

**IN THE MATTER OF
THURSTON COUNTY**

AND

**THURSTON COUNTY DEPUTY
SHERIFF'S ASSOCIATION**

Subject: Cost of Living Increase

Date Issued: October 23, 2018

INTEREST ARBITRATION OPINION AND AWARD

OF

ALAN R. KREBS

Appearances:

THURSTON COUNTY

Jane Futterman

THURSTON COUNTY DEPUTY
SHERIFF'S ASSOCIATION

Daryl S. Garrettson

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OPINION OF THE ARBITRATOR

PROCEDURAL MATTERS

In accordance with RCW 41.56.450, an interest arbitration hearing involving certain uniformed personnel of Thurston County, Washington was held on July 17, 2018 in Olympia, Washington. Alan R. Krebs was selected jointly by the parties to serve as the Arbitrator, acting in lieu of an arbitration panel, to decide the single issue presented. Thurston County was represented by Jane Futterman, Deputy Prosecuting Attorney. Daryl S. Garrettson, Attorney at Law, represented Thurston County Deputy Sheriff's Association. At the hearing, witnesses testified under oath and the parties presented documentary evidence. A court reporter was present, and, subsequent to the hearing, a copy of the transcript was provided to the Arbitrator, as were post-hearing briefs.

APPLICABLE STATUTORY PROVISIONS

When certain public employers and their uniformed personnel are unable to reach agreement on new contract terms by means of negotiations and mediation, RCW 41.56.450 calls

for interest arbitration to resolve their dispute. RCW 41.56.450 is applicable to the Sheriff's Office bargaining unit involved here.

RCW 41.56.465 sets forth certain criteria that must be considered in deciding the controversy:

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

- (a) The constitutional and statutory authority of the employer;
- (b) Stipulations of the parties;
- (c) The average consumer prices for goods and services, commonly known as the cost of living;
- (d) Changes in any of the circumstances under (a) through (c) of this subsection during the pendency of the proceedings; and
- (e) Such other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. For those employees listed in RCW 41.56.030(7)(a) who are employed by the governing body of a city or town with a population of less than 15,000, or a County with a population of less than 70,000, consideration must also be given to regional differences in the cost of living.

(2) For employees listed in RCW 41.56.030(7) (a) through (d), 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.

* * *

The statute does not provide guidance as to how much weight should be given to any of these standards or guidelines, but rather leaves that determination to the reasonable discretion of the arbitrator. RCW 41.56.465 requires the arbitrator to be mindful of the legislative purpose set forth in 41.56.430, which provides:

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

Arbitrators generally understand that interest arbitration is an extension of the bargaining process. They strive to decide the issues at impasse in a manner that would approximate the result the parties could have reached in good faith negotiations considering the statutory criteria. Resolving bargaining deadlocks in this manner supports the legislative purpose set forth in the statute.

NATURE OF THE EMPLOYER

Thurston County borders Puget Sound and is on the I-5 corridor of Western Washington. There are 85 employees in the bargaining unit of uniformed personnel at issue. The bargaining unit includes Lieutenants, Sergeants, and Deputy Sheriffs employed in the Sheriff's Department, with 52 of the 66 Deputies serving in the Patrol Division. The average tenure for bargaining unit employees is 12 years.

ISSUE

On February 21, 2017, the parties executed a Collective Bargaining Agreement that was to be effective from January 1, 2017 through December 31, 2018. That Agreement provided for a 2 percent wage increase effective January 1, 2017, but did not provide a specific wage rate for 2018. Rather, it provided for a wage reopener. Section 8.1.A of that Agreement provides:

Wage Reopener for 2018:

For 2018, the Association may reopen Article 8 of this Agreement and bargain with the Employer for a cost of living adjustment applicable to all employees covered by this Agreement. The Association may request

negotiations by notifying the Thurston County Human Resources Office, in writing, during the month of August 2017.

Debbie Brookman, the County's labor relations negotiator, testified that she wrote and proposed this language. She testified that she intended that the 2018 reopener would be limited solely to a cost of living adjustment that would apply to all bargaining unit employees, and that there would be no need to do wage comparisons for particular job classes.

Subsequently, the Association did request negotiations for a cost of living adjustment in accordance with Section 8.1.A. The County's proposal for this interest arbitration is to amend Article 8.1.A to add:

Effective July 1, 2018, the salary rates as set forth in Addendum A for 2017 shall be increased by two percent (2%) for all job classifications.

The Association's proposal is:

Article 8.1.A.
Wages for all members of the bargaining unit shall be increased retroactive to January 1, 2018 by 8.1%.

Appendix B.
The wage scale set forth therein shall be modified to reflect the salary increase provided for in Article 8.1.A.

On January 30, 2018, the Executive Director of the State of Washington Public Employment Relations Commission certified that following mediation, the parties were at impasse in negotiations, and therefore, they should proceed to interest arbitration on the following issue:

Article 8.1, Section A and Appendix B (wages)

The designation of comparable jurisdictions applicable to the criteria set forth in RCW 41.56.465(2) is not at issue. The parties agreed to designate the same five Counties as like employers for comparison purposes as they used in the past, and as specifically provided for in Section 8.1.C of the Agreement. They are Whatcom County, Snohomish County, Kitsap

County, Pierce County, and Clark County. All five Counties are situated on the I-5 corridor of Western Washington. Whatcom, Snohomish, Kitsap, and Pierce Counties each border Puget Sound. Clark County is situated further south, with its southern border across the Columbia River from Portland, Oregon.

POSITION OF THE ASSOCIATION

The Association contends that its proposal for an 8.1 percent across-the-board wage increase is justified based on the 3.1 percent increase in the Seattle-Tacoma-Bellevue Consumer Price Index for All Urban Consumers (CPI-U), published by the U.S. Department of Labor, Bureau of Labor Statistics for the twelve month period ending April 2017, with an additional 5 percent added to compensate for unsafe working conditions. The Association's attorney represented in his opening statement that the parties have historically used this Seattle area CPI-U index and the April-to-April period during contract negotiations. The Association points out that, according to the County's exhibit listing the cost of living increases provided by the County to the bargaining unit since 2009 and the corresponding increases in the Seattle area CPI-W index, the wage increases in total have, during this period, lagged behind the total increases in the cost of living by over 1 percent. The Association urges the Arbitrator to disregard the County's use of the CPI-W for all Western Cities of less than 2.5 million population because the parties in past negotiations have never used it and it was raised for the first time at the arbitration hearing. In addition, the Association argues, this index does not represent the Puget Sound cost of living since it covers a diverse area, including Alaska, Hawaii, Utah, and Wyoming, Arizona, California, Oregon, New Mexico, Idaho, and Washington.

The Association contends that the reopener should not be limited solely to consideration of the CPI since the parties have understood that the contractual reopener was for a general wage

increase, and that is reflected in the PERC certification of “Wages” as an issue. The Association avers that the County is trying to restrict the issue at arbitration only to constrain the Arbitrator from providing a proper and fair salary award.

The Association argues that the unsafe working conditions for Patrol Deputy Sheriffs should be considered as one of the “other factors” to be considered under RCW 41.56.465(1)(e). In this regard, the Association established that the County employs 0.57 Deputies per thousand of the unincorporated County population, while the statewide average for Counties is 0.85 Deputies per thousand, resulting in the County ranking 39th out of 39 Counties in this staffing criteria. Undersheriff Timothy Braniff testified that the current Sheriff’s Office staffing is lower than it was ten years ago despite the growth in population in the serviced area. He agreed that there is not adequate staffing. He testified that the County may dispatch one Deputy to a domestic violence call, and that, in his opinion, is not appropriate. Association Vice President and County Deputy Sean Chatterton testified that domestic violence calls are considered dangerous priority one calls that require immediate dispatch, similar to robberies and gun incidents, and local cities routinely dispatch two officers to such calls. Deputy Chatterton pointed out that the Sheriff’s Office has acknowledged that during May 2018, Deputies responded to 69 priority one calls in which the second Deputy arrived more than 7 minutes after the initial Deputy arrived on the scene, with the second responder, on average responding almost 20 minutes later. The Association presented anecdotal evidence of resulting difficulties. Deputy George Oplinger testified that he was injured during a fight with a suspect, while a backup Deputy did not arrive at the scene until 18 minutes after his request for cover. Deputy Brett Campbell testified that he was dispatched by himself to deal with a suicidal subject with a gun and that he was forced to shoot and kill him. He testified that had there been a second

Deputy at the scene, he might have had the option to deescalate or use a Taser. Deputy Detrich testified that he had fought with a suspect by himself for several minutes before having to shoot and kill him. He testified that he had requested backup but there were no Deputies close by. Association President and Deputy Sheriff Chris Packard testified that since the Sheriff's Office's staffing levels are below that of the comparable Counties and therefore less safe, it should pay more than the others.

The Association urges consideration of a total compensation comparison with the agreed-upon comparable Counties, with total compensation including base wages and longevity pay, but not including health benefits and special assignment pay. It argues that reduced consideration should be given to Clark County, since unlike the other comparators, Clark County is not on Puget Sound and it is part of the Portland metropolitan area. The Association represented that based on its criteria and considering differing years of service, Thurston County Deputies were behind the comparators by an average of 2.25 percent, and by 3.6 percent if Clark County was removed from the comparison.

The Association maintains that another factor considered by arbitrators is the local labor market, and in this regard, the local Cities of Olympia, Lacey, and Tumwater pay their Police Officers base wages plus longevity that are 12 to 14 percent more than that paid to Thurston County Deputies.

The Association observes that recruitment and retention is another factor considered by arbitrators. While it recognizes that the County has not yet had a problem with recruitment or retention of Deputies, it provided published articles that indicate that there is a significant recruitment problem developing in other jurisdictions. It suggests that this trend will affect the County if it does not address the compensation or staffing issues.

The Association argues that the County has not established a financial inability to pay, since there was no specific evidence of layoffs, reduced services, or lack of resources. It notes that the County's ending General Fund balance has been increasing over the past few years.

The Association argues that County bargained in bad faith by negotiating "me too" clauses with its other bargaining units, that would require the County to provide them with a cost of living increase above the agreed-upon 2 percent if it offered a higher increase to any other bargaining unit. Thus, according to the Association, the County's hands were tied during their negotiations, and awarding the County's wage proposal would be sanctioning the County's lack of good faith.

POSITION OF THE COUNTY

The County contends that a 2 percent cost of living adjustment is justified. It stresses that the Collective Bargaining Agreement makes clear that the contract reopener is for a cost of living adjustment, not for a general wage reopener. As such, according to the County, the Association's arguments regarding staffing levels and safety concerns should be disregarded.

The County maintains that the appropriate COLA for 2018 should be decided based on the factors set forth in RCW 41.56.465. The Association points out that the parties agreed to comparable jurisdictions for purposes of RCW 41.56.465(2) in Section 8.1.C of their 2017-2018 Agreement:

ARTICLE 8 – WAGES

* * *

8.1 WAGE SCHEDULE

* * *

C. The comparable jurisdictions agreed to by the parties are Kitsap, Whatcom, Clark, Snohomish, and Pierce Counties. The parties recognize these comparable jurisdictions could change in the future.

The County argues that to discount Clark County as an outlier, as the Association contends, because it does not border Puget Sound, would be counter to the express provision of Section 8.1.C of the Agreement. The County opines that a comparison of total compensation is appropriate, since compensation is negotiated as a package, and that total compensation comparisons should include wages at 5, 10, 15, and 20 years of service, uniform or cleaning allowances, the value of paid time off, and employees' cost of health insurance premiums. The County presented evidence that comparing such total compensation, a 2 percent increase places Thurston County at 2.84 percent above the average of comparables at 5 years of service, 1.04 percent higher at 10 years, 0.15 percent higher at 15 years, and 0.30 percent higher at 20 years. The County submitted statistics published by several entities that indicated that Thurston County's cost of living "falls mid-range among its comparators, and ... below the average of all the counties." It maintains that this data supports comparing Thurston County's compensation to the average compensation of the comparables.

The County urges that the wage information regarding cities in the local labor market should be disregarded since they are not like employers suitable for comparison according to RCW 41.56.465(2).

The County asserts that its position is supported by consideration of internal equity inasmuch as all of its other bargaining units received a 2 percent COLA for 2018.

The County maintains that its ability to recruit and retain its uniformed employees indicates that the wages paid are competitive in the marketplace. Undersheriff Braniff testified that he is unaware of any Deputy who has left the Sheriff's Office to take a job with another sheriff's or police department, and that the Sheriff's Office has not had any difficulties in recruiting or filling vacant positions.

The County avers that its financial condition, with expenses outpacing revenues, favors its proposal. Robin Campbell is the County's Budget Director. Ms. Campbell testified that the County's General Fund is the primary source of funding for the Sheriff's Office. She testified that property tax makes up about 35 percent of General Fund revenues, and that the County is mandated by statute to limit property tax increases to no more than 1 percent per year unless voters approve a larger amount at the ballot box. She testified that sales tax provides about 15 percent of General Fund revenues, and the remainder of General Fund revenues comes from a variety of sources. Ms. Campbell testified that during May 2018, she prepared a forecast for the Board of County Commissioners indicating that the ending balance for the County General Fund in 2018, if all employees received a 2 percent increase, would be \$9,064,000. She testified that this was a concern because the County needs to maintain a balance of \$10,000,000 in order for the County to pay its bills. She testified that the County has significant unfunded deferred needs, such as for road repairs and buildings. Ms. Brookman testified that the County's proposed 2 percent increase would cost a total of \$159,450, while the Association's proposal to increase wages by 8.1 percent would cost \$645,772.

The County observes that RCW 41.56.465(1)(c) requires consideration of the cost of living. It maintains that the CPI for West B/C is the most applicable index for determining the cost of living relative to this bargaining unit because it includes cities and regions of the western United States that are comparable to Thurston County. Ms. Brookman identified a chart that indicated that the CPI West B/C cost of living increase for June 2016 through June 2017 was 2 percent. Ms. Brookman testified that in the past, during negotiations, the parties had a tendency to look at the CPI-W for Seattle-Tacoma-Bremerton. She testified that the Bureau of Labor

Statistics discontinued this index in 2018. In its place, the Bureau of Labor Statistics provides a CPI-W index for Seattle-Tacoma-Bellevue.

DISCUSSION

This interest arbitration is confined to one issue. By the terms of the existing 2017-18 Collective Bargaining Agreement, there is a reopener for 2018 only for a possible “cost of living adjustment applicable to all employees covered by this Agreement.” Thus, this proceeding is confined to determining the appropriate cost of living adjustment for 2018.

RCW 41.56 465(1)(c) provides guidance for the meaning of a “cost of living adjustment.” It provides that one of the specified factors to be considered in interest arbitration is:

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

This factor is commonly applied in interest arbitrations by reference to the increase in the cost of living published by the Bureau of Labor Statistics. *Pierce County v. Pierce County Corrections Guild*, PERC Case No. 129400-I-17 (Axon, 2018); *Snohomish County Sheriff's Office v. Teamsters Local 763*, PERC Case No. 25993-I-13-0632 (Wilkinson, 2014). Washington public employers also often use the published cost of living increase data when negotiating wage adjustments for the second or third year of an agreement. Snohomish County, which is one of the parties' agreed-upon comparator's, has a provision in its current contract with its Deputy Sheriff's Association that provides for wage increases in the second and third year that are equal to 100 percent of the increase in the cost of living measured by the increase in the CPI-W during the preceding June to June period, each with a minimum of 2 percent and a maximum of 3.5 percent.

Here, as the County acknowledged, the parties have a history of reliance on the CPI-W for Seattle-Tacoma-Bremerton (June to June of prior year) when determining wage increases. For instance, in 2009 and 2017 the negotiated increase precisely matched that CPI-W increase. In all years between 2010 and 2016 the negotiated increases were close to that increase, usually rounded up or down to a whole number. While the Bureau of Labor Statistics did recently change the index from Seattle-Tacoma-Bremerton to Seattle-Tacoma-Bellevue, I do not view this as changing the basic nature of this cost of living information. It still essentially measures the increase in the cost of living in the Seattle metropolitan area. I am not persuaded by the County's argument that reliance should instead be placed on the CPI-W, West B/C because of the recent sharp rise in Seattle housing costs. According to statistics provided by the County that was published by the Washington Center for Real Estate Research - University of Washington, the first quarter 2018 year over year increase in the median housing resale price in Thurston County was 11.4 percent. The County also provided an "Economic & Revenue Update" published by the Washington State Economic and Revenue Forecast Council that included the following passage:

Seattle area consumer price inflation remains well above the national average. Over the last year, from June 2016 to June 2017, consumer prices in the Seattle area rose 3.0% compared to 1.6% for the U.S. city average. Core prices, which exclude food and energy, were up 3.1% in Seattle compared to 1.7% for the nation. The higher Seattle inflation is almost entirely due to more rapid growth in shelter costs. During the year, shelter costs in Seattle rose 6.3% compared to 3.3% for the nation. ...

Thus, it appears that the cost of living increase in Thurston County shares with the rest of the Seattle area a particularly sharp increase in housing costs. That increase demonstrates that the Seattle area CPI-W is likely a more relevant index than the CPI-W, West B/C that covers a much broader area, stretching from New Mexico to Alaska.

The Seattle area CPI-W increase for the June-to-June period preceding 2018 was 3.0 percent. I find that is the appropriate cost of living increase for this bargaining unit since it matches the best evidence of the increase in the regional cost of living and it utilizes an index that the parties have historically relied upon to determine appropriate cost of living increases.

I am not persuaded by the Association's argument "that the contractual reopener was for a general wage increase," and not merely for a cost of living adjustment, and therefore a higher increase is appropriate based on workload and safety considerations. The negotiated contract language restricts the reopener to a cost of living adjustment. PERC's certification of "wages" as an issue for interest arbitration cannot reasonably be interpreted as a modification of the specific reopener language in the Agreement. Wage adjustments based on factors other than "cost of living" must await negotiations for a successor agreement to the existing 2017-18 Agreement. For this reason, this reopener cannot serve to provide a general wage increase based on workload, unsafe working conditions, wage disparities with comparable jurisdictions or with the local labor market, or considerations of recruitment and retention. In any event, the evidence presented by both parties indicates that with the awarded 3 percent wage increase, the compensation provided will not be out of line with the comparators.

It was not sufficiently established that the County's financial condition is such that it cannot afford to pay a cost of living increase exceeding 2 percent. Current economic conditions locally and nationally are generally favorable. There is no evidence that the County is laying off personnel or that it is suffering revenue declines. Rather, over the past several years, the County has had growing revenues for its General Fund, and its ending balance has consistently and significantly exceeded the \$10,000,000 that it maintains it needs to meet current expenses. In 2014, 2015, 2016 and 2017, it had ending balances of \$10,085,000, \$13,564,000, \$15,425,000

and \$11,827,000, respectively. While Budget Director Campbell forecasts that the ending balance will fall below the \$10,000,000 figure in future years, I am not persuaded that during the current favorable economic conditions, it cannot afford to provide this bargaining unit a wage increase this year that matched the best evidence of the rise in the cost of living. The County has not established that it would be unable to pay a cost of living increase of 3 percent to this bargaining unit for the entirety of 2018.

A factor supporting the County's position is the 2018 cost of living increase settlements set at 2 percent that it reached with its other bargaining units. Interest arbitrators may consider the level of wage increases provided to an employer's other bargaining units as one of the other factors "that are normally or traditionally taken into consideration in the determination of wages, ..." according to RCW 41.56.465(1)(e). However, I find that this factor does not outweigh the parties' prior history of utilizing the Seattle area CPI-W for the prior June to June period to determine an appropriate cost of living wage adjustment, just as one of the agreed-upon comparable jurisdictions, Snohomish County, did for the second and third year of its contract.

AWARD OF THE ARBITRATOR

It is the award of the Arbitrator that:

- I. Effective January 1, 2018, the wage rates as set forth in Addendum A for 2017 shall be increased by three percent (3%) for all job classifications. The wage scale set forth in Appendix B shall be modified to reflect this wage increase.

Seattle, Washington

Dated: October 23, 2018



Alan R. Krebs
Arbitrator