deputy sheriffs that the County employed at that time.[24] In addition to its sworn officers, the City had 61 civilian personnel, while the County Sheriff had only 14 civilians on staff.[25] Meanwhile, County deputies have to travel throughout a much larger geographical area than Bellingham police officers do, even getting into remote areas like Lummi Island and Point Roberts, in order to respond to calls for service.

The Guild correctly points out that Arbitrator Snow compared the duties and compensation of Bellingham Police and Whatcom County deputies in the 1986 interest arbitration between the parties. The deputy sheriffs were represented by the Teamsters at that time.[26] Also, Arbitrator Latsch relied on Whatcom County as a comparable to Bellingham in an interest arbitration

---

[22] County Ex. 41, at p. 9.
[23] County Ex. 32, p.60. Crime in Washington, 1999 Annual Report, Washington Assoc. of Sheriffs and Police Chiefs.
[24] See County Ex. 31, p. 10, 13.
[25] Id.; See also County Ex. 32, which provides slightly different figures.
[26] Guild Ex. 21.

involving the city police and the City.[27] A careful reading of those Awards, however, discloses that arbitrators Snow and Latsch considered Bellingham and Whatcom County to be more like cooperative neighbors than *"like employers"*. Arbitrator Snow pointed out that it was important to lessen the huge wage gap (an 18.6% differential) that existed at that time between the two jurisdictions, but he did not advocate eliminating the gap entirely. In fact, he expressly declined to consider cities and counties as comparables, because he recognized their "fundamental difference in revenue generating capability".[28] As between Bellingham and Whatcom County specifically, Arbitrator Snow noted that the work done by the police and the deputy sheriffs was similar, and often involved collaboration. Observing that deputies must serve a much larger region, however, and that they are in often in greater danger because they serve without backup support, he called it an "anomaly" that the deputies earn *less* than the city police officers do.[29]

The reasons Arbitrator Latsch gave for including the County as a comparable to Bellingham were that there were no other comparably-sized cities in the nearby geographic area and some of the other comparable cities in the region were more metropolitan in character than Bellingham; therefore Whatcom County would provide a necessary balance. As a general proposition, however, Arbitrator Latsch indicated that he agreed with a conclusion Arbitrator Jane Wilkinson had expressed in a City of Pasco interest arbitration, where she determined that cities and counties were *not "like employers"*, as required by the interest arbitration statute.

Because of the difference in revenues between the City of Bellingham and Whatcom County, the difference in crime rate faced by the law enforcement personnel and the dissimilar

---

[27] Guild Ex. 22.
[28] Guild Ex. 21, at p. 11-12.
[29] Guild Ex. 21, p. 15-18.

size, nature of the geographic regions and conditions under which officers in each jurisdiction serve, the arbitrator is persuaded the Bellingham Police Department and the Whatcom County Sheriffs Office are not *"like employers"*. However, the arbitrator agrees with the reasoning of arbitrators Snow and Latsch that the close connection between the two communities cannot be ignored and there should not be a substantial variance between their wage scales. Also, the evidence shows that the majority of County deputies live in Bellingham and many of them have applied for employment with the Bellingham Police Department in the past.[30] Therefore, the two law enforcement agencies clearly draw from the same labor market and must remain somewhat competitive. Otherwise, morale among the County deputies will suffer. These factors require that Bellingham be considered a "secondary" comparable employer in this case, essentially falling within the statutory category of "such other factors. . . that are normally and traditionally taken into consideration in the determination of wages, hours and conditions of employment." RCW 41.56.465 (1)(f).

(3) Clark County: The Guild insists that Clark County is a *"like employer"* to Whatcom County, but the County disputes that assertion. The Guild points out that Arbitrator Snow considered Clark County as a comparable in the 1986 interest arbitration between the Teamsters and the County. The County responds, however, that conditions have changed dramatically in the fifteen years that have passed since 1986. During that time, Clark County's population has grown from 212,000 to 345,234, an increase of 63%, while Whatcom County's population has increased only 43%, going from 116,000 in 1986 to 166,814 today.

[30] See Guild Ex. 78.

The factors on which Arbitrator Snow found similarity between Whatcom and Clark Counties were "[their] relative geographical proximity; similarity of training. . .; similarity of taxing constraints; general uniformity in their organizational structure; and a reasonably similar population base."[31] The factors of "geographical proximity", "training" and "taxing constraints" clearly are no different than they were in 1986. The evidence shows, however, that the "population base" of the two counties has changed dramatically. Clark County has become a busy bedroom community for the large metropolis of Portland, Oregon. It is much wealthier and more urban in character than it was in 1986. Its *per capita* income in 1999 ($28,116) was 21% higher than Whatcom County's ($23,228) and about 12% higher than that of either Thurston, Skagit or Benton County, each of which had a *per capita* income of roughly $25,000 in 1999.[32]

As a result of the economic changes, the working conditions of deputy sheriffs in the two counties have changed. Clark County now enjoys more than double the budget for law and justice services that Whatcom County has ($50.7 million, as opposed to $22.7 million in Whatcom County in 1999)[33]. That budget has allowed a substantial increase in its Sheriff's organization. Clark County employed nearly double the number of deputies in 1999 as Whatcom County (122 as opposed to 64).[34] Clark County also had a large contingent of civilian employees.

---

[31] Guild Ex. 21, p. 12.
[32] County Ex. 35.
[33] County Ex. 38.
[34] County Ex. 32.

Interestingly, the Part I Crime Index in Clark County, at 26.9 per thousand of population, is five percent *less than* Whatcom County's rate of 28.3 per thousand[35]. Thus, Clark County's high concentration of officers may be having a beneficial effect on preventing crime there.

On balance, the arbitrator concludes that the Clark County, when compared to Whatcom County, no longer meets the "apples-to-apples" standard that the parties have agreed is appropriate in interest arbitration. Therefore, the two are not "*like employers*", as the statute requires.

B. "Similar Size": Arbitrator McCaffree opined in the Thurston County arbitration Award that a range in size between minus 50% and 200% (i.e. +100%) of the population and assessed valuation figures found in the target jurisdiction should provide a reasonable determination of jurisdictions *"of similar size"*. His rationale is as follows:

> "Although no magic exists in selecting a range for size to which these criteria might be applied, the 50% below [one-half the size] and 200% above [twice the size] the county at issue provides a reasonable basis. This range of measurement is statistically symmetrical and provides equal weight to units smaller or larger than the unit at issue. A County half the size of Thurston as Thurston county bears to a county twice its population size, for example. This range holds 'size' within reasonable bounds where similarities of actions and responsibilities will be relatively similar and comparable among various employers."

This arbitrator agrees with the rationale of Arbitrator McCaffree.

The following chart, which was included in the County's brief, shows the relative populations[36] and assessed valuations[37] of all eight of the parties' proposed comparables, using information included in the 2000 Census and the Association of Washington Cities summary:

---

[35] County Ex. 32.
[36] County Ex. 50. The population figure for Bellingham is from County Ex. 41.
[37] County Ex. 31, pp. 1-5.

	POPULATION	VARIANCE	VALUATION	VARIANCE
Bellingham	65,900	-60%	$3,932,604	-64%
Cowlitz	92,948	-44%	$6,114,952	+10%
Skagit	102,979	-38%	$7,461,317	-32%
Benton	142,475	-15%	$6,679,379	-39%
Whatcom	**166,814**		**$10,954,894**	
Thurston	207,355	+24%	$11,453,972	+5%
Yakima	222,581	+33%	$8,674,292	-21%
Kitsap	231,969	+39%	$13,187,033	+20%
Clark	345,238	+107%	$21,983,497	+100.7%

The table, as presented, shows that both Benton and Yakima counties fall within a –15% and +33% range when compared to Whatcom County, in terms of population, and within a range of –21% to –39% in assessed values. On the other hand, neither Bellingham nor Clark County falls within the range of –50% to +100%, when compared to Whatcom County. Bellingham's population is 60% below that of Whatcom County and its assessed valuation is 64% below that of the County, while Clark County's population is more than twice the size of Whatcom County's, and its assessed valuation, at 100.7% of Whatcom County, also is more than double.

Another size factor that separates Clark County from Whatcom County is sales tax revenue. Even though Clark County does not receive the B&O tax revenue that cities receive, its retail sales tax revenue in 1999 was three times that of Whatcom County ($18.6 million as compared to $6.2 million).[38] No doubt it is that additional revenue base that has caused the Clark County Sheriff's Department to be so much more better funded than Whatcom County's Department is. See Section A(3), *supra.*

The Guild points out in its reply brief that Bellingham's population has been *included* in the County's population figure in the chart, so the stated *"size"* comparison between the two

[38] County Ex. 50.

jurisdictions is inaccurate. That argument has some merit. When the city's population (65,900) is deducted from the County's (166,814), the *actual* County population, as served by the County Sheriff, becomes much closer to Bellingham's population figure. However, *every one* of the counties that has been considered as a possible comparable herein includes one or more cities within its boundaries. Clark County's population figure, for example, includes the population of Vancouver and several other cities, each of which have their own police departments.

In order to maintain a true "apples-to-apples" comparison, therefore, the population figures for *all* counties should be reduced by the population figures of those cities within their boundaries that are not served by the County Sheriff and sheriff's deputies. Neither of the parties computed the population figures in this way for the arbitrator. In order to be fair to the parties, however, the arbitrator has computed, from information contained in Tables 7 and 15 of the ***1999 Annual Report of the Association of Sheriffs and Police Chiefs*** (County Ex. 32), the populations of each of the proposed comparables, exclusive of the populations of cities that are served by separate police departments within the boundaries of the various counties. The resulting comparison between Whatcom County and its proposed comparables is as follows:

	POPULATION	VARIANCE
Bellingham	65,900	-10%
Cowlitz	40,610	-45%
Skagit	48,305	-34%
Benton	38,545	-47%
Whatcom	**73,049**	
Thurston	114,375	+57%
Yakima	94,573	+29%
Kitsap	159,890	+119%
Clark	170,210	+133%

The grid alters considerably the previous *"size"* comparisons between Whatcom County and the City of Bellingham, as well as between Whatcom and Clark Counties. Bellingham's population is shown to be only ten percent less than Whatcom County's, while Clark County's net population, as served by its sheriff's department, jumps to a figure that is 133% greater than Whatcom County's population.[39] This new way of looking at population figures tends to reinforce the arbitrator's conclusion that Bellingham should be considered a "secondary" comparable, while Clark County is no longer comparable to Whatcom County at all.

C. Conclusions as to comparable jurisdictions:

As stated earlier, Benton and Yakima Counties meet the *"like employers"* standard of the interest arbitration statute, along with the four stipulated counties. In the future, however, Yakima County should be monitored for further economic or social changes that might adversely affect its continued comparability as an employer to Whatcom County Sheriff's Department.

The City of Bellingham warrants consideration as a "secondary" comparable to the County, by virtue of its close geographical and sociological connection and the history by which its wage structure has been closely watched and relied on in the past by arbitrators Snow and Latsch, and even by the County itself, when hiring supervisors and unrepresented employees. The population of Bellingham also is similar in size to the population that is actually served by Whatcom County Sheriff's Department. The funding capability of the city's police department, and the working conditions of the police officers as well, are so different, however, from those of

[39] Kitsap County also exceeds the +100% standard, by nineteen percent, according to the grid. However, the parties have stipulated that Kitsap County is comparable and the interest arbitration statute requires the arbitrator to honor the parties' stipulations.

the County deputies, that they prevent the City of Bellingham from meeting the *"like employer"* requirement of the statutue.

Clark County and its Sheriff's Department have grown substantially in population and in wealth over the past fifteen years, since the last interest arbitration was conducted for Whatcom County deputies. During that period of time, the growth in Whatcom County has not kept pace with that of Clark County. As a result, Clark County is no longer a *"like employer of similar size"* and cannot be treated as a comparable jurisdiction in this report.

VI. THE ISSUES

The eighteen issues that remained unresolved as of July 30, 2001 are set forth with specificity in Appendix A, which was signed by both attorneys. There are fewer issues remaining for decision at this juncture, as the parties have resolved some of them by mutual agreement. The remaining issues, in the order in which they will be discussed, are as follows:

Contract Term: **Article 27.01**	Guild proposes providing for two-year term, January 1, 2000 – December 31, 2001. County proposes three years, January 1, 2000 – December 31, 2002.
Wages: **Article 22.01**	Guild proposes increasing the 1999 wage scale by 4% in 2000, and an additional 4% in 2001. County proposes increasing the 1999 wage scale by 3% per year in 2000, 2001 and 2002, and stating in the wage appendices that all step increases are annual adjustments. Guild does not oppose County's proposed provision regarding timing of step increases.
Longevity: **Article XX**	Guild proposes increasing longevity premiums and converting to percentage-based computation. County objects, seeks to retain status quo.
Specialty Pay: **Article XIII**	Guild proposes several modifications of the specialty pay provisions: (1) converting from flat dollar amounts to percentage-based computation; (2) adding new premiums for Crime Scene Investigator and Hostage Negotiator; and (3) deleting provision that requires Field Training Officers to work 40 hours in a month as FTO,

in order to be eligible for premium.
County seeks to retain status quo, except that County proposes adding provision granting 15 minutes of released time to dog handlers for dog care.

Shift Callback: Article 3.03(a) Guild proposes increasing minimum guaranteed callback pay between shifts from two to four hours. County seeks to retain status quo.

Vacation: Article 3.03(c) And Article 5.03 (1) Guild proposes adding provision requiring reimbursement of out-of-pocket losses when deputy is called back from vacation; (2) Guild proposes eliminating 5-day requirement of Article as threshhold for receiving penalty callback pay when vacation is cancelled; (3) Guild proposes increasing the number of patrol deputies that may be on vacation from one per shift to two per shift. County objects to all three proposals, seeks to retain status quo.

"Comp" Time: Article 3.07 Guild proposes new provision allowing deputies to accrue a "bank" of up to 80 hours of compensatory time off in lieu of overtime pay, to be cashed out in December at employee's option. County seeks to retain status quo.

Holiday Pay: Article 4.05 Guild seeks to holiday pay (time and one-half) for all holidays actually worked. County seeks to retain existing language.

Appendix A: County proposes deleting Civil Deputy position from Appendix A. Guild does not oppose this proposal. See Settlement Agreement, dated 10/29/98.

Letter of Understanding: County proposes deleting points 10, 11 and 13. Guild does not oppose.

A. Term of Contract (Article 27.01):

(1) The Guild: The Guild seeks a two-year renewal of the parties' 1997-99 collective bargaining agreement. The Guild offered no specific rationale, either in support of a two-year term or in opposition to a three-year term. The Guild argued in its brief that the bargaining unit should be allowed to catch up to the wage level of the comparable jurisdictions, in the event the arbitrator should award a three-year year.

(2) The County: The County seeks a three-year contract term, to run through December 31, 2002. The parties' predecessor contract was for a three-year period, argues the County, and in the past, the deputy sheriffs have always negotiated three-year contracts with the

County. Also, the County points out that, if a two-year contract were awarded, it would terminate December 31, 2001, just a few months from now. The parties would have to begin immediately to negotiate a successor contract and that would be very disruptive. The parties need a break from the intense negotiations of the past two years, to rebuild their relationship.

(3) Discussion and Findings of Fact: The parties have historically negotiated three-year contracts. They have just completed a lengthy negotiation period, two years in length, during which many conflicts arose, including adversarial proceedings before the Washington Public Employee Relations Commission and this interest arbitration. They need time to implement the terms of the contract and heal their bargaining relationship, before beginning negotiations for a successor agreement.

(4) Award: The arbitrator is persuaded that the appropriate term of the contract is three years. The contract shall be effective between January 1, 2000 and December 31, 2002.

B. <u>Wages (Article 22.01):</u>

(1) The Guild: The Guild seeks wage increases of 4% per year. The Guild asks the arbitrator to compare the wages of the comparable jurisdictions with Whatcom County's Deputy Sheriffs' wages at the level of ten years of experience and possession of an AA degree ("10/AA"), as support for its request. At the 10/AA level, the Guild asserts that its members' wages lag seven percent (7%) behind the average wage of the comparable jurisdictions and that the arbitrator should consider this a true wage inequity that needs to be eliminated.

The Guild cautions the arbitrator that Cowlitz County has not yet settled its collective bargaining agreement beyond 1999. As a consequence, its wage schedule is stale and constitutes

an invalid comparator with the other comparable jurisdictions. Therefore, the Guild asks the arbitrator to use a "projected" figure when comparing Cowlitz County's wage schedule, using recent settlement trends as the basis for the projection.

The Guild also asserts that Whatcom County, like Washington State and the nation as a whole, is enjoying a strong, healthy and moderately-growing economy. The Guild cites some newspaper articles from the Spring of 2001 showing that, prior to the hearing in this matter, unemployment was at a near-record low, local business was actively expanding, local capital projects were moving forward and future economic prospects were positive.[40] The Guild also presented in evidence a video-taped documentary showing recent construction of residential and commercial structures in Whatcom County as indicia of regional economic strength. The Guild pointed out that Washington State led the nation in wage gains from 1997 through 1999. The June 1999 Seattle CPI-W was at 3.2% and in 2000 it was at 3.9%. Among the comparable jurisdictions, wage settlements from 1999 onward have averaged 3.5% per year at the base wage level, before any contract enhancements were added, such as longevity or other premiums.

The Guild points out that the County's general fund revenues have been increasing, its debt status is excellent and it has no inability to pay the requested wage increases. The Guild also asserts that a special sales tax levy for criminal justice has generated substantial revenue and that all of that money should be used exclusively for the enhancement of public safety activities. The Guild recognizes that the County has allocated some of that revenue to adding eight new deputy sheriff positions. The Guild believes that all of those funds should all be used to correct

[40] See Guild Ex. 90-96.

the problems that have been growing in the department, which it says include understaffing, decreasing morale and high turnover.

The Guild objects to the County's reliance on internal wage comparability with its other bargaining units and unrepresented employees as justification for its offer of 3% wage increases in each of three years. The Guild points out that its members previously decertified the Teamsters as their bargaining representative. Therefore, it is inappropriate to compare the Guild's wage demand with settlements that the Teamsters have accepted on behalf of other bargaining units, including the corrections officers unit. Finally, the Guild asserts that many unrepresented County employees recently had their positions upgraded. Therefore, those employees actually received substantially greater wage increases than the 2% raises quoted by the County, in the Guild's view.

The Guild asserts that those facts and figures support its request for a 4% increase in each year of the new agreement. Such increases would provide a "catch-up" in the first year and maintenance of buying power in the second and third years, in the Guild's view.

(2) The County: The County contends that wage increases of 3% per year in each of the three contract years are fair and adequate. With such increases, the salaries of top-step deputies would remain in middle position among the comparable jurisdictions (exclusive of Cowlitz, whose contract has not been settled beyond 1999) and slightly above the average of the comparables, in keeping with the County's traditional objectives of bargaining. Also, the County asserts that its offer will maintain internal equity with its bargaining unit of corrections officers, who have accepted 3% increases, and will increase by one percent the 2% raises that were

granted to other County bargaining units and unrepresented employees. Internal equity has always been a priority of bargaining, says the County, and should be maintained.

The County contends that any upgrades in the positions of unrepresented employees have been the result of adding new duties and responsibilities to their positions. Such upgrades have not simply been a means of boosting their pay, as alleged by the Guild.

The County asks the arbitrator to compare deputies' wages in the comparable jurisdictions at the level of the top step, rather than at the 10-year/AA level that the Guild relies upon. The various jurisdictions have different education requirements at initial hire and their compensation schemes treat education and longevity in different ways. Also, the Guild is seeking increases in longevity and other premiums in this arbitration. Therefore, it would not be an "apples-to-apples" comparison to attempt to use the 10-year/AA level for comparability purposes on the wage issue, as recommended by the Guild.

Finally, the County asserts there is no turnover problem among deputies. To the contrary, in recent job recruitments for new deputy positions, large numbers of qualified applicants have responded, seeking employment with the County.

(3) Discussion and Findings of Fact:

First of all, it is clear that the County has not alleged any inability to pay whatever wage increases the arbitrator awards in this proceeding. The County Budget is healthy.[41] The Deputy Administrator acknowledged, in a letter dated September 22, 2000, that $906,000 was expected in revenues from criminal justice sales tax funds in 2000 and another $1,200,000 in 2001.[42] At

[41] County Ex. 33.
[42] Guild Ex. 130.

least some of that grant money has been used to hire eight additional deputies. The new deputies have been gradually hired in 2000 and 2001 and are in various stages of training.

In order to decide the wage issue, the arbitrator has considered the following issues: **(a)** the wage increases that deputy sheriffs in the comparable jurisdictions have negotiated for 2000, 2001 and 2002; **(b)** the County's goal of maintaining internal equity among its various bargaining units and unrepresented employees; **(c)** recruitment and retention concerns; **(d)** maintaining comparability with the external comparables; **(e)** keeping up with the cost-of-living; and **(f)** addressing recent changes in the economy.[43]

(a) Settlements among the comparables: The evidence shows that all of the comparable jurisdictions except Cowlitz County have reached wage settlements for their deputy sheriffs' units for 2000 and 2001. The *average* wage increase in 2000 was 3.45%, and in 2001 it was 3.6% (3.8% for sergeants). With the exception of Benton and Kitsap Counties, none of the comparables have reached settlements for 2002. This chart explains the overall picture:

JURISDICTION	2000	2001	2002
Benton	3.25%	1/1 – 3.5%, 7/1 – 0.5%	3.75%
Cowlitz	Not Settled	Not Settled	Not Settled
Kitsap	1/1 – 3.0%, 7/1 – 1.0%	1/1 – 3.0%, 7/1 – 1.0%	100% of Seattle CPI-U
Skagit	4.0%	3.5%	Not Settled
Thurston	3.0%	3%	Not Settled
Yakima	3.0%	3.5%, plus 1% for sergeants	Not Settled
Average	3.45%	3.6% (deps) 3.8% (sgts)	N/A

The settlements for Bellingham police, which is the County's "secondary" comparable, have been as follows: 3.25% in 2000, 4.0% in 2001 and 3.75% in 2002.

[43] As a consequence of the terrorist attacks in New York and Washington, D.C. on September 11, 2001, adverse economic effects have begun to occur throughout the United States, especially in the transportation industry. As a result, there are likely to be adverse effects on the Whatcom County economy in 2002. The arbitrator is required to consider such likely changes. See RCW 51.46.465(e)(f).

*(b) **Internal equity:*** The County relies heavily on its past history of maintaining internal equity between its wage settlements with the deputy sheriffs bargaining unit and with other County bargaining units and unrepresented employees. The County has settled its wage increases with several represented units and its unrepresented employees for 2% per year in 2000 and 2001. It settled its contract with the corrections employees, who are represented by the Teamsters, at 3% per year in 2000, 2001 and 2002.[44]

Maintaining internal equity is a strong goal of the County. In many situations, internal consistency among a public employer's bargaining units makes sense, particularly where the outcome happens to be consistent with external comparability figures as well. But the arbitrator finds that in this case, internal consistency must give way to external comparability. Deputies' wages must keep pace with the increases that *other similar providers of law enforcement services* have gained, rather than with the gains won by other units of employees within Whatcom County government, most of whom perform *different kinds* of services, ranging from nursing to cooking to supervising jail inmates and even piloting of boats. RCW 41.56.465(1)(f) authorizes the arbitrator to consider *"other factors"*, when reaching her conclusions and such factors would include internal equity. However, the initial statutory factor that the arbitrator is required to compare is "wages, hours and conditions of employment of *like personnel of like employers."* RCW 41.56.465(1)(c)(i). The arbitrator reads this provision, as well as the parties' own stated goal of comparing "apples-to-apples", as requiring that she give primary consideration to maintaining equity between the County's deputy sheriffs and the *external comparable units of law enforcement personnel.* Internal equity is reasonable as a secondary goal, but that goal must

give way to external comparability, when the evidence shows that deputy sheriffs' wages would lose pace with the wages of external comparators, if internal equity were considered primarily.

(c) Recruitment and retention: The Guild argues that there has been a turnover problem among the sheriffs' deputies as a result of falling wage levels. The evidence shows, however, that during a recruitment of new deputies by the County in 1999, there were 224 applicants. Also, only five of the deputies who have left the Sheriff's Office over the past three years did so to seek a "better job" elsewhere. Therefore, neither recruitment of new deputies nor retention of qualified senior deputies appears to be a problem at the present time. Nevertheless, the arbitrator agrees that there is a serious risk that recruitment and retention would *become* a problem if County deputies' salaries were allowed to drop back from their historic placement among the wage levels of deputy sheriffs in the comparable jurisdictions.

The critical questions that must be answered, then, are: *What wage level should be used for comparability purposes?* and *Have Whatcom County wages been keeping up with the wages of the external comparables at the target level?* The Guild says the 10year/AA wage should be used. Using that wage, the Guild contends that Whatcom County's wages have been above the average of the external comparables. The County says the top-step deputy wage should be used, without consideration of education or longevity factors. The County agrees with the Guild, however, that, historically, the County deputies' wages have been *just above the average* wage level of the comparables.

The arbitrator finds that the County's proposed standard is more reasonable. First, the various comparable jurisdictions handle education and longevity in different ways, so there does

---

[44] County Ex. 3-8.

not seem to be any realistic way of determining the average wage of a 10-year deputy with an AA degree. Also, there are separate proposals before the arbitrator in this proceeding, where comparability of longevity and specialty premiums will be considered. Therefore, education and longevity could end up being considered twice, and the more experienced deputies could end up being awarded excessive overall wage increases, if a 10 year/AA standard were used.

The arbitrator finds that recruitment and retention of sheriffs' deputies in Whatcom County are unlikely to become a problem as long as wage increases of top-step deputies remain just above the average of the top-step wage levels of deputies in the comparable jurisdictions.

(d) Maintaining comparability with the comparables: The County demonstrated, through the following grid, the actual top-step wages of deputies in the comparable jurisdictions in 1999-2002, the averages of those wages (insofar as averages can be determined), and what the placement of Whatcom County deputies' wages would be among the comparables, by first applying the County's proposed 3% wage increases to the 1999 top-step wages for Whatcom County in 2000-2002, then by applying the Guild's proposed 4% increases each year:

JURISDICTION	**1999 hourly(monthly)**	**2000 hourly(monthly)**	**2001 hourly(monthly)**	**2002 hourly(monthly)**
Benton	21.83 (3783)	22.59 (3915)	23.38 (4052)	CPI
Cowlitz	23.39 (4053)	Not settled	Not settled	Not settled
Kitsap	22.77 (3947)	23.68 (4104)	24.64 (4270)	CPI
Skagit	22.94 (3977)	23.96 (4152)	24.69 (4279)	
Thurston	22.20 (3848)	22.86(3963)	23.55 (4082)	
Yakima	21.75 (3770)	22.40 (3883)	23.19 (4019)	
Average of Comparables	**22.48 (3896)**	**23.10 (4003) (excl. Cowlitz)**	**23.89 (4140) (excl. Cowlitz)**	**Unknown**
Whatcom	22.51 (3902)			
Whatcom's Rank	**4/7**			
Whatcom w/3% increase	-	23.19 (4019)	23.88 (4138)	24.60(4263)
Whatcom's Rank w/3% increase		**3/6**	**3/6**	
Whatcom w/4% increase	-	23.41 (4057)	24.35 (4220)	25.32 (4388)
Whatcom's Rank w/4% increase		**3/6**	**3/6**	

The grid, which is based on evidence in the record, shows that Whatcom County's top-step deputy wage placed fourth out of the *seven* comparable jurisdictions in 1999 and, at $3902/month, was *$6/month above the average* of the six comparables. It then shows that County deputies would move to third place out of *six* of the comparables in 2000 and in 2001 (excluding Cowlitz County, which has not settled its contract beyond 1999), and would remain above the average of the *five* comparables (again, excluding Cowlitz), regardless of whether a 3% or a 4% wage increase were awarded in 2000. The wage level would *drop slightly below the average* of the *five* (excluding Cowlitz), however, if a 3% wage increase were granted in 2001. This tends to show that the County's wages will begin to drop behind the average of the comparables with a 3% increase in each year, as proposed by the County, even if Cowlitz County is ignored in the computation.

Cowlitz County should not be ignored, however, simply because it has not settled its contract beyond 1999. Exclusion of one out of six comparables may skew the grid's overall computations toward an unfair result. The effect of such skewing may be particularly significant here, because Cowlitz County had been the *highest*-paying comparable in 1999.

There is a reasonable way of avoiding the adverse effect of leaving Cowlitz County out of the computation. "Projected" figures can be used for 2000 and 2001 wages in Cowlitz County, by applying the average wage increases among the other five comparable jurisdictions to Cowlitz's 1999 wage. As shown herein, those increases were 3.45% in 2000 and 3.6% in 2001.

The following grid shows what Cowlitz County's wages *would be* in 2000 and 2001, with the *average* wage increases applied to its 1999 wages. The arbitrator has also computed what the

average wages would be among the *six* comparables, including Cowlitz, and has then compared that average with Whatcom's wages, assuming increases of 3% and 4% respectively.

JURISDICTION	1999 hourly(monthly)	2000 hourly(monthly)	2001 hourly(monthly)	2002 hourly(monthly)
Benton	21.83 (3783)	22.59 (3915)	23.38 (4052)	CPI
witz (assuming 3.45% increase in 2000, and a 3.6% increase in 2001)	23.39 (4053)	**24.19 (4193) projected**	**25.06 (4344) projected**	Unknown
Kitsap	22.77 (3947)	23.68 (4104)	24.64 (4270)	CPI
Skagit	22.94 (3977)	23.96 (4152)	24.69 (4279)	
Thurston	22.20 (3848)	22.86(3963)	23.55 (4082)	
Yakima	21.75 (3770)	22.40 (3883)	23.19 (4019)	
Average of Comparables (including Cowlitz,as projected)	**22.48 (3896)**	**23.28 (4035)**	**24.08 (4174)**	**Unknown**
Whatcom	22.51 (3902)			
Rank	**4/7**	-		
Whatcom w/3%	-	23.19 (4019)	23.88 (4138)	24.60(4263)
Rank w/3%		**4/7**	**4/7**	
Whatcom w/4%	-	23.41 (4057)	24.35 (4220)	25.32 (4388)
Rank w/4%		**4/7**	**4/7**	

The resulting figures show that Whatcom County would remain in the middle position among the seven jurisdictions, with either a 3% or 4% increase each year. However, the County deputies' wage level would gradually *drop behind the average* of its *six* comparables if a 3% increase were granted in 2000 and in 2001. Its wage level would keep its place *just above the average,* however, if a 4% increase were awarded.

Based on this grid computation, the arbitrator has determined that a 4% wage increase in 2000 and 2001 is appropriate, in order to maintain Whatcom County's consistent position among the comparables, which is *just above the average* and in fourth place out of the seven counties.

The arbitrator also notes, for what it is worth, that Whatcom County deputies, with a 3% increase, would be 8.1% behind Bellingham police in 2000 (Bellingham's top-step police officer salary was $4345 in that year) and 9.1% behind Bellingham in 2001 (the City's top-step 2001

wage was $4519).[45] With 4% increases in 2000 and 2001, however, Whatcom County deputies would be only 7.1% behind Bellingham police in both years. That differential would be closer to the wage comparability that the two law enforcement agencies had in 1999, when Whatcom County was 7.8% behind Bellingham police.

(e) Cost-of-living issues: RCW 41.56.465(1)(d) requires that the interest arbitrator consider the average cost of consumer goods and services, known as the cost of living. The County proposes that the arbitrator rely on the *CPI-W All Cities* schedule, while the Guild suggests that the *CPI-W Seattle* is the appropriate standard. The arbitrator is persuaded that the *CPI-W Seattle* data are the most relevant here, since Whatcom County is located about 80 miles north of Seattle and is in the same general economic region. The CPI-W Seattle increase in 2000 was 3.7% and in 2001 it was 3.9%. Both of those figures are closer to 4% than to 3%.

(f) Recent changes in the economy: The Guild argued that the local and regional economy in Whatcom County was strong and that continued growth was expected in 2002. Recent events show, however, that the economic trends throughout the country as a whole are going in a reverse direction. The arbitrator takes official notice that the tragic events in New York City, Washington, D.C. and Pennsylvania on September 11, 2001 have dramatically aggravated a downturn in economic indicators that was already beginning to be felt during August, 2001, after the arbitration hearings ended. There have been announcements of significant cutbacks in the aircraft, airline and tourist industries, for example, that are likely to cause serious ripple effects throughout the nation, including the state of Washington. As a result,

[45] See Guild Ex. 10 and 11.

the arbitrator finds it is likely that the CPI-W Seattle will drop over the next few months and that the economy of the region will slow down significantly in 2002. See RCW 41.56.465(1)(e)(f).

(4) Award: The arbitrator is persuaded that Whatcom County deputies should receive 4% per year wage increases in 2000 and 2001, respectively, in order to preserve their current placement just above the average wage level of their external comparable jurisdictions. Regarding 2002, however, the average wage level of the comparables is unknown at this time and overall economic indicators do not look favorable. Benton and Kitsap Counties each have agreed upon wage increases based on CPI figures. The other comparable jurisdictions have not yet settled their contracts for 2002 and their settlements are likely to be affected by the declining economic conditions. Therefore, the arbitrator awards the County's proposed wage increase of 3% for the third year of the contract, 2002. Also, all step increases shall be annual adjustments.

C. Longevity Premium (Article XX):

(1) The Guild: The Guild proposes converting to a percentage system the parties' long-time practice of paying longevity premiums by adding a flat monthly dollar amount to the deputies' pay for every year beyond step six, computed at $5 per year. Also, the Guild seeks to increase the longevity benefit, while the conversion to a percentage system occurs. The Guild cites three reasons supporting the proposal: (1) the comparability data supports it; (2) the department is experiencing problems retaining its experienced officers; and (3) senior officers provide a demonstrated value to the County, through (a) leadership, supervision and training of

new recruits; (b) enhanced knowledge in preserving crime scenes; and (c) careful driving, thereby reducing tort liability from motor vehicle accidents.

The Guild's proposal, as compared to the current system of longevity, is as follows:

Years of Service	Current Premium	Proposal (% of Base Wage)
6	$35	1%
9	50	2%
12	65	3%
15	80	4%
18	95	5%
21	110	6%
24	125	7%

(2) The County: The County seeks to maintain the status quo. The County asserts that the current pattern in the Guild's contract is consistent with the practice among the comparable jurisdictions and in the County's other bargaining units. The County also contends that the current schedule of longevity premiums amount to more dollars for the deputies than the longevity premiums that are paid by the comparable jurisdictions. The Guild's proposal would be a windfall to the deputies and would be costly to the County. Finally, the County believes that premium pay should be based on performance, rather than being earned automatically.

(3) Discussion and Findings of Fact: The evidence shows that the deputies' current longevity premiums have not changed since 1991. They amounted to between 0.9% and 3.2% of the County's top-step wage in 1999. For example, at year seven, the $35/month longevity premium was the equivalent of 0.9% of the wage figure; at year ten, the $50/month premium was 1.3%; at year 18, the $90/month premium was 2.4%, at year 22, the $110/month premium was 2.8 % and at year 25, the $125/month premium was 3.2% of the wage.

If the same longevity premium schedule is retained, those percentage values will diminish in 2000, and will be worth still less in 2001 and in 2002, because the dollar amounts

will not keep pace with the wage increases. Clearly, a premium that is established as a flat dollar amount, when not increased from one labor contract to the next, loses some of its purchasing power to the recipient because of such diminution in value. A percentage-based system retains its relative value over time, however. Since deputies' longevity premiums have not changed at all since 1991, it is clear that their value to the deputies has diminished considerably over time. According to witness testimony, the premiums are worth about one-half of their 1991 value.

The County asserts that the percentage system is not consistent with the practice among the comparables, or within the context of other County bargaining units. There is some merit to the County's argument. Benton County, like Whatcom County, pays a flat dollar amount, with a maximum longevity payment of $100/ month after ten years. Kitsap and Yakima Counties are, however, using percentage-based systems. Cowlitz and Skagit Counties do not reward longevity through a premium, but Skagit County has implemented an educational incentive that appears to be a substitute for a longevity premium that has been phased out. Thurston County has a "Performance" premium, payable after eight years of service, that is contingent upon the receipt of a satisfactory performance appraisal. Bellingham, which is the County's "secondary" comparable, rewards longevity through flat-dollar premiums that are significantly higher than the Guild's premiums -- $225/month after 20 years and $250/month after 25 years, for example.

Guild witnesses testified persuasively that senior deputies provide valuable service as skilled mentors to junior deputies. Their experience and safe habits may actually reduce the County's liability costs. Through their years of training and experience, they have acquired

enhanced abilities to gather and preserve evidence at crime scenes and deal with delicate emergency situations, such as domestic violence.

Although the evidence does not show that there is a problem retaining experienced deputies in the County at the present time, the arbitrator has noted earlier in this report that such a problem could arise, if the compensation scheme failed to keep pace with comparable pay in the law enforcement business. Since it is clear that the County's flat dollar longevity premiums have already lost much of their original value, and will lose more of their value during the new contract's term unless some change is made, the arbitrator finds that it is time to make a reasonable change in the premium. However, the Guild's proposal is excessive and should be modified to be more like the benefits available in Kitsap, Yakima and Thurston Counties.

The Guild's proposal does more than change a flat-dollar system to a percentage-based system. It also increases the current premium by more than 100% for some deputies. At year 25, for instance, the requested 7% premium amounts to $284/month in 2000, an increase of 127% over the current premium of $125/month. Such an increase is not in keeping with the comparables. While Kitsap and Yakima Counties use percentage-based systems, both of those are more in line with the Guild's current premiums than with the Guild's proposed changes. For instance, Kitsap deputies receive 2%, 2.5% and 3% of wage scale after 15, 20 and 25 years respectively. Effective January 1, 2002, those premiums will increase to 3%, 4% and 5%. Meanwhile, Yakima deputies, at years 15, 20 and 25, already receive 3%, 4% and 5% of wage base as their longevity premiums. Thurston deputies receive from 1% to 4%, but their premium is suspended for one year but if they fail to receive a "satisfactory" performance appraisal.

The appropriate solution is to award a percentage-based longevity premium schedule that allows a modest increase over the 1997-99 flat-dollar amounts and is in keeping with the recent schedules in the Yakima, Kitsap and Thurston County contracts. The arbitrator also agrees that a satisfactory annual performance appraisal should be required for full payment.

(4) **Award:** The Guild's proposal for increasing longevity premiums and computing them on a percentage basis is awarded in part and denied in part. The new longevity premium schedule, to be effective January 1, 2002, shall be called a ***Longevity/Performance Premium*** and shall provide as follows:

Years of Service	Premium (% of Top-Step Wage)
6	1%
9	2%
12	2.5%
15	3%
18	3.5%
21	4%
24	5%

If a deputy fails to achieve a rating of "satisfactory" on his/her annual performance appraisal, the applicable Longevity/Performance Premium shall be reduced by one percent (1%) for the year following the rating.

D. Specialty Premiums (Article XIII):

(1) **The Guild:** **(a)** The Guild has proposed changing the manner of computing all specialty premiums, from a flat dollar amount per month ($110-135) to a percentage-based system, which would increase the value as well. Most proposed changes are to 4% of base wage, but FTO's and K-9 officers are proposed at 5% of wage base. **(b)** The Guild also proposes adding new specialty premiums for deputies who provide service in investigating crime scenes (**Crime Scene Investigator Premium**) and those who negotiate with perpetrators of serious crises, especially when hostages have been taken (**Hostage Negotiator Premium**). **(c)** Finally,

the Guild proposes changing the requirement that a **Field Training Officer (FTO)** serve at least 40 hours in a particular month in order to earn the **FTO** premium. The Guild wants the premium paid instead for every hour of FTO service.

(2) **The County: (a)** The County proposes that the status quo be maintained on the manner and amount of paying specialty premiums, with one exception. The County has offered to modify Article 13.02, to permit K-9 officers to be released fifteen minutes prior to the end of each scheduled shift without loss of pay, in order to care for their dogs. The County argues that the Guild's proposals are not supported by the practice in comparable jurisdictions.

(b) There is no basis for granting a **Crime Scene Investigator** premium, argues the County, as the administrative goal is to train all deputies in the skills of gathering and preserving evidence, as part of their regular duties. Regarding the **Hostage Negotiator** role, the County points out that the deputy who currently provides that service is a sergeant who is highly compensated. He volunteered to take on the responsibility of Hostage Negotiator because of his particular personal skill in that area. He was trained at County expense on the belief that he would voluntarily provide the service when it was needed. There is no need for a premium.

(c) Regarding the **FTO** premium, the County asserts that the current contract provision, requiring at least 40 hours of FTO service in a month before the premium is paid, is consistent with the practice among the comparables. The County intends to train many deputies as FTO's, so that they can each train new recruits for short periods of time. Such limited, less intense, use of FTO's is reasonable and does not justify premium pay, as the deputies will suffer no burn-out.

(3) Discussion and Findings of Fact:

(a) ***Change to percentage-based system and increase in premiums:*** Premiums of $110 per month are currently paid when deputies provide service in one or more specialty roles, such as Search and Rescue, Motorcycle Operator, Detective and FTO officer. That dollar amount equalled 2.8% of the 1999 top-step monthly deputy wage. The Guild's proposal to change such premiums to 4% of deputy wage translates to an increase of about 40 percent in the current monthly premium. The proposed change in FTO premium to 5% would be a 78% increase. Similarly, the Guild's proposal to change the current $135 premium for K-9 Officer, which equals 3.5% of the 1999 top-step wage, to 5% of the monthly wage, translates into an increase of about 30 percent in that premium.

The evidence shows that Whatcom County's premiums are already more generous than similar premiums in most comparable jurisdictions. However, the trend among the comparables seems to be to use percentage-based systems. Three of the comparable jurisdictions, Kitsap, Skagit and Thurston Counties, all have percentage-based systems.

It is true that flat dollar premiums gradually lose their purchasing power over time, while percentage-based premiums maintain their value. Therefore, conversion to a percentage-based system makes sense. However, the arbitrator is not persuaded that the increases sought by the Guild in this proceeding are justified. With the exception of Benton County, whose premiums are dollar-based, the premiums in the comparable jurisdictions range from 2.75% to 3.5% of base pay, which is very close to the range that existed in 1999 in the County, from 2.8% to 3.5% of base pay. The arbitrator finds, therefore, that increases in all specialty premiums to 3%, with the exception of the K-9 officer premium, which shall be 3.5%, are supported by the evidence.

The County has offered to grant dog handlers, also known as K-9 officers, fifteen minutes of time at the end of each shift to care for their dogs. This offer was not opposed by the Guild. It is unclear why the County made the offer, as no evidence and no rationale was offered. It is likely that Management could adjust the K-9 officer's duty assignment without the provision being put in the contract, as it appears to relate to assignment of duties. Therefore, it is unclear why it needs to be added to the contract. The arbitrator does not award that proposal.

(b) ***Crime Scene Investigator premium***: The Guild seeks to compensate the skills and techniques of gathering, documenting and preserving evidence at major crime scenes, such as homicides and rapes, by adding this premium. County witnesses testified that they intend to train all deputies in those skills as part of their regular duties, however. The arbitrator understands that the training may be an expansion of the work currently expected of deputies. However, it is reasonable to expect that deputies will learn to gather, document and preserve evidence as part of their on-going duties. Also, the Guild relied in part on evidence that senior deputies already possess such skills, as justification for increases in the longevity premium.

The evidence also shows that when such investigation services reach the level of detective work, a Detective premium is provided in the parties' contract to compensate the deputy who provides that service. The County has not sought to eliminate that premium. Therefore, there is no basis for adding a new premium pay for Crime Scene Investigator service.

(c) ***Hostage Negotiator:*** The arbitrator is not persuaded that a Hostage Negotiator premium is required at this time. The evidence shows that hostage situations rarely occur in the County and, if they do occur when the current negotiator, Sergeant Scott Rossmiller is unavailable, a SWAT team can be called in from the Bellingham Police Department. Sgt.

Rossmiller volunteered to be trained in hostage negotiation skills at a training program conducted by the FBI and he goes to annual refreshers for updating those skills. He has served in four or five crisis episodes over the past three years, where he used the skills. Clearly, his talents and skills are valuable, but the arbitrator is not persuaded that a specific premium is needed at this time to compensate him, over and above his sergeant's pay and any longevity premium he may earn, for the occasional exercise of those skills.

(d) ***Field Training Officer (FTO) Premium:*** The evidence from the comparable jurisdictions is somewhat unclear, as to how much FTO service a deputy must provide in a week or a month, in order to be eligible to receive the FTO premium. First of all, neither Benton nor Cowlitz Counties offer any FTO premium at all. Thurston County pays a 3% premium, with no express minimum time requirement. Kitsap and Skagit Counties pay 3.5% and 2.75%, respectively, and Yakima pays $50/month, and none of those stipulate a minimum service requirement.

The evidence shows that eight new deputies are being hired by Whatcom County and they will need gradual on-the-job training from their experienced colleagues. The County's plan is to spread the role of short-term FTO service (less than 40 hours per month) among the experienced deputies. The County's plan makes sense, as it will develop camaraderie among the deputies while building a well-trained, well-integrated force of new recruits, who should become competent to work effectively with their more-experienced colleagues. Where, however, FTO service is provided at least 40 hours in a particular month, the 3% premium will be paid. That is reasonable compensation under the circumstances, and is consistent with the premium that is paid in Thurston, Kitsap and Skagit Counties.

(4) **Award:** The arbitrator grants in part the Guild's proposals for changes in Article XIII of the collective bargaining agreement, regarding premiums for specialty assignments. Compensation for all specialties which currently are paid at $110 per month shall be converted to 3% of top-step deputy wage, effective January 1, 2000. Compensation for the K-9 officer specialty shall be 3.5% of top-step deputy wage. The County's proposal to grant 15 minutes at the end of the K-9 officer's shift, to care for the dog, is denied. No new specialities for Crime Scene Investigator or Hostage Negotiator shall be added. Finally, the 40-hour-per-month requirement for eligibility for the FTO premium shall be retained.

E. <u>Call-Back Pay (Article 3.03(a)):</u>

(1) **The Guild:** The Guild proposes changing Article 3.03(a) by doubling the minimum guaranteed compensation for a deputy who is called back to service between shifts. The current guaranteed call-back pay between shifts is *two* hours at overtime rate (time and one-half). The Guild argues that there is no principled reason for such a short guarantee, in view of the fact that a deputy is guaranteed a minimum of *four* hours pay at time and one-half, when he or she is called back on a scheduled day off. The Guild contends that the inconvenience of preparing to return to work and traveling to and from the office is equally disruptive to the deputy, whether the call-back occurs on a day off or in between shifts on a regular work day.

(2) **The County:** The County seeks to retain the status quo. The County contends that, since the majority of the comparable jurisdictions guarantee *three* hours pay at time and one-half for call-backs between shifts, the Guild's proposal for four hours is excessive and should be denied. The County asserts that the main reason deputies are called in to work

between shifts is that they are subpoenaed to appear at court for criminal trials. It often happens, however, that the trial is cancelled once the deputy appears. Therefore, many of the call-backs do not result in actual work assignments. The deputy gets the two hours overtime pay just for showing up. The County contends it would be unduly expensive to grant the Guild's proposal, in view of that fact. The County stated in its brief, however, that it would not be opposed to increasing the minimum call-back between shifts to *three* hours at time and one-half, which is consistent with the practice among the comparable jurisdictions.

(3) Discussion and Findings of Fact: The Guild states that there does not seem to be any principled reason for having inconsistent minimum call-back payments between call-backs that occur on a scheduled day off and those that occur between shifts on a regular workday. The arbitrator does not agree, however. The witness testimony showed that the interference with a deputy's personal life and the stress of preparing for performance of official duties are more disruptive when they occur on a scheduled day off. Several deputies testified that they needed "mental health" time to relax from the stress of their jobs and they also treasured having whole days off to spend with their families. It could well be that the County agreed in the past to pay for a minimum of four hours at time-and-one-half for call-backs from regular days off, as a way of compensating the deputies for such major personal disruptions.

Nevertheless, the evidence is quite consistent among the comparable jurisdictions that call-backs between shifts are compensated at three hours of overtime pay. Cowlitz, Kitsap. Skagit and Thurston Counties all pay a minimum of three hours at time and one-half. Yakima and Benton Counties pay for four hours at the straight-time rate, which is only 30 minutes less.

(4) **Award:** Article 3.03(a) shall be changed to allow minimum guaranteed pay for call-backs between shifts at three hours, computed at the deputy's overtime rate, time and one-half.

F. <u>Vacation Benefits (Articles 3.03(c) and 5.03):</u>

(1) **The Guild:** The Guild has made three separate proposals regarding vacations. Those are summarized as follows:

(a) Reimbursement of out-of-pocket costs incurred when vacation is cancelled: The Guild seeks a new provision whereby the County would be required to reimburse deputies for any out-of-pocket losses incurred when their vacation is cancelled or modified, and they are required to return to work. The Guild contends it sometimes happens that a deputy is required to appear in court on a subpoena during a scheduled vacation. If the deputy incurs travel costs or extra fees, such as for cancelling or postponing a plane or hotel reservation, the deputy is left on his or her own to negotiate with the County prosecutor for reimbursement. There is no guarantee of payment. The Guild seeks contractual protection against such incidents.

(b) Elimination of five-day requirement in Article 3.03(c) for eligibility for "penalty pay": The Guild proposes eliminating from Article 3.03(c) the requirement that a vacation be at least five days in length before the "penalty pay" provision is triggered for a call-back from the vacation. The Guild contends there is no logical reason for the five-day requirement. All vacation call-backs are equally intrusive. The compensation should be equal, whether the vacation from which the deputy is called back is five days long or less, argues the Guild.

(c) Elimination of the provision in Article 5.03 allowing only one deputy per shift to be scheduled off on vacation: The Guild contends that this provision is an anachronism. Assuming there was a need for it in the past, to ensure that minimum staffing requirements were met on every shift, that need no longer exists. Because the County is in the process of hiring eight new deputies, there are now more deputies available for scheduling purposes than there were in the past. Therefore, the County can easily allow more vacation slots than one on each shift and still meet minimum staffing.

Unless a change is made in the provision, and additional vacation slots are opened up for vacation bidding, deputies will be partially deprived of their contractual vacation and holiday benefits, argues the Guild. A conflict is likely to arise with deputies' contractual seniority rights, as new recruits are likely to choose some vacation slots ahead of senior deputies.

(2) The County:

(a) Reimbursement of out-of-pocket costs incurred when vacation is cancelled: The County opposes the Guild's request for reimbursement of out-of-pocket losses due to a call-back from vacation. The County asserts that there is no compelling evidence that a problem exists which needs to be corrected. Also, the County contends that such a provision is "novel" and is not typically included in collective bargaining agreements. Only one of the comparable jurisdictions, Skagit County, is required by its contract to reimburse non-refundable expenses and transportation costs incurred by a deputy in returning to duty.

(b) Elimination of five-day requirement in Article 3.03(c) for eligibility for "penalty pay": The County opposes the Guild's request for eliminating the five-day-minimum requirement for "penalty pay", due to a call-back from vacation. The County contends the

penalty provision is extraordinary in its current form, in that it is more severe than any similar penalty in any of the comparable jurisdictions. It amounts to twenty hours pay (eight hours at overtime rate plus eight hours at straight hourly rate) for each day that the vacation is cancelled, and, in addition, the deputy gets back the vacation day that has been cancelled. Such a penalty should only be required only when the deputy is called back from a week-long vacation, in the County's view. The restriction is reasonable, says the County, and should not be eliminated.

When a deputy is called back from a vacation of less than five days, the deputy is guaranteed a minimum of four hours pay at overtime rate (time and one-half), or six hours pay. That is consistent with the current practice in most of the comparable jurisdictions. The County points out that the average guarantee among the comparables is 6.5 hours of regular pay, regardless of the length of the vacation that is cancelled when a deputy is called back to work.

(c) Elimination of the provision allowing only one deputy per shift to be scheduled off on vacation: The County opposes the Guild's proposal for changing the current vacation scheduling process, on the basis that the proposed change would cause a significant detrimental impact on minimum shift staffing in the Department. The County seeks to retain the status quo. The County contends that the current system of allowing only one deputy to be off on vacation per shift was adopted out of necessity, due to short staffing in the Sheriff's Department, and the need to protect officer and public safety. The system has worked well. Not only does it permit Management to meet minimum staffing requirements on all shifts, but it permits deputies to schedule their vacation time in conjunction with their time off for eleven contractual holidays. Finally, the contract provides that Management will review the vacation schedule on an annual

basis, and that provision serves as a protection for the deputies' concerns about ensuring that vacations are bid according to seniority. There is no need for a change.

(3) Discussion and Findings of Fact:

(a) Reimbursement of out-of-pocket costs incurred when vacation is cancelled: Deputy Smith testified at the hearing that he had once been subpoenaed to appear in court as a witness on behalf of the County prosecutor, on the very day that he was scheduled to depart with his family for a vacation in California. As a result of the last-minute change in his plane reservation, he had to pay a penalty fee. Then, because there was no express provision in the collective bargaining agreement requiring the County to reimburse him for the postponement penalty, even though the fee was directly related to his duties, he had to seek reimbursement through the prosecutor's office on his own. The County did eventually accept responsibility for the reimbursement, but it was not contractually required to do so. The Guild's proposal will correct this deficiency, as it will require the County to reimburse deputies for employment-related expenses and then figure out which departmental budget the expense should come from. The deputies should not be left to fend for themselves in negotiating with the County over such reimbursements. The proposal is reasonable and should be allowed.

(b) Elimination of five-day requirement in Article 3.03(c) for eligibility for "penalty pay": The evidence shows that none of the collective bargaining agreements in the comparable jurisdictions require the extreme financial penalty that the current Guild contract requires, when a deputy is called back from a vacation of five days or more. Every other jurisdiction pays the same penalty, regardless of whether the call-back is from a short vacation (i.e., less than five days) or a long one. Cowlitz and Kitsap Counties both guarantee minimum payment of three

hours at time and one-half. Benton and Yakima Counties pay four hours at the straight time rate. Thurston County pays four hours at time and one-half and Skagit County pays eight hours at double time.[46] The average is 6.5 hours.

In Whatcom County, a deputy receives four hours pay at time and one-half (6 hours pay), plus return of the vacation day, when the call-back occurs from a vacation of less than five days. That is a more generous penalty than is paid by most of the comparable jurisdictions. There is no justification for increasing that to the extraordinary penalty that is available in Whatcom County and nowhere else, of 20 hours pay plus return of the vacation day, when a deputy is called back from a vacation of five days or more.

Since there is no justification for the Guild proposal, the arbitrator denies it.

(c) Elimination of the provision in Art. 5.03 allowing only one deputy per shift to be scheduled off on vacation: Undersheriff Deane Sandell testified that the County needs to retain the restriction against scheduling more than one deputy per shift on vacation in order to ensure than minimum staffing requirements are met on all shifts. He said that, in his experience, the Sheriff has reviewed the number of available vacation weeks every September, as provided in the contract, in order to determine how many slots can be made available for vacation bidding by deputies each week during the following year, while ensuring that there will always be enough deputies on the job to meet minimum staffing requirements. Those requirements, which are set forth in the Sheriff's Operational Procedure Manual,[47] are that one sergeant and three deputies must be on duty every day during day shift and graveyard shift, and one sergeant and four deputies every day during swing shift.

The parties agree that, prior to the hiring of eight new deputies in 2000 and 2001, there was rarely any opportunity for scheduling a second vacation slot in any shift week during the year. In other words, given the number of deputies that were available on staff, only one vacation slot *could* be allowed per shift and still guarantee that minimum staffing would be met. Witnesses for both the Guild and the County concurred, however, that the addition of the eight new deputies will gradually allow for greater flexibility in the scheduling of deputies' vacations and may even allow a second vacation slot on every shift. They did not agree, however, as to whether such flexibility would occur immediately, so that a second vacation slot could be added per shift as early as January of 2002.

The evidence showed, for example, that while a new deputy completes his or her training and probationary period, the deputy does not "count" among the number of deputies on a particular shift, for the purpose of meeting minimum staffing requirements. An FTO and a trainee deputy, working together, constitute "one deputy", for minimum staffing purposes.

It appears that each trainee will be in training and on probation for approximately one year. Therefore, it may be some time in 2002 before all the new deputies will "count" among the minimum staffing numbers on each shift. For this reason, the arbitrator finds that the deputies' proposal to *require* the addition of an extra vacation slot per shift is premature and should not be awarded under this contract.

The parties concur that the intent of the annual Administrative review process, as provided in Article 5.03, is to allow Management to design a fair bidding procedure, whereby Guild members' seniority rights will be protected in the event an extra vacation bidding slot *can*

---

[46] See Guild Ex. 13, 15, 16, 17, 18.

be added for some or all weeks during the year. While Guild witnesses doubted that the Sheriff actually conducted such a review, Undersheriff Sandell was persuasive that it had been done in the past and would be done again this year.

Since vacation bidding for 2002 may have already begun or will be done immediately upon execution of this contract, and the arbitrator is not persuaded that an extra vacation slot can reasonably be *required* for bidding purposes at this time, the arbitrator finds that the parties should continue to rely on the Administrative review process, as contained in Article 5.03 of the 1997-99 contract, but that there should be consultation with the Guild, in order to ensure that the interests of both parties are met with respect to vacation scheduling during this transition year.

The parties may certainly revisit the vacation scheduling issue when they meet to negotiate their successor agreement during the fall of 2002.

(4) Award: The Guild's proposal to require the County to reimburse deputies their out-of-pocket expenses, incurred due to a call-back from vacation, shall be allowed. The other proposals for changes in vacation call-back pay and scheduling procedures are denied, except that the following amendment shall be made to the final sentence in Article 5.03:

> . . . . "Beginning in the fall of 2001, the Administration agrees to review operational requirements at least annually, in consultation with the Guild, to determine whether the number of deputies who will be allowed off on vacation at any one time by this paragraph can be increased."

G. Compensatory Time ("New" Article 3.07):

(1) The Guild: The Guild proposes a new compensatory ("comp") time provision in Article III of the contract, that would read as follows:

---

[47] County Ex. 27.

3.07 Compensatory Time. Employees earning overtime may elect to accrue such time to a compensatory time bank in lieu of overtime pay. The compensatory time bank shall be capped at eighty (80) hours. Compensatory time not scheduled is subject to being cashed out upon request of the employee. The employee may make such a request once each year; employees may request by November 30 each year that some or all of their unscheduled compensatory time be cashed out and such payment shall be made on the first paycheck in December.

The Guild contends that the County's current practice of allowing comp time to be taken in lieu of overtime pay, as long as it is pre-scheduled at the time that the overtime is served and is taken during the same pay cycle, is unreasonably restrictive and may be unlawful under the Fair Labor Standards Act and the Washington State collective bargaining law. The Guild also contends that the County should not be negotiating individually with deputies about the use of comp time. There should be a mutually-agreed-upon provision for such a benefit in the collective bargaining agreement that clearly respects the parties' interests.

The Guild points out that every one of the comparable jurisdictions has a comp time provision in its collective bargaining agreement. Also, the County Sheriff's Department itself allows comp time to be taken by management employees on a more liberal basis than it allows for deputies. The Guild contends that a comp time provision actually saves the employer money. In short, the Guild states there is no justification for denying such a provision.

(2) **The County:** The County states that it has had a policy in place on comp time since 1994. Under the policy, deputies can accrue up to three days of compensatory time, but they must pre-schedule the time, with the approval of their supervisor, at the time of its accrual. The County believes that its policy is reasonable and that it ensures the County's ability to meet its minimum staffing requirements. The County also contends that its policy meets the requirements of the Fair Labor Standards Act, 29 CFR 553.25.

The County is fearful that the Guild's proposed change would cripple the County's ability to meet its minimum staffing requirements. The County believes the proposal would subject the County to large overtime costs for hiring deputies to replace other deputies, when they use their comp time. In addition, the County would face an unknown expense for those deputies who might decide to cash out their unused comp time in December, as provided under the Guild's proposal. Finally, the County would risk an additional retirement expense following the retirement of a deputy who had comp time left in his or her "bank" at the time of retirement.

(3) Discussion and Findings of Fact: There was persuasive evidence in the record showing that the Sheriff's Department was severely understaffed during 1999 and 2000. County deputies had to work many overtime hours, just to keep up with their ever-growing workload.

In 1999, 9,616.2 hours of overtime were used and in 2000, the total was 9,320.1 overtime hours.[48] Assuming an average of 62 deputies were on staff in each of those years, the overtime accrual amounted to 150-155 hours per deputy per year, or nearly 13 hours in every month. The parties agree that the extraordinary overtime usage was required because the County simply did not have enough deputies on staff to meet the Department's minimum staffing needs and still complete the work that needed to be done on every shift, while allowing the deputies time for training and special duties, such as court appearances.

Two of the stated objectives in the Sheriff's 2001 budget document referenced the overload problem and acknowledged that increased personnel were needed to deal with the overload problem. Those objectives were as follows:

"*Reduce response times to emergency calls and improve the ability to provide for quick and certain back up to officers engaged in dangerous situations.

[48] County Ex. 21.

*Improve the capability of the Sheriff's Office to investigate crimes of violence and property crimes. *This ability has decreased dramatically in the past few years due to increased calls for service and additional mandated responsibilities without a corresponding increase in personnel.*"[49]

The relief which was so desperately needed in the department, in the form of additional deputy positions, has finally come. Eight new positions were authorized by the County Council in 2000. Most of the new employees have been recruited and are in various stages of training. As a result, the need for overtime should not be as great from now on as it was in the recent past.

Many of the deputies who appeared at the hearing showed the effects of working such long hours. They did not indicate that they minded earning overtime pay; however, they did indicate that they were exhausted from spending so many of their waking hours on the job and away from their families. They indicated some frustration over not being able to take compensatory time in lieu of overtime, so that they could schedule some "quality time" with their families on occasion.

The County points out that it has a comp time policy in place already for deputies. That policy, known as County Procedure AP-019-R1,[50] is reasonable and adequate, says the County, as it benefits employees, while protecting the County's staffing needs. The arbitrator finds that the policy is unduly restrictive for the deputies, however, in that the date and time that the deputy wishes to take time off must be noted on the form at the same time that comp time is requested in lieu of overtime pay. It is difficult for deputies to know in advance when they might wish to take comp time off, however, such as for dental appointments, parent-teacher meetings and other personal or family events. Clearly, a more flexible manner of requesting and scheduling comp

[49] Guild Ex. 127, emphasis added.
[50] County Ex. 28.

time is appropriate, as long as it can be provided without interfering with Management's minimum staffing requirements.

The County fears that a comp time alternative would be inordinately expensive or difficult to manage, or that it would necessarily jeopardize minimum staffing. Its fear is not well-founded, however. First, the need for overtime should be reduced, as a result of the addition of eight new positions. Secondly, the County already allows its managers to take comp time in lieu of overtime pay, so it has some experience with managing a comp time alternative system. Thirdly, several of the comparable jurisdictions allow a comp time option to deputies. Those counties' provisions, which are quite varied, are summarized as follows:

JURISDICTION	PRACTICE
Benton (Guild Ex. 13, p. 17)	No more than 20 hours comp time may be accrued, to be used in accordance with the FLSA
Cowlitz (Guild Ex. 15)	No Provision
Kitsap (Guild Ex. 16, p. 16)	Maximum accrual of 40 hours comp time, "scheduled by mutual agreement of the employee and the Employer or such time shall be paid by the Employer".
Skagit (Ex. 18, p. 7)	Maximum of 60 hours off per year (40 hours of overtime), balance may not exceed 40 hours at any time, Employer may cash out on February 1 balances existing as of December 31, Sheriff to approve the days which comp time will be taken, employees are paid accrued comp time on termination or resignation but must use comp time before retirement. "At his sole discretion, the Sheriff may eliminate the ability to accrue and use compensatory [time] at the end of the first year of the agreement, or at the end of any year thereafter."
Thurston (Ex. 17, p. 10)	The normal practice is to pay overtime. "However, with the mutual agreement of the employee and the Sheriff, compensatory time off may be used for overtime." Maximum accrual of 60 hours, employer to buy comp time in excess of 40 hours in October of each year.
Yakima (Ex. 19, p. 10)	Employee may carry up to 120 hours of comp time from one semester to the next, all comp time in excess of 120 hours shall be paid or used prior to the end of June 30 and December 31 of each year.

Cowlitz County is the only comparable that does not allow for some comp time choice by its deputies. Kitsap, Skagit and Thurston Counties allow varying amounts of comp time to be "banked" and taken at times that are mutually agreed upon by the deputy and the Sheriff. Only Benton and Yakima Counties appear to allow the deputies freely to choose the time that they wish to take off. Kitsap and Skagit Counties each allow 40 hours to be accrued, while Thurston County allows 60 hours and Yakima County allows 120 hours. The average of those four hourly limits is 75 hours, which is only slightly less than the 80-hour figure requested by the Guild.

The Skagit County provision seems to take into consideration the concerns that were addressed by Whatcom County herein. Specifically, the Skagit County Sheriff has the right to approve the days on which comp time may be taken, thereby preserving the right to deny a particular request, where minimum staffing would be compromised. The benefit to the deputies, however, over the comp time option that exists in Whatcom County's current policy, is that the deputy does not have to designate the date on which the comp time will be used at the time the overtime is worked.

Skagit County's comp time provision contains language that protects against the possible "horribles" that Whatcom County fears, namely a build-up of inordinate amounts of comp time by deputies, such that the County would have to pay overtime in the future to hire other deputies to cover for those using comp time, as well as a risk of extra retirement costs when deputies retire with comp time remaining in their "banks". The Skagit County provision reserves to the employer the right to cash out the end-of-year balances in the comp time "bank" in February of each year. Finally, there is a requirement in Skagit County that all comp time must be used or

cashed out before a deputy retires. If similar provisions are incorporated in the Guild's proposal in the instant case, both parties' interests will be met.

(4) Award: The Guild's proposal is needed and makes sense. Also, it is consistent with the practice among the comparables, and should be allowed, except that appropriate language should be added, to ensure that the parties will mutually agree on the dates that deputies may schedule compensatory time and that all accrued and unscheduled comp time will either be taken or cashed out annually, as well as prior to an employee's resignation or retirement. The provision shall read as follows:

> 3.07 Compensatory Time. Employees earning overtime may elect to accrue such time to a compensatory time bank in lieu of overtime pay. The compensatory time bank shall be capped at eighty (80) regular-time hours. The Sheriff shall pre-approve the days on which compensatory time will be taken, upon consideration of staffing needs. Compensatory time not scheduled is subject to being cashed out upon request of the employee. The employee may make such a request once each year. The Employer may cash out all unscheduled compensatory time, as accrued on November 30 of each year, and such payment shall be made by December 31. Employees shall be paid their accrued compensatory time upon termination or resignation and shall use or cash out all accrued compensatory time before taking retirement.

H. Premium Pay for Working Holidays (Article 4.05):

(1) The Guild: The Guild proposes modifying Article 4.05 to provide that deputies who work on any of twelve designated holidays be paid at the overtime rate of time and one-half for the shift worked.

(2) The County: The County points out that Article 4.03 of the contract already gives deputies eleven days off each year (excluding the personal holiday) in lieu of holidays. Pursuant to Article 5.03, the deputies may schedule those eleven "holidays" in the same manner that they schedule their vacations, in week-long blocks. They also schedule the time off at the same time that they schedule their vacations for the coming year, by bidding on a seniority basis

during the fall. Essentially, this flexible arrangement allows deputies to schedule two additional five-day periods of vacation each year, in lieu of taking isolated holidays throughout the year.

In addition to the eleven days off, Article 4.05 provides that deputies who actually work on six of the designated holidays (Thanksgiving, the day after Thanksgiving, Christmas Eve, Christmas Day, President's Day and Veteran's Day) are paid at the overtime rate of time and one-half for those shifts. This is a benefit which has gradually been added over a period of years, says the Employer. In the past, employees were not paid overtime for working any holidays.

(3) Discussion and Findings of Fact: The Guild offered no evidence in the record that a problem exists with the current contractual provisions governing holiday pay. Indeed, the parties understand that the Sheriff's Department is a 24-7 law-enforcement operation and that deputies are needed to work on holidays, just as they do on other days. It seems that the parties have worked out an effective way of allowing deputies to take eleven "holidays" off during the year, in a way that is very beneficial to them – by grouping the days together as additional vacation time, in week-long blocks. In addition, they are paid time and one-half if they actually work on any of six popular holidays, four of which are commonly recognized as "family" days, when deputies would probably prefer to be with their loved ones, as opposed to being on the job.

The practices vary significantly regarding the manner of granting holiday time and paying for working on holidays in the comparable jurisdictions. Thurston and Skagit Counties offer time and one-half pay on all designated holidays. Kitsap County only pays at the overtime rate on four holidays. Cowlitz County deputies receive no holiday premium pay. Yakima County employees are given 50 hours (6.3 days) of holiday time off during the year, and they apparently do not receive premium pay for working on any holiday. Benton County deputies get

an additional day's pay when working on any of twelve different holidays, including personal floating holiday, but they do not get time off for any holidays.[51]

The Guild points out that Bellingham police are paid time and one-half for all holidays actually worked by police officers.[52] However, Bellingham is a "secondary" comparable with a better financial capability for paying for such a benefit.

The arbitrator finds that, generally speaking, the holiday pay provisions among the comparables are less beneficial to deputies than the current provisions in the Whatcom County Deputy Sheriffs contract. It would not be appropriate to increase the holiday pay at this time.

(4) Award: The Guild's proposal for increasing the number of holidays on which time and one-half would be paid for work done by deputies is denied.

I. Proposed Changes to Appendix A and Letter of Understanding:

(1) The County: The County proposes deleting the Civil Deputy position in Appendix A and deleting Points 10, 11 and 13 from the Letter of Understanding. The first of these requests is designed to carry out the terms of the parties' settlement agreement, dated October 29, 1998, authorizing deletion of the Civil Deputy position. The second is designed as a housekeeping measure, to delete outdated matter.

(2) The Guild: The Guild did not oppose either of the County's proposals.

(3) Award: The County's proposals regarding changes to Appendix A and the Letter of Understanding shall be granted.

AWARD

Based upon the statutory criteria in **RCW 41.56.465** and the rationale set forth in the foregoing report, within various subsections that are entitled **Discussion and Findings and Fact,** within **Subsections A through I** of **Section VI, Issues,** in this matter, the arbitrator makes the **Awards** that are included for each of the **Issues.** Unless otherwise stated in a particular **Award** provision, all changes shall be effective January 1, 2000.

The arbitrator hereby retains jurisdiction of this matter for sixty (60) days from this date, to assist the parties with implementation of the various **Awards,** should such assistance be necessary.

Also, pursuant to the agreement of the parties at the hearing, the arbitrator may reassert jurisdiction in this matter at a later date, upon written notice from the parties, to resolve any of the contractual issues that are currently under suspension, pending the outcome of proceedings before the Washington Public Employment Relations Commission.

Respectfully submitted,

October 2, 2001

SANDRA SMITH GANGLE, J.D. **Date**
Interest Arbitrator

Sandra Smith Gangle, P.C.
P.O. Box 904
Salem, OR 97308-0904

Telephone: (503) 585-5070

---

[51] See Guild Ex. 13, 15, 16, 17, 18.
[52] Guild Ex. 11.

Appendix "A"

WHATCOM COUNTY AND WHATCOM COUNTY DEPUTY SHERIFF'S GUILD

ISSUES PRESENTED TO ARBITRATOR FOR RESOLUTION

July 30, 2001

Guild Proposal	County's Position
3.01 change standardized shifts from five 8-hour days to four 10-hour days. Add new language to provide that the compensable work day begins when a deputy departs their residence to begin patrol duties.	Suspended from interest arbitration by order of Marvin Schurke dated July 18, 2001
3.03 (a) increase guarantee for call backs between shifts from 2 to 4 hours at the overtime rate.	Retain existing contract language.
3.03(c) delete the requirement that vacation must be at least 5 days in length for this provision to apply.	Retain existing contract language.
3.03(c) include a new provision in the contract making employees whole for all losses incurred if called back to work during vacation.	Reject. Continue existing practice to resolve on a case-by-case basis.
3.07 include a new compensatory time provision in the contract allowing employees to accrue a compensatory time bank capped at 80 hours, to be cashed out in December at the employee's option.	Reject. Continue existing policy regarding comp time found in County Procedure AP-019-R1 (County Exhibit 28).
4.05 change to provide that all holidays worked shall be paid at the overtime rate of time and one-half.	Retain existing contract language.
5.03 increase the number of patrol deputies that may be on vacation from one per shift to two per shift, or up to 6 for all shifts.	Retain existing contract language.
13.02 increase existing premiums from a dollar amount to 4% and 5%. Add new premiums for hostage negotiator and crime scene investigator equal to 4% of base pay.	Retain existing contract language, except add a new sentence at the end of the first paragraph of this section to read: "Effective upon the execution of this Agreement, deputies assigned as dog handlers shall be released fifteen minutes prior to the end of each regularly scheduled shift without loss of pay in order to care for their dogs."
13.04 increase existing premium for temporary motorcycle operators from $100 per month to 4% of base pay.	Retain existing contract language (update to reflect that the current monthly premium is $110 as a result of the increases specified in Article 13.02 that were effective on 1/1/98 and 1/1/99)

Guild Proposal	County's Position
13.06 delete this provision which requires field training officers to work 40 hours per month in this capacity to be eligible for a premium.	Retain existing contract language (update to reflect that the current monthly premium is $110 as a result of the increases specified in Article 13.02 that were effective on 1/1/98 and 1/1/99).
13.11 increase the initial clothing allowance from $1,000 to $2,000 and the annual clothing allowance from $650 to $750.	Change the first paragraph of 13.11 to read as follows: "New employees shall be allowed one thousand dollars ($1,000) as an initial clothing allowance. In addition, effective January 1, 2002, the Department will issue a duty belt and the following to new deputies: a duty belt, two handcuff case, a magazine pouch, two sets of handcuffs, one aerosol restraint case, four gun belt keepers, a duty weapon, and a holster. These items are the property of the Department and are to be returned upon the employee's separation. After the first year of employment and annually thereafter, a clothing allowance in the amount of ~~five hundred and fifty dollars ($550) shall be paid to all sworn personnel. Effective January 1, 1998, the annual clothing allowance will be $600. Effective January 1, 1999, the annual clothing allowance will be $650.~~ six hundred and fifty dollars shall be paid to all sworn personnel. Effective January 1, 2001, the annual clothing allowance will be $750. Effective January 1, 2002, the annual clothing allowance will be $800.
13.11 add new language to provide that K-9 deputies will be provided jumpsuits and that any specialty assignments shall be provided uniforms and equipment consistent with past practice.	Reject. Continue existing practice, which is to issue K-9 officers initial jumpsuits, which are to be replaced by the officers using their annual clothing allowance.
13.11 change to provide that department mandated changes in uniform and equipment will be paid in full separate from the clothing allowance.	Retain existing contract language.
XX change the existing longevity provision to provide for a longevity premium as a percentage of base wages ranging from 1% at 6 years of service to 7% at 24 years of service.	Retain existing contract language.
22.01 increase the pay scales by 4% on 1/01/2000 and by 4% on 1/1/2001.	Increase the 1999 pay scales in Appendix D by 3% on 1/01/00; by 3% on 1/01/01; and by 3% on 1/01/02. State in the new wage appendices that all step increases are annual adjustments (per LOU, County Ex. 24).

Guild Proposal	County's Position
27.01 change to provide that the new contract is effective from 1/01/00 through 12/31/01.	Change to provide that the new contract is effective from 1/01/00 through 12/31/02.

County Proposals	Guild's Position
Appendix A-Delete Civil Deputy position, per settlement agreement (County Ex. 23).	
Letter of Understanding. Delete as outdated points 10, 11, and 13.	

Stipulations:

The parties agree to withhold from arbitration at this time their proposals regarding Article XXV, Management Rights. However, upon the issuance of a decision by the PERC hearing examiner in the ULP case pertaining to the County's rules and regulations manual, either party may present its issues regarding Article XXV to the arbitrator for resolution.

The parties agree that the Guild reserves the right to submit its issue regarding the grievance procedure to the arbitrator for resolution if the parties are unable to resolve the issue within a reasonable period of time.

FOR THE GUILD:

James M. Cline

FOR WHATCOM COUNTY:

Larry E. Halvorson

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION

BEFORE SANDRA SMITH GANGLE, ARBITRATOR

In the Matter of the Interest Arbitration between	
WHATCOM COUNTY,	**PERC Case No. 15395-I-00-347**
Employer,	**SUPPLEMENTAL AWARD**
and	***HOURS OF WORK ISSUE***
WHATCOM COUNTY DEPUTY SHERIFFS GUILD,	
Bargaining Representative.)	

Representing the Employer:
Larry E. Halvorson, Attorney at Law
HALVORSON & SAUNDERS
800 Fifth Avenue, Suite 4100
Seattle, WA 98104

Representing the Guild:
James G. Cline, Attorney at Law
CLINE & ASSOCIATES
999 Third Ave., Suite 3800
Seattle, WA 98104

Arbitrator:
Sandra Smith Gangle, J.D.
SANDRA SMITH GANGLE, P.C.
P.O. Box 904
Salem, OR 97308-0904

Date of Decision:
November 26, 2002

RECEIVED
OLYMPIA, WA
DEC - 2 2002
PUBLIC EMPLOYMENT
RELATIONS COMMISSION

I. BACKGROUND

This matter comes before the arbitrator pursuant to the Washington Public Employees' Collective Bargaining Act, RCW Chapter 41.56 and the Interest Arbitration Award that was issued by Sandra Smith Gangle, J.D., Arbitrator, on October 2, 2001, and a Supplemental Award on the issue of Longevity Premium, issued on December 11, 2001. The matter involves an issue that was raised during the arbitration hearing, but was subsequently held in abeyance pending the outcome of an unfair labor practice (ULP) complaint that was filed by the County with the Washington Public Employment Relations Commission (PERC) in July of 2001. The issue involves the Guild's request to change the deputies' ordinary workweek schedule from its current five-days-per- week, eight-hours-per-day ("5-8") schedule to a four-days-per-week, ten-hours-per-day ("4-10") schedule. In its ULP, the County alleged that the scheduling issue had not been properly raised before the interest arbitrator and should not proceed to the Award stage. On May 29, 2002, the PERC Hearings Examiner ruled, however, that the issue was properly before the arbitrator.[1]

Prior to the filing of the ULP, the parties had each offered some evidence at the hearing on the 4-10 scheduling issue. The parties each submitted supplemental exhibits to the arbitrator after the PERC ruling was issued. By agreement, they conducted a two-hour telephone conference hearing on October 7, 2002, for the taking of testimony from five witnesses who had not appeared at the 2001 hearing. Those witnesses were sworn by the arbitrator and were fully cross-examined. The telephone hearing was recorded by the parties. Therefore, a full record was made of both parties' evidence on the 4-10 issue.

The parties submitted simultaneous briefs to the arbitrator on November 4, 2002. The arbitrator has carefully reviewed the briefs and has considered and weighed all of the evidence that was offered on the 4-10 issue, in the context of the interest arbitration factors that the arbitrator is required to consider, pursuant to RCW 41.56.465. Those factors are as follows:

> **RCW 41.56.465. Uniformed personnel--Interest arbitration panel—Determinations—Factors to be considered.**
>
> (1) In making [her] determination, the [arbitrator] shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standard or guidelines to aid [her] in reaching a decision, [she] shall take into consideration the following factors:
>
> (a) The constitutional and statutory authority of the employer;
>
> (b) Stipulations of the parties;
>
> (c)(i) 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;
>
> * * * * *
>
> (d) The average consumer prices for goods and services, commonly known as the cost of living;
>
> (e) Changes in any of the circumstances under (a) through (d) of this subsection during the pendency of the proceedings; and
>
> (f) Such other factors, not confined to the factors under (a) through (e) of this subsection, that are normally and traditionally taken into consideration in the determination of wages, hours, and conditions of employment. * * * *

II. STATEMENT OF THE ISSUE

Shall the deputies' workweek schedule, which currently consists of five days of eight hours each (a "5-8 schedule"), be modified to reflect a schedule of four ten-hour days (a "4-10 schedule")?

---

[1] There were actually two issues held in abeyance as a result of the County's ULP complaint. The second issue, which involved the beginning time of a compensable workday and is known as the "Portal-to-Portal" issue, has been determined by PERC to be non-arbitrable.

III. POSITIONS OF THE PARTIES

A. The Guild: The Guild contends it is time to change the Sheriff's deputies' work schedule in Whatcom County to a 4-10 schedule. The Guild believes such a change is supported by the comparability data, will enhance the deputies' morale, will advance the economic interests of the County Employer and will improve public safety and officer safety.

The Guild contends the 5-8 schedule is an anachronism, in that it reflects the practices of industrial and office settings, but is inappropriate for meeting the needs of modern law enforcement work. Specifically, the Guild points out that deputies' call loads are unequal at various time periods throughout the day. The Guild argues that its members can serve their constituent population better when they work ten-hour overlapping shifts than when they work on a typical consecutive-shift plan. The Guild points out that the County's own training materials confirm that the 4-10 schedule is advantageous in mid-size agencies like Whatcom County, where call loads are unequal.

The Guild argues that the change to a 4-10 schedule will enhance the morale of the deputies and will reduce the number of sick days that are used. Employees will have less stress and better physical and mental health because they will have three days off each week instead of two. Even if they have to appear in court on one of their days off, they will still be able to spend more quality time with their families than they have been spending under the current arrangement. Therefore, they will be more relaxed and refreshed on the job.

Since deputies will be less fatigued on the job, the County will have a reduced risk of injuries from accidents and problems due to workplace mistakes. Also, the

County will incur less overtime expense, argues the Guild, as deputies will have more time on the clock to get their reports completed during their regular shift, as opposed to having to stay on after their shift to finish those responsibilities.

The 4-10 schedule will allow better service to be provided to the public as well, says the Guild. First, the overlapping shifts will allow incoming deputies to be briefed by those on the out-going shift. Also, those deputies on the out-going shift will be able to complete their unfinished calls and get their reports written while the incoming deputies are being briefed and are preparing to take over the caseload. Departmental efficiency as well as officer safety will be enhanced. Finally, deputies will have a greater opportunity than they have now to do "pro-active" work, such as tracking down suspects with outstanding arrest warrants and engaging in community policing activities.

The Guild argues that the Employer has been unable to articulate a clear, rational basis for its proposal to retain the 5-8 work schedule. The Guild faults the County for failing to conduct a study to determine whether a 5-8 schedule is actually more efficient than a 4-10 schedule would be, as the County contends. Further, the Guild contends the County seems to want to use the Guild's 4-10 proposal as a basis for exacting a major concession from the Guild that the Employer knows to be unacceptable, namely giving up the contractual process of shift bidding on the basis of seniority.

The Guild recognizes that the parties' collective bargaining agreement will expire on December 31, 2002, approximately one month after the issuance of this supplemental Award, and that it is probably not feasible to change the deputies' existing shift schedule during the current contract's term. The Guild asks the arbitrator to issue Findings of Fact

on the appropriateness of the 4-10 schedule, however, in order to help the parties with their negotiations for a successor agreement.

B. The County: The County asks the arbitrator to reject the Guild's 4-10 schedule proposal. The County seeks to maintain the status quo; that is, to continue the regular work schedule of five eight-hour workdays. In the event the arbitrator does recommend that the parties initiate implementation of a 4-10 schedule, however, the County recommends that she require implementation of a "squad system" in conjunction with the new schedule. Such a system would change the current contractual practice whereby each deputy bids his or her shift according to seniority to a practice whereby the Sheriff appoints deputies to serve on "squads" that rotate among shifts on a regular basis.

The County argues, first of all, that the Sheriff's Department has historically been understaffed and a 5-8 schedule is the most efficient plan for an agency that experiences such shortages. Since a 4-10 plan reduces the number of shifts that a deputy actually works each year, there would likely be additional staffing shortages under such a plan, except during the three time periods each day that two shifts would overlap for two hours each. The staff shortages would keep the Department from meeting its minimum staffing levels at least some of the time, says the County; therefore, additional deputies would have to be called in and overtime expense would be incurred by the County.

There are other reasons why the County believes the Guild's proposal will result in greater overtime expense for the County as well. First, a new compensatory time provision, which was awarded in the 2001 interest arbitration Award, has proven quite popular with the deputies over the past year. Many deputies have used comp time in lieu of taking overtime pay, thereby creating staff vacancies which have had to be filled with

other officers on overtime. Also, since deputies on a 4-10 schedule would have three days off each week, and they must be paid a minimum of four hours at overtime rate (six hours straight time) if they are called to court on a regular day off, there is likely to be greater overtime cost for court appearances under the Guild proposal than would be incurred under the current 5-8 schedule.

The County also argues that overlapping 10-hour shifts could have a detrimental effect on shift briefings and report-writing, rather than the beneficial effect that the Guild posits. Since sergeants would have the same 10-hour shift schedule as their deputies, they would no longer have an extra block of time on the job prior to the arrival of their deputies to prepare for such briefings. Nor would sergeants have extra time at the end of each shift to review deputies' reports.

Public safety and officer safety would not be enhanced either, argues the County, but could be adversely impacted, because there would be staff shortages during 18 of the 24 hours in any one day. Such impacts could be particularly serious between 7:00 p.m. and 2:00 a.m., when the more serious calls involving violence often come in, requiring multiple officer response.

Further, the County contends the 4-10 plan would actually give deputies *less* opportunity for self-initiated activity like community policing, *not* more, as the Guild has argued. The reason is that the ten-hour shifts would be operating with fewer deputies than eight-hour shifts would operate and all the deputies on duty on any given shift would be needed to respond to calls.

The County points out that only one of the comparable jurisdictions, Skagit County, utilizes a true 4-10 schedule at the present time, and the Skagit County Sheriff

has the unilateral right to revert to a 5-8 schedule at any time. Also, Skagit County assigns deputies to squads and rotates shifts and squads without regard to seniority. Cowlitz County uses a ten-hour schedule, but deputies have 3,4 or 6 days off at a time. Of the remaining comparables, Kitsap and Thurston Counties and the City of Bellingham all use the 5-8 schedule. The two remaining counties use a twelve-hour schedule.

Since the parties have established an ad-hoc committee to look into the issue of alternative shift schedules, that committee would be the appropriate body for recommending any schedule change, as well as designing an appropriate process for implementation. No change should be considered in the deputies' work schedule until a 12-month work study has been performed to determine actual staffing needs. Such a study is appropriate, because deputies' workloads vary from season to season. Since the study would have to be supported by adequate software, which the County does not presently own, budgetary concerns would have to be addressed.

Assuming the result of the work study showed that a change to a 4-10 schedule was warranted, implementation should only take place after good faith bargaining occurred between the parties on all the factors that would be affected by the change. Those would include shift bidding (a complicated process that begins in September of each year and takes four months to complete), shift rotations, assignments to squads, training schedules and impacts on other units, including the jail and the criminal justice system. Even then, if the 4-10 schedule were actually implemented, there should be a one-year trial period, during which time a full evaluation should be done as to the plan's effectiveness, before any decision is made on its long-term implementation.

IV. DISCUSSION AND FINDINGS OF FACT

A. Is there a trend among the County's comparable jurisdictions (RCW 41.56.465(1)(c)(i)), whereby deputy sheriffs work a 4-10 schedule?

The Guild offered testimony from the following witnesses, representing five of the County's six comparable jurisdictions. They all were cross-examined by the County during the telephonic hearing with the arbitrator on October 4, 2002:

> Michael Rodrigue, President of Kitsap County Deputy Sheriffs Guild;
> Tom Molitor, Treasurer of Skagit County Deputy Sheriffs Guild;
> Dan Garcia, Chief Criminal Deputy with Yakima County Sheriff's office;
> Bob Brockman, Union Steward with Benton County Deputy Sheriffs Guild;
> Cory Huffine, President of Cowlitz County Deputies Guild.

This evidence, plus the collective bargaining agreements that were submitted to the arbitrator, proves the following facts regarding the shift schedules of the six comparables, plus Bellingham, the County's "secondary comparable":

(1) ***Kitsap County:*** The patrol division in Kitsap County worked a 4-10 schedule until 1995, when a 5-8 schedule was adopted. In July of 2002, the swing shift changed back to a 4-10 schedule, through an informal arrangement with the Sheriff, for a one-year trial period.[2] During the three months since that change was made, overtime use on swing shift has lessened by about 20 percent, because the deputies have been able to complete their paperwork on shift. The 78 Kitsap County deputies do not bid for their shifts; they work on a squad system and they rotate shifts every three months. They are currently negotiating with their Employer to change all shifts to the 4-10 schedule.

[2] The Kitsap County Deputy Sheriffs' collective bargaining agreement for 2000-2002 expressly grants "discretion" to the Sheriff to implement, or to end the implementation of, a 4-10 work schedule for both an individual unit of deputies or the entire Guild membership. Guild Ex. 16, Section J(4), p. 15.

*(2) **Skagit County:*** All 30-35 deputies in Skagit County currently work a 4-10 schedule.[3] There are two main shifts, days and nights, each of which has staggered starting times, so that there is always some overlap of deputies on duty. Deputies generally serve on patrol squads that rotate shifts monthly and rotate their starting times every two months. The deputies find that they have time to accomplish their tasks and generally like their shift arrangement. Overtime is only needed for extraordinary occurrences.

*(3) **Yakima County:*** The majority of Yakima County's 32 patrol deputies currently work twelve-hour shifts, having recently changed from a 4-10 schedule that had been in place for approximately five years.[4] The deputies have a squad system and they work on the "Richland Plan", whereby their days off vary from week to week ("2 on, 2 off," then "3 on, 2 off," then "2 on, 3 off"). Their two shifts – days and nights – rotate every six weeks. According to witness Garcia, the change to the twelve-hour shift schedule came about because an on-going study of the efficacy of the 4-10 schedule had shown that the deputies were incurring a lot of overtime to meet staffing needs.

*(4) **Benton County:*** For approximately ten years, most of the deputies in Benton County have worked on twelve-hour shifts on the "Richland Plan".[5] They work on four squads of seven or eight deputies each, and those squads, which rotate between days and nights every six weeks, are generally assigned by seniority, with a mix of

---

[3] The Skagit County Deputy Sheriffs' collective bargaining agreement for 1999-2001 provides for either a 5-8 or a 4-10 schedule, which can be altered by the Employer upon three days' notice to deputies. Guild Ex. 18, Art. 6, p. 6-7.

[4] The Yakima County Deputy Sheriffs' 1999-2001 collective bargaining agreement provides that a "normal" workweek is either a 4-10 or a 5-8 schedule. Guild Ex. 19, Art. 9, p. 9. According to witness Garcia, the parties entered into a separate Memorandum of Understanding which modified that plan to allow for the 12-hour shift schedule.

officers with similar service time serving on each squad. According to witness Brockman, the deputies and Management are happy with the plan. He is unaware that any studies have been conducted regarding overtime usage.

*(5) **Cowlitz County:*** Patrol deputies in Cowlitz County normally work a 4-10 schedule with a complicated variable pattern of days on and days off.[6] The schedule has been in place for at least ten years, according to Witness Hoffhine. Deputies are assigned to squads, known as "patrol teams", which maintain the same work schedule all year long. The make-up of each team is determined by Management and changes are made from time to time, depending on vacations or other absences. Huffhine was unaware of any studies having been done on the efficacy of the plan and he was unaware of the extent of overtime usage in his department. He said he was aware that deputies have to be held over or called in on occasion, such as when there is an abundance of service calls or sick leave usage. This past year there have been a lot of such extra calls, he said.

*(6) **Thurston County:*** Article VIII (1) of the Thurston County 2002-2004 collective bargaining agreement provides that the "normal" work day for deputies is "eight (8) consecutive hours of work".[7] Any modifications must be mutually agreed upon by Management and the deputies' association.

*(7) **Bellingham:*** Article 3, Section 1 of the City's police department collective bargaining agreement provides that the "workweek for all employees . . . shall

---

[5] The Benton County Deputy Sheriffs collective bargaining agreement for 2001 and 2002 grants the Sheriff the right to implement, "if deemed in the best interest of the Employer," either an 8-hour, 10-hour or 12-hour shift schedule. Guild Ex. 13, Art. XXI, Section 21.3, p. 16.

[6] The Cowlitz County Deputy Sheriffs collective bargaining agreement for 2000-2002 expressly provides for the 10-hour-per-day shifts and sets out in detail the hours of each shift and the schedule of days off. (Guild Attachment B, Art. 4, p.2, transmitted on Oct. 1, 2002).

[7] See Thurston County agreement, at p. 9, transmitted by the Guild as Attachment C on Oct. 1, 2002.

be 40 hours consisting of 5 consecutive 8 hour days."[8] Since no other evidence was offered with regard to Bellingham, it is presumed that all officers work a 5-8 schedule.

(8) Whatcom County: The parties' 1997-2000 contract provided that the standard shift schedule for deputies in Whatcom County would be five eight-hour days (a 5-8 schedule).[9] Patrol sergeants were scheduled differently, however. The contract provided that they would work four ten-hour shifts (4-10), provided there is a minimum of six sergeants available.[10] An express contractual provision allowed shift schedules to be modified, "including the establishment of four ten hour days by mutual agreement between the County and the Guild". Evidence in the record shows that canine officers and search-and-rescue officers have arranged such a schedule with the County.

The current daily schedule of patrol sergeants is as follows: Day shift, 5 a.m. to 3. p.m.; Swing shift, 1 p.m. to 11 p.m.; Graveyard shift, 9 p.m. to 7 a.m. That schedule allows each sergeant to begin his/her shift one hour before the deputies arrive and end his/her shift one hour after the deputies leave. The two extra hours allow each sergeant to prepare for a shift briefing at the start of the deputies' workday and then review deputies' reports at the end of the day. *Testimony of Sgt. Barriball.*

Findings of Fact: Only two of the seven comparables (Skagit and Cowlitz Counties) now have a 4-10 schedule in place that is similar to what the Guild seeks in this proceeding. A third (Kitsap County) is trying out a 4-10 plan on one shift only for a one-year period. Yakima County, which had been on a 4-10 plan for five years, recently abandoned that plan and moved to a 12-hour schedule, which is similar to

[8] See Guild Ex. 11, p.2.
[9] See Guild Ex. 1, Art. III, p. 4.
[10] Sergeants have had the 4-10 schedule since 1996.

Benton County's 12-hour shift plan. The remaining two comparables, Thurston County and City of Bellingham, work a traditional 5-8 schedule.

It appears that deputies are assigned to squads or teams by Management, as opposed to choosing their own shift assignment by seniority, in at least five of the jurisdictions (Benton, Cowlitz, Kitsap, Skagit and Yakima Counties). And in four of the counties (Kitsap, Skagit, Yakima and Benton), the Employers retain discretion to change the deputies' work schedule as they may deem appropriate.

The arbitrator concludes from these facts that there is no consistent trend among the comparables regarding implementation of 4-10 schedules. Fewer than half the comparables have had success with such plans. Also, it appears most of the jurisdictions use squad systems whereby Management assigns the officers to shifts and squads. Whatcom County is somewhat unique in that deputies bid their shift schedules on a seniority basis.

B. Looking at the "other factors . . . that are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment" (RCW 41.56.465(1)(f)), is there sufficient justification for implementing a 4-10 schedule for all deputy sheriffs in Whatcom County?

Interest arbitrators consider a wide variety of "other factors", when deciding issues like the Guild's 4-10 schedule proposal in the instant case. Such factors may include: ***(1) feasibility of implementation, (2) efficiency of service to the public, (3) safety and health of bargaining-unit employees and managers, (4) budgetary concerns, and (5) organizational morale.*** In the instant case, all of these factors have been cited by the parties as relevant to the disputed issue.

The Guild contends that the evidence on all such factors *supports* the implementation of a 4-10 proposal (or at least a recommendation by the arbitrator that the parties work toward implementation of such a proposal under their successor agreement). The County, on the other hand, argues that the evidence *does not support* implementation of a 4-10 schedule at the present time. Should the arbitrator decide such a plan is worth considering, however, a one-year workload study should be undertaken as a preliminary step, says the County. Then, if the study shows that a 4-10 plan is likely to work well, implementation should be on a trial basis only, and there should be careful monitoring and evaluation for a set period of time before the plan is finalized. Also, deputies should be assigned to squads by Management, as opposed to being able to choose their own shifts under the current bidding process, argues the County.

Having reviewed the evidence offered by the parties, the arbitrator has reached the following findings of fact regarding the "other factors" that have been identified as relevant:

(1) Re: Feasibility of Implementation:

Since shifts and vacations are bid by seniority under the Whatcom County Deputy Sheriffs' contract, a complicated and time-consuming bidding process is required each year to prepare the following year's schedule. The process begins at the end of August and takes four full months to complete. The bidding process for the 2003 schedule began on August 28, 2002 and, as of this writing, it has been on-going for approximately three months. *See County Ex. 63.* One can infer, therefore, that the 2003 schedule is now nearly complete. Even if the arbitrator were to determine that a 4-10 schedule should be awarded in this interest arbitration, there simply is not enough time to begin a new

bidding process all over again, in order to implement the schedule under the current contract.

Another issue having to do with the current bidding process must be considered as well, and that issue may be more significant than the timing issue. Chief Jeff Parks testified that he believed there could be problems with implementing a 4-10 schedule, if the current shift-bidding process were retained as well. Since the most experienced officers would have priority in shift selection, as they do now, the work teams on the various 10-hour shifts could be inequitable and inefficient. Personality problems could arise between some deputies and their shift sergeants and those could be difficult to solve. In his opinion, a "squad system", through which the squads would be identified by Management as balanced and cohesive units, would be the preferable way of implementing a 4-10 schedule, if that were to replace the current system.

Assuming implementation of a 4-10 system actually occurred, using rotating squads, Chief Parks said he believed a specific trial period should be allocated for monitoring and evaluating the plan, before a final decision is made regarding its permanent implementation. In other words, the County offered persuasive evidence showing that a 4-10 plan is not something that can implemented quickly with assured effectiveness.

Finding of Fact: Before a 4-10 schedule could be implemented, assuming seniority-based bidding were still contractually required, as the Guild wishes, a whole new bidding process would have to be conducted and that process would take at least four months to complete. It is not possible to put such a schedule in place in early 2003.

As a practical matter, the earliest the plan could begin would be January of 2004, after a four-month bidding process had been conducted.

As a preliminary matter, the parties should negotiate regarding the potential difficulties that a 4-10 schedule could generate, if it were implemented with seniority-based shift bidding still in place. Also, the Guild should consider implementing a squad system commensurate with a 4-10 schedule, as the County recommends. A majority of the comparables use the rotating-squad approach. *See Discussion at p. 9-11* ***supra.*** While the Guild believes that the County merely wants to require the Guild to give up its contractual benefit of shift-bidding in exchange for the 4-10 schedule, the arbitrator finds that the County has articulated a reasonable rationale for allowing Management to appoint balanced and cohesive squads and then assigning those squads to work all shifts on an equitable, rotating basis.

(2) Re: Efficiency of service to the public:

The Sheriff's Department has been under-staffed over the past few years. As a result, Management has often had difficulty meeting its minimum staffing requirements on patrol shifts. The County's Operational Procedure Manual states that there must be at least one sergeant on each shift, with three additional deputies on day shift, four on swing shift and three on graveyard shift, to meet the needs of the public for law enforcement services. *See County Ex. 27.* As recently as June of 2002, the Department operated at the minimum staffing level on 33 of 105 patrol shifts, or nearly one-third of the time. *See County Ex. 71.*

The department prefers to operate with one or two more deputies than the minimum number on each shift. Since the most violent crimes usually occur between 7

p.m. and 2 a.m., that is the timeframe that extra officers are especially needed, in order to ensure public safety as well as relieve officer stress. Even during the rest of the day, however, more than the minimum number of deputies should be on duty, if officers are to have time to complete their reports and do self-initiated activities that benefit the public. Otherwise, they are constantly running from call to call, barely keeping up with the on-going demands for service. *Testimony of Chief Parks and Sgt. Barriball.*

The evidence shows that the assignment of extra deputies has been infrequent, however, due to the staffing constraints in the Department. In fact, there has been a high use of overtime in the Department, just to meet the regular staffing needs. More than 10,000 hours of overtime were used in 2001 and nearly 12,000 hours in the first nine months of 2002. *See Ex. 78, 79.* According to Chief Parks, the staffing difficulty and overtime use would likely be even greater under a 4-10 plan than they have been under the 5-8 plan. While there would probably be adequate staffing during the three two-hour blocks of time each day that the 10-hour shifts overlapped, there could be problems during the other eighteen hours of each day.

Chief Parks learned about the connection between staffing and scheduling when he attended a training program in November of 2000 that was conducted by David Hobson, an expert in law enforcement scheduling issues.[11] Parks testified that Professor Hobson told the training class that a 5-8 shift schedule is the most efficient in terms of maintaining officer availability when staffing numbers are tight, as they are in Whatcom

[11] David Hobson is now deceased.

County. *See Guild Ex. 197.*[12] Parks quoted Hobson as saying that a 4-10 schedule requires *additional* staffing and does not work well when staffing numbers are low.

The evidence shows that the staffing crisis is in the process of being cured, however, so a 4-10 plan may be more reasonable to implement in Whatcom County in the future. Since January of 2001, seventeen new deputies have been hired. *See County Ex. 64.* Most of those deputies are still in the rookie stage of their careers, not having completed their probationary period yet. Therefore, when they are assigned to shifts at the present time, they do not "count" for minimum staffing purposes. Once they complete their training, however, those additional deputies will be "counted" and their participation on shifts should alleviate, at least to a degree, the problem that the Department has been experiencing with meeting its shift-staffing requirements.

Even though the extra deputies should help reduce the staffing crunch, Chief Parks testified that it would not be wise to simply consider changing from the current 5-8 schedule to a 4-10 schedule, by placing an "overlay" on the current system.[13] He said he had learned during the shift-scheduling workshop that a necessary first step to making such a change would be to conduct a full, detailed "workload study" of at least 90 days, and preferably 9-12 months (since the work of deputies varies by season), in order to analyze the actual *use* of time by all the deputies on staff and determine with some degree of precision how many deputies would need to be available at every hour of every day.

---

[12] There was no textbook provided to the attendees at the scheduling workshop, only some paper hand-outs with problems that were worked out during the presentations. Those problems, and notes taken by Parks during the workshop, were offered in evidence as Guild Ex. 197.

[13] Guild witness Michael Jolly had offered in evidence two "overlay" plans, whereby he had demonstrated that it would be feasible to construct a minimally effective 4-10 schedule using the existing staff and a better plan if the new recruits were added. See Guild Ex. 170, 171. Jolly had been a human resources director in the food industry before becoming a deputy sheriff.

Such a study requires the use of special software and extra staff to and training time to carry out. The County does not have the software and has not budgeted for it.

The Guild contends that it has conducted an adequate "work study" on its own. The Guild presented in evidence a 90-day study of call-loads that had been received in the Department. *See Guild Ex. 166; see also charts submitted as Guild Ex. 167 and 168.* According to Chief Parks, the Guild's "study" was not the kind of study that Professor Hobson said was needed, as it only showed only the *numbers* of calls that were received at different times of day, not the actual *workload* of officers on duty. A workload study is a much more complex and detailed study, he said.

Finding of Fact: The evidence is not persuasive that a 4-10 work schedule, if implemented in conjunction with the current contractual bidding system for shifts and vacations, would lead to more efficient and more effective service to the public, as the Guild contends. At the very least, a through workload study should be undertaken by the Department for 9-12 months, using the software that has been created for such studies, and the results should be carefully analyzed by the parties before they negotiate a change from the current 5-8 schedule to a 4-10 plan. A number of factors should be discussed during their negotiations, in addition to the shift schedule itself, and then, if the parties do agree on implementing a 4-10 plan, they should consider doing so for a trial period only, so that they can monitor and evaluate the new plan's effectiveness before making a permanent change.

(3) Re: Safety and health of bargaining-unit employees and managers:

The Guild argues that deputies will enjoy better mental and physical health if they work a 4-10 schedule, because that schedule allows three days off per week, as opposed to the two days off that they have under the 5-8 plan. Even if they had to report on one of their days off for a court appearance, they still would have two days off as "down time" to spend with their families. As a result, they would be less fatigued and healthier. Fewer sick days would be used.

The Guild did not offer any statistical proof to substantiate its belief. Sergeant Barriball testified that he believed sergeants, who work a 4-10 schedule, use less sick leave than deputies use. The County, however, offered countervailing evidence showing that four of the County's nine sergeants were among the ten highest users of sick leave in 2001, the last full year that was measured. *See County Ex. 67.* One of the sergeants with high sick-leave use was Sgt. Barriball. It does not appear, therefore, that there is a correlation between the 4-10 schedule and sick-leave use. In fact, the opposite conclusion could be drawn from the evidence.

Finding of Fact: The evidence is inconclusive as to whether deputies would experience better health and use less sick leave under a 4-10 schedule than they use under their current 5-8 schedule.

(4) Re: Budgetary concerns: The Guild contends that a 4-10 schedule will be less expensive for the County because it will result in less use of overtime than is currently incurred. The deputies will have more time on the clock each day to complete their calls and finish their reports. Therefore, there is less likelihood that they would need to stay overtime to complete their work assignments. Also, there would

be less absenteeism due to stress, argues the Guild, because deputies would have more time with their families.

The evidence shows that overtime usage is a major concern in the Department. There are many reasons for overtime use: special operations, need for completion of service calls or arrests, pursuit of major crime and in-service training are a few of those reasons. *See County Ex. 78, 79.* The evidence shows that about fifteen percent of the overtime use since January 2001 has been for holding over to complete reports. *Id.* Overtime usage actually increased between 2001 and 2002. The reason for that increase may well be that many deputies have elected to take the new contractual benefit of comp time in lieu of overtime pay, and Management has had to cover the time loss of those on comp time by bringing in other deputies on overtime. Between October of 2001 and September of 2002, 1,869.34 hours of comp time were used by deputies and that was the equivalent of 234 work shifts of eight-hours each. *See County Ex. 76, 77.*

The arbitrator is not persuaded that a 4-10 schedule will seriously reduce overtime usage. Officers may still be tied up on calls from time to time on a 10-hour shift, just as they are now on their 8-hour shifts. Since a 4-10 plan would give officers one additional day off each week, the Department's costs for overtime use due to deputies' being called in for court appearances on a day off could be higher than it is now. Under the parties' contract, deputies are entitled to a minimum of four hours at overtime rate when called in on a day off, but they only receive three hours of overtime if called back on a scheduled workday.

It does, however, seem reasonable to expect that deputies will complete more of their reports during the final two hours of a ten-hour shift, as a result of the overlap with the in-coming shift, than they can complete under the current eight-hour arrangement. Also, a 2001 survey conducted by the Labor Relations Information System of Portland, Oregon, showed that two law enforcement agencies in Washington that already use 4-10 schedules – the City of Bellevue and Yakima County – have experienced significantly less overtime expense than Whatcom County. *See County Ex. 75.* Bellevue's per-officer overtime cost was $1,648 in 2001 and Yakima County's was $2,202, while Whatcom County's was $3,125 that year, nearly double that of Bellevue's and nearly fifty percent higher than that of its comparable, Yakima County. *Id.*

Finding of Fact: The evidence is inconclusive with regard to whether or not a 4-10 schedule would lead to greater or lesser use of overtime by deputies. It does appear more likely than not, however, that overtime usage would be reduced under a 4-10 plan. If a trial period were implemented with a 4-10 plan in place, the parties would have better information as to its potential long-term economic effect.

(5) Re: Organizational morale:

The Guild argues that deputies will be happier on the job and, as a result, their overall morale will be enhanced, under a 4-10 schedule. They will benefit from having an extra day off to spend with their families. Also, if they do get called to court on a day off, they will still have two days off for stress-relief. The County does not deny that the Guild's argument on this issue has merit.

Finding of Fact: It is indisputable that a change from the current 5-8 schedule to a 4-10 schedule would be likely to improve the morale of the deputy sheriffs.

SUPPLEMENTAL AWARD

Having carefully reviewed the evidence and argument of the parties, the arbitrator declines to award the implementation of a 4-10 schedule. The status quo shall be maintained regarding the shift scheduling provision of the parties' labor contract.

The arbitrator has determined, however, that there may be positive outcomes from a future implementation of a 4-10 plan, in improving the morale of the deputies and in improving service to the public. There may be economic benefits to the County as well.

The arbitrator concurs with the County that the preliminary step toward implementing such a change would be to undertake a complete workload study for a period of 9-12 months, using the appropriate software. Although the arbitrator has no authority to require this, the arbitrator recommends, in the interests of enhancing the bargaining relationship of the parties, that the County acquire the necessary software and commence such a workload study in early 2003, with a commitment to implement a 4-10 schedule on a trial basis during the first eight months of 2004, during which period a thorough monitoring and evaluation would be conducted. The arbitrator also recommends that the Guild suspend its seniority-based shift-bidding requirement during the trial implementation, so that the County's recommended squad system could be utilized in conjunction with the new shift schedule. The parties could then decide, by reopening their negotiations in August of 2004, whether to return to the current 5-8 system, with the current shift bidding process in place once again, or to continue with the 4-10 system as implemented initially or as adjusted by further agreement of the parties.

DATED Nov. 26, 2002

SANDRA SMITH GANGLE, J.D.
Arbitrator

THE WASHINGTON PUBLIC EMPLOYMENT RELATIONS COMMISSION

BEFORE SANDRA SMITH GANGLE, ARBITRATOR

In the Matter of the Interest Arbitration between	)	
WHATCOM COUNTY,	)	**PERC Case No. 15395-I-00-347**
Employer,	)	
and	)	**SUPPLEMENTAL AWARD** ***CLARIFICATION OF LONGEVITY ISSUE***
WHATCOM COUNTY DEPUTY SHERIFFS GUILD,	)	
Bargaining Representative.)	)	

Representing the Employer:	Larry E. Halvorson, Attorney at Law HALVORSON & SAUNDERS 800 Fifth Avenue, Suite 4100 Seattle, WA 98104
Representing the Guild:	James G. Cline, Attorney at Law CLINE & ASSOCIATES 6800 E. Greenlake Way N., Suite 250 Seattle, WA 98115
Arbitrator:	Sandra Smith Gangle, J.D. SANDRA SMITH GANGLE, P.C. P.O. Box 904 Salem, OR 97308-0904
Date of Decision:	December 11, 2001

I. BACKGROUND

This matter comes before the arbitrator pursuant to the Washington Public Employees' Collective Bargaining Act, RCW Chapter 41.56 and the Interest Arbitration Award issued by Sandra Smith Gangle, J.D., Arbitrator, in this matter on October 2, 2001. The parties jointly requested, by letter sent on November 26, 2001, that the arbitrator exercise her retained jurisdiction to clarify the Award in one respect, namely to determine the appropriate manner of computing the longevity premiums that would be payable to *sergeants* as of January 1, 2002. The parties submitted separate position statements to the arbitrator on or about November 30, 2001. Based upon those statements, the arbitrator hereby frames the stipulated issue as follows:

II. STATEMENT OF THE ISSUE

In computing the longevity premiums that are payable to *sergeants*, as of January 1, 2002, pursuant to the Article XX of the parties' collective bargaining agreement and the Interest Arbitration Award at page 42, should the Employer use the top step *deputy* wage rate or the top step *sergeant* wage rate?

III. POSITIONS OF THE PARTIES

A. The Guild: The Guild argues that the longevity premium schedule, as awarded by the arbitrator, should be applied by computing the applicable percentage of the top step wage rate of the particular *classification* to which *each employee* is assigned. In other words, the longevity premium for *sergeants* should be a percentage of the top step wage rate of *sergeants,* while the longevity premium for *deputies* should be based on the top step wage rate of *deputies.*

The Guild contends its interpretation is consistent with the Guild's original proposal in the interest arbitration proceeding. Also, the Guild asserts that the *"industry standard"* is to compute longevity premiums by applying the given percentages to the top step wage rate of *each classification* of employees separately. In the Guild's view, the arbitrator should follow the industry standard and order that the longevity premiums for *sergeants* be computed with reference to the *sergeants'* top step wage rate.

A. The Employer: The Employer points out that the arbitrator sought to achieve a result in her Award whereby the wages and premiums in the Deputy Sheriffs bargaining unit would remain *at or slightly above the average* of similar rates in the comparable jurisdictions. The Employer contends the longevity premium for *sergeants,* computed according to the percentage schedule established by the arbitrator, would meet that standard, if the top step *deputy* wage rate were used as a base for computing the premium. For example, a sergeant with ten years of experience would be eligible for a longevity premium of precisely the same amount ($84) as the *average* longevity premium that is paid to sergeants in the four comparable jurisdictions that offer such premiums (Benton, Kitsap, Thurston and Yakima).[1]

By contrast, the Employer argued that the longevity premium for sergeants in the County would be $20 per month *higher* than the $84 per month average of the longevity premiums for sergeants in the comparable jurisdictions, if the top-step *sergeant* wage rate were used for such computation by the County. Therefore, the arbitrator's goal of meeting or only slightly exceeding the average rate of the comparables would not be met.

[1] In its brief, the Employer used the *2001 wage rates* in the comparable jurisdictions to support its argument. The Employer applied the *2002 longevity premium percentages,* as provided in the labor contracts of the comparables, to the 2001 wage rates, to determine the approximate premium amounts.

The arbitrator expressly found, at page 41 of her Award, that the Guild's proposal, seeking longevity premiums that ranged from 1% to 7% of base salary, was excessive. She demonstrated, as an example, that the maximum premium sought by the Guild (i.e., seven percent, after 24 years of service), would have increased the existing premium by 127 percent, to $284 per month. The Employer argues that, if the top step *sergeants'* wage rate is used as the base for computing the new longevity premium, the result would be equally excessive. At five percent, which is the maximum the arbitrator allowed in her Award, the 25th-year premium for a sergeant would be $268 per month, or 114 percent more than the current premium amount that County sergeants receive, and $71 more than the average monthly longevity premium paid by the comparable jurisdictions.

If, however, the top step *deputy* rate is used as a base for computing the sergeants' longevity premium, the result is much more reasonable, says the Employer. The 25th-year premium is then only $21/ month more than the average longevity premium that is paid to sergeants in the comparable jurisdictions in the 25th year.

IV. ANALYSIS

The Guild's proposal for changing the long-standing flat-dollar-based longevity premium schedule in the parties' collective bargaining agreement, provided as follows: *"Employees shall be entitled to a longevity premium **as a percentage of their base wage,** in the following amounts*": [a chart then set forth a proposed ladder of percentages ***"of base wage"***, that ranged from 1% after 5 years to 7% after 24 years]. (Emphasis added). The Guild made no express distinction in its proposal between the *"base wage"* rates of *deputies* and those of *sergeants*. The Employer's proposal, on the other hand, sought simply to retain the status quo, by which the long-standing flat dollar amounts that had

been paid to *all* employees in the bargaining unit (deputies and sergeants alike), after they had served a certain number of years on the force, would not change.

The Guild did not argue in its post-arbitration-hearing brief that the arbitrator should make any distinction between the base wage rates of *deputies* and of *sergeants*, when she analyzed the longevity premium proposals. The Guild's argument focussed exclusively on the need to increase the existing schedule of premiums, and relied on the rationale that the old schedule had reduced in value and had become inadequate to compensate "*experienced . . . senior officers*" and ensure that they would continue working for the County. See Guild's Post-Arbitration Brief at pages 23-25. By using the word "*officers*", the Guild seemed to treat deputies and sergeants alike. No argument was raised that related to the difference in *rank* between deputies and sergeants. Specifically, the Guild did not contend that the arbitrator should apply different wage bases when computing the respective longevity premiums of deputies and sergeants.

The Employer's post-hearing brief, on the other hand, did offer some guidance to the arbitrator on how she might compare the parties' longevity premium proposals and determine their comparability with those of other jurisdictions. At page 30, the Employer provided a detailed chart in which the Guild's existing flat-dollar longevity premium schedule was set forth in column two. The Employer converted those premiums in column three to ***"percent[ages] of 1999 top base deputy wage after 5 years ($3902 per month)"***. (Emphasis in original). The chart also showed, in its fourth column, what ***percentage*** the Guild had proposed as replacement amounts for each of the current longevity premiums, at various terms of service. There was no reference to "*sergeants*" or to the "*top step sergeants wage*" anywhere in the Employer's chart.

In its Reply brief, the Guild did not object to the Employer's suggested manner of computing the Guild's proposal for longevity premiums in its brief (that is, by using "*percent[ages] of 1999 top base deputy wage*"). Also, the Guild did not clarify that it had a *different* intent as to how its proposal for the new premium schedule should be computed. For instance, it failed to state that its proposal should be computed on the top step deputy rate for ***deputies,*** but on the top step sergeant rate for ***sergeants,*** which is the distinction that the Guild seeks in this request for clarification. Finally, the Guild did not address at any time what it now calls an "*industry standard*" regarding the computation of longevity premiums.

Finally, the arbitrator has reviewed the evidence that was offered at the hearing regarding the computation of longevity premium schedules in the County's comparable jurisdictions. That evidence fails to persuade the arbitrator that there is a clear "*industry standard*", as alleged by the Guild, with respect to the construction and application of longevity premium provisions among the comparables.[2]

The arbitrator relied in part on the chart that the Employer provided in its brief, when she analyzed the parties' respective proposals. In discussing the Guild's proposal for a seven-percent premium to replace the existing 25th year premium of $125 per month, for example, she computed 7% of the *top step monthly deputy wage* that had been awarded for the year 2000 ($4057/month) and found that the resulting figure would be

[2] The evidence tends to show that the parties routinely negotiate a specific "base wage" on which their longevity premiums will be computed. For example, Kitsap County references its longevity premiums as a percentage of the "*annual salary*" of *each* employee. See Guild Ex. No. 16, p. 11-12. Also, Thurston County's "Performance Premium" provision contains express language requiring that it be computed on "*actual base salary; i.e. deputy receives premium on deputy pay, sergeant premium on sergeant pay.*" See Guild Ex. No. 17, page 20. Similarly, the Yakima County labor contract requires that longevity premiums be computed as a percentage of "*base pay, regardless of rank or position*". See Guild Ex. No. 19, p. 28. There does not appear to be any automatic "industry standard" on which the parties rely.

"excessive", at $284 per month. She wrote in her Award, at page 41, "*the requested 7% premium [would amount to] . . . an increase of 127% over the current premium of $125/month.*" In reaching that conclusion, she assumed that the longevity premiums would be the *same for all employees* who reached the level of 25 years, regardless of their rank, as they had been under the predecessor contract. Then, having considered the percentage-based premiums that were set forth in the collective agreements of several comparable jurisdictions, the arbitrator granted a maximum of five percent after 25 years of service, as a reasonable and relatively comparable longevity premium.

SUPPLEMENTAL AWARD

For the reasons stated in the foregoing Analysis, the arbitrator hereby clarifies her Award, dated October 2, 2001, on the Longevity Premium issue, at page 42, as follows:

The longevity premium schedule, as set forth in Article XX of the parties' collective bargaining agreement, shall be computed as a percentage of the top step deputy wage rate and shall be based upon the number of years that the officer has worked for the County Sheriff's Department, in any rank within the Deputies' bargaining unit.

Dated this 11th day of December, 2001.

Sandra Smith Gangle, J.D.
Arbitrator