IN INTEREST ARBITRATION BEFORE
MICHAEL E. CAVANAUGH, J.D.,
NEUTRAL ARBITRATOR
ERICA SHELLEY NELSON, ESQ., UNION PANEL MEMBER
URSULA A. KIENBAUM, ESQ., EMPLOYER PANEL MEMBER

COWLITZ COUNTY,	:	
	:	INTEREST ARBITRATION
Employer,	:	DECISION AND AWARD OF
	:	THE NEUTRAL CHAIR
and	:	
	:	PERC NO. 26942-1-15-0670
COWLITZ COUNTY CORRECTIONS OFFICERS GUILD,	:	
	:	
Union.	:	
	:	
	:	

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I. INTRODUCTION

This is an interest arbitration proceeding convened under RCW 41.46.430 to establish the terms of the parties' 2014-2016 collective bargaining agreement. By letter dated January 8, 2015, PERC Executive Director Michael P. Sellars found the parties to be at impasse in their negotiations and thus certified 22 issues for interest arbitration, one of which was subsequently suspended. Exhs. U-3 and U-4. At a hearing conducted in Kelso, Washington on November 2-5,

2015, the parties had full opportunity to present evidence and argument on the certified issues,[1] and counsel submitted written post-hearing briefs on or about January 15, 2016. The Interest Arbitration Panel met on March 10, 2016 in Seattle for a preliminary discussion, and the Neutral Chair then began analyzing the issues in detail, drafting a proposed Interest Arbitration Decision and Award. On or about April 10, 2016, the Chair notified the partisan arbitrators by email of his tentative conclusions on the central issues between the parties, i.e. wages and health insurance contributions, and asked if the parties wished to negotiate the remaining issues with that information in hand. The parties' efforts in that regard proved unsuccessful, however, and the Neutral Chair then finished a draft award which he circulated to the partisan arbitrators for their comments and suggestions on or about June 10, 2016. On June 17, the Panel conferred by telephone and discussed the parties' respective suggestions and concerns. Having now taken those matters into account, in light of the entire record, the Neutral Chair is prepared to render the following Award.[2]

II. Background

A. The Jail

Cowlitz County, a political subdivision of the State of Washington, operates a jail employing approximately 40 corrections officers working under this CBA. Six Sergeants (members of a different bargaining unit) and three Captains (supervisory employees) are also assigned to the jail. The facility operates 24/7/365 with individual CO teams working on either

[1] The proceedings were transcribed by a certified court reporter, and the parties arranged for the Arbitration Panel to receive copies of the transcript.

[2] For the parties' convenience, I have appended a Table of Contents to the end of this Interest Arbitration Decision and Award at Pages 53-54. The interest arbitration awards on the individual issues before the Panel are set forth in the body of the Decision and Award and each is labeled "**AWARD**." Each AWARD follow a discussion of the issue to be decided.

12-hour shifts[3] or the more traditional 8-hour shifts. Shifts are periodically bid by seniority. The jail averages a little more than 80% of capacity, i.e. a daily count of 291 inmates in a correctional facility with a "design capacity" of 356. Exh. E-13. While the number of inmates has remained relatively constant over the last few years, the number of CO's has been reduced[4] as part of the County's efforts to control the expense side of its operations. The County contends that expenses are rising faster than the rate of the post-recession growth in revenues. In addition, under current law, the County has limited options for increasing revenue.[5]

B. Statutory Provisions

The Legislature has declared an explicit public policy that must govern the Panel's deliberations:

> **RCW 41.56.430 - Uniformed personnel—Legislative declaration.**
> The intent and purpose of chapter 131, Laws of 1973 is to recognize that there exists a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

[1973 c 131 § 1.]. Toward these ends, the Legislature has also provided specific criteria to be applied:

[3] The parties agreed to try the 12-hour shifts according to terms embodied in a 2012 Supplemental Memorandum Agreement appended to the CBA. Under the terms of that MOA, either party may choose to withdraw from the 12-hour shifts at any time. County witnesses testified that the County's willingness to continue 12-hour shifts is dependent on several conditions, perhaps the most important of which for these purposes is that it not increase costs to the County.

[4] The Guild contends that this factor alone justifies an increase in wages irrespective of the analysis of wages and working conditions of comparable jurisdictions, i.e. in recognition of the fact that the same amount of work is being performed by a reduced complement of corrections officers, the employees should receive greater compensation.

[5] The County's general fund revenues primarily flow from property taxes which may not be increased beyond 1% per year, which the County argues is an insufficient growth rate to maintain pace with its increased costs.

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

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

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

(b) Stipulations of the parties;

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

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

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

(2) For employees listed in *RCW 41.56.030(7) (a) through (d),[6] the panel shall also consider a comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States.

RCW 41.56.465.

C. Comparator Jurisdictions

In implementing the statutory provisions quoted above, the starting point for analysis must be the selection of a list of appropriate jurisdictions with which to compare the wages and working conditions of the Cowlitz Corrections Officers. While the statute, under appropriate circumstances, would sanction the use of comparables "of similar size on the west coast of the United States," RCW 41.56.465(2), neither party has suggested ranging so far afield to find appropriate jurisdictions. Rather, each has suggested a list of five or six Washington Counties of "similar size." They agree that four of those Counties should be utilized by the Panel: Clallam, Grays Harbor, Lewis, and Skagit Counties. The Guild asserts that Island and Benton Counties should be added to the agreed four, while the County suggests instead a different Eastern

[6] Now codified as RCW 41.56.030(13) (includes security officers employed in a correctional facility operated by a County, such as Cowlitz County, with a population exceeding 70,000).

Washington jurisdiction, i.e. Grant County, to round out the list. Each party objects to the other's proposed additions to the agreed comparables.[7]

My own view, frankly, is that the most persuasive comparables would be found in Western Washington Counties similar in size to Cowlitz. Eastern Washington is a substantially different labor market, a different housing market, and a different economy. But the Legislature seems to have had a different view of the matter, and thus I find it difficult to categorically exclude Eastern Washington jurisdictions, especially when both parties have proposed to add at least one jurisdiction from across the Cascades to the list.[8] In the end, I do not find the parties' objections to each other's proposed Eastern Washington Counties here to be persuasive, and thus I will utilize all seven of the proposed jurisdictions in my analysis. My reasoning follows.

Taking Benton County first, I agree that Benton is larger than Cowlitz, but not so large as to be inappropriate for comparison. In evaluating population for comparability, i.e. implementing the "similar size" criterion, I customarily use a screen of 50% to 200% of the subject jurisdiction—that is, jurisdictions half the size or twice as large as the subject will be within the appropriate range. In my view, the alternative sometimes used by other interest arbiters, i.e. 50%

[7] For example, the County notes that Interest Arbiter Tim Williams rejected Island County in a previous Cowlitz County interest arbitration, treating it as an outlier given that its major employer is the federal government (Whidbey Island Naval Air Station) and because of its proximity to King County's more vibrant economy. The County further contends that Benton County is far larger than Cowlitz in population, as well as the other relevant statistical measures, and thus is not an appropriate comparator. The Guild contends, on the other hand, that Benton County should be added precisely because it is larger, i.e. it adds "balance" to a list of comparables in which Cowlitz would otherwise be unfairly compared almost exclusively to smaller jurisdictions. For its part, the Guild objects to the County's suggestion that Grant County be added to the list of comparables because it is less dense, has an agricultural economy, and falls within a very different labor market far distant from Cowlitz County. I will analyze these contentions in detail next.

[8] In authorizing the consideration of employers of similar size on the west coast, it is entirely possible, of course, that the Legislature was thinking of large public employers such as the City of Seattle or King County for which it would be difficult, if not impossible, to find a list of meaningful and fair comparators without considering employers across the Cascades and/or out-of-state. The statutory language is not limited to those somewhat unique situations, however.

to 150%,[9] illogically results in "one-way comparability." That is, if jurisdiction A is half as large as jurisdiction B, A would properly be considered an appropriate comparable for B under the 50% to 150% standard. If *A* were the subject jurisdiction, however, B would *not* be considered an appropriate comparator for A because B exceeds A in size by more than 50%. That result makes no sense to me. If A and B are appropriate comparables when *B* is the subject, how can an interest arbitrator refuse to treat them as appropriate comparables when *A* is the subject? In other words, if they are "comparable" in one direction, how could they cease to be "comparable" in the other? Consequently, I cannot find that Benton County is too large to be considered here. In addition, I note that Benton County has been used as a comparable in prior Cowlitz interest arbitrations. In fact, the record establishes that Benton County was a *stipulated* comparator in Interest Arbiter Schurke's 2015 Award between the County and the Cowlitz Deputies Guild.[10] *See*, Schurke Award at 4, Exh. E-4. For both reasons, I find Benton County to be an appropriate comparable here as well.

Grant County also falls within the appropriate population range, roughly comparable in population (just slightly lower) than Cowlitz. True, Grant County is located in Eastern Washington and is more rural than Cowlitz. It also has lower home prices. But these differences can be taken into account in assessing the "meaning" of the aggregate comparisons between the

[9] While there is disagreement on the appropriate upper end of the range, there seems to be general acceptance within the labor-management community and among interest arbitrators that 50% is the appropriate population cutoff for statutory comparables at the lower end.

[10] As an aside, I note that the Cowlitz Deputies contract is also an appropriate *internal* comparator here. There is substantial similarity between the work of Deputies and Corrections Officers. In fact, in many jurisdictions, including all four of the agreed comparables here, corrections employees are organized as an administrative division within the County Sheriff's Office. *See*, e.g. Exhs. E-21 (Clallam), E-23 (Grays Harbor County), E-24 (Lewis), and E-25 (Skagit).

comparables and Cowlitz County.[11] Nor would the designation of Grant County as an appropriate comparable here be without precedent in a Cowlitz County interest arbitration, including very recent proceedings. *See*, e.g. Schurke Award at 4. Consequently, I find Grant County to be an appropriate comparable as well, especially because it provides some balance in the Eastern Washington component of the comparability analysis.

With respect to Island County, the appropriate statistical measures fall within the 50%/200% range, and while I note the differences between Cowlitz and the somewhat more prosperous Island County (e.g. Island County's higher home prices and greater per capita income), I also find that like Cowlitz, Island County is situated within commuting distance of a major metropolitan economic center (Seattle-Everett),[12] just as Cowlitz is located within commuting distance of Portland-Vancouver.[13] In my view, these similar labor-market considerations make Island County an appropriate comparable here.[14]

In sum, to the extent comparability informs the analysis, I will utilize all seven of the comparables the parties have proposed.[15]

[11] In my view, the statistical averages of an appropriate list of comparables, while no doubt providing the interest arbiter with a rational and "objective" basis of comparison, are not intended to establish an equation from which appropriate wages and working conditions can be derived with mathematical exactitude. If that were the case, the best "interest arbitrator" would be a computer. Instead, statistical computations simply reflect *one* of the elements the Panel is directed to consider in arriving at an award consistent with the overall policies of the Legislature.

[12] Residents of Camano and Whidbey Islands, particularly at the northern ends of those islands, are within commuting distance by car of Everett and Seattle, as well as Bellingham (Whatcom County). Those residing more toward the central and southern end of Whidbey Island, of course, can commute to Everett-Seattle via the Clinton ferry to Mukilteo where other public transportation, including both bus and rail, is available.

[13] Because employees (and potential employees) of both Cowlitz and Island Counties could choose to commute to metropolitan areas with greater resources (and thus to seek employment with employers able to provide higher wage rates and superior benefits), Island County adds an important factor to consider in fixing fair wages and working conditions for Cowlitz corrections employees.

[14] To the extent my highly respected NAA colleague Tim Williams found proximity to King County to be a disqualifying factor as to Island County, I respectfully disagree.

[15] As an aside, I note that several of the County's exhibits included wage and benefits comparisons (at least for 2014 and 2015) based on the average of "all comparables," i.e. all seven jurisdictions that were on the table. *See*, e.g.

III. The Issues

In proceeding to analyze the parties' proposals, I decided to consider first the issues the parties deem most important, i.e. wages, health insurance, and the issues arising under the Supplemental Agreement for 12-hour shifts. Following my analysis of those issues, I utilized the Guild's brief as a checklist of the remaining issues, proceeding in the order they appeared in the Guild's brief, then double-checked the issues discussed in the County's brief to be certain I had not missed anything. It appeared to me that there were a few issues identified in the parties' final proposals, e.g. those indicated by strikethrough (deletions) or underlining (new language) that neither party discussed in the briefing. My general approach was to not award any proposal that was unsupported by argument in the brief or evidence at the hearing.

A. Wages

The Guild proposes across-the-board wage increases of 1.2%, 2.2%, and 2.5% over the three years of the contract, derived from 100% of CPI-W.[16] The County proposes a wage freeze for 2014 and 2015, and a flat 2.0% increase in 2016. These wage increases proposed by the County were not driven by any cost of living index, but rather by the County's analysis of the wages of the comparable jurisdictions. After carefully considering these proposals in light of the

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Exhs. E-55 through E-58 and E-81-82. For reasons explained later, these analyses needed to be updated to take account of post-hearing developments in Island County, but they were very helpful—especially when provided in Excel spreadsheet format that saved the Panel from the necessity of manual computations or from having to re-create the spreadsheets from scratch in order to manipulate the data.

[16] At the more traditional 80% of CPI, these increases would be 0.96%, 1.76%, and 2.0%, for a total of 4.72%. I note that the 80% of CPI approach recognizes the often substantial cost of Employer-provided health insurance and other benefits, but here the Guild asks both for 100% of CPI *and* substantial increases in the County's share of health insurance premiums.

statutory factors, I find that flat across-the-board increases of 1.0%, 1.0%, and 2.0% are appropriate.[17]

1. General Considerations

To set the stage for describing how I arrived at that conclusion, I begin with some general considerations.

a. methodology

In analyzing the parties' respective wage proposals, I note that the Guild has focused on total compensation analyses that include insurance benefits (while at the same time helpfully providing alternative forms of analysis for the Panel's use). *See*, e.g. Guild Exhs. III.A.5, 10, 15, 26, 31, and 36 ("Net Family Compensation" for each contract year for both the Guild's and the County's proposed comparables).[18] The County's analysis, by contrast, focuses on "net hourly wage" (total compensation, excluding insurance, divided by hours worked),[19] but also provides total monthly wage as a secondary analysis. *See*, e.g. County Exhs. 55-58 (all comps) and Exhs. 99-110 (Guild and County comps).

[17] Thus, I award total base wage increases of 4.0%, 84.7% of the increases that would be indicated following the traditional 80% of CPI approach (4.0% instead of 4.72%)—although I note that the Guild's analysis relied on CPI data for Seattle-Bremerton, where cost of living increases during the relevant period were concededly higher than in Cowlitz County.

[18] "Net Family Compensation" includes the County's flat (and capped) insurance contributions in addition to total monthly wages to reach a total compensation figure, and then *deducts* the amount employees must pay for insurance in addition to the County's agreed share, thus arriving at a "net compensation" figure. The Guild's contention is that the employees' share of health insurance premiums, in particular, has risen faster than the County's capped flat contribution, thus effectively reducing total compensation.

[19] As I understand it, however, all unit members, whether on 8- or 12-hour shifts, work the same number of annual hours. Thus, it is unclear to me what the average hourly compensation figure adds to the total monthly wage including base wage, longevity, and educational premium. Consequently, for reasons explained in a moment, I have used the County's total monthly wage calculations in considering the parties' wage proposals. It may be that the net hourly wage calculations will be helpful later in calculating the effect of the Guild's proposals on additional leave for the unit, or for additional wage premiums, e.g. for education, but for present purposes, I will focus on total monthly wage.

While I agree that Employer-provided health insurance benefits are a form of "compensation" that must be considered in arriving at a fair compensation package judged in light of the comparable jurisdictions, it seems to me that, at least when (as here) the Guild has proposed to substantially alter the contractual health insurance benefits,[20] it clouds the picture (and risks double counting) to consider the cost of insurance in the *wage* analysis. That is, if there is a deficit in the compensation package of these employees attributable to less generous employer-provided health insurance than that offered in comparable jurisdictions, that fact might justify a wage increase *or* improved health benefits, but most likely not both.[21] Consequently, I have considered the two issues independently in the first instance.

b. post hearing evidence

In considering what evidence to include in the analysis, I must first resolve a procedural issue. Subsequent to the hearing, each party provided the Panel with additional information potentially relevant to the wage analysis. The County, for example, submitted newspaper accounts of a decision by the Port of Longview not to proceed with a proposed oil refinery and propane terminal,[22] purportedly relevant as a partial reply to arguments the Guild has made to counter the County's asserted "financial responsibility" concerns. That is, at the hearing, the Guild had pointed to some proposed major projects (although not this specific Port of Longview proposal) as likely future revenue generators. Those sources of potential increased revenue, says

[20] The Guild has proposed eliminating the current fixed dollar cap on the County's insurance contributions and to replace that system with a 90%/10% share of the total premiums. The County proposes to retain the cap but raise it by $50.00 per month effective at the beginning of each contract year during the 2014-16 CBA.

[21] It is possible, of course, that a *combination* of wage increases and health insurance improvements would add up to an appropriate total compensation package, but it is preferable in my view to analyze the two issues separately before reaching that conclusion.

[22] *See*, Letter from H. Rubin, counsel for the County, dated March 3, 2016 (with attachments).

the Guild, belie the County's contention that it faces dire economic circumstances—specifically, that expenses seem destined to continue to grow faster than revenue.

On the other side, the Guild submitted materials, including an affidavit, setting forth the details of a tentative contract settlement reached between Island County and the Corrections Guild there, a TA reached subsequent to the end of the hearing in this matter. As noted, Island County had been proposed by the Guild as a comparable (and I have now determined, in fact, that Island County should be considered as a comparator). Therefore, says the Guild, the actual settlement in Island County should be utilized in the comparability analysis, rather than what turned out to be inaccurate "projected settlement" data used in the analyses previously presented.[23] The County objects to consideration of the Island County materials reflecting developments subsequent to the close of the hearing.

Neither party disputes that the statute, in RCW 41.56.465(1)(d), contemplates the Panel's consideration of *some* post-hearing developments. They disagree, however, about the sorts of materials regarding "changes during the pendency of the hearing" that may be submitted. In the end, I do not believe, as essentially argued by the County, that the Legislature intended to limit the Panel's consideration of post-hearing matters to changes in the three issues specifically identified in subsections 1(a) through (c) of the statute, i.e. the Employer's statutory authority, stipulations of the parties, and changes in the cost of living. Instead, while it is clear the statute *directs* the Panel to consider post-hearing changes of the three specified kinds, I find nothing in the language that *prohibits* the Panel from considering changes in *other* significant considerations—subject, no doubt, to a fair procedure that preserves the parties' rights to

[23] The Guild had projected 2015 and 2016 Island County wage rates by adding the average percentage wage increases for the comparables who had concluded bargaining for those years as of the time of the hearing. The actual settlement was higher than the average settlements of the comparators.

effectively present their arguments on any such late-arising evidence. Frankly, a holding that the Panel is precluded from considering changes in *any* of the relevant factors it is considering, other than those specifically referenced in RCW 41.56.465(1)(a) through (c), would make no sense. It is difficult for me to imagine, for example, that the Legislature would have intended the Panel to ignore the *actual* wage rates for 2014 and 2015 resulting from a bargaining agreement reached in a statutory comparable jurisdiction, e.g. Island County here, and instead to analyze the issues using former "projections" *known* to be inaccurate at the time of the Panel's final deliberations. Consequently, I do not believe that the statute precludes the Panel from considering late-breaking developments relevant to *any* of the issues traditionally considered to be part of the statutory analysis, including the Island County TA in this matter.

Even if that were not the case, however, at the close of the hearing I had specifically held the record open (without objection from the County) for the Guild to submit materials related to the Island County settlement (which was then anticipated to be imminent). *See,* Tr. at 892-93. That fact, too, supports the Panel's consideration of the current Island County data.[24]

With respect to the County's offered Port of Longview materials, I find them to be admissible, but they are also of limited relevance—and certainly not dispositive in either direction. That is, a major project still in the planning stage in late 2015 and early 2016—especially one likely to be controversial because of potential environmental concerns—will not, as a practical matter, result in economic impacts soon enough to affect the analysis of appropriate wages and working conditions in the 2014-2016 contract now before the Panel. Therefore, the County's materials are unlikely to play a central role in the Panel's decision one way or the other. To the extent further argument might be seen as necessary on these issues, the County's

[24] The Panel thanks the Guild for updating many of its exhibits to reflect the Island County settlement.

letter submitting the materials—and the Guild's email objection—provide sufficient information for the Panel to evaluate the weight, if any, to be given to the abandoned project.

c. "ability to pay" or "financial responsibility"

In addition to arguing that the County's corrections employees receive compensation that meets or exceeds the average of the appropriate comparable jurisdictions (at least for 2014 and 2015, and thus the proposed wage freeze for those years), the County strenuously asserts that it would be "financially irresponsible" to offer (or for the Panel to award) a greater wage increase than its final offer of 0%/0%/2.0%. In a nutshell, the County contends that it is still recovering from what has often been labeled the Great Recession, and its expenses are rising faster than revenue.[25] In addition, the County expects to be required to fund a number of critical and expensive capital projects such as updating the County's information technology systems and addressing a backlog of deferred maintenance on County physical facilities. The County also points to the need to maintain sufficient cash reserves to meet the County's fiscal obligations in the intervals between the County's collection of property taxes, which occur only twice per year.

The Guild, of course, paints a rosier picture of the County's financial prospects, and if necessary, I will delve into that issue during the course of this Decision. For now, however, I limit my comments to some general principles. First, while "ability to pay" is not an express criterion under the statute for considering the parties' economic proposals,[26] something like the

[25] As noted, the County is largely dependent on property taxes which are limited to an increase of 1% per year, plus whatever increases in revenue that might result from additional construction activities that add to assessed valuation.

[26] "Ability to pay" is an express criterion under the statute with respect to several *other* interest arbitration eligible units. *See*, e.g. RCW 41.56.465(4)(a)(ii) (child care workers) and 41.56.465(5)(a)(ii) (home health care workers), each of which provides that the Panel "shall consider" the State's "ability to pay." There is nothing comparable, however, in the statute governing *this* proceeding in which the Employer is a County, not the State. But while "ability to pay" may not be a statutory criterion *per se* for this bargaining unit, for reasons that follow I do not find that the Panel is precluded from considering "financial responsibility" under the "such other factors" branch of the analysis.

related concept of "financial responsibility" fits comfortably within the language permitting the Panel to take into account "such other factors . . . that are normally or traditionally taken into consideration" in collective bargaining. Thus, the County's responsible stewardship of the public treasury is an important consideration in the Panel's deliberations. But while I believe the Panel may consider that aspect of the situation, the burden remains on the County to establish that increases in wages or benefits would be "financially irresponsible" if it seeks to obtain an interest arbitration award substantially below that to be expected from a rational application of the statutory standards governing interest arbitration, i.e. the comparability analysis and the related criteria such as the cost of living.

In other words, if the analysis points to an increase in wages or benefits when Cowlitz corrections employees are considered in light of the wages and benefits provided their peers employed by appropriate comparator jurisdictions (and appropriate internal comparators), and/or by the cost of living and other statutory considerations, then it will not be sufficient for the County to simply argue that it will be difficult to find the money to provide increases, or that other County needs are more pressing, or that the voters have historically been resistant to the tax increases required to fund such awards.[27] No doubt the County must have up-to-date financial technology, and it is likewise imperative that the County's physical assets be restored and properly maintained. But it is also undeniable that the County is obligated to meet its corrections responsibilities, and in operating a jail to meet those responsibilities, it must also comply with

[27] The County notes, for example, that the Cowlitz voters, in 2007, voted down a proposed tax increase of $0.01 to fund law enforcement. That fact does not necessarily mean, however, that the voters would fail to support a tax increase today if necessary to fund jail operations or other significant law enforcement priorities, or to preserve *other* essential County services in light of required increases in compensation for the County's uniformed personnel.

the Legislature's policy directives, including the concept that

> [T]he uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; [and] that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes.

RCW 41.56.430.

In the end, choices between capital improvements and/or better wages and working conditions for employees—or more precisely, how scarce resources should be allocated among the many competing legitimate County needs—are political decisions for the State, the County, and the voters.[28] Shared sacrifice in difficult economic times is important, of course, but the policies enunciated by the Legislature in RCW 41.56.430 require that interest arbitration-eligible (i.e. strike-prohibited) uniformed employees be fairly compensated in order to maintain their "uninterrupted and dedicated service," and that service has been deemed by the Legislature to be "vital to the welfare and public safety" of the residents of Cowlitz County (and beyond). Consequently, while I agree that "financial responsibility" is an appropriate consideration, it is not one that can totally trump what would otherwise be a rational result in interest arbitration.

Finally, there is little, if anything, in the record here (as the Guild has noted) as to the cost to the County of the parties' respective wage and benefit proposals. Instead, the County simply points to $23.8 Million necessary to meet "immediate" County needs on the expense side in the preservation of its facilities, and notes the squeeze created by limits on the County's taxing authority that preclude increases sufficient to keep up with rising costs. In addition, that squeeze may well be exacerbated in the future by the Legislature's efforts to meet its obligations under

[28] The County's arguments seem to suggest that if the voters refuse to authorize tax increases, the County should be judged "unable to pay" increases in wages and benefits that might be awarded by the Panel applying the statutory criteria. While I appreciate the difficult financial constraints to which the County is subject, I find the logic of this argument somewhat problematic—as if the County and its voters are separate legal entities with respect to the rights of interest arbitration-eligible County employees under the statute.

the State Supreme Court's *McCleary* decision (funding of public schools), which will require additional revenue (and/or reductions in expenses) in the billions of dollars State-wide, leaving less room for increases in taxing authority at the local level—and perhaps to the shifting of some of the education burden to the Counties, directly or indirectly. The County's contribution rate for PERS has also increased. In other words, the list of the County's financial challenges is extensive. And in light of these huge amounts on the *expense* side, the County seems to be saying, considered in light of the strict limits in increases on the *revenue* side, there is little or nothing left with which to fund economic improvements for the corrections unit. But this generalized response, in the absence of *specific* cost data, deprives the Panel of one of the key elements of the analysis that would be necessary to resolve a conflict between the demands of the interest arbitration statute and the County's undeniable interest in financial responsibility.

d. internal comparability

In arguing for a wage freeze in 2014 and 2015, the County notes that all County employees faced a wage freeze in those years—except for the Sheriff's Deputies who received 2% in each year from Interest Arbiter Schurke. While the statute does not expressly designate internal comparability as a factor to be considered, interest arbitrators traditionally take that factor into account under the "other factors" portion of the analysis. It makes sense to do so given that the wages (and wage increases) received by one group of County employees can affect the morale and "dedicated service" of others, and that is especially true when the employees perform similar functions and/or work closely together (or at least interact in the course of their work). Thus, the closest and most significant internal comparators here will be the Sheriff's Deputies, for reasons already described, and the Corrections Sergeants[29] who work directly with

[29] The evidence established that the Corrections Sergeants agreed to a wage freeze for 2014 and 2015. *See*, Guild Exh. III.C.2, Appendix A at 19.

Corrections Officers. The fact that the wages of non-represented County employees were frozen in 2014 and 2015, while not entirely irrelevant, is much less significant, in my view, than a comparison to other uniformed (and thus interest arbitration-eligible) employees.

With the foregoing observations as background, I turn to the specific wage issues before the Panel.

2. Wage Analysis

The Guild proposes that Appendix A of the Agreement be modified to provide for raises in the base wage equal to 100% of the prior year June-to-June CPI-W, Seattle-Tacoma-Bremerton average, in each contract year, resulting in increases of 1.2% in 2014, 2.2% in 2015, and 2.5% in 2016. The County, as noted, offers flat-percentage increases (unrelated to a cost-of-living index) of 0% in 2014, 0% in 2015, and 2.0% in 2016.[30]

a. <u>2014 wages</u>

The parties' respective total monthly compensation reports for 2014 show that Cowlitz County meets or exceeds the average of the comparables at all levels, i.e. from 5 years to 25 years (at 5 year increments), and irrespective of whether an officer has a degree.[31] *See*, Exh. E-55-56; Guild Exh. III.A.1.[32] At first blush, that fact might be seen as supporting the County's

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[30] The County also notes that it is undisputed that increases in the cost of living in Cowlitz County have been lower than the increases in the Seattle-Tacoma-Bremerton index, as well as that the parties have never based wage increases on 100% of an index. Because I find that flat wage increases are appropriate, however, rather than increases tied to CPI-W, I need not analyze these issues in detail.

[31] Because the Cowlitz contract does not contain educational premiums, officers without a degree receive the same wages as their degreed counterparts. Thus, the compensation of Cowlitz no-degree CO's tends to exceed the wages of their comparators in jurisdictions that do offer educational premiums, and consequently I have focused on the degreed officers in the comparability analysis.

[32] The County's exhibits cover all seven comparables at 5-year increments from year 5 to year 20, and by my calculation demonstrate that Cowlitz total monthly compensation exceeds the average of the comps at those increments by 4.3%, 2.4%, 2.5%, and 3.6% (AA degree) and by 3.4%, 1.5%, 1.7%, and 1.9% (BA degree). The Guild's exhibit, using only the Guild's comps (i.e. excluding Grant County), demonstrates a similar conclusion, albeit by smaller positive percentage differentials in the County's favor. The Guild's exhibit does show that the

proposed wage freeze for 2014, but I find that other statutory factors nevertheless support an across-the-board increase of 1.0%.

First, as the Guild points out, historically Cowlitz County has been ahead of the comparables in wages, and to accept the County's wage freeze proposal would erode that historical advantage.[33] Moreover, in reported uniformed services cases arising in Washington, interest arbiters almost never awarded a wage freeze for 2014 (when the economic recovery was underway), in contrast to the somewhat more cautious approach for earlier years of 2008-2013. *See*, Guild Exh. III.C.5. Thus, a wage freeze for 2014 for this unit would be inconsistent with the trend of interest arbitrators to grant wage increases of at least some kind as the economy has improved—in part, no doubt, because of small or non-existent increases during the Recession—even if those improvements have failed to bring the economy back to its pre-recession heights. Similarly, the cost of living increased in 2014, albeit modestly (*see*, Exh. E-31),[34] and thus freezing the wages of these employees would constructively amount to a significant wage decrease. In my view, even if the other statutory criteria would point to no increase, at least some portion of the inflationary erosion of wages should be awarded. Finally, all of the comparables received at least a 2.0% increase in 2014. That fact also supports an increase of some kind.[35]

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average of the Guild's comps slightly exceeds Cowlitz total monthly compensation for 25 year officer with a BA. The County points out, however, that only one member of the unit exceeds 25 years of service, and she does not possess a BA. *See*, Exh. E-6 (Clement).

[33] I agree that the historical compensation advantage of Cowlitz CO's is an appropriate consideration, although that factor does not explicitly appear in the statute. If nothing else, however, that form of analysis is related to the statutory factor of the cost of living, i.e. comparing compensation levels to increases in CPI. I do not agree, however, with the implied suggestion that the statute requires that a compensation differential, once established, must be maintained in its entirety going forward.

[34] I note that even using the Employer's suggested CPI-W Index, inflation in 2014 was 2.0%, double the wage increase I will award for that year.

[35] Even with those more generous increases in the comparable jurisdictions, this unit, as noted remained ahead. *See*, e.g. footnote 31. That fact does not necessarily mean that Cowlitz Corrections employees should receive nothing, however, while their peers receive a 2.0% increase.

Turning to the most persuasive internal comparators, i.e. the interest-arbitration-eligible Cowlitz Corrections Sergeants and Corrections Deputies units, I note that the Deputies were awarded 2.0% for 2014 by Arbiter Schurke, and while the Sergeants agreed to a wage freeze for that year, the *average* increase for the two other units for 2014 was 1.0%, precisely what I will award these employees. In light of these factors, considered in the context of the general considerations previously outlined, I find that an across-the-board base wage increase of 1.0% is appropriate for 2014.

b. 2015 wages

For 2015, using the County's total monthly compensation exhibits (Exhs. E-57 and E-58) for all comps (and updating them to reflect the 4% increase for Island County in 2015 and re-averaging), I find that the total monthly compensation for Cowlitz, even with no increase as the County has proposed, comes close to meeting the average of all comps judged at five-year increments (5, 10, 15, and 20 years) and analyzing the AA and BA officers separately.[36] When analyzing the County's proposed 2015 wage freeze while taking account of the 1% across the board increase I have awarded for 2014, the positive differences for Cowlitz employees increase—at least for the AA degree officers, i.e. at 5, 10, 15, and 20 years with AA, Cowlitz is above the all-comparables average by 3.5%, 2.7%, 1.9%, and 1.6%. For the same intervals for officers with a BA, however, the differences are just 1.7%, 0.4%, 0.6%, and 0.9%.

[36] For officers with an AA degree, the County's offer of a 2015 wage freeze continues to result in total monthly wage that is slightly greater than the average of all comps at each of the five year increments analyzed: 5 years ($4583/$4541); 10 years ($4675/$4665); 15 years ($4720/$4704); and 20 years ($4766/$4739. These differences are so small, however, as to be statistically insignificant. For officers with a BA, Cowlitz County exceeds the average of all comps at 5 years ($4583/$4530), but falls slightly short at 10 years ($4675/$4702), 15 years ($4720/$4741), and 20 years ($4766/$4772). Again, these compensation deficits are relatively insignificant, however, except perhaps at 10 years.

The wage comparisons for officers with a BA degree justify an additional wage increase in 2015 to maintain at least a portion of the historical competitive advantage over the comparables.[37] I also note that the wage advantage over the comparables for officers with an AA is reduced in 2015 at three of the four intervals, even when the 1% wage increase I have awarded in 2014 is included in the analysis (i.e., 5 years-4.3% to 3.5%; ten years-2.4% to 2.7%; fifteen years-2.5% to 1.9%; and 20 years-3.6% to 1.6%). Particularly in the outer years, these figures also justify an increase. In addition, the internal comparability factor discussed earlier calls for something of an increase, i.e. the two closest internal comparables received an average increase of 1% in 2015 because of Arbiter Schurke's award of 2% to the Deputies. And while inflation might have been tamed in 2015 (perhaps because of a dramatic drop in the price of oil which has since rebounded somewhat and thus may not be a long-term factor in mitigating the level of inflation), it is also the case that these employees did not receive an increase fully commensurate with the CPI-W in my award for 2014. Thus, some adjustment is necessary here, too, in order to prevent their purchasing power from slipping farther behind. Taking all these factors into account, I find than an across-the-board increase of 1.0% is appropriate for 2015.

c. <u>2016 wages</u>

I have analyzed the relative monthly compensation of Cowlitz corrections officers using the Guild's spreadsheets on projected 2016 monthly wage for the Guild comps, adding data for Grant County,[38] and replacing the Guild's data on Cowlitz (which had projected the Guild's proposed wage increases over the life of the contract) with my own data, beginning by using the

[37] A different approach might be to grant an educational premium for officers with a BA, but for reasons described later, I chose not to utilize that more targeted option.

[38] I added Grant as having a 2.5% increase in 2016 based on the average of the jurisdictions with completed contracts, including Island County.

wages at the end of 2015 after my award of 1% each in years 2014 and 2015.[39] The resulting data indicate that even with a total wage increase of 2.0% in the first two years of the contract, the members of this unit would trail the average of their comparators by percentages of up to 1.70% at the 25 Year AA level.[40] Some of the levels, of course, exceeded the average of the comparators, with the highest difference reflected in the 5 Year No Degree data point (+1.34%), but overall, with no increase in 2016, the employees in this unit would trail the average of their comparators in 11 of the 15 data points analyzed. While some of the compensation deficits are relatively small, they speak to continuing erosion, in the absence of an increase for 2016, of the advantage in wages Cowlitz corrections employees once enjoyed.

To determine an appropriate level of 2016 increase, I first analyzed the effect of another 1% increase. *See*, Attachment 2. A wage increase at that level brought Cowlitz closer to the average of the comparables, although not at every interval and not necessarily at levels that take proper account of this unit's historical wage advantage over the comparators. I also note that a 1% increase would not be commensurate with the more recent settlement trends, nor would it make up for the lost purchasing power of prior raises (including the 2014 raise in this Award) that failed to match inflation.[41]

[39] In other words, the first analysis looked at the effect of no further increase for 2016 for corrections officers after the 1%/1% for 2014 and 2015.

[40] *See*, Attachment 1.

[41] As noted, Cowlitz employees without a degree tend to fare better than the equivalent employees of their comparators. As I understand it, this Employer views job experience as more important to good performance than formal education. Other jurisdictions apparently view the matter differently, however, and the result is that the comparables tend to compensate their AA and BA officers more generously than Cowlitz (and their non-degree officers less generously). While that situation might argue for an educational premium, which the Guild has proposed and which this CBA lacks, given the County's view that formal post-secondary education is not as important as experience, as well as the absence of an education premium in the prior contracts negotiated by the parties, I choose to deal with the AA/BA deficit with across-the-board wage increases instead. That approach is necessary because most of the comparables (perhaps most *corrections employers*, whether comparable or not to Cowlitz) recognize and reward added education, and thus Cowlitz employees with a degree might choose to take

Finally, I analyzed the effect of a 2% raise for 2016. *See*, Attachment 3. At that level, Cowlitz employees match or exceed their peers at each level except for 25 Years BA (a 2% increase would leave the 25 Year BA employee—if there were one in this unit—0.58% behind the average of the comps). While the positive wage differentials resulting from a 2.0% increase range as high as 3.25% above the comps at some intervals (e.g., 5 Year No Degree) and a number fall between 2% and 3% (i.e., 10 Year No Degree, 15 Year No Degree, and 20 Year No Degree), at other levels the differences are much smaller. For example, three are below 1% (10 Year BA, 15 Year BA, and 25 Year AA), but at least with a 2.0% increase, those employees with advanced formal education are on the same level as their peers with degrees. The clear trend among the comparables, of course, is for at least a 2.0% raise in 2016. Arbiter Schurke awarded that amount to the Cowlitz Deputies, a close internal comparable to the Guild. Island County, subsequent to the hearing in this matter, reached agreement with its corrections employees for a 3.0% increase for 2016 after having agreed on a 4.0% increase in 2015. Declaration of Dwayne Evans at 2. Even among the jurisdictions proposed as comparables by the County itself, the clear trend is for wage increases of at least 2.0% in *each* of the years 2014, 2015, and 2016. *See*, Guild Exh. III.C.2.

Therefore, after carefully considering the evidence, I have determined that Cowlitz Corrections Officers should receive a 2.0% across the board increase for 2016.[42] While I have been sympathetic to the County's financial responsibility concerns—thus the award of 1% across-the-board increases for both 2014 and 2015, less than the increases the comparables'

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their education to an Employer that values additional education and is willing to pay more for it than Cowlitz County.

[42] While the data conceivably could have supported a slightly higher 2016 wage increase, it was important, in my view, to preserve some of the County's limited financial resources to address the critical health insurance issue. As noted, the Employer contribution to the cost of insurance is also an element of overall employee compensation.

employees have received—I believe the statute requires that financial responsibility concerns be balanced against what is fair to interest arbitration-eligible employees, as well as what is required to "promote" their "dedicated and uninterrupted public service." When employees see their peers rewarded with appropriate wage increases after years of doing their part by accepting less in difficult economic times, they can hardly be expected to continue to provide dedicated and uninterrupted service if they are left behind as the economy improves—and that is particularly the case when, as here, the Employer has reduced the number of corrections officers, but has asked those who remain to accomplish the same amount of work.

AWARD:

With respect to base wages, I award across the board increases of 1.0% for 2014, 1.0% for 2015, and 2.0% for 2016 to be incorporated into Appendix A.

B. Other Wage Issues

1. Longevity Pay

The Guild proposes added longevity pay at 25 and 30 years of service. These steps, says the Guild, are important for retention of long-term employees, as well as in providing recognition for invaluable experience ("pay for performance"). Most of the comparables provide more generous longevity pay steps than Cowlitz, contends the Guild, and internally, the Corrections Sergeants, with whom corrections officers work closely, receive greater longevity pay. The County responds that longevity pay is neither necessary (there is no demonstrated retention problem) nor fiscally prudent. Thus, the County asks for no change in the language.

I decline to award additional longevity pay steps. I agree that the evidence does not establish that the County has a current retention problem in the corrections officer position. In addition, however, I note that the wage analysis above included longevity pay in the monthly

compensation figures used to compare Cowlitz with the comparables. Thus, to the extent there might be a deficit in that form of compensation, it has been factored into the overall wage and benefit increases already awarded.

AWARD:

No increases in longevity pay are awarded.

2. Education Premiums

The Guild proposes an educational premium of 1% per month for officers with an AA Degree, and 2% per month for officers with a BA. The proposal is supported, says the Guild, by "industry standards" as well as comparability. According to the Guild, law enforcement, including corrections, requires an increasingly well-educated and culturally-aware workforce given the complexity of the tasks and the diversity of the people likely to be encountered. The County, on the other hand, says experience, rather than formal education, is the most important ingredient in the making of a good corrections officer. There is no evidence, says the County, that the 70% or so of Cowlitz officers without a degree are lacking the skills necessary to be just as effective as those with a degree.

I agree that educational premiums are common, although not universal, in corrections. Not all of the statutory comparables here, for example, utilize that approach. Nor was the evidence at the hearing compelling as to why officers with a degree should be more highly valued than those without, at least by Cowlitz County. Several witnesses talked about the importance of communications skills, hard work, ability to be on time, and being ethical and honest as key attributes of a good officer. None of those, save perhaps communications skills, might be enhanced by formal education beyond high school.[43] One officer, a Guild witness,

[43] One might well wonder whether familiarity with the language of the 'street,' rather than the college campus, might be just as valuable a "communications skill" in corrections work.

testified that new officers with a degree might pick up report writing skills a little more quickly than those without, perhaps a communications skill for which post-secondary education might be helpful, but he conceded that even those without a degree learn to write good reports within a handful of years.

Most importantly, however, I note once again that educational premiums—to the extent applicable in the comparator jurisdictions—were part of the monthly wage analysis I used to develop my award as to across-the-board wage increases. Thus, to the extent the lack of educational incentive pay at Cowlitz Corrections has disadvantaged officers in their pay, that factor has already been taken into account. A fundamental change in compensation philosophy, moreover, should be negotiated by the parties, not imposed by an interest arbitrator.

In sum, the evidence does not support an award of educational premiums at this time.

AWARD:

I do not award the Guild's proposal on educational premiums.

3. Increase in Shift Differential (Article 18)

The Guild proposes to increase the shift differential for hours worked between 1800 and 0600 (6:00pm to 6:00am) from $0.50/hr. to $1.00/hr. In support of this proposal, the Guild cites the well-known effects of shift work on family life and on officer health and safety. I agree that these important effects justify serious consideration of an increase in the shift differential, but an analysis of the comparables demonstrates that Cowlitz is already ahead of its peers. Five of the comparable jurisdictions, for example (including two proposed by the Guild, i.e. Island and Benton), have no shift differential whatsoever. One, Lewis County (immediately adjacent to Cowlitz County to the south) provides a differential of just $0.20/hr. Grays Harbor County provides the most generous differential ($1.50/hr.). This pattern among the comparables simply

does not establish that an increase in the shift differential is compelled by a comparability analysis.

AWARD:

I do not award the Guild's proposal on increasing the shift differential in Article 18.

C. Health Insurance Contributions

I turn next to health insurance contributions, probably the second most important issue, after monthly wages, in this proceeding. Since 2007, the County has provided a capped monthly insurance contribution which covers several kinds of insurance including medical. The cap, which has increased by $50.00 per month each contract year, replaced the prior 95%/5% County-employee split of the total premiums with no cap on either the County's or the employees' share. As of 2013, the cap had risen to $1150 per year, and the County proposes to continue to increase the cap on its historical trajectory, i.e. to increase the monthly cap by $50.00 in each contract year to $1200 for 2014, $1250 for 2013, and to $1300 for 2016. The Guild proposes instead to return to something akin to the former approach that the parties had mutually abandoned in 2007, i.e. to delete the cap and move to an uncapped 90%/10% split based on the full family rate for the County's "Plan O" which is based on the Kaiser 250 and Washington Dental plans. The County responds that the Guild's concerns about the employees' rising share of the cost of health insurance premiums can be adequately addressed through increases in the cap.

The main difference between the two approaches, in my view, is that the cap system transfers the risk of unexpectedly large premium increases from the County (where most of that risk would fall under a premium-split model without a cap), squarely onto the employees, i.e. when the County's contribution has been capped, increases beyond the cap are necessarily borne *solely* by the officers. That is in fact what appears to have been the history between these parties

from 2010 forward both with respect to Kaiser Plans and Premera Plans offered in this unit, i.e. when annual premium increases have been larger than the corresponding annual cap increases, the officers were required to cover the excess, which necessarily lowers the County's overall percentage contribution to the cost of health insurance and increases the share paid by the employees themselves (effectively reducing monthly compensation).

Consequently, taking the Kaiser 500 Plan as an illustration, a County cap that once covered 99.5% of the cost of medical insurance (2010) covered only 89.8% in 2013, the last year the cap increased (pending the resolution of this matter). *Id*. And I note that from 2013 to present, the percentage of the insurance premium covered by the County has continued to decline (although the Guild's exhibits tend to over-dramatize the decline by failing to account for the annual cap increases of $50.00 per month included in the County's offer for each of the years 2014, 2015, and 2016—including those proposed increases would bring the cap to $1300 per month).[44]

Nevertheless, it is clear that increases in the cap have not kept pace with increased health insurance premiums (and with health insurance contributions of the comparable Counties). In addition, there is considerable force to the argument that corrections officers, who serve in a dangerous and stressful occupation, deserve high-quality and affordable medical care for themselves and their families. But that consideration does not necessarily support the Guild's current proposal to move immediately to a 90%/10% split with no cap. Rather, as the County has observed, it may well be possible to address deficiencies in County contributions to insurance coverage by adjusting the cap system that the parties themselves chose in bargaining less than a

[44] The Guild's exhibit reflects a figure of 79.2% County contribution toward the cost of the Kaiser 500 Plan for 2015, but had the exhibit included the County's proposed increases for 2014 and 2015, the County's percentage would actually be closer to 87% (86.7% by my rough calculation).

decade ago.[45] And that is particularly the case when two of the three years covered by this contract, i.e. 2014 and 2015, have already passed, and thus the cap can be set at an appropriate amount with respect to the *known* premium levels for those years.[46] Consequently, I decline the Guild's proposal to replace the cap wholesale.

Turning to the analysis of how the cap might be appropriately adjusted, I note that the County offers some 16 different health insurance options with different individual premiums. Thus, the task of finding an appropriate across-the-board benchmark against which to judge the adequacy of the County's proposed cap increases presents some difficulty. In its proposal for a 90%/10% split, however, the Guild chose the full-family County Plan O, tied to the Kaiser 250 Plan and Washington Dental. I agree that plan affords an appropriate benchmark for the analysis.[47] But I utilize the benchmark in a different manner than the Guild. I note that 2013 is the last year for which the parties had agreed on the precise level of the cap, i.e. they utilized the structure they had chosen to designate the County's 2013 health insurance contribution. Going forward into the 2014-16 CBA, then, I find that in order to maintain the viability of the cap at levels the parties had accepted in 2010-13, and doing so without unfairly shifting all of the

[45] I also note that the cap system was adopted as part of a settlement of an unspecified "disputed claim," Exh. E-83, and while that fact does not necessarily mean that the cap may never be changed in interest arbitration, the fact that it was part of an apparent quid pro quo exchange between the parties should cause an interest arbitrator to exercise caution before replacing that negotiated settlement with an entirely different health insurance structure.

[46] As a result, for those two years, at least, the "risk-shifting" issue inherent in a cap is inconsequential.

[47] Kaiser 250 falls about in the middle of the offered Plans in terms of monthly premiums, i.e. in 2014, plans ranged from $1162 per month (Premera 750) to $1754 (Kaiser HMO), with Kaiser 250 at $1410. In 2015, plans ranged from $1242 (Premera 750) to $1869 (Kaiser HMO), with Kaiser 250 at $1503. Thus, it strikes me as a good "average" benchmark. To the extent the County argues that the Kaiser 500 Plan should serve as "the" benchmark because more members of the unit have enrolled in that plan than any other, I disagree. It is highly likely that employees have chosen that plan for reasons of upfront "affordability" given that the County's monthly cap had not kept pace with premium increases in the more comprehensive plans. The County also objects that the cap was set in relation to the cheapest health plan available, whereas Plan O is relatively more expensive. But I base my award on the extent to which the County's capped contributions have failed to deliver a benefit comparable to what the capped contribution provided just a few short years ago.

downside premium risk to the employees, the cap should be increased each year by roughly 95% of the year-over-year increases in premiums of the benchmark plan (i.e. a 95%/5% split of the increased cost).[48]

Using the full-family Kaiser 250/Washington Dental as the benchmark, then, the monthly premium increase from 2013 to 2014 was $79.08 (from $1331.20 to $1410.28). The County's roughly 95% share of that premium increase is $75.13, which I will round down to $75.00.[49] Thus, for 2014, the monthly cap for County health insurance contributions shall be increased to $1225.00. For 2015, the Kaiser 250 premium increased from $92.49 from $1410.28 to $1502.77. The County's roughly 95% share of that premium increase is $87.87, which I will round up to $90.00.[50] Thus, the monthly cap for County health insurance contributions in 2015 shall be increased to $1315.00.[51]

For 2016, health insurance premium increases were unknown at the time of hearing. In line with the analyses set forth above for 2014 and 2015, the County's health insurance contribution cap shall be based on 95% of the year-over-year increase *or decrease* in the premiums for the full-family Kaiser 250/Washington Dental Plan package from 2015 to 2016,

[48] While the Guild has proposed an overall 90%/10% split, and while the parties may someday arrive there, in the meantime, a higher percentage split of the year-over-year increases is necessary to make up for some of the lost ground in cost-sharing under the cap. *Cf.*, Schurke Award (Cowlitz Deputies) at 16 (awarding the Deputies Guild proposal of 95%/5% split of premium increases over the cap).

[49] Had that amount been applied to an increase in base wages for 2014, by my calculation it would represent up to +1.6% over the 1.0% wage increase already awarded.

[50] Had that amount been applied to base wages for 2015, it would reflect an additional increase of up to 1.9% over the Cowlitz 2015 wage awarded above (i.e., Cowlitz 2013 plus 1%/1%).

[51] With these cap increases, it appears the County in 2015 will cover virtually the entire monthly cost of the Kaiser 500 Plan (99.99%) and 87.5% of the Kaiser 250 Plan. At this level, the County's share of the costs of health insurance roughly parallels the average County contribution toward those plans for 2010, ending the downward slide of the County's percentage contribution. The Guild argues that the cap increases should be measured by increases in the cost of the entire package of insurance benefits, not just the medical insurance. But the evidence clearly established, in my view, that the unacceptable increases in costs to be borne by the employees under the cap were attributable to medical, not the other kinds of insurance benefits.

rounded to the closest five dollars. That approach shall be awarded for future years as well, i.e. the parties will split increases or decreases in the full-family Kaiser 250/Washington Dental Plan package premiums 95%/5%, which shall become the contractual status quo.

The County also provides a VEBA benefit of $1150.00 per month for employees who choose to forego County insurance benefits, e.g. when insurance is available through a spouse's employer or some other source. The County proposes to reduce the benefit to $750.00 per month, noting that none of the comparables provide *any* VEBA benefit. The Guild has not proposed that the benefit be increased. I believe the status quo should be maintained for the life of the 2014-16 CBA. Thus, I will not award the County's VEBA proposal.[52]

AWARD:

The County's monthly insurance contribution caps under Article 15 shall be increased to $1225.00 effective January 1, 2014; to $1315.00 effective January 1, 2015; and effective January 1, 2016, shall be based on a 95%/5% split of the increases or decreases (if any) in Plan O premiums[53] for 2016 and future years rounded to the nearest $5.00. That is, I award the County's proposed language on Article 15 with the above substitutions, and the 95%/5% split of the increased premiums will become the contractual status quo. I do not award the County's Article 15 VEBA language.

[52] In my initial draft decision circulated to the partisan arbitrators, I had indicated that I would award the County's proposal. In part, that tentative decision was based on the fact that neither party had addressed the issue in its briefing (which for some reason led me to conclude that the proposal was consistent with the status quo). Only during a conference call with the partisan arbitrators did I realize that the County's proposal was not to maintain the status quo on VEBA, but rather to substantially diminish the benefit. As noted, I had intended to maintain the status quo, and that will be my award.

[53] I use "Plan O" here as a shorthand reference to the full-family insurance package that includes the Kaiser 250 and Washington Dental Plans.

D. Supplemental Agreement on 12-Hour Shifts

A Supplemental Agreement to the parties' CBA implements 12-Hour Shifts and 28 Day Work Periods, entered into in 2012. The Guild now proposes to strike the entire Supplemental Agreement and to distribute some of its provisions throughout the remainder of the CBA, replacing other provisions with new language which is primarily designed to allow accrual and use of leave on a basis that recognizes twelve-hour shift employees, i.e. instead of requiring them to continue to accrue and utilize leave on the same basis as employees working the traditional 8-hour shift.

The County points out that the Guild's proposal, as written, would remove the ability of either party to unilaterally revoke its agreement to 12-hour shifts (although the Guild says it is willing to retain that language), and also that accruing and utilizing leave on a 12-hour workday basis (as the Guild has proposed, the specific issues will be discussed later in this Award) would arguably increase the County's costs. An essential element of its agreement to 12-hour workdays, says the County, was that it would not result in increased costs. The Guild has not contested that assertion. In addition, the County contends the Guild's proposals, if adopted, would constitute a "windfall" to employees on 12-hour shifts who would accrue 50% more hours of leave per month than their 8-hour counterparts.

For now, I confine myself to the opt-out issue. It is clear that the unilateral ability of either party to opt out was an essential basis of the County's agreement to the 12-hour shift experiment. While the formal proposal of the Guild removes that opt-out prerogative, the Guild President testified at the hearing that the Guild does not oppose retaining that language. I also

believe the opt-out language should be retained as a core principle of the 12-hour shift experiment until the parties negotiate a different result.[54]

AWARD:

I do not award the Guild's formal proposal to strike the Supplemental Agreement and the opt-out language from the Agreement.[55]

E. Leave Proposals

1. Increased Annual Leave

Currently, officers reach maximum vacation leave accrual at year 18. The Guild proposes to add a vacation day (technically, a 'bonus day" under the bonus leave provisions of Article 6.8) at year 15 (from 9 days to 10 days), at years 16 through 17 (from 10 days to 11 days), at years 20 through 23 (from 11 days to 12 days), and for years 24 and over (from 11 days to 13 days). Those increases, says the Guild, are justified by comparing the annual leave granted officers in the comparable jurisdictions. I do not find a specific argument on this issue in the County's closing brief, but the County's general approach has been to cite its dire financial condition in response to any Guild request that would increase costs to the County, and because the jail is currently staffed at or very close to the minimum level, additional leave would almost certainly be covered on overtime, which would increase the County's costs.

In judging how Cowlitz ranks against all of the comparable jurisdictions, I manually averaged the hours of accrued annual leave at 15 years, 20 years, and 25 years in those jurisdictions using Guild Exh. VI.A.1. It is true that Cowlitz trailed the average of all comps by

[54] The issue has practical importance because, for example, if I award the changes in leave accrual and usage for 12-hour shift employees, the County could simply abrogate 12-hour shifts, as it is apparently willing to do. By the same token, if I do not award the Guild's proposals, the employees might decide that 12-hour shifts had become intolerable under the original conditions specified in the Supplemental Agreement, and the Guild could choose to back out of the experiment. Thus, in considering the proposals, I must keep these possibilities in mind.

[55] I will deal with the 12-hour shift accruals next in the course of analyzing the Guild's specific proposals on leave issues.

9.7 hours at 15 years (168 hours to 177.7) and by 16.6 hours at 25 years (184 hours to 200.6), but at 20 years, Cowlitz exceeded the average by 2.3 hours (184 hours to 181.7). Similarly, although the Guild has not proposed increases in annual leave at earlier intervals, at the "Start," 5 year, and 10 year marks, Cowlitz exceeds the average by a total of 36.2 hours of annual leave at those three intervals, even when a slight deficit at 10 years (-2.7 hours) is taken into account. Thus, the total annual leave over the span of years at Cowlitz Corrections exceeds the average of the comparables. This is not a compelling case for an increase in leave accrual in the later years based on the comparables, even if it appears that the Cowlitz CBA may be too generous at the beginning of a corrections career and too parsimonious toward the end.

Considering the Cowlitz Sergeant's CBA as an internal comparator, however, I find that although the annual leave in that unit tracks this CBA precisely at earlier years, the Sergeants receive an additional day (8 hours) of annual leave at year 22. *See*, Guild Exh. III.E.2 at 8. That factor justifies an additional day for this unit at the same level.

I will award an additional day of annual leave at year 22 and over.

AWARD:

One additional day (8 hours) of annual leave accrual under Article 6.8 at year 22 and over is awarded.

2. Sick Leave

The Guild proposes to change Article 8.1 (sick leave) so that employees working a 12-hour shift would accumulate 12 hours of sick leave per month, i.e. one "day," instead of the present accrual of 8 hours per month. That rate of accrual, of course, represents a "full day" of sick leave for officers working an 8-hour shift, but only covers two-thirds of a day for those working 12-hour shifts. The County opposes the proposal on the grounds that it unfairly gives

12-hour shift employees, who are generally more junior in seniority, "added paid time off that would not be available to employees on eight-hour shifts." County Brief at 48. No change in the 1200 hour cap on accumulated sick leave has been proposed.[56]

The Guild notes that two of the comparables, Grays Harbor and Skagit, allow accumulation of sick leave on a "day worked" basis, but that is necessarily a minority position in the seven jurisdictions. Moreover, once again the Guild seems to be attempting to change the terms of the parties' agreement to experiment with 12-hour shifts which expressly provided for accumulation of leave at the 8-hour rate. And while it may be true that 12-hour shift officers would only accrue sick leave *faster*, and not accrue more *total* sick leave than their 8-hour shift counterparts (because the 1200 hour cap would continue to apply), many 12-hour shift officers would also be likely to *use* their sick leave faster. For example, a 12-hour shift employee who consistently uses most or all available sick leave as it accrues would use 50% more sick leave than an 8-hour shift employee with the same pattern of usage. There is a cost associated with that increased paid time off, but the County's agreement to the 12-hour shift experiment was expressly conditioned on no increase in costs to the County.

Under the circumstances, I will not award the Guild's sick leave proposal.[57]

AWARD:

I do not award the Guild's proposal to alter the sick leave accrual rate under Article 8.1.

[56] Because there would be no increase in the cap, says the Guild, 12-hour shift employees would not be earning "more" sick leave, they would just be earning their allotted sick leave "faster."

[57] That is not to say that I disagree with the Guild's contentions about the potentially adverse consequences to an employee—and to the workplace—when employees do not accrue enough sick leave to cover their needed days off. *See*, Guild Brief at 88-89. But those potential consequences were known or should have been known at the time the parties agreed to conditionally establish 12-hour shifts with sick leave accumulations continuing at 8 hours per month.

3. Holiday Proposals – Article 5.1

The Guild proposes to add an additional floating holiday, increasing the number of annual holidays from 11 to 12; to pay all holidays at the number of hours in the employee's assigned shift, i.e. to pay 12 hours of holiday pay to 12-hour shift officers and 8 hours to 8-hour shift employees; and to pay all scheduled hours at the premium holiday rate (time and one-half) if the shift starts on the holiday (even if it extends into a non-holiday). Both parties have presented a proposal with respect to changing a floating holiday once it has been scheduled, and the Guild also proposes to allow employees to take the allotted floating holidays in blocks of four hours or more.

The County opposes the Guild's proposal to add a floating holiday, arguing that "doubling the number of floating holidays" is unwarranted by the comparables, a majority of which only provide a single floating holiday. The record establishes, however, that five of the comparables provide more *total* days of holiday leave (i.e., counting both observed holidays and floating holidays), and the average of all comparables is 12.7 days of holiday leave. This analysis supports the Guild's proposal to add a floating holiday, i.e. an additional non-premium holiday.

For reasons already discussed in connection with other Guild proposals, I will not award the proposal to pay holiday pay commensurate with the employee's shift, i.e. 8 or 12 hours. Granting that proposal would add to the County's costs and thus undermine the basis of the parties' agreement to try 12-hour shifts so long as those schedules did not result in additional County expenses. Similarly, I will not award the proposal to pay the entire shift at the holiday premium rate if the shift begins on an observed holiday. The purpose of the proposal is to benefit 12-hour shift employees who either must work the holiday or request it off, in which case they only receive 8 hours of holiday pay and are required to use an additional 4 hours of vacation or

other leave in order to take the holiday off to be with family. Guild Brief at 91. This, too, would undermine the parties' agreement on 12-hour shifts by affording additional holiday pay to 12-hour shift employees over and above the holiday pay available to their generally more senior 8-hour shift co-workers, and it would increase costs to the County. For the same reasons, I will not award the Guild's proposal to allow scheduling of floating holidays in four-hour blocks. There are administrative costs and burdens inherent in that proposal, which in any event is not supported by the comparables.

Finally, I will award the County's proposal for a language change in Article 5.1 to address the issue of changing of a floating holiday once scheduled. The Guild agrees that the language addresses the same issue as the Guild's proposed language,[58] and I think the County's proposed languge does so more directly and more simply:

> Once a floating holiday has been approved by the Director or designee it can only be changed by mutual agreement between the employee and the Director or designee.

AWARD:

I award the Guild's proposal in Article 5.1 to increase the number of annual non-premium floating holidays from one (1) to two (2). I do not award the remainder of the Guild's Article 5.1 proposals. I award the County's proposed additional language in Article 5.1 regarding schedule changes once a floating holiday has been approved by the Director or designee.

4. Bereavement Leave – Article 16.1

The Guild proposes to change the current bereavement leave language to provide for up to "three (3) working days off" instead of "twenty-four (24) hours off with pay." The stated purpose, again, is to benefit 12-hour shift employees who currently receive only two working days off for bereavement under the twenty-four hour language. That is insufficient time, says the

[58] *See*, Guild Brief at 92, fn. 299.

Guild, to make funeral arrangements, or to travel to an out-state-service and back. Several of the comparator jurisdictions allow for three working days off—Clallam, Lewis, and Grays Harbor Counties. Guild Brief at 93.

While I agree with the Guild's observations, I note once again that granting this proposal would undermine a central condition the County had clearly enunciated in agreeing to the 12-hour shift experiment, i.e. that 12-hour shifts would not increase costs to the County. The Guild's proposal would unfairly increase the paid bereavement leave of 12-hour shift employees by 50% over the leave hours available to 8-hour employees. While that approach may make sense in some workplaces, it may not in others, e.g. when the 12-hour shift employees are generally less senior than the 8-hour shift employees. Finally, changes of this nature should be made by the parties in the give and take of collective bargaining, not be imposed by an interest arbitrator.

AWARD:

I do not award the Guild's proposed language change in Article 11.1.

5. Kelly Days

The Guild proposes amended language in Appendix E that would credit 12-hour officers with all anticipated Kelly Days to be earned during the year on January 1, rather than the current system in which employees earn 1 Kelly Day during each 28-day work cycle which they must schedule during the next cycle. Tr. at 775-76. According to the Guild, junior officers on 12-hour shifts pick their Kelly Days before senior officers on 8-hour shifts pick vacation days, thus the current process impairs the seniority privileges of the 8-hour officers. The Guild contends the change would not only restore seniority privileges, but would also allow employees to combine Kelly Days with vacation days for an "extended vacation." The County opposes the proposal, chiefly because Kelly Days could be scheduled and taken before actually being earned, and if

subsequent events, such as resignation or termination, resulted in fewer Kelly Days actually earned than had already been taken, the County would face the difficulty and expense of recovering reimbursement for the unearned days.

I agree with the County that the proposal potentially increases the costs to the County of the 12-hour shifts—such as the difficulty of recovering overpayments to employees.[59] Nor is there sufficient evidence that comparable jurisdictions allow Kelly Days to be taken before they are earned. The closest comparison is an internal one, i.e. Cowlitz Sergeants, who are apparently required to schedule 1 Kelly Day per 28-day period, but may be allowed, after the fact and after all vacations have been selected, to change Kelly Days to vacation days, and to select open dates after the Kelly Day and vacation selection processes have both concluded. Tr. at 776-77. Had that been the Guild's proposal here, I would have seriously considered it, but the proposal was not made and considered at the table prior to impasse, which would have enabled the parties to mutually explore its merits and potential drawbacks.[60]

AWARD:

I do not award the Guild's Kelly Day scheduling proposal.

6. Sick Leave/Vacation Leave Usage

The County has proposed that when returning from sick leave, employees not be allowed to substitute vacation for sick days used unless they make written request on the first day they return and have a sick leave "zero balance." The County observes that vacation leave must be pre-scheduled, taking account of staffing issues, whereas sick leave may be taken at the

[59] The Guild's proposal, for example, does not even require that employees sign advance authorization for deduction of excess paid time off from a final paycheck, even assuming that final paycheck would be sufficient to cover the amount to be reimbursed to the County.

[60] I understand that the Guild did make that proposal during the parties' discussions following my distribution of a draft Award declining to grant the Guild's formal proposal, but at least as of the time of my last conference call with the partisan arbitrators, the County had not yet agreed. I urge the parties to complete their discussions on the issue, either during this process or in negotiations for the next CBA.

employee's discretion and is independent of staffing concerns. This situation creates administrative and staffing burdens for the County and should be changed, argues the County. The Guild counters that employees accrue sick leave at higher rates than vacation, and that officers may lose vacation time (which is "use it or lose it") by going over the maximum vacation accrual. Consequently, they prefer in many cases to use annual leave so as not to forfeit it.

I find the County's concerns to be well-taken. If employees need to be off work for reasons covered under sick leave, they should utilize that leave before turning to vacation. If the parties' agreed sick leave and vacation accruals are out of synch, the parties surely could negotiate a reasonable trade, reducing the number of sick days and adding to vacation days, but the nature of the time off—and the procedures necessary for utilizing them—should remain separate.

I will award the County's proposed changes to Article 8.6.

AWARD:

I award the County's proposal on Article 8.6.

F. Other Economic Proposals

1. Cleaning Allowance – Article 11.1

The Guild proposes to increase the annual dry cleaning allowance from $300.00 to $400.00, noting that in the comparable jurisdictions, these costs are borne (or reimbursed) in full by the Employer. The County argues that there is no showing as to the actual value of the cleaning provided by the comparables, nor a showing that the current amount provided by Cowlitz County is insufficient. Frankly, $300.00 per year seems low to me, i.e. an average of $5.77 per week, but the record does not contain sufficient evidence of the actual costs being

incurred by the officers that would be necessary for me to find that the allowance ought to be increased. Consequently, I will not award the Guild's proposed change in Article 11.1.

AWARD:

The Guild's proposal to increase the uniform cleaning amount set forth in Article 11.1 is not awarded.

2. Compensatory Time

The Guild proposes to increase the maximum annual comp time accrual from 40 to 60 hours.[61] The proposal is supported, says the Guild, by the caps of the comparables which range from 36 hours to 100 hours, with six of the seven having a cap exceeding 40 hours. Guild Brief at 94; Guild Exh. VII.A.2. In addition, the Guild proposes that employees be allowed to carry over accrued annual comp time hours in excess of 40 to the following year (currently unused hours are paid out at year-end, and no carryover is permitted). *See*, Article 3.2. The County contends the increase is unnecessary and too costly, and that Cowlitz is "within the comparators' range." County Brief at 50.

While it is true the County's comp time cap falls within the range of the comparable jurisdictions, only one of the seven comparables has a lower cap (Benton) and four jurisdictions provide for a cap of 80 annual hours or more (Clallam, Grant, Grays Harbor, and Island). A fifth jurisdiction (Skagit) allows an annual accumulation of 60 hours, equal to the Guild's proposal. Thus, I find the Guild's proposal to increase the annual cap on total compensatory time to 60 hours to be supported by the comparables. The carryover provisions of the proposal, as I understand the intent, would simply reduce the maximum allowed accrual of comp time in the following year (e.g. an employee who chose to carry over 20 hours from one year would only be

[61] The contract recognizes two separate comp time banks, 'FLSA' and "non-FLSA," currently limited annually to 20 hours each. The Guild proposes to increase the maximum FLSA accrual to 24 hours, and the non-FLSA accrual to 36 hours, for a total of 60 hours annually.

entitled to accumulate 40 additional hours in the following year before reaching the cap). With those understandings, I will award that aspect of the Guild's proposal as well.[62]

The County has expressed concerns that increased comp time could add costs and could create staffing difficulties. I agree with the Guild, however, that additional costs will only accrue if comp time shifts must be back-filled on overtime. That is a function, to a great extent, of staffing levels in the jail. As previously noted, at the current minimum staffing levels, significantly fewer officers perform the same amount of work previously accomplished with greater staffing, thus it would be unfair to expect both that they perform a greater amount of work and yet not receive compensatory time off (or compensation) commensurate with their peers employed by the comparators. I appreciate the County's financial challenges that have led to reductions in staff, but if the comparables are able to offer greater comp time to officers than Cowlitz, the County (within reason) must find a way to do so as well.

I will award the Guild's compensatory time proposals to increase the comp time caps and allow employees to carry over accrued comp time above forty hours from one year to the next.

AWARD:

The Guild's proposed changes to the compensatory time provisions in Article 3.2 are awarded insofar as they increase the compensatory time caps and allow for carryover of accrued comp time beyond forty hours.

[62] In discussions with the partisan arbitrators, an issue arose concerning whether employees, once they reach the cap, are entitled to accrue comp time up to the cap again if their use of the benefit during the year takes them below the cap. For example, if an employee reached the 60 hour cap during the year but then used 16 hours of comp time, is he or she entitled to earn additional hours of comp time during the year so long as the cap is never exceeded? My intent is to award the status quo on that issue, i.e. whatever the parties have allowed (or not allowed) under the current cap will also be the rule under the increased comp time cap.

3. Call Back Pay/Court Time

The Guild proposes to increase call-back pay to a minimum of four hours (from three) in recognition of the hardship on officers' family lives when being called in to work off-shift, particularly those on graveyard who are called to testify in court, for example, during the day (when they would otherwise be sleeping). The County contends, however, that the comparators' contracts do not justify the proposed increase, and I agree. Only one of the seven comparable jurisdictions, for example, provides for a four-hour minimum (Skagit).[63] The other six comparators provide either two or three-hour minimums, fully in line with Cowlitz County.

I will not award the Guild's call-back time proposal.

AWARD:

The Guild's proposed changes to Article 3.3 are not awarded.

G. The Guild's Article 3 Proposals; Proposed Appendices E and F

As noted, the Guild has proposed to strike the entirety of the Supplemental Agreement on 12-hour shifts and to distribute that language (with some proposed changes) throughout the existing CBA in appropriate places and to add two new Appendices E and F. *See*, Guild Brief at 97, *et seq.*; *see also,* Guild Exh. VII.A.10. The intent of that process is to expressly write 12-hour shifts into the CBA outside the terms of the Supplemental Agreement, specifically abrogating the reserved right of either party to unilaterally terminate 12-hour shifts. As I have already indicated, I do not believe the parties' Supplemental Agreement should be modified in that way. The parties have been living with 12-hour shifts under the Supplemental Agreement, and have apparently been able to work through any discrepancies in the application of the 8-hour shift language to 12-hour shifts beyond those expressly outlined in the Supplemental Agreement.

[63] Even then, the four-hour minimum is for being called in on a regular day off. Call back between shifts is a minimum of two hours. *See*, Guild Exh. VII.A.2.

Consequently, I will not award the Guild's proposal to strike the Supplemental Agreement from the CBA in this fashion and to create new appendices.

Some of the individual proposed changes to elements of the Supplemental Agreement, however, still need to be analyzed—and some already have been above (for example, sick leave, Kelly Days, annual leave, etc.). I deal with the remaining issues, predominantly proposed changes in Article 3, next.

1. Meals-Article 3.6

The Guild proposes added language that would obligate the County to "provide a meal of equivalent nutritional value as provided to the confined jail inmates, but not the same meals as provided to the inmates." In addition, the language would require the parties to meet at least once annually to "review the meal program and make any changes as agreed upon." This proposal apparently grew out of a problem with a previous County outside provider in 2013, a problem the County says has since been rectified. The County also worries that the vagueness of the standard—"equivalent nutritional value"—could lead to unnecessary grievances or disputes in interest arbitration, potentially involving expert witnesses on both sides.

In light of the fact that the County was apparently able to resolve the prior problem without difficulty and without a contentious adversarial process between the parties, I see insufficient current need for the proposed language. For example, there is no reason to believe that the parties would not be able to amicably resolve any problems that might re-emerge in the future, and if no problems actually emerge, it seems pointless to obligate the parties to meet annually to review the meal program.

AWARD:

The Guild's proposed language on nutritional meals in Article 3.6 is not awarded.

2. Timing of 12-hour Shift Meal Breaks

The Guild has also proposed adding language in Article 3.6 from the Supplemental Agreement governing the timing of meal breaks for 12-hour shifts. Guild Brief at 99. That language need not be inserted in Article 3.6, however, because the Supplemental Agreement itself will be maintained for reasons already outlined. Moreover, as the Guild notes in its brief, to the extent the language does not appear in the Supplemental Agreement, it reflects an existing practice between the parties and/or the requirements of the law. Guild Brief at 99. Thus, it seems to me the proposed changes to Article 3.6 are unnecessary.

AWARD;

I do not award the Guild's proposed language on the timing of meal breaks for 12-hour shifts.

3. Forced Overtime

The Guild proposes to add forced overtime language to the Supplemental Agreement that would require all "forces" of overtime to be "continuations" of the prior shift, e.g. if an officer had worked from 6:00pm to 6:00am and was "forced" to work an overtime shift of 8:00am to 12:00pm, the officer would be entitled to choose to stay on shift from 6:00am to 8:00am at time and one-half. Any involuntary working beyond the end of a shift would constitute a "force" and the officer's "force card" would be moved to the back of the box. In addition, the Guild proposes that all "forces" be paid at double time. The County objects to the proposed double-time provisions as unsupported by the comparability analysis, but does not respond to the other aspects of this proposal. County Brief at 52.

I agree with the Guild that forced overtime is a burden on employees and their families, but that is also no doubt the case in the comparable jurisdictions, none of which provide for

double-time compensation. Thus, I will not award the double-time aspects of the Guild's proposal. With respect to the "continuation of the shift" language, it does not appear to be limited on its face to the 6:00am to 8:00am issue. Rather, in the Guild's proposal that situation is expressly termed "an example." I would agree that the language should be adopted if it were in fact limited to that situation or similar "forces" with a short hiatus between the end of the regular shift and the beginning of the forced shift.[64] But given the ambiguity, I decline to award the language under these circumstances.

With respect to the proposed "definitional" language of what is a "force" justifying moving an officer's card to the back of the box, I find the record insufficient to judge the merits of the proposal. If the proposal contained a time limit, e.g. an involuntary holdover at the end of a shift that exceeds 60 minutes, for example, I might well award the language. As written, however, it could apply to brief involuntary holdovers of just a few minutes, and it is unclear to me why a brief holdover of that nature should be treated the same as, for example, an officer being held over for an additional four-hour shift.

I will not award the Guild's proposed changes to the forced overtime language of the Supplemental Agreement.

AWARD: The Guild's proposed changes to the forced overtime language of the Supplemental Agreement are not awarded.

4. Work Hours

The County opposes what it labels "a new provision" proposed by the Guild to limit officers from working more than 18 hours in a day and affording a minimum of six hours off between shifts. *See*, County Brief at 50. The language in question, part of the Guild's Article 3 proposals, was actually carried over from the Supplemental Agreement's "Overtime" language.

[64] That limited language would be supported by both fairness and safety concerns, as outlined by the Guild.

Given my award above retaining the Supplemental Agreement in its current form (with the exception of specific changes authorized in this interest arbitration Award), the issue is now moot.

AWARD:

I do not award the Guild's "work hours" proposal.

H. Bill of Rights

The Guild proposes to delete portions of Article 13 on discipline and to substitute a comprehensive Corrections Officers' Bill of Rights in a proposed Appendix G to the CBA which, as the County notes, runs more than four single-spaced pages. The County argues that the proposal is unneeded because the Guild has never filed a grievance challenging the appropriateness of an internal investigation conducted by the County.[65] The most important parts of the Guild's proposal appear to be as follows: 1) that notice of the investigation provide a "general description of the nature of the complaint unless such notice would endanger the investigation"; 2) that 48 hours' notice be given before an investigatory interview; 3) that officers be given *Garrity* warnings; 4) that officers be allowed to record investigatory interviews (or that an interview not be recorded if the officer objected); and 5) specifying timelines for completing investigations (rather than reliance on the general timeliness requirements inherent in principles of just cause). Much of the Guild's proposal concededly memorializes current practice between the parties. In addition, the Guild proposes language on personnel files, specifically governing the use of "old" discipline, "coaching and counseling" notes, and similar records, except those utilized in support of a discipline imposed at the level of a written reprimand or higher. The County has proposed revisions to Article 13 as well, but they are considerably more limited and do not include a comprehensive Bill of Rights.

[65] One investigation presented an issue of an alleged *Weingarten* violation, but the parties settled the matter.

I am accustomed to seeing Bills of Rights in police contracts, and in some corrections contracts as well. While they tend to share many elements, my experience is that many of the most important provisions are tailored to the unique work situations they cover. What may be appropriate for a large metropolitan police department, for example, may or may not be workable in a smaller County correctional facility. Those are issues, however, that are best resolved in good faith collective bargaining between the parties. It is apparent that both parties here believe some additions to the scant language of Article 13 are desirable, but I do not have the sense that they have exhausted the possibilities of agreement on the appropriate changes, nor that the disciplinary process in this bargaining unit is so inadequate as to require that immediate changes be ordered by an interest arbitrator.

I will not award either party's proposals on Article 13, nor the Guild's proposed Bill of Rights. Rather, I will remand those issues to the parties for further negotiations in the next round of collective bargaining (which it is my understanding will commence in the near future). If the parties are unable to agree and return to interest arbitration for their next contract, an interest arbitrator can revisit these issues.

AWARD:

I do not award the Union's proposed changes to Article 13 and the addition of a Corrections Officers' Bill of Rights, nor do I award the County's proposed changes to Article 13.

I. Miscellaneous Issues

1. Agency Fee – Article 1.9

The Guild proposed language that would require ten calendar days' written notice to an officer of its intent to demand termination if the officer does not within that time frame cure a delinquency in agency fees owed. No testimony was presented at the hearing on this proposal,

and no argument appears in the Guild's Brief. Thus, the County asks that the proposal not be adopted. I will not award the proposal.

AWARD:

The Guild's proposed language in Article 1.9 is not awarded.

2. Firearms – Articles 4.1 and 4.2

The Guild proposed language on firearms qualifications and purchase, but no testimony was presented at the hearing on this proposal, and no argument appears in the Guild's Brief. Thus, the County asks that the proposal not be adopted. I will not award the proposal.

AWARD:

The Guild's Firearms proposals, Articles 4.1 and 4.2 are not awarded.

3. Other Proposals

To the extent, if any, one or more proposals by either party have not been analyzed in this interest arbitration award, either in whole or in part, any such proposals will not be awarded, including any proposals that were certified for interest arbitration by Director Sellars, but that were not supported by evidence or argument at the hearing or in the briefs.[66]

AWARD:

To the extent, if any, that one or more of the certified proposals of either party, or parts thereof, have not been analyzed in this interest arbitration award, I do not award those proposals or parts of proposals.

[66] Because the Guild's proposals, in particular, included a major revamping of the CBA in several respects, including deleting the Supplemental Agreement creating new appendices, some of which contained old language from different parts of the Agreement, I have focused on and decided only the specific issues highlighted by the parties in their briefs. If this approach failed to capture all of the issues certified for interest arbitration, the default position is that those proposals should not be awarded. Of course, if the parties have not addressed one or more of the issues because they were no longer in dispute, nothing prevents them from stipulating that those proposals may be reflected in their CBA.

J. Reservation of Jurisdiction

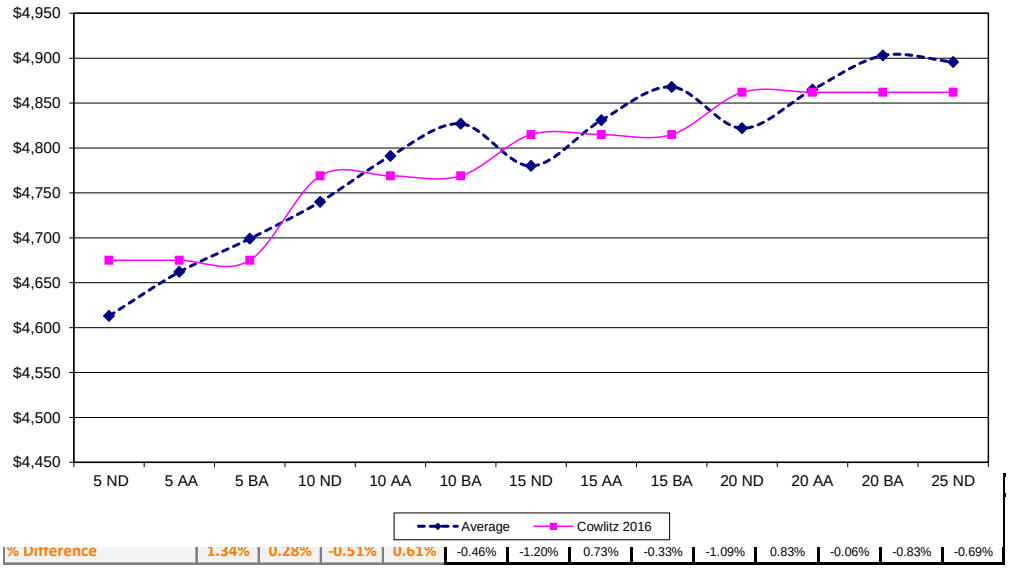
The Panel will retain jurisdiction for the sole purpose of resolving any bargaining issues that remain between the parties after this Award, and/or for the purpose of resolving disputes over the language to be inserted into or deleted from the CBA in order to effectuate this Award.

Dated this 29th day of June, 2016

Michael E. Cavanaugh, J.D.
Neutral Interest Arbitrator

Attachment 1

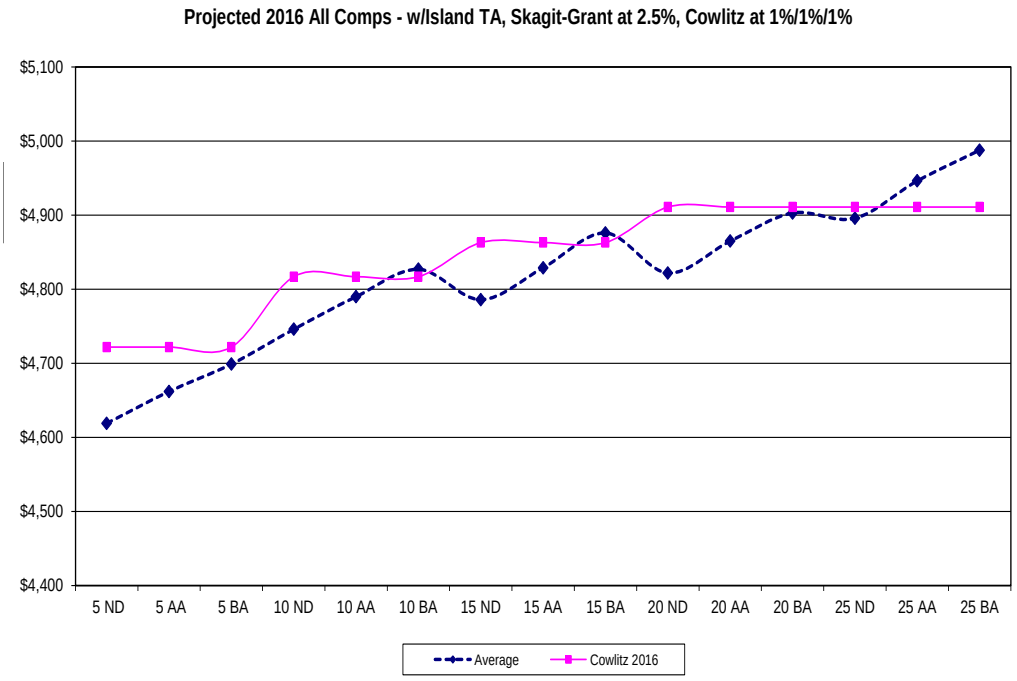
Attachment 1 - 2016 All Comps w/Island TA, Skagit-Grant at 2.5%, Cowlitz at 1%/1%/0%



% Difference	1.34%	0.28%	-0.51%	0.61%	-0.46%	-1.20%	0.73%	-0.33%	-1.09%	0.83%	-0.06%	-0.83%	-0.69%

Total Monthly Wage includes base wages, longevity, education and "unit-wide" (e.g. accreditation) bargaining premiums as measured after 60, 120, 180, 240 and 300 completed months of service.

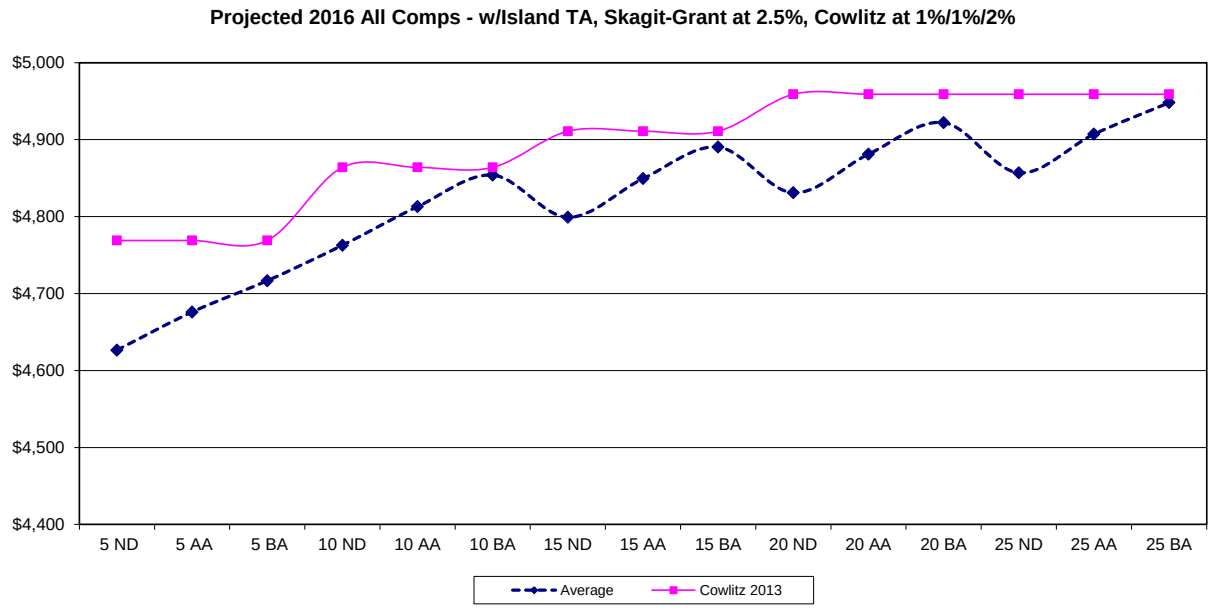
Attachment 2



	5 ND	5 AA	5 BA	10 ND	10 AA	10 BA	15 ND	15 AA	15 BA	20 ND	20 AA	20 BA	25 ND	25 AA	25 BA
Average	$4,619	$4,662	$4,699	$4,746	$4,790	$4,827	$4,786	$4,829	$4,876	$4,822	$4,865	$4,903	$4,896	$4,946	$4,988
Cowlitz 2016	$4,722	$4,722	$4,722	$4,817	$4,817	$4,817	$4,863	$4,863	$4,863	$4,911	$4,911	$4,911	$4,911	$4,911	$4,911
% Difference	2.20%	1.29%	0.49%	1.51%	0.57%	-0.22%	1.60%	0.69%	-0.09%	1.85%	0.94%	0.17%	0.31%	-0.71%	-1.58%

Total Monthly Wage includes base wages, longevity, education and "unit-wide" (e.g. accreditation) bargaining premiums as measured after 60, 120, 180, 240 and 300 completed months of service.

Attachment 3



	5 ND	5 AA	5 BA	10 ND	10 AA	10 BA	15 ND	15 AA	15 BA	20 ND	20 AA	20 BA	25 ND	25 AA	25 BA
Average	$4,627	$4,676	$4,717	$4,763	$4,813	$4,854	$4,799	$4,849	$4,890	$4,831	$4,881	$4,922	$4,857	$4,907	$4,948
Cowlitz 2016	$4,769	$4,769	$4,769	$4,864	$4,864	$4,864	$4,911	$4,911	$4,911	$4,959	$4,959	$4,959	$4,959	$4,959	$4,959
% Difference	3.06%	1.99%	1.10%	2.12%	1.05%	0.02%	2.33%	1.28%	0.04%	2.65%	1.60%	0.08%	2.10%	1.06%	0.02%

Total Monthly Wage includes base wages, longevity, education and "unit-wide" (e.g. accreditation) bargaining premiums as measured after 60, 120, 180, 240 and 300 completed months of service.

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