IN INTEREST ARBITRATION BEFORE
MICHAEL E. CAVANAUGH, J.D.

SNOHOMISH COUNTY SHERIFF'S OFFICE, CORRECTIONS BUREAU,	:	INTEREST ARBITRATION DECISION AND AWARD
Employer,	:	PERC NO. 127771-I-15
and	:	
SNOHOMNISH COUNTY CORRECTIONS OFFICERS GUILD,	:	
Labor Organization.	:	

For the County:

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I. INTRODUCTION

A. Legal Framework

This is an interest arbitration proceeding convened under RCW 41.46.430 with respect to the terms of the parties' 2015-2017 Collective Bargaining Agreement. After the parties had reached agreement on many issues but had arrived at an impasse as to others, those issues subject to interest arbitration were certified by the Executive Director of PERC, Michael Sellars,[1] and by statute, the Arbitrator's jurisdiction is limited to the certified issues.

The Legislature has declared an explicit public policy that must govern the Arbitrator's[2] deliberations in this proceeding:

> **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.]. To meet these ends, the Legislature has also provided specific criteria to be applied by an interest arbitrator in a proceeding arising under the statute:

> **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;

[1] See, Guild Exh. I.3 (letter dated December 14, 2015).

[2] Although the statute contemplates a three-person "Arbitration Panel" consisting of a neutral arbitrator and two "partisan arbitrators," one chosen by each party, here the parties elected to forgo the panel process and to present the issues to the Arbitrator sitting alone.

(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),[3] 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.

This statutory process has been described as an "extension of collective bargaining," and I agree that the description is apt—not necessarily in the sense that the Arbitrator should attempt to determine what the result of negotiations over the disputed issues would have been had the classic economic weapons of labor relations, such as strikes and lockouts, been available to the parties. That task would be very difficult, if not impossible. But an interest arbitrator may determine a fair and just resolution of the issues by rationally considering the public policies and guidelines set forth in the statute—which parallel the considerations parties usually take into account in collective bargaining—including financial constraints of the agency, labor market issues, the terms and conditions of employment offered to like employees by like employers of similar size, and the public interest in preserving the dedicated service of vital employees through fair wages and working conditions.

B. The Parties

Snohomish County, a political subdivision of the State of Washington, operates a jail in Everett, Washington, which is now organized as a bureau within the Sheriff's Department.[4] The

[3] 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).

[4] Prior to 2009, the jail operated as an independent County Department. Ty Trenary, an elected official, is the current Sheriff.

Corrections Guild ("Guild") represents the roughly 235 (FTE's) Corrections Deputies ("CD's") employed in the jail.[5] The jail operates under a "direct supervision" model in which the CD work stations are located among the inmates within the secure areas of the facility, although some CD's are involved in transport of inmates outside the facility, such as to medical appointments or to court appearances. The CD's are supervised by Corrections Sergeants (18 FTE's), who are the first-level supervisors. The Sergeants report to Corrections Lieutenants (7 FTE's). Management consists of two Captains ("Operations" and "Administration"), as well as a Health Services Administrator who manages the provision of medical, dental, and mental health services to inmates.[6] Those three managers report to a single Corrections Major who, in turn, reports to the Corrections Bureau Chief, the chief administrator directly responsible to the elected Sheriff.

II. ANALYSIS

A. Comparable Jurisdictions

The starting point for analysis under the statute is the selection of a list of appropriate comparator jurisdictions used to apply one of the key statutory standards, i.e. a consideration of the wages and working conditions of "like personnel of like employers of similar size on the west coast of the United States." As the Guild correctly notes, the use of averages of a list of appropriate comparables (or "comps" in the interest arbitration vernacular) in the determination of fair wages and working conditions provides an "objective" standard to guide what otherwise could simply turn into a purely subjective exercise. On the other hand, as I recently noted in the *Cowlitz County Corrections* decision (PERC NO. 26942-1-15-0670, dated June 29, 2016) at page 7, an interest arbitrator must bring more than a calculator or computer to the interest

[5] Other labor organizations represent other jail employees, and one of those bargaining units, the Corrections Bureau Sergeants and Lieutenants, is a significant internal comparator for the CD's because the Deputies report to them.

[6] A growing percentage of inmates suffer from addiction and/or mental health issues that must be managed and addressed during their incarceration.

arbitration process, and comparisons of the subject employees with average wages, benefits, and working conditions of like employees of the appropriate comparables is only one of several statutory criteria that must be applied. Nevertheless, it is a crucial—and sometimes determinative—part of the process.

In choosing among potential comparator jurisdictions, most interest arbitrators utilize an explicit screen to judge "similarity" of population, assessed valuation, and other relevant attributes. Some, for example, use a "50% to 150%" rule, i.e. comparators in the range of half as large to half-again as large as the subject jurisdiction may be considered of "similar size."[7] As I have previously noted,[8] however, that particular screen illogically results in "one-way comparability," i.e. if A is half the size of B, A would be an appropriate comparator if B were the subject jurisdiction (because A is within the range of -50% in size with respect to B), but A would *not* be an appropriate comparator if *B* were the subject (because B is more than 50% larger than A). In my view, jurisdictions that are "comparable" in one direction remain comparable in the other.[9] Thus, I use a 50% to 200% range, where the subject jurisdiction equals 100%, as a rough guide to "similar" size.

The parties agree that Pierce and Clark Counties in Washington are appropriate comps, in addition to Multnomah and Washington Counties in Oregon.[10] The County proposes to continue use of the Oregon jurisdictions as well as the other comparators utilized by Arbiter Reeves,

[7] The County's Brief, in fact, refers to "the traditional +/- 50% population band," implicitly arguing that the Arbitrator should utilize that screen here. *See*, County Brief at 22.

[8] *See, Cowlitz County* at 5-6.

[9] Not only is this broader range on the larger side consistent with logic, it also tends to expand the number of potential comparators on the "plus side," which otherwise might be quite limited for larger than average Washington Counties.

[10] The County reluctantly accedes to the use of the Oregon jurisdictions because they have been used "historically," i.e. Arbiter Reeves used them in a prior interest arbitration between the parties in 2007. *See*, County Brief at 20.

including Spokane and Kitsap Counties in Washington. The County concedes that Kitsap County falls below the "-50%" cutoff, but argues that I should nonetheless continue to treat it as an appropriate comparable because of the bargaining history. The County also contends that the populations of Kitsap and Snohomish Counties remain roughly in the same relationship to each other now as they did at the time of Arbiter Reeves' decision (-64.10% in 2007 as compared to -66.02% now). *See*, County Brief at 21. In addition, the County notes that of all the proposed comps, Kitsap most closely approximates Snohomish in "relative affluence," i.e. in financial resources as judged by assessed valuation *per capita*. *See*, County Brief at 23-24.[11]

Similarly, the County notes that Arbiter Reeves also used Spokane County as a comp in 2007, despite what the Guild, with justification, labels as the very different labor market East of the "Cascade Curtain." As with Kitsap, however, the County appeals to bargaining history in support of the use of Spokane County in the analysis. The Guild notes, however, that the history is more complicated than the County implies, pointing to the fact that Arbiter Reeves only considered Kitsap and Spokane because Arbiter Wilkinson, in a proceeding involving Snohomish Corrections Sergeants a few months earlier, had done so. *See*, Guild Brief at 17. In that prior proceeding, Spokane had been proposed by the union representing the Sergeants, and the union had also agreed to consider Kitsap—without necessarily conceding that it met the statutory definition of a jurisdiction of "similar size." Consequently, Arbiter Wilkinson included both in her analysis without respect to whether Kitsap actually fell within the traditional "-50%" range. *See*, Exh. E-5 at 22. Arbiter Reeves then followed suit, while at the same time expressing reservations about the appropriateness of those Counties as comparators under the statutory

[11] I wonder, however, whether "relative affluence" judged on a per capita basis is a meaningful comparison. It strikes me, for example, that a jurisdiction that is smaller in population but relatively more affluent might be less able to afford a correctional facility of an appropriate size than a less affluent, but larger jurisdiction, in which there are more taxpayers to share in the costs.

criteria. *See*, Exh. E-5 at 23. Under those circumstances, says the Guild, the Arbitrator should not consider himself bound by the history with respect to either Spokane and Kitsap.

I agree with the County that the parties' bargaining history on comparables is important, if only because remaining true to the parties' past use of comparator jurisdictions, especially when they have been selected by mutual agreement, lends stability to the process and to the ongoing collective bargaining relationship. But there has been no prior agreement between *these* parties that Spokane and Kitsap were appropriate comparators. Rather, a different union within the facility proposed Spokane, for whatever reason, and did not strenuously object to Kitsap. Thus, ten years ago these two jurisdictions found their way into Arbiter Wilkinson's analysis, at least in an informal sense with respect to Kitsap, and Arbiter Reeves then felt "compelled" to follow suit a few months later.

That history is not exactly one that reflects a joint and well-considered agreement by the parties that Kitsap and Spokane should continue to influence the terms and conditions of CD's in Snohomish County. And in any event, the importance of bargaining history fades with time, especially when a jurisdiction formerly used in the analysis, such as Kitsap here, clearly falls outside the test uniformly used by interest arbitrators to set a lower limit on the "similar size" criterion, i.e. the "-50%" cutoff.[12] The same is true, in my view, for jurisdictions that clearly fall outside the relevant labor market.[13] For those reasons, I find both Kitsap and Spokane should be excluded from the analysis here.[14]

[12] For example, both Arbiters Wilkinson and Reeves in 2007 declined to use at least two proposed comparables (Thurston and Yakima), although both had been used by Arbiter Axon in a 1996 interest arbitration proceeding between the County and the union that formerly represented the Corrections Deputies. *See*, Exh. E-5 at 20-22. They did so precisely because those counties failed the "-50%" screen. *Id*.

[13] To me, the most persuasive comparables here would be Western Washington jurisdictions of similar size on the I-5 corridor within reasonable commuting distance of Everett. Eastern Washington jurisdictions, given distance from Snohomish County and differences in the labor markets, cost of living, and similar measures relevant to the wage and benefit comparisons, are simply not as instructive. There may be instances in which one or more Eastern

Turning to the Oregon jurisdictions, I agree with the County (and with the Guild's expert witness), that the use of Oregon comparators presents analytical difficulties,[15] even though Multnomah and Washington Counties were used in 2007 and have been proposed by both parties here. As noted, however, the statute specifically allows consideration of jurisdictions *on the west coast*, and given that it is difficult, if not impossible, to find an adequate set of comparators for Snohomish County within the Puget Sound region,[16] the Portland-Vancouver metropolitan area is the next best thing. The parties have agreed, for example, that Clark County (Vancouver, Washington) should be utilized, and it is a short step from there to include appropriate jurisdictions that essentially abut Clark County (but for the Columbia River) on the Oregon side of the border. The differences Mr. Finkelstein noted in his testimony may be taken into account, of course, in determining what the comparisons actually *mean* in the context of analyzing wages

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Washington comparators, despite the labor market issues, might be appropriate jurisdictions to consider simply because there are insufficient available comparators west of the Cascades. That is not the case here, however.

[14] Although the County's "AV per capita" analysis suggests comparable "affluence," that potential comparability factor is not enough in my view to overcome Kitsap County's much smaller size. Similarly, while I agree that Kitsap County is within "commuting distance" of Snohomish County as a theoretical matter, it is unclear to me how many CD's who currently live on the East side of Puget Sound and within commuting distances to Everett would actually be willing to commute by driving to the Edmonds or Downtown Seattle ferry docks, riding a ferry across the Sound, and then driving (or taking public transportation) from Kingston or Bremerton to the Kitsap Jail in Port Orchard. The commuting costs of mileage, ferry fares, parking, and public transportation—not to mention the time invested in traveling each way—would seem to me to discourage significant numbers of CD's from opting to leave the Snohomish Jail for employment at the Kitsap County Jail instead— unless they were willing to move. Thus, there are labor market reasons for excluding Kitsap as well.

[15] *See*, e.g. County Brief at 25 ("per capita fiscal comparisons are meaningless when counties on either side of state borders have different responsibilities and revenue raising authority") (quoting the Guild's expert, Stan Finkelstein).

[16] As I have indicated in previous interest arbitration awards, it may be precisely because it is difficult to find a sufficient number of appropriate comparators for some jurisdictions within Washington State, particularly the larger ones, that the statute allows comparisons to "like employers of similar size on the west coast of the United States." Washington jurisdictions are obviously to be preferred, but if a sufficient number of appropriate comparator jurisdictions do not exist in Washington, an arbiter may expand the analysis to include appropriate comparators from out of state.

and working conditions for Snohomish CD's,[17] but I find it is necessary to include some Oregon jurisdictions in order to reach an adequate pool of comparators and to achieve some balance in size in the pool.

On the other hand, the analytical difficulties presented by the Oregon jurisdictions caution against adding another Oregon County to the mix as the Guild has proposed, i.e. Clackamas County. As an additional reason for caution, the Clackamas bargaining unit contains employees beyond corrections staff, i.e. it also includes patrol deputies, medical examiners, and others. *See,* Guild Exh. II.A.4 at 6 (Article I, Section 1). That fact would add even more anomalies to an analysis that already includes both Washington and Oregon jurisdictions and their differing responsibilities and revenue streams. I also note that Clackamas would increase the heavy representation of the Portland-Vancouver metro area in the analysis, i.e. Clark County, Multnomah County, and Washington County already represent that metro area, and already predominate over the two Washington comps which are themselves located some distance from Snohomish (Clark and Pierce). For all these reasons, I decline to add Clackamas as a comparable.

In sum, I will utilize the following jurisdictions in the comparability analysis: Pierce and Clark Counties in Washington State; and Washington and Multnomah Counties in Oregon. This cohort of comparables is smaller than I would like, but I find it to be adequate for this proceeding in light of the difficulty of finding additional comparators consistent with the statutory criteria.

B. Specific Contract Proposals[18]

[17] As an example, the parties have highlighted a specific anomaly I may need to take into account—namely, the fact that some Oregon jurisdictions have "retirement pickup" as a benefit in which the jurisdiction pays the employees' 6% share of the retirement contributions. The Guild argues that the pickup is an element of total compensation that should be part of the wage comparison, but the County notes that Washington law forbids the practice. I will have to determine how to deal with that issue in the analysis.

1. Guild Privileges (Article 4), Section 4.4 (New) - Personal Cell Phones

The Guild proposes that deputies be allowed to carry personal cell phones within the secure areas of the jail. *See,* Guild Exh. I.1 at 5. Cell phones are increasingly a part of everyday life, says the Guild, and it is important that CD's in the secure area be reachable by family in cases of emergencies. The County opposes the cell phone proposal on security grounds, e.g. if lost or stolen, a CD's cell phone in the hands of an inmate could be utilized to coordinate unlawful activities in the community, to arrange for possible escape during a planned transport outside the facility, or to engage directly in criminal behavior such as intimidation of victims and witnesses by inmates awaiting trial. The Guild counters that argument by noting that some employees are *already* allowed to carry cell phones, e.g. nurses, Guild E Board members, and supervisors. Guild Brief at 28; County Exh. 29.B. The County responds that most of the work-related cell phones issued by the County to jail employees (or to specific positions within the jail) do not have internet access or data plans, although some do,[19] and no personal data is stored on the phone that might be used by an inmate to compromise a CD. The Guild asserts, however, that if the County's security concerns were genuine, the cell phone ban would apply across the board, not just to CD's who might need a phone for personal reasons during the shift. It does not appear that any of the comparable jurisdictions allow personal cell phones in their secure areas, at least as a matter of contract.

[18] While it is clear that economic proposals and health insurance are the critical issues between the parties, for organizational purposes in this Award, I will consider the parties' proposals in the order in which they would appear in the CBA. In addition, my awards on these individual proposals will appear in bold immediately following my discussion of the various issues.

[19] In any event, argues the County, if one of the work-related cell phones was lost or stolen within the facility, the County has the ability to immediately disable the phone remotely, a power it would not possess with respect to the personal cell phone of a CD.

I am convinced by the County's arguments in support of the current policy banning most cell phones. The County's approach appears to me to balance security needs with the needs of some employees to use cell phones within the secure area for work-related (or Guild business) reasons. While current policy does not entirely eliminate potential security issues, it limits them to an acceptable level given the needs of the operation.

AWARD:

I do not award the Guild's proposal for a new Article 4.4 on personal cell phones within the secure areas of the jail.

2. Guild Privileges (Article 4), Section 4.5 (New) - Guild Use of County Email System

The Guild proposes a new Section 4.5:

> Guild representatives may use the Counties [sic] email messaging system to communicate about Guild business provided it is done on non-work time and employees cannot use the "reply all" function.

Guild Exh. I.1 at 5. The proposal is designed to ease difficulties communicating with the more than 200 deputies assigned across three shifts working 24/7. Guild Brief at 97. For example, says the Guild, the email system could be used to announce meeting times and places, or to "let everyone know that a particular issue was resolved in a certain fashion with management." *Id*. Clark County has a similar policy, notes the Guild, including use of phone and email, and current County policy allows "incidental" use which can and does include Guild business under appropriate circumstances.

The County opposes the proposal because of Public Disclosure Act considerations (all emails on the system become "public records" says the County, and it would be burdensome to add Guild emails to those that already must be searched and sorted for PDA requests).[20]

[20] The prohibition of using "reply all," says the Guild, is an attempt to limit the number of emails that might be responsive to a PDA request.

Moreover, the proposal risks putting the County "behind the curtain" of Guild business.[21] In addition, allowing the Guild to use public resources for Guild business presents government ethics issues, e.g. use of public resources for private benefit (an issue that may raise issues under the State Constitution). *See,* e.g. WASH. CONST. art. VIII, §§ 5 and 7. The County has also expressed concerns about "productivity" given that limits in the Guild's proposal as to when such email correspondence could be *sent,* i.e. only on non-work time, do not necessarily limit when an employee could *read* it. County Brief at 34.[22]

After considering the issues, I decline to award the Guild's proposal on use of County email. As the County correctly notes, the Guild, if it does not already have email addresses of its members, could simply compile an email roster—or at least a roster of those who wish to receive Guild communications in that manner—and communicate with its members via the Guild email account. In addition, the Guild may continue to use County-provided bulletin boards within the facility for communications with its members at work. To be clear, in declining to award this proposal, I expressly rely upon the County's commitment to "permit occasional announcements [via email] to the Guild membership upon request when reasonable or urgent and within County policy or state law." County Brief at 34.

AWARD:

I do not award the Guild's proposed Section 4.5.

3. Article 9 (Leaves), Sections 9.1.7 and 9.1.7.3 – Off Duty Limits in Vacation Scheduling

[21] The County does not specifically say so, although it may be implied, but it strikes me that there are potential unfair labor practice considerations here if the County has access to Guild communications.

[22] It is unclear to me on this record how Clark County has resolved these issues in providing Guild access to its email system.

The Guild seeks to permanently incorporate into the Agreement the terms of a 2013 MOU on vacation scheduling. The MOU increased the number of Deputies who may be on vacation at any one time to 8 on day shift and to 5 each on swing and graveyard shifts. *See,* County Exh. 30.A. The process has worked well, says the Guild, and thus should be set forth in the main body of the Agreement. In addition, the Guild proposes language in Section 9.7.1.3 that would exclude CD's on FMLA, sick leave, military leave and L&I from the computation of available vacation slots for "additional vacation days," i.e. supplemental vacation after the primary and secondary vacation selection process. This change is necessary, says the Guild, for employees to actually use the vacation they have accumulated. *See,* Guild Brief at 91. According to the Guild, Deputies currently earn more vacation than is available for them to use—collectively up to 184 shifts annually. *See*, Guild Exh. VII.A.3.

The County argues that these proposals are inconsistent with the language of Section 9.1.6—to which the Guild has proposed no change—that "leave shall be granted when it shall not impair the efficiency of a department or section." That Section also grants the Bureau Chief discretion to set limits and priorities on leave usage upon a determination that "the nature of the work is such that no employees or a limited number of employees may be on vacation at a given time." *See,* Section 9.1.6. It is only in this context of "additional vacation days," notes the County (not the primary or secondary vacation slot bidding)[23] that the jail counts employees out on long term leave in determining available slots for "additional days off" requests. "The Guild's proposal for Section 9.1.7.3 would impair this discretion and interfere with the County's ability to maintain appropriate staffing," potentially resulting in increased mandatory overtime. County Brief at 40.

[23] The Guild's Brief confirms that it is the "additional time off requests" that are at issue in the 9.1.7.3 proposal. *See,* Brief at 91.

Because the Guild's Section 9.1.7 proposal merely restates terms the parties have already adopted in a 2013 MOU, and the County does not seek to abrogate that MOU, I see no compelling need for a change in the language of 9.1.7. Thus, I do not award that Guild proposal. As to 9.1.7.3, I find the apparent conflict with Section 9.1.6 troublesome, i.e. the proposal does not explicitly modify Section 9.1.6, but could be understood to do so by implication. That leaves room for potential conflict between the parties in the future over the precise parameters of the two contractual provisions. In addition, as the County's Brief demonstrates at page 41, if those on the specified leaves are excluded from the off duty limits calculation, the result is likely to be increased overtime of up to two shifts per day—whether voluntary or mandatory—which would create additional costs to the County and additional burdens on other CD's who might be required to work mandatory overtime so others could schedule "additional vacation days" beyond their primary and secondary choices. Given those two issues, I decline to award the Guild's 9.1.7.3 proposal.

AWARD:

I do not award the Guild's proposals on either Section 9.1.7 or 9.1.7.3.

4. Article 9, Section 9.1.11 – Vacation Sell Back

The Guild proposes that vacation sell back in Section 9.1.11 (now *discretionary* with the County based on the availability of funds, and also *limited*, in effect, to vacation accruals beyond 240 hours, which is the maximum accrued vacation that can be cashed out upon separation or retirement) become *mandatory* for up to 80 hours per year *at the employee's option*. This proposal grows out of many of the same concerns as the proposals evaluated in the prior section, i.e. the Guild's view that Deputies earn more vacation than the schedule allows them to use, and thus CD's should be allowed to sell at least part of the excess back to the County.

The County notes in opposition that the Corrections Bureau is facing a financial crunch, with current budget instructions calling for a reduction in costs of several million dollars. If every Deputy took advantage of the sell back at 80 hours, however, the annual cost could exceed $260,000, plus additional costs related to the recalculation of overtime and other rates based on the required inclusion of the vacation sell back into the base "regular rate of pay." In addition, says the County, employees should be encouraged to bank some vacation time for unforeseen emergencies, such as extended illness. The proposed sell back, on the other hand, could encourage a number of employees to zero out their balances each year. Brief at 44. The sell back above 240 accrued hours is rational, argues the County, because 240 hours is the limit of accrued vacation that can be cashed out upon separation or retirement. Thus, the current approach, which is limited to the County's availability of funds and prioritizes those who might be in danger of losing a payout of accrued vacation above the 240-hour limit, is reasonable.

I agree with the County that the Guild's proposal is unwise at this time given that adopting the proposal could lead a number of employees to "zero out" their vacation banks, using up vacation that might more wisely have been reserved for later use in an emergency. In addition, the Bureau's financial situation calls for caution in imposing additional costs on the County that might make it more difficult to address direct compensation deficits, e.g. in wages and premiums. Thus, I decline to award the Guild's Section 9.1.11 proposal.

AWARD:

I do not award the Guild's proposed language in Section 9.1.11 regarding vacation sell back.

5. Section 9.2.4.1 - Sick Leave Incentive (New)

The Guild proposes to add a sick leave incentive of $200.00 for each quarter in which a CD does not take any sick leave. Almost one-fourth of the bargaining unit, notes the Guild, have accumulated more sick leave than they could cash out upon retirement. Guild Exh. VI.B.3. The proposed bonus would be an incentive[24] for CD's to limit their use of sick leave so as to avoid the disruption inherent in employees not working their scheduled shifts. Guild Brief at 89. The County argues that the proposal might discourage CD's from using sick leave even when they or a family member is ill. "The Corrections Bureau does not want to incentivize employees who are sick or not mentally prepared to be at work due to a loved one's condition to come to work." County Brief at 46. Moreover, says the County, experience demonstrates that the proposed incentive would not reduce absenteeism—employees would just use other forms of leave when ill and would collect the sick leave bonus anyway. Beidler Test. Or once they have used a sick day in a quarter, and thus become ineligible for the bonus, they might use a lot of sick leave for the remainder of the quarter. *Id*. As with other additional payments proposed by the Guild, argues the County, this one would impose a burden because it would affect the computation of the "regular rate of pay" for purposes of calculating the rate for overtime. County Brief at 47.

I tend to credit the County's arguments here, but even if I did not, the comparables do not support the Guild's proposal. Of the four comparable jurisdictions, none have a direct monetary incentive for limited use of sick leave. In fact, three of the four comps have no sick leave incentive whatsoever—Clark, Pierce, and Washington Counties—whereas the fourth, Multnomah County, awards additional *regular leave* (2 days of leave) if an employee uses fewer than 8 hours of sick leave in a year. *See*, Guild Exh. VI.B.1. The Multnomah approach might

[24] The County contends that those who have accumulated high levels of sick leave by using their leave responsibly will receive additional compensation under the proposed bonus, while those who tend to "abuse" sick leave will be gone from work just as often, but will just use other forms of leave. Thus, says the County, the proposed bonus, in practice, is unlikely to "incentivize" employees not to "abuse" sick leave.

meet many, if not most, of the County's objections. The proposal before me, however, is not supported by the comparables, and the County has made cogent arguments as to why the proposal might be unwise. I will not award the Guild's proposed new Section 9.2.4.1.

AWARD:

I do not award the Guild's proposed new Section 9.2.4.1.

6. Article 10 (Insurance Benefits)

We come now to one of the central issues in dispute between the parties—medical insurance benefits, rates, and employee premium contributions. The Guild proposes no change in plans and no increase in employee premium share. The County proposes two major changes: 1) implementation of "cost-sharing" for future premium *increases* in the plans, i.e. the County would pay 80% of the increase and employees would pay the remaining 20%; and 2) elimination of the Regency 200 PPO Plan from the plan choices.

I will evaluate the County's proposals in turn, but some background definitional discussion is necessary first. The County is "self-insured," i.e. the rates it pays for insurance are not set by a third-party insurer, who assumes the risk that the premiums will not cover the actual claims experience. Rather, the County has engaged a third-party actuary who computes the amount of County funds necessary to be set aside to pay benefits and to keep the insurance plans solvent, but the County pays the medical claims out of its own treasury. Based on the overall expected claims experience, the actuary computes "premium amounts" based on four "tiers" of coverage, i.e. "Employee Only" through "Employee and Family." For budgeting and accounting purposes, however, the County "charges" Departments a "composite rate" per employee without regard to how many Departmental employees might be enrolled in the various "tiers."

This approach makes the comparability analysis somewhat challenging. Should the Arbitrator use the "composite rate" the Guild says is the "true" amount the County pays for health insurance? Only one of the comparables, Pierce County, provides employee medical insurance based on a composite rate, and that is through a Teamsters Taft-Hartley trust, presumably with a much broader risk pool than the County. *See*, Guild Exh. V. 40. But it would be unfair to use the tiered rates in the analysis, says the Guild, because they overstate the actual per employee cost of medical insurance provided by the County, and the County essentially sets the "premiums" itself. The County asserts, however, that a third-party actuary sets the rates and the composite rate utilized is simply an administrative budgeting tool.

a. Cost Sharing

Turning to the specific issues, the current employee premium contribution cap, in effect since the ratification of the 2012-14 CBA in late 2013, and which the Guild proposes be maintained, is as follows:

Regence Selections	Employee Premium Contribution Cap
Employee Only	$25
Employee and Spouse	$95
Employee and Children	$85
Employee and Family	$120
Group Health	
Employee Only	$0
Employee and Spouse	$0
Employee and Children	$0
Employee and Family	$0
Regency PPO	
Employee Only	$58
Employee and Spouse	$195
Employee and Children	$98
Employee and Family	$235

The County does not propose increases in these premium caps as set forth in the contract,[25] but does propose a new and additional "cost sharing" mechanism with respect to *future* increases "in the annual tiered monthly medical premium rate" year-over-year effective April 1, 2016, i.e. employees would be responsible for 20% of any increase in the annual premium after that date with the County picking up the remainder.[26] The four comparable Counties, unlike Snohomish, already have some cost sharing mechanism in place for premium increases—each of the three Portland-Vancouver jurisdictions has a 95%/5% split of increases given that their contractual commitment is to pay 95% of the cost of insurance, and Pierce County has contractually agreed to pay the first 7% of any increase in premiums with the employees responsible for increases above that level. *See*, Guild Exh. V.40; Tr. at 585 (Sprague). The County believes it is important to have employees "partner" in the effort to keep medical insurance costs down by having an incentive not to overuse benefits so as to avoid unnecessary increases in insurance costs.[27]

[25] Using the composite rate for the County, I calculate the average employee share of current premiums for the four comparables at 6.34%, as compared to 6.93% for Snohomish County. If analyzed by tier, the County calculates the current employee share at between 2.8% and 5.6% depending on the tier. *See*, County Brief at 53. These calculations may inform the analysis that follows although, as noted, neither party proposes to change the employee contributions for *current* insurance premiums.

[26] As I understand it, however, the County does not intend to share the benefits of any future premium *decreases* that might occur after employees had contributed 20% of an increase, i.e. if the premiums later decreased, the employee premium payment would nevertheless remain the same. *See*, Tr. at 585-86 (Sprague). On the other hand, the County says it chose the April 1, 2016 effective date for a retroactive premium share because a modest decrease in premiums occurred on that date (approximately 1%) following a substantial increase in 2015 that the County proposes to underwrite on its own. The Guild contends, on the other hand, that any *retroactive* increases in the employees' share of the premiums would violate Washington law.

[27] The County notes that other County bargaining units have gone to the 80%/20% split of premium increases, including AFSCME and the Clerks. Because those units are not interest arbitration eligible, however, and also do not work under comparably stressful conditions as the CD's, I find that particular internal comparability argument to be less than fully persuasive. On the other hand, the Snohomish Corrections Sergeants and Lieutenants have the 80/20 share of increases, Tr. at 593 (Sprague) and I do find that fact to be potentially significant.

The Guild counters that requiring employees to share in "premium" increases set by the County is improper and perhaps even unlawful. *See*, Guild Brief at 75 *et seq*. That is so, says the Guild, because the County "sets its own rates" in that it is self-insured, and thus to assign a percentage share of unknown future increases to the employees when the County itself has the power to determine those increases, would essentially constitute an unlawful change in terms and conditions without bargaining with the Guild. In addition, an expert witness called by the Guild speculated that the premium increase sharing proposal might constitute an unlawful "transfer of risk" to the employees because the employees' 20% share of future increases is not a share of a true *premium payment*, in exchange for which a third-party insurer has accepted the risk that the premiums might not adequately cover the claims, but rather is potentially a 20% share of the *risk itself*, given that the County is self-insured. *See*, e.g. Tr. at 572 (Julnes).

The County strenuously objects that, contrary to the Guild's argument, it does not, in fact, perform the calculations or set the rates—the third-party actuary does. County Brief at 60. Nor is the County seeking to transfer any risk to the employees—stop loss policies in effect would protect the employees on that score. Rather, says the County, it is simply attempting to implement some cost sharing mechanism with respect to premium increases such as those in effect in the non-self-insured comparables, as well as in another unit in the jail, i.e. the Sergeants and Lieutenants.

The unfair labor practice arguments, which strike me as arguable in both directions, are beyond my jurisdiction, and the insurance law arguments are not only beyond my jurisdiction, but well beyond my expertise. Thus, I address the cost sharing issues solely under the standards of the statute I am called upon to apply in this proceeding. The clear trend in collective bargaining is for employees to share some portion of the increased costs of medical insurance. In

fact, each of the four comparables in this proceeding has a cost sharing mechanism in place, as do many of the other bargaining units in the County, including at least one other interest arbitration-eligible unit in the jail. I agree with the County that a "partnership" with its employees to mitigate increases in the cost of medical insurance is appropriate and important in today's medical insurance climate.

On the other hand, none of the external comparables assigns anything approaching a flat 20% share of premium increases to the employees. Rather, three of the four have a 95%/5% share, carried over from the employer's basic medical insurance contractual obligation, i.e. to pay 95% of the cost of insurance. In the other jurisdiction, the employer picks up the first 7% of the increase.[28]As to the internal comparables, for reasons other interest arbiters have explained, the benefits applicable to interest arbitration-ineligible units bear little consideration in the eligible uniformed units. And while I agree that the 80/20 split in the Sergeants and Lieutenants unit is an appropriate consideration, there is no evidence before me as to how that split came about, i.e. what, if anything, the unit received in exchange. Nor is there much in the way of evidence before me as to precise differences in the job functions of the Sergeants and Lieutenants as compared to the front-line CD's, e.g. evidence from which I could compare the stress levels, injury rates, etc. that might bear on the relative need for comprehensive and affordable medical insurance. Moreover, in the 95/5 jurisdictions—Clark, Multnomah, and Washington—the employee share is essentially capped in the neighborhood of 5% of the total

[28] With the employer being responsible for the first 7%, employees may actually pay little or nothing of the premium increases, e.g. under that provision, even with increases of 10%, only 3% would fall to the employees. Increases would have to reach a hefty 27% year-over-year for the employees to pay 20% of the increase as the County proposes here.

cost of insurance, *see*, e.g. Guild Exh. V.40, whereas the County seeks to begin in that neighborhood and impose increases from there.[29]

In the end, I believe it is appropriate for CD's to share in the increases in the cost of medical insurance, just as do their closest peers in the external comparators and at least one internal comparator. But the comparables suggest that the share should be 95% to the County and 5% to the employees.[30] The County also proposes that the increase be retroactive to April 1, 2016. I will order instead that the 95/5 cost sharing take effect as of April 1, 2017. That is, I will award the County's Article 10 proposal on cost sharing, substituting 5% for the 20% proposed, and modifying the proposed effective date to April 1, 2017.[31] My award will also provide that the 95/5 split will apply to future premium *decreases* so as to maintain a share of 95% to the County and 5% to the employees of increases in premiums as judged against the rates in effect immediately prior to April 1, 2017.

b. Elimination of the Regence PPO Plan

The County also proposes to eliminate the Regence PPO Plan as an option effective April 1, 2017. Only two members of the unit are enrolled in that Plan, says the County, and only three employees in the entire County. The administrative burden of negotiating and administering a plan for so few employees—creating spreadsheets and plan documents, distributing them, as well

[29] By my manual computations, it appears to me that the 20% share proposed by the County would result in *increases* in the 2016 employee medical insurance contributions, judged according to the tiered rates, of from 63.5% to 75.2%. These large increases are inappropriate in a single year. Moreover, those increases would bring the employees' overall share of the cost of insurance to a range from of 6.4% to 9.2% depending on the tier.

[30] With the 95/5 split I award here, the employees' share of the cost of medical insurance would range from 3.7% to 6.54%—much closer to the range of the comparables, i.e. from 5%-6%. *See*, e.g. County Brief at 53 *et seq*. To reiterate, under the County's proposal, the employee share would range from 6.4% to 9.2% depending on the tier, a result that is simply inconsistent with the comparability analysis.

[31] As noted, the Guild argues that it would be unlawful to change plan premiums retroactively, and I find those arguments to be persuasive enough, *see*, Guild Brief at 80, *et seq*., that it strikes me as unwise to subject the parties to the time and expense of potential litigation over the issue.

as extra work for the third-party actuary—cannot be justified with such a small pool. Moreover, the County offers a very similar plan, the Regence Selections, which is in fact the plan chosen by most bargaining unit members. Thus, the PPO Plan may safely be dropped. The Guild apparently opposes removal of the PPO Plan, but did not include a specific argument on that issue in its Brief.

I find the County's arguments persuasive that it is simply not cost-effective to maintain a plan option that so few employees find desirable. There is no evidence before me to suggest that the two employees who have chosen that PPO Plan will be seriously affected for some reason by moving to the less expensive Regence Selections or even to the Group Health Plan. In the absence of such evidence, I will award the County's proposal to eliminate the Regence 200 PPO as a medical insurance option for the unit. Because most of the extra work on that plan presumably has already been completed for 2017 (given that we are now within a few weeks of April 1, 2017), and in order to minimize disruption for the employees who have chosen that plan, I will order that the PPO Plan remain an option in 2017 and be removed effective April 1, 2018.

c. Opt Out Provision – Section 10.9 (New)

The Guild proposes that employees who choose to opt-out of County medical insurance coverage receive 50% of the contribution toward insurance the County would have made had the employee chosen to participate. The County opposes this new provision, contending that it is not supported—at least at the 50% level—by any of the proposed comparators. Moreover, says the County, the proposal is unworkable. The Guild's Brief does not mention its opt-out proposal.

The County argues that if members of the pool drop out, the claims are unlikely to go down significantly,[32] but there are fewer members of the pool remaining to share the costs. In addition, the County contends it would have no way to determine the premium on which to pay the benefit because the employee would have opted out of the insurance, i.e. would not have selected a plan and a tier under that plan.[33] The administrative burden of recalculating the regular rate of pay issue applies here as well, i.e. the opt-out payment would need to be taken into account in computing the overtime rate. Finally, although the proposal requires the opting out employee to provide proof of medical insurance, there is no guarantee that the other insurance will be of comparable cost and quality.

I think the County's concerns are well founded, i.e. that the proposal is not well considered and could cause difficulties if implemented. I will not award the Guild's proposal for a new Section 10.9 providing an "opt-out" benefit.

AWARD:

I award the County's Article 10 cost-sharing proposal as modified herein: a) the respective shares of future premium increases will be 95% to the County and 5% to the employees effective April 1, 2017; this premium share will apply to future decreases in premiums as well, i.e. beginning with April 1, 2017, to the extent an annual premium as calculated by the County's actuary during the life of this Agreement exceeds the premium established effective April 1, 2016, the respective shares of that excess premium shall be 95% to the County and 5% to the employees. I also award the County's proposal to eliminate the Regence 200 PPO as a medical insurance option, but not until April 1, 2018. I do not award the Guild's proposal for a new Section 10.9 providing for a payment to employees who "opt-out" of County medical insurance coverage.

7. Article 11 (Uniforms, Clothing and Cleaning Allowance), Sections 11.1 and 11.2

[32] That is particularly the case if the employee receives alternative medical insurance from a spouse who is also employed by the County.

[33] I assume there is a risk, as well, that if employees were allowed to designate a plan and tier in which they "would have enrolled," they would have an incentive to claim they would have enrolled in the most expensive plan so as to maximize the opt-out payment, even if they would not have chosen to pay the higher employee share for that plan in the absence of the proposed opt-out benefit.

a. Section 11.1 (Uniforms)

The Guild proposes to add a $150 "annual allowance for footwear allotment," which the County opposes. The Guild argues that CD's require boots which wear out over time, and thus the County should provide an allowance or reimbursement. The lack of an allowance, says the Guild, effectively reduces wages. Guild Brief at 90. Both Washington and Clackamas Counties reimburse $90.00 annually, either for footwear (Washington) or as a uniform allowance that may be used for footwear (Clackamas).[34] *Id*. The County notes that no jurisdiction cited by the Guild—whether a comparable here or not, and whether an allowance or a reimbursement—pays the amount the Guild proposes for footwear. County Brief at 70. The County also contends that it had explored with the Guild during negotiations the possibility of designating specific footwear as a County-provided "uniform item" that the CD's would be required to wear:

> Those discussions were, okay, let's for example say that we supplied a boot like we do maybe other labor agreements and people are required to wear that footwear like they are in other labor agreements. So there was conversations about what would -- what would you be willing to trade for that and so on. There was no interest anywhere that we could find that this was worth a lot. This is something that we would trade anything for. And they certainly weren't happy with – not angry, but not happy with -- well, if it was instead of a boot allowance, which was a raise, what if it was traded for something like, you will wear this boot if we issue it? There was not a lot of interest in that.

Tr. at 658 (Beidler). Given these exchanges during bargaining, the County concluded that the boot allowance was merely a disguised proposal for a wage increase.

If the proposal had been framed as a reimbursement, rather than an allowance, and in a reasonable amount (say, $90.00 like Washington and Clackamas Counties), I would have been

[34] Clackamas is not a comparable jurisdiction in this proceeding, however. Thus, only one of the four actual comparables has a footwear "allowance." In addition, the Multnomah provision entitles an employee to a *reimbursement* in connection with the actual purchase of footwear, whereas the Guild here proposes an "allowance" that would be paid irrespective of whether footwear had been purchased.

favorably inclined to grant it. But to the extent the issue is one of adding an additional element of compensation, those considerations belong in the wage analysis of this Award.

I will not award the Guild's footwear allowance proposal.

b. Section 11.1 (Taser)

The Guild has withdrawn its proposal regarding the issuance of Tasers. Therefore, I will not address the issue or award the proposal. Tr. at 787 (Guild Counsel stipulating that the issue was being withdrawn).

c. Section 11.2 (Cleaning Allowance)

The County proposes that the annual cleaning allowance of $360.00, paid in $30.00 monthly installments, not be paid for any month in which an employee has not worked:

> The Employee shall not be eligible for such allowance when not working during the month.

The practice of paying the allowance to employees on extended leave has apparently been inconsistent, and the County seeks clarity through a "bright line rule." County Brief at 68. There is no justification, says the County, for paying a uniform cleaning allowance, in aid of the County's "clean uniform policy," for a month in which an employee has not worked. The Guild's Brief does not address the issue, nor did counsel cross-examine the County's witness on the cleaning allowance, Maj. Kane. Tr. at 787.

In the absence of cogent argument as to why an employee who is off work for an entire month needs a stipend to clean his or her uniform, I find the County's Section 11.2 proposal to be reasonable, and I will award it.

AWARD:

I do not award the Guild's Section 10.1 footwear allowance proposal, nor the Guild's Taser proposal which has been withdrawn. I award the County's Section 11.2 Cleaning Allowance proposal that an employee not be eligible to receive the monthly installment in any month during which the employee has not worked.

8. Article 20.1 (Duration)

There is no dispute that the duration language should be amended to provide that the contract will be in effect from January 1, 2015 through December 31, 2017. Thus, I will award the agreed new language.

AWARD:

The duration of the Agreement will be January 1, 2015 through December 31, 2017.

9. Appendix A, Section A.1 (Wages and COLA)

a. Proposals of the Parties

The County proposes retroactive wage increases of 2.0% in each contract year, i.e. each January 1 in 2015, 2016, and 2017. The Guild proposes retroactive increases of 3.0% in each year effective January 1. I will award the Guild's proposal for reasons that follow.

b. Methodology

Each party has provided a comparability analysis to support its case, although they proceeded with very different methodologies and sets of comparables. Neither party anticipated the precise set of comps I chose at the outset of this Award, i.e. Clark, Pierce, Multnomah, and Washington. Rather, the County provided a corrected "net hourly wage" analyses of its own proposed comparables (Appendix A to its brief), and a similar analysis adding the Guild-proposed Clackamas County to the County's proposed comparables in Appendix B. *See*, County

Brief at 72, fn. 7. The Guild presented a variety of wage analyses isolating wages, premiums, medical insurance contributions, retirement contributions, etc.

These analyses by the parties were helpful, but because neither tracked the set of actual comparables I chose, and also because the net hourly analysis utilized by the County (as the Guild has persuasively argued in its Brief at 27 *et seq*.) does not necessarily capture all forms of "compensation" received, such as premiums and benefits.[35] Moreover, says the Guild, the County improperly included the "shift turnover" time, 10 minutes at the end of the shift which is paid at overtime, in the County's wage analysis. If that turnover time is truly "mandatory overtime," says the Guild, the County should have accounted for mandatory overtime in the comparables, which it did not do.[36] On the other hand, to be fair, the Guild's "Total Monthly Wage" charts, which I find to be most helpful,[37] include Clackamas County, which tends to increase the apparent County wage deficit beyond the level the analyses would show if the actual comparables had been used.

c. Wage Analysis

In sum, the parties' analyses would need to be tweaked in order to be meaningful for my purposes. In other interest arbitration proceedings, I have taken the parties' charts and gone through the sometimes laborious process of manually modifying them to reflect the actual comparables I have chosen (or, if the parties have been kind enough to share the source Excel spreadsheets, I have used them to perform that analysis). Here, however, I find no need to do so.

[35] In addition, given the only slight differences in hours worked in corrections in the County and in the comparable jurisdictions, the net hourly wage analysis does not necessarily add a lot.

[36] The County, in its analysis, did account for Multnomah which has similar turnover time, but paid at straight time wages.

[37] Those charts include base wages and premiums, such as longevity and education, but exclude medical and retirement contributions. Because the latter contributions may result in very different "benefits," however, and I have no way of comparing those benefits, I find them problematic in the wage comparison.

That is so because the County's wage analysis—even utilizing its own proposed comps (including Kitsap and Spokane, which *reduce* the County's wage deficits as compared to the actual comps by lowering the average) demonstrate that at many data points, the County's proposed wages would leave CD's more than 1% behind the average of the County's comparables. And even at the data points at which the County's wage proposal, judged by its own methodology, *appears* to meet or exceed the average of the comparables, that advantage disappears when Spokane and Kitsap are removed from the analysis.

To take just a couple of examples, the County's 2015 End of Year Wages, (including the 2% increase in the County's proposal) for a 5-year Deputy in Appendix A is shown at -0.13%, i.e. close enough to judge wages at a par with the average of the County's comps. But if Kitsap and Spokane are removed, the average monthly gross pay of 5-year Deputies in the comparables rises from $5519.11 to $5807.37, for a difference of $299.04, which puts the County's proposal of $5508.03 at -5.43% from the average. Performing a similar analysis for the 10-year Deputy, shown at +0.26% on the County's chart at page 80 of its Brief (reproduced from the corrected Appendix A), the average monthly wage rises from $5701.26 to $5956.17 for a difference of $254.57 or -4.45% from the County's proposal of $5726.26.

Similarly, for 2016, the County's chart using its own comparables shows a deficit at every data point except at the 10-year Deputy which the County has calculated at +0.01. The average monthly wage using the actual comparables (eliminating Kitsap and Spokane), however, rises from $5829.82 to $6081.83 or $241.11 over the County's proposal of $5840.72 (-4.13%). And for 2017, the County's chart shows negative variances from the average of its proposed

comparables ranging from -2.47% (Start) to -0.14% (10-year Deputy).[38] Using the actual comparables and analyzing the 10-year Deputy number, the closest to being on par with the average of the *County* comparables, however, turns the County's proposal into a -4.29% deficit when judged according to the average of the actual comps.[39]

If these analyses turn substantially negative for the few data points at which the County's analysis suggests parity, I assume that they would be even more negative at the other data points where they are already negative in the County's own analysis.[40] In light of the fact that the Guild's wage proposal of 3%/3%/3% retroactive exceeds the County's 2%/2%/2% retroactive proposal by just 1% in each contract year, and that the Guild's proposal for each year would be justified by the comparability analysis even if I accepted the methodology the County used in support of its proposal—and especially if modified to take account of the actual comparable jurisdictions in this proceeding—I see no need to examine the competing methodologies in detail.[41]

An award of the Guild's proposal is supported by other statutory criteria as well. The County expressly disclaims an "inability to pay" argument. *See,* County Brief at 4. But it makes

[38] In the County's Brief, the 5-year Deputy shows as a positive variance, i.e. +0.52%, but Appendix A establishes a typo, i.e. that the number is actually negative.

[39] The average monthly wage, excluding Kitsap and Spokane, rises to $6212.82 or $255.32 above the County proposal of $5957.50, which calculates to -4.29%.

[40] In a quick scan of the County's backup data, I did not see any anomalies, e.g. data points at which a specific year Deputy of one of the comparators was well above what might be expected given the wage levels for other Deputies of that comparator on the longevity chart.

[41] It might well be the case that I would find that the Guild's analysis overstates the wage deficit of Snohomish CD, even disregarding the effect of Clackamas on the computations. It might even be true that the Guild's "overstatement" would exceed the County's "understatement" of the wage deficit, particularly in that portion of the analysis that took account of the 6% retirement pickup in the Oregon jurisdiction which, in light of Washington law, would be difficult for me to accept as a legitimate part of the computations. That is, it strikes me that taking account of the 6% pickup in setting wages would be accomplishing something indirectly that Washington law prohibits a County from doing directly. Be that as it may, however, I am satisfied that the comparability analysis justifies the Guild's wage proposal.

something of a "financial responsibility" argument when it notes the budget difficulties facing Snohomish County, e.g. the jail's financial challenges given recent reductions in ADP ("average daily population"). The County chose to reduce ADP because of physical limitations of the facility that make it difficult to properly supervise and respond to the needs of a current inmate population with greater mental health and/or addiction issues than has historically been the case.[42] In response, the jail has reduced ADP to a level that can be effectively monitored and serviced. Formerly, the jail accepted a significant number of contract detainees from other jurisdictions, and those contracts produced substantial revenue. Consequently, the reduction in ADP has also resulted in a corresponding decrease in revenue produced by the jail itself to fund the operations. The Guild's expert, Mr. Finkelstein, however, testified credibly that Snohomish County has a comparatively better financial outlook than most other Washington counties, with strong sales tax and property tax revenue increases, substantial new construction (which allows an increase in total property tax revenues beyond the 1% per year limit applicable to existing construction), and strong employment from Boeing and others. I also note that, although a recent public safety levy narrowly failed, it is not out of the question that voters would rally to the revenue needs of the County if necessary to fairly compensate corrections Deputies under this Award, or to salvage other valued County services if they were imperiled.[43]

There are some historical justifications for the Guild's wage proposal as well. For example, although recent settlement trends in corrections units for 2015-2017 range from 1% to 5.5%, *see* Guild Brief at 38-39, the most common increase in settled contracts has been 2%-

[42] Several inmate deaths in recent years focused attention on how the County was doing in handling that changed jail population.

[43] And as I observed in Cowlitz County, the fact that voters prefer not to tax themselves to pay wages and benefits called for under an interest arbitrator's analysis of the statutory factors can hardly be binding on the Arbitrator. *See*, e.g. *Cowlitz County* at 14-15, fns. 27 and 28.

2.5%. But in 2010 and 2011, this unit received 0% while other corrections units were receiving at least modest wage increases. *See*, e.g. Guild Exh. III.A.26-31. That fact justifies a somewhat higher award for these employees now to restore some of the lost differential between these employees and their peers.

AWARD:

With respect to base wages in Appendix A of the CBA, I award the Guild's proposal of across the board increases of 3% effective January 1, 2015, 3% effective January 2016, and 3% effective January 2017, all retroactive.

10. Longevity Pay (Appendix, A.3)

The Guild proposes to delete the current "grandfathered" longevity pay provision, i.e. a provision that is only applicable to employees "receiving longevity pay prior to December 31, 1982" and is "frozen" at the rates then in effect. The Guild proposes to replace those provisions with a new longevity pay schedule starting 2% in year 4 and increasing in four-year increments to 11% after 24 years. The proposal is justified, says the Guild, based on the value to the institution of experienced CD's who "convey substantial benefits to the County" and thus "should be rewarded for providing those benefits." Guild Brief at 53. That experience is especially important in light of the changes in the kinds of inmates, i.e. CD's no longer deal as much with violent offenders, as was the case in the past, but rather detainees suffering from mental illness and/or addiction. Similarly, offenders tend to be "repeat customers," and become known to and by the experienced Deputies. Thus, the jail runs more efficiently because CD's have developed rapport with the inmates. These benefits to the County deserve additional

compensation, says the Guild. The Guild also points to an internal comparability factor, i.e. the Road Deputies have a longevity benefit in their contract.[44]

The County notes, however, that none of the comps have a longevity benefit that begins so early (i.e., after only four years) or that progresses to such a high rate at its maximum (11%). Nor is there any "retention issue" in evidence that would justify a longevity premium here. *See*, e.g. County Brief at 91 (reproducing an exhibit that shows attrition rates between 6% and 8%). As for internal comparability, the County notes that the Road Deputies are less persuasive as a comparable than the Sergeants and Lieutenants. The Road Deputies may interact with CD's at booking, etc., but the Sergeants and Lieutenants actually supervise the CD's. The Sergeants and Lieutenants do not receive longevity, however, and were in fact denied that benefit in the last interest arbitration for that unit in 2014.[45] Moreover, education is a factor in promotion for the Road Deputies, but is not a factor in this bargaining unit.

As I have indicated in previous interest arbitrations, because longevity pay is included in the total monthly wage analysis I usually employ on the base wage issue, separately considering add-ons such as longevity risks double-counting. In the end, I also think Arbiter Wilkinson was on the mark in the 2014 Sergeants and Lieutenants interest arbitration:

> I am disinclined to award premium or incentive pay unless proposals for the same receive extremely strong comparator support or there are other compelling reasons to add such provisions via arbitration, as opposed to negotiation. The reason is that this pay is part of the total compensation package and must be figured as such. However, many times these forms of premium pay benefit a bargaining unit unevenly. Therefore, if the parties decide that this premium or incentive pay is needed and part of the wage "pie" that should be distributed in this uneven fashion, then the result should be achieved by negotiations.

[44] Although the County points out that the Road Deputies may receive the Longevity Premium or the Education premium, but not both, whereas the Guild in this proceeding seeks to gain both benefits and "stack" them on top of each other.

[45] As with the Guild here, the Sergeants and Lieutenants argued for longevity based on internal comparability with the Road Deputies. Arbitrator Wilkinson did not award that proposal. *See*, Exh. E-7 at 22-23.

Exh. E-7 at 22-23. And that is particularly true when, as here, the parties' CBA previously provided this form of premium pay, but the parties abandoned it through negotiations (even if it was 35 years ago, and even if abandoned only prospectively). Nor is the current proposal—at least at the levels suggested—consistent with longevity pay provisions in the comparable jurisdictions. Consequently, I will not award the Guild's longevity pay proposal.

AWARD:

I do not award the Guild's A.3 proposal in Appendix A.

11. Appendix A , Section A.10 (Full-Time FTO's) (New)

At the hearing, the County withdrew its objections to the Guild proposal on Full-Time FTO's. *See*, Tr. at 787, confirmed in the County's Brief at 18. Therefore, I award the proposal.

AWARD:

The Guild's proposed A.10 in Appendix A is awarded.

12. Appendix A, Section A.8 (Specialty Pay)

The Guild proposes an added sentence in Section A.8 of Appendix A that "The employer shall not refuse to use trained staff without articulated justification." The genesis of this proposal was apparently a single instance in which the County chose to use someone other than the "usual" trainer in a specific instance, thus denying the Deputy the 3% premium pay. Eventually, management sat down with the Deputy and explained that action, but according to the Guild, "it took many months and the filing of ULP to figure out" the reasons. The County argues that the proposal should not be adopted because it is essentially a "one-off" situation, since resolved,[46]

[46] *See*, Tr. at 750.

and as drafted, the provision is ambiguous in a number of respects. For example, in the testimony at the hearing, it was unclear whether the County's "articulated justification" would be the end of the matter, or whether a Deputy or the Guild could file a grievance if they believed the articulated justification was insufficient.[47] Nor was the proposal discussed extensively in bargaining. Tr. 764.

I will not award the proposal at this time. It is not clear to me that there is an ongoing problem that this proposal is designed to address, nor what the precise parameters are, e.g. whether the *substance* of the articulated justification, e.g. whether the County has given a "good" or "sufficient" reason for its actions, is a subject for the grievance and arbitration procedure. Had this proposal been discussed more thoroughly in negotiations, these ambiguities might have been resolved, and I might have been able to award it. On the current record, however, I cannot do so. Instead, I return it to the parties for further discussions.

I will not award the Guild's proposed addition to Appendix A, Section A.8.

AWARD:

I do not award the Guild's proposed addition to Appendix A, Section A.8.

13. Appendix A, A.11 (Deferred Compensation) (New)

The Guild proposes a deferred compensation program with a $50.00 per month County match. The Oregon comparables effectively have deferred compensation, says the Guild, because two Oregon jurisdictions link the retirement pickup to deferred comp by providing that if the Legislature alters the pickup, an equivalent amount will be transferred to base wages or to a deferred comp program. Guild Brief at 64. The internal comparability argument (much stronger

[47] For example, at the hearing, Guild counsel offered to stipulate that "if this language was in here and there was a disagreement about it that it could be the basis of a grievance." Tr. at 752. But in the Brief, the Guild implies that the Deputy was eventually given a "clearly articulated reason for his removal from the position" and that "this is the extent of the articulated reason the guild is requesting." Guild Brief at 95.

in my view) is that a number of County bargaining units already participate in a deferred compensation program, including the Corrections Sergeants and Lieutenants. But the County notes that the units with deferred comp negotiated that benefit in exchange for a lower COLA percentage. *See*, Exh. E-33R. In addition, in the County's view, other units, including the Corrections Deputies, previously negotiated some other benefit in lieu of a deferred comp match. *See*, Guild Exh. IV.D.15.

This benefit is another one that I believe should be negotiated between the parties and not imposed in interest arbitration, and that is especially so when there is a history of bargaining on the subject. I will not award the Guild's deferred compensation proposal in Appendix A, Section A.11.

AWARD:

I do not award the Guild's proposed new Section A.11 to Appendix A.

14. Appendix A, Section A.12 (Education Incentive) (New)

The Guild proposes an "education incentive" of a 2% increase in wages for an AA Degree and 4% increase for a BA or BS degree. The County opposes adding an education premium to the wage structure, noting that there is little support in the external comparables, other than one Oregon jurisdiction. Nor is there a requirement for advanced education to be eligible for promotion in this unit, unlike the primary internal comparator, the Road Deputies, who need higher education to be promoted to Lieutenant. County Brief at 92. "Skills that can only be gained through experience and post-secondary education is one of the only ways in which employees can gain experience working in diverse groups which mirror that of a corrections environment, which epitomizes a diverse environment," argues the Guild. Guild Brief at 59. Deputy Moormeir testified that he gained that sort of experience through Edmonds

Community College and courses from a satellite of Central Washington University. Tr. at 366-67. He also testified that his formal education helped in his report writing. *Id.*

I have no doubt that advanced education can be useful to employees and to the County, but I do not award the Guild's proposal. First, as already indicated with proposals for other premiums, a separate education incentive is somewhat duplicative given that education incentives, where they exist, are usually part of the total compensation methodology utilized in considering the base wage issues.[48] In addition, however, there is no evidence before me that County CD's who have not gone to college are significantly deficient in dealing with a diverse inmate population, or that their written reports are not acceptable. Were there such evidence, I might view the matter differently. Similarly, if educational attainment had been linked by the County to eligibility for promotion, the case for a separate education premium would be strengthened. But those conditions are not present here, and thus I decline to award the Guild's proposal. I leave the issue, instead, to the parties' future negotiations.

AWARD:

I do not award the Guild's education incentive in the proposed Section A.12 of Appendix A.

15. Appendix A, Section A13 (Firearms Qualification)

The Guild proposes a 3% wage premium for CD's who are weapons qualified, pointing to substantial premiums applicable in the Oregon comparable jurisdictions. While conceding that the County has not had difficulty keeping a sufficient number of qualified CD's on staff, at least partly because qualification provides eligibility to bid for the desirable M-F day shift Transport assignment, the Guild contends that once qualified, CD's discover the "drawbacks," e.g. being

[48] To the extent, if any, that the education incentive proposed is based on labor market considerations, e.g. the concept that CD's with a degree could take their services to another jurisdiction that offers an incentive, I find that those factors have already been taken into account here because education premiums in the comparator jurisdictions, if any, were part of the base wage analysis.

pulled off a regular assignment for an unscheduled hospital transport, which might involve eight hours without a break.

The County notes that the parties bargained over weapons qualification and entered into a MOU in 2008 that modified the contractual provisions left in the prior contract by Arbitrator Reeves. *See*, Exh. E-33Q. Technically, the contract language still requires that *all* CD's be firearms qualified, but the parties agreed that as long as 50% of the Deputies are qualified, enforcement of the requirement for all Deputies to be weapons certified is suspended. In practice, 50-60% of the Deputies are qualified, with a waiting list for those who would like to receive the training.[49] The County trains from the waiting list at its discretion.

As consideration for this MOU, the Guild withdrew a proposal for a 1.5% weapons premium and the County agreed that nine of the Court Transport positions (half) would be bid by seniority, as well as that future vacancies would maintain a 50-50 split of CD's from the eligibility list and seniority bid. *See*, Id. at 2, "Court Transport Officers – Seniority Bid."
In light of this bargaining history, I cannot award the Guild's current proposal. That is so because in the relatively recent past, the Guild withdrew a proposal for a weapons qualifications premium in exchange for the County's commitment not to enforce the comprehensive firearms qualification provisions of the CBA as written.[50] In addition, the Guild received a commitment from the County that half of the Transport slots—a desirable assignment for many—would be bid by seniority. In effect, then, granting the current proposal would unfairly allow the Guild to "pocket" these benefits from the 2008 MOU while adding back the withdrawn firearms

[49] If the percentage of firearms qualified CD's falls below 50% of the budgeted positions without sufficient volunteers to make up the deficit, all Deputies must become qualified within 24 months. Id. at ¶ 5.

[50] As I understand the history, some CD's did not wish to be firearms qualified for one reason or another, e.g. moral or personal objections. Thus, an alteration in the enforcement of the contract was in the interest some members of the unit, i.e. a valuable consideration received from the County.

premium—part of what the County received in exchange for *agreeing* to those benefits. In my view, that would be in violation of the statutory standards I am required to apply, e.g. the express requirement to consider "stipulations" of the parties as well as "bargaining history," which in my view clearly falls within the "other factors" portion of the analysis under RCW 41.56.465.

I will not award the Guild's firearms qualification premium proposal.

AWARD:

I do not award the Guild's Appendix A, Section A.13 proposal.

C. Reservation of Jurisdiction

The Arbitrator will retain jurisdiction for the sole purpose of resolving any certified bargaining issues that may 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 6th day of March, 2017

Michael E. Cavanaugh, J.D.
Interest Arbitrator