

IN ARBITRATION PROCEEDINGS PURSUANT TO
RCW 41.56.430 et seq. AND CHAPTER 391-55 WAC

In the Matter of the Interest Arbitration

between

CLARK COUNTY DEPUTY SHERIFFS GUILD,

and

CLARK COUNTY.

RE: Interest Arbitration; PERC Case No. 129560-I-17

OPINION AND AWARD

of

LUELLA E. NELSON,
Interest Arbitrator

September 12, 2018

This Interest Arbitration arises between CLARK COUNTY DEPUTY SHERIFFS GUILD ("Guild"), and CLARK COUNTY ("Guild"). I, LUELLA E. NELSON, was selected to serve as the Neutral Chairperson. The parties agreed to waive the panel provided for in RCW 41.56.450.

At a hearing held on March 19, 2018, in Ridgefield, Washington, the parties had the opportunity to examine and cross-examine witnesses, introduce relevant exhibits, and argue the issues in dispute. A certified shorthand reporter attended the hearing and subsequently prepared a verbatim transcript. Both parties filed post-hearing briefs on or about May 4, 2018.

APPEARANCES

On behalf of the Guild:

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On behalf of the County:

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In arriving at my Decision and Award, I weighed and considered the following criteria set forth in RCW 41.56.465(1) and the Rules of the Washington Public Employment Relations Commission ("PERC"), Chapter 391-55 WAC (Impasse Resolution Rules):

- (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.

I also weighed and considered the following criterion in RCW 41.56.465(2):

- (2) ... 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.

BACKGROUND

This case involves the Sheriff's Office for Clark County, a county on the southern border of Washington. The Guild represents Deputy Sheriffs in that agency. This bargaining unit is one of three bargaining units in Clark County that are strike-prohibited, and thus eligible for interest arbitration.

As fully described below, the parties believed they had reached tentative agreement ("T/A") to settle all the terms of a new collective bargaining agreement in March 2017¹. They later realized they disagreed regarding the meaning of a County proposal within that T/A regarding elimination of the Payroll Stabilization Account ("PSA") program, described below. They agreed to finalize the contract with the exception of the PSA issue, which is the sole issue submitted to this interest arbitration.

THE PSA PROGRAM

In the 1990's, the County moved from a monthly salary to a semi-monthly hourly payroll cycle. This change generated large swings in compensation from pay period to pay period, particularly for employees who worked compressed schedules (e.g., the 11.5-hour shifts, four days at a time, worked by most of this bargaining

¹ Except as otherwise indicated, all dates refer to 2017.

unit), and particularly in the second half of shorter months. The County implemented the PSA program for all employees, represented or not, to permit employees to even out their earnings between payroll periods. Employees could set aside up to 4 hours out of any 40-hour workweek, with a cap of 50 hours, to be paid out in later payroll periods. The County did not set aside PSA pay amounts; it merely tracked the hours in each employee's PSA account. PSA was paid at the employee's hourly rate at the time of the pay-out, not at the time the hours were worked. The County treated PSA pay-outs as income in the pay period in which the pay-out occurred. The parties incorporated language for the PSA program in the Agreement.

During 2015-16, 40 Guild bargaining unit employees, or approximately 30% of the bargaining unit, used PSA. In 2016, the County informed all employees that it intended to eliminate the PSA program. Guild witnesses testified this caused them to stop using PSA and spend down their PSA balances. As of February 28, 2018, 14 out of 130 Guild employees, or 11% of the bargaining unit, still had a PSA balance.

OTHER PERTINENT CONTRACTUAL ACCRUALS

COMPENSATORY ("COMP") TIME

Article 10.9 of the Agreement allows employees to accrue compensatory ("comp") time in lieu of overtime, to a maximum of 110 hours. Comp time is used to take paid time off, which must be scheduled. Accrued comp time can only be cashed out if the employee moves to a position that is not eligible for comp time (e.g., a salaried position) or terminated. Employees who reach the 110-hour comp time cap receive only overtime pay.

Guild witnesses described considerable levels of overtime work. For example, Deputy Sheriff Dolores Warden estimated she works 400 hours of overtime annually. Nonetheless, as of January 31, 2018, only 35 out of 128, or 27%, of bargaining unit employees had an accrued comp time balance greater than 20 hours. Warden, for example, had no accrued comp time hours as of January 31, 2018. Of the 40 bargaining unit employees who used the PSA program during 2015-16, 29 had fewer than 20 hours of accrued comp time as of January 31, 2018. Of the 14 bargaining unit employees with PSA balances as of February 28, 2018, 6 had fewer than 20 hours of accrued comp time as of January 31, 2018.

PAID DAYS OFF (“PDO”) AND SICK LEAVE

Under Article 7 of the Agreement, bargaining unit employees accrue Paid Days Off (“PDO”) each pay period, based on their completed years of service and hours paid in that pay period. The cap for accrued PDO increases with years of service. PDO is used “during the year for vacation, illness, holidays or personal business time off.” In some circumstances, employees can sell back some of their accrued PDO. Employees also accrue sick leave under Article 8, some of which may be cashed out by employees with more than 10 years’ service who retire, voluntarily separate in good standing, and/or are laid off.

COUNTY CONCERNS REGARDING THE PSA PROGRAM

Over the years, the County identified employees whom it believed were using the PSA program other than in the manner it was intended. The PSA program was intended to allow employees to even out pay between pay periods by shifting some of the pay from pay periods with more hours to pay periods with fewer hours. Some employees were banking or taking large PSA pay-outs within a single pay period, without regard to whether the pay period was a long or short pay period. The County notified the alleged PSA abusers of its concern, but ultimately had few options because it could not refuse to pay for hours employees had worked.

In 2015, the Washington Department of Retirement Systems (“DRS”) audited the County and concluded that the PSA program did not comply with DRS reporting requirements. There was also a concern that the PSA program did not comply with federal Internal Revenue Code provisions regarding “constructive receipt.” The County concluded that it did not have the administrative ability to account for PSA hours in a manner consistent with those obligations. It therefore decided to eliminate the PSA program.

By the time of the negotiations that led to this dispute, the County had eliminated PSA for all County employees except the Corrections Deputy and Deputy Sheriffs bargaining units. Other than in those two bargaining units, employees’ PSA accounts were slowly paid out during the last half of 2016. Employees outside those two bargaining units received no additional compensation or benefits beyond the sums required to pay out their PSA balances.

2017 CONTRACT NEGOTIATIONS

In negotiations for the 2017-2019 Agreement, the County proposed to eliminate the PSA program and cash out existing PSA balances. In taped pre-mediation negotiations, the Guild floated the idea of packaging PSA elimination with a 5% specialty pay proposal. The County rejected coupling the PSA elimination with a benefit that had a monetary cost. Instead it suggested a comp time sellback for parts of the year with the most impact from the semi-monthly pay periods, analogizing the idea to a paid days off (“PDO”) sellback. The Guild argued it was more like a vacation sellback, and later disavowed any interest in vacation sellback.

In mediation, the County proffered two “what if” package proposals on 21 issues; both packages included elimination of the PSA program. Its February 6 PSA proposal was:

CCSO proposes deletion of the PSA language and dissolution of the PSA program. In exchange for deletion of PSA, CCSO offers a one-time payout in the month of February of 2017 of 10 hours of compensatory time for all Guild members.

The County’s March 9 “what if” package included the following PSA proposal:

Deletion of the PSA language and dissolution of the PSA program. In exchange for deletion of PSA, one-time payout in the month of June of 2017 of 15 hours of compensatory time for all Guild members.

It reiterated that language later the same day in a “what if” package that the parties T/A’d that day. In addition to PSA, other agreed-upon items included, inter alia, increases in base pay, longevity pay, and the addition of Veterans Day as a paid holiday. The Guild had initially proposed adding Martin Luther King Day as a second additional paid holiday, but had dropped that part of its holiday pay proposal by then. On March 21, the County provided the T/A in legislative format, including the following PSA provision:

~~11.7 — The parties agree to reopen this Section and the definition of active employment under Article 2 should the County propose any modifications to its payroll system and procedures during the term of this Agreement which affect mandatory subjects of bargaining. The County shall continue to make available the Payroll Stabilization Account (PSA) under its present terms and conditions in order to provide employees a voluntary mechanism to even out pay from pay period to pay period.~~ **(PSA Program Dissolution and PSA language to be removed from CBA. In exchange, for deletion of PSA, a one-time payment in the month of June 2017 of fifteen (15) hours of compensatory time for all guild members.**

The Guild membership ratified the T/A.

The parties later realized that they had different interpretations of the agreement regarding the PSA. HR Manager Breanne Nelson testified that the County intended to permit employees who had accrued comp time to cash out 15 of those accrued hours. Sergeant Bill Sofianos, who was Guild President at the start of the negotiations, testified he understood the County's offer would give 15 hours of additional comp time to each bargaining unit employee; he did not understand it to mean only that, if an employee already had 15 hours' comp time banked, s/he could cash it out. Sergeant Robert Latter, who is now Guild President, testified he shared Sofianos' understanding. Rather than hold up the rest of the contract, on June 8, the parties agreed to a Memorandum of Understanding ("MOU") with the following interim resolution of the PSA dispute:

1. Remove Article 11, Section 7 (PSA) from the parties 2017-2019 CBA and place the section into this Memorandum of Understanding ...
2. Ratify the 2017-2019 CBA containing all of the remaining tentative agreements and existing contract language.
3. Agree that signing the parties' 2017-2019 CBA that does not contain the above listed Article 11, Section 7 (PSA) is not an agreement that the terms of Article 11, Section 7 has ceased to exist. Article 11, Section 7 (PSA) remains in force, but is an unresolved issue between the parties. The terms have simply been moved to this Memorandum of Understanding in order to allow the remainder of the CBA to be implemented.
4. Agree to re-open the mediation to continue to meet and bargain in good faith over this Article 11, Section 7 (PSA) Memorandum of Understanding to either a resolution or to impasse. If the parties are unable to resolve the issue and reach an impasse, the mediator will refer Article 11, Section 7 (PSA) to PERC for certification to Interest Arbitration.

The mediator subsequently certified Article 11.7 to Interest Arbitration on August 2, 2017.

PROPOSALS IN INTEREST ARBITRATION

The Guild submitted the following proposal prior to hearing in this matter:

The County shall be allowed to end the availability of the Payroll Stabilization Account program to Guild members only under the following conditions:

- 1) Martin Luther King's Birthday shall immediately be added to the list of Holidays in Article 7, Section 4, and
- 2) The County shall immediately make a one-time payment of fifteen (15) hours pay to all guild members.

The County submitted the following proposal prior to hearing in this matter:

~~11.7 The parties agree to reopen this Section and the definition of active employment under Article 2 should the County propose any modifications to its payroll system and procedures during the term of this Agreement which affect mandatory subjects of bargaining. The County shall continue to make available the Payroll Stabilization Account (PSA) under its present terms and conditions in order to provide employees a voluntary mechanism to even out pay from pay period to pay period.~~ [Language not to be included in the Collective Bargaining Agreement: The Payroll Stabilization Account (PSA) shall be cashed out at the employee's current rate of pay at an agreed upon pay date in 2018. In exchange for elimination of PSA, the County offers the following: DSG members with accrued and available Comp Time as of a mutually agreed date are eligible to cash out up to sixteen (16) hours of accrued Comp Time as a one-time option. This cash out will be at an agreed upon date in 2018.

At hearing, the County modified its proposal in a Statement of Position reading, in pertinent part:

The County proposes elimination of the PSA. In order to assist employees in the transition from PSA, the County proposes providing Clark County Deputy Sheriff's Guild (CCDSG) employees:

- Permit Guild employees to cash out accrued and existing compensatory time three times/year at dates to be determined at the end of the prior calendar year;
- To cash out, employee must maintain a minimum balance of 20 hours; therefore, any hours above 20 may be cashed out

The County estimates the cost of the Guild's proposed 15-hour one-time payout at \$74,982.75, plus 7.65% employer contributions for Social Security and Medicare. It estimates the cost of adding Martin Luther King Day as a holiday to be paid at holiday premium rates at \$16,896.10 in the first year; that amount would rise in later years with annual wage adjustments and step increases. Had Martin Luther King Day been a paid holiday in 2018, the payroll cost per bargaining unit employee would have ranged from \$1.02 to \$316.43.

According to the County, the constructive receipt doctrine complicates cashing out comp time balances. The County must go back through its records manually to determine when the comp time was earned. For that reason, it seeks to limit comp time cash-outs to three times per year, which would allow employees to even out the earnings in the three smallest pay periods each year but limit the County's administrative time. The County plans to implement a new payroll accounting system that will track when comp time was earned.

EXTERNAL COMPARATORS

In 1996, the parties agreed that the comparable jurisdictions were Kitsap, Spokane, Thurston and Yakima Counties in Washington and Clackamas, Washington, and Marion Counties in Oregon. In interest arbitration involving these parties in 2012, Arbitrator Howell Lankford adopted the traditional measure of

“similar size,” of $\pm 50\%$. Applying this standard, he looked to comparator jurisdictions of Kitsap, Spokane, and Thurston Counties in Washington, and Clackamas, Washington, and Marion Counties in Oregon. He found that Yakima County had dropped out as a comparator because its population at that time was “barely below a 40% cutoff” in size. In so doing, he commented that it could be argued that per capita property valuation could be as significant as simple assessed valuation in comparing “economic size,” but noted the lack of evidence of assessed value per capita. He rejected Multnomah County, Oregon, as a comparator, noting that both its population and its assessed valuation are significantly larger than the County’s.

The County proposes as comparators the same jurisdictions used in 2012 by Arbitrator Lankford – Kitsap, Spokane, and Thurston Counties in Washington, and Clackamas, Washington, and Marion Counties in Oregon. The Guild proposes as comparators Kitsap and Thurston Counties in Washington, and Clackamas, Multnomah, and Washington Counties in Oregon.

Of the County’s proposed comparators, all but Clackamas and Marion Counties permit employees to cash out comp time voluntarily; Marion County employees can only cash out comp time if they are unable to schedule time off, but the Sheriff can require them to cash out comp time, and any comp time in excess of the 48-hour cap that is not used is paid out in December of each year. The cap on comp time in the comparator jurisdictions ranges from 40 to 100 hours.

All but one of the Guild’s proposed comparators have approximately 11 paid holidays that include Martin Luther King Day as a holiday; Washington County has time off in lieu of paid holidays. The Guild compared specific types of compensation (e.g., longevity, retirement, and incentive pay for certifications and education) and paid time off (e.g. vacation, sick leave, and personal days off). The Guild’s exhibits do not calculate the cost of the total economic packages in these jurisdictions.

THE CORRECTIONS DEPUTIES AWARD

Arbitrator Martin Henner heard an interest arbitration between the County and the Clark County Corrections Deputy Guild went to Interest Arbitration on November 9, 2017. Both parties proposed elimination of the PSA program, and both parties proposed modifications in the comp time provisions to increase the

maximum accrual and provide, in different ways, for those employees to cash out accrued comp time. In a March 16, 2018, Opinion and Award, Arbitrator Henner:

- * ordered the cash-out of all PSA banked hours, as proposed by the County;
- * increased the maximum number of compensatory (“comp”) time hours by 48%, to 144 hours (which he characterized as “a transfer of the lost 50 PSA hours from the eliminated payroll stabilization plan into an enhanced compensatory time cap”), as proposed by the Corrections Deputy Guild; and
- * limited comp time cash-outs to three times per year, in the three shortest payroll periods of the year unless the employee selects alternative payroll periods by the end of the previous calendar year (as proposed by the County), with a maximum of 48 hours’ cash-out in any calendar year (as proposed by the Corrections Deputy Guild).

He rejected the County’s proposal to require employees to maintain a minimum 20 hours of comp time such that only hours above that minimum could be cashed out.

ANALYSIS AND AWARD

CONSTITUTIONAL AND STATUTORY AUTHORITY OF THE EMPLOYER

The County has the authority to manage the operations of the Sheriff’s Office, as well as other County functions. This authority does not assist in resolving the issue certified to this interest arbitration.

STIPULATIONS OF THE PARTIES

The parties reached agreement on all the terms of the Agreement. They later agreed to reopen mediation and, if unable to reach agreement, to engage in interest arbitration over Article 11.7. No other pertinent stipulations exist in this case. Article 11.7 is the only provision the parties agreed to reopen, and the only issue certified to this Interest Arbitration. The parties fully bargained, inter alia multiple elements of compensation, including paid holidays. Those provisions were not certified to Interest Arbitration.

On brief, the Guild discusses the reasonableness of its belief that the County was offering an economic benefit – i.e., payment of 15 hours’ comp time to all Guild members – rather than simply the opportunity to cash out existing comp time. This not the forum to litigate the clarity of proposals in bargaining and mediation.

The Guild argues that, if the County believed the PSA was illegal, it could have engaged in substitution bargaining pursuant to Article 21.1 of the Agreement, which reads:

Should any Article, Section or portion thereof of this Agreement be held unlawful and unenforceable, such decision shall apply only to the specific Article, Section, or portion thereof directly specified in the decision. The parties agree to immediately negotiate a substitute, if possible, for the invalidated Article, Section, or portion thereof. All other portions of this Agreement, and the Agreement as a whole, shall continue without interruption for the term hereof.

It further argues that, if the Guild had resisted substitution bargaining, the County could have sought a legal ruling on the PSA program. It notes that, in substitution bargaining, if a substitute is possible, it is likely to be inferior to the original benefit from the standpoint of the party losing the benefit. It argues that it is more equitable to substitute an economic benefit of relatively low cost for a program that was of value to members.

In negotiations, the Guild expressed some doubt about the County's legal stance, but ultimately did not pursue that line. Instead, after toying with other leave provisions, it agreed on comp time as the place to salvage some benefit from the elimination of the PSA program. This is not the forum to litigate the correctness of the tax advice the County received or the parties' decision to negotiate away the PSA program.

Having only one provision on the table tends to make it more difficult to reach agreement because there are few opportunities to trade off interests. While the County Corrections Deputy Guild faced the same County legal position regarding the PSA, and similarly disputed the County's analysis of the legality of the PSA program, it also met the County's comp time-centered proposals head-on by itself proposing an increase in the comp time cap and provisions regarding the amount and frequency of comp time cash-outs.

I sympathize with the Guild's desire to find more trade-offs by re-visiting already-settled contract provisions, particularly since this dispute came to the foreground only after ratification. However, I am bound by the certification. Reopening agreed-upon economic items with no connection to the timing of pay for hours worked leads where the parties did not venture in bargaining, with little indication of where those discussions would have gone had they ventured there with full appreciation of the County's PSA proposal.² I therefore

² To the extent that the parties peeked into other contract terms in discussing elimination of the PSA, economic items were quickly ruled out even before the start of mediation.

have not considered in depth economic items such as retirement contributions; pay for longevity, certification, and education; differentials for specialized training; sick leave and other paid days off; and paid holidays. It would not serve the bargaining process to reopen those economic items outside that process.

COST OF LIVING/CHANGES OF CIRCUMSTANCES

Cost of living is not a factor in this case, nor is any change of circumstances in the first three statutory criteria involved.

OTHER TRADITIONAL FACTORS

The record is very limited regarding other factors traditionally considered in interest arbitration, such as recruitment/retention and the economic condition of the County.

In addition to external comparators (discussed below), the County points to “internal comparators” - i.e., the other bargaining units of its employees. Internal comparisons are not among the named statutory criteria. Interest arbitrators are divided regarding the appropriateness of internal comparisons as an “other traditional factor,” particularly as between strike-prohibited and strike-prohibited bargaining units. Other bargaining units within an employer are comprised of employees with different functions and interests from the bargaining unit at hand. I am of the view that internal comparisons are not appropriate in most cases. Assuming *arguendo* that there are exceptions, this is not one of them.

EXTERNAL COMPARABILITY

The most pertinent statutory factor in this case is the one articulated in RCW 41.56.465(2): external comparability with “personnel of like employers of similar size....” Even there, as discussed below, the pertinent evidence is of limited value in resolving this very narrow dispute.

Looking first at comparators, Multnomah County’s population is 170% that of Clark County, a significant difference in size. Assessed values in Clark County have closed the gap to within 150% since 2012, when Arbitrator Lankford rejected Multnomah County as a comparator. However, the State of Oregon has artificially suppressed assessed valuations since enactment of Measure 50 in 1997, whereas the State of Washington requires property to be assessed at fair market value. Assuming *arguendo* that per capita assessed valuation

could be a valid measure of comparability, the property value piece of that calculation is measured so differently between the two states that a valid comparison cannot be made solely on raw numbers. I therefore conclude that assessed valuation per capita is not properly comparable. In consideration of its much larger size and urban concentration, Multnomah County is not an appropriate comparator.

Measure 50 also skews assessed values in the Oregon counties that have been used as comparators in the past. However, population size makes those counties otherwise more comparable to the County than the much larger Multnomah County. They are within a range of 50% to 150% of the County's size; they are also reasonably similar regarding urbanization and other factors that tend to affect terms and conditions of employment. There is value to having multiple comparators within a reasonable range of size and prosperity, and a perfect fit is unattainable. I therefore will look to the same three Oregon counties used in prior interest arbitrations between these parties.

The Guild argues that Spokane County is not comparable due to its distance from Clark County, which it argues puts it in a different labor market. I am not fully persuaded that it is outside the relevant labor market for law enforcement, which has a more mobile set of skills than some other occupations. Spokane County's status as a population center in Eastern Washington gives it sufficient comparability to the County. I will therefore look to the same three Washington counties used in prior interest arbitrations between these parties.³

Five of the six comparator jurisdictions provide for some cashing out of comp time. It appears that none of the comparator jurisdictions have a program comparable to the PSA.⁴ The record is silent regarding whether any of them ever had such a program but eliminated it. Some have bi-weekly rather than semi-monthly

³ I note that Yakima County has returned to the \pm 50% range, with a 2017 population of 253,000, or 53.7% of the County's 2017 population of 471,000. Neither party proposes Yakima as a comparator.

⁴ The Clackamas County Agreement does have a "Deferred Compensation" provision stating:
An amount equivalent to four percent (4%) of the employee's compensation ... shall be placed into a deferred compensation plan for each employee, the plan to be administered by a provider with which Clackamas County has contracted for deferred compensation services.
Clackamas County, however, has bi-weekly pay periods. No evidence exists that this was intended to serve the same purpose as the PSA program.

pay periods, so they do not have the same need to smooth out pay between payroll periods. These jurisdictions thus do not provide useful comparisons for the PSA program. It is more useful to examine the logical connection between the parties' respective proposals and the impact from elimination of the PSA program.

The only cost to the County of the PSA program, above and beyond ordinary salary and benefits, was a slight bump if employees took their PSA pay-out after a pay increase. The County's current proposal to permit employees to cash out comp time three times annually has a noticeable financial impact only if there is a large pent-up demand to cash out comp time. The Guild's evidence suggests this is not the case.

In contrast, the Guild's proposal is a cash benefit beyond hours worked, plus an additional day of holiday pay for employees who work on that holiday. Even discounting for the difference between comp time and regular pay, the permanent addition of another paid holiday, on top of a one-time payment of 2/3 the amount the Guild believed was offered, would be a considerable step up in the long term compared to what the Guild believed it had agreed to. Other than a desire to get something for loss of a program that 30% of its bargaining unit used when it was in full swing, there is no logical connection to either Guild proposal. The Guild had already negotiated for one additional holiday as part of the overall contract settlement. An additional holiday benefits only those who work the holiday, and thus is not targeted to those who are losing PSA. There was no "meeting of the minds" to give each bargaining unit employee 15 hours' comp time.

On balance, it is most consistent with the parties' legitimate expectations to consider the County's comp time proposals. The most recent County proposal has one major departure from the stated goal of "easing the pain" of the elimination of the PSA program, requiring further examination.

The County's modified proposal - to allow employees to cash out comp time three times per year rather than a one-time cash-out - enhances the mediated proposal for any employee who wishes to cash out comp time every year. However, it claws back some of that enhancement with a new requirement that an employee have - and keep - more than 20 hours' accrued comp time. There was no requirement to carry a PSA balance.

I have compared the names of bargaining unit members who used PSA in 2015-16 (before the news that the PSA program was going away induced many to spend down their balances) with the accrued comp time hours for the bargaining unit. Most of the 30% of employees who actually used PSA in 2015-16 have fewer than 20 hours' accrued comp time. A 20-hour minimum thus would make comp time cash-out of no benefit to most of the employees who are personally affected by the elimination of PSA.

Sofianos testified there was no reason to sell back comp time because employees could just take overtime pay, and the record reflects that roughly 3/4 of them do just that. However, the elimination of the PSA program somewhat changes their incentives. Absent the 20-hour comp time floor, employees who previously used the PSA program to even out their cash flow could achieve nearly the same effect by banking enough comp time to make up the difference in the three pay periods when their pay is lowest.

The remainder of the County's proposal is supported by the record. The administrative burden of manually tracking comp time back to when it was earned justifies limiting comp time cash-outs to three times annually. Scheduling the three cash-out dates in the prior year aids in compliance with the constructive receipt doctrine. I therefore will order the County's proposal, but without the 20-hour minimum accrued comp time requirement.

AWARD

1. Article 11.7 of the Agreement shall be modified to provide that:
 - (a) The PSA program shall be eliminated, and
 - (b) Existing balances in the PSA program shall be cashed out at the employee's current rate of pay at an agreed upon pay date in 2018 or such other date as the parties mutually agree.

2. Article 10.9 of the Agreement shall be modified to add a provision that permits employees to cash out accrued and existing compensatory time three times per year, at dates to be determined at the end of the prior calendar year.



LUELLA E. NELSON - Neutral Chairperson

WITNESSES FOR THE COUNTY

Dave Ratliff
Breanne Nelson
Mande Lawrence

WITNESSES FOR THE GUILD

Josh Troyer
Dolores Warden
Pete Muller
Russell Bradseth
James Naramore
Bill Sofianos
Robert Latter

EXHIBITS

County

- A.1 RCW provisions
- A.2 WAC provisions
- A.3 Collective Bargaining Agreement 2017-19
- A.4 August 2, 2017, Certification to interest arbitration
- A.5 March 5, 2018, County proposal in interest arbitration
- A.6 March 5, 2018, Guild proposal in interest arbitration
- A.7 Informational piece about Sheriff's Office
- A.8 Organizational chart
- A.9 Guild bargaining unit roster

- B.1 County proposal for elimination of PSA program
- B.2 County's position in interest arbitration (modifying A.5)
- B.3 PSA Fact Sheet
- B.4 Compensation of groups of employees in 2016
- B.5 Compensatory time balances and PSA balances
- B.6 PSA balances in bargaining unit
- B.7 Compensatory time balances in bargaining unit
- B.8 Cost to pay 15 hours to each bargaining unit member
- B.9 Martin Luther King holiday estimated cost
- B.10 Internal comparison chart regarding PSA
- B.11 Internal comparison chart regarding compensatory time cash out
- B.12 External comparison table regarding PSA, compensatory time cash out
- B.13 External comparison table regarding vacation, annual leave and Personal Days Off
- B.15 Guild bargaining unit PSA activity 2015-16
- B.16 February 25, 1986, memo on reporting of compensatory time
- B.17 1989-91 collective bargaining agreement
- B.18 1992-94 collective bargaining agreement
- B.19 Payroll calendar
- B.20 Transcript of negotiations session March 28, 2016
- B.21 Transcript of negotiations session July 29, 2016

Guild

- G1 Comparable study for Guild comparator jurisdictions
- G2 Backup data for Exhibit G1
- G3 Excerpts from Lankford 2012 interest arbitration decision
- G4 January 2, 2018, news releases on CPI Portland
- G5 What-if proposal from County February 6, 2017
- G6 What-if proposal from County March 9, 2017
- G7 What-if proposal from County later in the day on March 9, 2017
- G8 Tentative Agreement March 21, 2017, in legislative format, from the County
- G9 MOU June 8, 2017, regarding PSA language dispute